

Incarceration- refocussing the aims of an overcrowded and ineffective Australian prison system

Across Australia, the issue of incarceration has received one overarching bipartisan stance: to enforce a policy that is ‘tough on crime’. In doing so, government- adhering to populist demand- “abolished suspended jail sentences”, introducing “baseline sentencing... and mandatory jail terms for some offences”.¹ The result is an unprecedented prisoner population of 186 per 100,000 people, and an overall expenditure of \$942 million in 2014-15². As Australian Human Rights Commission President Gillian Triggs stated, rising prison populations are a “policy failure”³, symptomatic of entrenched flaws of the establishment: as recorded offences decrease in Victoria and New South Wales, imprisonment rates remain on the rise⁴, due significantly to harsher sentencing⁵. Disproportionate punishment, victimisation of disadvantaged populations, unnecessary spending—Australia’s response to crime has been vastly inadequate, pervaded with sanctions that fail to target the crux of the social issues upon which crime is predicated. To look to prison reform is to reinforce the role of rehabilitation within the justice system, amend current legislation on sentencing and remand, and establish a plan for justice reinvestment: all to develop a fundamentally fair and sustainable criminal justice system.

“You do the crime, you do the time”—such a maxim has frequently been touted by politicians to rally the support of the masses. Indeed, public opinion surveys conducted by the Sentencing Advisory Council indicate how incarceration is supported by the people, but shrouded by misconception: individuals tend to “perceive crime to be constantly increasing”, “under-estimate the severity of sentencing practices”, and “know little about sentencing alternatives and focus instead on imprisonment”⁶. In actuality, issues run rampant in Australia’s prison system; notably, implemented practices breach the United Nations’ “Mandela Rules”: solitary confinement is “increasingly used as a management tool”, and Bandyup Women’s Prison in Western Australia is overcrowded to such an extent that some women “are required to sleep on the floor of crammed cells”⁷. Meanwhile, women and those of low socioeconomic standing also continue to increase in commonality within Australian prison institutions⁸. The ‘cruel, inhuman and degrading’ treatment that prisoner populations suffer is a travesty of justice and dignity. Nowadays, the government prioritises short-term solutions, even as between 35 and 41 percent of prisoners will be re-imprisoned within two years of release⁹; on the other hand, very little has been done to reduce recidivism and reorient prisons towards a rehabilitative criminal justice system.

Australia should embark on three central avenues of change: firstly, a lesser focus on punitive justice, designating rehabilitation as the primary aim of incarceration; secondly, reform of current sentencing

¹ Barns, Greg, “The Libs’ tough-on-crime policies failed Victoria”, *The Age*, 8 December 2014

² Karvelas, Patricia, “Victoria’s tough on crime policy ‘seriously flawed’”, *The Australian*, 28 November 2014

³ Lavoipierre, Angela, “Rising NSW prison population a result of ‘policy failure’: Gillian Triggs”, *ABC News*, 1 February 2016

⁴ “Value of a justice reinvestment approach to criminal justice in Australia”, *Parliament of Australia*, June 2013, Chapter 2

⁵ Bourke, Emily, “Time for prison reform across Australian states”, *ABC*, 25 May 2012

⁶ “Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing”, *Sentencing Advisory Council Victoria*, July 2006

⁷ Barson, Ruth, “Australian prisons need to improve to measure up to the UN’s Mandela Rules”, *The Sydney Morning Herald*, 29 October 2015

⁸ Rubinsztein-Dunlop, Sean, “Australia’s prison system overcrowded to bursting point with more than 33,000 people in jail”, *ABC News*, 3 July 2014

⁹ Payne, Jason, “Recidivism in Australia: findings and future research”, *Australian Institute of Criminology*, 2007, p. xi

legislation; and thirdly, establishment of justice reinvestment to effect long-term improvements in crime rates.

Prison's primary objective should be to rehabilitate, not to punish. In restorative justice programs such as victim-offender mediation, conferencing and circle sentencing, key stakeholders can address the underlying causes of criminal behaviour, and develop solutions that can empower and heal victims, offenders and community members.¹⁰ The outcome of a NSW Circle Sentencing case demonstrated how an Aboriginal man was able to take correct medication, serve his sentence and maintain contact with elders to appreciate his culture and pave a path to productive reintegration through restorative justice.¹¹ Recidivism and incarceration rates will only decline when the primary objective of a traditional prison system is subverted in favour of a reparative aim, and funds are channelled into rehabilitative programs. One former prisoner- 'Anna' - stated that she had waited many months for access to mental health services¹². Without responding to the needs of prisoners, crimes associated with drugs, alcohol or mental health difficulty are left unchecked, and recidivism rates increase; a proper rehabilitative program accommodates for remorse and factors associated with crime to best prepare for reintegration. Society must be educated to understand that most crimes are sourced from a coalescence of factors and circumstances; certain major influences can be addressed to prevent reoffending.

Expensive mandatory sentencing¹³ and harsh penalties on non-violent offences have ultimately culminated in the proliferation of Australian inmates. Current mandatory sentencing laws include coverage of crimes such as aggravated offences, weapon trafficking and burglary¹⁴, enforcing a minimum sentence for certain crimes. Yet even as property crime went up under Northern Territory mandatory sentencing legislation and went down after it was repealed¹⁵, many states still choose to retain these controversial and ineffective laws. These governmental legislative interventions limit a judge's discretionary power to evaluate the influence of a case's mitigating circumstances¹⁶, disproportionately targeting the Indigenous and the juvenile: Indigenous representation constitutes 27% of prisoners in comparison to only 2.5% of the total Australian population¹⁷, and young offenders are less likely to be offered a plea bargain in cases with mandatory penalties¹⁸. Many studies in fact demonstrate that there is "no clear correlation between sanction severity and levels of offending"¹⁹. Australian states must push for abolition of mandatory sentencing, and allow the judiciary full discretion over a case. Working in conjunction with rehabilitation programs, the funds saved from sentencing excess should be redirected into providing health services, programs for education and work, educating prosecutors, and improving bail conditions for marginalised groups to minimise use of remand²⁰. Doing so will address two key points of incarceration: an individual's first interaction with the criminal justice system, and ideally their last.

¹⁰ Ibid, p. 16

¹¹ Ibid

¹² Carrick, Damien, "Rehabilitation and prisoners' rights", *ABC*, 21 July 2015

¹³ Roche, Declan, "Mandatory Sentencing", *Australian Institute of Criminology*, December 1999

¹⁴ "Current Mandatory Sentences Laws", *Law Council of Australia*

¹⁵ "Mandatory sentencing: does it reduce crime?", *ABC News*, 5 February 2014

¹⁶ Tubex, Hilde, "Mandatory sentencing leads to unjust, unfair outcomes – it doesn't make us safe", *The Conversation*, 5 January 2016

¹⁷ Ibid

¹⁸ Hoel, Adrian; Gelb, Karen, "Sentencing Matters: Mandatory Sentencing", *Sentencing Advisory Council Victoria*, August 2008, p. 18

¹⁹ "Mandatory sentencing: does it reduce crime?", *ABC News*, 5 February 2014

²⁰ "Bail", *Victorian Law Reform Commission*, November 2004, Chapter 11

Our current legal system is not only damaging to prisoners, but damaging on the economy. A scheme of justice reinvestment redirects the excess budget allocated to prisons to community-based initiatives. It costs approximately \$98,000 to house one prisoner for a year, and \$500,000 per prison bed in construction cost²¹. Understanding the importance of both rehabilitation and lighter sentencing legislation, Australia must advocate for the reallocation of funds sourced from reducing prisoner populations to community improvement; 1,000 people diverted results in \$598 million in savings.²² By systematically targeting marginalised groups through funding substance abuse programs, education opportunities and halfway houses, money is properly assigned to programs that address the fundamental catalysts of crime²³. To alleviate strain on the community and the economy while reducing recidivism and forging solutions *in futuro*, Australia must shift to a long-term approach, embracing the implementation of new programs targeting change in all stages of the criminal process, not just stagnancy and short-term deterrence.

Contrariwise, critics in opposition to an ideological shift discuss the effect of crime on victims and the community as a reason for a harsher system. In 2014, a survey showed that 9 out of 10 respondents wanted stronger penalties for alcohol-related violence, and politicians continue to accordingly present hardline approaches to crime in adherence with public views²⁴. In the past, issues of lenient sentencing have been illuminated: the case of Brodie Panlock, for example, illustrate how lenient sentencing can fail to provide adequate recompense for victims of crime and their families—significant public backlash escalated after four men bullying a 19 year-old to the point of suicide received a fine as punishment²⁵. The subsequent parliamentary decision enacting laws to enforce jail sentences on bullying demonstrate how deterrence and protection are still significant aims of criminal justice. This case is one of many which highlight an unjust sentence for men of privileged socioeconomic standing, unable to be easily helped by rehabilitation programs. However- while it is true that protection of the community is important- the best way to do so is to prevent reoffending through a methodical program for change—sanctions should deter, but also transcend this base purpose to further the agenda for long-term improvement. In order to address incarceration on a holistic basis, where disadvantage and injustice remains prevalent, society should look to appropriate punishment—not sentencing disproportionate to the crime. According to one study, a quarter of Australian prisoners come from 2% of postcodes²⁶. Furthermore, seven years of data from the Victorian Magistrates’ Court system found that “people who were jailed were more likely to re-offend than those who received fines or suspended sentences”—incarceration is in no way an effective deterrent²⁷. As former Supreme Court Judge Christine Wheeler QC stated, “Deterrence works for people like you and me, who think about consequences...It doesn’t work for drug addicts, it doesn’t work for alcoholics, it doesn’t work for people who are mentally ill”²⁸. Crime rates are reducing and incarceration should subsequently decline.

²¹ Schwartz, “Building Communities not Prisons: Justice Reinvestment and Indigenous Over-Imprisonment”, *Australian Indigenous Law Review*, 2010

²² “Justice reinvestment: investing in communities not prisons”, *Smart Justice*, 16 April 2012, updated 2 July 2015

²³ “Value of a justice reinvestment approach to criminal justice in Australia”, *Parliament of Australia*, June 2013, Chapter 6

²⁴ Saulwick, Jacob, “The verdict: tougher laws on crime can be expensive”, *The Sydney Morning Herald*, 25 January 2014

²⁵ “Men who tormented suicide waitress Brodie Panlock fined”, *News.com.au*, 8 February 2010

²⁶ “Justice reinvestment: investing in communities not prisons”, *Smart Justice*, 16 April 2012, updated 2 July 2015

²⁷ Carbonell, Rachel, “Prison study shows jail not an effective deterrent”, *ABC*, 4 June 2013

²⁸ Rubinsztein-Dunlop, Sean, “Australia’s prison system overcrowded to bursting point with more than 33,000 people in jail”, *ABC News*, 3 July 2014

There are challenges to implementation of change—a lack of bipartisan support for justice reinvestment and public perception²⁹ - as well as criminal justice being an exclusively residual power- all form significant setbacks. Regardless, the economic rationalism of justice reinvestment should provide an incentive for each state government to at least trial pilot programs in Australia³⁰, simultaneously developing public education of the realities of incarceration and crime. Though there has been some evidence for effective mandatory sentencing in Western Australia, it is not sufficient to substantiate the methods presently enforced, which contribute to discrimination and overcrowding in the prison system, while also undermining the separation of powers and influencing future prospects for prisoners.

Legislative change does not have to be immediate, but it must occur for the eradication of a prison system which fails to deter crime and damages all parties involved within the criminal process. Prisons continue to be a burden on the economy and the people. Men, women, and children continue to be denied the chance to rehabilitate and reintegrate as citizens of society. Australia has an opportunity; Australia has a choice: to remain with ineffective deterrence systems that unfairly target the disadvantaged, or to further invest in humanitarian rehabilitation, abolish mandatory sentencing, and allow Australian prisons to deliver lasting solutions.

Word Count: 1991

²⁹ “Value of a justice reinvestment approach to criminal justice in Australia”, *Parliament of Australia*, June 2013, Chapter 7

³⁰ Youth Justice Advisory Committee, *Submission 125*, p. 4