



Opinion by
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Prisons – Help or Hindrance?

Prisons are rarely out of the news – even in recent months there’s been talk of establishing a separate one for bikie gang members in Queensland where inmates would be confined for 23 hours a day. Clearly, such an initiative is based on the popular theory that more and tougher prisons will lead to less crime. Quite apart from the fact that solitary confinement is usually a counter-productive violation of a person’s human rights, this theory is fundamentally flawed.

There are numerous studies showing that imprisonment is not the most effective way to reduce crime. In one such study, Emeritus Professor David Brown of UNSW describes the immense challenge of reconciling this fact with the ‘cultural imaginings concerning punishment’ which militate against alternative methods of crime control. The temptation to prescribe harsh punishments is seductive (not least to politicians), but ultimately an inefficient allocation of scarce resources.

This is not to deny that there are some violent offenders who need to be separated from society during the reform process. A community’s desire to see guilty parties punished is also a powerful force which must be acknowledged by policy-makers. Yet even the tabloid press, which so often stokes community outrage about the ‘soft’ criminal justice system, has felt compelled to report on the fact that prisons mostly promote reoffending. Unfortunately, governments are not getting the message.

A great many of the custodial sentences handed down every day in Magistrates’ Courts around the country are for non violent offences such as stealing, receiving stolen property, unlawful use of a vehicle, illegal entry of premises, driving offences, drug offences and breaches of bail conditions.

Just last year, the Australian Institute of Criminology found that only a small proportion (less than 18%) of people are arrested for violent crime, and of those who are, more than 40% attributed their offending to drugs and/or alcohol. This leaves only a small cohort of inherently dangerous offenders who belong in prison. For the rest, alternatives such as diversion schemes, drug treatment courses and victim-offender conferencing have massive potential to reduce reoffending rates.

Last year, the Castan Centre prepared a comprehensive report for the federal Government entitled *Alternatives to Imprisonment for Vulnerable Offenders* – the kinds of non-violent offenders who simply should not be in prison. Among other things, it set out what other countries with lower crime and imprisonment rates do, what experts recommend and what human rights law requires. In an Appendix, the report also surveys in detail the alternatives to imprisonment which already exist in Australia. Unfortunately, these include some successful schemes which have been closed or starved of funding.

The report notes the hugely disproportionate number of Indigenous detainees in our prison system. On the latest figures available, 26% of the prison population identified as Indigenous, compared with

just 2.5% of the general population. As if this weren’t shocking enough, Indigenous juvenile offenders are 28 times more likely to be imprisoned than non-Indigenous juveniles – a state of affairs which the UN Special Rapporteur on the Situation of Indigenous Peoples describes as ‘alarming’ and ‘disturbing.’ This kind of overrepresentation has been with us for decades, and will not change without a concerted reform effort.

The report also notes the overrepresentation of detainees with a mental illness or cognitive disability, who fare poorly in prison – especially when insufficient resources are devoted to appropriate medical care. In addition, the homeless and young people generally are detained at higher rates than other Australians.

Naturally, other countries face similar problems. For example, Canada’s Indigenous imprisonment rate is also disproportionately high. Yet, unlike ours, Canada’s overall imprisonment rate has been in decline over the last decade due to ‘conscious efforts that have been made to utilize community-based alternatives to imprisonment to the extent possible, consistent with public safety.’

Finland’s approach is even more radical from an Australian point of view. The sentencing provisions of Finland’s Criminal Code are based on the theory that the criminal law should have an educative function – to make people ‘refrain from illegal behaviour not because it is followed by unpleasant punishment but because the behaviour itself is regarded as morally blameworthy.’ Since 1945, the incarceration rate in Finland has decreased from 250 per 100,000 to just 59 per 100,000. By contrast, Australia’s is currently 168 per 100,000 and trending higher.

Much of the difference can be attributed to increasing use of alternative punishments by the Finnish courts, such as fines adjusted according to an offender’s ability to pay, community service and suspended sentences. Nearly three quarters of cases in Finland are now referred to mediation (a form of restorative justice), which involves a contract to perform volunteer work in the offender’s community.

With few exceptions, a stronger focus on rehabilitation of an offender is likely to lead to greater benefits for society than an overly punitive approach. If imprisonment is the least restrictive option available to a sentencing court, but would be inappropriate or ineffective in the circumstances of the particular case, the government has a responsibility to make less restrictive alternatives available. This is not just what the evidence tells us, it is what we need to do to comply with our human rights obligations - including the right to personal liberty and freedom from discrimination.

This article first appeared on the Castan Centre Blog, which you can find at www.castancentre.com.