Bail in Australia, the United Kingdom and Canada: Introduction

Most countries of the industrialised world have seen an unprecedented rise in their prison populations over the last decade or so. Indeed, many countries currently have the highest prison populations they have ever had, resulting in huge economic and human costs. In many countries the rising number of accused persons being remanded in custody has been a significant driver of the rising prison population. This special issue of Current Issues in Criminal Justice focuses primarily on the bail process in three common law countries, Australia, Canada and England and Wales. The individuals dealt with throughout the bail process are, in the main, legally innocent. Under international human rights law they should not be detained without good cause and only in limited circumstances. As Lord Hailsham said of the refusal of bail in England and Wales, it is 'the only example, in peacetime, where a man [sic] can be kept in confinement without a proper sentence following conviction after a proper trial' (quoted in Cavadino & Gibson 1993:69). Despite its centrality to assessments of freedom, fairness and democracy and its role as one of the main drivers of rising prison populations, bail decision-making is the 'Cinderella' of criminal justice, receiving very little political or academic attention. There is a paucity of published statistics and research on bail processes and remand populations in each of the three jurisdictions under scrutiny here, leaving large gaps in our knowledge of how and why systems operate in the way that they do, and how and why the drivers of prison remand populations affect corrections policy and practice generally.

This special issue attempts to draw together current research findings relating to the bail process from a number of perspectives. The various articles highlight divergences between jurisdictions. The most striking of these is that the prison remand population in England and Wales has been stable over the last five years and accounts for a decreasing proportion of the prison population. By contrast, prison remand populations are rising in Australia and Canada and in many other jurisdictions. The articles contained in the special issue also highlight the commonalities between the three countries. Firstly, and most strikingly, is the extent to which the law relating to bail has harmonised, serendipitously, across jurisdictions, giving supremacy to measures which tackle the problem of offending on bail and, in Australia at least, are designed to protect the public from accused persons while they await trial. For example, police have been observed to prefer arrest to proceeding by way of summons when the latter procedure could easily have been employed (see King et al., this volume). Indeed, focusing upon offending on bail has become the main preoccupation of bail authorities in most jurisdictions, replacing the historical focus on ensuring that defendants do not abscond and thus will appear for trial. The extent to which these developments have been independently driven or have resulted from policy transfer is uncertain. Secondly, the rise of risk aversion and risk management has created climates in most jurisdictions where the granting of bail is less likely, driving up prison remand populations in numbers and as a proportion of the prison population as a whole. It has also led to an increase in the use of restrictions on individuals whilst on bail in the community. In England and Wales, for example, the use of conditional bail has increased (see Hucklesby, this volume) and in Canada the use of sureties has risen and their role has been expanded (see Webster et al., this volume). Developments such as these result, potentially, in net-widening, increasing the reach and intensity of the criminal justice system. They also raise important challenges to the rights of legally innocent defendants which are rarely addressed by academic researchers and penal reform groups alike, arguably because of the pervasive

attitude that being released into the community, even under highly restrictive conditions, is better than being placed in custody. A third commonality between jurisdictions is the number of defendants who are remanded who could safely be granted bail if appropriate services and facilities were available, an issue highlighted by Katherine Boyle (this volume). The jurisdiction of England and Wales has been proactive in this regard, recently introducing a range of measures including bail support schemes and drug assessment and treatment services which are likely to have contributed to the stability of its prison population (see Hucklesby, this volume). However, such initiatives are often short-lived, because funding is short-term and open to the whims of political will and the constraints of the economic climate.

The similarities in the issues facing the countries represented in this volume demonstrate that comparative analysis of the remand process of common law countries is likely to lead to significant increases in our understanding of the operation of bail processes and the drivers (up and down) of prison remand populations. Whilst local contexts are important and raise specific challenges in different jurisdictions, comparative research is well placed to provide a greater understanding of how and why remand processes operate in the way that they do. To this end, we trust that the information and analysis in the pages that follow provide useful tools to distinguish between appropriate and inappropriate use of prison for defendants awaiting trial. Hopefully, policy-makers will benefit from this examination. It may even lead to reductions in prison remand populations.

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Reference

Cavadino P & Gibson B 1993 *Bail: The law, best practice and the debate* Waterside Press Winchester