Jailhouse
BLUES

Last month David Brown argued for a politics of policy on prisons rather than the old politics of critique. Here he explains what this might mean for responding to current penal trends.

In last month's ALR I argued for a rethink of radical approaches to prisons, away from an oppositionism which tends to view all prisons as the same and all penal practices as manifestations of repressive power and authority, to be opposed in toto. Such a rethink is based on a number of propositions:

(i) that prisons are not explicable in terms of some individual and singular 'purpose' or 'function';

(ii) that prisons are diverse and differentiated institutions. For example, the imprisonment of juveniles, women, Aborigines, or imprisonment in specific segregation and punishment regimes, prison farms, or in police lock-ups, are not identical;

(iii) that far from being purely sites for the exercise of an exclusively negative power to punish, prisons are also institutions for the expression of social values, sensibility, and morality, rather than instrumental means to a penological end;

(iv) that there is a need to reconceptualise the power to punish, and specific penal practices and institutions as forms of community resource, subject to political debate. They are not the property of a technical penology, but rather the subject of social policy debates of an allocational and distributive nature.

The argument then was cast at a general level. Here I want to illustrate the benefits of such an analysis by examining some current penal trends: the increasing interpenetration of prisons and police, the question of the siting of new prisons and HIV infection in prisons.

(i) The interpenetration of prisons and police

An emerging trend in some states (NSW in particular) is the increasing interpenetration or intermeshing of prisons and police. If, following the traditional Left approach, we view prisons and police as merely different sectors of a unified state apparatus organised around some overarch-
The clearest indication of the trend is the growing industry of prison informers. The key conditions encouraging the growth of prison informers are the repressive and punitive regime and, in particular, the abolition of remissions—all of which increases the pressure to find new forms of personal advantage within the system. The emerging incentive is a developing market in criminality: the volunteering of testimony in exchange for a range of privileges. These range from formal grants of immunity, informal sentence discounts, favourable classification and transfer decisions, access to witness protection programs, recommendations and support for bail, favourable parole assessments, day release, contact visits, phone calls, property, and so on.

There are numerous problems with the recruitment of prison informers by these sorts of inducements—foremost among them the unreliability of the evidence obtained and the damage done to the integrity of the criminal justice system. While commodification may well be a general tendency in what used to be called late capitalism, the growth of a testimony bazaar, located in the prison yards and run by particular detectives who seem to enjoy very privileged access to the prisons and by relatively newly formed intelligence units within Corrective Services Departments, worries many people. It is currently exercising the minds of the NSW Independent Commission Against Corruption as they investigate the issue of prison informers.

For the purpose of this discussion my point is that this is a tendency which should be strongly resisted, and such resistance is hard to ground in some generalised view of state repression or surveillance. It is not the function of prisons to become an annex to the court system, or an extension of the police holding cell or interrogation room. Extremely dubious confessional evidence which can no longer be so easily constructed in police stations under stricter regulation should not simply be given a change of venue, induced and assembled in the prison yard or cell: a trend I call the privatisation of the verbal.

One way of protecting prisoners, accused persons and the criminal justice system from these sorts of practices is to reinforce the separation of policing and corrective services functions and departments. Police access to the prisons should be strictly monitored and regulated and the activities of the new intelligence units in Corrective Services Departments clearly defined and made accountable. The institutional separation of the police and corrective services, increasingly blurred under the current NSW government in particular, must be clarified.

(ii) Prison Building: The New Transportation

If all prisons are much the same then the issue of where they are located is of little concern. But an increasing trend is to locate new prisons either in country areas or on the periphery of the major metropolitan centres. While there are certain economic advantages (cheaper land, for instance), there are also very clear economic and social disadvantages attendant on this new form of transportation. The symbolic and material exclusion from the communities from which prisoners and their families and friends are drawn is heightened by the problems of distance and cost of travel and in many cases lack of adequate public transport. While we would expect the physical conditions in the new prisons to be an improvement on the dilapidated state of many of the old 19th century prison stock, this does not necessarily compensate for the loss of contact with visitors and over-classification entailed where the new prisons are designated maximum security.

The old traditional prisons in the main metropolitan centres—such as Fremantle, Boggo Road, Pentridge, Long Bay, Parramatta, and so on—often have appalling physical conditions. Yet they at least have or had a physical relationship with particular local communities wholly lacking in some of the new prisons positioned at the edge of country highways. The closure of Fremantle is perhaps the starkest illustration of this tendency. In another example, NSW ministers have suggested that the Long Bay site is now too valuable a location for a prison; it should be knocked down and relocated to the hinterlands and the site sold to private enterprise for a luxury hotel and residential development. This is similar to the objection to Housing Department tenants living in traditional inner city working class residential areas which have suddenly become desirable locations for the middle class. Expulsion takes many forms.

It is clearly necessary to point out the folly of the massive prison building program being undertaken in NSW, Britain and the USA as largely irrelevant to crime reduction and prevention. Yet it is important not to abstain from debates over the location, design, classification, regime and facilities of the new prisons. Involvement in such decisions is part of the process of reconceptualising penal institutions as community resources, subject to political debate over planning and resource policy issues. The location of new prisons, like new airports, hospitals, freeways, does matter.

(iii) Prisons and HIV Infection

Particular attention has focused on HIV and AIDS infection in prisons because of the fear that prisons will become 'incubators' for the transmission of the HIV virus and will form a 'bridge' between the recognised high risk groups to the community at large. The argument has been put as follows:

Prison populations include a disproportionate number of people who engage in high risk activities associated with the transmission of the HIV virus—intravenous drug users and men who engage in homosexual activity, often temporarily for the period of imprisonment. Prisoners are thus seen as a high risk group for HIV infection upon admission, for the transmission of HIV infection within the prisons and for further transmission in the general community upon release.
I want to argue here that the outcomes of the diverse issues thrown up by the intersection of HIV and prisons are not already inscribed in some logic of repression or contagion. New issues are created, old practices can receive fresh consideration, new political alliances and constituencies can emerge; in short, a range of political outcomes is up for grabs.

On the regressive side, certain attitudes to AIDS in prisons echo the deserving/undeserving, guilty/innocent victim dichotomies common in popular debate. This is the view that those who are infected with the HIV virus through high-risk activities such as homosexual activity or IV drug use ‘deserve’ to catch the disease while those who have been infected through, say, blood transfusion, are ‘innocent’ and ‘undeserving’. In some of the more extreme formulations of certain religious fundamentalist groups, AIDS is even welcomed as a form of divine retribution for evil. This sort of moral differentiation is closely connected with themes in the justification of punishment, particularly just desserts, deterrence and retribution. They are potentially given an even stronger inflection in relation to prisoners. For prisoners who are infected can be seen as doubly deserving. Not only have they intentionally engaged in high risk practices but they have also been convicted of criminal offences.

Doubly disaffiliated in this fashion, HIV-affected prisoners become the lowest of all political priorities, the most ‘undeserving’. At best such a status grounds policies marked by complacency or neglect, industrial action based on exaggerated fears of contracting the disease, lack of resources for proper medical and counselling programs, and so on. At worst (and usually unarticulated or at least not publicly articulated) AIDS is tacitly used as a new form of capital punishment via policies of punitive segregation, misconceived compulsory testing programs, gross breaches of confidentiality, the withdrawal of needle cleaning agents, and the refusal to allow access to condoms and clean needles. NSW Prisons Minister Michael Yabsley once commented that not only was rape in prison inevitable, but also that it might be a useful deterrent factor. Now the prospect of acquiring AIDS in prison is being used as a deterrent to crime.

Operating against such regressive responses is the metaphor of the prison as a ‘bridge’ for AIDS infection into the wider (and particularly the heterosexual) community. This highlights the impossibility of isolating ‘contagion’ either in an institution or in individuals, the inadequacy of basing preventive strategies on concepts of individual guilt or desert. So, paradoxically, there are potentially positive influences and effects on prison conditions and issues which might be established out of the responses to AIDS. One of these is the introduction of new pressure groups to penal politics. Two such groups stand out.

First there are the AIDS activist groups, such as ACT UP, which have already entered penal debates with submissions, protests and educational activities. The second group comprise senior health care professionals engaged in AIDS prevention work. In the past this politically power-

ful group had little interest in prisons. Now their interest in preventive and epidemiological work has drawn them into the potential ranks of the prison reform movement as they discover and condemn prison practices and conditions which promote the spread of infection and which hinder preventive strategies.

This attitude is not restricted to the prison; respected senior health administrators have increasingly supported needle exchange programs and called for an end to the criminalisation of personal drug use and possession.

Another potential benefit is increasing recognition of the links between the criminalisation of certain drug use and addiction and property crime. This could translate into support for the development of internal prison drug education programs involving prisoners themselves, similar to the strategy of education campaigns which have proved spectacularly successful in changing sexual practices and promoting prevention in both the homosexual and sex worker communities.

Such internal prisoner groups might even start the difficult task of attempting to create a prison culture where sexually predatory and violent behaviour is actively discouraged rather than condoned or tolerated: a ‘remoralisation’ which works against the construction of ultra-machismo promoted in traditional male prison culture. If this sounds far-fetched, consider that even in the worst prisons (such as the Long Bay Assessment Prison in NSW), inmate support groups are offering encouragement and assistance to young prisoners newly arrived in prison to negotiate the terrors of prison life. The prisoners in ISG lend their individual and group authority to the protection of these vulnerable prisoners from sexual assault, preventing suicides and trying to promote an ethic of caring within the prison community.

Even in the most unfavourable of conditions and out of tragedies such as AIDS, new forces of sociality and new sensibilities are constantly emerging. The task is to identify and support these developments, to enhance their potential. That task is not assisted by a blanket condemnation of prisons as places of undifferentiated repression. Nor by an approach to criminal justice which treats it as a system, as a coherent set of institutions and linked processes within which power is localised and exercised upon external objects.

There is little to be gained from imposing some logic on the criminal justice system from above, which in turn serves to sustain and bolster it. Rather, the more fruitful course is to dissect it from below: to analyse the practices which constitute it as a field of power, their sources, effects, and the myriad networks of power and knowledge they enter.

DAVID BROWN teaches in Law at the University of NSW.