



# IMPRISONMENT — USE, ABUSE AND COSTS

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## INTRODUCTION

If crime persists in challenging our ingenuity and in frustrating our best efforts to control it, this is partly because we continue to disown it as a normal feature of our social life. If crime really means all transgressions of the law and if we make a habit of enacting several hundred brand new statutes every year, then it follows that there has to be more than a little crime in the best of us. Even those horrible crimes that we would all totally repudiate, seem to provide some vicarious satisfaction for our baser instincts or suppressed desires. Why else would they continue to sell newspapers, make fortunes for the authors and publishers of crime fiction or induce advertisers to sponsor violence and gore during TV's prime viewing time.

Acknowledging our involvement, however, does not mean that we have to tolerate the serious crimes in our midst or condone outrageous behaviour. It does mean that we have to stop thinking that it will all go away if we are tough enough with our offenders or sufficiently indulgent. It does mean that we should suspect the simple remedies often advanced. It does mean we have to forego any dreams we may have entertained of crimeless societies, where people are free but always law abiding. It does mean that we have to understand why so much of our crime prevention seems like shadow boxing. In a way it is looking at ourselves in a glass darkly; for crime is the shadow of our civilisation; and it is as futile to think we can escape as it is irresponsible to allow that shadow to become the very substance of our existence. The shadow we obviously carry with us — and have down from time immemorial: but we do not have to live in its gloom.

If the criminals inside our penal institutions look very much like the people outside we should not be surprised. There is now a great deal known, from victimisation surveys,

about the "dark figure" for crime i.e. about that majority of crimes which is never detected, discovered or brought to official notice, about that submerged mass of the criminal iceberg beneath the visible tip which occupies our police, our courts and our prisons. In a real sense it can be alleged that those now inside constitute the inefficient, unsabtle or unlucky fraction of our criminal community which is processed and convicted. And, human nature being so prevalent, we should not be quite as incredulous as we often are about police forces that need policing, about correctional systems which themselves need correction or perhaps about self-centred, unthinking communities which still imagine that they can get rid of crime by paying rather than caring. After all, whether we call it perversity, the id or simply our criminal nature we are all still struggling with original sin. And the community that tries to buy itself out of involvement with crime prevention by employing specialists in law enforcement, might be well advised to investigate the sources of its own funds.

In our value divided society, we will argue anyway about what exactly the criminal law should cover. In our democratic society we virtually exult in our preference for more liberty than order. In this we tend to conveniently forget that crime is one of the basic costs of freedom. Just as the Almighty risked sin when he endowed Adam with the freedom to choose, so is crime the risk which democracy implies. This becomes obvious in our own times in the misgivings we have about genetic engineering and our suspicion of terms like "behaviour modification". In this age of advanced technology there is really no secret at all about efficient crime control. Without the extremes of a police state, or the nationwide control of all movement, it is possible to regulate human behaviour with a variety of wonder-drugs and to maintain surveillance by electronics. Indeed, we may soon be able to actually clone, for posterity, the law-abiding individuals it will need for an improved society. We could do it. We do not do it — and we do not want to do it, because we are more concerned with human rights and personal dignity than with crime control.

Short of such extremes of efficiency unqualified by justice and rights the governments are left to select the

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appropriate balance within the restraints of the funds available. They have to determine priorities and they are not helped at all by the condensation of the balancing process into slogans like "longer sentences", "rehabilitation", "doing justice" none of which reflect adequately the complexity of the problem, none of which take into account the way in which society really casts its own crime shadows.

### Imprisonment in the U.S. and the U.K.

In no area of the criminal justice system do the slogans affect policy more than in corrections — and especially in the use of imprisonment. When people are outraged by crime or criminals they want to "lock them up the throw the key away". Others are more outraged by the caging of human beings and demand a moratorium on prison building.

As usual, it is the United States which provides the example of a paradox which may be infecting Australia. During the self same decade that Martinson's "Nothing Works" gained national prominence (1) and the prison system was being castigated as a grim, odious and expensive failure, the American public was becoming impatient with the "bleeding hearts" who sympathised with criminals and developing a nausea for the soft options provided for offenders. So with all the pundits condemning the futility of imprisonment, the rate of imprisonment actually increased apased — and it continues to rise. (2)

In New York where, in 1971, the American Friends Service Committee reversed all previous Quaker interest in penal reform and went over to the critics of the system they had been so instrumental in developing, there is so much more imprisonment taking place, that the courts are intervening to prevent intolerable levels of overcrowding. The Friends Service Committee had said.

"It would be naive not to acknowledge the blunders that an uncritical faith can produce. The horror that is the American prison system grew out of an eighteenth century reform by Pennsylvania Quakers and others against the cruelty and futility of capital and corporal punishment. This two-hundred-year-old experiment has failed".(3)

Ten years later there is so much more imprisonment taking place that the prisons cannot hold the numbers, and the public in New York has been asked to support a US\$500 million bond issue to provide 4,000 more places in the prisons. Lt. Governor Cuomo, leading the campaign for the bonds has referred to the unprecedented state of lawlessness and has coined a catchy slogan:

*"Catch 'em, convict 'em, can 'em"*.

Succinct, and to the point, it sounds to the fearful populace of New York States as if someone is at last prepared to do something. I am sure there are people in Australia who would welcome the echo of this strident call to action across the Pacific. Unfortunately, for the straightforward, no nonsense school of thought, the slogan is not as practical as it sounds. If the cans were coffins or containers to be conveniently shipped out, the policy might work. Instead it is proving to be self-defeating.

To say "can'em" is apt, because we can sardines and it looks, in some parts of America, as if the intention is to

- (1) Robert Martinson "What Works? Questions and Answers About Prison Reform" *The Public Interest* 35; 22-54; Spring 1974.
- (2) *The Research Bulletin for June 1981 of the National Institute of Justice summarises the five volumes phase 2 of a huge study of "American Prisons and Jails" completed at the end of 1980. This surveyed 559 Federal and State prisons, 3,500 local jails and 400 halfway houses in 1978, and concluded that from 1972 to 1978 prison populations in the institutions surveyed increased by 50 per cent.*
- (3) American Friends Service Committee "Struggle for Justice"; New York: Hill and Wang: 1971.p.v.

emulate the canning of sardines. For it is the problem of overcrowding the penal institutions which is exercising the Americans — almost as much as the urge to incarcerate. As the courts push the offenders in one door, to satisfy the police and the public, they have to let them out of another door, to satisfy correctional authorities. The people want the violent offenders off the streets and the politicians have, for years now, been cashing in on the widespread fear of crime. They are elected with a mandate to get tough: but the tough policies depend on available penal space; and since this does not expand with the length and number of prison sentences it is the tough policies which are actually putting the violent criminals back in the streets — long before it was ever intended.

As the campaign to get more of the taxpayers' money to "can 'em" was gathering momentum in the State, the Correctional Services of New York City were being forced (by laws passed to prevent the overcrowding of prisons) to consider the immediate release of all those held in custody but not technically convicted. And in the neighbouring state of Connecticut the Governor, William O'Neil had signed into law on 1st July 1981, public Act 81-437 designed to cut sentences for immediate release where the inmate agreed and the overcrowded condition of the prisons made it necessary. When overcrowding occurs the Connecticut Commissioner of Corrections is empowered *inter alia* to petition for a judge of the Supreme Court to be appointed to modify any inmate's sentence and to permit releases. So the tough policy of "canning them" is matched by unprecedented measures to "un-can them". There are other examples. In some American states where prison accommodation is sadly overcrowded and there has been no court intervention to relieve the situation, prisoners themselves, aided by outside prisoners' organisations, have brought class actions, and succeeded in recovering damages for their discomfort. Very recently, a paraplegic sentenced to imprisonment for fraud, obtained his release and compensation because the prison to which he was sent did not have the medical facilities appropriate to his case.

If this goes on, there will be, not one door through which to send them in and another for their release, but a revolving door with the courts turning them out as fast as the police bring them in. Obviously, with no rehabilitation to leaven the lump, the prisons become warehouses for all those unwanted and/or feared: and they have to become larger or more numerous warehouses if they hope ever to be able to cope with the amount of retribution that the public and the law would like to impose. Since the rebuilding cannot happen quickly enough to meet the need, the U.S. prisons have to release, so that instead of working on a medical model, or a justice model, they appear to be working on a virtual "motel model" with prisoners checking in and checking out, and the public as usual paying more for less.

Australia is not nearly so bad: generally we have the accommodation but there are some signs of a propensity to use prisons more and the standards are being forced up by a new emphasis on human rights so that the costs will increase. This will demonstrate here, as in America, that imprisonment is a measure to be used sparingly, whether one seeks to rehabilitate, to use it retributively or simply for custody. It is a lesson which the United Kingdom has also learnt the hard way. In 1975, the then Home Secretary Mr Roy Jenkins, announced that a prison population of 42,000 would place the prison system in a state of crisis. Early in 1980 the population reached a peak of 44,600 and on 30 April 1981 it stood at 43,600. In 1980, well over 17000 prisoners were accommodated two or three to a cell originally designed for single occupancy. The Home Affairs Committee of the House of Commons has been told that Pentonville is "literally falling to bits" and that several wartime camps which reached

the end of their economic life twenty years ago, are still in use, "held together by paint and the devoted effort of very overworked staff". At Risley a building only 15 years old is already falling down and the standards and strengths of many recently constructed buildings are said to be wholly inappropriate for the sorts of prisoners they now have to accommodate. Moreover, the \$1,000 million which is set aside for prison buildings over the next decade was based on prison population forecasts which have already been proved wrong. At best it can only maintain existing low standards(4). As a consequence of this situation the Howard League for Penal Reform is calling for a moratorium on prison building, whilst others are calling for enormous amounts of additional funds to provide for more prison places.

The Home Affairs Committee rejected both extremes, and after a careful look at the concern about the levels of crime in the country, and the research available on the reformatory effects of imprisonment, it concluded that the public interest would not suffer from a diminished use of imprisonment both by the frequency of committal and by length of sentence.

"There are some offenders, who for the public safety, must be kept in prison for lengthy periods, and some offences so distasteful to public morality that they must be visited with weighty retribution. But equally . . . there is much scope for a more parsimonious use of imprisonment which, by rendering more economical and efficient the administration of justice would be in the public interest"(5)

However, the Home Office seems doubtful of the courts responding to this call by a reduction in sentences likely to relieve the prison overcrowding. So in a *Review of Parole* issued in May 1981 there are proposals for extending parole which amount to a doubling of remission for persons sentenced to between six months and under three years. However, parole rather than remission is being extended with some burdens on the supervising officers — and therefore with some additional costs.

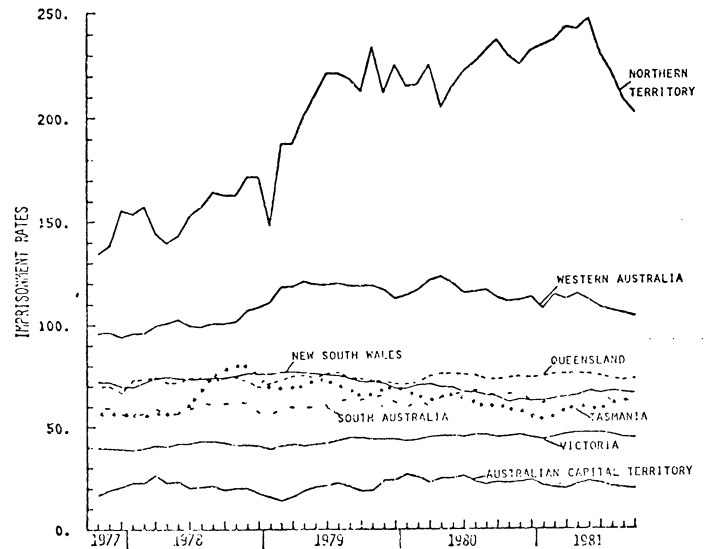
## IMPRISONMENT IN AUSTRALIA

The experience of America and the U.K. should surely provide substantial food for thought for any one in Australia who believes that the simple answer to our crime problem is longer sentences — that we also should "can them" more than we do already. In both these other countries, the greater severity has boomeranged: it has actually resulted not in extended incarceration but in curtailments of prison sentences, in longer remissions, in diversions, in earlier parole and, in fact, in greater leniency — just because the available accommodation could not be stretched to meet the enthusiasm for "canning them". If we really want to be tough this is hardly the way. In fact there is something almost comic in society fulminating for longer sentences and passing them with great solemnity, then having to let prisoners out even earlier than they or anyone else could have expected simply because they are really not sardines.

Generally speaking, the overcrowding problem is not much in evidence in Australia where, on balance, the prison population has been declining over the past decade. Figure 1 compiled from the Australian Prison Trends maintained by the Australian Institute of Criminology with the co-operation of all the States' Correctional Administrations, illustrates this recent inclination to fall rather than rise. The rises in the Northern Territory rates in 1979/80 are now being reversed, Victoria has been steady and South Australia's rate is lower now than in 1978. There are differences between the States which persist over time and show a measure of stability. The Northern Territory and Western Australia are consistently the States with the highest rates. Victoria and the A.C.T. the

lowest. Though, it must be observed that these imprisonment rates are not the imprisonment populations, these populations are available and presented below; and it will be clear that the numbers have not been rising in any general sense.

FIGURE 1: AUSTRALIAN IMPRISONMENT RATES, OCTOBER 1977 TO SEPTEMBER 1981 ( )



Since, in this same period, a large amount has been spent by most States on the improvement of their institutional accommodation, it seems unlikely that overcrowding is a general problem. It may occur, of course, in some of the older buildings or where certain classifications of prisoners show disproportionate increases. However, in 1975/76 and again in 1977/78 the three year average capital expenditure for all States was running at some A\$11,334,000. New South Wales led the field spending A\$3,415,000. Queensland spent roughly the same, Victoria some A\$2,068,000, South Australia A\$1,033,000, Tasmania A\$907,000 and Western Australia the least i.e. A\$464,000. This is the best information available so far, but it could be misleading, since capital expenditure tends to be spread over several years and any snapshot impression of a three year period such as this, can only be understood with reference to earlier and later years. Nevertheless, the point is that accommodation has generally improved, in a period when prison populations were not increasing much — if at all.

For 1979 we have more detailed information. At that time my Assistant Director (Research) Mr David Biles did a quick survey of the accommodation. It was rough — simply dividing the prison accommodation by the prison population — and again it had all the disadvantages of a snapshot. This showed that as at the 1st March 1979 there were 10,827 places in the prisons (single cells and dormitory beds). These were occupied by 9,665 prisoners giving an overall occupancy rate of 89.3 per cent. The occupancy in New South Wales was 95.6 per cent, in Queensland 88.8 per cent, in Victoria 84.7 per cent, in South Australia 67 per cent, in Tasmania 65.2 per cent but in Western Australia there was a problem for at that time 1,472 prisoners were held in accommodation totalling 1,423 places i.e. the occupancy was 103.4 per cent.(6)

(4) See Justice of the Peace August 15th 1981 Vol. 145 No. 33 P. 485.

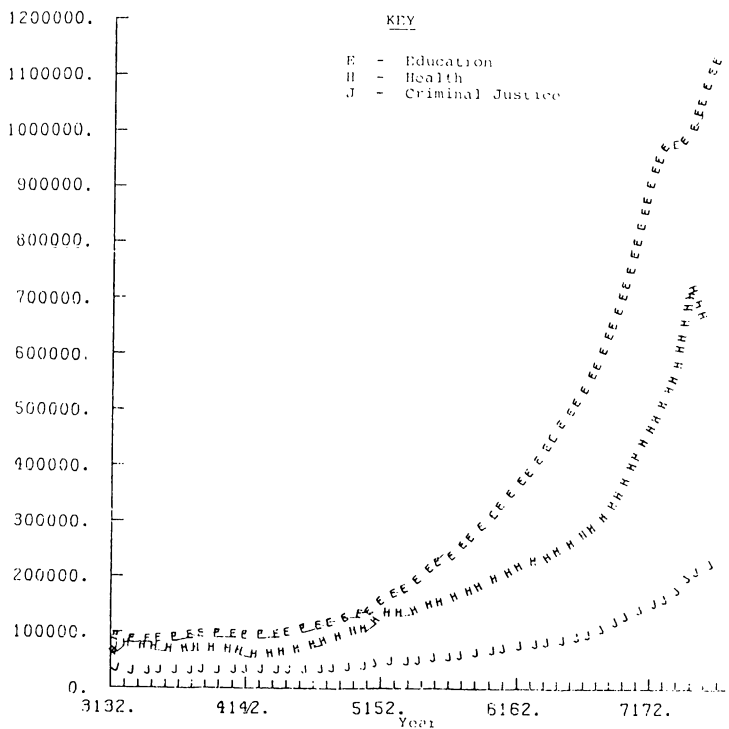
(5) Ibid.

(6) This Figure was compiled by Mr David Biles, Assistant Director (Research) Australian Institute of Criminology from Institute data for his paper "Modern Developments in Penology". The Inaugural Whatmore Memorial Oration Melbourne 10 November 1981.

Hopefully this has improved since then with a fall in total numbers and the opening of Canning Vale. At that time (1979) the staff-prisoner ratios in Australia were about 1:1.75 or a little better than one officer to every two prisoners.

The danger of using prisons to deal with problems which might have been created to some extent by the uneven economic and social development — and the corresponding danger of not integrating crime prevention into broader economic and social planning is at least suggested by Figure 2 which shows the way in which expenditure on health and education has outstripped criminal justice expenditure in all states between the financial year 1931/32 and 1976/77. It can be taken that these curves reflect changes in the levels of health and education not only of the population at large but of the offenders during this period. Criminal problems are never unrelated to these expanded forms of education and improved health levels where these could not be adequately accommodated by other changes in society — because expectations have risen proportionately and have not always been satisfied.

FIGURE 2  
NET EXPENDITURE ON CERTAIN SOCIAL SERVICES (Adjusted)  
ALL STATES 1931/32 - 1976/77



Just in case there are still people unconvinced by the U.S. and U.K. experiences that longer sentences are not the answer to the crime problem, it might be worth while looking at what we are already paying in this country for our prisons. Unfortunately the figures available are not as up-to-date as I would like them to be. It takes time for actual expenditure figures to become available and sometimes even longer to get access to them.

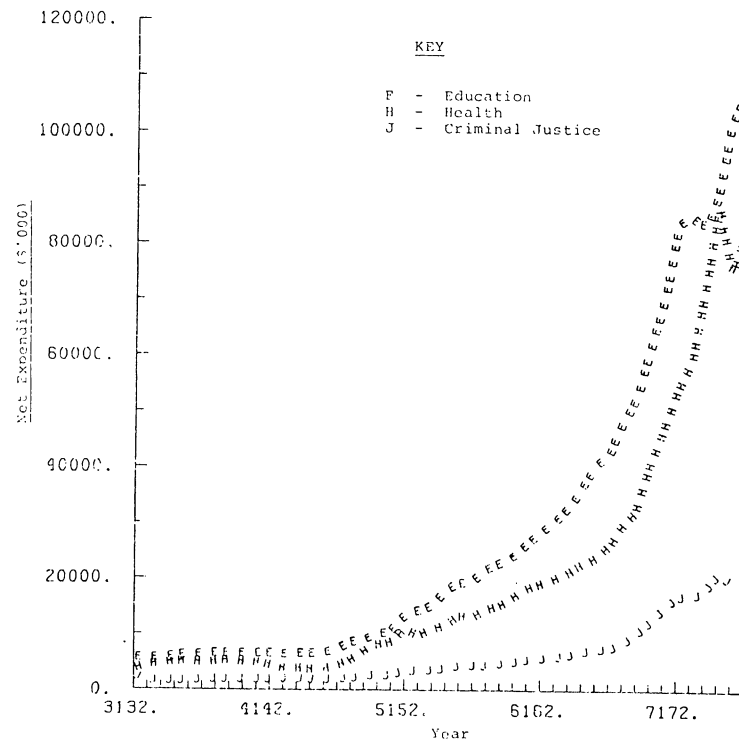
Moreover, there are some complications in calculating the costs of imprisonment to a population, which arise from the need to take into account not only the extent to which imprisonment is being used but also the length of sentences, the capacity of the system, the location of particular institutions and the methods of costing being employed.

(7) David Biles "Prison Accommodation Survey" Australian Institute of Criminology May 1979 (Mimeo).

It is interesting to look at the special position of Western Australia. Figure 3 shows that Western Australia followed very closely the national pattern:—

FIGURE 3

NET EXPENDITURE ON CERTAIN SOCIAL SERVICES (Adjusted)  
WESTERN AUSTRALIA 1931/32 - 1976/77



Nevertheless, we can now be certain that in the financial year 1977/8, prisons in Australia cost rather more than A\$110 million — of which amount no less than sixty per cent went in salaries (including allowances, penalty rates and overtime). Another 30 per cent of the total amount spent went on recurrent charges of one kind or another. Another 10 per cent of the total was devoted to capital works.

So how much did each prisoner cost the State? It varied, but with the notable exception of Tasmania, a prisoner cost between A\$12,000 and A\$13,000 a year. In Tasmania, however, a prisoner in the same year was costing just under A\$17,000 a year (A\$16,975 to be precise). Naturally in every State the prisoners cost different amounts depending upon the degree of security in which they are held; but these are the averages.

Looking at this another way, we can distribute the prison costs per head of population. If we do this in Western Australia, the A\$14,670,000 it spent in 1977/8 worked out at A\$12.50 per head of population. This was the highest cost per head in Australia. The corresponding figure for Tasmania was A\$10 for New South Wales A\$9 — and in Victoria it was as low as A\$5. The average per capita rate for all States was A\$8 so that Western Australia was over 30 per cent higher than this average. Looking at the situation since the early part of the century — and correcting the figures to account for inflation — it appears that, as far as the taxpayer is concerned, he is paying proportionately 5 times more for his prisons now than he did in 1900 — as against 3 times the amount he paid for the police in 1900.

Of course not all the activities are costs. What, for example, about prison labour. Here the studies are conspicuously inadequate and the returns from various institutions are not always comparable. Nevertheless, as far as I have been

able to ascertain, there is no prison administration in Australia recovering more than 16 per cent of its recurrent expenditure from the proceeds of its prison labour and Victoria and Western Australia's returns are as low as 4 per cent — or even less.

So, by any standards the prisons are costly undertakings not to be over used if the taxpayer is not going to be overburdened.

## CONCLUSIONS

It is unwise to be tough if you can't keep it up. It is even less wise to be tough if the effect is to decrease rather than increase security. If this brief survey of costs and outcomes means anything at all, it constitutes a warning to the Australian public to beware of the simple punitive, no-nonsense, solutions to crime issues which are much more complex than the media implies and which need the community's own care and involvement as much as its condemnation. Everyone hates serious crime but it does not go away simply by waving a big stick — or by just locking people out of sight for as long as will assuage the outrage. It becomes worse when we threaten this and then find we cannot do it.

The simple punitive solutions may appeal to common-sense but they are more effective in satisfying feelings of outrage than in preventing it happening again. They don't cost less, they cost a great deal more. They may even prove

to be beyond the means of any democratic government unable to control incomes or the rates of inflation. The sentence imposed may indeed hurt the society more than the offender. This survey shows that it does. Taxes go up and still the extra accommodation cannot be found. However, it is not only that severity via increased imprisonment is expensive: it leads to less, rather than more security, if the U.S. and U.K. experiences are anything to go by. So why do we pay more for less?

Australia could do a lot worse than adopt the advice of the U.K. Home Affairs Committee i.e. that it should be more parsimonious in its use of imprisonment. This does not mean that society is without effective ways of dealing with crime. There are alternatives to imprisonment — fines, probation, community service orders, to mention only some which have already proved equally effective in the reduction of recidivism amongst certain classes of offenders. And we have a long way to go before we can claim to have exhausted the prospects of dealing with some quite serious offences by punitive financial penalties, by the garnishing of earnings or by developing even wider varieties of extra moral labour.

Obviously, when we have done all we can, the fact that we have abandoned recourse to the death penalty and corporal punishment will leave us with a need for prisons for those criminals who have to be segregated. It is, however, in our own interests, as well as theirs, to keep this figure as low as we possibly can.

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# TWELFTH BIENNIAL CONFERENCE

## Australian Crime Prevention Council

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