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# Megan's laws and re-trials don't help: the Judges' decision should be final

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# Megan's laws and re-trials don't help: the Judges' decision should be final

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The criminal justice system, at least in theory, is meant to be equitable, display stability and reflect finality. This concept of finality is under threat from recent law-and-order moves to exact greater punishments, namely proposals to scrap the double jeopardy rule and to introduce sex-offender notification laws. At both the front and back ends of justice processes, those who subscribe to the "more law equals more order" view are attempting to extend the reach of the criminal law.

Calls for American-style notification laws are usually loudest following high-profile child sexual abuse cases or when 'notorious' sex offenders are released from custody. In 1999 in New South Wales, convicted child killer John Lewthwaite was subject to continual harassment following his release from gaol after more than 20 years imprisonment. Baying crowds gathered outside his residence and the harassment extended to physical actions like throwing objects and putting a garden hose through his front door. In Queensland, released child abductor Dennis Ferguson was hounded last month by the press on his entry back into the community. Ferguson has been "under siege" from local citizenry and the media again this month forcing him to call for police protection on a number of occasions.

This level of vigilantism abounds even without formalised notification laws. One can only speculate on the level of harassment if notification became a requirement under the law.

Such "Megan's Laws" now operate in 45 jurisdictions in the USA. They are exclusively aimed at released sex offenders who are required to notify police and other justice agencies of their whereabouts at all times. The notification period ranges widely across jurisdictions, with the average notification period extending for around 10 years but can extend to a lifetime commitment. They also involve publicly notifying those with special interests such as schools, recreational organisations and even entire communities that a released sex offender is residing in the local area.

In at least one US state these laws have been described as "cruel and unusual punishment". They have led to physical violence, offenders failing to seek treatment, and greater levels of unwarranted fear in the community.

Like many law-and-order moves, we in the Antipodes tend to borrow wholesale from overseas models. The question is: do these notification laws work? One of the few empirical studies available shows notification to be virtually useless in protecting potential sexual-abuse victims from offenders. In this study it was retrospectively calculated that of 136 serious sex offenders in Massachusetts, at best, in only four cases was there a strong prospect that the eventual victim would have been appropriately warned and even then there was no guarantee that action to thwart future abuse could have been taken.

The second move to extend the reach of the law is the suggested scrapping of the double jeopardy rule. This rule has offered legal protection that one cannot be tried for the same crime twice and has been fundamental to western legal systems. Its

removal is currently under review in the UK and similar proposals are being mooted here.

In Queensland the case of Raymond Carroll has spurred the calls to abandon the double jeopardy rule. Carroll was convicted of the slaying of a toddler, Deirdre Kennedy, in the 1970s but this decision was overturned on appeal. The Crown then tried him for perjury committed during the original trial and again a conviction was secured but overturned on appeal.

This case motivated some to argue that because new technologies like DNA analysis were not available during the original law enforcement investigation and at the trial, then the double jeopardy rule should be removed. This would allow police investigators to have a second (or even third) attempt to gather sufficient evidence to convict.

There are many problems with this position, not the least being that it places far greater power in the hands of the Crown with whom the power and resources already reside. In addition, it would be difficult to mount an adequate defence if witnesses and clear knowledge of the circumstances of the crime are no longer fresh. In effect it would permit overzealous concern for victims' needs for 'justice' to override the rights of defendants. A move in this direction would give DNA evidence the status of almost infallible 'proof' even though there are a great number of difficulties with the testing, storage and interpretation of DNA material.

We are now somewhat immune to the perennial calls for increased punishments that often accompany elections or high-profile crimes in this country. This expected law-and-order push is generally characterised by calls for harsher penalties for select crime categories, to get tough on juvenile crime, or to introduce strict regulations on remissions and other 'soft' options. At times, it seems as if the 'more law equals more order' approach is the only one adopted by politicians and policy-makers in their myopic vision of justice.

Notification laws and proposals to scrap the double jeopardy rule represent the most extreme form of net-widening or extension of the gaze of the criminal justice system. They herald greater intrusion into the lives of all caught up in the law. So at election time the law-and-order push should no longer be measured only in terms of severity of penalties, but in terms of the reach of justice processes.

The adage that if one does the crime, then one does the time, should finish there. Justice agencies should not have the opportunity to keep coming back to try suspects afresh whenever they wish. They should also not have the powers to continue to monitor those who have been released from custody for decades after their sentences have expired. The abandonment of the principle of finality should be resisted.

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