

Review

Michael Tonry, *Malign Neglect. Race, Crime and Punishment in America*

Oxford University Press, New York (1995) ISBN 0195104692

Tonry explores a number of issues relating to the disproportionate levels of imprisonment of Black Americans. Despite the subtitle of the book referring to 'race', the focus of the work is clearly on African Americans rather than other minority groups within the USA. However, many of his arguments may have wider application in understanding minority group involvement in the criminal justice system more generally. It is also a book which is about African American men. Tonry justifies this on the basis that women only comprise six to seven per cent of the prison population, and that the removal of African American men through criminalisation further undermines efforts to improve the conditions of life for the black 'underclass' (page ix). One criticism I have of the book is the complete absence of any discussion (let alone deconstruction) of racial categories. 'Race' is unproblematised and the world is divided between 'blacks' (lower case 'b') and 'whites'.

Tonry's basic argument can be set out simply. The prison population in the US tripled during the 1980s at the same time as the disproportion of Black Americans in prison also increased. A major reason for this outcome is repressive crime control policies, including the 'war on drugs' and the development of mandatory sentencing schedules and 'three strikes' legislation. The rising levels of Black incarceration rates were the foreseeable effects of deliberate policies by the Republicans during the 1980s. These policies also undermined other attempts to include Black Americans in the social, political and economic life of the nation.

By 1991 the incarceration rate for Black Americans was 1,895 per 100,000 compared to a rate of 293 per 100,000 for whites. As a result Black Americans were nearly seven times more likely to be imprisoned than whites (page 4). Tonry notes that a quarter of young Black males nationally were either in prison or subject to a probation or parole order. In areas like Washington D.C. and Baltimore some 42 per cent and 56 per cent respectively of Black males between the ages of 18 and 35 were under the supervision of the criminal justice system.

Tonry also discusses the ethical and moral dimensions to law and order policies. He argues that from 1981 onwards the Reagan and Bush administrations consistently pushed for tougher penalties, mandatory penalties, more prisons and reduced habeas corpus rights. The foreseeable effects of these policies were such that the responsibility of those who introduced them is the same as if they had deliberately set out to disproportionately lock-up Blacks (page 32). Tonry argues that mandatory penalties should be abolished. They have few, if any deterrent effects for serious crime. They are 'a pernicious part of contemporary punishment policies. Their principal purposes are political and short term' (page 44).

The book contains a discussion of law and order policies built around the principle of 'doing less harm'. Tonry argues that there is a need for honesty in regard to the likely outcomes of crime policies. No 'war on crime' will ever be won. Some policies will have a foreseeable impact on minority groups. One example is the distinction between crack and

powder cocaine in federal law and sentencing guidelines. The distinction, which has substantially higher penalties for crack rather than powder cocaine, discriminates against minority groups who are more likely to use this form of the drug. In addition it was known at the time that the 'war on drugs' was announced that illicit drug use among the majority of the population was actually declining, although not among urban minority groups. The 'war' thus ensured the creation of a significant 'crime problem' among minorities. Indeed more generally the 'war on drugs' has been the single most important cause of the trebling in prison population during the 1980s and the increase has disproportionately impacted on minority groups. By 1991 over half of Federal inmates had been convicted of drug crimes compared to a quarter decade earlier (page 113).

I found Tonry's discussion of the relationship between moral responsibility and crime control policy one of the more interesting features of the book. It is argument that has a direct resonance in Australia. In particular, as jurisdictions like the Northern Territory have moved to use mandatory and repeat offender sentencing legislation for particular offences such as property crime, we might ask what responsibility politicians should bear for the foreseeable and discriminatory effects of their policies.

Chris Cunneen

Senior Lecturer, University of Sydney