

**Prisons – 21<sup>st</sup> century asylums or a pathway to positive change?**  
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Before I start I'd like to acknowledge the Traditional Owners of the land on which we meet and to pay my respects to their Elders, past and present, and any Elders from other communities who may be here today.

I also want to thank the organisers of this event for their invitation, although I have to say that their choice of theme for this year's conference "Innovative Justice" seems somewhat ironic coming as I do from Victoria, where in a race to the bottom over law and order issues ahead of this November's state election, I sometimes feel that our esteemed leaders would like to jump into a time machine and take a trip back to the good old days of penal colonies and capital punishment.

Certainly, proposing innovative solutions to justice problems can be a hard sell in any election year – but particularly in the

face of the sort of horrific and inexplicable crime we've seen in Melbourne in the past week, where the public, quite rightly, wants to see some kind of justice done.

What I fear though is the tendency of our policymakers to respond in many situations with knee jerk solutions that don't do anything to make us as a community safer. While good policy should always be based on evidence, when it comes to the law and order debate, often policy seems to be made **DESPITE** the evidence.

Often we are so keen to lock up offenders and throw away the key that we rarely pause to ask: what are our prisons really for?

### **The role of prisons**

To most in the wider community, prisons exist as mechanisms to keep 'the rest of us' safe – to contain and restrain those who have committed serious offences; to deter (in theory) others from doing the same; and, if the principles of the applicable

sentencing legislation are to be believed, to provide those same offenders with prospects of reform.

The reality, however, does not always match the theory. Without doubt, there are a small minority of hardened or profoundly damaged offenders for whom there seems no other option but incarceration. In the vast majority of cases, however, there are indications that tell us we have to do something *before* this offending kicks in, and that we have to intervene more effectively once it does.

Despite this, the criminogenic nature of the prison environment can often serve to entrench, rather than address offending behaviour – first-time offenders introduced to a figurative library of criminal experience, as well as a culture in which status *as an offender* carries extremely serious weight.

What's more, the infantilising experience of an institutional environment – the lack of control or agency over daily decisions; over self-care; over personal relationships - leaves inmates ill equipped to resume community life.

Released too often to homelessness; almost always to unemployment; to the sudden availability of drugs and alcohol and often in Victoria to minimal supervision because of changes to parole, reoffending, rather than reform, are the most likely prospects on the cards.

All of this means that the reality of Australian Corrections systems – and many others around the world – is to operate as revolving doors, keeping the community ‘safe’ from the relevant offenders for a period of time, maybe; but doing little to deter crime; nor to address risk that offenders may pose upon release, sometimes even *increasing* it instead.

As former British Home Secretary Sir Douglas Hurd put it, and as cited in a 2015 report by the Victorian Ombudsman, prison is ‘an expensive way of giving the public a break from offenders, before they return to commit more crimes’. This means that, while existing victims of crime might receive brief respite (although, arguably, little else from the adversarial process), the broad failure of our prison systems to address offending is likely

to lead to the *creation of more victims down the track* – hardly the task for which these systems were designed.

### **Who makes up our prison populations?**

When we look at the individuals inside our prisons, of course, the picture becomes even more confusing. Far from the hardened or ruthless offenders which the public might imagine and the media portrays, a significant majority of inmates of Australia's prisons arrive with a history of profound and entrenched disadvantage.

As the same report by the Victorian Ombudsman unequivocally explains, prisons function as a snapshot of the way in which we have, collectively, failed certain groups in the community. Not only this, but in encountering our justice system, we continue to fail them again.

Ad lib re Mt Isa watch house then ask...have things really changed?

*Ad lib about the "Free After 543 days" article*

Whether in the shamefully disproportionate rates of Aboriginal and Torres Strait Islander people in *all* Australian Corrections systems; or in the stark finding that half of Victoria's prisoners come from just six per cent of the state's postcodes – the demographics of our prisons tell us a story of entrenched institutionalization, intergenerational trauma or poverty serving to map out a trajectory towards inevitable harm.

Levels of educational attainment echo this story – with high school completion rates at six per cent for male prisoners, as opposed to around roughly 85 per cent for the wider population. Mental illness, cognitive disability and Acquired Brain Injury, meanwhile, are also rife – a recent [Human Rights Watch report](#) found that while people with a disability make up 18 per cent of the Australian population, they make up HALF of those in Australian prisons. In Victoria, one study found 40% of the prison population had been assessed as having mental health conditions; another report indicated that 42% of male prisoners and 33% of female prisoners have an ABI, which had, for the most part, gone unidentified and unaddressed, compared with

2% in the general population. This paints a picture of our prisons functioning as the 21<sup>st</sup> century's asylums.

### **Victim or offender - a false dichotomy**

So what, some will say. These individuals might be disadvantaged, but they have still broken the law and been convicted as an 'offender' in a courtroom. There are victims, there are offenders and 'ne'er the twain shall meet'.

What if, however, we start to dig a little deeper? What if we edged out from behind this neat little dichotomy and realised that, often, there were more victims standing in that courtroom than we first assumed?

The reality is that 34% of young Victorians in custody have had previous child protection involvement; and 64% in the juvenile justice system have experienced child abuse. Harrowing stories before the Royal Commission into Institutional Responses to Sexual Assault echo this trajectory from victim to offender, while an Australian Human Rights Commission report confirms that

many offenders with a disability are victims of violence who have not received appropriate support.

As if that were not enough, estimates suggest that between 50 - 90% of inmates at any female prison have been subjected to some form of interpersonal violence. Child abuse, sexual assault in adulthood, and of course family violence – this is the experience of far too many, the associated trauma then propelling them ultimately onto the wrong side of the law.

This indirect causation, however, is only part of the story. Family violence also contributes *directly* to women's incarceration – property damage by a partner; debts that an abusive man has accumulated or deliberately caused his partner to accumulate; charges for drug offences that she has assumed on his behalf because she is so frightened of him...the list goes on. Women can also be imprisoned for assault or homicide of their partner, of course, having seen no other way out.

We see this on a regular basis at the CIJ because our neighbours at the Mental Health Legal Centre run a program called Inside

Access - the only service that, with Corrections Victoria's support and with RMIT law and social work students in tow, regularly visits Victoria's maximum security women's prison and provides civil legal advice to help them establish stable lives. Ad Lib re program....

Over and over, family violence and sexual assault comes up as the backdrop – to divorce, to mental illness, to child protection, to debt. It comes up when women are too terrified to leave prison until an Intervention Order is in place; when they are unable to be released because they have no housing. It comes up when women want to apply for victims of crime compensation to start to recover from a lifetime of harm.

In other words, the Inside Access experience confirms what many in the family violence sector already know – that there are women in Victoria's prisons *simply because they are victims of crime*. *They* are the ones who have been assaulted; *they* are the ones made homeless; *they* are the ones propelled into poverty, substance abuse or mental illness...yet they are the ones who have been locked up.

This is completely without logic. This is a failure of the system at its worst – the experience of prison and associated dynamics of control often compounding the effects of family violence and leaving women more vulnerable to poverty, reoffending and victimisation upon release. What's more, when family violence has been the cause of an ABI – either as the result of a direct head injury from a physical assault or from drug abuse fueled by a violent relationship – the experience of prison leaves these victims even more vulnerable. Meanwhile, the children of these women, often already victims, are further cemented in the cycle of potential offending and victimisation, six times more likely to become offenders themselves by virtue of losing a parent to custody.

In this and other ways, then, male family violence is a direct contributor not only to the increasing population of Victoria's male prisons, but its female prisons as well. The question then becomes to what extent Victoria would need a women's prison at all were it not for its epidemic of family violence? Surely investment in greater support for victims – *including to prevent their reoffending* - would make more social *and* economic sense

than the construction of more prisons and a legal system that compounds, rather than alleviates, harm?

### **Throwing out the framework and starting again**

How did we compartmentalize our response to all this, offering boundless compassion to those who have been wronged until their resulting dysfunction trips them over to into *wrongdoer* - until they become 'offenders' and we suddenly experience a compassion bypass, jostling instead to see how harsh we can be?

If we genuinely want to prevent crime – and the creation of more victims - this is not an intelligent, or even pragmatic, reaction. Sending damaged people to prison so that they can emerge more damaged is not going to keep anyone safe. Instead, it is going to turn already marginalized people into more hardened, repeat offenders, cementing the cycle of institutionalization and propelling more victims – who continue to experience the ongoing effects of the crime they have experienced – beyond the reach of our apparently limited concern.

To acknowledge these realities is not about being soft on crime, nor is it about making excuses for those who commit it. Yes, there are bad bastards out there who need to be met with the full force of the law. Sometimes there are no signs or indications that their offending is on the cards; sometimes their crimes are so heinous and their prospects of rehabilitation are so poor that we have a duty to detain them in custody for a very long time.

In the vast majority of cases, however, there are indications – of aberrant behaviour; of victimisation; of increasing isolation and distorted thinking; of escalating risk – indications that tell us that we have to do something *before* this offending kicks in; that we have to intervene more effectively once it does.

Where a perpetrator is imprisoned, meanwhile – either for an offence identified as related to family violence or for something else – it is often the case that a history of family violence goes unaddressed, with many family violence offenders imprisoned for such short periods of time that they are ineligible for the necessary treatment programs, with the hyper masculine environment of prisons serving to entrench, rather than

dismantle, misogynist attitudes and violence supportive attitudes.

All of this means that, potentially, the prison environment can be responsible for the *creation of more victims* in a whole range of ways. Whether it be the victims of those crimes committed by offenders when the causes of their offending have failed to be addressed; or the existing victimisation of an offender which has been compounded, rather than alleviated, by the experience of incarceration, this accumulation of victims could be halted if prisons – and our legal system more broadly – functioned in a different way.

### **The real purpose**

This, then, is where we must return to examining the purpose of prisons and the justice system more broadly. We need to ask whether the duty of a justice system should go beyond functioning purely as a detached and impartial machine – one which takes no interest in what brings people through its door, nor responsibility when they keep coming back.

We have to ask whether the purpose of a police force is simply to detect crime or to find ways to help to prevent it and therefore keep communities safe. We have to ask whether the purpose of a court is simply to adjudicate disputes and administer sentences in an impartial and timely fashion, or is it to function as a positive intervention that will prevent further disputes or offending from occurring. We have to ask whether the purpose of a Corrections system is to function as a revolving door for victimisation... or as a one-way door to different and better opportunities.

I believe we've got to start seeing contact with the justice system as a potential for positive intervention. Where this intervention occurs effectively, this should mean that prisons become irrelevant, communities supported to address potential offending before it occurs; and first-time offenders diverted onto more constructive paths.

Where a custodial sentence is necessary, however, this also needs to be seen as the unique opportunity it really is – a structured relationship that enables us to address prior victimisation and to create new lives.

For example, a project our Centre is embarking on brings a restorative justice framework to culpable driving matters, with some truly remarkable results –

*Ad lib about Hayden and Lindi*

In other words, if we want our sentencing practices to work, a relationship with Corrections (whether custodial or otherwise) is an opportunity to address histories of trauma and family violence; to address addictions to drugs or alcohol; to address mental illness or ABI rather than just warehousing it; to address fractured relationships; to connect people with case management, long term housing or ultimate employment; and to help them reconceive themselves beyond their history of disadvantage and their identity as ‘committer of crime’.

**Conclusion**

In asking whether ‘prisons change lives’ we must be honest about whether, currently at least, the answer is ‘yes, but to the detriment of us all’. Until we take a drastically different

approach, the trajectory of our Corrections system seems as negative and inevitable as the lives of those countless disadvantaged and victimised individuals it houses.

The main game, the real role of *any* aspect of the justice system must be to prevent crime and the creation of more victims.

Ultimately, then, the role of prisons should be, for the most part, to do themselves out of business – to keep the community safe from that hardened minority where there is no other alternative, but to put the vast majority of offenders on a more constructive path.