

The Importance of Political Will in the Imprisonment Debate

Abstract

Prisons are very expensive institutions. They disproportionately affect Indigenous Australians and other disadvantaged groups. They drive a massive wedge into the social fabric and have limited impact on crime rates and re-offending. Yet, as the rates and numbers show, we are turning to them to an increasing degree to 'solve' our law and order problems. Why might this be the case? Can and should we attempt to reverse the trend? Is it appropriate and possible for governments, in their quest to control crime and victimisation, to put in place policies designed to lower, rather than raise, imprisonment rates? Can they do so without jeopardising their popularity at the polls? This comment attempts some answers to these questions.

Introduction

About ten per cent of Australia's national budget expenditures are concerned with 'public order and safety'. One would have thought that this level of resource allocation would have ensured widespread debate concerning the most cost-effective and productive means to police and punish anti-social activity and crime. Sadly, the justice 'debate' is usually facile and shallow, based upon the major political parties setting out their 'tough on crime' credentials. Thus, political 'justice' promises are typically narrowly focused, centred on more laws, more police, less discretion in the hands of those charged with the task of sentencing, longer sentences and more prison beds. Opposition parties rarely argue against these promises, lest they be targeted as 'soft on crime' and thereby place their political survival in jeopardy. It is very unusual to find informed discussion concerning alternative policy options that may better address crime and justice concerns and that may allow the public dollar to be spent more effectively. This is a political disconnect of major proportions, and a very costly one at that. What makes this situation even more regrettable is that there is an abundant and growing body of cross-disciplinary research evidence that highlights successful crime reduction initiatives that do not involve a highly punitive approach. This comment explores this political disconnect, and considers some of the policy alternatives. It posits, amongst other things, that a high imprisonment rate is a failure of policy, and should not be touted by governments as some sort of badge of honour. A high imprisonment rate, contrary to the view often presented by governments, does not necessarily lead to lower crime rates. The evidence shows that there is nothing mutually exclusive about a low imprisonment rate and low levels of crime. The comment concludes that policy-makers who pursue both aims are capable of satisfying the concerns of voters generally and victims of crime more specifically.

Imprisonment Rates

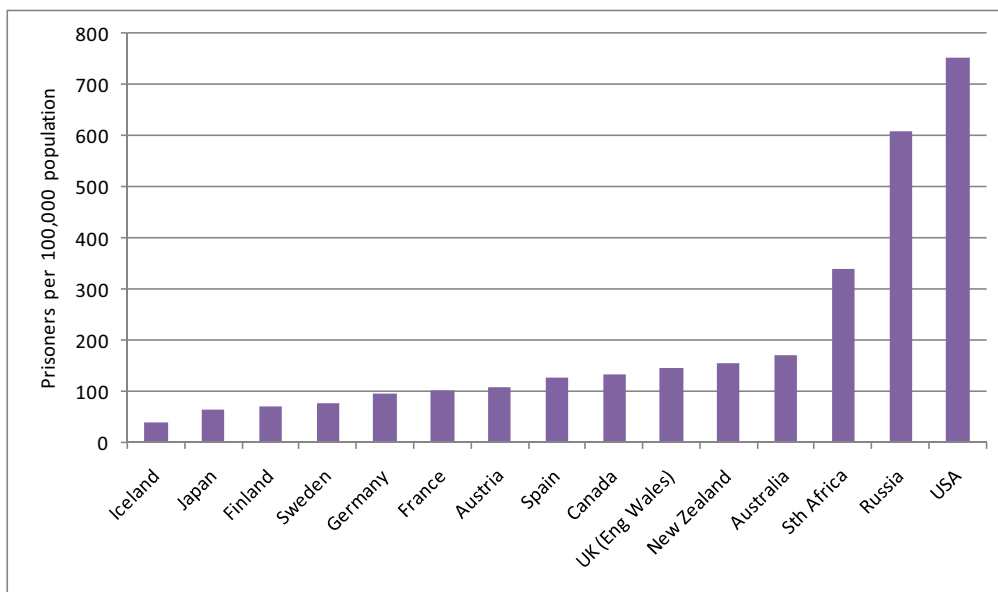
In 1973, the First Report of the Criminal Law and Penal Methods Reform Committee of South Australia was released by its authors, Justice Roma Mitchell, Professor Colin Howard

and Mr David Biles. In that document, the authors remarked that ‘[t]he object of modern sentencing policy ... is not on sending offenders to prison but wherever possible on keeping them out of prison’ (South Australia 1973:164).

Notwithstanding the zeal of these authors, the drive to reduce the numbers of offenders sent to prison has since waned considerably, especially in the last decade. In 1998 there were just over 18,000 adult inmates in Australian prisons. By 30 June 2008 there were some 27,600 prisoners, or a 50 per cent growth over that period. This rate of growth is around four times that of the Australian adult population generally (King et al. 2008). About 47 per cent of all sentenced prisoners are there for crimes of violence. Property offenders make up around 20 per cent of prisoners, and the remaining 33 per cent have been convicted of other offences (AIC 2007).

Currently Australia’s imprisonment rate is 169 per 100,000 population. While this rate compares favourably with the USA at 751 per 100,000, it well exceeds the rate found across Scandinavia, Western Europe, Canada, England and Wales and New Zealand (Aebi & Delgrande 2007) (see Figure 1).

Figure 1: Imprisonment Rates per Selected World Nations 2007

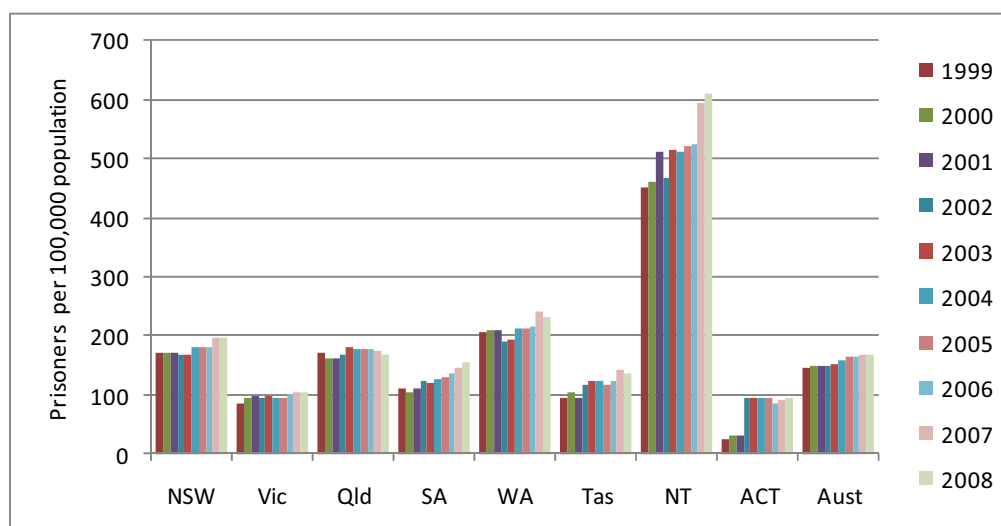


While it is tempting to smirk at the astonishing US imprisonment rate, one should not forget that in Australia we have a segment of our population that finds itself in custody at a far greater rate. At 30 June 2008, the age standardised imprisonment rate for Indigenous prisoners was more than double the US rate, at 1,769 per 100,000 adult Indigenous population. Indeed, Indigenous persons are 13 times more likely than non-Indigenous persons to be in custody (ABS 2008a). In Western Australia, Indigenous offenders are (on 2008 figures) 20 times more likely to be in prison than non-Indigenous persons, the highest

ratio in Australia. While 2 per cent of the Australian population identifies as Indigenous, around a quarter of the Australian prison population consists of Indigenous prisoners (ABS 2008a). This compares with 14 per cent of the Australian prison population at the time of the Royal Commission into Aboriginal Deaths in Custody in 1991 (Johnston 1991). In July 2004, it was reported that Indigenous people aged 18 years and over in Australia suffer twice the victimisation of non-Indigenous Australians (Sarre 2005).

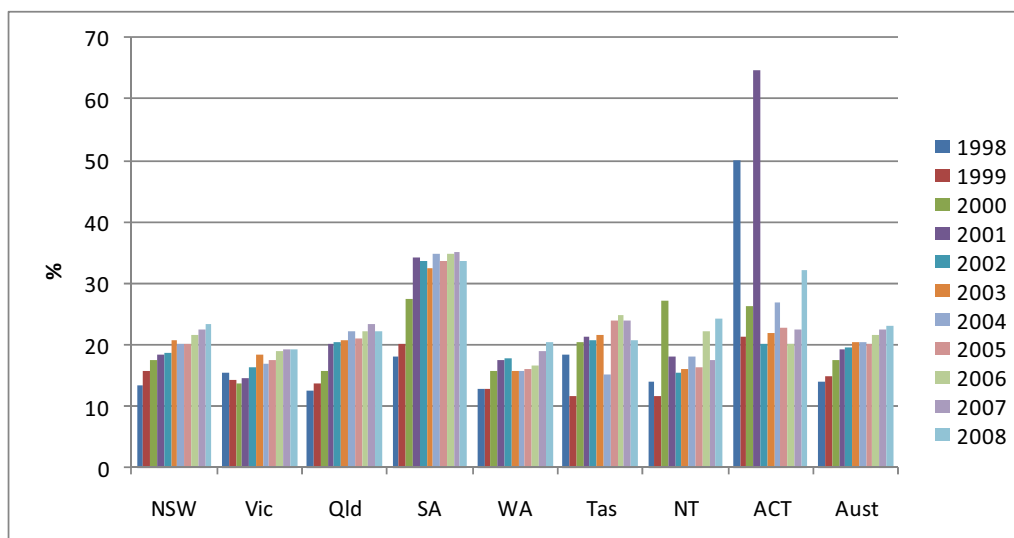
Currently Victoria boasts the lowest rate of imprisonment, a rate that is 20% lower than the South Australian rate. The Queensland imprisonment rate is over 50% higher than the Victorian rate. The NSW rate is almost double the Victorian rate (see Figure 2).

Figure 2: Imprisonment Rates per Australian Jurisdiction 1999-2008



Source: ABS Prisoners in Australia 4517.0 1999-2008

Moreover, an increasing number of Australians are remanded in custody, awaiting trial. The proportion of the Australian prisoner population who are unsentenced has increased from 12.6% in 1996 to 23% at 30 June 2008 (ABS 2008a). That is, almost one in four Australian prisoners has yet to be found guilty of the offence for which they were charged. South Australia continues to have the highest remand rate of all the States (Sarre et al 2006; King et al. this volume) and the highest proportion of unsentenced prisoners, around 33% (ABS 2008b: Tables 6A.34 and 6A.35) (see Figure 3).

Figure 3: Remand Proportions per Australian Jurisdiction 1998-2008

Source: ABS Prisoners in Australia 4517.0 1999-2008

Imprisonment and Crime Reduction: Is There a Link?

Some parliamentarians have sought to link higher rates of imprisonment with falling crime rates. Are these claims supported by the evidence? According to the ABS Recorded Crime data, there is something of a correlation; the numbers of victims recorded by Australian police are declining generally in many offence categories. Property crime provides a useful starting point. Victimization rates for unlawful entry with intent (UEWI) are lamentable. On 2005 figures, an UEWI occurs at the rate of 33 per hour across Australia. But fortunately it is in long term decline. In 2006 there were 261,895 recorded victims of an UEWI, a decline of 8% from the previous year (AIC 2007).

From 2001 to 2006, motor vehicle theft (MVT) decreased by 46%. The total decline of 'other theft' (about 60% of all property crime) from 2001 to 2006 was some 26%, from 700,137 to 517,492 victims. The overall trend in fraud over the 11 years from 1995 to 2005 has been stable, although the recorded fraud rate for 2005 was the lowest recorded in that period. Over the last decade there has been an overall decline in arrests for drug offences of some 22% (AIC 2007).

But anyone who claims that prisons can take the credit for these lower crime rates may find it difficult to explain away a disturbing rise in violent crime. Assaults recorded by police show a steady increase of 50% between 1996 and 2006, with over 170,000 reported assaults now occurring in Australia each year. Trends in the rate of recorded sexual assault display a steady incline too, namely an increase of 4% every year since 1995. While there was a slight decline between 2004 and 2005 (from 92 assaults per 100,000 population to 89 per 100,000 population), there was an upward trend again in 2006 to over 18,000 reported incidents that year (AIC 2007). For both assault and sexual assault, the rate of increase is

greater for children aged less than 15 years, with increases almost double those of the older age group (Bricknell 2008).

The rate for robbery peaked in 2001. Following a subsequent decline, the rate has levelled out to 84 per 100,000 in 2006 (some 17,000 robberies per year). Armed robbery has declined by some 30% since the 1990s.

The homicide rate remains stable at around 1.5 per 100,000 population, with the number of murders in 2004 the lowest figure since 1993. Unfortunately, in 2006, the number of homicides rose above 300 again, to 319 for the year (AIC 2007).

These trends appear, then, to move in a variety of directions. Thus, any attempt to suggest that there are correlations between rising imprisonment rates and falling crime rates is fraught with danger. By way of further example, in 2005 Victoria had the lowest rate in Australia of victimisation of personal crimes (Productivity Commission 2008: Figure 6.16). Its robbery victimisation rate is half the national rate (Productivity Commission 2008: Figure 6.20). Yet, as noted above, it has the lowest imprisonment rate of all of the States.

It is certainly the case that fewer crimes can be committed while particular offenders (especially serial offenders) are behind bars. There are costs, however, associated with putting all (or most of) the crime reduction 'eggs' in this basket. Australia spends about \$1.786 billion annually on corrections, and \$68,291 was spent for every prisoner in Australia in the financial year 2006-07 (Productivity Commission 2008: Figure 8A.9). This represents about 22% of expenditures by government on 'justice' related services. Most prisoners will be released eventually, and there is research evidence to suggest that the prison experience does not change ex-felons' offending patterns. Indeed, 55% of all prisoners in adult custody at 30 June 2008 had served a sentence in an adult prison prior to that episode (ABS 2008a).

There is also a very high opportunity cost. Every dollar spent on a custodial option is potentially a lost dollar that could have been spent on programs that support pre- and post-release services including employment initiatives, Indigenous capacity-building, drug treatment, family counselling and especial care for 'at risk' groups. Intriguingly, governments do spend significant amounts of money on programs that could be identified under the rubric 'social crime prevention', but they dare not breathe a word that taxpayer money is being spent on those whom many would class as the 'undeserving' lest they suffer at the polls. Their fear is probably unfounded. The most recent Survey of Social Attitudes indicated that the proportion of Australians who agree that stiffer sentences are needed in order to fight crime is on the gradual decline, from a peak of 84.8% in 1987 to 71.7% in 2007 (Roberts & Indermaur 2009).

The Challenge

What steps are required to change the current mindset?

1. Opposition spokespersons need to open up a debate rather than be Tweedledee to the government's Tweedledum. When the South Australian Deputy Premier Kevin Foley made his well publicised remark in the State Parliament in May 2008 that the Labor Government was prepared, with reference to high prisoner numbers, to 'rack 'em, pack 'em and stack 'em', the then Opposition leader Martin Hamilton-Smith called him a 'bully' and pointed to Mr Foley's apparent 'about face' on the issue, given public statements that Mr Foley had

previously made. There was no mention, however, by Mr Hamilton-Smith of a report authored in 2007 by the Human Rights Committee of the Law Society of South Australia that had alleged that South Australia was in breach of the Standard Minimum Rules (International Guidelines) on prisoner management and overcrowding (Niarchos 2008). There was, indeed, no pressure on the government at all. Having a timid Opposition does not make for good policy-making.

2. We need to challenge the assumption that punitiveness is what citizens want. The evidence is there that, when given the right information, the population is not as punitive or vindictive as our political leaders might think or fear. In a pioneering study conducted over 25 years ago in Canada by Tony Doob and Julian Roberts, volunteers were asked to consider a sentence given to an offender convicted of manslaughter on the basis of a brief news report; 85% said it was too lenient. When participants were then given all of the information that was available to the judge, only 15% said it was too lenient. In fact, 45% now said it was too tough (Doob & Roberts 1983). These findings have been corroborated by studies done in Victoria by Karen Gelb and the Sentencing Advisory Council (SAC) in 2006. When asked a simple abstract question, people believe that sentences are too lenient. But when given more information about the crime or about the offender, people's levels of punitiveness drop dramatically. In a 2008 follow up study, the researchers concluded that, when given more information, people are willing to accept alternatives to imprisonment, and victims of crime are no more punitive than others (Gelb & Sentencing Advisory Council 2008). In another Australian study, Austin Lovegrove surveyed employees in 32 workplaces in Victoria, asking them to suggest criminal sentences across a range of cases. In three of four cases the median sentence imposed by the participants was less than the one handed down by the judge. His conclusion was that citizens who are fully informed about the sentences that are handed down in criminal cases are likely to be relatively content with those sentences (Lovegrove 2007).

3. Policy-makers need to drive home the argument that a safe community is one that is built on trust, equality of opportunity and social capital, not one where social misfits are locked away in disproportionate numbers. It is undeniable that in our prisons we find principally those who are economically marginalised and facing labour market uncertainty, who live under the influence of drugs, poor education or mental illness. For example, in a study of NSW prisoners published in 2007, researchers found 46% with a mental disorder, 55% with a substance abuse disorder and 41% with a personality disorder (Butler et al. 2007). Mental health is not the only concern. Nationally, 35% of prisoners are hepatitis C positive (Butler & Papanastasiou 2008). As a priority, governments should be providing a full suite of health services in custodial settings, particularly targeting mental health. The legislation required to make that happen needs to be overhauled immediately (Howells et al. 2004).

Conclusion

Prisons provide some deterrent effect on crime, and there is certainly a short term incapacitative effect, but an over-reliance upon prison as a crime reduction strategy comes at a significant financial cost, is not consistent across offences nor jurisdictions and is often inequitable. The high rate of imprisonment of Indigenous Australians does not have an obvious dividend of crime reduction in Indigenous communities.

Governments (and oppositions) of all persuasions usually remain quiet on these issues because they are unsure about whether touting social initiatives (as opposed to their law and order credentials) will jeopardise their political survival. To that extent we, as citizens, and academics in particular (Graycar 2006), need to challenge more boldly the lack of commitment of governments to debate 'justice' alternatives. We need to tell governments that they *can* build long term social investment into criminal justice policy-making without risking electoral backlash.

It is not beyond the wit of modern societies to find effective strategies to combat the scourge of crime, to protect victims, to stop victimisation, and to stem the tide of angry and disillusioned young people who keep coming to the attention of police. That will not happen without well informed debates free from the politics of 'law and order' populism. There is every reason to suspect that the community is ready for such debates and will not punish at the polls any party brave enough to raise them.

Rick Sarre

School of Commerce, University of South Australia

References

- ABS 2008a *4517.0 Prisoners in Australia* Australian Bureau of Statistics Canberra
- ABS 2008b *4509.0 Crime and Safety* Australian Bureau of Statistics Canberra
- Aebi M & Delgrande N 2007 *Council of Europe Annual Penal Statistics 2006* SPACE-1
- AIC 2007 *Australian Crime: Facts and Figures* Australian Institute of Criminology Canberra <www.aic.gov.au/publications/facts/>
- Bricknell S 2008 'Trends in Violent Crime' *Trends and Issues in Crime and Criminal Justice* No 359 Australian Institute of Criminology Canberra pp 1-6
- Butler TG & Papanastasiou C 2008 *National Prison Entrants' Bloodborne Virus & Risk Behaviour Survey Report 2004 & 2007* National Drug Research Institute (Curtin University) & National Centre in HIV Epidemiology and Clinical Research (University of New South Wales)
- Butler T, Allnut S, Kariminia A & Cain D 2007 *Australian and New Zealand Journal of Psychiatry* vol 39 pp 407-413
- Doob A & Roberts J 1983 *An analysis of the public's view of sentencing* A report to the Department of Justice Department of Justice, Ottawa, Canada
- Gelb K & Sentencing Advisory Council (Vic) 2008 *Myths and Misconceptions: Public Opinion versus Public Judgment about Sentencing* Report <www.sentencingcouncil.vic.gov.au/>
- Graycar A 2006 'Public Policy: Core Business and By-Products' *Public Administration Today* IPAA, July-September, pp 6-10

- Howells K, Heseltine K, Sarre R, Davey L & Day A 2004 Report to the Criminology Research Council, *Correctional Offender Rehabilitation Programs: The National Picture in Australia* (May 2004) <www.aic.gov.au/crc/reports/200203-04.html>
- Johnston E 1991 Royal Commission into Aboriginal Deaths in Custody National Report AGPS Canberra
- King S, Bamford D & Sarre R 2008 'The Remand Strategy: assessing outcomes' *Current Issues in Criminal Justice* vol 19 no 3 pp 327-344
- Lovegrove A 2007 'Public Opinion, Sentencing and Lenience: An Empirical Study Involving Judges Consulting the Community' *Criminal Law Review* vol 9 no 4 pp 769-781
- Niarchos N 2008 'The State of Prisons in South Australia: A Systemic Failure' *Law Society Bulletin* vol 30 no 1 pp 14-18 (Part 1), vol 30 no 2 pp 24-28 (Part 2) and vol 30 no 3 pp 12-14 (Part 3)
- Productivity Commission 2008 *Report on Government Services* Australian Government Canberra
- Roberts L & Indermaur D 2009 'What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes' *Research and Public Policy Series* No 101 Australian Institute of Criminology Canberra
- Sarre R 2005 'Police and the Public: Some observations on policing and Indigenous Australians' Contemporary Comment, *Current Issues in Criminal Justice* vol 17 no 2 pp 305-313
- Sarre R, King S & Bamford D 2006 'Remand in Custody: Critical factors and key issues' *Trends and Issues in Crime and Criminal Justice* No 310 Australian Institute of Criminology pp 1-6
- South Australia 1973 *First Report of the Criminal Law and Penal Methods Reform Committee of SA* Government of South Australia: Government Printer