

Contemporary Comments

*The Limited Benefit of Prison in Controlling Crime**

Introduction

A number of recent developments in the United State (US), United Kingdom (UK) and Australia suggest that conditions may be ripe for a political shift in the reliance on escalating rates of imprisonment as a default criminal justice strategy for responding to crime. The default position is illustrated by the Yabsleyite response of former New South Wales (NSW) Premier Nathan Rees's to questioning over the cost of prison building and NSW's high recidivism rate: '[t]he advice to me is we have still got 500 cells empty, I don't mind if we fill them up, and if we fill them up and have to build another jail, we'll build another jail' (Knox and Tadros 2008).

After three decades of rapidly increasing imprisonment rates across a number of countries and jurisdictions, albeit with considerable variations, there are signs that some politicians, and sections of the media and public, are tiring of the endless political bidding wars (Hogg and Brown 1998) over who is tougher on crime and the consequent 'arms race' involving ever-increasing public expenditure on prison building, at the expense of other forms of public investment such as schools, hospitals, public transport, welfare and rehabilitative services. The global financial crisis has sharpened the need to scrutinise all forms of public expenditure, especially in those countries embarking on cuts to public services. Feeding into this incipient mood change is increasing information and research on:

- the economic and social costs of imprisonment;
- the relationship between incarceration rates and crime rates; and
- the comparable benefits offered in terms of cost, crime prevention, public safety and reduction in recidivism through public investment in services and programs other than increasing rates of incarceration.

This brief comment is an attempt to summarise in an accessible, albeit truncated way, research on the second of these issues: the relationship between incarceration rates and crime rates. It also seeks to insert this discussion briefly into the wider context of the growing movement for a rethinking of the place of imprisonment in current criminal justice policy.

Signs of a shift: selected US imprisonment rate reductions

In the US, where the national imprisonment rate is the highest in the world at 756 per 100,000 population and the rate has increased fivefold since 1975 when it was 110, there is evidence in certain US states of reductions in imprisonment rates, spurred largely by fiscal

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concerns over the spiralling costs of penal expansion or by movements such as ‘justice reinvestment’. A recent Sentencing Project report, *Downscaling Prisons: Lessons from Four States* (Greene and Mauer 2010), noted that while there had been a 12% increase in the number of people incarcerated in state prisons in the US over the period 2000–08, four states had reduced their numbers. New York showed a 20% reduction between 1999–2009; Michigan a 12% reduction from 2006–09; New Jersey a 19% reduction from 1999–2009; and Kansas a 5% reduction from 2003–09. According to Greene and Mauer (2010:2): ‘[i]n 2008, the national total remained steady, and 20 states experienced a modest reduction in their populations that year’. The authors noted that ‘what is clear in each of these cases is that the reduction only came through conscious efforts to change policies and practices’ (Greene and Mauer 2010:2), before going on to discuss the factors contributing to reduced rates of incarceration in these states, including specific sentencing reforms, development of alternatives, reductions in the length of sentences, increasing parole release rates, and reductions in parole revocations.

Support for imprisonment reduction is coming from non-traditional sources such as business leaders. A Pew report, *Right Sizing Prisons: Business Leaders Make the Case for Corrections Reform*, quotes a number of US business leaders across various states ‘adding their voices to calls for more cost-effective ways to protect public safety and hold offenders accountable, while also providing the education and infrastructure they need for a thriving economy’ (Pew Center on the States 2010:1). The National Conference of State Legislators (NCSL) has been arguing for an extension of ‘earned time’, otherwise known as ‘remissions’, noting that ‘earned time provisions have seen recidivism rates remain unchanged or actually drop’ as a result of participation in prison programs (Lawrence 2009).

In another development, legislation in the form of a National Criminal Justice Act establishing a National Criminal Justice Commission is currently before the US House of Representatives and Senate. Its sponsor, Senator Jim Webb, has stated that:

We are wasting billions of dollars and diminishing millions of lives. We need to fix the system. Doing so will require a major nationwide recalculation of who goes to prison and for how long and how we address the long-term consequences of incarceration (Fisher 2010:1).

‘Justice reinvestment’

The ‘justice reinvestment’ movement is gaining traction in the US, UK and Australia. Justice reinvestment involves advancing ‘fiscally-sound, data driven criminal justice policies to break the cycle of recidivism, avert prison expenditures and make communities safer’ (Council of State Governments Justice Center 2010a). US state expenditure on corrections has risen from US\$12 billion to US\$52 billion over the 20-year period from 1988 to 2008 and it is estimated that half of those released from state prisons will be reincarcerated within three years (Council of State Governments Justice Center 2010b:1). The key strategy is the quantification of savings and subsequent reinvestment in high-stakes neighbourhoods to which ‘the majority of people released from prisons and jails return’, by, for example, redeveloping ‘abandoned housing and better coordinat[ing] such services as substance abuse and mental health treatment, job training, and education’ (Council of State Governments Justice Center 2010c).

The ‘justice reinvestment’ approach is an outgrowth of the ‘evidence-based public policy’ strategy. An example in the penal realm is the Washington State Legislature decision in 2005 that, in the light of the costs of a typical new prison of around US\$250 million per year plus annual operating costs of US\$5 million, it was important to identify ‘alternative “evidence-based” options that can: (a) reduce the future need for prison beds, (b) save money for state and local taxpayers, and (c) contribute to lower crime rates’ (Aos et al 2006:1). The Legislature directed the Washington State Institute for Public Policy (WSIPP) to examine possible options. The ensuing WSIPP Report based on detailed analysis of correctional programs showed reductions in recidivism up to 20% resulted from a range of programs less costly than prison (Aos et al 2006).¹ The Report argued that the adoption of particular ‘portfolios’ of such evidence-based options would avoid a ‘significant level of future prison construction’ saving taxpayers ‘about two billion [US] dollars’ and reducing crime rates (Aos et al 2006:1).

In the UK, the House of Commons Justice Committee released a report, *Cutting crime: the case for justice reinvestment*, which defined justice reinvestment as ‘approaches which channel resources on a geographically-targeted basis to reduce crimes which bring people into the criminal justice system and into prison in particular’ (House of Commons Justice Committee 2010:5). The Report argues that the criminal justice system ‘is facing a crisis of sustainability’ (House of Commons Justice Committee 2010:5), noting that ‘[t]he overall system seems to treat prison as a “free commodity” ... while other interventions, for example by local authorities and health trusts with their obligations to deal with problem communities, families and individuals, are subject to budgetary constraints and may not be available as an option for the courts to deploy’ (House of Commons Justice Committee 2010:6). The Justice Committee recommended capping the prison population at current levels, followed by phased reductions to two-thirds of the current population (House of Commons Justice Committee 2010:[321]) and a devolution of custodial budgets so that there is ‘a direct financial incentive for local agencies to spend money in ways which will reduce prison numbers’ (House of Commons Justice Committee 2010:[338]).

In Australia ‘justice reinvestment’ arguments are starting to gain some political traction through the work of pressure groups such as the Sydney-based Crime and Justice Reform Committee (CJRC) established by Hal Sperling QC, a retired NSW Supreme Court judge.² The Australian prison population has doubled since 1980 to a national imprisonment rate of 165.6 per 100,000 adults in 2008–09. NSW has nearly double the rate of imprisonment (184.8) of Victoria (103.6), with 57 custodial facilities compared with 14 in Victoria. In 2008–09 costs per prisoner per day were A\$205.94, and national operating expenditure and capital costs on prisons were A\$2.79 billion — A\$1 billion of it in NSW (CJRC 2010:1). The NSW Opposition’s Shadow Attorney-General, Greg Smith, has offered to declare a truce in the law and order ‘arms race’ in the lead-up the next state election (West 2009; Merritt 2010; Steketee 2010), although the offer was not taken up by the Labor Attorney-General, who preferred to run on the Government’s ‘tough-on-crime’ credentials

¹ A net value (the long-term benefit after deducting up-front costs of the program) ranging between US\$13,738 and US\$3,258 (in ascending order of value) was returned by: vocational education in prison; intensive supervision and treatment-oriented programs; basic education or post-secondary; cognitive behavioural therapy; drug treatment in the community; correctional industries in prison; drug treatment in prison; adult drug courts; employment and job training in the community; and sex offender treatment in prison with aftercare programs (Aos et al 2006:9).

² For the Charter of the CJRC and fact sheets see: <<http://www.crimeandjustice.org.au>>.

— a stance dating back to the mid-1980s. The NSW State Plan sets a specific target for the prison system: to ‘reduce the proportion of all offenders who re-offend within 24 months [of being convicted] by 10% by 2016’ (NSW Government 2010:55).

What such developments suggest is that the time may be right to achieve a significant shift in political approaches to the use of imprisonment. One component of such a shift is a research-based reconsideration of the taken-for-granted link between imprisonment rates and crime rates. The received wisdom on the link is exemplified by the claim of current NSW Attorney-General John Hatzistergos that NSW’s falling crime rates across many categories of crime are a result of the Labor Government’s ‘tough on crime policies’, including significantly increased imprisonment rates — ‘[w]e are taking more serious offenders off the street for longer and that means fewer criminals are posing a threat to the community and there are fewer opportunities to commit crimes’ (Steketee 2010). In short, if imprisonment rates go up, crime rates go down because ‘criminals’ are out of circulation. Interestingly, when crime rates were increasing during the 1980s and 1990s, governments, including the NSW Labor Government, generally sought to emphasise the complex relationship between imprisonment rates and crime rates, and the role of non criminal justice economic and social factors in producing crime rates. This latter analysis is closer to the mark, as we shall see.

Does incarceration of offenders increase or decrease crime?

The first thing to note is that research studies on the relationship between incarceration and crime are relatively few in number, especially in the Australian context, and that both the relationship itself (King et al 2005) and the methodology of research into it, are complex. A detailed comment on the methodological issues can be found in Spelman (2000; see also Weatherburn et al 2006a). Spelman (2000) categorises the main methodological difficulties as:

- ‘simultaneity’ (at the same time as prison is affecting crime, crime is affecting prison);
- left out variables;
- the difficulty of comparisons across jurisdictions as prisons may be being used differently (for example, by imprisoning wildly differing proportions of drug offenders); and
- measurement errors.

The two main measures that emerge from the studies are those of ‘elasticity’, that is the percentage change in crime rates associated with a 1% change in the prison population; and ‘marginal effectiveness’, which is the number of crimes prevented by putting one more offender in prison.

Spelman’s study involving a detailed review of all major previous studies, and including an examination of their methodologies, concluded that a 10% increase in imprisonment rates will produce at most a 2–4% decrease in crime rates (Spelman 2006:484) This estimate is now the most cited and tends to be accepted as a benchmark. In a 2006 report, the NSW Bureau of Crime Statistics and Research (NSW BOCSAR) calculated how much burglary might be prevented by the incarceration of offenders convicted of that crime (Weatherburn et al 2006a). The basic findings were that to get a 10% reduction in burglary rates through

imprisonment, we would need to increase the number of burglars imprisoned by 34% at a cost of A\$26 million per year (Weatherburn et al 2006a:2). The authors qualified their findings in a number of ways, including, significantly, that it did not take into account the potential effect of imprisonment as a factor that might itself result in an increase in criminal behaviour after the offender was released (Weatherburn et al 2006a:8–9). This is a significant omission that some of the more sophisticated US research is starting to examine further (for example, Pritikin 2008; Rose and Clear 1998; Mauer and Chesney-Lind 2002).

The potentially criminogenic effects of incarceration highlighted by researchers fall into three categories: the effects of incarceration itself; post-incarceration consequences; and third-party effects. The experience of incarceration includes: prisons as ‘schools of crime’ effects; the fracturing of family and community ties; hardening and brutalisation; and the deleterious effects of imprisonment on mental health. Post-incarceration crime-producing effects include: labeling; deskilling; reliance on criminal networks built up in prison; reduced employment opportunities; and reduced access to benefits and social programs. Third-party effects include crime-producing effects on families of offenders and their communities (Pritikin 2008; Daoust 2008).

Rose and Clear (1998:457) found that there may be a ‘tipping point’ in certain communities so that crime increased once incarceration reached a certain level. They argue that:

high rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up (Stemen 2007:6).

The Sentencing Project calculates that 60% of the US prison population is racial and ethnic minorities — with one-in-eight African-American males aged 20–29 years in prison at any one time (Sentencing Project 2010).

It seems likely that such effects apply in the Australian context, particularly amongst vulnerable populations and communities, such as Aboriginal communities and certain geographical or ‘postcode’ areas, where we may already have reached that ‘tipping point’ where excessive imprisonment rates are actually causing crime.

Indigenous Australians comprise one-in-four of the Australian prison population. Between 2000 and 2008 the imprisonment rate for Indigenous Australians increased by 34% — from a rate of 1,653 prisoners per 100,000 Indigenous adults to 2,223 per 100,000, seven times the increase of non-Indigenous adults (from 123 to 129 per 100,000 adult population). In 2000, Indigenous people were 13.5 times more likely to be incarcerated than non-Indigenous people and this rose to 17.2 times more likely in 2008 (Australian Institute of Criminology 2009). Fitzgerald (2009:1) found that the increase was even greater in NSW — at 48% — most of which was ‘due to increased severity by the criminal justice system’ and not to increased offending. Once age cohorts are taken into account, it is likely that one-in-five young Indigenous males are under some form of criminal justice supervision. A NSW BOCSAR study revealed the one-in-four young Indigenous men are being processed through the criminal justice system every year (Weatherburn et al 2003).

Such findings provide support for those who argue that the concept of ‘mass imprisonment’ (Garland 2001) applies to Indigenous Australians. Mass imprisonment refers

to a situation where imprisonment rates are far higher than the comparative and historical norm, and fall disproportionately on particular (often racial) groups, so that the effects cease to be explicable in terms of individual offending and involve whole communities. In this situation, imprisonment:

becomes part of the socialisation process. Every family, every householder, every individual in these neighbourhoods has direct personal knowledge of the prison –through a spouse, a child, a parent, a neighbor, a friend. Imprisonment ceases to be a fate of a few criminal individuals and becomes a shaping institution for whole sectors of the population (Garland 2001:5).

Michael Levy (2008) has noted that 20% of Aboriginal children have a parent or carer in prison. In these circumstances, imprisonment becomes ‘normalised’ and incarceration becomes one more contributor to social dysfunction, weakening communities and reducing the social capital and social solidarity that are the bedrock forces preventing crime.

An additional effect of such ‘normalisation’ is that the prospect of prison loses much of its supposed deterrent effect — becoming, instead, an inconvenient expectation, a ‘fact of life’ or even, on some accounts, a ‘rite of passage’. Blagg (2008:131) argues that ‘enclaves of domain’ — domain meaning ‘those spaces where the dominant languages, cultures, structures of sentiment and feeling are Aboriginal’ — may be built within prison. In the 20 years that the NSW prison population has increased from less than 4,000 to more than 10,000, the proportion of inmates serving a second or subsequent term has increased from 52% to 69% (Knox and Tadros 2008). It bears noting at this point that deterrence research generally suggests that deterrence is, in any event, an overrated notion — largely assumed, rather than proven. The research suggests that the likelihood of getting caught is the primary deterrent; that there may be some deterrent effect of imprisonment in relation to instrumental property crimes, but little if any in expressive crimes such as assault and other violent crime; and that the severity of punishment has no deterrent effect. On this last point, a NSW BOCSAR study found no evidence that full time imprisonment exerts a greater deterrent effect than a suspended sentence (Lulham et al 2009:1).

One widely accepted finding is that any crime-reduction effects of imprisonment are subject to diminishing returns. This is because high-rate serious offenders are more likely to have been arrested and imprisoned earlier on, so that as we send more people to prison, we include more and more lower rate offenders for committing less serious offences (Donahue and Siegelman 1998). A major US study found that over a 25-year period (1978–2004), the rate that incarceration reduced crime dropped fourfold between the first half of that period and the second (Johnson and Raphael 2006).

It appears from this brief review of the leading research that incarceration has, at best, a modest effect in reducing crime; that this crime-reduction effect diminishes over time the higher incarceration rates climb; and that in relation to particular communities and groups, such as African Americans in the US and Aborigines in Australia, it is likely to have a negative or crime-producing effect in the long term.

What other factors affect crime rates?

Crime rates have been dropping for many offences in Australia and NSW over the last decade. There are significant long-term downward trends in NSW in murder, robbery with a firearm, break and enter a dwelling and non-dwelling, and motor vehicle theft (Moffatt and

Goh 2010:1). Crime rates in the US are the lowest in 30 years, with total violent crime and property crime a half and a quarter, respectively, of 1973 levels (Bureau of Justice Statistics 2010). In the UK, household and violent crime rates are down by 46% and 43% respectively (House of Commons Justice Committee 2010:5).

Spelman calculated that only 25% of the US drop in crime rates could be explained through increased incarceration rates (Spelman 2006). The Vera Institute of Justice has examined criminological research into other factors contributing to the decrease in crime rates. Factors identified as contributing to decreased crime rates in the US included: fewer young people in the population; smaller urban populations; decreases in crack cocaine markets; lower unemployment rates; higher wages; more education and high school graduates; more police per capita; and more arrests for public order offences (Stemen 2007:9).

Some of these particular findings may be US-specific (for example, reductions in crack cocaine markets). However, it seems likely that some are more applicable to Australia, suggesting that politicians and policymakers have placed too much emphasis on prisons and that other forms of public investment may be both more effective and more cost effective in reducing crime.

A range of research from the NSW BOCSAR produced the following findings:

- a very strong positive relationship between criminal activity and the extent of long-term unemployment (Chapman et al 2002:1);
- a negative association between criminal activity and high school completions (Chapman et al 2002:1);
- dominant factors in reducing property crime rates appeared to be ‘a reduction in heroin use, rising average weekly earnings and falling long term unemployment’ (Weatherburn et al 2009:2); and
- Indigenous respondents to a National Aboriginal and Torres Strait Islander Social Survey (NATSISS) ‘were far more likely to have been charged with, or imprisoned for an offences if they abused drugs or alcohol, failed to complete year 12 or were unemployed. Participating in the Commonwealth Development Employment Scheme (CDEP) appears to reduce the risk of being charged (compared with being unemployed). Other factors that increase the risk of being charged or imprisoned include: experiencing financial stress, living in a crowded household and being a member of the “stolen generation”’ (Weatherburn et al 2006b:1).

Reformulating the key question

While US research is not necessarily directly applicable in the Australian context (where commitment to welfare and social democratic policies are stronger), and while extensive Australian research is lacking, an emerging view is that the impact of imprisonment on crime is limited and diminishing. Expenditure on imprisonment, especially in a time of reduced public expenditure, is often at the cost of spending on other areas such as education, employment programs, wages policy, welfare, rehabilitation and post-release services, which are likely to have greater crime-reduction effects at lower cost.

In a 2006 report, the NSW BOCSAR argued that ‘the relevant issue is not whether prison costs less money than it saves but whether it is the most cost effective way of bringing crime down’ (Weatherburn et al 2006a:9). Other NSW BOCSAR research has found that ‘modest reductions in the rate at which offenders are re-imprisoned would result in substantial savings in prisoner numbers and correctional outlays’ (Weatherburn et al 2009) and that participants in the NSW Drug Court were less likely to be reconvicted than offenders imprisoned (Weatherburn et al 2008:1).

As Spelman puts it: ‘[i]t is no longer sufficient, if it ever was, to demonstrate that prisons are better than nothing. Instead, they must be better than the next-best use of money’ (quoted in Stemen 2007:13). The Vera Institute of Justice puts it this way: ‘the pivotal question for policymakers is not “Does incarceration increase public safety?” but rather, “Is incarceration the most effective way to increase public safety?”’ (Stemen 2007:2).

Confronting limitations

It is not only the limited benefit of prison in controlling crime that requires recognition. It is also important to recognise the limitations that may affect the nature and extent of the postulated shift, suggested above, in political approaches to the use and costs of imprisonment. For it is only if these limitations are openly acknowledged, addressed and combated, that the potentialities in the current conjuncture can be fully realised. Some of the difficulties or limitations include:

- various problematic assumptions underlying the whole ‘evidence-based’ approach (Freiberg and Carson 2009; Hogg 2009);
- fiscal ‘rationality’ arguments do not necessarily trump emotive law and order policies that are electorally popular;
- given that punishment involves deeply-held emotions and has a strong expressive and symbolic character, evidence of the limited or counter-productive effects of imprisonment on recidivism, rehabilitation and deterrence does not directly confront imprisonment as retributive (Overington 2010);
- the limits of rationality are shown in studies where large sections of the public believe that crime rates are higher than ever, although they have been decreasing; and that judges are too lenient when sentences are considerably longer (Jones et al 2008; Judicial Commission of NSW 2010);
- there are dangers that cost-saving imperatives may feed into cuts to prison services and programs;
- it is one thing to ‘model’ targets for prison reduction and quite another to commit to and invest in the programs and sentencing changes that will bring them about;
- while there is an emerging political consensus in NSW that recidivism rates need to be lowered in order to reduce imprisonment rates, crime rates and correctional costs, there is very little political will at present to confront and wind back some of the key drivers of escalating imprisonment rates, such as the constant undermining of the presumption in favour of bail, which has led to nearly one-in-four prisoners being on remand — that is, unconvicted (Lulham and Fitzgerald 2008; Gibson 2010; SMH Editorial 2010). In addition, sentences for selected serious crimes have

been driven up by up to 60% due to a raft of sentencing changes such as the ‘truth in sentencing’ changes in 1989; guideline judgments; and, in particular, the introduction of standard non-parole periods (Judicial Commission of NSW 2010);

- individual politicians, such as NSW Shadow Attorney-General Greg Smith, may be broadly supportive of justice reinvestment approaches, but whether he can carry the Shadow Cabinet and likely future NSW Government, is another matter, as he openly acknowledges — ‘What I want to do and am allowed to do might be different questions’ (Steketee 2010).

The challenge is to situate cost-based arguments and ‘justice reinvestment’ concerns within a moral and political vision, to couch them in a language that connects with cultural imaginings concerning punishment — for punishment is nothing if not about the imagination, emotion, culture, symbolism, representation and pain. As Michelle Brown argues: ‘punishment constitutes one of the most precarious spaces of the human condition in its seductive invitation to rely upon the acts of others, both real and imagined, to justify our own infliction of pain rather than see our place in its problematic pursuit’ (Brown 2009:11). The developments sketched out briefly above are illustrative of an attempt to shift debate from the partisan politics of law and order and its assumption that the ‘toughest’ policies are automatically the most politically advantageous, to the ground of ‘the most effective use of scarce resources to reduce offending and re-offending’ (House of Commons Justice Committee 2010:[42]). Such a potential shift is a political development of some significance that requires both critical analysis and a political and ethical engagement with its strategies, policies and constituencies in order to secure the most favourable conditions under which to reduce incarceration rates, recidivism and crime.

Emeritus Professor David Brown

Faculty of Law, University of New South Wales

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