



# PRISON



# The



# LAST

# RESORT

*A Christian Response  
to Australian Prisons*

The Anglican General Synod Social Responsibilities Commission  
The Australian Catholic Social Justice Council,  
The Australian Council of Churches Commission  
on Church and Society,  
The Uniting Church in Australia Assembly Social  
Responsibility and Justice Committee

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In Luke's Gospel, Jesus begins his ministry by declaring that under the Spirit of God he has been led to proclaim liberty to the captives. In Matthew (Chapter 25) he made the claim that when we visit those in prison we in fact do this to him. Christ was concerned about all that binds and oppresses and keeps people from the freedom intended by God.

The Christian community cannot be obedient to its Lord and remain aloof from the situation that exists in our gaols. Too many people enter the gaol system, particularly those who are young and poor. Too many prisoners exist in appalling situations of violence, lacking proper facilities, enduring overcrowding and boredom. Despite these harsh conditions, there is no measurable reduction in crime and little is done either to rehabilitate offenders or to ensure that they are not caught even tighter in the web of continuing crime.

The story in these pages is one that Christians cannot ignore. If we believe in compassion, justice and care of the least for whom Christ was concerned, we should consider the plight of those who are in our gaols.



'Nobody knows what it's all about.'

(Former inmate)

'Church people do very little about prisons.'

(Christian Post-Release Centre)

'There is no rehabilitation in prisons; people come out angrier.'

(Member of a prisoner's family)

'In prison there is no one you can turn to. Many men are in turmoil. The churches should go in and try to help and listen to what they say.'

(Spokesman for Prisoners' Action Group)

'We wish to draw your attention to the pathetic situation in the prison's so-called psychiatric institution. We wish to protest at the deplorable lack of resources and appropriate therapy available for people incarcerated and classified under largely extenuating circumstances of which they were not necessarily in control. It seems the official attitude is to control psychiatric inmates by depriving them of anything which might prove stimulating.'

(Two inmates of a prison psychiatric unit)

'We ask, do people have to kill themselves before anyone can receive the appropriate, humane, responsible attention freely given elsewhere, but lacking where it is so desperately needed?'

(Prisoner—Psychiatric Unit)

## Justice system blamed for oppression of Aborigines

By GAY ALCORN

300,000 Aborigines  
deemed British citizens  
in its

penalties for juvenile  
institution for hardened youth.

### Crime and punishment stays in teenage too-hard basket

## THE LIBERAL PARTY Kennett: We will toughen terms in jail

LIBERAL Govern-

ving only a part of their  
sentence."

He said victim im-  
statements wor-



'Society rejects the criminal with a passion. So entrenched is their contempt for criminal behaviour that the prison officer suffers from their contempt towards criminals as well. By association, if for no other specific reason!'

(Prisoner)

'One feels so lonely that it is impossible to be in the frame of mind needed to even analyse oneself, as a start to getting on the right path.'

(Prisoner)

'I was in prison and you visited me.'

(Jesus)

**OUR GAOLS ARE TOO SOFT**

(Headline *Western Mail* 20.12.86)

**PRISON SYSTEM UNDER FIRE**

(Headline *Western Australian* 20.12.86)

**TIME TO ACT ON PRISONS.**

'What sort of prison system are we running in N.S.W? ... The public has lost virtually all confidence in the jail system. The Government must not ignore such deep-felt public concern. Sentences need to be tougher, the parole system must be reviewed and jails must be made effective instruments of correction.'

(*The Sunday Telegraph* 3.3.86)

...ly subdued entrance where  
...ion was a broom, he was even  
...n the Protection prisoners. He  
ump, who killed Virginia Morse in  
...his most heinous crimes.

... Visit to Maitland jail, 1988.

wouldn't be here now."

... Ex Wests and City  
player serving a 10-year  
sentence  
for  
conspiracy, Long Bay  
July 1987.



© Roy Masters

# INSIDE OUR JAILS OF HATE

Out of Sight, Out of  
Mind fell short of  
revealing some of the  
circumstances  
elicit sympathy  
"the prison"  
be'

TIMES ON 5

**Suicide  
'the  
easiest  
way out'**

TREVOR DAY will appear in court  
Monday charged with offensive  
— allegedly urinating in  
... next month, the





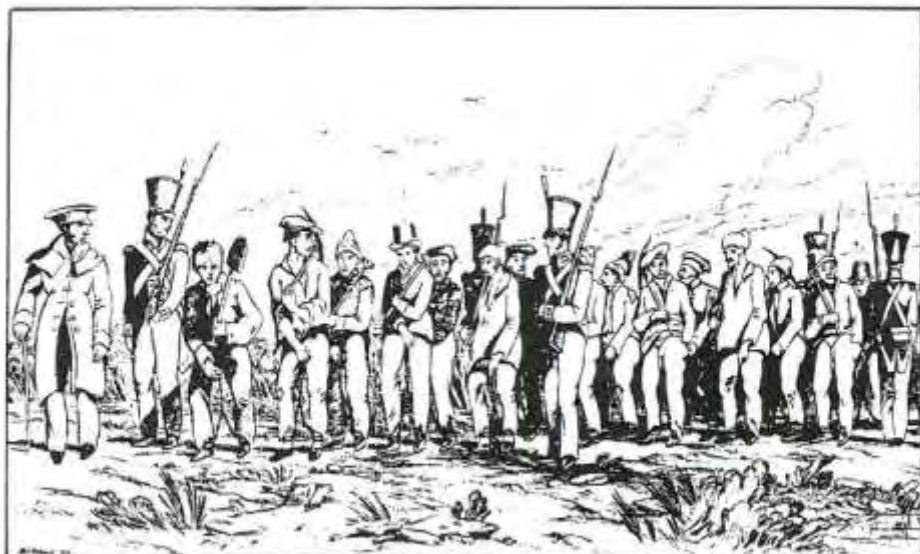


# INTRODUCTION

**During 1988 we recall that the Australian nation was founded as a penal colony. The nation that dates itself from 1788 depended on those who were banished from their own country to live and suffer under a harsh colonial regime.**

The reality of the European settlement of Australia is that it occurred in response to the need for the British Government to solve the problems of lack of space in British prisons. The industrial revolution had displaced rural people and led to the overcrowding of cities unprepared for the increase in population. There was an apparent breakdown in law and order and a consequent overcrowding of prisons which were generally intended only to hold prisoners awaiting sentence. The situation reached crisis point with the loss of the American colonies as a place where prisoners could be sent.





The use of imprisonment had not yet developed as a major form of punishment and, apart from the death penalty which covered 160 offences, transportation was a major way of dealing with crime.

While the measures used to keep order in the new colony were harsh—execution, flogging, temporary banishment to Pinchgut Island, deprivation of rations, use of collar and fetters—the convicts were not isolated or imprisoned. They provided the labour for government and private activity, marriage was allowed, and skills were developed. To some extent, at least, this harsh system prepared people for more normal society.

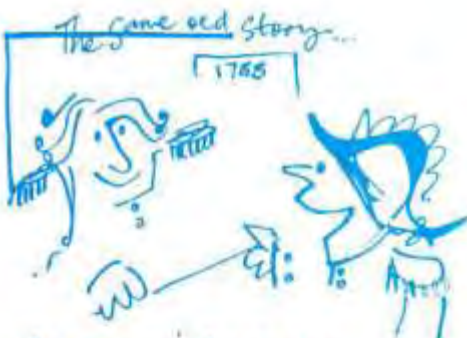
From the beginning of white settlement, two types of prisoners have tested our notions of justice: the poor and Aboriginal people—who are both poor and dispossessed. Recent prison statistics suggest that, in this regard, nothing much has changed in 200 years. Both groups continue to confront us with the relationship between individual criminal activity and deeper social ills.

Developed at the time of the industrial revolution, the prison system was intended to carry out the functions of transportation—to control marginal elements of the working class and to make 'invisible' those considered to be of little economic and social value in the labour market. The prison exists as a powerful emotional and symbolic answer to the crisis of control which exists in society, a guarantee of the state's ability to exercise law and order.

This is not to deny the fact of personal sinfulness, the need for practical assistance and concern for victims of crime, or society's right to protection. Rather, it is to plead for deeper examination of a complex issue and the creation of more humane alternatives to the prison system where appropriate.

Prison walls do two things: they keep prisoners in, and they keep the rest of the community out. It is a case of 'out of sight, out of mind', except when something sensational happens behind the walls: a riot, a murder, a fire or an escape. Normally we have little concern for or interest in what goes on in prisons.

However, our prisons are just as much part of our community as are our hospitals, our schools, our geriatric centres and our psychiatric institutions. The men and women in our prisons are all members of our community. They are mostly young, unmarried, illiterate, unemployed or disturbed people who have been convicted of non-violent crimes. Apart from a handful in each Australian state, they will all return to the community. We all have an investment in what happens behind prison walls.



No more criminals Sir, we've sent them to Australia



They're all in gaol, Sir



Often the media portray judges as handing down light sentences, or depict gaols as luxurious motel units. Escapes make the front page of newspapers, but those who successfully complete work release schemes never come to our attention.

Prison rates vary between states, yet there is no indication of more criminal behaviour in one region than in another. Studies show no significant link between the level of crime in a community and the percentage of people in prison.

Law and order campaigns seem to hit an election nerve. Somehow they ignore all the research about the failure of tougher gaol sentences to reduce crime, or statistics which show that crimes such as homicide are declining.

**There is tough talk about stiffer penalties for young offenders, ignoring the fact that the younger a person is at the time of sentencing to an institution (rather than some other penalty) the more likely he or she is to enter gaol later in life.**



We, surely, have the answer to prisons...

Regardless of their initial motivation, warders become custodians and controllers: people fighting to establish their authority in the face of fear of attack and daily abuse.

Gaols are frequently boring, brutal places where people learn more about crime than acceptable and responsible behaviour. Yet they are places where people on remand can spend many months, or even years.

The effect on the family of the person imprisoned can be devastating. The spouse and children suffer physical and emotional separation, difficulties with neighbours and economic hardship. Visits can involve long journeys and can be as short as an hour per fortnight in some gaols. They can be cancelled without notice. Maintaining a relationship under these circumstances is almost impossible.

Gaols reflect the racism of much of Australian society. Aboriginal people are grossly over-represented in prisons, and live with the fearful knowledge that far too many of them have died in gaol.

This document explores part of the gaol system in Australia: who is in the system, why do we have prisons (i.e. what do we expect them to achieve), and do they in fact achieve what is hoped for? What are the gaols like? What guidance might we get from the Christian tradition (including the Bible)? What response might be made by the community, particularly the Christian community?



# 1. WHO GOES TO PRISON?





In the Australian prison system we will most certainly find the poor with whom Jesus identified, the poor whom we, too, are to love. One third of those who enter prisons are there because they couldn't pay fines. Many have suffered abuse in society, are mentally disabled or suffer from society's racism.

At the beginning of 1988 approximately 11 500 prisoners were in Australian gaols, which is 70.5 prisoners for every 100 000 Australians.

The Australian Institute of Criminology provides this profile of a typical prisoner. The prisoner is likely to be:

- a male between 20 and 29 years
- Australian-born
- in certain states and prisons, Aboriginal
- a person who has not completed a secondary education
- unemployed at the time of the offence.<sup>1</sup>

A relatively large number of persons appearing before the courts suffer some sort of intellectual disability, about 10 per cent of the Australian prison population are intellectually handicapped, and a substantial number are psychologically disturbed.

A high percentage of prisoners are affected by alcohol and drugs at the time of the offence. For example, an Australian Institute of Criminology Report in February 1988 shows that 74 per cent of prisoners in the Northern Territory appear to have been under the influence of alcohol when they committed their crimes.

Studies (such as Vincent, et al, *Accountability and the Legal System: Drug Cases Terminating in the District Court 1980-1982*) suggest that persons from high status socio-economic groups appear before the court for drug related offences at over twice the rate of their numbers in society. This may not be surprising considering that the median value of drugs for an offence was \$6000 and that 27.5 per cent involved cases over \$10 000.

There is a common assumption, aided by inaccurate reports in the media, that certain classes of crime are forever increasing. Homicide is the crime most frequently cited. However, statistics in Australia show that while more homicide cases are being reported to the police than previously, the rate per head of population is actually falling. In 20 years (1965-1984) the rate has fallen from 6 per 100 000 to less than 4.4 per 100 000.

According to figures from the Australian Institute of Criminology (see Figure 2), 96 per cent of crimes are offences against property.

The one major crime that has shown an increase is rape (from 5.6 cases per 100 000 of the population in 1973-74 to 12.1 in 1984-85).<sup>2</sup> Part of the reason for increased figures for rape is the greater likelihood of women today reporting the offence. Women are less likely to conceal sexual assault now than they did in the past, and the stigma attached to being a victim of rape has decreased.

Of course, not all people who commit offences go to gaol. Court and police statistics indicate that only a small minority of the people who are convicted of a crime are sentenced to prison.

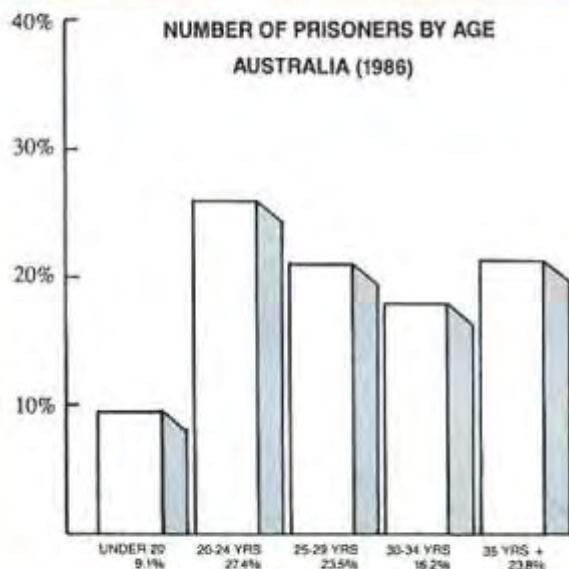
The view promoted by the media, and often by politicians, is that it is necessary for prisons to be high security institutions. The underlying assumption is that prisons are full of people who are a risk to the community.

**Fig. 2 Offences committed.**

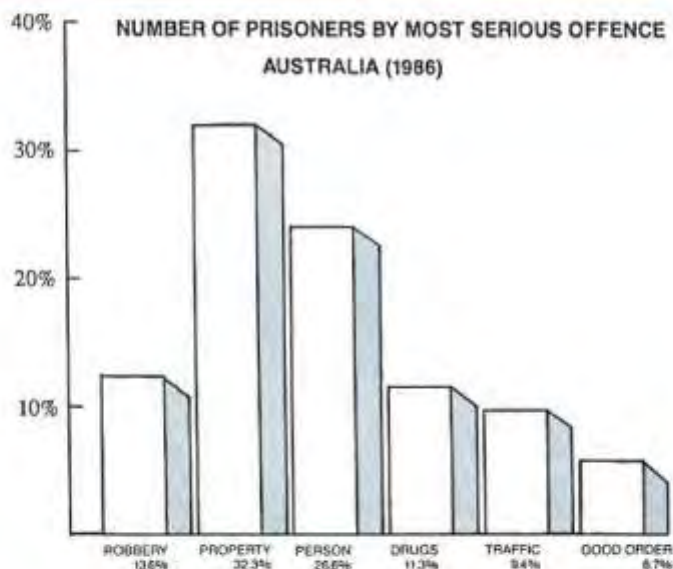
Australian Institute of Criminology (February 1987)	
Breaking, Entering And Stealing	-59%
Motor Vehicle Theft	-22%
fraud	-15%
Violence (murder, Serious Assault, Rape, Robbery)	-3.9%

<sup>1</sup> Report of the Australian Institute of Criminology, February 1988.

<sup>2</sup> Mukherjee, Satyanshu et al., *The Size of the Crime Problem in Australia* (AIC, February 1987).



Source: John Walker & David Giles, assisted by Dianne Degger, *Australian Prisoners 1986*, Australian Institute of Technology.



Source: John Walker & David Giles, assisted by Dianne Degger, *Australian Prisoners 1986*, Australian Institute of Technology.



The prison census of June 1986 (see Figure 4 below) indicated that 42.2 per cent of the prison population had committed violent crimes and had received relatively lengthy sentences. However, the majority of prisoners receive short sentences and turn-over in prison is quite high. The majority of prisoners do not pose an ongoing risk to the community.

Figure 5, compiled from January 1987 figures of the Australian Institute of Criminology, indicates that there is great disparity in imprisonment rates between States. For example, the Northern Territory imprisonment rate is nine times that of the Australian Capital Territory and nearly six times that of Victoria. The differing imprisonment rates are not the result of differing rates of crime, which are broadly similar throughout Australia. Some systems of justice are therefore much harsher in their use of prisons than others.

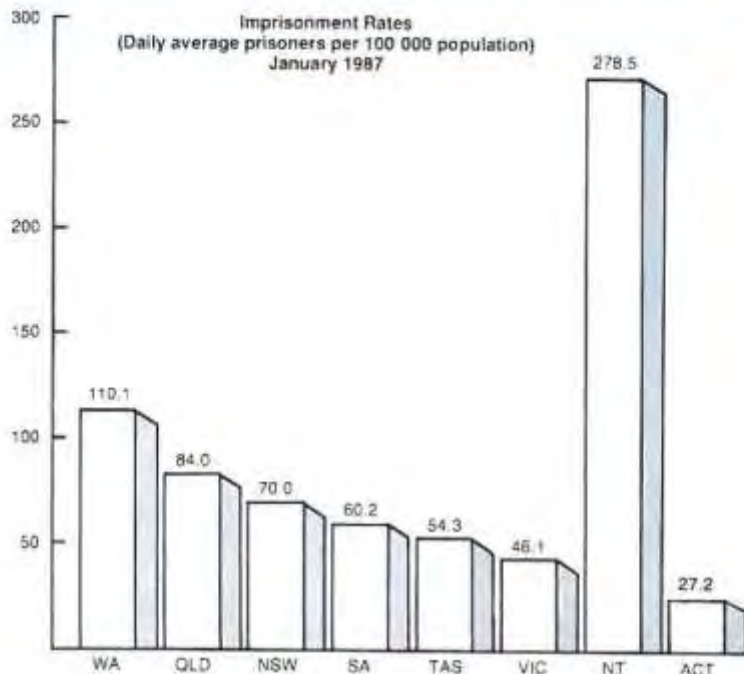
Although only a small number of people convicted of offences are sent to prison, there is a need to ask serious questions about those groups who do go to gaol. This is particularly so regarding young people, women, Aboriginal people, and those who are mentally ill or intellectually handicapped.

## Prisons and Young People

In comparison to other age groups, the number of young people in corrective institutions is disproportionately high. The implementation of the law regarding young people often does not take account of their vulnerability, immaturity and dependence. It can often be inflexible when dealing with young people.

There is serious concern regarding repeat offenders, a minority group. The most common profile is of a boy aged between 14 and 17 years who has failed in the school system, is unemployed, and comes from a single-parent, low-income family. He is often the victim of family violence when young and probably has minimal contact with his family.

The problems intrinsic to institutionalisation: diminution of responsibility, removal from reality, stunting of socialisation skills and acceptance of this as a normal way of life, are equally important in Youth Training Centres as in prisons. For the young this is even more damaging than for adults.



Source: Australian Institute of Criminology, Australian Prison Trends - No 128

### DURATION OF SENTENCES - Western Australia

	% of receivals in one year 30.6.86 to 30.6.87	% in prison on 30.6.87	
Under 8 days	11%	1%	
Under 1 month	38%	3%	
Under 3 months	61%	8%	
Under 12 months	85%	26%	
Under 5 years	97%	57%	
Over 5 years	3%	31%	
			UNSENTENCED 12%

While the daily proportion of long term offenders in prison is quite high (31%), it can be seen from this table that the majority of offenders who pass through the prison system in 1 year are serving terms of below 12 months duration (85%).

Source: Christian Justice Association Inc., *The Prison System in Western Australia: Statistical and other information.*

Detention ought to be considered a most inappropriate penalty for youth crime.

In Western Australia, for example, less than 5 per cent of apprehended young offenders continue into the adult criminal system. Most offences committed by young people are not at the serious end of the crime scale. In a background paper by the Youth Legal Service it is pointed out that:

- violence is an adult male problem;
- there is a very low level of arrest for violent offences involving young people;
- most offences for which juveniles are arrested are trivial.

According to Des Semples, Director General of the Department of Community Services, Western Australia, juvenile crime is most often

motivated by situational factors, peer group pressure or a testing by the youth of his presence in society... Most juvenile offending behaviour stops of its own volition or in response to fairly minor responses from the social system such as a caution, a panel appearance or in some cases after the first court appearance... Statistics indicate that over two thirds of children who appear before first offenders panels are never apprehended for further offences. (*Law and Order—A Community Objective*, November 1987)



## Women in Prison

The rate of imprisonment of women is growing in Australia. In the last ten years the percentage of women in the prison population has almost doubled, from 2.4 to 4.6. This is an increase from approximately 200 ten years ago to approximately 500 in 1988. Richard Harding, Professor of Law at the University of Western Australia, believes that this trend will continue. He estimates that the rate of female imprisonment will again double in the next ten years.

The percentage of drug-related offences involving women is higher than that for men. Indeed, approximately 80 per cent of female prisoners have committed drug-related crimes. If it were not for heroin the number of women in prison would be much smaller.

The majority of women in prison are young and poor. They are not well educated, most having had only three years of secondary education. At the time of imprisonment over three-quarters were in low status jobs, and less than half were married or in de facto relationships. Most are convicted of drug-related crimes, welfare fraud and spouse homicide, in that order. Women are more likely than men to be held on remand (usually because they could not afford bail), and more likely to be gaoled for a simple drug charge (i.e. no other crime connected with the drugs).<sup>3</sup>

There is some evidence that women also suffer from discriminatory sentencing in regard to prostitution (where prostitutes, but few clients, are gaoled) and spouse homicide (where they receive harsher sentences than men—even where the women have been subjected to years of violence). Women are more likely to be imprisoned for first offences and less likely to be included in programs that are an alternative to prison.

### Perception of Women

*'In here you are aware of so many things that the average free woman takes for granted. Just to be able to make your own decision to sleep, eat when you choose, to be with the ones you love. All these things would probably mean more than all the riches and jewels in the world.*

*(Mary Keel, My Life [not yet published])*

The majority of women in prison are young and poor.



## Aboriginal People and the Prison System

At the time of European occupation, Aboriginal people had a developed an effective system of law. This had evolved over tens of thousands of years: a result of the interaction between people and creation. This law did not rely on prisons, nor on a select few lawmakers and rulers. It was a system of law concerned for the welfare of the whole community, the restoration of the offender and the preservation of the whole creation.

The colonisers neither recognised nor respected the law of the land. They brought their own law—and did not even respect that in their dealings with Aboriginal people. Whites were rarely convicted of stealing Aboriginal land, raping Aboriginal women, killing Aboriginal people, kidnapping or denying wages. Yet an Aboriginal person who committed a crime was hunted without mercy and often with a minimum of justice.

<sup>3</sup> For example, *The Report of the NSW Task Force on Women in Prison*, March 1985.



Since the beginning of European occupation, Aboriginal people have been subjected to a variety of discriminatory laws that denied them the vote, disqualified them from various forms of social security, denied them the ability to buy liquor, discriminated against them in labour laws, took their children without real cause, and subjected them to the whims of so-called protection laws.

Myths have been developed to justify this discrimination. Aboriginal people are described as being lesser people than whites, more troublesome, and more in need of control and punishment. These myths have contributed to difficult relationships between Aboriginal people and the police and courts.

Aboriginal people find themselves discriminated against at every step in the legal process: in the chances of being charged, in the difficulty of getting legal assistance and bail, and in the severity of the sentence passed.



This table was reprinted from *It seems the Law is Different for the Aborigines and Whites*, a kit prepared for Action for World Development (Sydney 1986).

#### Imprisonment rates

United States	158 per 100 000
Thailand	157 per 100 000
Singapore	109 per 100 000
Canada	95 per 100 000
New Zealand	88 per 100 000
Malaysia	82 per 100 000
West Germany	81 per 100 000
United Kingdom	80 per 100 000
Australia	64 per 100 000
France	52 per 100 000
Japan	44 per 100 000
The Netherlands	21 per 100 000
NSW Aborigines	600 per 100 000
WA Aborigines	1300 per 100 000

The most significant reflection of prejudice which underlies the administration of law is to be found in the imprisonment rates for Aboriginal people. As the graph and table on the next page indicate, Aboriginal people are far more likely to be imprisoned than other Australians: over 16 times more likely over the nation as a whole. Thus 1.3 per cent of the population make up 14 per cent of the gaol population.

Many Aboriginal people enter gaol several times for minor offences—the most common being breaches of public order, driving offences, licence breaches, or debt, welfare and family law offences.

In her studies in Western Australia and South Australia, Melbourne lawyer Greta Bird found that when laws were changed to decriminalise public drunkenness, police frequently changed the charge and continued to arrest the same Aboriginal people. The formal charge was often not the reason for the arrest, but its justification. The real purpose was to control the situation, an expression of disapproval against those who refused to conform to the values of white society.

The situation of Aboriginal people in prisons or police custody raises several questions:

- Why is it that Aboriginal people are arrested much more frequently than other people in society?
- What crimes are they usually charged with?
- Have they been convicted by substantial evidence or by 'confession'?
- How many Aboriginal prisoners are in custody because of inappropriate interviewing procedures which use language, thought patterns and a legal system which is alien to them?





# Solitary Confinement

Robert Walker

(Died 4.30–5.00 a.m. Tuesday 28 August 1984  
in Fremantle State Prison. Aged 25)

Have you ever been ordered to strip  
Before half a dozen barking eyes  
Forcing you against a wall—  
ordering you to part your legs and bend over?

Have you ever had a door slammed  
Locking you out of the world,  
Propelling you into timeless space—  
To the emptiness of silence?

Have you ever laid on a wooden bed—  
In regulation pyjamas,  
And tried to get a bucket to talk—  
In all seriousness?

Have you ever begged for blankets  
From an eye staring through a hole in the door  
Rubbing at the cold air digging into your flesh—  
Biting down on your bottom lip, while mouthing 'Please, Sir'?

Have you ever heard screams in the middle of the night,  
Or the sobbings of a stir-crazy prisoner,  
Echo over and over again in the darkness—  
Threatening to draw you into madness?

Have you ever rolled up into a human ball  
And prayed for sleep to come?  
Have you ever laid awake for hours  
Waiting for morning to mark yet another day of being alone?

If you've never experienced even one of these,  
Then bow your head and thank God.  
For it's a strange thing indeed—  
This rehabilitation system!



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Human beings are not  
created for loneliness or  
aloneness or separation  
from others.

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## The Mentally Ill

Despite the intentions of the Criminal Justice System, the law impacts most heavily on the less able people in the community.

Those with less intellectual skills, less educational skills, less negotiating power or who are unable to use the system effectively due to communication difficulties, language difficulties or mental illness, tend to be more heavily discriminated against even with the best of intentions ...)

In the field of mental health those people who are found not guilty by virtue of insanity are more likely to be non-English-speaking than their proportions in the population would suggest. (Dr John M. G. Grigor, Director, Forensic Psychiatry Services, Victoria.)

Changes in mental health services over the last 10 to 15 years have meant that people with mental illnesses spend less time in hospitals. While this has had beneficial consequences, it has also meant that people with mental illness are brought more frequently into the prison system. For example, acute behaviour disturbance is often handled by calling the police and having the person charged, usually with a trivial offence.

## The Intellectually Disabled

The intellectually disabled in prison are open to being victimised, sodomised, discriminated against and exploited more than other prisoners. They need something better than they are getting.

At all points in the criminal justice system the intellectually disabled are less aware of their rights, less able to defend themselves and more vulnerable to imprisonment. This occurs often for offences that, in the absence of intellectual disability, would not lead to incarceration.

Frequently such people hide their disability because of fear of shame or ridicule. Services to this group are almost non-existent.

At all points in the criminal justice system the intellectually disabled are less aware of their rights, less able to defend themselves and more vulnerable to imprisonment.

## Confusion about Why People Are Sent to Prison

The issue of who is in prison is in part determined by why society wishes people to be sent to prison.

Motives for dealing with people who commit crimes include punishment, deterrence, incapacitation, rehabilitation/reform and restitution to the community.

Punishment is the penalty that the community expects a person to pay for breaking a law. The difficulty with punishment is how a decision is made about just and appropriate punishment, about the importance of punishment compared with the other purposes of imprisonment, and about how to avoid the desire for revenge (rather than justice).

The threat of imprisonment is also said to act as a deterrent to people who are considering committing a crime, although it is hard to prove that this is so. On the contrary, there are prisoners who find that

prison can be a stable, predictable community where they can cope, no longer having to be responsible for themselves, where their every decision is made by authorities.

(Prisoner, Pentridge)

A society has the right to protect itself, and prisons can be used to restrain those who appear to threaten it seriously. The High Court has ruled, however, that it is not normally permissible to sentence a person for a longer period than the crime deserves simply to prevent what might occur in the future.

National public opinion polls (for example, Saulwick Herald Poll, November 1987) suggest that 25 per cent of people believe that the main purpose of prisons should be to rehabilitate, to provide people with social and economic skills that will lessen the chance of their returning to crime.

We do not solve problems of social disruption, increased crime and increasing community fear by placing all the blame on those who express the sins of the community in acts of crime.



Not Drunk and Disorderly?  
How about Disturbing the Peace or ...



### Regional differences in average fine for 13 categories of offence, 1979

Offence	Region		
	Central	Urban	Rural
Driving with prescribed concentration of alcohol	311 (866)	416 (7622)	380 (7616)
Cannabis (possession)	110 (277)	135 (1080)	148 (609)
Offences to the person	110 (103)	152 (570)	152 (399)
Fraud	112 (84)	140 (355)	130 (219)
Break, enter & steal	220 (10)	291 (64)	247 (95)
Larceny	104 (918)	144 (145)	138 (1711)
Unlawful possession	159 (90)	194 (301)	160 (188)
(Non drink) driving offences	219 (67)	200 (2410)	233 (1328)
Betting and gaming	96 (203)	108 (565)	116 (156)
Firearms/dangerous weapons	144 (51)	105 (184)	90 (707)
Environmental offences	265 (42)	102 (115)	64 (24)
Damage to property	74 (123)	128 (495)	128 (516)
Offensive behaviour	59 (941)	61 (1500)	60 (1759)

Source: NSW Bureau of Crime Statistics and Research, in D.J. Weatherburn, 'Sentencing for what?' in Mark Findlay, Sandra J. Egger and Jeff Sutton (eds), *Issues in Criminal Justice Administration* (Allen & Unwin, 1983).

These variations in sentencing are also supported by the study of T. Vincent et al., *Accountability and the Legal System: Drug Cases Terminating in the District Court 1980-82*.

### Reconviction rates for offenders under different sentences

	Non-custodial (%)	less than 6 months (%)	6 months 2 years (%)
Reconvicted in less than 2 years	22	50	47
Reconvicted in 2 and less than 5 years	12	19	21
Reconvicted in 5 and less than 10 years	9	6	5
Not reconvicted in 10 years	57	25	27
Number of cases	1179	123	51

Source: NSW Bureau of Crime Statistics and Research, in D.J. Weatherburn, 'Sentencing for what?' in Mark Findlay, Sandra J. Egger and Jeff Sutton (eds), *Issues in Criminal Justice Administration* (Allen & Unwin, 1983).

In its 1987 Discussion Paper No 29, the Law Reform Commission makes the point:

Just as there is no predominant judicial rationale for punishment which finds widespread acceptance, there is no community consensus about the goals of sentencing. (p. 15)

The Paper goes on to make the point that judicial officers give different weight to the various goals of punishment, i.e. retribution, deterrence, rehabilitation and protection of society by incapacitation of the offender—according to their assessment of the various aspects of the case.

As a result sentences for like conduct may vary from judge to judge, from court to court and from jurisdiction to jurisdiction even where there are general similarities between cases and offenders. This means that there is a disparity in sentencing that breaches the need for a uniform application of the law 'without deviation or discrepancy based upon unjustifiable differences'. (p. 16-17).

The disparity in sentencing and its subsequent effect on who is in prison is seen in two sets of figures: the variations in gaol populations of the states (shown earlier) and sentencing variations between different courts in NSW in 1979.)

While street crime is severely enforced and substantial penalties are imposed on blue-collar offenders, white-collar crime is pursued with less vigour.

To overcome some of these difficulties, the Discussion Paper suggests that the primary goal of punishment ought to be to ensure that people receive their just deserts, at least to the extent that punishment is proportionate to and does not exceed the gravity of the offence and culpability of the offender.

It further suggested that this could be modified by the offender 'making good' the harm done, or by consideration of rehabilitation, protection of society, or deterrence of the offender from committing further crime.

While this position suggests clear priorities in determining sentencing, it continues to ignore the fact that there is real incompatibility among the stated purposes.

For example, if the purpose of sentencing is punishment and just deserts, then more serious crimes should receive longer sentences. On the other hand, longer sentences would appear to be contrary to the goal of rehabilitation. The following figures for less serious crimes suggest that reconviction rates are less for those given non-custodial sentences and, thus, the more severe the sentences, the more chance of the person being reconvicted.)





To some extent, the possibility of reducing the prison population will depend on increased clarification of the purpose of imprisonment, its place in the punishment system and its effects on repeated criminal behaviour.

The composition of the prison population reflects the social function of prisons as a support for the larger political, economic and social order, in that it carries out and reflects the attitudes of the community.

**The fact that those who are less well educated, poorer, and have less skilled jobs are more likely to be in prison does not mean that they are more involved in criminal activity, but that they are more likely to be convicted than those who are better off.**

It is significant that while people generally express concern about the loss of life and destructive effects of industrial pollution and employer negligence, such things rarely make headlines. Nor are the offenders dealt with as severely as others who kill people. While street crime is severely enforced and substantial penalties are imposed on blue-collar offenders, white-collar crime is pursued with less vigour.

While brutal murders provoke a great deal of public outrage, much less is said about the fact that many more people are killed in road accidents—often as a result of criminal negligence or the abuse of alcohol. Drug users are regularly arrested and convicted of offences, but far fewer drug dealers are caught and convicted.

Thus, one of the effects of prisons is actually to divert public attention from the more destructive and dangerous aspects of society. The press, radio and TV often assist this process by selective and sensational treatment of certain crimes while displaying ignorance of the overall subject of penal activity and reform.

## Remand

The presence of one category of people in Australian gaols challenges the legal system. Many people are held on remand while awaiting trial, and a number spend lengthy periods in prison before they are tried. During this time they can lose their jobs, experience the break-up of their marriages and find their reputations destroyed. They may then be found not guilty, or may receive lighter sentences than the time spent on remand.

Persons detained in police custody or in gaol awaiting trial are presumed to be innocent until found guilty in a court of law. It is a demand of justice that people who are charged with a crime have the right to a public trial as soon as possible. Justice delayed is justice denied, particularly for people found to be innocent.

As in South Australia, bail should be a *prima facie* right which should only be overturned if there is good reason to believe the person will not appear in court.

Where it is necessary to keep people on remand in prison, they should be separated from those already convicted.

Not only does a delayed trial affect the defendant, it also has implications for victims. Increased community awareness of the plight of victims underlines the importance of eventual court contact and the urgency of bringing matters to trial at the earliest opportunity.

Consideration should be given to the treatment of persons awaiting the outcome of an appeal and to ensuring that appeals are not delayed unnecessarily.

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### ...destructive effects of industrial pollution and employer negligence

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## FOR DISCUSSION AND REFLECTION

1. What is your reaction to the following paragraph from a paper published by Dr Paul Wilson of the Australian Institute of Criminology:

The rate of recidivism [i.e. repeated offences] for murder is amongst the lowest of all offences. Thus, acting on information received from nearly all Commonwealth countries, including Australia, the British Royal Commission on Capital Punishment reported that the majority of released murderers behaved well after leaving prison and were not regarded as a type of prisoner ... particularly liable to misbehaviour upon release. (*Trends and Issues: No. 3 Capital Punishment*, Australian Institute of Criminology)

Does this information have any affect on your attitude to the sort of punishment people should receive?

2. Would you agree that our perceptions of crime are influenced by the media? To what extent? What sort of view of crime do we gain from the media?

3. How do you react to the idea that prison is used as a form of social control in regard to Aboriginal people?

4. Why do you think there has been an increase in the number of women in prisons?

5. Read the following summary:

- Crime is largely an activity of males between 16 and 30.
- The majority of those who come before the criminal courts belong to lower income groups. (In 1974, of a random sample of 1000 prisoners, 66.8 per cent were unskilled workers compared with 20.4 per cent in society.)
- A majority of crimes are not of a violent kind, although some who were not originally convicted of a violent crime became violent after imprisonment.
- The majority of crimes are against property.
- A high percentage of those coming before the courts are illiterate, unemployed or disturbed people.
- Increasingly, large numbers are in gaol because of drug-related crimes.
- Aboriginal people are over-represented in the prison system.

Do the points above reflect community perceptions of prisoners?

How does this information affect your response to the prison system?

What reforms, if any, would the information seem to demand?





## 2. LIFE ON THE INSIDE





'Apart from physical comforts, or lack thereof, prisoners live in an atmosphere of frequent tension and sometimes fear, particularly in maximum security gaols. Standover tactics and assaults by prisoners on prisoners are often the norm. Even after 15 years experience as a prison officer, all of which have been spent in maximum security, I consider I would have little comprehension of real life and the pressures placed upon a prisoner living within the prison environment.'  
*(A Prison Officer)*



'As soon as you arrive in Pentridge, you are herded in like animals and stripped naked, in front of strangers. You are then put into yards until you are classified (according to your crime). You may spend up to eight weeks in the yard while being classified. If you are not convicted and refused bail, you can wait up to 18 months or more. The yards are filthy, with cold concrete seats and the toilets have no doors. You are there in winter and summer under all conditions. This can be disputed officially by the statement that we are under cover. This consists of a roof, like a car port, which is open in the front. After the yards you are classified to a country gaol or Pentridge. If you have a job, you are lucky. If not, you are put in a wired compound, to walk up and down all day. Even a prisoner can cop this to a degree, but what the public is not told is how the governors can make life hard, via the prison officers, if you have a fall-out with the governor or the officers.'  
*(A prisoner)*

'Prisoners get degrading and dictatorial treatment from many prison officers... I have seen the results of systematic beating of large numbers of prisoners as retribution—no charges are laid. Moreover, prisoners can be denied access to medical treatment at the whim of prison officers.'  
*(Government medical officer)*

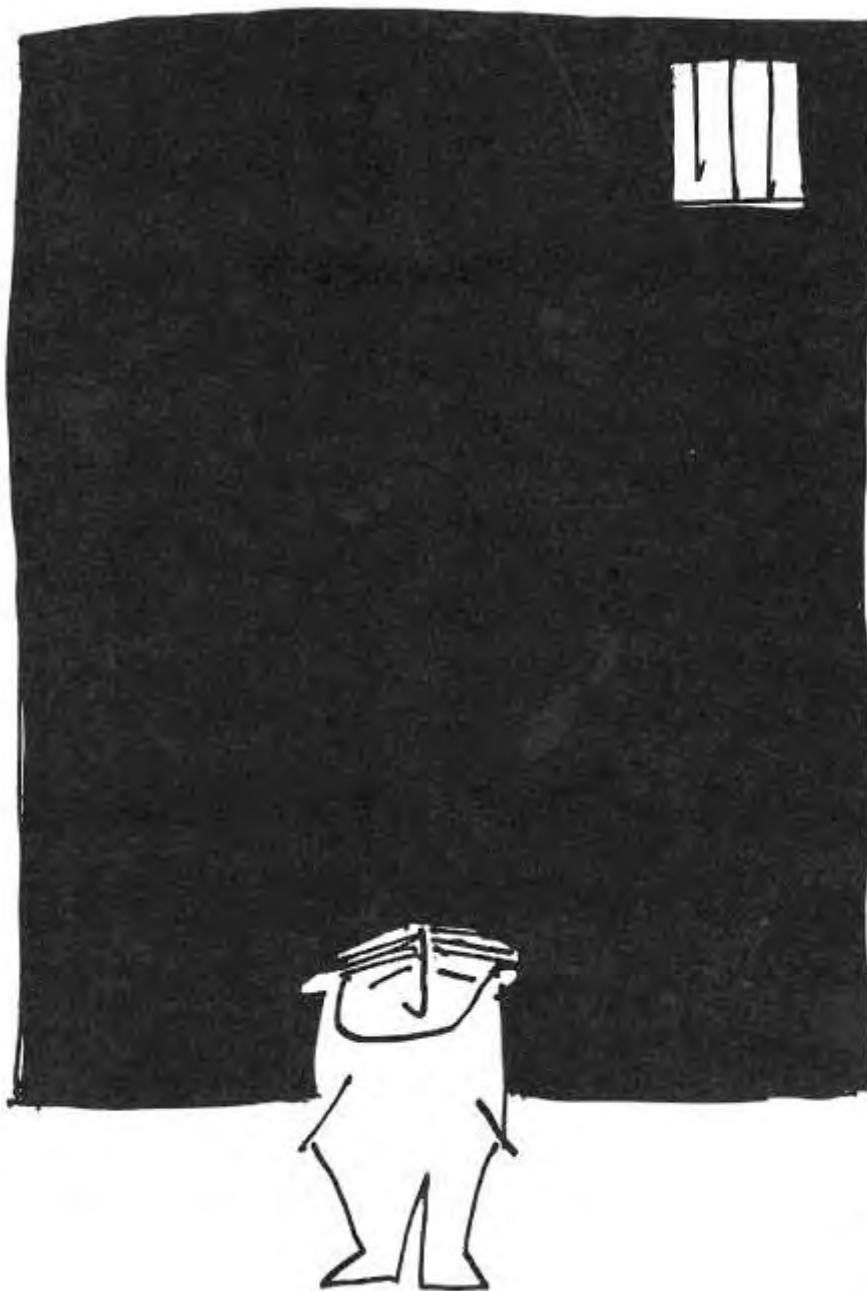
'The day when it arrives, is a continuous battle with the authority of the prison. This conflict is encouraged by the attitude taken by prison authorities at any minor victory, such as having a visiting time altered. A prisoner is made to feel that he has perpetrated a minor crime by convincing those responsible that his need was genuine. This victory will be paid for at some time, but the minor crime is paternally tolerated, as though by an indulgent master. 'What work exists is of the dig a hole and fill it variety... there are no occupations that provide the skill most needed by the majority of prisoners: that of living in the real world. The skills of communication that are developed during the few hours out of the cells are minimal and confined to the workings of this specialised environment that bears no relation to the world into which a prisoner is released.'  
*(A prisoner)*

'First, imagine a world without nature, animals, little children, the opposite sex and elderly couples. Imagine a world where you have almost literally no choice day after day. Your clothes, food, timetable, contact with your family, leisure and work are determined, in most cases, for you. Your personal environment is a mix of companions you did not choose: first offenders with lifers; property offenders with offenders against the person—a mix that has led prison to be described as a 'university of crime'. Imagine being locked away in your room from 4.15 p.m. until 7.30 a.m.—often a shared room. Think for a moment of what such a combination could mean for personal development—for the establishment of a healthy human relationship, for the use of freedom, for a wholesome and creative relationship with nature. It is a recipe for personal destruction... It is a destructiveness which reaches out to the innocent families of offenders, a destructiveness which extends even to those who work within the system.'  
*(A Catholic sister involved in prison work)*



Imagine a world without nature, animals, little children, the opposite sex and elderly couples. Imagine a world where you have almost literally no choice day after day.





'You hear about the bashings in gaols where someone's life is seriously threatened but you don't hear about all the less serious bashings (and this includes the bashings of officers). You don't hear about the attempted suicides, only the ones that succeed. You don't hear about the depth of depression and despair that hits so many when the full reality of what being in gaol means for them or because they have been moved to another gaol. No one outside can fully understand the feeling that they are less than human, the feeling of degradation that hits so many, the feeling of powerlessness that they have to come to terms with.'

*(Letter from the wife of a prison officer)*

'The oppression is constant and extreme. If one makes a legitimate complaint to the Governor, then despite what action is taken, if any, one is then classed as a troublemaker. Word is passed around to all the prison officers. One can then expect to be constantly harassed, strip-searched constantly, etc. An unrelenting campaign until eventually you disobey an unreasonable order. Then you are charged, taken to 'H' Division where the prison officers have been told about you, then bashed. If you strike back, you are bashed worse, classified as violent and sent to Jilka.'

*(A prisoner)*

These accounts come from people closely associated with prisons. Conditions do vary from one prison to another, depending on the security classification of the prison, the aims of the prison administration and the design of the buildings. Despite this variation there is still cause for concern at the state of Australian prisons. In its Discussion Paper No. 31, August 1987, the Law Reform Commission states that although standards in Australian prisons have improved in the last ten years, most prisons fail to meet at least some of the minimum standards set down by the United Nations in 1955. Many Australian prisons were built in the last century and these, together with some of the more recent prisons, have an excess of maximum security and too little medium and low security accommodation.

It is perhaps indicative of a 'thing-oriented' society that a popular measure of prison reform lies in such observations as: 'they have TV' and 'prisons are like motels'. An adequate standard of prison reform would show concern for the 'personal' and relational aspect of life.

*English*





**DAILY TIMETABLE:  
PRISONERS ON REMAND AT PENTRIDGE PRISON, VICTORIA**

7.45 a.m.	Cell doors are open breakfast is served treatments (attention for cuts, bruises, etc.)
8.45 a.m.	Medication available from Hospital Ward
10.00 a.m.	Medical doctor's daily visit
10.45 a.m.	Muster (head count of prisoners).
11.00 a.m.	Lunch is served treatments
12.00 noon	Medication available from Hospital Ward
12.45 p.m.	Muster (head count of prisoners)
1.00 p.m.	Governor's complaints (request to see Prison Governor) treatments
2.30 p.m.	Medication available from Prison Ward
3.15 p.m.	Evening meal served (This is the third meal in 7 <sup>1</sup> / <sub>2</sub> hours)
4.00 p.m.	Lock-up time (16 hours in cell)



## The Treatment of Women in Prison

Much of the hardship suffered by women in prison is related to the role of women in Australian society. Added to the charge of being a criminal, a woman has also to suffer the criticism of being a bad mother. Women in general receive fewer visitors in prison than men. They are often rejected by family, friends and the community who consider them 'lost' or failures as women. Many women prisoners are single mothers, and it is often difficult for them to arrange for their children to visit. In some prisons they are not allowed contact with their children as a right but only as a privilege. They are often pressured into taking responsibility for their children before they are properly stabilised after a gaol sentence.

An ex-prisoner speaks of her experiences:

It is not a right to touch your children so as a result I had to step out to ask Matron if I could put my arm around my nine year old daughter and I was told I had to give a reason why I should put my arm around my daughter who had never been separated from her mother before, and after doing that two or three times I decided I could not do it any more, that it had taken me to the stage of being so demeaning for myself but in the process of dehumanising me as a parent to have to ask to touch my own child; but I told my children that I could not ask for a contact visit any more and eight years later my children still refer to that—that they could not even touch me while I was in prison.

'Within the prison itself we hear today about the little bit of work available to prisoners, and the made-up and the no-work situation. Well, in the female division those percentages were disproportionate; the real work in the female division is very small. I think it is still probably a small amount of sewing, sewing of uniforms or something like that, so the majority of the women have nothing to do and they are made to feel that even the skills they have as women, I mean a woman may be able to cook adequately but the women who are chosen to cook are those who have no cooking skills, so that it is over and over again illustrated that in there, even if you could cook before, you can't cook now because you are a bad woman.



Women have suffered the same appalling conditions as men, with cases where facilities have been condemned by international standards. However, there have been dramatic changes over recent years, as is illustrated in the case of the Norma Parker Women's Prison, which is a Low Security Prison.

There was an atmosphere of trust and care amongst the prisoners and staff. Many of the women were at their day jobs, some were relaxing after being on shiftwork in the community and others were working in the industrial sewing section. A small group were taking cooking lessons from a volunteer in the large kitchen. The programme at this prison was based on trust, but was nevertheless strict. We were told that prisoners lost work-release privileges if they infringed the rules. We saw prisoners and prison officers chatting, discussing how things were going and generally affirming one another's humanness. Although there were problems the lack of tension was most marked.

*(Visitor to prison)*

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