

## EFFECTIVENESS OF PUNISHMENT

To assist in assessing the effectiveness of penalties there are probably two questions that should be asked (as in any such assessment):

1. What are we trying to achieve?
2. Are we achieving what we want?

One of the best references for this exercise is Don Weatherburn's book: *Law and Order in Australia: Rhetoric and Reality* (2004, The Federation Press) and I commend it to you.

The answer to the first question is probably easy. We are trying to reduce the amount of criminal offending (accepting that we will never completely eliminate it) and to restore offenders, those who have been caught, as law-abiding members of the community. Crime prevention and the mechanism of punishment are directed to those ends; but it can be seen that a myriad of social and personal considerations also arise in dealing with these issues.

The answer to the second question is somewhat more complex and I borrow directly here from a paper I delivered to the NSW Teachers' Federation Annual Conference in 2006 because not much has changed since then.

In the criminal justice system there are continual attempts to improve methods of preventing crime, detecting it, prosecuting and correcting offenders. All of those activities, however, are constrained by the resources able to be applied to them and are proceeding in a piecemeal, often uncoordinated fashion. When the public financial pie is limited - as it always is - then the sharing out of its slices must be prioritised. While crime is politically "sexy" - because it is an easy drum to bang and it makes a loud and instant political noise - any new money applied to it is usually put into the first stage of recruiting more police (not an effective strategy in itself, but an apparently popular one) and the last stage of locking up more people in prison (which suffers from similar shortcomings). But if more resources were applied to prevention, then we might need fewer police and prisons and less involvement of the mechanisms in between.

Even partial prevention is better than often ineffectual cure and there is always more that can be done at the source of criminal offending. To the extent that the criminal justice process deters anyone from offending, well and good; but even that is coming too late. Only social and educational programs can really deter in advance by preventing crime. By and large, people who are well educated, in good health, comfortably housed, in employment or otherwise usefully occupied and in stable and positive personal relationships do not commit crime (unless they become excessively greedy, over-sexed or unusually intoxicated).

To improve the impact of any deterrent effect after the event, we might also consider providing further resources for proven alternative means of disposing of the criminal "body" - such as the Drug Court, Circle Sentencing, juvenile and young adult conferencing and other forms of diversion from the strict course of the criminal courts to which I have already referred. The Attorney General has said recently that he will be giving these areas higher priority in the future.

## WHAT ARE THE RESULTS?

One obvious result of our present approach has been an enormous increase in the prison population and an increase in the number of prisons to house them. In 2007-08 \$982m was spent by Corrective Services. A few facts and figures for NSW follow (as at 2006 were indicated, otherwise 2008) and they tell a story.

- Each year about 15,000 persons pass through NSW prisons and at any one time there are now more than 10,000 inmates (sentenced and on remand).
- Another 18,000 persons are subject to supervision at any one time under community based orders at an average daily cost of \$12.
- The daily average cost of an inmate in 2007-08 was \$187 for open custody and \$225 for high security – an average of \$210 which represents around \$110 per head of population per annum.
- About half of the inmates are there for offences of violence; about 10% for sex offences (about one third of those – say 300 – in the medium-high to high risk category). [2006]
- Nearly 80% of prisoners are drug or alcohol abusers; about 70% have intellectual disabilities of some kind; about 8% (over 700) have a psychiatric disorder (of recognised DSM4 mental illness). [2006]
- Standards of education of prisoners are generally low – 60% are at a level below Year 10 and the level of functional illiteracy is high, many being truly illiterate in any language. Some cannot even tell the time. [2006]
- Aborigines, comprising 2% of the general population of NSW, make up 17% of the prison population - Aboriginal women making up 26% of the female inmate population and men 16.5% of the males. [2006]
- In NSW, on average, each prisoner has \$7,000 in unpaid fines - in Australia, the average for unpaid fines plus family support payments is \$8,000 per inmate. [2006] This has consequences for release from prison.

Of course, some offenders must be kept away from the community - they are simply too dangerous to be allowed to live among us - and some must be isolated for the rest of their lives. At present for the worst crimes committed, there are 30 natural life prisoners in NSW, one a woman. A few have died in custody. Only about 670 are there as what are classified as “serious offenders”.

Since 1990 and the passage of the *Sentencing Act* 1989 the number of prisoners and the length of sentences have increased substantially and they continue to increase. These increases have been reflected elsewhere - in the decade 1995-2004 the Australian prison population increased by 40% while the population growth was about 11%. There has also been a huge increase in the remand population in NSW brought about by changes to the law and procedure relating to bail.

There is much debate as to whether prison deters criminals and thereby prevents crime. In some individual cases, it probably does - but is it a product of the system generally? And how much of the offending population does it affect? In 1987 the Australian Institute of Criminology reported that for every 1,000 crimes committed in Australia, 400 are reported to police, 320 are recorded by police as crimes, 64 result in the detection of an offender (and one person may commit more than one crime), 43 persons are convicted and one is imprisoned. On those figures it might be argued that doubling the prison population could affect only a further 0.1% of crimes committed (and that principally by incapacitation).

It is reported that studies into whether persons given a custodial penalty are less likely to re-offend than those given a non-custodial penalty usually find little difference in rates of re-arrest, re-conviction or re-imprisonment.

The incapacitation effect of imprisonment, of course, is real - while in prison an inmate cannot offend in the community. A recent BOCSAR report established that present levels of imprisonment in NSW (of about 1,135 domestic and commercial burglars who each commit an average of 38 burglaries a year when free) prevent about 45,000 burglaries per annum. But to get even a further 10% reduction in burglaries would require a 34% increase in imprisoned burglars at a cost of about \$26 million per year on 2006 figures.

Recidivism (or re-offending) is an issue. In 2004-05 the percentage of inmates and offenders in NSW who served their sentences (in prison or in the community) and who returned to prison within two years was 43.5%. BOCSAR's Crime and Justice Bulletin Number 91 of January 2006 reported on the "Risk of re-offending among parolees". It tracked 2,793 prisoners released to parole in the 2001-02 financial year. By September 2004 (ie within 2-3 years) it found that 67% had reappeared in court, 64% had been convicted again and 41% were back in gaol. In 1007-08 about 44% of prisoners were back behind bars within two years.

Of course, the vast bulk of offenders are dealt with by non-custodial measures and do not reappear in the criminal courts.