

PRISON SERVICE JOURNAL

November 2014 No 216



Reviews

Book Review

Penal Culture and Hyperincarceration: the revival of the prison

by Chris Cunneen, Eileen Baldry, David Brown, Mark Brown, Melanie Schwartz and Alex Steel.

Publisher: Ashgate (2013)

ISBN: 978-1-40944-7290

(hardback)

Price: £70.00 (hardback)

This book is timely and topical as imprisonment rates seem to have taken another step upwards in many jurisdictions following what for some appeared to be a 'peak' being reached in 2012. Despite news worldwide of prison closures there are equally jurisdictions that have very high levels of overcrowding and are now embarking on intense prison building programmes and emergency measures to deal with overcrowding.

This book is mainly based on studies of Australian Penal systems by a group of academics based in Australia; however the 'lessons learned' can equally be applied to any English speaking country throughout the world, and particularly those nations that have experienced the extraordinary increases in rates of imprisonment over the last 10-20 years. The book takes as its theme the work of Wacqaunt, and the concept of 'Hyperincarceration', or in other words the seemingly inexorable rise in the use of imprisonment and other punitive measures, despite the almost worldwide reductions in offending rates that coincide with this period.

Australia and New Zealand have been subject to the same pressures that have been seen in the UK and parts of Western Europe, with one significant difference — the massive over imprisonment of aboriginal groups. In many instances the high rates of imprisonment of aboriginal peoples can almost entirely explain the high rates of imprisonment nationally. In New Zealand for example Maori account for around 14 per cent of the population but 51 per cent of those imprisoned, resulting in an incarceration rate of 674 per 100,000 (the national rate for the USA) for this group, and a national rate of 188 per 100,000.¹ In the Northern Territories and Western Australia the picture is similar, although the overall rates are much lower than New Zealand principally because aboriginal groups are a much smaller proportion of the overall population. However this picture is not universal, and like some of the more enlightened (and Northern) states in the USA, some jurisdictions are bucking the trend: Victoria has a remarkably low rate of imprisonment and only modest numbers of aboriginal peoples in custody.

The book describes the changes in penal culture over the last 40 years in an attempt to explain why there has been such a marked variation in incarceration rates recently, making comparison with the USA which has until recently 'led the way' in what has been generally regarded as a unique Penal phenomenon (Tonry²).

The authors argue that we must now look to the USA to explain the relationship between penal culture and resulting trends that are emerging in liberal democracies throughout the world.

A key point of course is that there is little (if any) relationship between the rate of crime and the rate of imprisonment (Nagin³) and in fact the change is more a result of changes in sentencing law and practice and 'tougher' penalties and increasing punitive innovation in sentencing and sentence administration. Australia makes a good place to study these changes and how they can and have been differently applied. For example New South Wales and Victoria share a similar demographic profile and industrial base yet the former has a rate of imprisonment twice the latter. Even the explanations here differ — in some cases they are related to technical differences and attitudes to measures like bail, in other cases they are a product of social factors like post release support and the generosity or otherwise of state systems towards 'ex-offenders'.

The book also examines the theoretical context in which these changes have taken place and enters the debate about whether this apparent period of 'mass imprisonment' might be a product of 'neo-liberal' states move away from a 'rehabilitative agenda' to one based on risk assessment. The authors argue that whereas this might partly explain differences, the real issue is to do with 'penal culture' in other words the extent to which social, historical and political

1. NZ census 2013.

2. Tonry, M. 1999. Why are US incarceration rates so high? *Crime and Delinquency*(45) 419-437.

3. Nagin, D.S. 1998. Criminal deterrence research at the outset of the twenty-first century, in *Crime and Justice: A review of Research* University of Chicago Press, 1-42.

ideology coincides in the minds of popular media, government policy and activism.

Rising prison populations of course mean rising costs to the state. In Australia alone expenditure on Correctional Services has risen from \$2 billion in 2005 to \$3.1 billion in 2012. Although not examined in detail the book opens up the debate about the value of incarceration and the opportunity costs that prisons provide compared with say building schools or better adult education to tackle one of the causes of the rise. They quote the interesting 'exchange rate': for every prison bed built 30 school student places could have been provided. This is particularly poignant in New Zealand at the moment which has large numbers of Maori children who are not fully engaged in school at the same time attainment rates for this group are akin to those in developing nations.

Australia provides a somewhat unique perspective on imprisonment given its colonial history — In 2011 UNESCO gave World Heritage status to 11 of its prison sites, in view of the special nature they had in colonial history. During the 1970's there was a widely held belief that prisons would eventually become 'redundant' as a result of social reform, improved technology and improving economies. In other words there would be far less crime far less offenders and few prisons. Ironically only the latter part of this statement has not come true. It was the highly politicised law and order debate of the 1980's in which 'new labour' in the UK took a key role that seems to have signalled a turning point in history.

The book examines colonialism, convict transportation and other little known areas of 'custodial practice' such as the forced indenture of thousands of Polynesian peoples to work as

labourers in agricultural production in Australia, and their subsequent expulsion from the country; or the continuance of public executions of aboriginals long after the practice had ceased for white Europeans. Aboriginal peoples gained full constitutional rights in 1967 and the removal of legislation that allowed for flogging of aboriginal offenders and segregation in 'reserves.' This coincided with the sudden increase in Aboriginal peoples in Prison.

In response to rising numbers came therapeutic jurisprudence which sort to revive or at least allow in the practice of culturally driven criminal justice leading to Nunga aboriginal court in South Australia and the Koori Court in Victoria. Sadly these courts have had little if any impact on rates of imprisonment and re-offending rates. In some jurisdictions there has been a recent 'push — back' against punishment that was perceived as 'soft' or outside of mainstream. At the same time experiments started with Remission and Parole — two approaches designed to reward compliance with sentences and positive behaviour in custody. Again public reaction to these apparent reductions in sentence led to progressive challenges to Parole Board decisions and eventually to the availability of the process at all under the general banner of 'truth in Sentencing' born out of similar events in the USA. In New Zealand the 'Sensible Sentencing Trust' increasingly occupied the debate around law and order and the attention of both public and politicians leading to a current debate about 'three strikes' sentencing for property crime.

It is not just the availability of alternative sentences but also the manner of use. The book's authors chart the course from Parole as a method of early release to one of

'control'. Even bail procedures (originally designed to keep low risk offenders out of prison and manage the remand population) have been subject to this same pressures — like the UK electronic tagging is now routinely used for bailees and the process in effect becomes one of containment.

Interestingly the change has not been completely linear. In part this is to do with the resistance that the Judiciary has been able to mount against government attempts to fetter their independence.

A whole chapter is devoted to the rise and dominance of risk management and its overriding impact on custodial management and other factors such as early release as well as the way that offenders are managed in the community, and its more recent expansion into involuntary detention.

The penultimate chapter is devoted to the current opportunities that are presenting themselves as an alternative trajectory. In particularly the US Supreme court decision directing California to reduce prison overcrowding.

The most important factor that has the potential to drive long-term change is ironically cost. Bill English, the current New Zealand Finance Minister (and member of a National Government) made the unusual statement 'prisons are a fiscal and moral failure'⁴ signaling the way for alternative thinking in a country which had up until this point one of the highest imprisonment rates of any OECD country outside the USA. The book notes that the changes that have so far driven up imprisonment rates were done with little if any scientific rationale, largely driven by popular politics and reactions to events. The opportunity has arisen for 'justice Reinvestment' strategies that

4 . Widely reported comment made by Bill English at the Opening a Families Commission's 50 Key Thinkers forum on May 11, 2011.

rationalize approaches (more and more using empirical research) and question the relative value of one versus another. This approach is emerging in a number of countries; in the UK it is described as 'a form of preventative financing which shifts funds away from dealing with problems downstream (policing and prisons) and towards tackling them upstream (family breakdown, poverty, mental illness, drug and alcohol dependency).(IPPR)⁵

The House of Commons Justice Committee in 2010 made the poignant remark that 'the overall system seems to treat prison as a free commodity',⁶ and went on to recommend capping the prison system numbers and using this as an opportunity to divert funding into preventative measures. Sadly this proved 'too radical' for the British public and the Coalition government resulting in a 'bounce back' to more punitive rhetoric and cost cutting rather than cost saving.

Justice reinvestment is therefore moving tentatively rather than rapidly, looking to be accommodated alongside traditional conservative approaches to penal policy rather than in place of them.

Perhaps more of an immediate stumbling block is inequality and race, at the time of writing this review, the amount of children living in poverty in New Zealand rose from 25 to 27 per cent,⁷ worst still this group is massively overrepresented by Maori and Pacific Island peoples. The same story is true in Australia. It is indigenous groups that dominate the majority of those entering and returning to prison — in some areas Aboriginal Youth have a 25 per cent chance of being incarcerated.⁸ Until this crisis is dramatically reversed no policy will make a serious difference.

This book is an outstanding contribution to the growing body of work on prison growth. In terms of both the depth of discussion and the geographic reach both in the context of Australia but also the wider implications for Global practice, it is a thought provoking and ambitious undertaking, which is impressively realised.

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Book Review

Young Adult Offenders: Lost in Transition

By Friedrich Lösel, Anthony Bottoms and David P. Farrington
Publisher: Routledge
ISBN: 978-041574-744-8
Price: £24.95 (Paperback)

This is the eighth book in the Cambridge Criminal Justice Series, which is published by Routledge in association with the Institute of Criminology at the University of Cambridge. It therefore boasts three renowned editors drawn from the University in Friedrich Lösel, Sir Anthony Bottoms and David P. Farrington. They have, in turn, attracted authoritative contributors to the ten chapters of the book that include Alison Liebling and Rod Morgan.

The book aims to highlight issues around the transition from Juvenile Justice (i.e. community and custodial provision and practices for those aged under 18) to the adult justice world, with a particular focus on the individual variability of maturity, vulnerability and physical development of those in transition (Young Adults or those aged between 18 and 21 or 18 and 25

depending on how the definition is applied). The editors argue that this inconsistency is reflected in Justice systems across Europe and the rest of the world when dealing with transitional Young Adults, and this inconsistency provides the space to debate the most effective approach for administering Justice for this group. It is a timely publication given the significant reduction in under 18 offenders held in custody in England and Wales over the last few years, and the subsequent reduction in the 18-21 year old offender population. Furthermore, there are a number of different models in prisons holding Young Adults across the England and Wales system; with some prisons holding 18-21 year olds (e.g. HMYOI Brinsford), some holding 18-25 year olds (e.g. HMP and YOI Isis) and some mixing Young Adult and Adult populations (e.g. HMP and YOI Portland).

The book commences with these different approaches across Europe in the introduction and the second chapter by Frieder Dünkel and Ineke Pruin, with examples given of countries that treat some offenders as 'Juveniles' until they are 21 (e.g. Germany) or even 25 (e.g. Switzerland). This chapter focuses heavily on Germany which typically diverts 64 per cent of Young Adult offenders up to 21 into Juvenile provision and the analysis provides a strong argument for consideration by academics and policy makers.

This chapter focusing on broad policy is juxtaposed by the next from Mary McMurrin from the University of Nottingham's Institute of Mental Health, which looks at alcohol and aggression in Young Adults in the UK at the individual level, a reflection of her academic background in Psychology. Of particular resonance is the

5. Pages 172-3.

6. Ibid.

7. OECD report prepared jointly with New Zealand Statistics reported in New Zealand Herald Feb 28, 2014.

8. For example Aboriginal people constitute 37% of all Queensland youth offenders whilst only 2.5% of the general population.

comparison of middle-age and Young Adult heavy drinking which appear equally prevalent, except that middle-age drinkers have a much reduced inclination to behave aggressively and cause public disturbance, and therefore are less prominent in the public consciousness. It is another strong argument for the unique management of this group. David P Farrington provides a chapter based on longitudinal research that considers predictive factors in childhood for offending before an extremely interesting chapter for practitioners and academics by Alison Lieblich who summarises research into the coping strategies of Young Adults in custody and the positive impact that relationships can have on offending futures.

Friedrich Lösel uses the next chapter to attempt to review the evidence of what works for young adults, although this is generally limited to extrapolating general research, exposing the dearth of Young Adult specific empirical evidence. An interesting analysis of female Young Adults follows, highlighting key differences in the approach to this cohort, such as how specifically the sense of responsibility to others is a key factor in desistance for this group. Research evidence of desistance is continued in the following chapter which brings together evidence from the Sheffield Desistance Study, a longitudinal piece of research that mainly offers recommendations for those supervising Young Adults in the community.

The final two chapters focus on policy level issues, with Rob Allen specifically analysing the difficulties facing policy makers and Rod Morgan, the former Chair of the Youth Justice Board providing an updated version of an earlier speech he gave whilst still in post concerning transition. He gives a very balanced view, and is

ultimately pragmatic about the way forward, adding to points he made when I interviewed him for an earlier special edition of the *Prison Service Journal*.¹

In conclusion, this book meets its aims of highlighting the variation in approaches to Young Adult Justice across England and Wales, and Europe, providing strong arguments and evidence at the individual and policy level of decision making. Clearly the editors and contributors argue the benefits of a more tailored approach to a fairly unique group of offenders, although, as Rod Morgan admits in his chapter, the practicalities of achieving this in the current political, operational and financial climates appear slim. Overall this book has the right balance of contributions to peak the interest of students, academics and practitioners working with Young Adults, but the underlying message throughout is clearly reserved for policy makers in the UK and across Europe.

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Book Review

Juvenile Justice: A Guide to Theory, Policy and Practice 8th Edition

By Steven Cox, Jennifer Allen, Robert Hanser and John Conrad
Publisher: Sage
ISBN: 978-1-4522-5823-2
Price: £68.00 (Paperback)

Juvenile Justice: A Guide to Theory, Policy and Practice has been published and republished for almost forty years with this being the eighth edition produced. It aims to be a concise and reader friendly textbook covering a broad range of topics across Juvenile Justice. The book is produced in the US and

focuses predominantly on the US system of Juvenile Justice, although a number of the key themes running throughout the book are consistent in most western countries, if not the whole world. In particular a large proportion of the book is dedicated to child protection, age of criminal responsibility and Juvenile gang activity, and these issues reoccur throughout all of the chapters.

Unsurprisingly, given the established nature of this textbook, the authors are experienced and reputable academics, some of which have been practitioners within the field of Juvenile Justice. The authors have provided numerous special features in addition to the core text such as 'built-in learning aides', landmark legal case summaries and linked 'career opportunities' related to each chapter.

The book comprises of 14 chapters starting initially with a thorough analysis of the history of Juvenile Justice around the world and in the US. Of particular interest is the lasting punitive approach to Juvenile Offenders, with the chapter highlighting for example the application of the death penalty to Juvenile Offenders which was only 'struck down' by a test case in 2005. Furthermore, there is an explanation of how life without parole for non-homicidal juvenile crimes was only ruled as 'cruel and unusual punishment' by judges as recently as 2010. Building on this chapter there is a descriptive chapter on the definition and measurement of Juvenile offences in the US, followed by a chapter that is applicable across most western cultures on the typical characteristics of Juvenile Offenders.

The following two chapters examine the criminological, psychological and sociological theories of Juvenile Offending and the importance of child protection.

1. Crosse, Paul (2011) Interview: Rod Morgan, former Chair of the Youth Justice Board *Prison Service Journal*, 193, 37-42.

Chapters six, seven, nine and eleven document in detail the specifics of US legal procedures in relation to Juvenile Offenders and are arguably the least useful to those seeking a more generic textbook. However, Chapters eight and ten provide an excellent examination of the interaction between the Police and Juvenile Offenders, in particular the importance of Police discretion and criminalising children, and the advantages of Restorative Justice with this cohort.

Possibly the most interesting chapters are the following two that consider an analysis of Juvenile gangs and their development followed by a chapter summarising Juvenile Justice around the world. The later focuses on the globalisation of the predictive factors of Juvenile Offending, and the link between urbanisation and increased offending within this group. It goes on to examine the variations in the age of criminal responsibility around the world, estimated to be between seven and eighteen before providing useful regional summaries of Juvenile Offending. The final chapter provides some brief ideas for future practice within this field.

Overall, this book achieves its aim of being concise and reader friendly. It is clearly aimed at the undergraduate student of criminology or a similar field, rather than the policy maker or established academic, although it could be of benefit to practitioners working in this area. Although it is strongly focused on the US system, which renders some of the chapters less useful to those wanting a more general or European based text, it does provide a number of chapters that will still resonate across all western society along, with a good analysis across all regions of the world.

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Book Review

Hate Crime second edition

By Nathan Hall

Publisher: Routledge (2013)

ISBN: 978-0-415-54027-8

(Paperback) 978-0-415-54026-1

(Hardback)

Price: £28.99 (Paperback) £85.00

(Hardback)

This is a second edition of a book first published in 2005 that aims to capture the growth of global interest in hate crime since the first edition.

The first chapter addresses the question *what is hate crime?* It is a relatively new category of crime and is difficult to define. The author explains that the root of this problem is that hate crime is a social construction rather than a clear cut category that is defined by laws that are more or less inclusive in different jurisdictions. Moreover, some offending badged as hate crime is motivated not straightforwardly by prejudice, sometimes not even by prejudice, but is variously opportunistic or otherwise criminal. In fact, as the author points out, few offences are motivated solely by hate. As if this wasn't complicated enough, the criminalisation of prejudice is also tricky in that it threatens to undermine freedom of belief and expression within pluralist and democratic societies.

Having set the scene as a complex and confounding one the second chapter seeks to answer the question *when is it occurring?* Although hate crime is a relatively new label it is an old problem, and this chapter charts its emergence as a contemporary socio-legal problem in the US and in England and Wales. The next chapter asks *where is it occurring?* The problem of varying definitions and recording practices produces a confusing international geography of apparent frequency in some countries and rarity in others. The next chapter addresses who is

affected? Here the British Crime Survey suggests that 3 per cent of overall crime in Britain is hate crime; that the predominant motivating prejudice is racial hatred and the highest risk group young single people aged 16 to 24 from an ethnic minority. With the changing geopolitical landscape racial hostility increasingly extends to new minorities that include immigrants, asylum seekers and migrant workers (not to mention Muslims in the wake of 9/11 and 7/7). The levels of repeat victimisation and consequent fear and anxiety lead the author to suggest that hate crime is better conceptualised as a process than an event, with a disproportionate and cumulative negative effect on victims.

Chapter 5 examines the nature of prejudice and hate in an attempt to explain why hate crime is occurring. Despite this being one of the most researched areas of social psychology a causal link between prejudice and violence has proved elusive. Many more people hold prejudices than cross a threshold to commit violence. This and the following chapter examine possible explanatory frameworks, hampered by an acknowledged dearth of research into perpetrators. A range of theories are presented. The most promising for me is that of social identity and group dynamics, not least because this has proved central to understanding extremist offending in those convicted under terrorist legislation. The review of the social psychological literature on prejudice and explanatory frameworks is helpful, but largely fails to bridge the gap between macro theory and individual agency.

A possible exception to this is the reference to Waller's (2002) account of how ordinary people come to commit genocide or mass killing in which they are extraordinary because of what they do, not because of who they are.¹

1. Waller, J (2002). *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*. New York: Oxford University Press.

This goes some way to explaining the role of threshold influences that we have identified in extremist offenders such as identity, meaning, belonging, status, grievance, threat and thrill that make an ideology of hate appealing, and the role of conditioning and grooming in overcoming inhibitions about using violence. Waller's theory refers to professional socialisation, the merger of role and person, us and them thinking, dehumanisation and blaming of the victims. The conclusion of this chapter echoes our own within extremism, that '*the search for a single, universal causal factor for hate crime is likely to be fruitless. Rather it is the interplay of a number of different factors that produces perpetrators*'.

Chapters 7 and 8 address the question of *what should we do to make the problem better?* It examines law enforcement responses and other forms of intervention. The difficulties of definition and explanation again emerge to hamper the development of effective responses. In particular the lack of a comprehensive theory that integrates macro level analysis with an understanding of individual vulnerabilities has meant that formal treatment programmes for individual offenders have been slow to develop and lack evaluation. The conclusion is that at this stage in our knowledge we don't know what works, which leads into a chapter that questions the very utility of the hate crime paradigm. The conclusion is that hate crime is

here to stay, largely for pragmatic reasons. Legal challenges have failed to lead to its abolition.

Although the category of hate crime has practical value, theoretical and moral issues remain and are the subject of the next chapter *Critical issues in hate crime*. These essentially make the case for the continuing use of hate crime laws. Concerns about double jeopardy for hate crime in punishing both the motive and the offence and about the curtailment of freedom of speech are both discussed. The author concludes that the causal link between hatred and the offending can be inferred by the demonstration of hostility during the commission of the offence, and the evidence from victims is that offences aggravated by hostility hurt more and result in more long term damage.

One of the critical issues that resonated significantly with me concerned the extent to which the silo study of hate crime has prevented the recognition of the theoretical intersections between disciplines. The author is referring to academic silos, but it applies also to correctional approaches that tend to be specific to particular categories of offending. There is clearly much to be gained by shared working between those who are experts in extremist offending, gang related offending and hate crime. Indeed such a collaboration is now taking place within the National Offender Management Service in England and Wales to develop new shared approaches to assessment

and intervention. Disappointingly for me the area of Al Qaeda influenced extremism was not discussed despite there being some discussion of Right Wing extremism. This is undoubtedly because this work has not been published due to its sensitivity at the present time. Hopefully this area of learning will eventually be placed in the public domain so that the areas of convergence can be recognised.

The author concludes his book with a chapter of *Conclusions* that reprises the areas discussed and the implications of the gaps in our current knowledge for the future. His essential optimism and resilience is reflected in his interpretation of the ground still to cover as an inspiration rather than a deterrent. He reminds us again of the excerpt from T S Eliot's *Four Seasons* at the beginning of the book

*We shall not cease from
exploration
And the end of all our
exploring
Will be to arrive where we
started
And know the place for the
first time.*

This is a useful, well argued and scholarly book that should significantly advance our shared exploration.

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