POLITICS AND THE PRESUMPTION IN FAVOUR OF BAIL. CONSIDERATION OF ASPECTS OF THE BAIL ACT, N.S.W, 1978, IN THE PERIOD TO THE END OF 2008. DISCUSSION OF THE RELATIVE IMPORTANCE OF VARIOUS POLITICAL FACTORS THAT LED TO THE NEUTRALISATION OR REVERSAL OF THIS CONCEPT THAT IS ASSOCIATED WITH THE PRESUMPTION OF INNOCENCE.

Chapter 1.

Introduction.

"The determination of bail is a delicate balancing act between principles that are the foundation of the rule of law in a society such as ours and the protection of the community. The community is right to expect that it will be protected, but that must be done within a framework that continues to observe fundamental principles, such as the presumption of innocence. Several speakers in this debate and in a debate earlier today seem not to understand that there is such a thing as the presumption of innocence, as fundamental as that is to the very essence of our democracy." 1.

The above quote contains many of the basic assumptions that underpin a Western democracy regarding the role that law plays in a democratic society. The twin roles of law as both protector of the people against crime and also as protector of the people against unjust prosecution is intertwined with the concept of liberty which is also central to the Western political ideal. Avoidance of unjust prosecution and the assurance of liberty is pursued via the concepts of a fair trial and the presumption in favour of bail (the presumption). However, for serious crime, in N.S.W, in the years since 1978 there has been a radical shift away from the right to the presumption. This thesis seeks to address how and why this shift occurred and what the implications might be for the liberal/democratic nature of our society.

This thesis will consider those provisions of the New South Wales Bail Act, 1978, that deal with the presumption and specifically consider changes to those provisions. It will be the contention of this thesis that these changes have led to an erosion of democratic principles and furthermore, that some elements of the process by which these changes have been engendered are a threat to the basic tenets of democracy.

It is beyond the scope of this thesis to analyse every change to the Bail Act since its inception in 1978. A number of key changes will be outlined and discussed in detail, in order to highlight the pattern of change to the presumption. Aggravated robbery, drug supply, domestic violence and sexual assault will be discussed. Crime in company, gang related offences, repeat offenders, firearm offences and special circumstances provisions will not be considered.

Chapter Two will examine "What is bail?" and specifically the presumption. It will consider why the presumption is important in relation to the presumption of innocence and liberal democracy. It will show that institutionalism in the form of rules in use underpinned the availability of the presumption for major crimes. Theories used in the thesis are explained below. The differences between the relevant sections of the Bail Act in 1978 and 2008 will also be set out. The material will show that for thirty years Attorneys General have been conscious of the presumption as a pillar of our society. However, Table 1 will provide clear evidence that by 2008 the presumption had been severely eroded through a series of amendments.

Chapter Three will consider the relevant sections of the Report of the 1976 Bail Review Committee and the development of the subsequent 1978 Bail Act. In particular the reasons, for and implications of, excluding aggravated forms of robbery

e.g (being armed with an offensive weapon) from the presumption will be considered. The material will show that in the lead up to the Bail Review Committee, interest groups and those within government institutions were working, consistent with both multiple stream and punctuated equilibrium theory, towards a new Bail Act. However, both before the Committee was set up and before the subsequent new Act equilibrium was punctuated by intense media coverage of armed robberies. The media did not meet Fourth Estate commitments in relation to explaining the presumption's importance. Social construction of armed robbers required such 'deviant' behaviour to be dealt with. Structural circumstances led to the rational choice to not provide the presumption for such offences even though the statistics did not and do not support such an approach. There was no convergence of party policy at this point but the first step towards erosion of the separation of powers occurred.

Chapter Four will consider amendments from 1986 relating to illegal drug supply. The material will show that neither punctuated equilibrium nor multiple stream theory provide adequate explanation for the continuation of the presumption up to 1986. Institutionalism in place since 1978 supported the presumption and was only overcome when bail became directly connected to public debate and the rational choice was to erode the presumption. Major change only occurred after the 1988 election which was fought on law and order issues. This macro level punctuation, described as disruptive dynamics, led to a convergence of political party position on law and order issues and a clear erosion of the separation of powers. Once again the statistics did not and do not support these changes.

Chapter Five relates to amendments from 1986 concerning domestic violence and sexual assault. The material will show that an amalgam of theory is required to

explain the changes to the presumption in relation to these issues. Significant incremental change had been occurring for many years through the efforts of policy networks without threat to the presumption. However, in the 1990's punctuation of equilibrium occurred because of macro level changing attitudes, rising rates of recorded domestic violence, media coverage and the post 1988 election convergence on toughness towards crime. Institutional acceptance of the presumption as adequate was replaced in this period of disruptive dynamics by institutional acceptance of no presumption. The separation of powers was further eroded. The materials will show that the 1998 amendments in relation to a range of sexual offences while involving a media driven punctuation actually extended the new approach to a wider range of crimes rather than introducing a complete change.

Statistics which are included at various points in the thesis often show no justification for the removal of the presumption. This leads to the conclusion that broader socio-political factors have acted as the impetus for amendments to the law in this area. These include reporting of crime in the media, political reaction to that, the influence of pressure groups, association with broad and necessary social change and convergence of political party policy.

A number of theories of public policy development will be applied in explaining the shift away from the presumption in favour of bail for many crimes. It will be contended that because the reasons for the changes are multifaceted and complex they can only be fully understood through an amalgam of these theories.

Punctuated equilibrium theory helps to explain why periods of incremental change in policy making concerning the presumption were punctuated from time to time by dramatic major change. For example media concern about a particular crime

combined with community concern resulting in the particular issue being elevated to priority by policy makers. There are, at any one time, numerous policies which expert policy sub groups can consider through parallel processing. Incremental change occurs through the bargaining of interest groups, however, Parliament can only deal with a more limited group of issues. Dramatic change occurs when the policy image of a particular policy issue is heightened. In such a situation small changes in objective circumstances can cause large changes in policy, a process known as positive feedback. 2.

Social construction theory posits that “public policy makers typically socially construct target populations in positive and negative terms and distribute benefits and burdens so as to reflect and perpetuate these constructions.” 3. Those thought of as criminals are given a negative social construction and have low political power. They are described in the theory as ‘deviant’. Owners of homes and small businesses are examples of ‘advantaged’ groups with a positive image. 4. These target groups will be apparent in the decisions regarding the erosion of the presumption. At times competing belief systems have attempted to create the social construction that reflects such beliefs. However, in the case of the presumption the belief in the civil liberty of individuals has repeatedly been overwhelmed by assertions about the need for a firm approach to protecting the community.

Multiple stream theory explains that the problem stream consists of data on various problems. Proponents of policy reform on various issues (such as bail) are found in the policy stream. For any change to occur the political stream including elections and elected officials must be combined with the problem and policy streams. The theory contends that only when a compelling problem opens a window of

opportunity will there be the potential for such combination to take place and policy entrepreneurs will attempt to take advantage of this . 5.

Agenda setting, that is “what makes some problems or events political issues, how do they get onto the agenda, and what causes their relevance to wax and wane?” and non decisions that keep troublesome issues off the agenda will be considered in relation to the various theories. 6. The presumption’s placement on the agenda has fluctuated in relation to broader legislative initiatives that could have included it.

Institutions of the State and institutional rational choice theory are relevant. Government has on occasions been significant as a driving force in changing the presumption. Path Dependency whereby “‘even the most innovative creations are decisively shaped by the content of previous policy,’” will be tested. 7. Institutional support for the presumption will be considered as part of resistance to its modification. Rational choice for purposes of self interest will be considered, particularly in relation to politicians, but within “the assumption of bounded rationality – that persons are intendedly rational but only limitedly so,” because of incomplete knowledge. 8.

Media theory in relation to the extent to which the media carried out the critical role of acting as the fourth arm alongside the legislative, executive and judicial arms of government will be considered. In particular, did this Fourth Estate ensure that power remained diffused and that all aspects of any change to the presumption were publically considered before any change was made? 9. Whether the media contributed to the development of a convergence of political views will be addressed through analysis of print media, namely the Sydney Morning Herald (Herald) and the Daily Telegraph (Telegraph).

Theory about the separation of powers will be considered. It will be contended that the executive and legislative arms of government have via the erosion of the presumption provided direction to the courts that goes beyond the discretionary issues found in section 32 of the Bail Act. Does such direction amount to erosion of the separation of powers?

An exploration of the Bail Act over thirty years reveals a distinct pattern of change in the presumption. It is the aim of this thesis to explore the political explanations for these changes and the very real effects they have had on our notion of law and liberty in Australia.

Chapter 2.

What is bail? The presumption as provided in 1978 and 2008. Its importance.

Bail has a long history. Its current form is best explained by the definition in the Bail Act, 1978 which remains unaltered to current times. In Section 4 Definitions it is defined as "authorisation to be at liberty under this Act, instead of in custody."10. Section 6 makes clear that bail applies to all aspects of the legal process from pre trial to appeal. The Act allows for conditions to be set in relation to that liberty. Bail did not always have the same emphasis on conditional liberty. Long delays before trial have always been an issue and "In earlier times it was based on the idea of the accused's being placed in custody of his surety…" 11. By surety is meant a person who guaranteed that the accused will turn up at court and who in the case of non attendance risked penalty. Section 62 of the 1978 Act abolished common law powers to grant bail so that the Act became the relevant one unless some other Act specified the contrary.

At the time of the introduction of the Bail Act, in 1978, the Supreme Court had an inherent power to grant bail. The District Court also had power via "long accepted practice and as a necessary incident to the constitution of the court…"12. Local Courts had power via the provisions of the Justices Act, 1902.

The approach to bail by the early 1970's included consideration of a number of issues: possibility of the non appearance of the accused at later parts of the proceedings; seriousness of the offence; strength of the Crown case; severity of punishment; previous record, and likelihood of tampering with witnesses or committing further offences; delay in court hearing; the right of the accused to be free to prepare his or her defence and the economic and personal implications for the

accused if bail was not granted. 13. Denial of bail was not to be retribution for possible future guilt. In *R v Wakefield* it was stated; “So that prima facie a person accused of a crime should be allowed his liberty before the hearing in order that the preparation of his case be as full and thorough and unfettered as possible.” 14.

The material set out above shows that institutionalism consisting of “rules in use… the do’s and don’ts that one learns on the ground that may not exist in any written document,” was in place at the time of the Bail Review Committee discussed in the next chapter. 15. Those rules in relation to the presumption would find their way into the Committee Report.

Politicians who proposed legislation which included modification or reversal of the presumption had no doubt of the importance of bail in relation to the presumption of innocence. Three examples from a number that are available will suffice to make the point. Mr Walker, Attorney General (Labor) in introducing the original Bail Bill, 1978, stated: “Although it is perfectly true that the community must be protected against dangerous offenders, one must not lose sight of the circumstances, first, that when bail is being considered, one is confronted with an alleged crime and an unconvicted accused person, and second that the liberty of the subject is one of the most fundamental and treasured concepts in our society.” 16. In 1988, Mr Dowd, Attorney General, (Liberal) stated: “Under the Bail Act there is a presumption in favour of bail for most offences. This is consistent with the presumption of innocence which is a fundamental principle of criminal law.” 17. The observations of Mr Debus, Attorney General (Labor) in Reply on the Bail Amendment Act, 2003 appear at the beginning of Chapter 1. For thirty years Attorneys General have asserted that bail and the presumption in its favour are part of our democratic way of life, our civil liberties,

and most importantly, the presumption of innocence. And yet for many major offences the presumption is now gone.

This fundamental change is best shown by a comparison of the Act in 1978 with the Act in 2008. The relevant sections for comparison in the Bail Act continue from Section 8 through to section 9D. Table 1 sets out the areas of relevant change and includes a description of the area of change.

TABLE 1
COMPARISON OF SECTIONS OF THE BAIL ACT IN 1978 AND 2008

SECTION 8	**SECTION 8**
1978 *Right to release for certain offences. These are non major offences.*	**2008** *Right to release for certain offences.*
All offences not punishable by a sentence of imprisonment. All offences punishable summarily… prescribe by the regulations for the purposes of this section.	Same Same
This section did not exist in 1978.	Offences under the Summary Offences Act, 1988,.. punishable… by imprisonment. Some conduct and language offences that were dealt with by fine under an older repealed Act could under the 1988 Act be dealt with by imprisonment. 18.
"Persons… entitled to be granted bail in accordance with Act unless……"19. These exceptions relate to failure to comply with bail conditions and risk to the accused eg intoxications etc	Same.
SECTIONS 8 A-F	**SECTIONS 8 A-F**
1978 *These sections did not exist in 1978. They are major offences.*	**2008** *Presumption against bail for certain offences.*
	8A relates to serious drug offences under State and Commonwealth legislation. 20. 8B serious firearm, weapon offences. 21. 8C very serious property offences and two or more from different incidents. 22. 8D riots or other civil disturbances. 23. 8E Persons on lifetime parole who

	commit offences carrying prison terms 24 8F breach of supervision orders under section 12 of the Crimes (Serious Sex Offences) Act. 25.
SECTION 9	**SECTION 9**
1978 *Presumption in favour of bail for certain offences*.	**2008** *Presumption in favour of bail for certain offences*.
Section applied to offences not referred to in Section 8 or Section 51 ("failure to appear").	Same.
Aggravations of robbery such as being armed, striking, wounding were excluded from this presumption in favour of bail in the 1978 Act. 26.	Aggravations of robbery continued to be excluded and so were the 8A etc sections referred to earlier. In addition murder, kidnapping, aggravated sexual assaults, malicious wounding with intent and various drug related offences. 27.
Persons entitled to be granted bail… unless,.. consideration of the matters referred to in section 32 (see below), justify refusal. This is the generally significant provision. Conviction, stay of conviction or bail dispensed with will also remove the entitlement. 28.	Same.
SECTION 9 A-B	**SECTION 9 A-B**
1978 These sections did not exist in 1978	**2008** *Exception from presumption in favour of bail.*
	Certain domestic violence offences and offences contravening domestic violence orders. If at time of offence, on bail, parole, sentence but not in custody, good behaviour bond, etc. Also if offence indictable and previous conviction for indictable offence. 29.
SECTION 9 C-D	**SECTION 9 C-D**
1978 These sections did not exist in 1978	**2008** *Cases in which bail is to be granted in exceptional circumstances*
	Includes, murder, repeat offenders in serious personal violence offences where not the same offence for which bail is being sought. 30.

The Table shows that the Act in its original form only excluded aggravated forms of robbery from the presumption where the presumption was a relevant issue.

Minor matters are covered by section 8. In 2008, a significant array of matters including serious drug supply, have a presumption against bail. Many other matters have been added to the list for which there is no presumption in favour of bail.

Since 1978 the “only” criteria for a judge or magistrate to take into account when considering bail have appeared in section 32 of the Bail Act under the heading, *Criteria To Be Considered In Bail Applications*. However, the person standing before the court will already be the subject of a presumption as set out in Table 1as to whether they should or should not be granted bail. Section 32 does not apply to offences under section 8. Sections commencing at 8A are subject to section 32. I have already mentioned the tests courts used before 1978. From 1978 the criteria were: the probability of whether or not the person would appear in court; the interests of the person; the protection and welfare of the community. 31. Detail of the provisions was provided in 1978 and added to over the following decades. Such additions include protection of alleged victims, close relatives of alleged victims and any other person thought to need protection in the circumstances; whether the offence is sexual in nature and prior record for use of an offensive weapon or instrument if the offence involves such an allegation. 32. Section 36 provides for the conditions under which bail will be provided and section 51 for the penalty if conditions are ignored or the person fails to appear.

Bail is not an exact science. Given that provisions in Section 32 have existed since 1978, and have been added to over time, why were political decisions made to modify the presumption in favour of bail? In the chapters to follow the thesis will analyse the main factors which led to the modifications in the presumption.

Chapter 3.

1976 – 2008. The Bail Review Committee. Armed robbery within the new Act.

Prior to the setting up of the Bail Review Committee in 1976 by Attorney General, Frank Walker, a number of interest groups within the pluralist system, including those associated with governance and those external to governance had been calling for an overhaul of the bail laws and the introduction of one Act to cover bail. The Bail Review Committee made reference to the Law and Poverty Commission, Australian Law Reform Commission and other interest groups. 33. The committee noted the existing problems:

> "… the need to make bail hearings more systematic and comprehensive; to reduce the emphasis on money bail; to codify the relevant criteria; and to eliminate anomalies in the powers of police and courts..." 34.

Before the Committee was set up there appears to have been consensus on a significant number of issues with differences on others. However, as noted in multiple stream and punctuated equilibrium theory this did not guarantee bail reform would emerge for consideration from the many issues which could potentially be considered within the parliamentary political process. It also left open for decision which of the competing views emanating from various policy networks would prevail in subsequent legislation and to what extent there would be compromise. 35.The catalyst was extensive media coverage of violent property crime particularly armed robberies. Whether this is best described as a 'window of opportunity' or a 'punctuation of equilibrium' will be considered below.

In late June 1976, according to the Herald and Telegraph, a bank robber on bail after facing armed robbery charges, shot dead a bank manager and was

subsequently shot dead by police. Such an event met newsworthiness criteria of legitimate journalism: “interest, timeliness and clarity… consequence, proximity, conflict, human interest” 36. Consequence was achieved by the coverage raising issues concerning bail. However, in relation to explaining the presumption the obligation “to discharge the investigative or critical function assigned to it under classical Fourth Estate values,” was not fulfilled in this early coverage. 37.

The policy image (“mixture of empirical information and emotive appeals”) of bail after the armed robbery, changed after this punctuation of equilibrium. 38. The feedback from the public, positive in the sense that it meant something had to be done, added to the momentum for change in an area that needed reform in any case. Bail was immediately placed on the policy agenda. 39.

On June 30, one day after the bank robber was shot, a page 1 article in the Herald appeared under the heading, “WRAN CALLS FOR FILES ON GUNMAN.” The article quoted the Premier as saying in relation to bail, “Obviously the court made the decision on the material before it but in retrospect, it was hardly one to be applauded.” 40. The article included criticism by the Australian Bank Officers Association of the bail decision, as the offender had a record as an armed bank robber and stated their intention of approaching the N.S.W Government. By 3 July, the Herald could report, “BAIL SYSTEM REVIEW ORDERED.” In the article, the Attorney General stated: “I would not like a misapprehension that I favour a restriction on the general prospects of defendants obtaining bail – the truth of the matter is the reverse.” 41. In the period between June 30 and July 3 the Telegraph reported on the matter in similar terms to the Herald.

It is clear from the above that the media, pressure groups and the government

were attempting to set the agenda - that is “seek to define what matters will be subject to a public debate as a precursor to some form of governmental response.” 42. The media were concerned about the granting of bail to people who later proved to be violent and called for restricting bail on such issues. Fourth Estate concerns over the importance of the presumption were not prominent in the media. Interest groups such as the Australian Bank Officers Association were rightly concerned for the safety of their members. The Attorney General was strongly expressed his concern that the presumption of innocence not be lost. Rational choice theory best explains the situation. Bail needed to be reformed and the bank robbery issue needed to be addressed. The problem was resolved by setting up the Bail Review Committee so that “the outcome of any particular set of choices (depended) on the structured circumstances in which they (were) made.” 43. At this stage the politicians were not responding to the law and order problems by use of “‘penal populism’ or populist punitiveness.” 44.

The Bail Review Committee was established on 14 July, 1976. The terms of reference included matters to be considered in bail determinations. 45. The Terms met the concerns of those who wanted widespread change.

The list of those who made written and oral submissions is set out in Appendix A of the Bail Review Committee Report. The submissions are not attached to the Parliamentary Papers and attempts to obtain them through various libraries , Attorney General’s Department and State Archives were not successful. The submissions represented a cross section of those who might expect to be in a policy network on such a matter. They included legal, police, civil liberty and social service organisations. The Australian Banker’s Association, Mayne Nickless Ltd and two

Bank Officers Associations also made submissions. 46. These banking organisations could in other circumstances, such as an industrial dispute, potentially be in conflict. However, the destruction of bank property and the injury and death of bank officers meant that it was in the rational self interest of their members for the organisations to put submissions to the Committee. 47. While the range of ideas being considered in the policy stream was wide, realistically only a limited number could be included in the final report. "Selection criteria include technical feasibility and value acceptability..." 48. The significant representation of bank organisations made clear their determination to state the case for a stronger approach to bail. .

The bank groups were effective in having their matters considered. Within the section of the Report considering factors that affect the 'Probability of Appearance' is a subheading 'The Seriousness of the Charge.' It is there stated: "It is absurd to propose that people liable to twenty years gaol on an armed robbery charge be treated as if they were charged with breaking, entering and stealing." 49. The seriousness of the charge and the penalty were placed in section 32 in 1978 which meant magistrates and judges were required to consider these matters in relation to probability of appearance without a need to amend the presumption. 50. The Committee was not convinced that the material before it in relation to crime by persons on bail allowed it to firmly conclude this was a widespread problem. Seventeen case histories presented by Mayne Nickless were not found to be convincing. 51. Commonwealth Bank Officers Association statistics concerning armed robbery in Victoria from 1January 1974 to 31 December, 1975 were not confined to bank robberies and the statistic on further offences did not explain the seriousness of the further offence. 52. The Committee noted that the Bureau of Crime Statistics and Research would be

providing a study on armed robbery in the future. (see below). The Committee, as the pinnacle of the policy stream having considered all arguments put forward by various interest groups did not provide for any modification to the presumption for armed robbery or any other offences .

Part III of the Report is headed *The Right to Bail*. The Committee noted that "two rights should be recognised in respect of bail in New South Wales. First, in respect of certain minor offences, release on bail by both police and courts should be an absolute right. Second, in all other cases, there should be a presumption in favour of bail – the onus should be on the prosecution to establish grounds for bail refusal." 53. Noting the difficulties for those who seek bail and who are poor, have language problems or find the system unfamiliar, the Committee stated, "The presumption should be in favour of release on bail rather than limited to the much more illusory right to have bail set." 54. The importance for the presumption of innocence in a liberal democracy could not be more clearly stated. As a matter of social construction it recognises that the target group often includes the poor and those with language problems. At a minimum they should be seen as "positively constructed as deserving…" and not automatically seen as deviants for whom "the politics of punishment has come to dominate much of policy…" 55.

Part IV dealt with *The Criteria for Release on Bail*. The committee concluded there were three criteria for release on bail: the probability of appearance; the interests of the accused and interests of the community. 56. The committee went on to outline each heading in detail. Most of its recommendations found their way into the 1978 Act and have stood the test of time.

Nearly two years passed before the Report resulted in legislation during which

time issues addressed by the Report were considered further. The newly set up Criminal Law Review Division sought the views of judicial, legal, ministerial and departmental organisations. It then presented a Report to the Attorney General on 1 August 1977. 57. (The report was not obtainable from libraries or the Attorney General's Department.)

It is reasonable to assume that major reform concerning bail would have eventually come before the Parliament. However, it did not do so in the period between August 1977 and November 1978. Once again the equilibrium was punctuated by a crisis concerning armed robbery and this issue played a sensational part in the press and ultimately in the speeches that led to legislation. Positive feedback "overcomes inertia and produces explosions or implosions from former states." 58. Public concern produced that feedback.

In November 1978 a bank robber seized several hostages. One hostage was killed before the gunman was shot during a police chase. The heading above the page 1 article in the Herald of 18 November, 1978 was "BANK ROBBER AND HOSTAGE DIE IN WILD POLICE CHASE." 59. The article went on to explain that the bank robber was on parole having served seven of a seventeen year sentence. The article also included the fact that there were three further hold-ups in Sydney suburbs the day before. The Telegraph used the entire front page and a heading "GUNMAN, HOSTAGE DIE IN SHOOTOUT." 60. On 19 November the Sun Herald reported that the Attorney General "would examine the functions of the parole board…" 61.

Media interest in armed robbery and a perceived inadequacy of the parole system remained intense. On 23 November, 1978, the Herald reported on "SHOTS FIRED AT POLICEMAN DURING CHASE." 62. The article concerned two men

in balaclavas robbing a bank. The editorial of that day was headed THE PAROLE SYSTEM and declared: "…time is ripe for a thorough re-examination of the system." 63. On 24 November there appeared a page 1 article about safebreakers obtaining $1.7 million from a bank while a further article about the earlier events in which the hostage was killed appeared on page 3. The Telegraph headline was "$1.7 m BANK HAUL, ROBBERY IS BIGGEST YET." 64. Further articles appeared in late November 1978 in the Herald, Sun Herald and Telegraph.

It is difficult to see how at this point the government could do anything else but deal with the issue of armed robbery. "Much that government does is foisted on ministers from outside. Policy cannot ignore the 'issue drivers' – those external and internal factors that throw up topics for resolution." 65. A non decision where "Government may find it easier not to discuss a matter…" was not an option. 66. As a matter of social construction many aspects of bail reform could be put in the positively constructed 'dependant' category (deserving but lacking political power): easing money bail for example as a means of confronting poverty. Other aspects could be explained as part of administrative efficiency: placing bail in one Act for example. Armed robbers, however, would inevitably be placed in the 'deviant' group that "lack both political power and positive social constructions… and … the broader public believes are undeserving of anything better..." 67. Adding to the pressure to deal with them severely was the reality that "Over the past 30 years public and political faith in the possibility of rehabilitating offenders seems to have waned considerably." 68. It was to be expected that elected politicians would respond emphasising a "powerful reinforcement of social constructions, prevailing power relationships, and institutional cultures." 69. Multiple stream theory does not seem as appropriate as punctuated

equilibrium at this point. A window of opportunity had been created by the intense media focus on bank robbery even though the Bail Review Report had already considered armed robbery. All three streams of problems, policy and politics appeared to be about to converge but in reality policy on armed robbery and the presumption had simply been reopened. 70.

On 29 November 1978 the Premier made an announcement which was reported on page 1 of the Herald under the heading “HELICOPTER, MORE DETECTIVES, PAROLE REVIEW, CRACKDOWN ON CRIME.” 71. The article referred to armed robberies and other violent crimes and noted, “The measures included: The early introduction of planned legislation to tighten bail laws. A tougher approach to parole for criminals convicted of crimes involving violence and the use of firearms…” 72. The announcement goes on to indicate that “banks should be doing more to protect their employees.” There follows a sub heading, “TALKS WITH BANKS OVER ROBBERIES” and an article asserting “Government action came 24 hours after Mr Wran met representatives of the banks and bank employees over the increase in the number of armed robberies.” 73. The November case that led to deaths in a shoot out is then referred to. It then states, “The Premier conceded that Cabinet had been examining the bail system for some time…” 74. The Telegraph editorial on the same day headed “VIOLENT CRIME,” stated “At the same time, as the Daily Telegraph has repeatedly requested, the State Government will also tighten bail laws and hasten the review of the parole system.” 75.

What was the actual position in relation to armed robbery in the relevant period? The Bureau of Crime Statistics and Research produced a statistical analysis of armed robberies between 1975-6. 76. Here it was noted that “In both years the most common

location for armed robbery was the street… Banks ranked eighth in New South Wales in 1975 but seventh in 1976." 77. In half of the robberies the gain was less than $100. Gains of ten to fifty thousand represented 4% in each year. For $50,000 plus the figure was 1% and 0.9%. 78. No-one was injured in 88.7% and 75.2% of cases of armed robbery. Where someone was injured, Table 18 defined the nature of the injury as "none or negligible" in 86.4 and 79.9% and "Bruising or other minor injury" in a further 5.3% and 5.9% of cases. 79. The study includes the results of an overseas study tour and notes that "Australia's bank robbery rate is relatively low; about 5.5 offences per million of population." 80.

In his speech in Reply concerning the Bail Bill, 1978, the Attorney General stated, "The latest report showed that 3.1% of people dealt with for armed robbery had committed the offence while on bail. However, statistics fail to take into account that few armed robbers get bail in the first place." 81.

Armed robbery is a serious matter but the material set out in the previous two paragraphs suggests that individual violent crimes should not have led to something as fundamental as the presumption in favour of bail being removed for all crimes within that category.

These statistics were not considered in the media coverage. While statistical material was not as easily available at that time as it would be later, some of the above statistics could have been obtained. The media did carry out a Fourth Estate role in the matter but "investigative or critical function assigned to it under classical Fourth Estate values…," would have been enhanced by consideration of the wider issues suggested by the statistics and the principles on which our society is based. 82. No doubt, the tyranny of deadlines and the pressure to provide immediate back up stories

contributed to this situation. The tone of the editorials indicate an approach favouring a tough line on armed robbery and editorial gatekeeping may have occurred. 83.

The Attorney General in his First Reading speech referred to “The Government’s intention to legislate in the field has been apparent for some time now and recent tragic events led the Premier to announce on 28 November that a several pronged plan to combat the incidence of violent crime… bail laws would be quickly tightened…and that the banks would be encouraged to design their premises and install protective devices to discourage bank robberies.” 84. The overseas study report had recommended greater use of bullet proof glass and other protective devices. 85. During his Second Reading speech the Attorney General announced that the presumption in favour of bail would not apply to aggravated forms of robbery. 86.

While rationality in policy development is often an ideal it is apparent from the many areas of implementation of the Report of the Bail Review Committee that a significant degree of rational development did occur because of established policy communities success in creating a consensus about solutions. 87. Media coverage of armed robbery provided the punctuation of equilibrium for the Parliamentary debate but that does not explain adequately why the government broke with the Bail Review Committee by not providing for a presumption in favour of bail for aggravated forms of that offence. Social construction and rational choice provide a better explanation. The negative “deviant” behaviour was being signalled to the community as something that would be treated differently by way of no presumption in favour of bail. 88. The statistical material available to the government did not justify removing the presumption but “the outcome of any particular set of choices will depend on the structured circumstances in which they are made.” 89. When all

the criticism by the media was taken into account and combined with the resultant public fear and concern then as a matter of rational choice the political best option was the modification of the presumption.

Mr Maddison for the Opposition explained that the Opposition wanted a much wider removal of the presumption, "…related to the maximum term of imprisonment …where such maximum penalty is penal servitude for life or ten years imprisonment or more." 90. The Opposition did support the Bill and to that extent there was a core convergence but the significant differences on how many offences should not attract the presumption shows the limits of convergence of policy at that time. It appears to be a case where "there cannot be a single definitive answer to this question, that convergence or divergence is very much a matter of what policies one looks at, over what period…" 91.

The treatment of armed robbery in a different way to other major offences raises the question of whether the separation of powers was damaged by such specific instruction about the presumption. It is true that the State Constitution was more open to such intervention than the Commonwealth equivalent. 92. Also Parliaments do intervene through legislation in the judicial process. However, such an erosion of the presumption in favour of innocence raises the point made about the Commonwealth Constitution by Ratnapala, "… that the separation of powers in the Constitution prevents Parliament from directing 'the manner and the outcome' of the exercise of judicial power." 93. The negative right to liberty and in particular the need to be free if possible to prepare for trial needs also to be considered. It is a right that arises "every time a person is deprived of personal physical freedom: detention, imprisonment, …" 94.

Recorded rates of robbery and robbery without a weapon rose in the nineteen nineties. However, the average annual percentage change over the last 60 months for robbery without a weapon is down by 3.4%; for robbery with a firearm is down by 11.1% and for robbery with a weapon not a firearm by 9.2%. For robbery with a firearm there has been a consistent downward trend: 67% from 1990 to 2008.95. These declining percentages have not led to legislation restoring the presumption. Whatever the factors involved in changes in trends it is difficult to see how the material establishes the need for the removal of the presumption in 1978. The point is reinforced by the Issue Paper on bail released in 1992 which noted in relation to armed robbers and drug traffickers, “However, closer examination casts doubt on the need for different levels of entitlement for bail for these offences.” 96. The percentage of offenders refused bail in the Higher Courts for robbery, has increased from 41% to 67.2% between 1993 and 2007. Imprisonment trends have been upwards, reaching 78.5% in 2007. 97. That still leaves a significant group not imprisoned. The percentage of persons on bail for robbery who failed to appear in the Higher Courts was 6.7% in 2000. 98.

The Bail Act, 1978 in its original form contained many provisions that can be explained by a number of the theories previously mentioned. The lead up to the Bail Review Committee and its actual proceedings show the work of pluralism, interest groups and the development of policy through the policy stream and equilibrium. Punctuation is the best way to describe the influence of armed robberies and media coverage of them which accelerated the setting up of the Committee and ultimately the placing of legislation before Parliament. This was brutal politics and ‘window of opportunity’ seems not adequate as a term although it is acknowledge that

is what was provided. However, the ultimate decision by the Parliament seems best explained by social construction and rational choice theory. Knowledge of the structural circumstances will never be perfect. Nevertheless, the material available did include the statistics which showed that the general issues concerning armed robbery needed sophisticated consideration rather than a reaction to individual crimes and headlines. The media coverage did meet Fourth Estate values but should have given greater consideration to investigative issues concerning the importance of the presumption. In particular it should have given greater emphasis to section 32 of the Bail Act which provided for matters that a magistrate or judge must take into account when considering bail for all matters including armed robbery. In considering all aspects of the structural circumstance and given the need to socially construct a politically acceptable approach, politicians made the rational choice to be tough on these particular crimes. There was not a convergence of policy between the parties at this point. The Opposition wanted a much wider removal of the presumption and to its credit the Government resisted. However, the prescription about the presumption for specific crimes was a step towards potentially eroding the separation of powers.

Chapter 4.

1978 – 2008: Drug Supply.

Between 1978 and 1986 there were no further amendments to the Bail Act. It was a constructive piece of legislation and as His Honour Mr Justice Roden noted, “The presumption in favour of bail, subject to stated exceptions, is now formally recognised as a natural concomitant of the presumption of innocence.” 99. However, in 1986 and 1988 new initiatives occurred in relation to drug supply with those in 1988 being part of a fundamental political change out of which the presumption in favour of bail began a long and unending period of decline. It was a case where, “from a historical view, it can easily be seen that many policies go through long periods of stability and short periods of dramatic reversals.” 100. The political atmosphere concerning drug dealers forms an essential part of the explanation of the changes to the presumption.

The government had set up the Commission to Inquire into NSW Police Administration in 1981 and a number of reforms, including anti corruption measures were introduced. 101. Nevertheless, “Despite these developments, the 1980’s saw a repetition of the scandals that had marked the preceding two decades.” 102. These scandals included allegations of police involvement in marijuana growing; allegations of police involvement in drug trafficking; and gangland wars over drug trafficking. 103. The media were active about the drug supply issues and information and emotional appeals led to a change in policy image. As a matter of social construction the public being the “advantaged groups (that) have high levels of political resources and enjoy positive social construction as deserving people,” were alarmed. 104.

The concern about drug issues is confirmed by the occurrence of three Royal Commissions on the issue between 1979 and 1983. The Woodward Royal

Commission Into Drug Trafficking in 1979 made reference to police claims as to the "disproportionate number of alleged drug offenders, particularly major ones, absconding while on bail awaiting trial." 105. However, Mr Justice Woodward was of the view that section 32 in the new Bail Act was adequate to deal with the matter. In its original form, section 32 required certain matters to be taken into account in considering an application for bail. They included: probability of appearance including seriousness of the offence, strength of case and penalty; interests of the person; and protection and welfare of the community including breach of bail for the offence, likelihood of interference with witnesses, evidence and jurors, likelihood of further serious or violent offence on bail. 106. He noted "In particular, amendment to the Bail Act to create a prohibition on bail, or a presumption against bail, for persons charged with drug trafficking offences, is undesirable… such persons (major drug trafficker) do not appear to be disproportionately absent at the commencement of their trials…Nevertheless legislation to diminish or remove this risk represents too high a price…" 107. Expressing a contrary view the Williams Royal Commission of Inquiry Into Drugs, 1980, referred to information concerning 'drug offenders' and absconding between 1972 and 1977 and concluded absconding was "becoming a national scandal." 108. Mr Justice Williams noted the existing provision in the N.S.W Bail Act providing no presumption for robbery with violence recommended a similar provision in relation to Division I drug offences. 109.

The Stewart Royal Commission of Inquiry Into Drug Trafficking, 1983, considered the different views of the Woodward and Williams Royal Commissions on claims of a disproportionate number of absconders being serious drug traffickers. Mr Justice Stewart pointed out that the difference may arise because "there are in fact no

statistics kept as a matter of course by any of the relevant Governments or any agency thereof which would permit the question to be answered with confidence." 110. He did consider material made available from Victoria and also Queensland material that showed a drop in absconding after changes that made bail more difficult to obtain. 111. Mr Justice Stewart recommended that the N.S.W Bail Act add serious drug trafficking charges to those in which there is no presumption. 112.

It is noteworthy that at the end of three Royal Commissions the N.S.W Government did not immediately change the presumption in favour of bail for serious drug supply. And yet if social construction theory would put armed robbers in the category of deviants then at least the same level of disapproval applies to large scale drug dealers. They are a group that the politics of punishment applies to and "policymakers have repeatedly used the issue of personal safety as a strategy to gain political capital." 113. Institutionalist theory provides the best explanation in that the presumption for such crimes had been in place since 1978. The Bail Review Committee Report and the legislation had established the direction of public policy and then "policy making continues down that path because interests and assumptions become entrenched around them." 114. A significant issue was required if the institutional defence of the presumption was to be overcome.

Political pressure on the government over drug supply and bail rose beyond institutional limitations when the ongoing law and order debate over drug trafficking combined with an issue involving bail. An alleged drug importer failed to appear in court, having been released on bail. On 1 November 1985, The Herald ran the story under the heading "ALLEGED TOP DRUG DEALER VANISHES IN VICTORIA." 115. The story goes on to explain that the charges involved 36 kilograms of heroin

worth $25 million. The article explained that prosecutors had twice tried to have the $50,000 bail revoked. The alleged drug importer was alleged to have $500,000 overseas. The Telegraph explained the events on 2 November, 1985 under the heading “BIG SUSPECT JUMPS BAIL”and added that a senior policeman stated that the person “should never have been granted bail…” 116. Equilibrium about bail had been punctuated because “the State’s bail laws once again came under widespread public attack. The attack gave publicity to the view, expressed earlier by N.S.W Police and the Williams and Stewart Royal Commissions…” 117. Once again the criteria for newsworthiness referred to earlier, given the ongoing law and order debate about drug supply, was met. The importance of the presumption of innocence and civil liberties was not canvassed in the range of criticisms of the bail decision. The tyranny of deadlines and the time and policy limits put on investigative journalism provide a likely explanation for that. 118.

In order to consider the appropriate theory for the political decisions in 1986 and 1988 it is relevant to consider what statistics on absconding by such suppliers were available to politicians. In 1984 the Bureau of Crime Statistics using police records produced a report that provided information on levels of absconding for various offences. Weatherburn, Quinn and Rich considered the Report and combined Table 4 concerning bail determinations for major offence groups with Table 31 concerning warrants issued for failure to appear to create an absconding percentage rate. Fifty two persons had been granted bail in this group and two absconded. This was 3.8%. Compared with the other groups it showed that drug offences as a charge group “were among the least likely of defendant groups to abscond.” 119. However, it should be noted that the police are less likely to grant bail (police officer of rank of sergeant or

above and no determination of bail by a court) for serious drug charges and there will be a disproportionate number of less serious drug charges in the figures considered above.

The 1987 paper by D Weatherburn, M Quinn and G Rich, related to serious drug charges which they defined as any drug charge proceeded with by way of indictment. The sample was restricted to matters in the District Court that were finalised or resulted in a warrant for non appearance in 1984. Within this group of matters they considered offences that carried life imprisonment (Import) and also supply and cultivate charges that carried a maximum sentence of fifteen or ten years. 120. They concluded that “bail decisions were found to be strongly related to the nature of the charge. Bail was particularly likely to be refused in relation to import charges. Only 10% of these cases were granted bail by the police. While this figure rose to 38.7% at the first court appearance, rates for other classes of offence in the sample at this stage ranged from 66% to 79.5%” 121. The authors also found “there is no relationship between the seriousness of the charge and the likelihood of absconding.” 122. There is also “no evidence of a tendency for absconders to congregate in the higher drug quantity ranges.” 123. Perhaps the most sobering statistic is that arising from Table 12 which shows “that in 44.8% (82) cases in which bail was known to have been refused or bail conditions known to have not been met *at some stage or other*, the defendant was ultimately found not guilty or given a non-custodial sentence.” 124. The period on remand often exceeded six months. 125. The absconding rate for all the offences was 9.8%. 126.

On 23 April, 1986, Mr Sheahan, Attorney General, introduced the Bail (Amendment) Bill and the Drug Misuse and Trafficking (Amendment) Bill. The latter

Bill involved destruction of drugs seized because “the retention of large amounts of drugs creates a scope for corrupt practices and criminal activity…” 127. The amendment to the Bail Act added the most serious supply of drugs charges, (those with a maximum sentence of twenty years or life) to the category of offences where there would be no presumption in favour of bail. This was the first such initiative since the armed robbery issues of 1978.

The Attorney General indicated he was acting in accordance with the recommendations of the Williams Royal Commission. It had recommended the removal of the presumption in favour of bail. He could have chosen the opposite view and reasoning of the Woodward Royal Commission which was supported by the 1984 statistical material referred to above. Instead he helped to “create social constructions of target groups in anticipation of public approval of approbation.” 128. The punctuation of equilibrium resulting from the bail breach issue of the previous November took place after many years of growing public concern about the apparently successful activity of drug dealers. “Legislators do not want to get caught doing things very favourable to groups easily constructed as deviant…” 129. While this could be described as a window of opportunity for policy it is hard to see how those supporting the existing institutionalised approach to bail would see it in that light. The Attorney General stated, “When implementing these proposals, the Government has endeavoured, so far as possible, to protect the rights of accused persons. It has striven to maintain the delicate balance between the rights of the individual and the requirements of the community.” 130. This was a rational choice for to go to the other extreme of a presumption against bail would have alienated those who had and still did support the presumption. In doing this he had dealt with

"…particular institutional arrangements (that) present individuals with a set of opportunities and obstacles which they must negotiate if they want to advance their interests." 131. Weight for the suggestion that the earlier exception would be used to further erode the presumption is found in the Attorney General's observation that, "The Bail Act already excepts people charged with armed robbery from the presumption of bail." 132. He also observed that "It will be readily apparent from the bills that the drug offensive in this State is well under way." 133. Mr Dowd for the Opposition indicated support for the Bill. He noted the presumption of innocence issue in relation to bail but added, "Far too much crime is committed by persons on bail and far too much intimidation of witnesses occurs prior to trials. I relate all that to too many people being granted bail." 134.

Illegal drug supply, law and order and corruption remained big issues up to the 1988 election which resulted in a Liberal Party victory. A strong law and order campaign had been part of the successful electoral formula. Premier Greiner explained in an interview that "People weren't marching in the streets saying that the railways are losing three million dollars a day.. So there's no doubt that my break came with the corruption issue…" 135. Public attitudes were changing and Zdenkowski has noted the reasons included "The demise of the rehabilitation ethic and the rise of the new retributivism, based on a policy of just deserts…" 136. None of the theories based on interest groups, policy networks or specific media enhanced punctuations adequately explain this shift. Punctuated equilibrium on a macro scale, sometimes described as disruptive dynamics, best explains this fundamental change. Punctuated equilibrium can occur at a broad multi policy level "and these changes inevitably involve political parties…(though these actors may or may not control the

processes in which they participate).” 137. Of course, the 1987 statistics about absconding were available but concern about the presumption of innocence and civil liberties were never going to be a dominant feature of a law and order debate.

Many of the initiatives raised in the campaign were implemented within the next year. The prison population increased from 3,950 in March 1988 to 5,534 in September, 1990. 138. In relation to bail a Summary Offences Act was introduced that included gaol terms for offensive conduct or offensive language in a public place. 139. Section 8 of the Bail Act was then amended to include these offences that now included a potential gaol term. The alternative was to have these matters dealt with under the more stringent tests in section 9. 140.

On 25 May 1988, Mr Dowd Attorney General introduced Bills that reflected a tougher line on drug crime. They included the Drug Misuse and Trafficking (Amendment) Bill and the Bail (Amendment) Bill. The amendments of the Drug Misuse and Trafficking Act were made because “it is crucial that the provisions of the Act effectively serve the community in the war against drugs,…” 141. In his Second Reading speech the Attorney General explained that, “The major consideration… is the protection and welfare of the community…” 142. As mentioned earlier in the thesis he also made reference to the presumption of innocence and liberty. However, as a matter of social construction the ‘community’ being referred to is groups such as home owners who are perceived as enjoying “positive social construction as deserving people important in the political and social hierarchy…” 143.

The quantity of drugs that were defined as small, trafficable and indictable were increased. In part this was because the existing definitions were resulting in fewer

people appearing in Local Courts and more in District Courts. However, the Attorney General observed that, “At the other end of the scale there is a clear inadequacy in the quantities currently set as commercial… the quantities are too high.” 144. The quantities at which the commercial definition became applicable were lowered. Further, a new category of large commercial quantity was introduced. Penalties for these commercial categories went up.

For the first time a presumption *against* bail was introduced in the Bail (Amendment) Bill. It related to these more serious drug offences. For a number of other drug offences where the quantity was in excess of twice the new indictable quantity, the presumption in favour of bail was removed. The Attorney General makes reference to the legislation of previous Labor governments which removed the presumption for aggravated robbery and commercial quantities of prohibited plants or drugs. 145. Thus the precedent set by previous Labor governments to erode the presumption in favour of bail became one of the arguments for the next steps.

In the same set of amendments section 32 was strengthened to include in the consideration of a Magistrate or Judge, the “…alleged victim, the close relatives of any such person and any other person identified as being in need of protection in the circumstances of the case.” 146.

Mr Whelan for the Opposition supported the amendments. He pointed out that the Bill “is a continuation of amendments to the Bail Act introduced by the previous Government to strengthen the bail provisions.” 147. This reference to ‘continuation’ raises issues concerning Convergence theory. It is not necessary to consider to what extent the parties had converged generally. On specific issues concerning law and order the parties believed, and the 1988 election reinforced this view, that the public

mood now favoured a tough conservative approach. 148. In terms of social construction the result of the convergence on law and order was that, “policy designs come to exert a powerful reinforcement of social constructions, prevailing power relationships, and institutional cultures. Elected leaders respond to policy just as do other policy actors and strengthen prevailing images.” 149.

By the end of 1988 the Separation of Powers doctrine had become an issue. Aggravated robbery offences and a number of drug offences now had no presumption in favour of bail. Some more serious drug offences now had a presumption against bail. It is an example of where, “The separation of powers doctrine has been… vulnerable in the parliamentary systems. The executive – legislative divide in the parliamentary system is weak to begin with…” 150. This level of direction to the courts was unnecessary. Section 32 had always contained matters a judge or magistrate must consider before granting bail. Additions had now been added. When statistical material about absconding is added to the section 32 powers the justification for the erosion of the separation of powers is not made out.

The convergence of Labor and Liberal approaches to being tough on crime has remained in place to the current day. The 1995 and 1999 elections provide good examples of this convergence and subsequent legislation on drug supply.

The 1995 State Election saw the return of a Labor Government. The campaign contained claims by both parties that they would deal with a law and order crisis. “The ‘law and order auction’ was condemned by the Bar Association, the Law Society and the Director of Public Prosecutions.” 151. By 1995 the convergence on a tough stand on law and order meant that there “were fundamental shifts in the manner in which the electorate, and policymaking elites as well, understand the policy

process.” 152. In 1998 the Attorney General, Mr Shaw introduced the Drug Misuse and Trafficking Amendment (Ongoing Dealing) Bill explaining that it was in line with the recommendations of the 1997 Wood Royal Commission Into the N.S,W Police Force. The aim was to overcome dealers who only carried small parts of a larger stash at any one time. 153. His Honour observed that the frustration for police in such circumstances means “they may ‘solve’ the problem by ‘loading up’ the dealer…” 154. Consistent with earlier treatment of serious drug matters Section 9 of the Bail Act was amended to provide for no presumption in favour of bail.

In the 1999 election the Labor Party “reiterated its ‘tough new laws’ in areas like drug dealing and weapons possession.” 155. The coalition was equally firm on these matters. 156. In 2001 Mr Debus explained that the Police Powers (Drug Premises) Bill, 2001, was intended to “giving law enforcement officers the powers they need to stop the drug trade in Cabramatta.” 157. As part of this Bill the presumption in favour of bail was removed for unauthorised possession or use of a prohibited firearm. Section 32 was also amended so that such possession was to be taken into account. Some Commonwealth drug related offences were included in the presumption against bail and other Commonwealth offences had the presumption removed via the Crimes Legislation Amendment Bill, 2002. 158.

Illegal drug supply is a matter that rightly causes great concern in the community. However, as the 1987 statistics showed, removing the presumption in favour of bail does not contribute to resolving the problem. Between 1995 and 2000 persons charged with dealing or trafficking in illicit drugs and dealt with in the higher courts were the least likely group amongst a range of serious listed charges to be on bail at finalisation of their matter. In relation to import or export of drugs the figure in 2000

was 31.8%. 159. The same report points out that absconding by those to be dealt with by the higher courts for deal or traffic in illicit drugs amounted to 8.9% in 2000 and that “It should be noted, however, that the numbers are very small in each category.” 160. The trend for refusal of bail in the higher courts for deal, traffic or cultivate illicit drugs has been upward between 1993 and 2007. It is true that the percentage of those imprisoned upon conviction in the higher courts also rose from 44.2% to 64.1%. 161. However, that still leaves a significant number who were not imprisoned. Finally, the latest trend over 24 months to March 2009 is stable for all drug trafficking matters, manufacturing drugs and importing drugs. 162. There has been no suggestion of reintroducing the presumption in favour of bail.

Neither equilibrium nor policy stream provides an adequate description in relation to drug supply. Three Royal Commissions had made recommendations by 1983. Media coverage of drug supply issues was continuous. However, nothing was done to the presumption until 1986 and no presumption against was introduced until 1988. Institutionalism provides a better explanation as the structures put in place in 1978 provided for a considered position favouring the presumption other than for aggravated forms of robbery. Only when bail became an issue directly associated with spectacular media coverage and in the context of rising public concern did a punctuation of equilibrium occur that was powerful enough to overcome the institutional structures. The rational choice in 1986 was to meet concerns by removal of the presumption but not providing for a presumption against bail. By 1988 everything had changed for a State Election had been fought and won on law and order issues. This macro level change required a special level of punctuated equilibrium for it is not at subsystem level but a change that affected all political

parties and members of elites. It has been described as disruptive dynamics. The first presumption against bail was introduced after the 1988 election for large scale drug supply. In all subsequent elections there was a convergence of policy between the parties on law and order. The 1988 and subsequent changes represent clear developments in the erosion of the separation of powers. Nothing in the decades of factual statistical material about drug suppliers, absconding and who gets bail has led to the restoration of the presumption for these offences.

Chapter 5.

Domestic Violence and Sexual Assault. 1986-2008.

For over a decade up to 1988 there was a growing public and political consciousness concerning extensive domestic and family violence. Major reforms took place without any recognisable punctuating event or window of opportunity. These reforms could have but did not lead in the short term to significant erosion of the presumption. In the early 1990's the presumption was significantly changed. The best explanation is to be found in macro level disruptive dynamics in which the strength of feminist and community concerns about ongoing domestic violence found expression in demands as to how bail was considered in relation to alleged perpetrators.

The first women's refuge had opened in 1974. Rising public consciousness of spousal and non spousal domestic violence led to the government to set up a Task Force on Domestic Violence in 1981. 163. Its membership included a range of organisations supporting women and also legal bodies such as the Criminal Law Review Division of the A.G's Department. It recommended many reforms concerning police and courts. There was no proposal to change the presumption but there was discussion of how to create cooling off periods consistent with section 32. 164. In 1983 the N.S.W Domestic Violence Committee was established and major legal reforms introduced concerning domestic violence as it relates to women currently or formerly married and women in an equivalent position. 165. There was no change to the presumption.

In 1987, after widespread discussion between organisations, including legal organisations, and the Premier's violence against women and children law reform task

force, Premier Barry Unsworth, introduced the Crimes (Personal and Family Violence) Amendment Bill. 166. The Bill expanded the category of people who could apply for domestic violence orders and increased penalties for certain offences. It also increased the range of sexual offences and provided for court reforms. 167.

The Premier in speaking to the Bill, explained that in relation to a domestic violence offence the Bill would "remove the presumption… if the accused person has previously failed to comply with any bail conditions imposed for the protection and welfare of the victim." 168. Section 32 was amended to add the protection and welfare of the alleged victim and previous conduct by the accused that increased the likelihood of domestic violence towards the victim as matters to be considered. The Bill was not opposed by the Opposition. 169.

The developments up to 1988 are not adequately explained by punctuated equilibrium or multiple stream theory. If punctuated equilibrium theory "simply extends current agenda-setting theories to deal with both policy stasis, or incrementalism, and policy punctuations," then it does not in this case explain ongoing major change without punctuation and why there was only minor change to the presumption. 170. There were headlines on domestic violence in the relevant period. GIRL TELLS OF MOTHER'S FATAL BEATING was a Herald headline on 3 April 1987. 171. However, given the long history of discussion and reform and the list in Hansard of nearly three pages of organisations that were consulted before the 1987 Bills were introduced, then neither the reforms or the lack of change in the presumption are explained by response to headlines. Nor were there "fleeting opportunities for advocates of proposals to push their pet solutions…" as multiple stream theory would suggest. 172. The change was ongoing and major. The better

explanation is that the change in attitude towards women and domestic violence affecting policymaking in subsystems and in parties was an evolving process. 173. In the period before the 1990's institutional structural support for the presumption in domestic violence and sexual assault matters was not under the level of pressure that would later occur as criticism about the problem of domestic violence, police, courts and bail grew stronger. As a matter of rational choice both general reform and protection of the presumption could be provided for. As a matter of social construction women, whether in politically powerful 'advantaged' groups or politically weak but positively thought of 'dependent' groups could be supported. 174. The legislation did not have to produce contentious and dramatic initiatives concerning the presumption.

The 1988 election and its emphasis on law and order have been dealt with. While the coalition did call on voters "to remember the murderers, the rapists and the drug dealers… free from gaol after a few short years behind bars," it is not the case that the campaign was fought specifically on domestic violence issues. 175. It was not a case of macro level punctuation involving disruptive dynamics.

Activity after the election was consistent with the ongoing large scale reform approach. In 1989 the government amended the Crimes Act to "extend the provision of apprehended violence orders to all people who fear violence towards themselves." 176. The Bail Act was amended to recognise the new situation. In relation to sexual assault the Attorney General noted in 1990 that "Concern has been expressed recently at the release on bail of some people who have been charged with offences of a violent or sexual nature. 177. He then noted that defendants are presumed to be innocent unless proven otherwise, but that seriousness and potential harm required

special consideration by those granting bail. The Bail Amendment Act, 1990 spelt out in section 32 that the protection and welfare of the community included whether the offence was of a sexual or violent nature. Mr Whelan for the Opposition pointed out that the existing protection and welfare of the community covered such issues and added, “The Opposition will not be opposing the Bail Amendment Bill for the obvious reason that the Government would attempt to paint the Opposition as supporting violent crime.” 178. In relation to convergence it was another example showing that by 1990 the parties had reached a similar position in relation to the presumption and section 32.

In 1993 the approach towards major ongoing reform without major change to the presumption altered. On 15 September 1993, the Premier, Mr Fahey, introduced the Crimes (Domestic Violence) Amendment Bill and the Bail (Domestic Violence) Amendment Bill. The first Bill provided for telephone interim apprehended violence orders, created new offences, allowed interim orders even if the defendant was not in court and increased penalties. Legal support for women in domestic violence situations was strengthened by this Bill but this did not stop the loss of the presumption in a wide group of cases via the second Bill. The material suggests that a serious crime and widespread media coverage caused punctuation of longstanding equilibrium at a time when the policy image of bail and specifically the presumption in relation to domestic violence was no longer part of a policy monopoly, a “single image… widely accepted and generally supportive of the policy .” 179.

The punctuation was explained by the Premier, Mr Fahey, in his Second Reading Speech. “Recent incidents of domestic violence, including the Andrea Patrick case, have raised the question of the capacity of the present criminal law to adequately

respond to domestic violence situations." 180. The headline on page one of the Herald on 25 August, 1993 was "GOVT PLEDGES NEW LAWS TO PROTECT WIVES." The article went on to state, "The State Government has vowed to pass laws to protect people living under the threat of violence, in the wake of the murder of Miss Andrea Patrick." 181. On the same page was another article headed, "POLICE SOUGHT BAIL TWO DAYS BEFORE KILLING." It explained that the alleged perpetrator had been given bail in relation to Ms Patrick, two days earlier, on condition he comply with an AVO condition to stay away from her. 182. It is difficult for politicians and the media when these types of events occur. Given spectacular media coverage, "With the best will in the world, political parties find it very difficult to respond to this intense concern in any other way than promising to get tough on crime." 183. However, fifteen years had gone by since the presumption and the reasoning behind it had become law. Changes to the law after 1978 offered the chance for 'follow up' investigative journalism on the issue. 184. However, in this new punctuation, whether it was because of routine, pressure of deadlines or editorial gatekeeping, there was no high profile coverage of the importance of the presumption.185.

The policy image change is observable in the Report of the N.S.W Domestic Violence Committee produced in 1991 as part of the N.S.W domestic violence strategic plan. The plan is referred to by the Premier in speaking to the Bill. The Report's terms of reference included legislation to, "provide immediate safety to women and children who are (or are at risk of becoming) victims of domestic violence." 186. It involved a wide range of submissions from government and non government organisations, individuals and a Discussion Paper. A Study

concluded that “100,000 women each year are likely to report or disclose domestic violence.” 187. Many more do not disclose. The considerable occurrence of domestic violence had been commented on in the 1981 and 1987 Reports. 188. Section 32 had been amended. The 1991 Report indicates a lack of satisfaction with the results. “Police and legal responses to domestic violence are frequently characterised by inconsistency of approach.” 189. The recommendations covered many fields. In relation to bail it recommended for police that “bail should be refused on arrest for breach of an Apprehended Violence Order until the first court appearance.” 190. In recommendation 2.2.12 it states, “The presumption in favour of bail should be reversed so that there is a presumption against bail where an Apprehended Violence Order is breached and where bail conditions in respect of an Apprehended Violence Order application or domestic violence offence are breached.” 191. This Report, like those before it, proposed worthwhile reforms in relation to domestic violence. However, the proposal to reverse the presumption appears to arise from concerns within the policy community that by 1991 domestic violence remained a major concern for which the presumption needed to be changed. The long period in which “the existence of a policy network, or more particularly a policy community constrains the policy agenda and shapes the policy outcome,” remained true in general but not in relation to the presumption and domestic violence. 192.

The Premier noted that the government had just undertaken a review of the Bail Act. He observed that, “While overall the Act was found to be working well, significant shortcomings in its protection of victims were identified…” 193. The Premier expresses concern about balancing protection of the community and victims “against the rights of accused persons.” 194. Contact with libraries and the

Attorney General's Department did not meet with success in obtaining this material. The Issue Paper published in May 1992 pointed out that section 32 provided for a magistrate or judge to consider the likelihood of further offences on bail, whether sexual, their level of violence and number. It also emphasised the interrelationship between the presumption of innocence, liberty and the presumption. 195. Institutional support for the presumption was still apparent because it was part of the "rules, norms and strategies adopted by individuals operating within organisations…" 196

The Premier made reference to statistics showing that "over 80 per cent of all homicides in New South Wales are committed by a member of the victim's family or by an acquaintance." 197. The Premier concedes that "No legislation, of course, will deter persons who are committed to killing or injuring their partners or family members." 198. The Premier refers to relevant studies showing that the "best indicator of future violence is a past history of violence." 199.

The Bail (Domestic Violence) Amendment Bill removed the presumption in the case of a domestic violence offence or contravention of an apprehended domestic violence order by violence or intimidation where the accused has a history of violence against any person, (found guilty in last ten years of personal violence offence against any person or offence of contravening AVO.) The presumption was also removed where there had been previous violence against a person who is the alleged victim of the current charge whether or not the accused person has been convicted of an offence in respect of that previous violence. Domestic violence orders covered spouse, de facto partner, a person living in the house but not as a tenant, a relative or in an intimate personal relationship with the defendant. The Bill also removed the presumption in cases of murder. 200.

The Report of the N.S.W Domestic Violence Committee called for the reversal of the presumption in certain circumstances. The Issue Paper emphasised the importance of the presumption of innocence and section 32. The legislation seems best explained by a combination of theories. Institutionalism is apparent in the support for the presumption in legal thinking and procedures. The policy changes throughout the nineteen eighties and nineties in relation to domestic violence had created a policy monopoly which became deeply concerned about legal institutions and bail. This tension was resolved by punctuation created by the violent crime and subsequent media coverage. The legislation moved a distance in favour of abandoning the presumption because the policy image, ("mixture of empirical information and emotive appeals,") changed. 201. However, institutional rules prevailed to the extent that there was no reversal of the presumption.

Mr Whelan for the Opposition supported the general amendments and proposed certain amendments to both Bills. Those amendments did not weaken the changes to the removal of the presumption. He too referred to the Report of the Domestic Violence Committee and the "tragic and needless death of Andrea Patrick." 202. Convergence of policy between the parties was once again apparent.

The range of charges for which the presumption no longer applied was extensive and this further undermined the Separation of Powers.

The last area to be considered is the major change to the presumption concerning sexual assaults and other violent crimes that occurred in 1998. The convergence to a tough line on crime following the 1988 election and apparent in the 1995 election meant that any punctuation concerning an area of major crime where the presumption was still intact was likely to lead to erosion of the presumption.

In his Second Reading Speech on 27 October 1998, concerning the Bail Amendment Bill, the Attorney General Mr Shaw referred immediately to “Concern about the issue of bail has been heightened by a number of recent cases including the tragic death of two Bega schoolgirls.” 203. This is a reference to events in October and November 1997 including the murder of two teenage girls. There had been considerable media coverage. The Herald page 1 heading of 14 November, 1997 read, ABORTED TRIAL SET BEGA MURDER SUSPECT FREE. The article went on to explain that, “A man being questioned… was on bail after his trial on multiple child sexual assault charges was aborted ...” 204. On 15 November an article noted that “The case has raised questions about the adequacy of bail provisions in N.S.W with the Opposition calling yesterday for tightening of the Bail Act.” 205. Media coverage of the trials of those involved would continue well into 1998.

In this Second Reading Speech, Mr Shaw also indicated that there had been a review of the Bail Act and “the Act was generally working well.” 206. Contact with libraries and the Attorney General’s Department did not meet with success in obtaining this material. Mr Shaw noted the “proper balance between protection of the community and the rights of the accused is an important matter which warrants regular monitoring.” 207. Mr Shaw specifically referred to the existing provisions that removed the presumption in favour of bail for certain crimes. He then went on to explain that manslaughter, malicious wounding with intent, kidnapping and various aggravated sexual offences would now be placed in that category. 208. He also proposed some expansion of coverage to victims of apprehended domestic violence. Section 32 was amended so that a court would consider whether the defendant was already on bail or parole for a serious offence. 209. The Opposition did

not oppose the Bill. 210.

Punctuated equilibrium and multiple stream theory provide part of the explanation for this change. There was, of course, a punctuation created by serious crime and the associated media coverage. Once again, there was not enough discussion in the media of the importance of the presumption. By 1998 when the punctuation occurred, aggravated forms of robbery, drug supply, murder and domestic violence in certain circumstances, had all become subject to a presumption against or no presumption in favour of bail. As a matter of social construction in relation to serious crime, the "continuing struggle to gain acceptance of particular constructions and their consequences," had been resolved in the period between 1988 and 1995. 211. Macro political change described as disruptive dynamics had set both major parties on the path of a hard line on law and order. Multiple stream theory also provides an explanation because "windows are opened by compelling problems or by events in the political stream." 212. This problem from amongst the many competing for government attention needed to be dealt with. However, rational choice institutionalism also assists with explanation for by 1998 the institutional arrangements concerning the presumption and serious crime had changed so that the presumption was no longer a predominant feature. Rational choice is based "on the structured circumstances in which they are made." 213. In this case the structural circumstances favoured the erosion of the presumption. The 1998 changes concerning the presumption are best explained by an amalgam of aspects of a number of theories.

Changes to the presumption after 1998 in relation to domestic violence and sexual assault were in most cases an extension of the vast changes that had come to exist by the end of that year. Domestic violence was put in a separate Act via the Crimes

(Domestic and Personal Violence) Act, 2007. That Act also developed provisions concerning the protection of children, domestic violence offences and criminal records. In relation to Bail, the Act replaced various provisions with the provisions under the new Act. 214.

The trend for those being refused bail in the Higher Courts between 1993 and 2007 for assault, sexual assault and related offences is upwards. The same is true for the Local Courts. 215. The trend to imprison is also upwards in both sets of courts reaching in the Higher Courts 67.6% for assault and 75.5% for sexual assault and related offences. 216. However, that still leaves a sizeable percentage not imprisoned. In a number of the offences referred to in this part of the thesis they would have started with no presumption in favour of bail. Over the last sixty months the average annual percentage change of recorded crime for “assault – domestic violence related,” “sexual assault,” and “indecent assault, act of indecency and other sexual offences,” has been “stable”. 217. In relation to absconding when on bail, those before the Higher Courts charged with sexual assault had the lowest rate of six major groups of offences assessed in 2000. Assault was the second lowest category. Assault was recorded as at the lower end in Local Courts. 218. None of these statistics suggest that removing the presumption in favour of bail contributes anything to solving the issue of domestic violence or sexual assault. Section 32 provides ample material for a judge or magistrate to consider.

Domestic violence and changes to the presumption is best explained by an amalgam of theories. Domestic violence has been the subject of incremental change in the law for decades. Much of that change has been brought about by policy networks and has been positive for the protection of women. This positive social construction

was for many years associated with bail reform that concentrated on section 32 and matters a judge or magistrate should consider. However, that equilibrium on the approach to bail was punctuated in the early nineteen nineties for a number of reasons: spectacular individual crimes; failure of the media to emphasise the importance of the presumption; the convergence of party views on the issue; rising recorded rates of domestic violence, whatever view is taken of whether this was caused by greater reporting or genuinely rising rates or both (219), change in approach within the policy community and disruptive dynamics in which the institutional acceptance of the presumption was to some extent displaced. The separation of powers was significantly undermined by this change. The 1998 amendments concerning sexual assault and other violent crimes were a product of the convergence of policy on law and order that emerged between 1988 and 1995; punctuation created by violent crime; media coverage that failed to emphasise the importance of the presumption and the already weakened state of institutionalism in relation to the presumption and its application to other major crime. Statistical evidence has not led to a proposal to restore the presumption in favour of bail for these offences.

Conclusion.

The presumption in favour of bail is fundamental in the presumption of innocence in the Western political ideal and is one of the basic assumptions that contribute to our defining ourselves as a democratic society.

The Bail Review Committee, 1978 recognised the centrality of this principle and recommended no exceptions to the presumption, specifically rejecting neutrality in relation to the presumption. Consecutive Attorneys General have also recognised the fundamental nature of the presumption. Nevertheless between 1978 and 2008 there has been a radical shift away from the right to the presumption for more serious crimes.

It is clear there was a need for a Bail Act that dealt with problems resulting from poverty, language difficulties and bureaucratic complexity and that a range of interest groups were producing policy in networks. As a result of their advocacy change would have occurred by incremental progression but at a slower pace. The punctuation of equilibrium by a number of spectacular armed robberies, particularly of banks, and the consequent media coverage and interest group demands for action did accelerate the emergence of the Committee and subsequent legislation. However, it also provided the pressure that resulted in the first exception to the presumption. It was legitimate for the media to deal with the issue but difficult for the government to meet all public expectations - bank robbers having low social construction value. The government did restrict the concessions it made to public pressure by advocating no presumption in favour of bail rather than a presumption against bail. It also restricted the concession to aggravated forms of robbery, not robbery as such. The Opposition wanted wider exceptions to the

presumption but at that stage there was no convergence of policy. The exception was not so broad at that point to call into question the separation of powers. The new Act was a major, progressive piece of legislation.

For ten years with minor exception the situation remained as described. However, in the context of ongoing public debate and media coverage of drug supply issues, alleged corruption and a growing consciousness of domestic violence and sexual assault, changes emerged. This process culminated in the 1988 election in which law and order was a major issue. The punctuation of equilibrium now took place at the level of the macro political system. The new Liberal government's policies were aimed at those seen in a positive social construction light and included an emphasis on protecting their person and property against those seen in a negative light such as criminals. After that election the first presumption against bail was introduced, the range of crimes for which there was no presumption in favour of bail was significantly extended and imprisonment for some summary offences was introduced. The Labor Party never again meaningfully contested the need for a hard line on law and order. The 1995 election reinforced that position. The convergence of policy on law and order and the erosion of the presumption is to be seen in the changes concerning sexual assaults in 1998. These changes were also the product of punctuation but also reflected the diminished institutional state of the presumption in relation to major crime by that year.

Domestic violence does not simply fit the pattern described for other issues. Problem, policy and political streams converged from time to time producing reforms that expanded out from domestic violence between partners to ultimately include a much broader range of persons. These were major changes and often not associated

with punctuation politics. Because of concentration on section 32 dealing with discretionary matters judges and magistrates should take into account and institutional support for the presumption there was no major change to the presumption until 1993. The 1988 election was not fought over domestic violence issues. However, by 1993 concern for the extent of domestic violence led to a change in approach by the policy community concerned about this issue. The existing institutional support for the presumption was still strong enough for the change to be limited in the sense that no presumption against bail was introduced.

The media did carry out Fourth Estate obligations in reporting on important issues but should have raised more questions about the importance of the presumption when discussing major crimes and government response. No doubt it was restricted by the tyranny of deadlines and editorial policy.

There is no evidence that diminishing the presumption has played any part in improving criminal justice. The detailed provisions in section 32 of the Bail Act provide ample coverage of what a magistrate or judge should consider in a bail application. The existence of the presumption does not necessarily guarantee a person will be granted bail. In many areas of major crime a person no longer walks into court with the presumption of liberty. The changes in legislation leading to a shift away from the presumption in favour of bail and the erosion of the separation of powers represent a threat to the basic tenets of democracy.

ENDNOTES

1. Debus, R, Attorney General, *Bail Amendment Bill*, (N.S.W Parliamentary Debates, (Session 2003, Third Series, Vol 300) P 1700.
2. Sabatier, P, *The Need for Better Theories*, P 9, and James, L, True J, Jones B and Baumgartner, F, *Punctuated Equilibrium Theory*, in (ed P Sabatier, *Theories of the Policy Process*, Westview Press, U.S, 2007,) 155 – 161.
3. Ingram, H, Schneider, A, Deleon, P, *Social Construction and Policy Design*, in (ed P Sabatier, *Theories of the Policy Process*, Westview Press, U.S, 2007) P 93.
4. Ingram, H, Schneider, A, Deleon, P Social Construction and Policy Designn P 101-103.
5. Sabatier, P, *The Need for Better Theories*, P 9.
6. Fenna, A, *Australian Public Policy*, (Pearson Longman, Malaysia, 2nd Ed 2004) P 129.
7. Fenna, A, *Australian Public Policy*, P 136.
8. Ostrom, E, *Institutional Rational Choice*, in (ed P Sabatier, *Theories of the Policy Process*, Westview Press, U.S, 2007, P 31.
9. Economou, N and Tanner, S, *Media Power and Politics in Australia*, (Pearson Education Australia, Malaysia, 2008) P 8.
10. *Bail Act*, 1978, (Act 161, 1978, assent, 29 December, 1978) Section 4. Bail ` Act, 1978, Section 4 (Act 161, Reprint 11, 29 April 2008) Section 4. Note: I have checked later 2008 amendments and they do not change relevant issues. I shall refer to it in the text and endnotes as the Bail Act amended.
11. Donovan, B, *The Law of Bail*, (Legal Books, Hogbin Poole, 1981) P 19.
12. Roulston, R, *The Quest for Balance in Bail: The New South Wales Experience*, in (Eds Chappell, D and Wilson, P, *The Australian Criminal Justice System*, Butterworths, Australia, 1972) P 472.
13. Roulston, R, *The Quest for Balance in Bail*, P 474-482 and Watson, R and Purnell, H, *Criminal Law in N.S.W, Vol 1*, (Law Book Company, Australia, 1971) P 353-4.
14. *R v Wakefield*, (1968-9) 89 W.N. (Pt 1) 325 at 327.
15. Ostrom, E, *Institutional Rational Choice*, P 23.
16. Walker, F, *N.S.W Parliamentary Debates*, (Session 1978-9, Third Series, Vol 143,) P 2020.
17. Dowd, J, *N.S.W Parliamentary Debates*, (Session 1988, Third Series, Vol) P 551.
18. Brown, D, *Post Election Blues: Law and Order in NSW Inc*, (Legal Service Bulletin, 13, 1988, P 100.
19. *Bail Act*, 1978, Section 8 (2) (a). *Bail Act amended*, Section 8 (2) (a). Bail Act, amended, section 8.
20. *Bail Act*, amended, section 8A
21. *Bail Act*, amended, section 8B
22. *Bail Act*, amended, section 8C
23. *Bail Act*, amended, section 8D
24. *Bail Act*, amended, section 8E
25. *Bail Act*, amended, section 8F
26. *Bail Act*, 1978, section 9.

27. *Bail Act*, amended, section 9 (1) (c –g)
28. *Bail Act*, 1978, amended, Section, 9 (2)
29. *Bail Act*, amended, section 9 A – B.
30. *Bail Act*, amended, section 9 C – D.
31. *Bail Act*, 1978, Section 32 (1) (a), (b), (c).
32. *Bail Act*, 1978, Section 32 (1) (a), (b), (c) and *Bail Act*, amended, Section 32, (1) (a), (b), (c).
33. Anderson and Armstrong, *Report of the Bail Review Committee*, (Vol, 1 Joint Volumes of Papers, Parliament of N.S.W, 1976-8) P 10 and Appendix A.
34. Anderson and Armstrong, *Report of the Bail Review Committee*, P 10.
35. Zahariadis, N, *The Multiple Streams Framework, (*ed P Sabatier*, Theories of the Policy Process*, Westview Press, 2nd Ed, 2007) P 70 – 73.
36. Economou, N and Tanner, S, *Media Power and Politics in Australia*, P 97-99.
37. Economou, N and Tanner, S, *Media Power and Politics in Australia*, P 105.
38. True, J, Jones, B and Baumgartner, R, *Punctuated Equilibrium Theory,* in (ed P Sabatier, *Theories of the Policy Process*, Westview Press, 2nd Ed, 2007) P 161.
39. True, J, Jones, D and Baumgartner r, *Punctuated Equilibrium Theory*, P 156-162.
40. No author named, *Wran Calls for Files on Gunman*, in (Sydney Morning Herald, 30 June, 1976) P 1.
41. O'Hara, J, *Bail System Review Ordered*, in (Sydney Morning Herald, 3 July, 1976) P 3.
42. Economou and Tanner, *Media Power and Politics in Australia*, P 139.
43. Fenna, A, *Australian Public Policy*, P 141.
44. Weatherburn, D, *Law and Order in Australia*, (Federation Press, Sydney, 2004) P 29.
45. Anderson and Armstrong, *Report of the Bail Review Committee*, P 10.
46. Anderson and Armstrong, *Report of the Bail Review Committee*, Appendix A.
47. Fenna, A, *Australian Public Policy*, P 155-6.
48. Zahariadis, N, *The Multiple Stream Framework*, P 72.
49. Anderson and Armstrong, *Report of the Bail Review Committee*, P 27.
50. *Bail Act, 1978*, section 32 (1) (a) (iii).
51. Mayne Nickless quoted in Anderson and Armstrong, *Report of the Bail Review Committee*, P 30
52. Anderson and Armstrong, *Report of the Bail Review Committee*, P 30
53. Anderson and Armstrong, *Report of the Bail Review Committee*, P 19.
54. Anderson and Armstrong, *Report of the Bail Review Committee*, P 21.
55. Ingram, H, Schneider, A and deLeon, P, *Social Construction and Policy Design*, P 103.
56. Anderson and Armstrong, *Report of the Bail Review Committee*, P 22.
57. Donovan, B, *The Law of Bail*, P 3-4.
58. True, J, Jones, B, Baumgartner, F, *Punctuated Equilibrium Theory,* P 162.
59. Minchin, K and O'Donnell M, *Bank Robber and Hostage Die in Wild Police Chase* in (Sydney Morning Herald, 18 November, 1978) P1.
60. No author, *Gunman, Hostage Die in Shootout*, in (Daily Telegraph, 18 November, 1978) P 1.
61. Robinson, C, *Police Blamed: Death Hostage in Wild Chase* in (Sun Herald, 19 November 1978) P 3.

62. Molloy P and Neill K, *Shots Fired at Policeman During Chase* in (Sydney Morning Herald, 23 November 1978) P 3.
63. *The Parole System*, (Editorial, Sydney Morning Herald, 23 November, 1978) P 6.
64. Bolton, B $1.7 m *Bank Haul Robbery Is Biggest Yet*. (Daily Telegraph, 24 November 1978) P 1.
65. Bridgman, P and Davis G, *The Australian Policy Handbook*, (Allen and Unwin, Sydney, 3rd 2004) P 35.
66. Bridgman and Davis, *The Australian Policy Handbook*, P 44.
67. Ingram, H, Schneider, A, Deleon, P, *Social Construction and Policy Design*, (ed P Sabatier, *Theories of the Policy Process*, Westview Press, 2nd Ed, 2007,) P 103.
68. Weatherburn, D, *Law and Order in Australia*, P 131.
69. Ingram, H, Schneider, A, Deleon, P, *Social Construction and Policy Design*, P 106.
70. Zahariadis, N, *The Multiple Stream Framework*, P 72 – 3.
71. Kennedy K, *Helicopter, More Detectives, Parole Review*, in (Sydney Morning Herald, 29 November 1978) P 1.
72. Kennedy K, *Helicopter, More Detectives, Parole Review*, P 1.
73. Kennedy K, *Helicopter, More Detectives, Parole Review*, P 1.
74. Kennedy K, *Helicopter, More Detectives, Parole Review*, P 1.
75. *Violent Crime* (Editorial, Daily Telegraph, 29 November 1978) P 6.
76. Sutton A, Director, *Armed Robbery* (Research Report 2, December 1977, Bureau of Crime Statistics and Research, Dept of the Attorney Genera)
77. Sutton, A, Director, *Armed Robbery*, P 4.
78. Sutton, A, Director, *Armed Robbery*, P 11.
79. Sutton, A, Director, *Armed Robbery*, P 16.
80. Sutton A, Director, *Armed Robbery*, P 39
81. Walker, F, Attorney General, Reply, *Bail Bill, 1978*, (N.S.W Parliamentary Debates, Session, 1978-9, Vol 143) P 1849.
82. Economou, N and Tanner, S, *Media, Power and Politics in Australia*, P 104 - 5.
83. Economou, N and Tanner, S, *Media, Power and Politics in Australia*, P 103-5 and 114.
84. Walker, F, Attorney General, *Introduction Bail Bill*, P 1844
85. Sutton, A, Director, *Armed Robbery*, P 41.
86. Walker, F, *Bail Bill, 1978*, P 2015.
87. Bridgman and Davis, *The Australian Policy Handbook*. P 48.
88. Ingram, H, Schneider A and Deleon, P, *Social Construction and Policy Design*, P 103 and 106.
89. Fenna, A, *Australian Public Policy*, P 141.
90. Maddison, K *Bail Bill, 1978* (Vol 143 N.S.W Parliamentary Debates, Session 1978-9, 13 December) P 2024.
91. Goot, M, Party *Convergence Reconsidered*. (Australian Journal of Political Science, Vol 39, No 1, March, P 49-73) P 69.
92. Ratnapala, S, *Australian Constitutional Law*, (Oxford University Press, 2nd Ed, 2007, P 115.
93. Ratnapala, S, *Australian Constitutional Law*, P 169.
94. Ratnapala, S, *Australian Constitutional Law*, P 299.

95. . *N.S.W Recorded Crime Statistics, Quarterly Update, March, 2009*, P 3 and Moffat, S and Goh, D, *An update of long term trends in property and violent crime in N.S.W: 1990 – 2008*, (Crime and Justice Statistics, N.S.W Bureau of Crime Statistics and Research, Issue Paper 39, April 2009) P 2-3.
96. *Issue Paper, Review of the Bail Act*, P 4.
97. Lulham, R and Fitzgerald, J, *Trends in bail and sentencing outcomes in N.S.W Criminal Courts: 1993-2007* (*Crime and Justice, Bulletin*, N.S.W Bureau of Crime Statistics and Research, No 124, November 2008) P 2 and 3.
98. Chilvers, M, Allen, J and Doak, P, *Absconding on bail*, (*Crime and Justice Bulletin*, Bureau of Crime Statistics and Research, No 68, May 2002) P 10.
99. Roden, A, *Foreword*, (Donovan, B *The Law of Bail*, Legal Books, Sydney, 1981) P x.
100. Baumgartner, F and Jones, B, *Agenda Dynamics and Policy Subsytems*. (Journal of Politics, Volume 53 (4), 1991) P 1044.
101. His Honour, Mr Justice Wood, *Royal Commission Into The New South Wales Police Service*, (N.S.W Government Printer, May 1997), P 67.
102. Wood, J, *Royal Commission Into The New South Wales Police Service*, P 71
103. Wood J, *Royal Commission Into The New South Wales Police Service*, P71-4
104. Ingram, H, Schneider, A, deLeon, P, *Social Construction and Policy Design*, P101.
105. His Honour, Mr Justice Woodward, *Report of the Royal Commission into Drug Trafficking*, (N.S.W Government Printer, 1979) P 1828.
106. *Bail Act, 1978*, section 32 (1) (a), (b) and (c).
107. Woodward, J, *Report of the Royal Commission into Drug Trafficking*, P1830.
108. His Honour Mr Justice Williams, *Report of the Australian Royal Commission of Inquiry into Drugs*, (A.G.P.S, Vol F, 1980) P F35
109. Williams, J, *Report of the Australian Royal Commission of Inquiry into Drugs*, P 36.
110. His Honour, Mr Justice Stewart, *Royal Commission of Inquiry Into Drug Trafficking*, (A.G.P.S, 1983) P 551.
111. Stewart, J, *Royal Commission of Inquiry Into Drug Trafficking*, P 552.
112. Stewart, J, *Royal Commission of Inquiry Into Drug Trafficking*, P 843.
113. Ingram, H, Schneider, A and Deleon, P, *Social Construction and Policy Design*, P 103.
114. Fenna, A, *Australian Public Policy*, P 136.
115. No author stated, *Alleged Top Drug Dealer Vanished in Victoria.* Sydney Morning Herald, 1 November, 1985, P 3.
116. No author stated, *Big Suspect Jumps Bail*, Daily Telegraph, 2 November, 1985, P 12.
117. Weatherburn, Quinn, Rich, Drug Charges, Bail Decisions and Absconding, (Australian and New Zealand Journal of Criminology, June, 1987, 20, P 95-109) P 96.
118. Economou, N and Tanner, S, *Media, Power and Politics in Australia*, P 105 and 114.
119. Stubbs, J, *Bail Reform in N.S.W*. (Bureau of Crime Statistics and Research, 1984) P 14 and 61 and Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 97.
120. Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 98.
121. Weatherburn, Quinn, Rich, Drug Charges, Bail Decisions and Absconding,

P 99 and 107.

122. Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 103.
123. Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 104.
124. Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 106.
125. Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 108.
126. Weatherburn, Quinn, Rich, *Drug Charges, Bail Decisions and Absconding*, P 107.
127. Sheahan, T, *Drug Misuse and Trafficking (Amendment) Bill, Bail (Amendment) Bill*, (N.S.W, Parliamentary Debates, Session 1986, Third Series, Vol 190) P 2575.
128. Ingram, H, Schneider, A and deLeon, P, *Social Construction and Policy Design*, P 106.
129. Ingram, H, Schneider, A and deLeon, P, *Social Construction and Policy Design*, P 107.
130. Sheahan, T, *Drug Misuse and Trafficking (Amendment) Bill*, P 2575
131. Fenna, A, *Australian Public Policy*, P 141.
132. Sheahan, T *Drug Misuse and Trafficking (Amendment) Bill*, 1986, P 2578.
133. Sheahan. T *Drug Misuse and Trafficking (Amendment) Bill*, 1986, P 2578.
134. Dowd, J, *Drug Misuse and Trafficking (Amendment) Bill*, 1986, P 2801.
135. Laffin, M and Painter, M, *Introduction*, in (ed Laffin, M and Painter, M, *Reform and Reversal*, Macmillan, Impact, 1995) P 7.
136. Zdenkowski, G, *Punishment Policy and Politics*, in (ed Laffin and Painter, M, *Reform and Reversal*, Macmillan, Impact, 1995) P 221.
137. Baumgartner, F and Jones B, *Agenda and Instability in American Politics*, (University of Chicago Press, U.S.A, 2009) P 285.
138. Brown, D, *Putting the Value Back in Punishment*, (Legal Service Bulletin, Vol 15, 1990) P 240.
139. *Summary Offences Act*, 1988, (Act 25, 1988, assented to, 6 July, 1988) Section 4.
140. *Summary Offences Act*, 1988, Section 38.
141. Dowd, J, Second Reading Speech, *Drug Misuse and Trafficking (Amendment) Bill*, (N.S.W. Parliamentary Debates, 3rd Series, 1988, Vol 201,) P 546.
142. Dowd, J, Second Reading Speech, *Bail (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1988, Vol 201) P 551.
143. Ingram, H, Schneider, A, deLeon, P, Social Construction and Policy Design, P 101.
144. Dowd, J, Second Reading Speech, *Drug Misuse and Trafficking (Amendment) Bill*, P 549.
145. Dowd, J, Second Reading Speech, *Bail (Amendment) Bill*, P 551.
146. Dowd, J, Second Reading Speech, *Bail (Amendment) Bill*, P 552.
147. Whelan, P, Second Reading Debate, *Bail (Amendment) Bill*, N.S.W. Parliamentary Debates, 1988, P 892.
148. Fenna, A, *Australian Public Policy*, P 24 and Goot, M, *Party Convergence Reconsidered*, P 69.
149. Ratnapala, S, *Australian Constitutional Law*, P 105.

150. Ingram, H, Schneider, A and Deleon, P, *Social Construction and Policy Design*, P 106.
151. Smith, T, *1995, The People's Choice*, P 348.
152. Baumgartner, F and Jones, B, *Agenda and Instability in American Politics*, P 286.
153. Shaw, J, Attorney General, *Drugs Misuse and Trafficking Amendment (Ongoing Dealing) Bill*, (N.S.W Parliamentary Debates, Session 1998, Vol 265) P 6382-3.
154. Wood, J, *Royal Commission Into The N.S.W Police Service*, P 229.
155. Smith, R, *The People's Choice*, 1999, P 399.
156. Smith, R, *The People's Choice*, 1999, P 401.
157. Debus, R, *Police Powers (Drug Premises) Bill*, 2001, (N.S.W Parliamentary Debates, 3rd Series, Vol 284, 2001) P 13997.
158. *Crimes Legislation Amendment Act*, (Act No 130, 2002, Assented to 17 December, 2002.
159. Chilvers, M, Allen, J and Doak, P, *Absconding on Bail*, (Crime and Justice Bulletin, Bureau of Crimes Statistics and Research, Number 68, May 2002) P5-6.
160. Chilvers, M, Allen, J and Doak, P, *Absconding on Bail*, P 10.
161. Lulham, R and Fitzgerald, J, *Trends in Bail and Sentencing Outcomes in New South Wales Criminal Courts: 1993-2007*. (Crime and Justice Bulletin, Bureau of Crimes Statistics and Research, Number 124, November 2008)P 2 and 3.
162. *New South Wales Recorded Crime Statistics, Quarterly Update, March 2009*, (N.S.W Bureau of Crime Statistics and Research) P 4.
163. L'Orange, H, Chairperson, Report to the Premier The Hon B.J. Unsworth *On A Survey of Non-Spousal Family Violence*. (Secretariat: Women's Co-ordination Unit, N.S.W Premier's Department, 1987). P 3.
164. Woods, G, Chairperson, *Report of N.S.W Task Force on Domestic Violence*, (N.S.W Government Printer, 1981) Two pages before P 1 and P 48-50.
165. L'Orange, H, Chairperson, *Report On A Survery of Non-Spousal Family Violence*, P 3.
166. Unsworth, B, *Crimes, (Personal and Family Violence) Amendment Bill*, (N.S.W Parliamentary Debates, Session 1986-8, Vol 199) P 15464.
167. Unsworth, B, *Crimes (Personal and Family Violence) Amendment Bill*, P 15466-7.
168. Unsworth, B, *Crimes, (Personal and Family Violence) Amendment Bill*, P 15467.
169. Dowd, J, *Crimes, (Personal and Family Violence) Amendment Bill*, (N.S.W Parliamentary Debates, Session 1986-8, Vol 200) P 16139.
170. True, J, Jones, B and Baumgartner, F, *Punctuated Equilibrium Theory*, P156.
171. *Girl Tells of Mother's Fatal Beating*, no author, Sydney Morning Herald, 3 April 1987, P 6.
172. Zahariadis, N, *The Multiple Streams Framework*, P 73.
173. Baumgartner, F and Jones, B, *Punctuated Equilibrium and Disruptive Dynamics*, P 285.
174. Ingram, H, Schneider, A and deLeon, P, *Social Construction and Policy Design*, P 101-103.
175. Hagan, J and Clothier, C, *1988, in (ed* Hogan, M and Clune, D, *The People's Choice*, Parliament of N.S.W and University of Sydney, Star, 200)P264.

176. Dowd, J, Second Reading Speech, *Crimes (Apprehended Violence) Amendment Bill*, (N.S.W Parliamentary Debates, 3rd Series, Vol 207, 1988-9) P7318.
177. Dowd, J, Second Reading Speech, *Bail (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1990-91, Vol 219) P 9658.
178. Whelan, J, Second Reading Debate, *Bail (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1990-91, Vol 219) P 10536.
179. True, J, Jones, B and Baumgartner, F, *Punctuated Equilibrium Theory*, P 162.
180. Fahey, J, Second Reading Speech, *Crimes (Domestic Violence) Amendment Bill and Bail, (Domestic Violence) Amendment Bill.* (N.SW Parliamentary Debates, 3rd Series, Vol 237, 1993) P 3217.
181. Jurman, E, *Government Pledges New Laws to Protect Wives*, Sydney Morning Herald, 25 August, 1993, P 1.
182. Riley, M, *Police Sought Bail Two Days Before Killing*, Sydney Morning Herald, 25 August, 1993, P 1.
183. Weatherburn, D, *Law and Order in Australia*, P 47.
184. Economou, N and Tanner, S, *Media Power and Politics in Australia*, P 96.
185. Economou, N and Tanner, S, *Media, Power and Politics in Australia*, P 105.
186. Woodruff, J, Chairperson, *Report of the N.S.W Domestic Violence Committee*, (Women's Coordination Unit, 1991) P 1.
187. Woodruff, J, *Report of the N.S.W Domestic Violence Committee*. P5.
188. Woodruff, J, Report of the N.S.W Domestic Violence Committee. P 6.
189. Woods, G, Chairperson, *Report of the N.S.W Task Force on Domestic Violence*, P 40-42, *and* L'Orange, H, Chairperson, *Report on a Survey of Non Spousal Family Violence*, P 5-7.
190. Woodruff, J, *Report of the N.S.W Domestic Violence Committee*, P 13.
191. Woodruff, J, *Report of the N.S.W Domestic Violence Committee*, P 16.
192. Fenna, A, *Australian Public Policy*, P 161.
193. Fahey, J, Second Reading Speech, *Bail (Domestic Violence) Amendment Bill*, P 3218.
194. Fahey, J, Second Reading Speech, *Bail (Domestic Violence) Amendment Bill*, P 3218.
195. *Issue Paper. Review of the Bail Act*,(Criminal Law Review Division, Attorney General's Department, May 1992). P 3-5.
196. Ostrom, E, *Institutional Rational Choice*, P 23.
197. Fahey, J, Second Reading Speech, *Bail (Domestic Violence) Amendment Bill* P 3217.
198. Fahey, J, Second Reading Speech, *Bail (Domestic Violence) Amendment Bill*, P 3218.
199. Fahey, J, Second Reading Speech, *Bail (Domestic Violence) Amendment Bill*, P 3218.
200. *Bail (Domestic Violence) Amendment Act*, 1993, (Act 102, 1993, Assented to, 2 December, 1993) Sections, 9 (1) (f) and 9A (1) (a-d).
201. True, J, Jones, B, Baumgartner, F, Punctuated Equilibrium Theory, P 161.
202. Whelan, J, Second Reading Debate, *Bail (Domestic Violence) Amendment Bill*, P 5614.
203. Shaw, J, Second Reading Speech, *Bail Amendment Bill*, (N.S.W Parliamentary Debates, 3rd Series, Vol 267, 1998) P 8976.
204. Riley, M, "*Aborted Trial Set Bega Murder Suspect Free*," Sydney Morning

Herald, 14 November, 1997, P 1

205. Riley, M, heading, Sydney Morning Herald, 15 November, 1997, P 6.
206. Shaw, J, *Bail Amendment Bill*, 1998, P 8976.
207. Shaw, J, *Bail Amendment Bill*, 1998, P 8976.
208. Shaw, J, *Bail Amendment Bill*, 1998, P 8976-7.
209. Shaw, J, *Bail Amendment Bill*, 1998, P 8977.
210. Samios, J, Second Reading Debate, *Bail Amendment Bill*, 1998, (N.S.W Parliamentary Debates, 3rd Series, Vol 267, 1998) P 8979.
211. Ingram, H, Schneider, A, deLeon, P, *Social Construction and Policy Design*, P 95.
212. Zahariadis, N, *The Multiple Streams Framework*, P 74.
213. Fenna, A, *Australian Public Policy*, P 141. 206.
214. Schedule 2, *Crimes (Domestic and Personal Violence) Bill*, 2007.
215. Lulham, R and Fitzgerald, J, *Trends in bail and sentencing outcomes in N.S.W Criminal Courts: 1993-2007*, P 2 and 4.
216. Lulham, R and Fitzgerald, J, *Trends in bail and sentencing outcomes in N.S.W Criminal Courts: 1993-2007*, P 3 and 5.
217. *New South Wales Recorded Crime Statistics, Quarterly Update, March 2000,* P 3.
218. Chilvers, M, Allen, J and Doak, P, *Absconding on bail*, P 9 and 10.
219. Ringland, C and Baker, J, *Is the assault rate in N.S.W higher now than it was during the 1990s?* (Crime and Justice Bulletin, N.S.W Bureau of Crime Statistics and Research, No 127, March 2009) P 3, 4 and 7.

BIBLIOGRAPHY

Anderson, K and Armstrong, S, *Report of the Bail Review Committee*, (Vol 1, Joint Volumes of Papers, Parliament of N.S.W, 1976-8)

Bail Act, 1978, (Act 161, 1978, assent 29 December, 1978)

Bail Act, 1978, as amended, (Reprint 11, 29 April, 2008)

Bail (Domestic Violence) Amendment Act, 1993, (Act 102, 1993, Assent, 2 Decemeber 1993)

Baumgartner, F, Foucault, M and Francois, A, *Punctuated Equilibrium in French Budgeting Processes*, (Journal of European Public Policy, 13, (7) September, 2006: 1086-1103)

Baumgartner, F and Jones, B, *Agenda Dynamics and Policy Subsystems*, (Journal of Politics, Volume 53 (4), 1991)

Baumgartner, F and Jones, B, *Policy Subsystems, Punctuated Equilibrium and Theories of Policy Change*, in (Baumgartner, F and Jones, B, *Agendas and Instability*, University of Chicago Press, 2nd Ed, U.S, 2009) SEE 138 AND EARLIER

Bolton, B, *$1.7 m Bank Haul Robbery Is Biggest Yet*, in (Daily Telegraph, 24 November, 1978)

Bridgman, P and Davis, G, *The Australian Policy Handbook*, (Allen and Unwin, Sydney, 3rd Ed, 2004)

Brignell, G, *Bail: An Examination of Contemporary Issues*, (ed Potas, I, Sentencing Trends and Issues, Judicial Commission of N.S.W, No 24, November, 2002)

Brown, D, *Post Election Blues: Law and Order in N.S.W Inc*, (Legal Service Bulletin, 13, 1988)

Brown, D, *Putting the Value Back in Punishment*, (Legal Service Bulletin, Vol 15, 1990)

Chilvers, M, Allen, J and Doak, P, *Absconding on Bail*, (Crime and Justice Bulletin, N.S.W Bureau of Crime Statistics and Research, No 68, May 2002)

Crimes (Domestic and Personal Violence) Act, 2007, Schedule 2, (Act No 80, 2007, Assented to 7 December, 2007)

Crimes Legislation Amendment Act (Act No 130, 2002, Assented to 17 December 2002)

Debus, R, Attorney General, Second Reading Debate, *Police Powers (Drug Premises) Bill, 2001,* (N.S.W Parliamentary Debates, 3rd Series, Vol 284, 2001)

Debus, R, Attorney General, Second Reading Debate, *Bail Amendment Bill,* (N.S.W Parliamentary Debates, 2003, Vol 300)

Donovan, B, *The Law of Bail*, (Legal Books, Hogbin Poole, 1981)

Dowd, J, *Crimes (Personal and Family Violence) Amendment Bill*, (N.S.W Parliamentary Debates, Session 1986-8, Vol 200)

Dowd, J, Attorney General, Second Reading Speech, *Drug Misuse and Trafficking (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1988, Vol 201)

Dowd, J, Attorney General, Second Reading Speech, *Bail (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1988, Vol 201)

Dowd, J, Attorney General, Second Reading Speech, *(Crimes, (Apprehended Violence) Amendment Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1988-9, Vol 207)

Dowd, J, Attorney General, Second Reading Speech, *Bail (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1990-91, Vol 219)

Economou, N and Tanner, S, *Media Power and Politics in Australia*, (Pearson Education, 2008)

Fahey, J, Premier, Second Reading Speech, *Crimes (Domestic Violence) Amendment Bill* and *Bail (Domestic Violence) Amendment Bill*, (N.S.W Parliamentary Debates, 3rd Series, Vol 237)

Fenna, A, *Australian Public Policy*, (Pearson Education, 2nd Ed, Malaysia, 2004)

Goot, M, *Party Convergence Reconsidered*, (Australian Journal of Political Science, Vol 39, No 1, March, P49-73)

Hagan, J, and Clothier, C, *1988*, in (ed Hogan M and Clune, D, *The People's Choice*, Parliament of N.S.W and University of Sydney, Star, 2001)

Ingram, H, Schneider, A, Deleon, P, *Social Construction and Policy Design*, in (ed P Sabatier, *Theories of the Policy Process*, Westview Press, 2nd Ed, U.S, 2007)

Issue Paper, Review of the Bail Act, (Criminal Law Review Division, Attorney General's Department, May 1992)

Jurman, E, *Government Pledges New Laws to Protect Wives*, (Sydney Morning Herald, 25 August, 1993)

Keenan, A, *"$50,000 Paid in Milner Case,"* (Sydney Morning Herald, 24 July, 1987)

Kennedy, K, *Helicopter, More Detectives, Parole Review*, in (Sydney Morning Herald, 29 November, 1978)

Laffin, M and Painter, M, *Introduction*, in (ed Laffin M and Painter, M, Reform and Reversal, Macmillan, Impact, 1995)

L'Orange, H, Chairperson, Report to the Premier The Hon B.J Unsworth *On a Survey of Non-Spousal Family Violence, (*Secretariat: Women's Coordination Unit, N.S.W Premiers Department, 1987)

Lulham, R and Fitzgerald, J, *Trends in bail and sentencing outcome in N.S.W Criminal Courts: 1993-2007*, (Crime and Justice Bulletin, N.S.W Bureau of Crime Statistics and Research, No 124, November, 2008)

Maddison, K, *Bail Bill, 1978*, (N.S.W Parliamentary Debates, Session 1978-9, Vol 143)

Minchin, K and O'Donnell, M, *Bank Robber and Hostage Die in Wild Police Chase*, in (Sydney Morning Herald, 18 November, 1978)

Molloy, P and Neill, K, *Shots Fired at Policeman During Chase*, in (Sydney Morning Herald, 23 November, 1978)

N.S.W Recorded Crime Statistics, Quarterly Update, March 2009, (N.S.W Bureau of Crime Statistics and Research)

No author, *Wran calls for files on Gunman*, in (Sydney Morning Herald, 30 June, 1976)

No author, *Gunman, Hostage Die in Shootout, in Shootout*, in (Daily Telegraph, 18 November, 1978)

No author, *Alleged Top Drug Dealer Vanished in Victoria*, (Sydney Morning Herald, 1 November, 1985)

No author, *Big Suspect Jumps Bail*, (Daily Telegraph, 2 November, 1985)

No author, *Girl Tells of Mother's Fatal Beating*, (Sydney Morning Herald, 3 April, 1987)

O'Hara, J, *Bail System Review Ordered*, in (Sydney Morning Herald, 3 July, 1976)

Ratnapala, S, *Australian Constitutional Law*, (Oxford University Press, 2nd Ed, 2007)

Robinson, C, *Police Blamed: Death Hostage in Wild Chase*, in (Sun Herald, 19 November, 1978)

Riley, M, *Police Sought Bail Two Days Before Killing*, (Sydney Morning Herald, 25 August, 1993)

Riley, M, *Aborted Trial Set Bega Murder Suspect Free*, (Sydney Morning Herald, 14 November, 1997)

Riley, M, Heading, Sydney Morning Herald, 15 November, 1997* AND
Bega School Girl Murder Pleads Guilty (Sydney Morning Herald, 27 June 1998)*

Ringland, C and Baker, J, *Is the Assault Rate in N.S.W Higher Now Than It Was During the Nineteen Nineties*. (Crime and Justice, N.S.W Bureau of Crime Statistics and Research, No 127, March, 2009)

Roden, A, *Foreword*, (Donovan B, *The Law of Bail*, Legal Books, Sydney, 1981)

Roulston, R, *The Quest for Balance in Bail: The New South Wales Experience*, in (ed, D Chappell and Wilson, P, *The Australian Criminal Justice System*, Butterworths Australia, 1972)

R v Wakefield, (1968-9) 89 W.N, (Pt 1) 325.

Sabatier, P, *The Need for Better Theories*, in (ed Sabatier, P, *Theories of the Policy Process*, Westview Press, 2nd Ed, U.S, 2007)

Samios, J, Second Reading Debate, *Bail Amendment Bill*, 1998, (N.S.W Parliamentary Debates, 3rd Series, 1998, Vol 267)

Shaw, J, Attorney General, Second Reading Speech, *Criminal Legislation Amendment Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1995-6, Vol 245)

Shaw J, Attorney General, Second Reading Speech, *Bail Amendment Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1998, Vol 267)

Shaw, J, Attorney General, *Drug Misuse and Trafficking Act (Ongoing Dealing) Bill*, (N.S.W Parliamentary Debates, Session 1998, Vol 265)

Sheahan, T, Attorney General, *Drug Misuse and Trafficking (Amendment) Bill, Bail Amendment Bill*, (N.S.W Parliamentary Debates, Session 1986, Third Series, Vol 190)

Smith, T, *1995*, in (ed Hogan M and Clune D, *The People's Choice*, Parliament of N.S.W and University of Sydney, Star, 2001)

Smith, R, *1999*, in (ed, Hogan M and Clune D, *The People's Choice*, Parliament of N.S.W and University of Sydney, Star, 2001)

Stewart, His Honour Mr Justice, *Royal Commission of Inquiry into Drug Trafficking*, (A.G.P.S, 1983)

Stubbs, J, *Bail Reform in N.S.W*, (Bureau of Crime Statistics and Research, 1984)

Summary Offences Act, 1988, (Act 25, 1988, assented to 6 July, 1988)

Sutton, A, Director, *Armed Robbery*, (Research Report 2, December, 1977, Bureau of Crime Statistics and Research, Dept of the Attorney General)

Totaro, P, *Carr Blasts Bail For Wife Killer*, (Sydney Morning Herald, 2 May, 2003)

True, J, Jones, B and Baumgartner, F, *Punctuated Equilibrium Theory*, in (ed Sabatier, P, *Theories of the Policy Process*, Westview Press, 2nd Ed, U.S, 2007)

The Parole System, in (Editorial, Sydney Morning Herald, 23 November, 1978)

Unsworth, B, Premier, *Crimes, (Personal and Family Violence) Amendment Bill*, (N.S.W Parliamentary Debates, Session 1986-8, Vol 200)

Violent Crime, in (Editorial, Daily Telegraph, 29 November, 1978)

Walker, F, Attorney General, *Bail Bill, 1978*, (N.S.W Parliamentary Debates, Session 1978-9, Third Series, Vol 143)

Warner, K, *Gang Rape in Sydney: crime, the media, politics, race and sentencing*, (Australian and New Zealand Journal of Criminology, Vol 37.3, December, 2004)

Weatherburn, D, *Law and Order in Australia*, (Federation Press, Sydney, 2004)
Williams, His Honour Mr Justice, *Report of the Royal Commission into Drugs*, (A.G.P.S, Vol F)

Weatherburn, D, Quinn, M, Rich, G, Drug Charges, *Bail Decisions and Absconding*, (Australian and New Zealand Journal of Criminology, June 1987, 20, P 95-109)

Whelan, J, Second Reading Debate, Bail (Amendment) Bill, (N.S.W Parliamentary Debates, Vol , 1988*

Whelan, J, Second Reading Debate, *Bail (Amendment) Bill*, (N.S.W Parliamentary Debates, 3rd Series, 1990-91, Vol 219)

Wood, His Honour Mr Justice, *Royal Commission Into the N.S.W Police Service*, (N.S.W Government Printer, May, 1997)

Woodruff, J, Chairperson, *Report of the Domestic Violence Committee*, (Women's Coordination Unit, 1991)

Woodward, His Honour Mr Justice, *Report of the Royal Commission Into Drug Trafficking*, (N.S.W Government Printer, 1979)

Zahariadis, N, *The Multiple Streams Framework*, in (ed Sabatier, P, *Theories of the Policy Process*, Westview Press, 2nd Ed, U.S, 2007)

Zdenkowski, G, *Punishment Policy and Politics*, in (ed Laffin and Painter, M, *Reform and Reversal*, Macmillan, Impact, 1995)

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DEPARTMENT OF POLITICS AND INTERNATIONAL RELATIONS

TOPIC:

POLITICS AND THE PRESUMPTION IN FAVOUR OF BAIL.

CONSIDERATION OF ASPECTS OF THE BAIL ACT, N.S.W, 1978, IN THE PERIOD TO THE END OF 2008. DISCUSSION OF THE RELATIVE IMPORTANCE OF VARIOUS POLITICAL FACTORS THAT LED TO THE NEUTRALISATION OR REVERSAL OF THIS CONCEPT THAT IS ASSOCIATED WITH THE PRESUMPTION OF INNOCENCE.