

HIGH TARIFF INTERVENTION WITH YOUNG OFFENDERS IN AUSTRALIA AND THE REGION: SOME PROPOSALS FOR RESEARCH

Lloyd Owen

THIS PAPER REPORTS ON THE BACKGROUND THINKING AND SOME preliminary activity associated with some proposed social research. It concerns high tariff intervention principally through juvenile justice dispositions and programs designed for use with ten to seventeen-year-old offenders. The term high tariff has been drawn from the Carney report into Child Welfare Practice and Legislation which preceded the development of the Victorian *Children's and Young Persons Act 1989*. The concept has been given expression in a sentencing hierarchy and the requirement that the court exhaust less restrictive options before imposing greater degrees of supervision and or custody. The groups to be studied are:

- those incarcerated in juvenile facilities;
- those subject to a disposition for a serious offence or for persistent offending, that is clearly designed and designated as an alternative to secure custody;
- those placed in an adult lockup, correctional facility or program when the youth is still under the age of 18 years.

The Aim of the Study

In brief the study aims to find out what is happening to young people in Australia and ultimately some other countries in the Asia Pacific region who are being locked up or who are being managed in a program as a clear

alternative to being locked up. The emphasis in this inquiry is on the programs planned and in use and the intended outcomes of intervention. Where any have been evaluated we are particularly interested in those. Information gained will be shared and, we believe, will assist in the development of better programs.

The Significance of Such a Study

As far as we can see at present not enough sustained and systematic attention has been given to considering the nature and consequences of present forms of intervention with those young people who have been given the heaviest penalties available to the jurisdiction. Most of the Australian jurisdictions have been subjected to reviews and legislative change in recent years. Some of the reviews examined so far appear to have concentrated on the legislation, on processes, and prospects for decarceration and diversion. References to programs have sometimes acknowledged a need to maintain access to developmental opportunities for the young people concerned and access to opportunities for educational, vocational and life skill development. Pointed reference is also made to the need for general health services, alcohol and drug services and psychiatric and psychological services. Sex offending and anger management have been specific targets. (Vic: Carney 1984; WA: Edwards 1982; NSW: Senate Standing Committee 1992 & Green Paper 1993; Vic & WA: public relations material).

Sources of Data

Some good work has been done in relation to crime, court and correctional statistics but it is still very difficult to see clearly what they mean. It is hoped to approach key informants associated with high tariff dispositions and the programs which might be attached to them in each of the jurisdictions. An annotated bibliography of literature on high tariff programs and a catalogue of material which might be useful but unpublished or otherwise less accessible will also be produced. This will probably include program proposals, needs studies, planning documents, reports and evaluations used by departments, and academic work such as research projects, theses or dissertations relating to this field of inquiry.

The Emerging Picture

Our investigation to date on a limited budget has been largely confined to an examination of available literature, including some government and parliamentary reports, seeking input from locally available informants and looking more closely at the position of Victoria. This has led to the establishment of a tentative framework for data collection and analysis which in turn has produced some information which is of immediate interest. Information has been sought on the current Victorian legislation, and investigations and inquiries leading up to it. An attempt has been made to identify the high tariff dispositions in each of the Australian jurisdictions. Some earlier useful work done by David Stanley provided a helpful starting

point (Stanley 1990). There appear to be wide variations in the usage of high tariff sanctions in Australia. As this material is covered in other papers at this conference, suffice to include here an approximate picture of the differential juvenile detention rates for some of the Australian jurisdictions. For 14 to 16-year-olds, Victoria has the lowest rate with 26.4 in detention per 100 000 of the age cohort, this is followed by Queensland and South Australia who have over 40, then New South Wales with 71.9 and Western Australia with 102.2. The rate for the Northern Territory appears to be extremely high. There would appear to be an urgent need to make sense of these differences (H&CS 1993). It has been difficult so far to obtain much detail from the literature concerning the three main areas of our inquiry: direct alternatives to detention, detention in juvenile programs, and placement of those under eighteen in adult programs. What follows is some brief discussion in relation to each topic, with some illustration from the target area.

High Tariff Alternatives to Detention

Some useful background to this section of the inquiry emanates from the work of Morris and Tonry (1990), reporting on the deplorable situation in the United States. He argues for much greater attention to be given to the range of sanctions he terms "intermediate punishments", by which he means the group of dispositions falling between probation and incarceration. He prefers the word "punishment" to "treatment" as it is more consistent with what is expected of the system. In their argument for a comprehensive punishment system Morris and Tonry suggest that the history of juvenile justice in the United States is characterised by responses to offending which are either too lenient or too severe. They point to a current viewpoint which sees only incarceration as punishment and everything else as "letting off". The result is the excessive use of both incarceration and probation. The incarceration is enforced but often in an unproductive or destructive way, whilst probation is poorly enforced and is equally unproductive. They argue for better quality of both, but a vastly expanded use of the options in between, the intermediate punishments allowing for combinations of sanctions which better fit the crime and the needs of the offender and the community (1990, p. 8).

One alternative: The Victorian Youth Attendance Order

The philosophy of the "in between" is evident in Australian jurisdictions and there is an urgent need to describe better the operation of these programs and their outcomes. Most jurisdictions are experimenting with pathways and processes and with high tariff alternatives to detention. One example is the Victorian Youth Attendance Order which occupies the position on the tariff immediately below incarceration. It is currently undergoing evaluation. Its principal features are mandatory assessment, agreement to participate, a capacity for intensive supervision and an attendance requirement of up to ten hours per week. Up to four of these hours are spent in community work and the balance can be applied to educational, vocational or developmental programs. Breach entails return to court and possible sentence to a Youth Training Centre. The order commenced operating in 1988 financed by the

closure of a non government Youth Training Centre. The program caters for about one hundred 15 to 17-year-olds per year.

High tariff orders in other Australian States and Territories

Some of the dispositions which should be explored in other jurisdictions are Western Australia's Conditional Release Order and what is described as a supervised detention program where suitable repeat offenders have been placed on pastoral stations. A 90 per cent success rate has been claimed for the latter (Western Australia 1991, p. 13). Tasmania has a Supervision Order, Queensland a Community Service Order, the Northern Territory a Suspended Detention order with conditions, New South Wales a Community Service Order (the Green Paper raises the possibility of an Attendance Order) and the ACT an Attendance Centre Order. More precise comparisons have yet to be established.

Other alternatives

Parole orders should also take a place as high tariff dispositions. Although they are generally applied in a post institutional phase of longer duration (in Victoria for sentences in excess of eight months) they can be viewed as sentences being served in the community with breach carrying the threat of further incarceration. Various forms of leave from detention should also be considered. Work release and employment access programs and some varieties of wilderness/adventure programs appear to have merit.

Juvenile Detention

It will be interesting to mark the differences in the use of juvenile detention from the situations reported by Millham in the UK (1978), and Miller and others (*see* Bakal 1973) in relation to the Massachusetts experiments with juvenile correctional programs. Both involved an analysis of the reasons for young people being held in secure custody. It was found that physical security was being used to respond to a variety of concerns. Security is used for purposes of remand or sentence. Commonly found among the residents are those accused or convicted of grave offences, persistent offenders—especially those who are prone to abscond, people who exhibit bizarre behaviour, people who are self-destructive (seen to need close supervision) and people who may be placed there for protection from others.

The Massachusetts example

The overuse of detention and the inability to achieve change from within led to the closure of most Massachusetts juvenile institutions in the early seventies. The writer visited that State in 1984 and witnessed the movement to a number of smaller secure settings, some of which were grouped into what looked like a return to institutional arrangements. In addition, there was an impressive array of tracking and supervision programs and group homes established following the institutional closures. This boost in secure

accommodation followed a report from a Governor's Task Force set up to examine perceived problems with juvenile crime. Much of this activity had the flavour of a community backlash pointing to the need for care in managing high tariff circumstances. Miller, the architect of the closures, finally concluded that he had underestimated the need to have sufficient secure accommodation to manage the extreme behaviour of a few young people (Kratcoski & Kratcoski 1990, p. 318). A remarkable array of services was developed, however, in the effort to sustain non-institutional responses.

Secure unit development in Australia

Most of the Australian jurisdictions have been revamping or building new secure units. The John Oxley Centre in Queensland has been open for about six years, the Don Dale Centre opened in the Northern Territory in 1991, Kariiong in New South Wales was opened about eighteen months ago and at Turana in Victoria, a long awaited rebuilding program will result in the Melbourne Juvenile Justice Centre becoming operational in December 1993. Rangeview, a 48-bed facility is opening in Western Australia, as is Cavan with 30 beds in South Australia. A new secure unit is due for completion in February 1994 on the same site as Quamby in Canberra for the ACT. In some instances there is a clear intention for these new units to replace old outdated accommodation and to avoid any extension of the system's capacity. The extent to which this is so is yet to be explored.

Juveniles Places in Adult Correctional Programs

The issue of placing juveniles in adult facilities also warrants careful consideration. The issue is complicated in Australia by the variation in the age limits applying to juvenile status and court and correctional provisions between States. There is no doubt that significant numbers of 17-year-olds are in adult programs, although the age of majority for most other purposes is not attained until the 18th birthday. There seems likely to be a substantial long-term cost flowing from this accelerated potential for contamination and stigma.

Options in Victoria

Victoria has a dual track system. Offenders aged 17 to 20 can be accommodated in an Adult Youth Training Centre administered by the juvenile justice system rather than adult corrections. Magistrates can choose for this age group YTC, prison or an adult community based order. One of the two centres operating for this purpose since the sixties was closed this year and subsequently reopened as an adult prison. Data from the Victorian Office of Corrections indicates a threefold increase in the number of 17 to 20-year-olds in prison between 1987 (about 100) and 1992 (over 300). This has been followed by a decline, which may be the result of the introduction of a new adult intensive community based supervision order.

The Youth Parole Board can transfer a young person aged 16 or older to prison. Transfers most frequently follow the imposition of a prison sentence

for another offence, the balance of YTC being converted to imprisonment. Some transfers are made for behavioural reasons, and young people can apply for transfer themselves. In 1991-92 ten were transferred on behavioural grounds, and a further seventeen because they had received additional sentences to prison. Five requests for transfer were declined. It has not yet been possible to determine how many 17-year-olds have gone directly to prison rather than to YTC.

Juveniles in Adult Programs in Australia

Freiberg reported that 15 to 17-year-olds in prison increased from a rate of 27 per 100 000 in 1980 to 38 per 100 000 in 1986 (Freiberg et al. 1988). ABS year books for each of the States show that in 1992 adult prisons held fifty 16 to 17-year-olds in WA, and ten in Tasmania. Five per cent of the Queensland prison population were under 18 years of age. Data from the AIC annual prison census is to be examined. Attention should also be given to the use of police lockups to house juveniles. The preliminary report of the National Police Custody Survey 1992 (McDonald 1993) showed ages ranging from as young as 10 years with 1 836 of the people taken into custody during the month of the survey being under the age of eighteen.

Conclusion

Heightened currency is placed today on reconciling the deed which led to the sanction with the young person's return to the community: a return which generally occurs sooner rather than later. The way has been pointed to case planning and management, to stakeholder participation, to mediation, to training and to life course opportunities. Representatives at this conference have described innovations in Australian jurisdictions and we are sure that there are enlightening things to discover in the region between the discipline of Singapore and the rascals of Papua New Guinea.

Surely the principal purpose of what we do should relate to reconciliation and the restoration of harmony rather than punishment. The principal concern should be for mitigating harm, facilitating reconciliation and maintaining individual and collective public safety. As far as possible we should look for solutions in the area where the interests of community, victims and offenders overlap. We expect to find much to challenge our thinking among high tariff responses and we look forward to sharing the results of our enquiries with you.

References

- Bakal, Y. (ed.) 1973, *Closing Correctional Institutions: New strategies for youth Services*, Lexington Books, Lexington, Mass.
- Carney, T. 1984, *Report of the Child Welfare Practice and Legislation Review Committee*, Government Printer of Victoria, Melbourne.

- Edwards, E. 1982, *The Treatment of Juvenile Offenders, a study of the treatment of juvenile offenders in Western Australia as part of an overall review of the Child Welfare Act Government of Western Australia*, Department of Community Welfare, Perth.
- Freiberg, A., Fox, R. & Hogan, M. 1988, *Sentencing Young Offenders*, Sentencing Research Paper no. 11, Australian Law Reform Commission, Sydney.
- Health and Community Services 1993, *Industry Training Plan 1994: Vocational Education for H&CS Young Offenders in the Juvenile Justice System*, Health & Community Services, Victoria.
- Juvenile Justice Advisory Council of New South Wales 1993, *Future Directions for Juvenile Justice in New South Wales*, Green Paper, February.
- Kratcoski, P.C. & Kratcoski, L.D. 1990, *Juvenile Delinquency*, 3rd edn, Prentice Hall, Edgewood Cliffs, NJ.
- McDonald, D. 1993, *National Police Custody Survey 1992: Preliminary Report Deaths in Custody Australia No. 2*, Australian Institute of Criminology, Canberra.
- Millham, S., Bullock, R. & Hosie, K. 1978, *Locking Up Children*, Saxon House, Farnborough.
- Morris, N. & Tonry, M. 1990, *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*, Oxford University Press, New York.
- Stanley, D. 1990, *Juvenile Justice Equivalence Matrix: A Guide to Legislation Throughout Australia*, Department of Community Services, Melbourne.
- Western Australian Government 1991, *Juvenile Justice Information Package*, Department for Community Welfare, Perth.