NIODA

NATIONAL INSTITUTE OF ORGANISATION DYNAMICS AUSTRALIA

Getting the Policies we Deserve?
The Dynamics of Making Policy

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Proceedings

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Introduction: Dr Susan Long

Welcome to the 1st Symposium conducted through the National Institute of Organisation Dynamics Australia (NIODA)

I am Susan Long, Director of Research and Scholarship at NIODA, the Symposium Chair and your guide for the two days.

I will give the traditional acknowledgement to the traditional owners.

'I wish to acknowledge the Traditional Owners and custodians of the land on which we are meeting: the Wurundjeri people of the **Kulin** Nation. I pay my respects to their Elders, past and present, and the Elders from other communities who may be here today.'

NIODA is an accredited tertiary education provider in Australia since the beginning of this year. We have a Masters' degree in Organisation Dynamics - the Master of Management, Organisation Dynamics. We have a consulting to organisations division and we have a research centre.

This Symposium is presented through the NIODA research centre where the focus is on collaborative capability.

This Symposium has a focus on the Dynamics of policy-making.

Policies are developed and implemented at many levels from the micro-level of office management through organisational policies to country – level policies. At the psycho-social level these are all connected. All policy is developed and implemented in a context – local, organisational, societal. The context influences policies and the policies influence the context.

I feel excited to see you all here and look forward to our discussions. Many of you are familiar with a systems-psychodynamic or socioanalytic approach to organisations. For some of you this approach may be quite new; including for some of our panel speakers. The symposium provides us with the opportunity for moving across disciplines and organisational contexts to enrich the discussion. None of us have definitive answers to the issues within policy-development and implementation or even the end-use of policies. But we need to share and explore. Here we are coming from a psychological, psychodynamic perspective, hoping to understand not only the conscious rational ways of thinking about policy, but also to understand some of the more unconscious and less rational influences on policy-making. May I even say, some of the quite seemingly irrational and emotional

influences. Yet, these influences have their own unconscious logic and it behoves us to understand them.

The Symposium is designed to include input from our invited keynote speaker Dr Bruno Boccara, whose interests and experiences take us to country level histories and dynamics that influence governmental policy and who has ways of conceptualising and thinking about these dynamics and how their damaging aspects might be mitigated. The Symposium also includes two panels of people with extensive experience of either policy-making or policy implementation. These speakers will introduce some more local issues. But much of the Symposium is about your responses to their ideas and experiences and how what they say might influence your thinking about policy-development, implementation and use in your own organisations or areas of work or study. I hope you are able to stay with both your thinking selves and with how you emotionally experience the issues as they come forward.

As I said, here at NIODA we are coming from a psychological, psychodynamic perspective, hoping to understand not only the conscious rational ways of thinking about policy, but also to understand some of the more unconscious and less rational influences on policy-making. Importantly, you rarely uncover unconscious processes by yourself. They become more evident in the struggle for shared understanding within a contained process. Dr. Bruno Boccara, our speaker this morning calls this 'socioanalytic dialogue' and we have designed the symposium to encourage some exploration and experience of socioanalytic dialogue, not just presentations followed by questions.

I want briefly here then, to introduce to some of you, and to remind others of, some central concepts that we might work from. It's always helpful to begin discussions with some similar ideas in mind, even if we each have a different take on them. Our keynote speaker will draw on and develop some of these ideas.

1. Behaviour is influenced by **ideas and emotions outside our immediate awareness.** These include our own assumptions, our own anxieties, as well as those ideas of which we are unaware in our contexts – families, histories, organisations, peer groups, identity groups, societies.

2. Individuals build psychological defences to protect themselves – habitual ways of approaching problems; personality characteristics to reduce anxieties and stresses; lifestyles and work preferences to avoid problems and maximise pleasures. Particular roles institutionalise some of these defences – traditional gender roles for example, or different organisational roles: the union rep; the boss; the worker or the professional. But whole organisations can use what we call **social defences** to protect the organisation or company from the stressors and anxieties that they face. These defences can be built into the very structure of the organisation or may be habitualised in organisational cultures: values assumptions and behaviours. Defences are there for a purpose, and may help to keep the organisation on task, but they can become pathological in themselves. Dr. Boccara will take us further to look at how

very large social systems such as countries also have defensive structures and cultures.

3. **History has an impact** on individual, organisational and societal developments. Traumas within history have an especially important impact because they make an indelible mark. Responses to trauma may include the wish to find causes and an object to blame and hence to wreak revenge; or the wish to forget and escape from painful memories – to repress them; to move on. But without some reparation, moving on is an illusion.

4. We all have internal worlds filled with what some psychoanalysts call 'internal objects'. Some are good and loving objects; some are bad and persecutory. We are not always consciously aware of these but have developed them from infancy. Moreover, we can see others through the lens of these 'objects' or can treat others 'as if' they represent these objects, especially when direct realistic interactions with those others are lacking. We may project our objects onto others and make others into idealised (good) or demonised (bad)objects. The radical separation of good from bad is termed **splitting.**

5. Perverse dynamics occur when, from a narcissistic position, we objectify others, use them instrumentally and draw in others to act as accomplices in this process. Organisations and societies as a whole can act perversely through their policies.

6. A psychodynamic or socioanalytic or psycho-social approach (however named) looks to find patterns in behaviour that betray unconscious dynamics. Patterns are developed over time through personal or organisational history in response to threats, traumas, motivations and aspirations. Patterns may be written into behaviours, structures or cultures. Patterns may be written into policies.

At NIODA we want to work with you to discern some of the patterns built into the policy-making dynamics in your organisations or work practices and we offer this symposium as a start.

So now I want to give you some time at your tables to introduce yourselves to each other. Perhaps you might also start to explore what it is you want from this symposium.

Keynote Talk – Dr Bruno Boccara

(This talk was given in two segments at the Symposium, but is produced in totality here.)

ABSTRACT

The purpose of this presentation is to argue that society-wide "psychological" considerations, or **psychosocial dynamics**, should be taken into account when designing and implementing public policies. This is, however, not necessarily straightforward since, similar to what is the case at the individual level, there exists what can be considered a **societal unconscious** that impacts large group behaviors and, as a consequence, policy outcomes.

The application of psychosocial thinking and systems dynamics to countrywide policies is called **Socio-Analytic Dialogue**.

The presentation also argues that today's psychosocial dynamics are increasingly becoming detrimental to public policies and, more generally, societies' well-being in the sense that the collective defenses mobilized to deal with the shared anxieties, or **social defenses**, have become increasingly **regressed**. Examples of regressed social defenses include the need for enemies and enactments of aggression.

This is, in turn, exacerbated by the presence of **perverse societal dynamics**, which corresponds to a society, or **social system**, in which others are "used" narcissistically to satisfy one's needs. The use of others as **narcissistic objects** leads to individuals being denigrated, hence the characterization of our times as an **Age of Contempt**.

The presentation then argues that one way to decrease the incidence of regressed social defenses in a culture dominated by perversion and the use of narcissistic objects is for leadership to focus on promoting the development of **empathic capability** at the level of the entire society.

The presentation is organized as follows:

Part 1

The first part of the presentation, **Policies in the Age of Contempt**, motivates the thinking behind Socio-Analytic Dialogue and briefly presents the methodology used to identify psychosocial dynamics impacting policies.

It starts with an example of monetary and exchange rate policy in Argentina to illustrate that public policies have psychosocial functions too. It follows with an example on Bolivia, violent riots in response to a natural gas export project, to show how a country's culture and history, or **country romance**, impacts the psychosocial dynamics surrounding policies.

The presentation then discusses the psychosocial dynamics that lead to perverse societal dynamics and shows how the increased propensity to use others as narcissistic objects leads to contempt.

This, in turn, provides the necessary background to present an organizing framework, **Policies in the Age of Contempt**, as well as giving a brief overview of the methodology used in Socio-Analytic Dialogue (e.g., Social Systems as Defense against Anxieties, Socio-Analytic Map of the Country).

Part 2

The second part of the presentation, **A Journey into Empathic Capability**, suggests ways to mitigate the adverse impacts of regressed psychosocial dynamics on policies.

It shows how **reparative leadership**, which aims at decreasing the incidence of regressed social defenses and the preponderance of perverse societal dynamics, can play a significant healing in role by promoting empathic capability at the level of the entire society.

This is illustrated with two examples, one on Tunisia's revolution (Arab Spring) and one on Colombia's peace process, which contrast empathic availability in two countries undergoing profound transformation.

The presentation concludes, using Islamist terrorism as an example, by suggesting that empathic availability is especially appropriate when dealing with groups that are despised by the rest of society, including those that are demonized.

Part 1: Policies in the Age of Contempt

INTRODUCTION

Policies are the source of most tensions in countries. They also are what connect citizens to the State and to one another. Thus, disagreements on policies often provide a fertile ground for large group unconscious dynamics. Unless psychosocial aspects of policies are acknowledged and understood, it remains likely that policy formulation and implementation will continue to be carried out in a vacuum, eliciting resistance to change that will often be misdiagnosed.

Grandiose fantasy In Argentina

This relatively detailed example is taken from B. Boccara's *Socio-Analytic Dialogue: Incorporating Psychosocial Dynamics into Public Policies* published by Rowman & Littlefield, Langham MD, USA in 2014.

> In what follows, we use the economic crisis of 1999/2000 in Argentina to introduce the idea that country policies have psychosocial functions too.
>
> Before World War I, Argentina was a highly successful country. The memory of this golden age led the society to construct a country romance of being "European-like." This is, for example, evidenced in the comparison between Buenos Aires and Paris, Argentineans fond of referring to their capital city as "*The Paris of the Americas*." Thus, Argentina adopted an idealized representation of itself. However, the capacity to maintain that idealized representation was challenged by the nation's traumatic history, the country going through an economic meltdown, hyperinflation, and a brutal dictatorship. Furthermore, the dictatorship ended with a collective narcissistic injury, the nation losing the war of the Falklands. Only a uniquely robust idealization of the country and of its society could sustain the onslaught brought by such economic and political circumstances. We, therefore, conclude that the shared idealized representations of Argentina that exist within its society must correspond to a country romance of great intensity, a grandiose fantasy at the level of the entire country.

As such, following hyperinflation, the adoption of a Currency Board in 1989 as a mechanism to restore macroeconomic stability, also became a way of rescuing the grandiose fantasy. As soon as the Currency Board was established, the guaranteed convertibility of the Argentine Peso –at equal parity to the U.S. dollar- instantly reestablished macroeconomic stability and enabled an artificially high standard of living. Upper and middle classes could, for example, easily afford shopping trips to Europe. With the adoption of a living standard commensurate with their country romance, fears of collective narcissistic injuries receded as, once again, Argentina could bask in the glory of being "European-like." This time period is remembered as "*la plata dulce*" or, easy money.

We are not saying that the choice of exchange rate regime was motivated by psychosocial dynamics. The policy makers' only goal was to stop hyperinflation and re-establish trust. However, a society functions simultaneously at the conscious and unconscious levels. All that is argued is that, at the psychosocial level, the Currency Board also enabled the country to regain its pride by reversing a series of narcissistic injuries. However, the initial adoption of fixed convertibility was a huge gamble at the time, since the central bank did not have sufficient reserves to effectively guarantee the convertibility. Thus, when the economic measure was initially adopted, the authorities took a huge bet on the faith of the Argentine population in the sustainability of the policy. Many economists feared that there would be an immediate run on the Argentine Peso, in the expectation that the population, having no trust whatsoever in the monetary authorities, would immediately queue to exchange their Argentine Pesos into U.S. dollars. But, nothing happened. Undoubtedly, the Argentine population and its policy makers, traumatized by hyperinflation, had a strong desire not to see the policy fail. They knew that failure would quickly destroy the fabric of the society. In spite of its distrust in government's institutions, the population chose to believe in the sustainability of the Currency Board. This can only be understood by also taking into account its psychosocial function. It is because the Currency Board constituted a powerful mechanism in allowing the society to reverse a series of narcissistic injuries and regain its pride that the population embraced it. Thus, it is the psychosocial rather than the economic function of the Currency Board that played the coordinating role required for the policy not to instantly fail. Reaching this equilibrium would have likely been elusive on purely economic grounds. In fact, the International Monetary Fund had advised against adopting a Currency Board.

Unsurprisingly, fiscal issues resurfaced, ultimately leading to the largest sovereign default in history. It is quite likely that the grandiose fantasy, because of identification with wealthier countries, impeded the required adjustment process. The necessary fiscal tightening was inconsistent with existing mental representations of a wealthy country. It is almost certain that the abandonment of the Currency Board and resulting devaluation of the Argentine Peso was resisted and, therefore, delayed not

only because it meant a difficult adjustment in relative prices but also because it was experienced as letting go of a grandiose fantasy. Thus, as an exchange rate and monetary policy, the Currency Board played the role of a collective, or social, defense shielding the country from a narcissistic injury by allowing it to maintain a grandiose fantasy.

Therefore, the policy had been "hijacked" by unconscious psychosocial dynamics in the sense that, having become a social defense, it also served a purpose other than its purely economic function. The intensity of the resistance to change was precisely due to the psychosocial role of the policy. In general, resistance to a policy's defensive aspects will be greater than resistance to its economic ones. However, the fact that the defenses are mostly unconscious means that resistance will often appear to be motivated by rational reasons.

The idea that policies can also be social defenses constitutes one of the most important contributions of Socio-Analytic Dialogue.

Undoing traumas in Bolivia

I am only going to touch upon the findings of the first-ever (and still only) psychoanalytic-based evaluation of a country and of its policies. Plural Editores first published *Bolivia: Revirtiendo Traumas* in La Paz, Bolivia in 2013.

The purpose of this part is twofold:

1)   To Illustrate the formation of the country romance, something taken as given when discussing Argentina; and
2)   To show how the country romance impacts policies.

Only the main findings are summarized.

October 2003: *Guerra del Gas*

Violent riots erupted over an investment project aimed at exporting natural gas to Chile. In spite of its extreme poverty, Bolivia missed the one and, until then, only chance to radically transform its economy. President Sanchez de Lozada, one of the major reformers in all of Latin America (successful at eradicating hyperinflation, providing capital to poor, and empowering the disenfranchised indigenous population) was forced to resign. The intensity of the response has no precedent in world economic history.

The shared narratives that define the country romance are influenced by the citizen's mental representations of their society, which in turn are shaped by the historical events, both traumas and glories, for which neither centuries nor modernization could erase their importance as markers of identity. Among the latter in the case of Bolivia, the exploitation of silver in Potosi stands out.

The arrival of the Spaniards in the Bolivian highlands left huge scars due to the subjugation of the indigenous population. It is difficult to overstate the impact of Potosi on Europe and the Americas. The rapidity with which the extraordinary wealth was created led to a grandiose fantasy (wealth as the work of God, magical thinking) accompanied by the fear that it could all vanish. The extractive nature of the exploitation reinforced the fear (i.e., resource exhaustion) that wealth could run out or benefit others first.

Furthermore, because of *mestizaje*, the two populations became intertwined. Identity issues –and, as a consequence, identifications- became complex. With feelings of shame (from having been despoiled) and of envy on the parts of the indigenous communities coexisting with feelings of guilt (from despoiling) on the parts of the Spaniards, the society quickly became ambivalent about wealth.

As wealth creation was intrinsically linked to exploiting the Indians, colonizers did not trust the Indians, whose rebellion they feared. Furthermore, they embraced the idea that exploiting natural resources could only be successfully done with foreigners' participation. This might have also served the purpose of dealing with their guilt by sharing it with others. However, as a common Bolivian identity was progressively taking hold, colonizers increasingly distanced themselves from those same foreigners they had initially identified with, appropriating for themselves in the process the indigenous' fear of being taken advantage of by foreigners. This fear is often exaggerated since the corresponding loss is that of a magical object and of omnipotence.

Thus, the resolution of the conflict that emerged from the multiple identifications ended with guilt projected outward into a feared and hated object, labelled the "foreigner," whose psychosocial function was to despoil. With time, and notably after the War of the Pacific with Chile, the feelings merged into a general fear of being despoiled by "foreigners."

Within two months of the War of the Pacific with Chile, Bolivia had lost all its coastal territories. *El odio a Chile*, or the hate of Chile, constitutes a perfect example of rejection of the "foreigner." In displacement, toward Chile, the hate of the colonizers felt by the Indians became, for all Bolivians, a shared experience of hate of the "foreigner," the latter taking the form of a foreign country.

Repeating "in the mind" the original trauma of Potosi, the loss to Chile of access to the sea became a chosen trauma. As such, it acted as a marker of identity transmitted across generations. As the population groups were mixing, the shared narratives and social defenses converged. Chile was thus "chosen", as the vehicle, always ready to be revived, to express and act upon feelings of being despoiled by "foreigners."

This is exactly what happened with the *Guerra del Gas* in October 2003. Until it erupted, it seemed that a genuine opportunity that permitted Bolivia to successfully negotiate its access to the sea existed. However, it required exporting gas to and through Chile. For the first time, Bolivia had something that Chile did not have and needed. But on one of its most keenly felt issue of national pride and strategic interest, Bolivia found itself unable to take advantage of the huge advantage that it had. Chile is not Potosi but in its chosen form, it takes on all, or most of, the attributes of Potosi as they are "remembered", or experienced, today.

The fear of being robbed by the "foreigner", *El Saqueo*, and the related rejection of the despoiling object, *El Rechazo*, are, irrespectively of ethnic background and beliefs, the most important, and widely shared, psychosocial characteristics of all Bolivians. They are key to understanding policy choices in Bolivia.

AGE OF CONTEMPT

Perverse societal dynamics

Perverse societal dynamics are crippling the social fabric of our societies, which, as a result, are becoming unable to satisfactorily contain their members. As such, they are, in our view, one of the single most important sources of anxieties worldwide. The propensity of perverse societal dynamics to take hold increases whenever instrumental relationships dominate (e.g., consumerism). Susan Long's *The Perverse Organisation and its Deadly Sins* studies perverse organizational dynamics in great detail. Of particular importance to economics and public policy are individuals' sense of entitlement and the engagement of accomplices. In such an environment, perverse and abusive practices become the norm. Individuals, deliberately abandoning those that are abused, turn a blind eye (collusive denial). In Long's words, "the system both knows and does not know."

For the purpose of this section, the interest is on the experience of society's members living in a perverse culture rather than on the specific psychosocial mechanisms that allow the dynamics to take hold. Perverse dynamics lead to a loss of basic trust, something observed frequently today with attitudes towards politicians' ability of implementing sound and fair policies. Although each country' situation remains unique, the unifying experience is a revulsion at a system that is increasingly perceived to be unfair and dysfunctional. In a perverse social system, objects (e.g., individuals, public institutions, or work organizations) are used, as narcissistic objects, to satisfy needs. Elites experience pleasure at the expense of others whose existence they fail to adequately recognize. Therefore, perverse societal dynamics are characterized by society-wide inter-personal relationships whose dominant feature is contempt.

Age of Contempt

Several of the most recent developments point to contempt as one of the shared psychosocial affects underpinning the discontent, individuals feeling denigrated by the elites in power. Contempt's ubiquity is what leads us to argue that perverse societal dynamics have become one of the single most important sources of anxieties worldwide. From that perspective, the social malaise at the origin of the 2011 global wave of discontent, which started with the *Indignados* in Spain, is interpreted as a rejection of perverse societal dynamics rather than of the policies themselves, the latter the consequences of those psychosocial dynamics.

The self-immolation of Bouazizi, the act that triggered the Tunisian revolution and the Arab Spring illustrates this particularly well. Bouazizi's powerlessness and disgust at the perverse dynamics that flourished under Ben Ali are well understood in Tunisia. The far-reaching

consequences of Bouazizi's act imply that his despair and unbearable shame must also have been the experience of the majority of the population in Tunisia and elsewhere in the Arab world.

Once revulsion at the conspicuous "*Jouissance*" of the people in power had reached a certain threshold, all it took was a trigger for the protests to metamorphose into a revolution. Empowered by the realization that one could do away with the shame that one had introjected while in the role of the denigrated object, individuals deliberately chose to no longer participate in the system. This is the profound sense of the Tunisian revolution, an undoing of humiliation, symbolized by two slogans that circled the globe: *Dégage* (get out) and *Game over*.

Policies in the Age of Contempt

The main ideas are that policies are influenced by the collective defenses mobilized by society in response to anxieties (social defenses) and that defenses are a function of shared narratives, or country romance. The framework explicitly differentiates between two sources of anxieties: perverse societal dynamics; and structural changes in the environment.

First, there are anxieties induced by structural changes (e.g., economics, social issues, climate) in the environment. An important example is the gradual disappearance of the connectedness between individuals. It destroys society's ability to perform its containing function. In response, individuals may feel that their identity is under threat.

Second, there are anxieties induced by perverse societal dynamics. These are of a different nature than those stemming from structural changes. While the latter are perceived as affecting everyone in the same way, anxieties induced by perverse societal dynamics, because they only affect specific subgroups, are often experienced as personal attacks. As such, the social defenses mobilized to fend them off can become quite regressed. Once group revulsion at the perverse dynamics reaches a certain threshold, social defenses may become drastically altered as a consequence of groups deliberately choosing to abandon the system. This is called "Exit."

Policies in the Age of Contempt
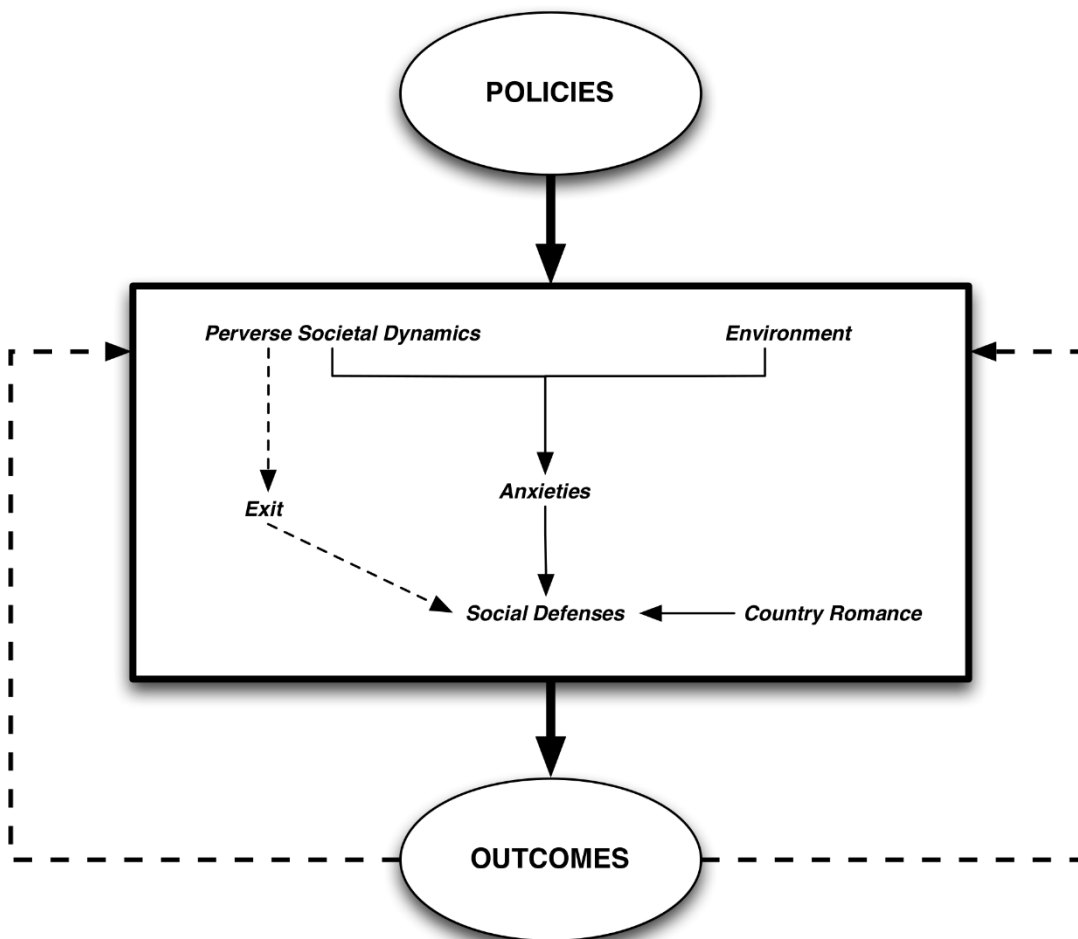
SOCIO-ANALYTIC DIALOGUE

Socio-Analytic Dialogue proposes to take into account unconscious societal dynamics; these are the most resilient and difficult to understand.

The notion of social systems as defense against anxieties, or social defenses, is probably the most important psychosocial concept, which policy makers should be made aware of. Furthermore, projective identification can induce a group, even a country, to take on the role that others, unconsciously, wish it to adopt. Taken together, social defenses and projective identification are capable of explaining otherwise seemingly irrational societal dynamics surrounding public policies.

Social systems as defense against anxieties

The main idea is that the needs of members of a group to deal with anxieties lead to the development of a social system, which becomes an intrinsic part of the structure, culture, and mode of functioning of the group. The defenses operate mostly unconsciously; the social system a result of largely unconscious collusive interactions between members of the group. Individuals belonging to the same group introject its characteristic defenses and share some beliefs and values.

Socio-Analytic Map of the Country

Understanding the psychosocial issues at play in a country requires a psychosocial snapshot of that country. By psychosocial, we mean citizens' emotional experiences of the society. Country wide socio-analytic based relies on two fundamental tasks, that of identifying:

(1) The internal representations that citizens have of their country (how they view their country) and the kind of nation that they are aspiring to (their ideal); and

(2) The inter-groups projections and introjections (how subgroups in the country view others and how they respond to how others view them) and their behavioural implications.

Socio-Analytic Map of the Country
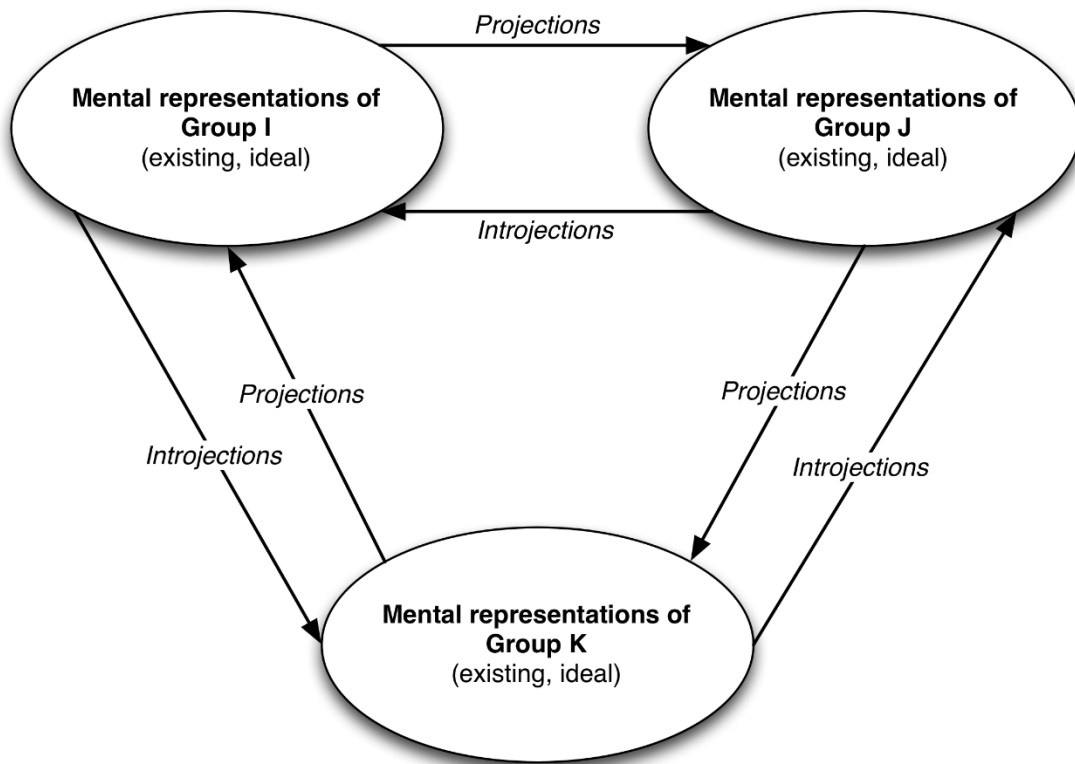
Sufficient attention must be paid to the complexities of each country. These are determined by that country's history, in particular its traumas, and its culture. Focusing on the inter-groups projections and introjections that exist can often disentangle these complexities. The various projections will often presage conflicts and resistance to change; subgroups' mental representations of others an ideal place to begin understanding how history and culture have left their mark on a society.

Projective identification

From a psychosocial perspective, the ways in which the various subgroups interact in society are the projections and introjections. Projection here is used in a general sense, meaning how one group sees another. Introjection is defined as what the group internalizes (e.g., "decides" to own) from what is projected onto it. Introjection can lead a group to act upon what the rest of society projects onto it. (These descriptions are decidedly simpler than their psychoanalytic counterparts, but suffice for this exposition).

Socio-Analytic Dialogue is more interested in the recipient rather than the originator of the projection since it prioritizes focusing on the ways in which a group acts upon the role that is "assigned" to it (projective identification at the country level)

Societal unconscious

The societal unconscious refers to social and cultural forces of which individuals are unaware. The concept can be understood from several perspectives. In its most static form, it would correspond to Jung's collective unconscious. The latter is universal and cannot, by definition, produce psychosocial mechanisms that are specific to a given society at a given time. A useful concept towards understanding group behaviour is instead that of the "associative unconscious" described by Long and Harney. The concept is based upon the idea that thinking is a social rather than an individual process. The associative unconscious is, therefore, the unconscious at the level of the social system. Our preference, however, is to work with a concept similar to the associative unconscious but nevertheless closer, in spirit, to the Freudian unconscious. The social system generates data, the observed behaviours at the level of the group. These behaviours, similarly to what would be the case at the level of an individual, can be explained by the existence of unconsciously motivated psychosocial mechanisms. Therefore, the societal unconscious is a hypothetical unobserved construct, that is such that its existence is compatible with the observed behaviours. It does not need to be identified. Traditional concepts of clinical psychoanalysis cannot be directly extended to that setting; the societal unconscious naturally inaccessible to clinical interpretations.

Part 2: A Journey into Empathic Capability

SOCIETY'S EMOTIONAL UNDERPINNINGS

Something is happening. Everywhere we seem to be confronted with systemic developments whose intensity and suddenness we fail to anticipate. There exists also a general dismay at the tensions and paralysis gripping our societies. From irreconcilable views on alterity, merging of truth and fiction, precariousness and shameless display of consumption, to eroticized sadistic violence, futureless-ness and meaninglessness are seemingly gripping our world like never before, including during some of the darker periods of recent history.

We have been there before, for example during times (e.g., industrial revolution) when a large segment of the population experienced what Stapley has described as a "the death of a way of life." However, the historical episodes (e.g., European colonization in Sub-Saharan Africa) were not felt globally. Furthermore, our world today is one in which there exist threats that humanity as a whole may not be able to survive.

Therefore, this time things are likely to be different. One thing certain today is that shared anxieties are likely to be extremely high. We are, for the first time in history living in a truly integrated world, one in which an error somewhere can quickly morphed into an error everywhere. The loss of omnipotence that comes from the anxiety of "not knowing" (e.g., Long's writings on global warming) induces unacknowledged feelings of hopelessness. In response, narcissistic denial creates illusions for societies that they remain in control. Doing so restores, albeit in fantasy only, omnipotence. This psychosocial mechanism is not new,

witness the need for enemies evidenced on so many occasions in history with the scapegoating –and elimination- of "others." But it ultimately fails since it is a displacement. On terrorism, for example, the focus has almost exclusively been on the extreme violence of a few rather than on the existence of more systemic issues. Fear can quickly induce entire societies into large-group regression. Unscrupulous leaders, or those finding themselves unable to be reparative, are then likely to precipitate the mobilization of regressed social defenses.

A JOURNEY INTO EMPATHIC CAPABILITY

We will now, in response to what has been highlighted above, argue for an almost unconditional empathic availability at the level of entire societies. This leads us to empathic capability. However, empathic capability requires first and foremost an ability to listen. To this, we now turn.

Reparative leadership

The objective of reparative leadership is to decrease a society's reliance on regressed social defenses, particularly splitting, and propensity to allow perverse dynamics to flourish. Reparative leadership can reinforce national identity in an inclusive manner while destructive leadership is likely to deliberately exclude some groups. Fuelling opposition between groups can only increase splitting. Thus, reparative leadership maintains or creates the space for each group to experience its own identity.

Reparative leaders strive to separate their own emotions from their decisions. They emphasize the maintenance of basic trust by promoting the awareness and understanding of each group's experience and role in the society. Genuine empathic availability on the part of a leader is a prerequisite for reparative leadership to successfully promote empathic capability within a society.

Nevertheless, reparative leadership may struggle in promoting empathic capability within a society since, similar to the anxiety of "not knowing "and its concomitant loss of omnipotence, there exists an anxiety of "not belonging." Omnipotence in this case is maintained by excluding "others." The impossibility of "others" to access a "narcissistic fortress" to which only a selected few proudly gain entry validates one's "belonging". Contempt and exclusion are what lie outside the fortress' walls. However, empathic capability at the societal level requires a weakening of that fortress. But to those that are inside the fortress, this is experienced as psychological death. Empathic capability will be resisted.

Analytical Attitude at the Country Level

Constructing the Socio-Analytic Map of a Country requires experiencing, as if being transported into someone else's mind, the mental affects of each of the subgroups. In other words, one needs to be able to "travel" along the projections and introjections shown in the

Socio-Analytic Map. This leads us to define the Analytic Attitude at the Country Level as the unrestricted willingness and ability to temporarily experience, in order to be able to communicate them to others, each of the inter-groups' projections and introjections as if they were our own. Thus, Socio-Analytic Dialogue proposes to bring the essence of psychoanalysis to public policy. Psychoanalytic-informed listening and empathic availability at the societal level can only increase the ability of policy makers of understanding subgroups' affects and their psychosocial consequences and, as such, improve the likelihood that leadership be reparative.

In addition to empathic availability, I have found being attuned to my own emotional responses, including unconscious ones, particularly useful. Thus, I often share with my audience what I am experiencing as a way to explore areas, which I believe would otherwise elude me. This often allows for the validation of societal affects that are denied.

Empathic availability, positive identification, and mourning

Empathic availability brings feelings of togetherness and shared meaning. As such, empathic availability allows for (some) positive identifications between various subgroups, no matter the extent to which the society might be split. In other words, it can become a prelude to dialogue in situations where it is thought to be elusive, even when groups demonize one another.

Empathic availability is more likely to be made possible if groups recognize the existence and extent of unconscious collusions within a society. There is little room for blame in a social system in which outcomes, once they have been experienced as shared responsibilities, become collectively owned.

Empathic capability is a prerequisite to a nation's preparedness to work through some of its most salient psychosocial issues, particularly those concerning mourning. Country level mourning refers to the shared psychological journey members of a society undertake in response to shared losses. On many occasions, the strong wish to turn the page, seemingly as if nothing had ever happened, bodes poorly. Instead, it is fundamental that each group be given the opportunity to share its suffering. The society should also have developed a sufficient level of empathic capability to positively identify (i.e., internalize) each group's emotional experience.

Often a topic seemingly marginal to the core issues can provide a point of entry enabling an otherwise next to impossible dialogue across the splitting divide affecting a country. The idea is to move away from the divisions splitting a country and, as such, allow communication between groups that are otherwise on the defensive when confronting one another.

Evidence of wrongdoing, such as torture or human rights violation, forces a society to confront truths that may be unbearable, particularly when they are the consequence of perverse societal dynamics that led individuals to turn a blind eye to what was taking place. Dialogue on such sensitive topics can only occur when groups are first able to let go of their shame, even if not publicly admitting to it, and tolerate the guilt that comes with it.

A tale of two empathic availabilities

In Tunisia, the irruption of alterity following the onset of the revolution became a significant source of anxieties; otherness experienced as an attack on identity. The Arab world's ambivalent relationship with the West, a dominating object, combined with a slew of negative projections concerning backwardness, intolerance, and fanaticism is having a profound impact. The West's repetitive attacks –mental representations of the Arab being that of the quintessential "bad" object- are fueling humiliation and resentment in Tunisia. As a consequence, the regressed social defenses that were mobilized in response to otherness were exacerbated by the negative projections. In unconscious collusions with the West, Tunisia as a social system internalized what has been projected into it.

Thus, on terrorism, the marker of the country newly inherited "bad object" identity; Tunisia was unsurprisingly unable to defy an unspoken taboo of thinking differently from the West. For example, Tunisia made it extremely difficult for its citizens returning from Guantanamo to reintegrate into the society; the country unwilling to provide the narcissistic repair that the former inmates desperately needed. Although this only concerns a very small number of individuals, 12 in total, this "detail" has meaning. It reveals a lot about aggression and the society's incapacity to develop empathic capability. The case of Hedi Hammami, a Tunisian national who asked the International Red Cross to return to Guantanamo rather then remain in Tunisia and face harassment is quite symbolic. Going further, the lack of empathic availability is probably one of the main psychosocial reasons behind Tunisia's difficulties with its transitional justice program, the re-emergence of corruption, and the country's intolerance towards minorities. Two groups, neither of which is able to have any empathy towards the other, are confronting one another over in a war of attrition fashion. Their disagreement about the way to handle economic crimes within transitional justice is risking both economic growth and the achievements of the revolution.

On the other hand, Colombia is a country, whose social fabric and character (e.g., *Colombianidad*), made it uniquely placed, in spite of its protracted conflict, to develop empathic capability. The shock of the no vote rejecting the peace agreement allowed the country to find the empathic availability that it needed to move forward. A series of deeply moving marches occurred spontaneously all over the country allowing civil society to build together from the bottom up what the government could not deliver from the top down.

This psychosocial turnaround at the level of the entire country was not only sufficient to allow the authorities to quickly reach a revised peace agreement but also the very first time many FARC members felt that the Colombian population was genuinely willing to reintegrate them into the fold of Colombian society. In response, they were able to mobilize a degree of empathic availability that few expected them to be capable of.

Empathic availability at the Frontier

Empathic availability is especially appropriate when talking about groups that are despised by the society. This, unfortunately, was not in evidence when President Macron of France categorized all "Islamist terrorists", perpetrators or not, of being *rien*, or nothing. However, denying individuals their humanity is already adopting the route that these individuals have chosen and that France opposes in the name of its humanism. In this age of demonization and killing in the name of identity, humanity should never be taken away.

Empathic availability would likely increase if the unconscious collusions and assumptions surrounding the psychosocial dynamics of terrorism were more fully recognized. The virulence of the demonization suggests a pressing need in the West to find a "bad" object. In the case of Islamist terrorism, there seems to exist a "*folie a deux*", which is the outcome of the simultaneous occurrence of projective identification between two groups whose fantasies feed into one another. Denying that terrorism also comes from within reflects a narcissistic defense whereas "bad" parts of our societies are simply split off.

Taking empathic availability at the frontier, a society might even treat its youth prone to violent nihilism (while combatting those that act upon it) as an opportunity in the sense that understanding the youth's perceptions could enrich the society by inducing it to reflect psychosocially about its own shortcomings (e.g., perverse dynamics). Rather than forcing – prematurely- shared societal values upon those that reject them, one could initially envision a genuine empathic dialogue whereas the disaffected youth, at least those whose super ego has not yet morphed into an extremely rigid and unforgiving one, could be empowered narcissistically in being asked to become part of the solution rather than remain a problem.

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Panel on Health Policies

Moderator: Dr. Stanley Gold

Decisions have to be made and policy developed on the basis of these decisions. But if, Rationality will not save us, what will?

In our world of Algorithms, evidence based results and with the urgency to make policy, how do we also make room for thinking? One can seize upon untruth with the passion of truth so how can we deal with our own prejudices to say nothing of the influence of contemporary culture, politics and community expectations?

This morning Bruno suggested that understanding the principles of psycho-dynamics could lead to more informed and empathic policy decisions, a more creative base. But whilst a Psychodynamic approach might enable man to know himself better it may not make the picture more beautiful. As Freud himself remarked, "Do they not know that I am bringing them the plague".

Nevertheless, without thought, policy may end either with the authoritarian style, what has been called decisionism, endorsed or not by the community, enmity seen as an essential element of human life, or as the caricature of liberal democracy with endless debate, fearing decisions, excessive analysis leading to paralysis.

Today we have four eminent and experienced decision makers who will lead us in our further discussions. They are Associate Professor Ruth Vine; Dr Leanne Beagley; Dr. John Speirings and Dr. Peter Annear.

Mainstreaming mental health services

Associate Professor Ruth Vine

Associate Professor Ruth Vine is the Executive Director, North Western Mental Health (NWMH). She previously worked at the Department of Health as the Chief Psychiatrist for Victoria from 2009 to 2012 and was Director of Mental Health from 2003 to 2008. Ruth has also worked as a consultant psychiatrist in forensic mental health, in a community Health setting and in an advisory role with the Department of Health and Aging. She was a member of the RANZCP committee for examinations from 1996 – 2002. She holds both medical and law degrees, and has contributed to the development of legislation and policy in areas including mental health, disability, and the management of mentally ill offenders.

Thank you for asking me to be a part of this meeting. My background is in Forensic and administrative psychiatry. I am no psychotherapist. But I have been part of those advising on policy, articulating policy and trying to implement policy directions. And I have certainly been on the receiving end of policy. The changes I am referring to today relate mostly to those with severe and enduring mental illness such as schizophrenia. The manifestations of schizophrenia are often exacerbated by comorbid issues such as substance abuse, alcohol dependence or cognitive dysfunction.

Of critical importance is that these are illnesses where the more intense the experience or suffering, the less likely the person is to seek clinical assistance – the opposite to physical illness such as cancer or diabetes etc. People with severe mental illness are more likely to believe that the origin of their distress is external – the neighbours, the government, the doctors and so on, rather than an illness that will respond to treatment.

My question is whether changes in the policies relating to public provision of psychiatric treatment and care to those with severe and enduring mental illness such as schizophrenia, reflect examples of social defences and perverse societal dynamics. These policy shifts have resulted in decimation of the bed based services in both psychiatry and drug and alcohol services. The policies reinforce a suspicion of the psychiatric profession and the denigration of parts of clinical psychiatry. I will contend that support for these changes has been further ingrained by a collective 'magical thinking' that believes that early intervention in illness will work and reduce the burden of mental illness. The logical consequence of this is that clinical services are no longer required or at least required less.

This is a very tricky area. We are talking about unconscious defenses and responses to those defenses. We presumably all have our own individual and as a community collective defences, so it is hard to know where the risk of bias or preconceived views rests. My defenses may result in thinking and acting that is just as unreasonable and uninformed, but here is an attempt to look at this in the area of clinical psychiatry.

Background:

The 19th Century was marked by the development and implementation of large institutions for the insane the disabled and socially destitute, based on benevolent notions of care. In all Western countries and colonised countries thousands of folk were separated from mainstream communities, often at the instigation of family, administrators, public officials and doctors.

The benefits of Institutional care were progressively challenged by sociologists, and by the social justice and rights movements in the 1960's. There were also scandals of mistreatment, misappropriation of government funds and consumables including food. Failure to invest resulted in aging decaying buildings, expensive to maintain, which worsened the plight of those detained and those who worked with them. The anti-psychiatry movement and growth of the consumer movement added a level of distrust of the clinical professions. (Note books/films like 'One flew over the cuckoo's nest' by Ken Kesey, 'Frances', and 'Myth of mental illness 'by Thomas Szasz.)

These attacks on institutional care resulted in widespread community support for the closure of stand-alone services. Perhaps this was also connected to collective guilt about abuses in institutional care and with a desire to decrease the visibility of this system of 'care'. The solution was to 'normalise' mental illness and move to community care. This was

championed by JF Kennedy, but he was promising a major investment and radical shift in funding responsibilities, which was never realised.

But the shift in policy resulted in extensive closure of the large custodial institutions across USA, UK and Australia. In Victoria, we went even further than other States, closing all the large institutions and keeping only a remnant in Forensic Psychiatry.

The closure of the large hospitals became an end in itself. If a bad hospital is bad for patients then any hospitalisation is bad and should be avoided or made as short as possible. An added bonus for government was that selling off the land on which institutions were built provided a financial windfall and opened up new areas for housing. The once anticipated growth in community mental health services did not occur or was inadequate to meet growth in demand.

The end result of this was that people with a severe mental illness were left with episodic and delayed care, with associated increases in the number of mentally ill in prisons and homelessness services. This decline in State funded psychiatric services and its impact are well described in the book by E Fuller Torrey – 'American Psychosis'. Delayed, because if you don't seek treatment, you have to get very sick to be made to have compulsory treatment; and episodic because as soon as you are part way to well you will be discharged to the primary care sector where there is no assertive follow up, and probably limited interest in people with schizophrenia for a range of reasons.

More recently there have been several persuasive and erudite proponents of 'early intervention'. They have suggested or perhaps even promised that investment in early intervention will lessen the morbidity of mental illness and therefore lessen the need for investment in downstream services. Early intervention is embedded in mental health policy, although it is unclear whether this is early in life, early in the course of illness, or early in each episode of illness.

Current Context

These changes in policy directly impacted on service delivery – a move to **care in the community and treatment to be provided in the least restrictive environment**. The changes have been supported by changes in legislation that reinforce the ideas that institutional care is bad and that psychiatric clinical professionals, particularly psychiatrists, are not to be trusted. This was particularly so in the change from the 1959 Mental Health Act to the 1986 Act, but this was further emphasised in the 2014 Mental Health Act.

The movement away from paternalistic care to a greater push to individualism and autonomy was linked to a push to de-stigmatise mental illness, and to challenge the belief that those who are mentally ill are dangerous. Legislation moved from a paternalistic risk averse/ treatment focus to one of Rights, Recovery and external review (Mental Health Act 1986, Mental Health Act 2014). These changes have resulted in reduction in the discretion of the treating psychiatrist/authorised psychiatrist to make decisions regarding the place and type of treatment, with those decisions instead being made by an external tribunal. In effect those with the most severe illness and risk of violence receive treatment later than

those with mild illness and receive more episodic treatment because they are less likely to see a need for treatment, to accept or remain in treatment.

I wonder if these sweeping changes, occurring across fifty years or less are evidence of social defenses, and perhaps the narcissistic belief in the goodness of such change has meant that we have needed to relegate public clinical psychiatry to the dark side.

The movement away from bed based services, with a failure to keep pace with population growth, especially in the forensic setting where prisoner numbers have increased dramatically, has resulted in people who cannot be managed in a community setting being denied treatment. The belief in early intervention has seen a significant proportion of mental health funding at a State and Federal level being diverted to the mild to moderate end of the spectrum or to short term intervention early in the onset of an illness likely to be relapsing and enduring. It is as if there is a belief that if all the ambulances are at the top of the cliff there will be no need for ambulances at the bottom of the cliff. The trouble of course is that it is difficult to know where on the top of the cliff you should place the ambulances.

The consumer movement and maybe the broader community see these changes in access to services and service quality as the fault of the service provider, not the fault of government or the policy settings which influence investment.

> One example of the mismatch between policy, legislation and service capacity is the growing number of people in prison who have a severe mental illness but cannot be transferred to a hospital (no available beds) but cannot be treated in the prison as compulsory treatment in prison is not permitted under the Mental Health Act. Instead they are managed in lockdown, often restrained and unable to be physically assessed. This is a particularly confronting reminder of what happens when growth of inpatient services has fallen way below clinical need. But this is not uncommon. There are always people waiting for beds, untreated, in inhumane conditions.

> Have the community been content to stand by in the belief that severe psychiatric illness either did not exist or did not require treatment in a hospital setting.

- ❖ Another example of the impact of Rights focussed legislation applied to clinical care is the risk of a delay in treatment while approval is sought from the external Tribunal. This applies to Electro-Convulsive Therapy which can only be administered if approved by the Tribunal if the person lacks capacity to provide consent. The requirement for 'natural justice' and 'procedural fairness' in a life-threatening illness associated with loss of insight and loss of capacity to consent risks delay in access to necessary treatment. This would not be acceptable in other branches of medicine.

  The policies which lead to the regulation of ECT reflect community attitudes linked to treatment practices over fifty years ago, with a failure to perceive the advances that have been made or to equate these with the advances in other parts of

procedural medicine. The psychiatric profession continues to be demonised as if they were still practicing in those bygone days.

So, do these two examples give evidence of social systems as defense against anxiety and describe aspects of the socio-analytic map prevalent in Victoria as it pertains to the state funded mental health system? The key polices of early intervention, care in the community, and treatment in the least restrictive environment in the absence of fair and equitable investment, have to my mind lead to perverse outcomes for a significant subset of the very people who were supposedly 'rescued' from the large asylums. They have allowed these people to get sicker before they get help, have pushed responsibility back on family, and meant that working in public psychiatry is less attractive and therefore harder to get good people to commit to.

Thank you.

Dr Leanne Beagley

Leanne is CEO Western Victoria Primary Health Network. Until 2016 she was the Director, Mental Health and Drugs in the Victorian Department of Health and Human Services, and previously held other senior executive roles in a range of different health services, including Austin Health and Eastern Health. Prior to commencing her current position, she was consulting to various community and health services in areas of corporate and clinical governance and organisational performance.

These are notes for talking, not a full paper

My Work Context:

- Occupational Therapist
- Psychodynamic basis with post grad training
- Family therapist – systems and groups
- Worked for many years as a clinician in child and adolescent mental health services
- Clinical expertise – adolescents at high risk, families, groups and systems
- Management/leadership experience and training in systems psychodynamics and leadership
- Realised through this work that organizational interfaces created anxiety and conflict, prompting the development of organizational defensive structures. Idea that the right policies may help to address these structures – joined government bureaucracy

My other context:

- Anglican Church leadership – seeking to increase women's influence in leadership and improve responses to children and child sexual assault
- Keen observer of primitive responses to anxiety and the social defenses that spring up – for example colluding to defend against knowing about the abuse; active exclusion of women.

Some thoughts:

- Linked with idea of a 'romance' I would say that a fascination in government for measurement as a proxy for demonstrating value, relevance and guarding against annihilation
- In my experience Adult psychiatry is at its core about containing madness/psychosis (Wilshire) and Child/Youth psychiatry is about trauma and torture in a developmental context.
- Both these core paradigms create anxieties in the organisations delivering care.
- How do the organisations develop structures to manage this anxiety and is harm being done by these structures, who to and how do we respond?
- Is action required? How do we initiate and engage in dialogue?
- Policies and government imposed structures can collude with the defensive structures that develop in organisations.

An Example from my PhD Research

E.g. Child and Youth Mental Health/Child Protection

- In Child Protection (CP) they are driven by emergency/crisis model due to demand and risk. Compromises capacity to think.
- Child and Youth Mental Health Service (CYMH) – desirable as a collaborator with CP and there is a fantasy that CYMHS will have a magic wand for these traumatised children.

- CYMHS workers are then idealized, envied and then denigrated as arrogant, exclusive and with-holding (Bruno: 'elites')
- In my research is found a high level of intensity and hate and rage between these two systems (described by one informant as like a 'very bad marriage')
- Structural exclusions were observable (e.g., where CYMHS policy deliberately excluded CP clients who otherwise met clinical entry criteria on the basis that CP would benefit from 'consultation').

- My observation was that there was inherent unconscious anxiety with significant impact on defensive behaviours and structures such as the 'intake' gate which was no such thing in reality.

- My sense was that an impenetrable access point guarded the organisation against overwhelming anxiety that CYMHS workers experienced in engaging with the despair and pain in the children.

- Conversely the CP culture guarded against 'thinking' which protected workers from really knowing the pain in the children and allowed them to make decisions about their lives that had life-long consequences and even life & death consequence.

Dr John Spierings

John was appointed as the Reichstein's Foundation's Executive Officer in 2013 after more than four and a half years experience as a senior adviser in the Office of the Prime Minister, Julia Gillard. He had responsibility for higher education, skills, industry, innovation, science, research and employment policy issues in the Office. He worked as a researcher and policy advocate in education and training with the Dusseldorp Skills Forum between 1998 and 2008. He has a long-standing interest in social justice, community development and social policy issues.

Do We Get The Policies We Deserve?

My Story

- Outside the bureaucracy and the party – not a career adviser or party hack

- Decade as a researcher and policy analyst on youth, employment, education & transitions. Mentored by, and collaborated with, a number of people here today

- Weathered nearly five years across DPMO, an election (2010) and then PMO – employment, skills, universities, industry (incl manufacturing), science and innovation

- Left with immense regard for Julia Gillard as a person, policy-maker and leader

- Now working in a complete reversal of roles: from the top-down possibilities of policy to the bottom up potential for change

Our National Anxieties

Susan has raised the question of our national anxieties and their role in policy-making. Are we an anxious people or happy-go-lucky? We are rarely driven to policy through a sense of crisis. However, if you look at climate change: the Murray Darling basin is haemorrhaging; the Great Barrier Reef is bleaching; energy policy is a mess but we don't join the dots. Our responses are piecemeal, incoherent, ineffective.

Why is there Such Failure?

- ❖ Our myths of exploration: of the frontier and the outback, of endless opportunities for exploitation.
- ❖ Our national myth of a 'çan do' country means we are averse to grand strategies. We improvise and adapt rather than strategise.
- ❖ And because it's never been explained that once we begin to price externalities related to fossil fuels, the policy transition to renewables is not cost free.
- ❖ Politics often boils down to the emotions of hope vs fear.
- ❖ And revolves around three core values: leadership; trust and power.

What did I Learn?

The importance of the team: A champion team always beats a team of champions

Labor, a decade of leadership issues in the background [Beazley; Latham; Crean; Rudd] substitute of personality over the deep policy grind:
lack of appraisal of, and relationship with, the Hawke-Keating legacy
the Coalition – triumph of ideology/purity over pragmatism. [When the Coalition stalled on carbon pricing]

Gough, quoting Roman authority: only the impotent are pure.

What is Important?

- Caucus cohesion, trust, sense of common purpose and capacity to have a voice is crucial.

- The First among Equals principle. The PM has a license to lead but it's not unconstrained.

- It's a balance between : Genuine courage (a moment in the theatre of the Parliament; a media event or a Captain's call or giving voice to a pent up policy – the Apology) that will inspire and compel; And the deals and relationships you form to get to power (as PM or Minister) – Rudd; Gillard; Abbott; Turnbull. The circumstances of their Ascension to leadership has brought debts, constraints & history.

- But we vote knowing this; perhaps not wanting this this but aware of this.

- The 24/7 nature of the business – at the senior level, whether in a Political Office or the PS Department is grinding. You are doing the core policy work; managing stakeholders; responding to the press office; seeking new ideas and suggesting new coalitions

- Power dynamics within the PS - role of the central agencies in guiding, controlling and grinding line agencies. The power of the Greens and the Pinks. Lack of internal contestation. Lack of media, industry, union, community voices to counter the central neo-liberal lines

- The best advising is about laying out policy principles; suggesting policy benchmarks; teasing out likely winners and losers in response to measures. And injecting new voices and ideas.

- Much of this is now outsourced but the tendency is to shut down structural sources of advice that might compete/challenge the PS. Climate Commission; Skills Australia; Human Rights Commission. Ongoing mechanisms like science councils can be sidelined.

Getting good policy that will endure requires a deep process of analysis, problem solving, consultation, networking

- Bradley HE reforms; carbon pricing; Gonski.

- Rational. Evidence based. Community engagement. Time and reflection. Thrashing through options. No surprises. Synch between politics, community and bureaucracy.

- Role of Treasury and Finance to unpick; re-formulate; bastardise.

- Policy with shallow roots: Direct Action; VET reform; housing affordability.

The psycho-dynamics of policy making in lower income countries: a reflection and some examples

Professor Peter Annear

The Nossal Institute for Global Health

School of Population and Global Health

The University of Melbourne.

I have been involved in the policy making process In Asia for almost twenty years, where I have lived and worked as a program manager, researcher, consultant and advisor.

My area of work is the health sector, and I have worked with governments and development agencies in many countries across Asia. In some cases, my research has provided a part of the evidence base for the development of national policies.

I have become familiar with the notion of the psycho-dynamics of policy making only in preparations for this forum. But in the situations where I work, and in the policy processes in which I participate, I can see a reflection of many of the concepts involved in the unconcsious social dynamics of policy making outlined by Dr Boccara.

The concept of empathetic capability or empathetic dialogue – to the extent that I understand it – has some relevance and some appeal, especially related to the activities of the international aid agencies.

For those working in a foreign country setting, the notion of "ownership" is a critical one – are policies owned by local policy makers or by their donor partners and advisors?

In the last few weeks, I have just completed interviews with policies makers in Cambodia for a research project funded by the Bill and Melinda Gates Foundation. I have worked with health policy makers in Cambodia for most of the last twenty years, particularly on issues related to national health strategy, health financing strategy and national health insurance strategy.

We asked policy makers working at the technical level (rather than the political level) just how they were able to learn from other countries and from global evidence of successful policies elsewhere. The responses were not surprising but were nonetheless revealing.

The themes that emerged from our research included:

-the need for patience and for time in developing policies;

-the need for partnership and trust between local and international agents;

-the professional and political risks faced by local policy makers;

-the face-off between technical issues and political considerations.

Interestingly, our work on these issues occurs against a backdrop of the big historical questions and the wider development of the economy and the health sector.

As you know, during the 1970s Cambodia suffered a period of utter political, social, physical and human devastation. During a period of three years, eight months, and twenty-one days from 17 April 1975 to 7 January 1979. One-quarter of the population perished, every family suffered tragic human losses, and the psycho-social trauma resulting from that episode is still palpable in Cambodia today.

The destruction and trauma caused by the Khmer Rouge was compounded by a further ten years during the 1980s when the international community – including the United States and Britain – voted to hand Cambodia's seat in the UN General Assembly to the deposed Khmer Rouge forces. In 1980, then Foreign Minister Andrew Peacock himself recommended continued recognition of the Khmer Rouge at the UN.

You may easily understand what such events might mean for the concepts of partnership and trust between Cambodian policy makers and the advisors attached to international and UN agencies in the years that followed the Paris Peace Accords and the return of international recognition during 1989-93.

I can see that these events produce today an effect on:

-the role of the foreigner within the local environment;

-how we all, ourselves, affect the way in which policy is developed;

-the character of "systemic culture";

-the unconscious dynamics of policy making.

There is something deeper in Cambodia too, which can be described as the national "romance" with the period of Angkor, at the beginning of the second millennium, when the Khmer king ruled over an enormously wealthy empire that stretched from Thailand and Laos to the coast of Vietnam.

The disaster of the Khmer Rouge and the illusions now in the lost grandeur of Angkor – that such a period could possibly return – make up what is essentially the underlying "romance" of the Cambodia people.

In reality – beginning with absolutely nothing in the 1980s – Cambodians have for twenty-five years struggled to rebuild their country, which is now growing impressively at a consistent 7% annual rise in GDP.

Our recent interviews in Cambodia revealed a pattern in health policy making – from the early 1990s – of:

-initially, an utter lack of local capacity and a conscious (that is, known) dependence on foreign advisors;

-knowledge and information derived from working alongside (and often under the control of) foreign advisors;

-academic study overseas for many key officials;

-effective study tours often arranged by the donor agencies;

-increasing individual experience and knowledge and rising capacity in independent policy making.

Today, Cambodians are much more firmly in control of their own destiny, and my work (along with other international advisors) is now almost entirely within the context of service and support for my local policy making colleagues. Partnership and trust are the modus operandi of this relationship.

The experience in neighbouring Thailand since the early 1970s, in the area of health policy making, in an environment of consistent national development (despite repeated political turmoil), provides us with a very well documented account:

-of the policy making process;

-of consistent national independence and a strong national will;

-of the role of local researchers in partnership with policy makers;

-of capturing the opportunities provided by political change;

-and of sympathetic support and advice from international partners.

If you have the opportunity, a study of the Thai situation can be rewarding.

My outline here is more conceptual than practical. But perhaps you can see some relevance to the wider discussion of the national and psycho-social aspects of policy making. We may say Cambodia provides an illustration of some of the notions we are thinking about today.

These might include:

- "defence" – against the influence of local and foreign destructive forces (secret us carpet bombing, the Khmer rouge, the Vietnamese who occupied the country for too long, the united nations);
- the "idealised image" of the Angkorian past;
- the "psycho-social pathology" following the Khmer Rouge period;
- the "empathetic capability" (or absence of it) on the part of foreign agents;

- the "reparative leadership" required both by the Cambodian government and by international agencies (damaged, I think, by increasingly disturbing national political circumstances today).

Often, in my line of work, in the international environment, we talk about the need to fully understand the context in which we work. We cannot afford to take it for granted (of course) that all situations are the same, that policies that work in one context may be equally effective in another, and that the need for local adaption and innovation is not necessarily paramount.

I feel that understanding "the context" begins with a knowledge of history and of the wider political, social and psycho-social conditions in which we work.

Do we get the policies we deserve?

Sometimes the policies we get are imposed on us from outside forces.

What are the emotional and relational issues that arise?

If there is no trust there can be no progress (and developing trust takes time and patience).

What are the dynamics of policy making and the role of implementers?

Implementers often deal with policy at the objective and the technical level (defining best-practice solutions).

But many times, politics overrides technical expertise and policy makers must find a way to adjust.

What are the risks faced by policy makers?

In a heightened environment, like that in Cambodia, the risk in providing appropriate and well-founded technical advice that may inadvertently contradict a political imperative can lead to ending a career, the loss of livelihood and social exclusion in a way that we (in countries like Australia) don't often recognise.

The future then may lie truly, when placed in such situations, in the development of our empathetic capability. That much, I think, is a major contribution that we might glean from today's discussion. I hope I might have been able to add something to that thought.

Panel on Justice Policies

Dr. Janelle Morgan, Moderator

Thank you and welcome to the Justice Panel.

My name is Janelle Morgan. I think I got this role because I have recently retired after thirty years with the Victorian Department of Justice and Regulation. During that time, I worked in Community Corrections, Prisons, Courts, Victim Services and the Sheriff's Office.

The process for this morning will be a fifteen-minute presentation from each of our speakers, followed by a break for morning tea. After morning tea, I will ask the panellists if they would like to add any further comments having heard all of the presentations, then I will open the discussion up to everyone for questions, comments, associations and let the whole group examine everything that comes out from the panellists from a systems psychodynamic perspective.

The panellists are: Ms Jenny Hosking; Mr Mark Madden; Magistrate Tony Parsons and Professor Arie Frieberg.

One of the things I know about the Department of Justice is that it provides a rich soup of dynamics that must be worked with all of the time. Dynamics such as guilt and innocence, good and bad, shame and redemption, them and us. The other thing I know is that there is also an 'other', regardless of whether we call them: clients, prisoners, offenders or defendants.

So, do we always get the policies we deserve? In my experience, so much of what is good or bad public policy depends to some extent on luck and whether policy makers can make use that luck. I am referring for example, to which government is in power, who the Attorney General or Minister might be, who the Secretary of the department is and what the government priorities might be.

An example that comes to mind for me is the development and implementation of the Court Integrated Services Program (CISP) which was implemented in the Victorian Magistrates Court. The CISP is an integrated model of support and services provided at the pre-sentence stage of the court process primarily for persons charged with criminal offences. Defendants are referred for assessment to determine the level of service and nature of services required. A report is prepared for the magistrate and if bail is granted, participation in the CISP becomes a condition of bail.

The luck involved in the policy sitting behind CISP is the fact that we had a Labor government and reforming Attorney General (AG) who wanted to make a mark through the implementation of the AG's Justice Statement. As part of the development of the Justice Statement, the AG's office asked the Department for suggestions about what it might include and the unit I was heading up put forward the CISP idea. While this idea was welcomed by the AG's office it was not well supported by the Department in the initial

stages. Over a period of months there was an ongoing and often heated debate about whether the CISP should stay in the Justice Statement.

The development of the justice statement was also lucky in as much as it provided a very useful container within which to conduct this debate. It allowed those of us committed to the idea of the CISP to work to progress its continued place in the Statement as a key plank of the problem-solving response in the Magistrates Court. The CISP was funded as part of the Justice Statement. Its implementation over the next twelve months or so is another story altogether.

Ms Jenny Hosking

Jenny Hosking is the Assistant Director, Community Correctional Services, a role she has held for the last 18 months. She has worked for Corrections Victoria since 1985 in a variety of roles and most recently she spent eight years as Manager, Sex Offender Management Branch during the development of the post sentence scheme under the Serious Sex Offender (Detention and Supervision) Act 2009.

Good morning. I feel honoured and rather underqualified to be talking to you given the esteemed company I am in. I tried policy development once, it didn't agree with me, I got a rash! We have to understand our strengths and our passions, mine is very clearly operations, making it happen on the ground.

I come to this conference from the perspective of many years of correctional operations experience, implementing government policy and in several cases influencing policy.

I strongly believe that policy-makers must consult with operational practitioners otherwise we risk ending up with policy that are good, coherent and rational but unable to have practical application and therefore will make no difference to the lives of people who put their faith in policy makers to get it right.

The premise of Bruno Boccara that resonates with my experience is "that today's psychosocial dynamics are increasingly becoming detrimental to public policy and more generally societies' well-being in the sense that the collective defences mobilised to deal with the shared anxieties or social defences have become increasingly regressed."

Case in point, law and order policies. I am in no way suggesting that these issues are black and white or in fact anything other than highly complex mattes where competing interests all have a degree of legitimacy. I am questioning whether, on occasions, our policy response does not cover the complexities.

Let's consider how these policies are formed. Bad things happen. The media report or sensationalise the events and the community becomes concerned or fearful or angry. Group thinking, or as Bruno Baccara refers to it, societal unconscious kicks in and the community "knows" what should happen. "We" need to be protected. "They" shouldn't let this happen. "They" should do something about it.

Governments react, promising to protect the community by becoming tougher on crime because after all, popular thinking is that we just need to get tougher and it won't happen

again. And after each media worthy terrible crime, governments must try to find a new and tougher way to respond to appease community anxiety.

An example in Victoria is the response that came about following the murder of Jill Meagher. The wide-ranging review and recommendations of Justice Callinan were adopted by the Victorian Government. The policy position became that parole is a privilege, not a right and those assessed as posing an unacceptable risk should not be granted parole.

The changes to the entire system were wide-ranging and I would argue in the main, have been positive. There is a greater emphasis on prisoners taking responsibility for their participation in treatment programs, and their behaviour to increase the likelihood of being granted parole, but the outcome of the legislative and policy changes is that there are less than half the number of prisoners currently on parole as were subject to such supervision prior to the changes to the parole system.

Is this a good thing or a bad thing? We will need long term recidivism data to come to any rational conclusions but in the short term, a significantly smaller number of offences have been committed by prisoners on parole.

Smaller number on parole/ only lower risk prisoners paroled/requirements (treatment and good behaviour) prior to parole may all contribute. Either way it is a good news story that confirms the "rightness" of the changes made.

 But in the longer term, we need to determine whether the higher threshold for accessing the monitoring and support of parole supervision will reduce re offending into the future.

But what happens when someone who has been in prison and may or may not have had parole supervision but has completed his sentence, reoffends in a horrific way?

I believe Susan talked in her introduction yesterday about not just understanding policy development in a conscious, rational way but also some of the more unconscious less rational, even irrational and emotional ways. Let me talk to you about policy and irrational response by saying two words: sex offenders.

Government's response has been to implement a post sentence scheme. Such schemes are of course not just in existence in Victoria but worldwide. Identified prisoners are subject to continued supervision or in fact detention at the completion of their sentence based on the risk of what they might do, as determined by the court.

Civil libertarians and many others are opposed to this system. It seems very "Minority Report", draconian and against the fundamental principles of our system of justice. However, what should a government's response be when those within the criminal justice systems are aware of and very concerned about some of the prisoners being released into the community at the end of a sentence without supervision or oversight, when there is a state of knowledge about significant risk.

I'm not just talking about recidivist house breakers or car thieves, I'm talking about people for whom there is a very high probability or in fact, stated intention to commit serious offences. Where sometimes significant untreated mental illness or severe personality

disorder or abuse and neglect from very young ages, deviant core beliefs or in fact on some occasions for unexplainable reasons manifest in dangerous behaviours that are harmful to others. These are people who are complex and dangerous.

The difficulty is determining what is "unacceptable risk" without widening the net and capturing too many people in this scheme. Of course, a crystal ball would be useful but they are few and far between!

In Victoria, we have had eleven years of a post-sentence scheme for sexual offenders. Initial projections were that by this time we would have significantly greater numbers subject to such supervision than in fact we have.

The experience so far has enabled us to refine the parameters of what is unacceptable risk and ensure only those at the very pointy end of the pyramid of risk are referred to the court for consideration of being made subject to the scheme.

Because of course, contrary to the commonly held view of most of the community, sexual offenders reoffend at the lowest rate of any offender cohorts. These schemes arise when Governments/policy makers/ the community considers all sex offenders to be equally dangerous – despite evidence.

However, this post sentence scheme will soon expand to include violent offenders as a result again of a review following another terrible event in the community. Violent offenders are a much greater number and consideration of the risk they pose for eligibility for such a scheme will have to be done with rigour to ensure only those that pose an **unacceptable risk** are subject to such supervision.

The seriousness of the offence, what I refer to as the "ick" factor, does not necessarily indicate the level of future risk. And even if the actuarial risk of reoffending is low, for some, the gravity of that offending should it recur, makes the smallest risk unacceptable.

However, such schemes are very expensive. The supports and supervision required to be wrapped around such high-risk offenders within the scheme is substantial. It includes purpose built facilities to accommodate offenders who should be living in the community but where community tolerance of risk is low. NIMBY takes over, an example of social defences.

The staffing of these facilities given the risk such residents pose and the legal costs of ensuring conditions of orders to which offenders are subject are the least restrictive to reduce risk but still manage risk, are substantial.

So, what is the alternative? Is there a place for empathic availability within our community?

Far from a consideration of such policies from a perspective of empathic availability, in many states in America, the public policy debate in relation to post sentence schemes has become about costs. I found an article recently when researching the "what works" literature. It is titled: "**EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES.**" Not evidence

about how to reduce reoffending or harm to the community but to reduce prison construction. The tipping point of changes to public policy is not empathic availability driving more evidence based responses but rather the effect of the cost that has removed funding from schools and hospitals.

However, with empathic availability in the community, Governments may respond differently. When I consider the childhood and upbringing that many of these offenders have had that has significantly contributed to their aberrant behaviours and damaged their personalities such that they react violently to perceived threat, I often wonder at what point we stop seeing them as victims of horrific abuse and neglect and start seeing them as filthy offenders who deserve to be despised, isolated from our community and punished ongoing.

There are however examples of empathic availability. The Mennonite communities in Canada started Circles of Support and Accountability or COSAs many years ago.

COSAs are groups of volunteers who, with professional supervision, support sex offenders as they reintegrate into society after their release from incarceration. They welcome offenders back in to the community with supervision and support but do not demonise them.

I met with a number of such COSA members on a trip to Canada several years ago and was impressed that following a phone call from an offender, a COSA member willingly agreed to assist an offender with moving to a new house even though it impacted on the day the COSA member had planned.

The response was the same as a friend asking for assistance. The COSA member took their commitment seriously to the point that they saw the offender as a member of their community who needed practical assistance.

In Victoria, we have Support and Awareness Groups or SAAGs to support sex offenders to remain offence free. These are groups of people nominated by the offender to whom he explains (and statistically it is nearly always a he) his offending and his high-risk situations as he understands them following treatment. These people can be family members, community members or professional supports when neither of the other options are available. He asks SAAG members to help him to remain offence free by providing feedback about involvement in high risk situations, by providing support and by understanding that he is motivated not to reoffend.

For many of the high risk sexual offenders currently supervised under the post sentence scheme in Victoria, this forms a part of the response to managing risk. But by no means all. There are offenders who have no family member /community member or friends to undertake this role. There are also those whose wish for sexual gratification in inappropriate and harmful ways overcomes any internal of external locus of control.

So for some we end up back to a post sentence scheme with strict external controls. The empathic response then should then come from those making policies to govern such schemes and facilities and those working in such areas. Most of the staff with whom I have had contact over the years who work in this area have a commitment to the important role

they fulfil and understand that their work makes a difference. This perspective needs to be supported.

So what part can our political leaders play in supporting pockets of empathic availability? Perhaps considering policies that deal with causes as well as results of offending. Thinking about leadership in forming public opinion rather than allowing the popular media to set the agenda and having a considered evidence based response to the complex issues of dealing with law and order in modern communities.

But even if it is from the cost perspective alone, a more evidence based response to policy formation is likely to get the best outcomes for the community.

Mr Mark Madden

Getting the Policies We Deserve?
**The Dynamics of Making Policy**

A view from Government

Mark Madden is the Deputy Director of the Centre for Innovative Justice at RMIT University. Mark has more than 30 years' experience in media and communications and strategic planning as well as government and public policy, including justice, education and training, environment, regional development, local government and the arts. He has been Chief of Staff to senior ministers in state and federal governments. He has written an e-book of practical advice for ministerial advisers called Generals, Troops and Diplomats.

I want to do three things today:

- Take you on a journey of policy-making and implementation from a Ministerial office point of view.
- Along the way, reflect on some of the issues raised by Bruno and Susan Long, particularly the role of empathy and the importance of listening, (to policy success), and
- Briefly outline its value in two key areas and human-centred design and restorative practice.

First the journey.
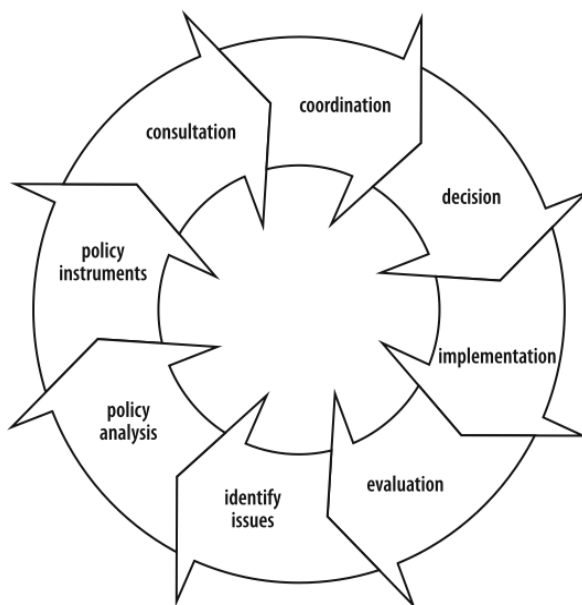
Orderly process. This is the way we like to think policy happens.

An orderly procession from identifying issues to implementation and evaluation.

BUT This is the way it really happens.
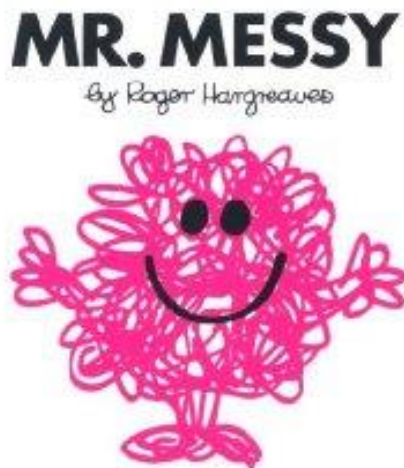
Public Value Theory

This is why. Below is a representation of Mark Moore's public value theory, with three key areas in dynamic relationship … the most dynamic perhaps between the public value and the authorizing environment. This is where the real contest is, and areas which bring into play the areas this conference has been dealing with.
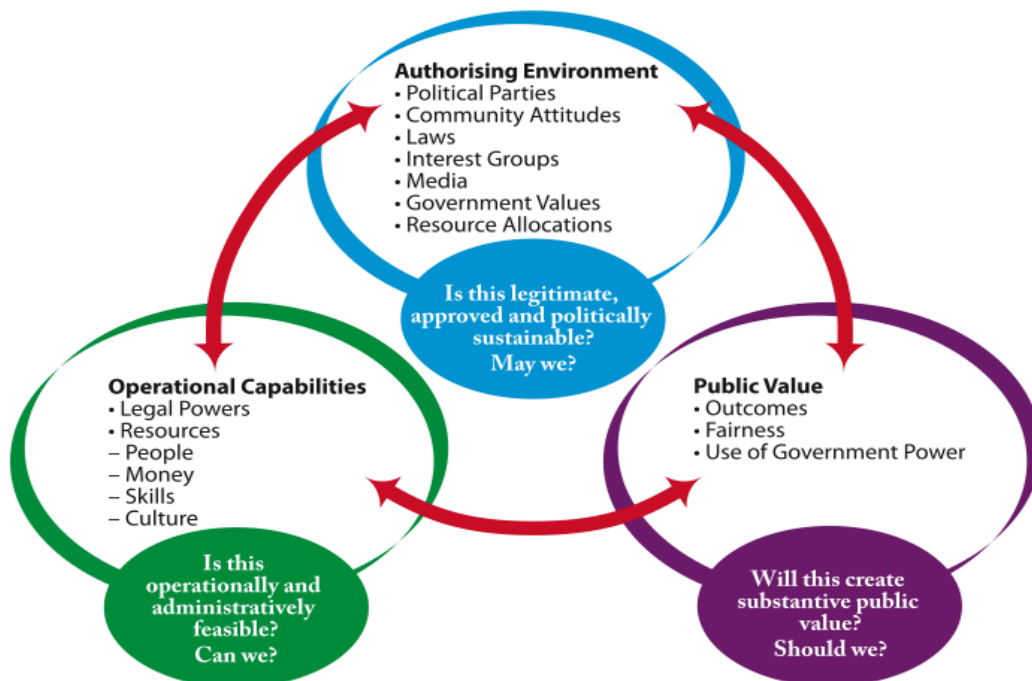
There are three important questions to ask:

Should we?

May we?

Can we?

I found this an important way to frame what the fundamental role of Ministerial offices were

What drives…
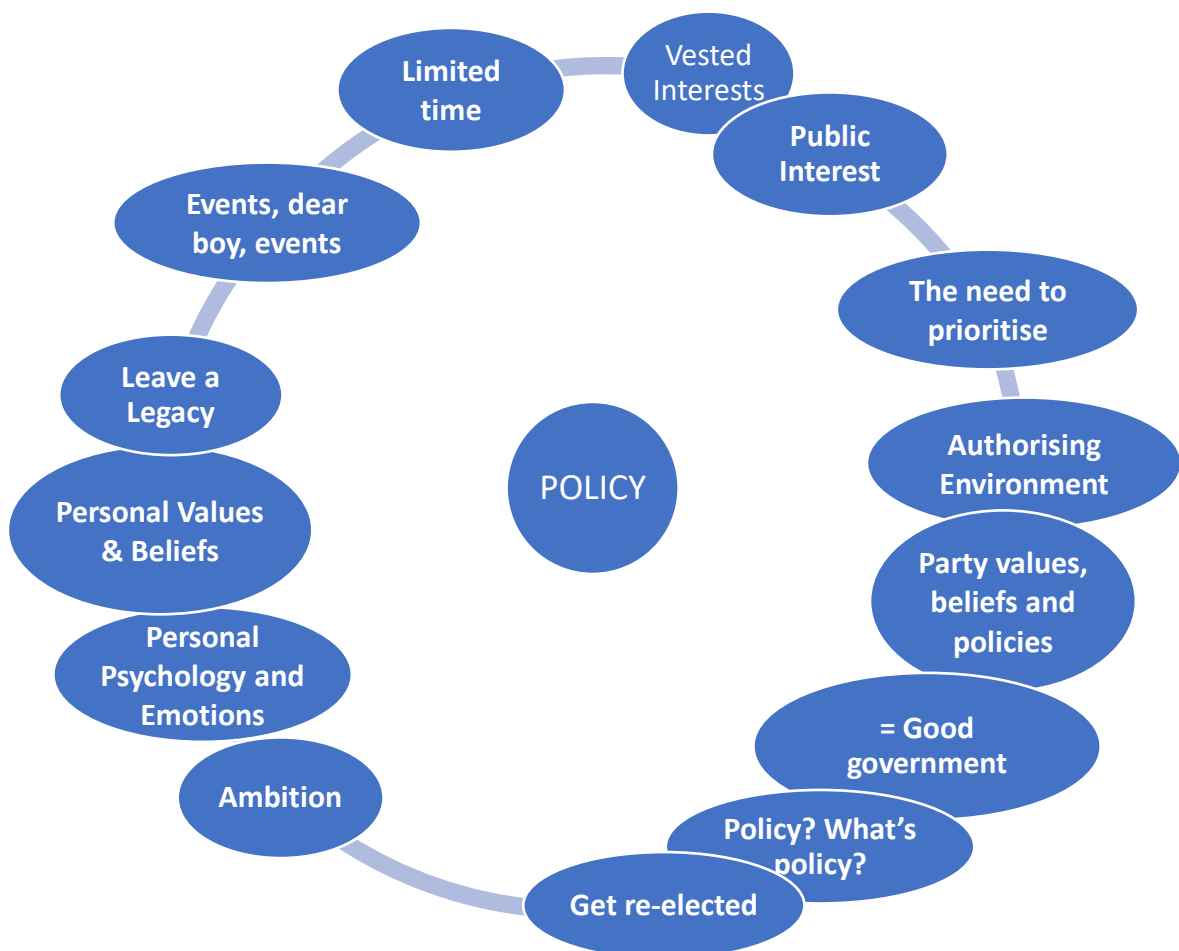
In the contest for 'public value' and managing the 'authorising environment' (what 'authority' does the government have?), there are a number of factors at play, at any one time.

- Public interest v vested interests
- Party values and beliefs --- personal values and beliefs (not always the same)
- Does good policy always equal good government? What is the balance between power and authority.
- Policy, what's policy versus exercise of power (what are we here for?)

- There is the overwhelming need to get re-elected.

Then come other personal motivations, including the level of ambition to leaving a legacy.

Then of course, are all of the things out of your control… events, dear boy, events …. and of course, limited time!

The electoral cycle that goes from tough decisions, putting policy and promises in place, to the grind of implementation then to setting up for re-election.

Setting priorities

There's the setting out priorities, and deciding what are the things that are the most important; will have the most impact.

Setting priorities...

Attachment 1

Political Effort Vs Political Benefit

Political Benefit			
High	High Benefit Low Effort		High Benefit High Effort
Medium			
Low	Low Benefit Low Effort		Low Benefit High Effort
	Low	Medium	High

Political Effort

RMIT UNIVERSITY
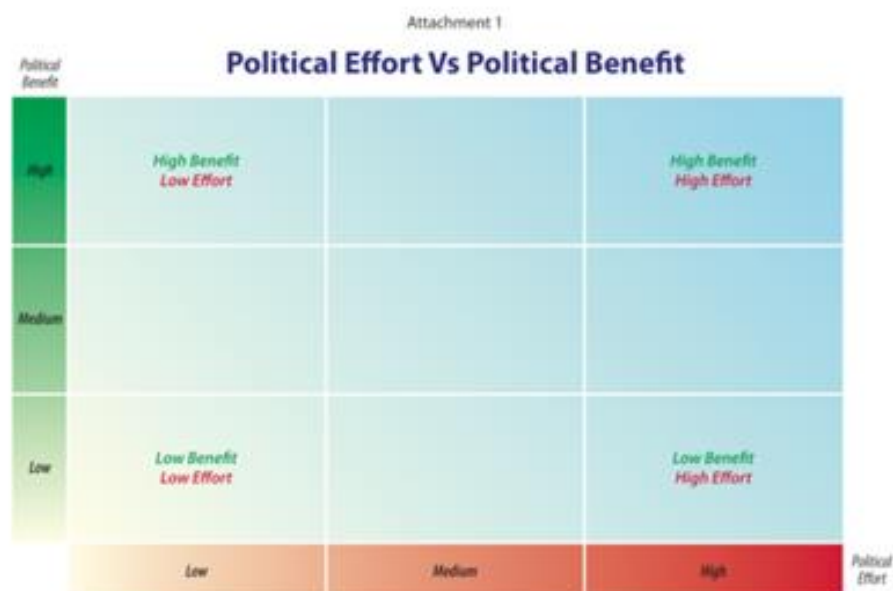
Policy into reality

So how do you get things done? By taking account of Kingdon's three pre-conditions for policy success…

- A crisis or opportunity
- A solution (under discussion)
- The right time.

The first and last are often out of your control (unless they can be manufactured) … the second goes to the importance of policy anticipation and development.

Designing Policy solutions.

This leads us to some fundamental questions about policy success or lack of it…

- Importance of strategy/policy framework
- Who are we designing/developing for?
- Are we doing things TO you or FOR you, OR are we working WITH you?
- What's missing? What's required? EMPATHY. The courage to truly listen…
- Restorative practice, therapeutic jurisprudence and design thinking (human-centred design).

Some examples

- Justice Statements 1&2
- Acquired Brain Injury

The Ten Commandments of Communication

Why is empathy so important?

- Fundamental to communication, and policy success
- See below the ten commandments of communication

1. It is not what our message does to the listener, but what the listener does with our message that determines our success as communicators.
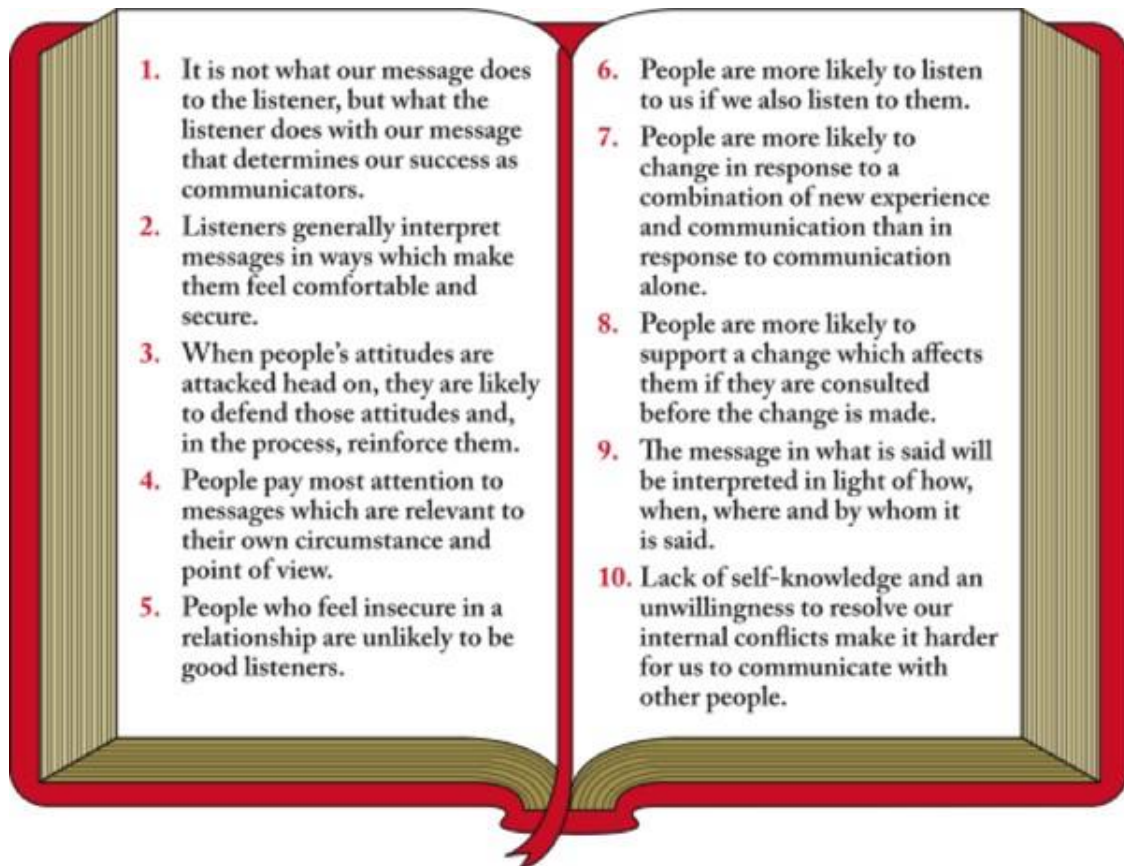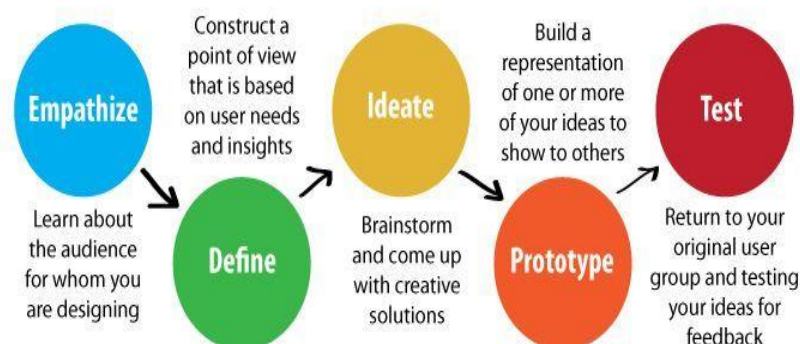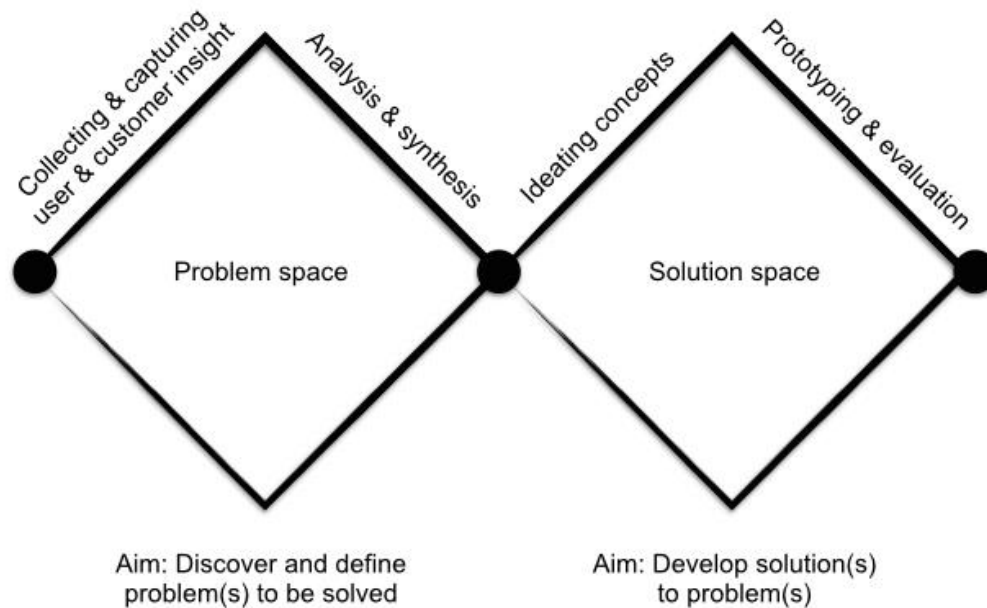2. Listeners generally interpret messages in ways which make them feel comfortable and secure.
3. When people's attitudes are attacked head on, they are likely to defend those attitudes and, in the process, reinforce them.
4. People pay most attention to messages which are relevant to their own circumstance and point of view.
5. People who feel insecure in a relationship are unlikely to be good listeners.
6. People are more likely to listen to us if we also listen to them.
7. People are more likely to change in response to a combination of new experience and communication than in response to communication alone.
8. People are more likely to support a change which affects them if they are consulted before the change is made.
9. The message in what is said will be interpreted in light of how, when, where and by whom it is said.
10. Lack of self-knowledge and an unwillingness to resolve our internal conflicts make it harder for us to communicate with other people.

IDEO framework

Empathize — Learn about the audience for whom you are designing

Define — Construct a point of view that is based on user needs and insights

Ideate — Brainstorm and come up with creative solutions

Prototype — Build a representation of one or more of your ideas to show to others

Test — Return to your original user group and testing your ideas for feedback

The UK Design Council's double diamond approach

Collecting & capturing user & customer insight — Analysis & synthesis

Problem space

Ideating concepts — Prototyping & evaluation

Solution space

Aim: Discover and define problem(s) to be solved

Aim: Develop solution(s) to problem(s)

Community Engagement

Info rm
To provide balanced and

Con sult
To open up a dialogue to get public feedback

Invol ve
To work directly throughout projects to ensure issues are consistentl

Collabo rate
To partner with the community on project or decision making

Empow er
To place part or all of a project in the hands of the community and support/encour age community-led decision-making

Fundamental to policy design … how do you know what people need unless you ask, observe, engage?

Why are we reluctant to truly empathise/listen?

- It moves us from doing thing to you or for you, to working with you --- it moves from inform to empower, and a loss of power and control … hard to cope with!
- We might find out things, that challenge us, that we would prefer not to..

Asking the same questions

Why is it powerful?

- It asks the same questions --- should we, can we, may we (or do they want this)
- Avoids costly leaps of faith.
- Motivates people for the change required.
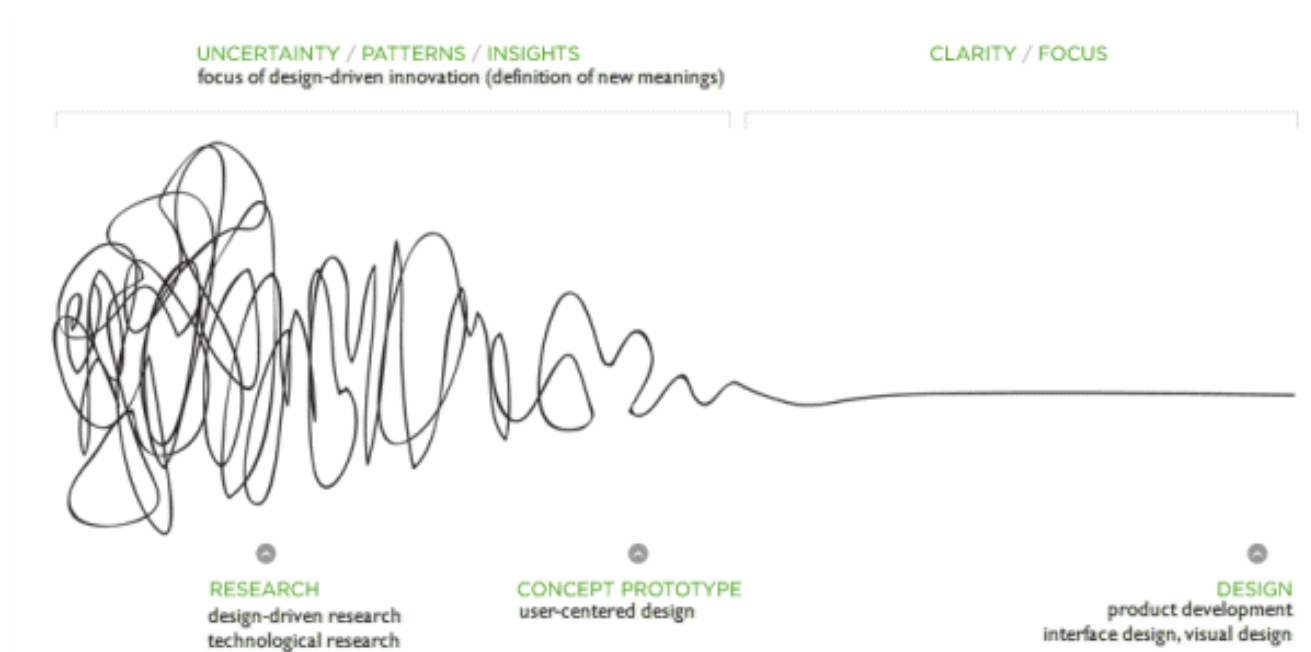

How much empathy are we prepared to show?

The six core principles for working with Aboriginal people and organisations are (NT):

- Applying a child-focused approach;

- Ensuring that Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that

- affect their children;

- Protecting Aboriginal and Torres Strait Islander children's right to live in culture;

- **Pursuing evidence based responses;**

- Supporting, healing and strengthening families; and

- **Challenging systemic racism and inequities.**

One of the reasons why we end up with so much bad policy….

"Insanity is doing the same thing over and over again and expecting different results"

Albert Einstein
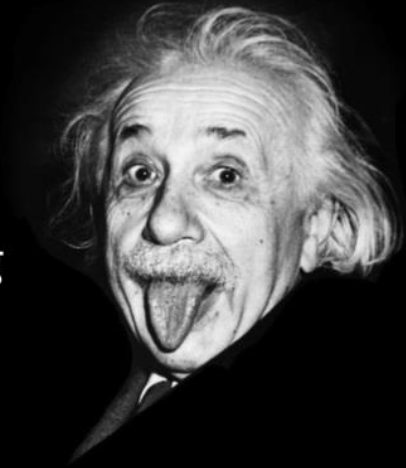
Magistrate Tony Parsons

Magistrate Parsons leads the Melbourne and Dandenong Drug Courts, a division of the Magistrates Court of Victoria. He was previously Managing Director of Victoria Legal Aid (2000-2008) and before that a practising lawyer. He has extensive experience with policymaking both within government and with stakeholders more broadly.

I'll leave the psycho-analytical perspective of the policy development experience the subject of my contribution today to those better qualified to explore it but I can say that at the time the policy caused a seismic reaction across the sector in which I then worked.

Background – The Long Historical View

The current legal aid system in Australia is comprised of one central legal aid commission in each state and territory which receives funding from the Commonwealth and the parent state or territory. With their own legal staff each legal aid commission delivers legal services directly to their communities and also funds both the private profession and not-for-profit community legal centres to do the same.

This system of legal aid had its genesis in the early 1970s, a legacy of the reformist Attorney-General of the day, Lionel Murphy. He established the Australian Legal Aid Office (ALAO) which had an office in each State and Territory and over the decades these morphed into the eight Australian legal aid commissions. Prior to the establishment of the ALAO, legal aid was virtually non-existent with state and territory governments providing piecemeal legal services, usually confined to legal representation in very serious criminal cases for people who couldn't afford a lawyer.

The highly controversial creation of the ALAO split the legal community. The private legal profession argued that government lawyers could not ethically deliver legal services because they were faced with an irreconcilable conflict of interest – on behalf of their clients they would be challenging members of other agencies (police, immigration, social security etc) who, like Legal Aid, were employed by the government.

At the time, the Law Institute of Victoria threatened to take the issue to the High Court.

Supporters of the new system argued that the private profession was simply motivated by greed, seeing the new national system of legal aid as a pathway to enrichment on the back of the tax payer and wanting to monopolise access to that revenue.

In the end the Law Institute challenge in the High Court was never launched but an uneasy arrangement of sharing legal aid work commenced at that time. Legal Aid Commission lawyers did some of the work and the private profession, via a grant of legal aid on a case by case basis, also did some. But until the new millennium the Law Institute refused to bury the hatchet and over the decades, at every opportunity, the Institute would publicly criticise the Legal Aid Commission as bureaucratic, inefficient and incompetent. This criticism flowed notwithstanding the fact that the Institute and the Victorian Bar both occupied seats on the Legal Aid Commission's board.

The divide and animosity between government employed lawyers working for the Legal Aid Commission and lawyers in private practice was set in stone.

Background – The Medium Historical View

In Victoria in the early 1990s during the Kennett & Howard era the Legal Aid Commission of Victoria was dramatically restructured with the historical stakeholder representative board swept aside for a smaller, 'corporate' board with a focus on finance and governance replacing stakeholder interest. The organisation was renamed Victoria Legal Aid (VLA).

From 1994 to 1997, largely as a result of cuts made by the Howard Government to the Commonwealth contribution to legal aid, VLA's revenue was cut from $88m to $52m per annum. Drastic measures were required to manage these cuts. The then VLA managing director, MRC, dramatically cut every in-house legal aid program with many job losses and also substantially cut the rates and numbers of grants of legal aid made to the private profession. The private profession was outraged that their access to this source of revenue was being curtailed but rather than attacking government, the rage was directed at VLA. On behalf of VLA, MRC's public response, personally delivered at a forum at the Law Institute no less, was '*if the private profession don't want to come with us they don't have to come along, nobody's forcing them and we don't need them, they can go and make money doing something else*'. The howls of indignation from the private sector suggested that the narcissistic injury might have been terminal!

Background – the Short Historical View.

At that time, I was a specialist criminal lawyer in a small private practice. Like most criminal law practices my firm did a lot of work funded by VLA. In the latter years of the 1990s the firm became politically very active. We acted for Save Albert Park and enjoyed huge success representing the demonstrators who were arrested opposing the construction of the Grand Prix race track at Albert Park. The practice had ready access to the media and used it to publicly attack Mr Kennett and his government. I occupied a seat on the executive of the Law Institute's Criminal Law Section and was the Institute's spokesperson for drug law policy, a position which enabled me to campaign hard and publicly for safe injecting facilities and heroin assisted treatment of dependent citizens.

The firm also took on VLA. VLA had no choice but to cut funding to the private sector but those funding decisions nevertheless had to be made in accordance with long established principles of administrative law. Often, they weren't and when the decision affected a client of my firm, we were instructed to sue VLA. In 1997 the firm issued proceedings in the Victorian Supreme Court against VLA challenging their refusal to fund a client's case. VLA lost and was ordered to fix the decision and to pay costs. The firm again was instructed to issue proceedings against VLA 1998 on behalf of a different client who also won, with costs. In early 1999 the firm issued a third action against VLA but this time VLA capitulated prior to the hearing, agreed to fund the client and paid the legal costs. VLA also offered to engage my firm to act for VLA when other practitioners issued proceedings against their organisation (an offer which was declined). As a result of this litigation my firm and I were

seen by the legal sector as a formidable opponent of legal aid, ready and willing to stand up to VLA in the State's highest court.

In late 1999 the Kennett government lost the election and MRC immediately took up a role with the Howard Government in Canberra. The new Attorney-General in the Bracks Government, Rob Hulls, appointed me the new managing director of VLA.

Word of my appointment got out before the official announcement and I vividly recall walking past a couple of VLA employed lawyers in the street. Their icy stare said it all: *here is the arch enemy of legal aid appointed to run VLA! Here is the darling of the reviled Law Institute about to sit in the driver's seat of our organisation! What terrible plans does he have in store for it and us?*

The Policy

Before I joined VLA as its managing director, applying to VLA for a grant of legal aid for a client was a time-consuming pain in the neck. The money attached to the grant was meagre but, worse, the application process was frustrating and time consuming. A multi-page paper application had to be completed with proof of means attached. A written submission was required to argue that the application for a grant of aid fell within VLA's grants guidelines. The application was assessed by a grants officer who was not a lawyer. A response from VLA in two weeks was considered a fast turnaround. Often further information was requested, causing further delay and cost. Courts get impatient when adjournments are sought because funding is not settled and the grant doesn't cover an appearance to request a postponement of the case. Often enough the application process took more time and energy than the case itself! Lots of lawyers in private practice just stopped doing legal aid work because of the hassle and cost of obtaining the grant.

Shortly after I started at VLA, the head of VLA's Grants Division came to me with a radical proposal. She showed me data which disclosed that in 95% of grant applications, VLA granted aid in exactly the terms sought by the private profession. What value, she asked rhetorically, was being added to the decision process by VLA's legion of grants officers if their decisions were precisely what the lawyers said was appropriate in the first place?

She argued that we abandon our practice of assessing each application using non-qualified staff and hand over the power to make a grant of aid to the client's lawyer. Risk would be managed by random auditing of the lawyer's files to ensure their decision making processes complied with VLA's grants guidelines. Lawyers who wanted to do legal aid work would have to join a VLA practitioner panel and agree to the audit process. Setting up a practitioner panel and undertaking file audits gave VLA serious leverage over quality and risk control. The change would mean downsizing the grants division by thirty positions with the remainder to be trained as compliance auditors. The organisation could divert millions spent on grants administration into legal services. Instead of engaging in acrimonious, time

consuming and costly debate with VLA to secure aid for a client, a process taking at least a couple of weeks, practitioners could allocate a grant to their client on the spot! A win:win!

The proposal was pure genius and my Grants Division head and I submitted a comprehensive business case for a pilot of the new process to the VLA Board who, with some white-knuckle reservations, approved the pilot. Several of my executive team also held reservations.

A week later two very large briefings about the new policy pilot were held. The first, at 8 am, was held with private sector lawyers. About forty lawyers attended and all of the firms who did substantial numbers of legally aided cases were represented. At 10 am the second briefing was held with VLA's legal teams and Grants Division staff. At both meetings the new process and the pilot was explained. At the VLA meeting the VLA lawyers were also told that their cases would be subject to the same pilot, that our in-house lawyers would also be given the power to approve grants for their clients but they also would have their files audited for guideline compliance. A level playing field was to be established between the lawyers from both camps.

The response was seismic.

From VLA staff:
Their worst fears had now been confirmed. *The arch-enemy of legal aid, the Law Institute's man, was going to give the grants making power to the private lawyers, was going to allow the greed driven private sector to help themselves to the scarce financial resources of VLA.* Someone contacted Jon Faine after the staff meeting. Faine was a legal aid lawyer in a previous life. The next morning he interviewed me. His opening line was: "*So Mr Parsons, you've decided to give the keys to the grog cupboard to the alcoholics?*" Someone contacted the Attorney-General and I was summonsed. His opening line was "*Won't they empty the coffers and bankrupt VLA?*"

From the private legal profession:
At first blush the proposal was greeted favourably. Within 24 hours of the briefing, the tide had turned. *How dare a bunch of public servant lawyers think they can tell us anything about delivering quality legal services! What right do they think they have fossicking around in our files? We've been working for the underprivileged at cost or even at a loss for insultingly low legal aid remuneration for decades and now, rather than being grateful, they want to tell us how to do it (narcissistic injury?) – outrageous! And to add insult to injury, they want to pass on the extra work and cost of making grants decisions to the lawyers so they can sack all their grants staff! Humbug!*

Epilogue:
The pilot was run with the highest volume legal aid firms. It succeeded. The ill will and suspicion between VLA and the private profession generated by the traditional, tedious grants process significantly abated. Our file audit teams, replacing faceless grants officers, got to know and build up constructive, even trusting relationships with lawyers and their staff, inside and external to VLA. The policy was rolled out across the State and across all

law types. The organisation diverted $2.5m annually from grants administration into legal service provision.

And the sky didn't fall down.

Emeritus Professor Arie Freiberg

Arie Freiberg is an Emeritus Professor at Monash University Chair of the Victorian Sentencing Advisory Council and Chair of the Tasmanian Sentencing Advisory Council. His particular areas of expertise are sentencing, non-adversarial justice and regulation. He has consulted for a number of state government agencies and departments on regulatory reform and has served as a consultant to the Federal, Victorian, South Australian and Western Australian governments on sentencing matters as well as the Australian and South African Law Reform Commissions and to the Royal Commission on Child Sexual Abuse in Institutional Contexts on sentencing issues and in 2016 he was a consultant to the Queensland Department of Justice and Attorney-General on drug courts. He has publications in the role of emotion in criminal justice and public policy.

The continuing debate about the merits or otherwise of mandatory sentencing policies, which now form the basis of the Victorian Opposition's sentencing policy for the next election, frequently revolves around issues such as their utility, their effect on crime rates and public safety as well as the appropriateness and scope of judicial discretion. These are important issues which speak to matters such as evidence, cost, fairness and criminal justice policy generally.

However, sentencing in general, and mandatory sentencing in particular, cannot be understood solely in rational, utilitarian tools. The introduction of mandatory sentencing in some states and territories represents a significant symbolic statement about the nature of the societies which produce and support them. Sentencing has an emotional dimension as well.

There is more to crime policy than reducing the level of offending in society. Crime and punishment are not just about law-breaking. Social problems such as crime carry a multiplicity of meanings. Contentious issues such as crime, drugs, alcohol, religion, sex and others generate considerable heated and emotional responses. Political analyst Harold Lasswell once described politics as the process by which the irrational bases of society are brought out into the open. The late Graeme Little in his last book, *The Public Emotions,* argued that in order to understand 'who we are and what we can do', we must understand the role of emotion, particularly in the public arena.

Explanations of the rise, fall and remarkable resurrection of populist politicians, such as Pauline Hanson, of racism, of riots, of mobs, of demonstrations, of crowds and of crime and punishment must be cognisant of the emotional dimension of public life which includes grief, insecurity, fear, anxiety, sympathy, envy, jealousy, anger, hatred, revulsion, disgust, frustration, guilt, hope, pride, shame and others. The twentieth anniversary of the death of Princess Diana, and the extraordinary public expressions of grief at the time, and the continuing interest in her two decades on, remind us of powerful forces motivating private and public action.

Crime represents more than the fear of loss of property or personal harm. It represents an affront to social and moral values and norms, to the civic order and to the moral cohesion of society. Anxiety grows with signs of social disorder: the broken windows, the small incivilities. These deviant or criminal effects do not occur in a vacuum but are embedded in the larger social environment and where this environment is itself also threatening, unstable and insecure a multiplier effect will occur. In times of high unemployment, job insecurity, high immigration, globalisation and rapid and unremitting social change, people will look for

symbols of solidarity, reassurance and stability. It is in times of high insecurity that the myths of crime and punishment are most effective, that the most punitive responses, such as mandatory sentencing and capital punishment are evoked.

There is little doubt that in many Western countries public opinion has become more punitive over recent years. Support for more punitive measures such as three strikes laws, mandatory and minimum sentences, indefinite sentences, sexual psychopath laws, truth in sentencing, boot camps and capital punishment appears to be growing.

Studies of why people support mandatory sentencing or three-strikes legislation have found that the reasons people put forward to justify such legislation are not necessarily the real reasons. Punitiveness is largely non-instrumental and people's policy positions in other areas are largely symbolic and non-instrumental in character. The studies, mostly in the United States, found that the people surveyed were responding to feelings that that important institutions were breaking down. Crime represented a symbolic harm: an expression of the lack of a clear, shared set of moral values, of declining social ties. The more they felt that society was disintegrating, the more punitive were their public policies. Punishment represented a re-assertion of social value. Support for the three strikes legislation in fact had little to do with reducing crime.

These messages have been picked up the politicians who respond by enacting legislation which provides psychic reassurance. It matters not, then, whether these laws actually work.

It is possible to find correlations between punitiveness and the degree of heterogeneity or inequality in a community. The harshest regimes, the highest imprisonment rates and the most severe laws tend to be found where there are large social differences in the community, whether that difference be race, ethnicity or income. People tend to prefer homogeneity, order, predictability, hierarchy and deference to authority, that is, the forces of stability. They tend to be antagonistic towards plurality, difference, complexity, ambiguity and change, that is, threats to the social order.

Dr Boccara refers to:

> anxieties induced by structural changes (e.g., economics, social issues, climate) in the environment. An important example is the gradual disappearance of the connectedness between individuals. It destroys society's ability to perform its containing function. In response, individuals may feel that their identity is under threat.

Crime, and especially crime by minorities, threatens social cohesion and produces high emotional tension. And, as he has observed, regressed societies need enemies and seek the means to act out aggression. As he argues, these enemies need to denigrated, treated with contempt.

One only has to read the daily tabloid press in Victoria to see the repeated expressions of abuse, vilification and condemnation. People who break the law, even young people are not 'offenders', or 'accused persons' but 'thugs', 'fiends' and 'monsters' to borrow just a few of their epithets. These people are demonised, dehumanised and assumed to be outside the pale of humanity.

If we are to deal effectively with the social problems of inequality and disunity, the worst possible response is to employ exclusionary measures such as imprisonment which only

exacerbate the very conditions they wish to improve. Mandatory sentencing is a poor palliative measure for deep seated social pathologies.

Appropriate responses must be long term. They must be responses which reinforce social solidarity and must stress the ideas of integration and cooperation. Politicians can play an important role here. Rather than expressing or inflaming feelings of hate and disgust, good politicians should provide leadership to develop, promote and defend long term programs, social, educational and fiscal which capture a sense of well-being and security.

The key to countering the myths of law and order must lie in the ability of programs to help to overcome the sense of helplessness and insecurity that crime engenders. They must overcome the feeling that 'it is all too much', the sense that there are no definitive answers to complex social problems

There are no short-term solutions for the problems that crime presents to most all western societies. Debates about justice and equity will have little impact unless and until these deeper, emotional issues are addressed.

An important alternative agenda for criminal justice policy one which does not look at effectiveness and efficiency, but rather one which (a) explores people's feelings about their social communities and social groups; (b) attempts to understand the social dynamics between and within groups; (c) attempts to understand how people identify and respond to diversity and (d) attempts to understand how people conceptualise loyalty to their community.

This is what Boccara possibly refers to a reparative leadership: bringing people together rather than dividing them. It points to approaches such as restorative justice, which is inclusive rather exclusive and stigmatising.

The development of public policy needs to be a dialogue, not a one-way conversation. It needs to develop a model that does not see emotion as an obstacle, but as intrinsic to the policy process. It must see policy as discursive, rather than a linear process, as democratic rather than scientific.

Dr Bocarra probably did not know of our recent and continuing moral panic regarding youth crime in Victoria, attributed to the Apex Gang', which has resulted in new and more severe sentences and an investment in nearly $300 million in a youth custodial facility that we don't need, when he wrote in his conclusion, in a different context, but very relevant to us (in plain language):

> a society might even treat its youth prone to violent nihilism … (as an opportunity in the sense that understanding the youth's perceptions could enrich the society by inducing it to reflect … about its own shortcomings). Rather than forcing – prematurely- shared societal values upon those that reject them, one could initially envision a genuine empathic dialogue whereas the disaffected youth … in being asked to become part of the solution rather than remain a problem.

Recognition of emotion and affect within a reasoned and open dialogic process of policy formulation would not only generate a better model of policy making but also a greater likelihood of such policies achieving their expressed objectives.

Poster Presentations

Posters on research by David Cook, Kristina Karlsson and Margot Lockhart are posted separately at www.nioda.org.au