The Booming Industry: Australian Prisons

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Abstract
The number and rate of people imprisoned in Australia has risen rapidly over the past two decades. The largest rates of increase have been in remand, women and Indigenous prisoners. There has been a concomitant rise in the rate and number of prisoners being released back to the community. Many thousands of these releasees are back in prison within two years: on the prison conveyor belt cycling in and out. The majority of prisoners are from severely disadvantaged backgrounds, with serious health problems. Those with mental and cognitive disability and a history of abuse are grossly over-represented amongst the prison population as are Indigenous Australians. The prison is tasked with a number of purposes: punitive, deterrent, protective and rehabilitative. But the legitimacy and indeed the viability of these purposes for the majority of those in prison and for the wider citizenry in the context of increasing imprisonment in Australia is challenged using social justice and community well-being analyses.
Introduction

Australian prison population
In 2007, from the latest national data available, there were around 27,200 full-time inmates (sentenced and unsentenced) in prisons in Australia, a rise of 6% in just one year (ABS 2007:3). The most useful method of representing and comparing the number of prisoners over time is the rate per 100,000 of the adult population. Using this representation, the rate was 169 prisoners per 100,000 in 2007 (320 per 100,000 males and 24 per 100,000 females), an increase of 23% from 30 June 1997 when it was at 137 per 100,000 as shown in graph 1. In other words proportionally the prison population has grown much faster than the general population.

Graph 1 Imprisonment rates

This though is based on a census, that is, a count made on one day of the year. It does not provide the more dramatic, volatile picture of how many flow in and out of prison over a year with hundreds admitted to and released from prisons around Australia every week. As by far the majority of prisoners are incarcerated for under 12 months and for lesser offences, the flow through number of prisoners is much higher than the census figure suggests (ABS 2007:3). There is no national accounting of this but it has been estimated at around 50,000 sentenced and unsentenced persons flowing in and out of prison over a year (Baldry et al 2006:21).

Prisoners and disadvantage
All prisoner demographic information confirms that prisoners, as a group, are significantly more disadvantaged than the general population. The description below
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by John Ryan MLC, Chair of the NSW Parliamentary Inquiry into the Increase in Prisoner Population (2002) still applies generally:

The prison population consists of men and women who are, on average, of lower socioeconomic status, of poorer health and of lower levels of education than the rest of the population. For example:

- 60% of inmates are not functionally literate or numerate;
- 60% did not complete year 10;
- 64% have no stable family;
- 60% of males and 70% of females had a history of illicit drug use.

Indigenous men and women and those with an intellectual disability or a mental illness are significantly over represented. The majority of prisoners who pass through the prison system each year serve sentences of less than six months.

Prisoners come from and go back to a relatively small number of disadvantaged suburbs or towns with a high proportion dependent upon social housing due to disability, unemployment, domestic violence and poverty; at least 60% were not employed when arrested and very few gain employment upon release with a majority being dependent upon government benefits (Baldry et al 2006).

Prisoners’ physical health is much worse than the general population. Prisoners in NSW for example have very poor oral health, very high levels of alcohol consumption and tobacco smoking (80% compared with 21% in the general population) and very high levels of Hepatitis C (66% of women and 40% of men) (Eckstein et al 2007).

**Increases in remand, Indigenous and women prisoners**

There has been a dramatic rise in those held in remand, that is, in those who have been charged, not been granted bail, are held in prison custody and are awaiting sentencing but have not yet been found guilty. Remand prisoners accounted for over 22% of the full-time prison population in 2007, an increase of 9% over the previous year (ABS 2007) and up from 13% of the prison population in 1997. The rate over the decade (1996-2006) more than doubled from 17 to 35 per 100,000 (Australian Institute of Criminology 2007), and is continuing to rise (ABS 2008) meaning that the
remand population grew much faster than the sentenced prison population. A period in remand is not a light matter. Persons held on remand are held in full-time custody in the equivalent of maximum security and have little access to education or programs due to uncertainty regarding their date of release. They have usually been committed to remand in custody straight from court with little time to arrange for matters such as care of children or to secure their housing and care of pets.

The rapid rise in the Indigenous imprisonment rate is even more dramatic. Indigenous Australians represented 24% of the prison population in 2007, up from 14% in 1992 (AIC 2008). The age standardised rate (a method of accounting for the much higher percentage of younger persons in the Indigenous as compared with the non-Indigenous population) of 1,787 per 100,000 adult Indigenous population means that Indigenous Australians are 13 times more likely to be imprisoned than non-Indigenous Australians (ABS 2007). This over-representation varies significantly across Australia, with Indigenous persons in Western Australia being 21 times compared with those in Victoria being 10 times more likely to be imprisoned than non-Indigenous persons in those states as indicated in Graph 2.

Graph 2 Ratio of indigenous to non-indigenous age standardised rates of imprisonment

Clearly no matter whether to a very high or lesser degree, Indigenous Australians are grossly over-represented in Australian prisons.
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The third group of prisoners that is growing rapidly is women. Although they are still a very small proportion of the prison population at just over 7% this represents a significant growth over the past two decades. Whilst male numbers of prisoners have grown by 40% women’s numbers have grown by 80% over the past decade. The rate of women’s imprisonment rose from 15 to 22 per 100,000 of adult women over the same period. This growth appears to be made up largely of Indigenous women and women on remand.

Graph 3 Female vs Male increase in prisoner numbers in Australia

This very brief overview of the Australian prisoner population and its growth provides a context for an analysis of this growth and a discussion of particular aspects of the penal estate.

Recidivism

Recidivism occurs when persons convicted by the courts return to prison or receive a community corrections order. (The Audit Office of NSW, 2006:83)

One stated purpose of prison is to rehabilitate by both providing the prisoner with an incentive never to return to prison and with programs that assist in changing behaviour and lifestyle to assist that to happen; every Corrective Service in Australia has reducing recidivism as an aim. The crudest measure of the success of this venture is the rate of recidivism. For the purposes of this paper return to prison, excluding re-arrest and being given a community order, will be used. Most Australian agencies use return to prison within two years of release as a common measure. This rate sits at
around 36% (Payne 2007). So, over one third of those released will be re-imprisoned within two years. But ‘whenever having served a sentence before’ is used around 58% of people in prison today have been in prison before (ABS 2007:9). Again this is variable, depending upon the jurisdiction. For example NSW has a known prior imprisonment rate of 69% of its census prisoners (NSW Corrective Services 2008:4). This must be understood in the context of the explanation given earlier of the flow, as opposed to the census population in prison. A higher percentage of the flow through population has been in prison before as compared with the census population that is skewed by those in prison on long sentences for serious crimes, like murder, and who are not on the whole recidivists. So if recidivism were to be measured for the flow through population it would be higher than it appears using the census population.

So prison does not appear to reform nor deter the majority of those who have been there before.

Prison: the new therapeutic community?
Politicians and society, in the ‘Western world’ at least, have been trying to use prison as a solution to multi-layered and complicated social disadvantages. This is not a new phenomenon. But it has re-intensified in Australia over the past two decades with the rapid increase in the growth of imprisonment of those with mental, cognitive and multiple disabilities, the homeless and Indigenous persons.

Mental health disorders
Prisoners have much higher rates of mental health problems than the general community. National and State reports from the Human Rights and Equal Opportunity Commission (1993) report (The Burdekin report) onwards have drawn attention to the growing social inequity of the increasing numbers of people with mental disorders caught in the criminal justice system (see for example Karras et al 2006; Parliament of Australia Senate Select Committee on Mental Health 2006; NSW Parliament Legislative Council Select Committee on Mental Health 2002).

In NSW a 2001 survey of prisoners (Butler & Alnutt 2003) found a 12 month occurrence of any psychiatric disorder (psychosis, anxiety disorder, affective disorder, substance use disorder, personality disorder) of 74% amongst prisoners (86% for
females; 72% for males) compared to 22% in the general population. When alcohol and other drug disorders as the only disorder were removed, 50% of reception inmates and 30% of sentenced inmates had mental health disorders specifically, 9% of prisoners Vs 0.42% general population suffered psychosis; 22% Vs 6% suffered affective disorder; and 43% Vs 10% had suffered anxiety disorder in the 12 months prior to the survey. So although these persons had committed a crime or crimes they also suffered mental disorders at a much higher rate than the rest of the population.

These findings are supported in international studies (Lamb et al 2004; Reed & Lyne 2000) as well as other Australian studies. In Victoria it was found that males with schizophrenia and coexisting substance abuse were 12 times more likely to be convicted than those without mental illness but with similar offences (Mullen 2001).

The continuum from juvenile detention to adult prison (Baker 1998) in which significant numbers of juvenile detainees progress to adult prison, is also seen in the exceptionally high rates of potential mental health disorders amongst that population of young people. The NSW Department of Juvenile Justice (2003) reported that 88% of the young people in custody reported mild, moderate or severe symptoms related to their mental health. These included 61% having symptoms consistent with conduct disorder, 35% with personality disorder and 21% with schizophrenia. Seventy-three percent had symptoms consistent with dual diagnosis (mental illness plus drug use disorder and/or cognitive disability).

Cognitive Disability
Internationally and in Australia the level of cognitive functioning amongst prisoners is much lower than in the general population. The disabilities range from intellectual disability (with an formal assessment before the age of 18 of under 70 IQ plus low social adaptive functioning) to acquired brain injury resulting in poor cognitive capacity and borderline intellectual disability (between 70 and 80 IQ). In fact one recent study in the UK revealed the extent of poor cognitive functioning of the prison population with 45% of a sample of prisoners in a major British prison having borderline or full intellectual disability (Hayes et al 2007).
A Victorian study revealed the extreme disadvantages suffered by prisoners with intellectual disability and the over-representation of Aboriginal (in this case) men amongst these prisoners (Glaser & Dean 1999). In NSW the high representation of people with an intellectual disability in the criminal justice system has been well recognised (Department of Family and Community Services 1988; NSW Legislative Council Inquiry into the Increase in Prisoner Population 2001; Simpson et al 2001). In a survey of juvenile offenders in NSW, 17% had cognitive functioning scores consistent with a possible intellectual disability. Ten percent met both culture-fair IQ and adaptive behaviour deficits consistent with criteria for intellectual disability compared with less than 2% of the general population of young people (Australian Institute of Health and Welfare online). Remarkably 74% scored in the low range of intellectual functioning, compared to 25% from a standardised sample (NSW Department of Juvenile Justice 2003).

The NSW Sentencing Council (2004) outlined the serious consequences of imprisonment for people with cognitive disabilities:

- Entrenchment within a culture of criminality due to the tendency of those with intellectual disabilities to want to be accepted by their peer group.
- Readjustment problems post-release as people with intellectual disabilities inherently have impaired adaptive skills.
- Vulnerability to being assaulted and mistreated in the mainstream prison environment.

There is a high rate of dual and multiple diagnoses amongst those with cognitive disability with a high number having a mental health disorder and drug or alcohol use problem as well (Butler & Allnutt 2003).

**Prison as a care institution**

Prison does not rehabilitate offenders with these disabilities because it is not and cannot be, a therapeutic community; it cannot serve both punishment and therapeutic purposes because they are antithetical and prison’s primary focus is security not therapy. Prison by its very nature, excludes normal society, promotes prison living skills and actively erodes community living skills, the very skills the de-institutionalisation movement aimed to restore to those with mental health disorders.
Most of these persons need long-term social and health assistance and support, which are not achievable whilst cycling in and out of prison.

The argument that at least persons with these disorders and disabilities are being cared for in prison and receiving health care that they do not receive in the community is spurious. Of course inmates should receive good health and social care but imprisoning a person is an extremely serious step because it has so many negative implications. Even if prison services provide the best programs and health care possible, going to prison and having a criminal record disadvantages the already disadvantaged. It makes a person a target for re-arrest and re-imprisonment; it disrupts social connections and locks people into serial institutionalisation, does not guarantee good or appropriate treatment and often any treatment started is not continued in the community upon release; it makes homelessness more likely, creates connections with criminal culture, ensures the learning of prison culture to survive and often causes self-harm and depression (Stern 2006; Baldry et al 2006; Tonry & Petersilia 1999).

**Indigenous Australians**

The unconscionably high rate of Indigenous Australians in prison has been argued to be associated mainly with higher serious offending levels especially related to violence and alcohol abuse (for example see Weatherburn et al 2003) rather than bias in the criminal justice system. Others such as Cunneen (2006), whilst not resiling from the recognition of high offending rates, argue that also the range of Aboriginal Australians’ experiences of removal, dispossession, exclusion from education and employment, as well as institutional discrimination must be considered as having a part in Indigenous offending rates and over-representation in prison. Blagg (2008) argues for Indigenous Australians to have greater ownership and control over criminal justice processes to overcome the continuing colonising effects of current criminal justice approaches.

**Costs**

Prison is an expensive business with the taxpayer footing the total bill. Both the financial and social costs of locking up more people are, not surprisingly, increasing with the rate of financial costs, not just the amount increasing as well. Expenditure on prisons in Australia in 2006/2007 was $2.18 billion (SCRGSP 2008:C.11). The
annual growth rate in expenditure between 2002/2003 and 2006/2007 was 3.9% and was the fastest growing expenditure within the justice area – almost twice the growth rate of police services. All jurisdictions are building more prisons or expanding current prisons to accommodate the growing numbers. The costs of building prisons are high but higher still are the recurrent costs of maintaining and running them (NSW Legislative Council Inquiry into the Increase in Prisoner Population 2001). The total average cost (including capital and recurrent costs) per prisoner per day in Australia in 2006-2007 was $244 (SCRGSP 2008:8.22).

The social costs are immense. Quilty et al (2004) taking NSW as an example, estimated large numbers of children, some 60,000, suffer the imprisonment of a parent at some time in their childhood. Clearly the numbers across Australia would be significantly larger. Children of women prisoners experience loss of their mother and out of home care and children of prisoners in general suffer disrupted schooling and greater poverty and are more open to abuse and the likelihood of themselves ending up in prison (NSW Legislative Council Standing Committee on Social Issues 1997; NSW Department of Juvenile Justice 2005; Murray 2007). Other family members are affected with partners and parents of prisoners suffering upheaval, loss of income, difficulties of visiting and stigma (Cunningham 2001).

Prisoners lose housing and jobs (if they had any), become more indebted and lose social capacity during imprisonment. Upon release they are usually worse off than when they were incarcerated with around a half being homeless and the rest being in unstable or unsuitable housing and over 75% being unemployed (Baldry et al 2006). The financial and social costs affect the particular groups discussed earlier to a greater degree than others. For example some Aboriginal families and communities and particular highly disadvantage suburbs are decimated by incarceration and do not have the financial or social resilience to support those returning from prison, thus continuing the imprisonment cycle. Post-release life is made even more difficult by ex-prisoners being discriminated against in employment and the rental market (NSW Legislative Council Inquiry into the Increase in Prisoner Population 2001).

**Prison is criminogenic**
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Jones et al (2006) point out that a significant number of parolees are re-arrested or are breached for parole violations and returned to prison but given that there are such large numbers of prisoners with disorders and disabilities, it is not surprising that many cannot manage to meet parole requirements.

Having a higher chance of returning to prison applies to remandees, not just those who have been on sentence. Large numbers on remand are released without having to serve further time in prison because they are found not guilty, given a community order or it is deemed that their time on remand (usually a period of weeks or a month) equals their sentence (Thompson 2002). This hardly represents the dangerous criminal profile politicians argue tighter bail laws are meant to corral on remand. In the current policy and legislative climate of building more prisons to manage risk and therefore to deal with difficult social problems and an era of reduced systemic support for those with such problems, more people with little capacity to negotiate the criminal justice system will be imprisoned and the more persons imprisoned, the more will re-offend and return to prison; so prison itself is criminogenic, that is it causes crime (Haney 2005; Tonry & Petersilia 1999; Weiman 2007).

Conclusion

When the current use of prison is subjected to a social justice analysis, as has been done in this article, a number of things become clear.

• The facts that increasing numbers of people with poor educational backgrounds, mental and financial capacity find themselves imprisoned, and when released have even less capacity to negotiate their way around society successfully and are quickly returned to prison are evidence of failures of social and human services and of increasing inequity.

• There is an imperative to reduce the number and rate of Indigenous Australians’ imprisonment.

• Australian society is diminished by the increasing use of prison to address multi-layered social difficulties.

A fairer and safer society with lower rates of offending is likely to be achieved not by criminalising greater numbers of persons with less social capacity but rather by improving early educational, family, social and health support and reducing inequity in the community.
References
Mullen, P. 2001 A Review of the relationship between mental disorders and offending behaviours on the management of mentally abnormal offenders in the health and criminal justice system, Criminology Research Council, Canberra.
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