Investing in Alternatives to Prison

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Introduction

• Penal ‘crisis’ –or at least watershed moment
• Political context –the costly consequences of populist law and order politics becoming more apparent
• Broader political context –GFC/neo-liberalism and social democracy
• Arguments for ‘justice reinvestment’ –USA/UK/Aust
• A key issue –how is devolution of custodial expenditures to be achieved in Australian context?
• Build on existing policies - homelessness - Vic v NSW
• Conclusion
Penal ‘crisis’ or watershed

Penal Crisis manifest in:
  – Increasing imprisonment rates
  – Escalating costs
  – High recidivism rates
  – Increasing questioning of ‘value’ of increased prison expenditure cf alternatives
  – Increasing recognition of limited benefits of imprisonment in reducing crime and enhancing public safety
  – Increasing recognition of criminogenic effects of imprisonment
  – Paucity of research base – reliance on assumption and populism – hostages to politics of staying in government
Net Operating Expenditure and Capital Costs on Prisons – National ($’000), 2008-09

<table>
<thead>
<tr>
<th>State</th>
<th>Cost</th>
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<tbody>
<tr>
<td>NSW</td>
<td>$1,036,023</td>
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<tr>
<td>Vic</td>
<td>$466,838</td>
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<tr>
<td>Qld</td>
<td>$576,119</td>
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<tr>
<td>WA</td>
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<tr>
<td>SA</td>
<td>$159,634</td>
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<tr>
<td>Tas</td>
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<tr>
<td>ACT</td>
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<tr>
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<td>Australia</td>
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In 2008/09, the operating cost of community-based correctional services $0.4 billion or $20.23 per prisoner per day (1/7 total cost and 1/10 per prisoner per day)

- “In its effort to win electoral support by attacking the courts and other criminal justice agencies, loudly seeking to rebalance the criminal justice system in favour of the victim, and weakening civil liberties and protections against wrongful convictions, the Labour government of Tony Blair played dangerous games. There is ample evidence that tensions between the young and the old, and between the well-off and the dispossessed, were exacerbated. By repeatedly talking and acting as if crime had reached crisis proportions and required radical responses, at a time when crime rates were falling, the Government increased public anxieties and fears. By repeatedly insisting that the criminal justice system was not working satisfactorily, the Government undermined faith in legal institutions. By insisting that traditional procedural rights and protections are unimportant and can be cut back without loss of anything important, public understanding and support for fundamental ideas about liberty, fairness and justice were undermined.”
Local political context

• Similar argument can be made out in NSW – legacy of NSW law and order politics since 1986 – Yabsley - 1988 Greiner – Carr response from 1995-2005. ‘Sorcerers Apprentice’ analogy

• 2008 Opposition Shadow AG Greg Smith offer to abandon the law and order auction approach rejected by ALP AG Hatzistergos – happy to run on record of being ‘tough on law and order’.

• ALP refusal to act on drivers of high imprisonment such as bail – cynical and shabby ‘review’ which excludes key issues; defensive response to Noetic Report.

<table>
<thead>
<tr>
<th>Country</th>
<th>Imprisonment rate Per 100,000 2006</th>
<th>Homicide rate (%)</th>
<th>Foreign Prisoners %</th>
<th>Co-ordination index rating (0-1)</th>
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<tbody>
<tr>
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<tr>
<td>Japan</td>
<td>62</td>
<td>1.05</td>
<td>7.9</td>
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Comparative penology: Penal culture and political economy

Key factors:

• The structure of the economy
• Levels of investment in education and training
• Disparities of wealth
• Literacy rates
• Proportion of GDP on welfare
• Co-ordinated wage bargaining
• Electoral systems
• Constitutional constraints on criminalisation
• Institutional capacity to integrate ‘outsiders’
Pratt on Scandinavian ‘exceptionalism’

SCANDINAVIAN EXCEPTIONALISM IN AN ERA OF PENAL EXCESS

Fig. 1 Prison rate per 100,000 total population: 1950 - 2006.
Emergence of ‘Justice reinvestment’ - US

• Calculates public expenditure on imprisonment in localities with high concentration of offenders and diverts a proportion of that expenditure back into programs and services in those communities.
• Half of those released will be reincarcerated within 3 years
• Support from business leaders PEW Foundation Report Right-Sizing Prisons 2010
Emergence of ‘Justice reinvestment’ -UK


Emergence of ‘Justice reinvestment’ - UK

- House of Commons Justice Committee – *Cutting Crime: the case for justice reinvestment* (2010) - ‘Channel resources on a geographically targeted basis to reduce crimes which bring people into the prison system’
- ‘crim justice system facing a crisis of sustainability’ – prison as a ‘free commodity’ while other rehab and welfare interventions subject to budgetary constraints’
- Recommended capping of prison pop and reduction to 2/3 current level and devolution of custodial budgets - financial incentive for local agencies to spend money in ways which will reduce prison numbers
Emergence of ‘Justice reinvestment’ - Aust

- Senate Legal and Constitutional Affairs Committee Report *Access to Justice* 2009 Rec 21 ‘the federal, state and territory governments recognise the potential benefits of justice reinvestment, and develop and fund a justice reinvestment pilot program for the criminal justice system.’

- Aust 2008-09 $2.79 billion on prisons, $205 per prisoner per day; $1.09 billion in NSW

- Spatial dimension – ’ million dollar blocks’ – ’ millions are being spent on the neighbourhood but not in it’

- Papunya NT -72 adults in prison at cost of $3,468.960 for community of 400 people.
Emergence of ‘Justice reinvestment’ - Aust

- Devolving accountability and responsibility to the local level
- Data driven – ’incarceration mapping’ – linked to ‘asset mapping’ eg Vinson’s ‘post codes’ cf ‘hot spot’ mapping
- Queensland Justice Agreement – specific goal to reduce the rate of ATSI people incarcerated by 50% by 2011. Admira ble, but clearly not going to happen – exemplifies problems of achieving policy aims without budgetary allocation and programs of implementation
How to implement-key difficulties

• identify political, administrative, and fiscal mechanisms through which such policies are implemented, with particular attention to the structures of government through which criminal justice budgets are devolved onto local government and local community agencies;

• identify barriers to the implementation of justice reinvestment policies:
  - confronting engrained law and order and retributive sentiments;
  - limits to ‘evidence led’ policies;
  - in Australian context the lack of strong local government structures, affecting the possibility of budgetary devolution

• lack of guarantees that monies saved through imprisonment rate reductions and ‘penal moderation’ not applied to ‘justice reinvestment’ programs

• Possibility of disinvestment resulting

- Features of the participants from the prerelease interview were:
  - 75% male, 25% female
  - 16% Aboriginal or Torres Strait Islander
  - 66% imprisoned previously
  - 82% had just served sentences of 12 months or less with 53% 6 months or less
  - 75% had not completed secondary school with most not completing year 10
  - 73% in NSW, 58% in Victoria said they were given no information on accommodation or support prerelease
  - 20% in NSW and 12% in Victoria were in primary homelessness (literally without shelter) prior to imprisonment
  - 16% expected to be homeless or did not know where they were going postrelease
  - 24% were in family accommodation prior to imprisonment, but 36% expected to be with their family postrelease
  - 38% of female and 21% of male participants were in public housing prior to imprisonment
  - 40% of males were expecting to live in their family’s house postrelease, compared to 27% prior to imprisonment
  - 67% of men expected to be with parents/partner postrelease, whereas only 32% of the women expected to be.

“Deterioration in participants’ circumstances, in particular returning to prison, is significantly associated with and is predicted by their ‘moving often’. As seen in the findings, participants who moved often were also moving in and out of homelessness — parent’s house to the street to a friend’s sofa to a homeless shelter. This is best described and understood as being in a ‘state of homelessness’. Having been incarcerated before, lack of family support or professional assistance that ex-prisoners retrospectively judged to be helpful, lack of employment or study opportunities, being concentrated in disadvantaged communities and worsening drug use are all also associated with poor housing and returning to prison. Just addressing one of these problems, such as heroin use, without addressing housing problems was recognised by participants as unhelpful. The research findings also highlighted the reliance on short prison sentences to address what are essentially social and systemic problems.”
Homelessness strategies: Vic v NSW

• Vic – The Transitional Housing Management (THM) program – ”a comprehensive response to individuals and families in crisis as a result of homelessness or impending homelessness.”

• THM program co-ordinated with the Supported Accommodation Assistance Program (SAAP) a Commonwealth – State government program that provides funding to non-govt organisations and local government to deliver crisis accommodation and related support services to people who are homeless, at risk of homelessness, and women and children experiencing family or domestic violence.”

• Vic Homeless Strategy (VHS)

• Dept of Human Services, Office of Housing THM Management Program Guidelines and Funding.
Homelessness strategies -NSW

• COSP Centres (Community Offender Support Program) temporary accommodation post release in selected prison locations

• ‘Housing and Human Services Accord, Housing NSW and Corrective Services - provide accommodation and support services to help offenders released from custody and community-based offenders with complex housing needs to gain access to public housing. - assist probation and parole officers in accessing accommodation and other services for high-risk offenders with complex needs.’ NSW DCS Annual Report 2008

• ‘the Community Compliance Group (CCG) established to improve community supervision of serious offenders. The CCG offices target high-risk and high-profile offenders, providing an additional layer of supervision in the community through unannounced home visits at any hour of the night or day, alcohol and drug testing, risk profiling and surveillance.’ NSW DCS Annual Report 2008

• NSW DCS Investing heavily in policing community corrections and parole compliance; DCS hegemony at expense of a varied and well resourced NGO and broader social services sector.
Implementing Justice reinvestment?

• Build on existing generalist programs –eg Vic approach to homelessness
• Seed funding for specific projects, followed by allocation of part of custodial budget for successful outcomes
• Funding to expand existing and new joint Federal/State; NGO and voluntary sector programs
• Funding for specific research projects in incarceration and asset mapping; and in mechanics of budgetary devolution
• Re-deployment of DCS funding from custodial to community/programs services
Conclusion

• Penal crisis or ‘watershed’ moment – increasing recognition of excessive cost of penal expansion, financial and social.
• Recognition that populist law and order auction politics counterproductive, ineffective, costly and damaging.
• Prospects of reversing the expansion of imprisonment depend at most general level on mitigation of neo-liberal political, economic and social policies – a politics of inclusion, social welfare provision and social solidarity – renewal of social democracy
• Imprisonment rates need to be consciously reduced as matter of government planning;
Conclusion

• Imp rates not just an aggregation of individual criminal acts but artifacts of social, economic and political and legal policy

• Traditional parties of social reform such as ALP not the only political agencies capable of reducing imprisonment rates and stimulating a reconsideration of penal policy;

• Stop pandering to popular punitiveness and challenge the assumptions – eg that crime rates increasing, sentences shorter, that judges more lenient, that public punitive etc.

• Circulate and debate research on cost and success of non-custodial alternatives
Conclusion

• Recognise criminogenic effects of incarceration
• Adopt justice reinvestment approaches that:
  - build on broader existing social programs (Vic homelessness example)
  - provide seed funding for particular pilot projects
  - devolve custodial budgets to local area and to non government sector
    - divert policy and resources from the custodial to welfare, educational and training programs in community settings.
• Fund research using incarceration and asset mapping and exploring mechanisms for local devolution of budget
Conclusion

• The challenge is to situate cost based arguments and ‘justice reinvestment’ concerns within a moral and political vision, to couch them in a language which connects with cultural imaginings concerning punishment, for punishment is nothing if not about the imagination, emotion, culture, symbolism, representation and pain. As Michelle Brown argues: ‘[P]unishment constitutes one of the most precarious spaces of the human condition in its seductive invitation to rely upon the acts of others, both real and imagined, to justify our own infliction of pain rather than see our place in its problematic pursuit’ (Brown, 2009:11). The task is to attempt to shift debate from the partisan politics of law and order and its assumption that the ‘toughest’ policies are automatically the most politically advantageous, to the ground of ‘the most effective use of scarce resources to reduce offending and re-offending’ (UK Parliament, 2010: para 42). Such a potential shift is a political development of some significance which requires both critical analysis and a political and ethical engagement with its strategies, policies and constituencies in order to secure the most favourable conditions under which to reduce incarceration rates, recidivism and crime.