The Functions of Incarceration and Implications for Social Justice

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Abstract

This paper analyses the core functions of the carceral system, focusing on the concepts of justice, punishment, deterrence, incapacitation and rehabilitation. There is a significant number of prisoners in Australia, and a wide variety of factors that contribute to the causes of incarceration. Although individualistic ideas about criminal behaviour permeate much of the discourse on crime, there is ample evidence that crime is tied to social inequities such as poverty, intergenerational trauma, homelessness, mental health issues, disability and substance abuse (see Baldry, McDonnell, Maplestone & Peeters, 2003, p. 155; Butler et al., 2006; Department of Justice, 2003, p. 26; Mullen, 2001). With the rise of social movements such as Black Lives Matter, the injustices of the carceral system in Australia are under increased scrutiny. Analysing how prison functions through a social justice lens is thus work of critical importance. This paper contributes to this analysis, utilising rights-based and emancipatory frameworks to examine social justice implications of the carceral system. It concludes that the functions of incarceration are both ineffective and unjust. The role of social work in responding to these issues is considered, and it is argued that social workers are ethically bound to challenge injustices in the carceral system. Social workers can do so by listening to and supporting the rights of people with lived experience of imprisonment, advocating for alternatives to incarceration, and working to address the underlying causes of crime.

Keywords

Introduction

Incarceration is currently a fundamental element of the Australian justice system. In 2020 there were over 41 000 prisoners in Australia (ABS, 2020). Before the COVID-19 pandemic, more people were being imprisoned than at any time since 1900, both in number and per capita (Centre for Policy Development, 2020, p. 18). These numbers do not reflect the diverse and wide-reaching impacts of incarceration on individuals, their families and communities. Evidence from a systematic review suggests that entry into prison adversely affects the mental health of individuals (Walker et al., 2014). This is hardly surprising considering that prison environments can include disconnection from loved ones, a loss of freedom and lack of meaningful activities. They can also include exposure to violence, in part caused by institutional practices. A report from the Victorian Ombudsman (2015) found that overcrowding in prisons contributed to discontent and interpersonal tension between inmates, which increased incidents of violence within prison environments. Additionally, incarceration continues to impact individuals post-release with evidence suggesting that ex-prisoners have difficulties integrating into the community, facing difficulties with employment and financial management (Graffam & Shinkfield, 2013). Prisoners also face challenges securing housing post-release. Research amongst prisoners in NSW and Victoria found that individuals experience homelessness at a higher rate after being incarcerated, and that homelessness is a significant predictor of re-incarceration (Baldry, McDonnell, Maplestone & Peeters, 2003). Incarceration can also impact the families and communities of prisoners by causing emotional distress and creating challenges relating to finances, caregiving arrangements and other interpersonal responsibilities (Besemer & Dennison, 2018a). However, incarceration has ongoing implications not only for those who commit crime and their loved ones, but for the whole of society. As will be discussed throughout this paper, there is ample evidence that prisons in Australia are populated by individuals from marginalised communities (for example, see Victorian Ombudsman, 2015). Evidence suggests that marginalisation - such as issues related to health, housing and employment - continues after release from prison, and in some ways may be reinforced. Additionally, incarceration has economic costs to society in relation to courts, policing, government policy and support services. The impacts of incarceration are diverse for those who enter prison, their loved ones and communities. It is thus critical to analyse the effectiveness of incarceration as a response to crime and consider the social justice implications inherent in its operation. This paper contributes to this analysis by examining five intended functions of incarceration - justice, punishment, deterrence, incapacitation and rehabilitation - through a social justice lens. It is argued that this topic is relevant to social workers, who are not only well placed but also ethically obliged to address the injustices of the Australian carceral system in their daily practice.

Theoretical Frameworks

To analyse the functions of incarceration, it is vital that principles of social justice are centred. Focusing around the themes of equality and fairness, social justice as a concept is utilised by social workers in a diverse range of ways (O'Brien, Noble, & Henrickson, 2011). Social justice definitions often incorporate understandings of how wider structures can impact on the social participation of individuals and groups (Buettner-Schmidt & Lobo, 2011). There has, however, been critiques centreing on the idea that social workers primarily engage in social justice on an individual level, rather than a structural one that emphasises broader social change. Kam (2014, pp. 726-729) examines these critiques in the context of changing social work practice. She finds that some argue that this shift is due to a loss of connection from social justice roots. Others argue that there is increasingly a focus on evidence-based practice that emphasises clinical interventions for individuals, rather than community-based solutions. Other critics highlight the limitations that come with establishing social work as a legitimate profession within a neoliberal market economy. There are thus numerous reasons that mean incorporating social justice into daily social work practice is challenging. A qualitative research study on social work practice (O'Brien, 2011) found that social workers do utilise social justice concepts, but generally incorporate them into their work on a micro level by applying theory to practice with individuals and groups. Less commonly, some social workers articulated working on the meso level of practice, by challenging unjust policies and procedures of their own and other organisations. Least common of all, few examples were provided of social workers using their platform to work on the macro level to initiate change. These examples included social workers using data and information from their work environment to lobby for broader changes in social policy and structure. Shifting social justice work from only the micro to the meso and macro can be supported by embracing frameworks that emphasise a more transformative approach. Examining social justice implications through rights-based and emancipatory frameworks provides guidance for social workers on all three levels of practice. As such, this paper utilises a combined approach incorporating both these frameworks to strengthen its analysis of the functions of incarceration.

In a human rights framework, rights are inalienable and available to all people simply due to their status as human beings (Meldon, 1970, as cited by Murdach, 2011). Following international standards, the Australian Association of Social Workers recognises human rights as core to the definition of social work (AASW, 2002, p. 7). Based on international treaties, particularly the United Nations Universal Declaration of Human Rights (United Nations, 1948), rights-based approaches emphasise fairness and freedom and provide a framework in which to challenge injustice. Although not legally binding, international law grants legitimacy to social movements and outlines potential changes in policy that can be advocated for locally. Although Australia does not have a federal human rights charter, human rights are intertwined with many pieces of legislation, and human rights remain a useful lens in which to challenge injustice. This framework

can be adapted to working on all levels of social work practice. However, social workers must be wary of not limiting human rights approaches to the micro level of working with individuals. In the context of neoliberalism and capitalism a discourse of individual freedoms can obscure collective needs (Lorenzetti, 2019, p. 50). Additionally, a focus on empowering individuals does nothing to change the conditions that create problems stemming from inequality. As Lorenzetti (2019, p. 52) writes, "does a marginalized person require empowerment to confront an entrenched oppressive system, or, does this system need to be disempowered if not fully eradicated?". The limitations of an individual human rights approach can be overcome through a commitment towards emancipatory practice. Emancipatory social work can be described simply as "practice which seek to challenge discrimination and oppression" (Thompson, 2002, p. 711). Emancipatory social work involves challenging oppressive systems that social workers often operate within. It is a framework that highlights collaboration, and prioritises the perspectives of the marginalised. Although all theoretical approaches have limitations, examining social justice through rights-based and emancipatory frameworks is a useful approach to analysing the functions of incarceration. In doing so, this paper clarifies the meaning and relevance of social justice, overcomes some limitations of micro-level approaches, and enables a rich analysis of social justice implications of the functions of incarceration.

Justice

One of the core functions of incarceration in Australia centres on the concept of justice. Incarceration within the justice system involves the idea that individuals should be held to account for their actions against other individuals, and against society. In liberal democracies, the concept of justice implies equality and fairness under the law. However, there are no universal understandings of justice, nor is it served equally. With different legal and cultural perspectives on what constitutes crime, justice itself is subjective. In a pluralistic society like Australia there are many ideas about what should constitute law and justice, but minority perspectives are often overshadowed by hegemonic norms of "Western" liberalism (Choudhury, 2010). Justice in Australia exists within a Westminster judicial system based on the British legal model that does not necessarily incorporate other cultures' justice systems. Incarceration is a key tool of justice within this system.

What is considered just in terms of crime and punishment is tied up with the development of Australian society, and thus is subject to changing social and cultural norms. Significant impacts on approaches to justice and the role of incarceration occurred following the emergence of neoliberalism in the 1980s. Neoliberalism developed as an ideological and policy position centred around the idea of reducing government expenditure and involvement. It was therefore ideologically opposed to government-funded social and economic supports, a policy approach that existed in Australia during neoliberalism's inception. To justify a shift in government policy away from social support, an ideology developed that emphasised individual responsibility (O'Malley,

2014, p. 90). This ideology depicted individuals as free, self-sufficient agents able to operate independent of government assistance. In this framework individuals were depicted as responsible for their actions, and thus should be held solely to account for deviant behaviour like criminal activity. This created space for punitive attitudes and social policies to develop that punished and demonised those who committed crime, ignored underlying causes of crime and justified incarceration as an appropriate mechanism for preventing and responding to crime. Although Australia's social democratic welfare roots offset some punitive effects (Cavadino & Dignan, 2006), neoliberalism increased the validity of incarceration as a key element of justice. This is reflected in data that indicates a consistent increase in incarceration rates from the 1980s, and increases in sentencing lengths (Tubex, Brown, Freiberg & Sarre, 2015; Freiberg, 2010).

Although ideologies such as neoliberalism impact justice systems on a national level, contextual factors mean that effects are not felt equally. There is significant variance in incarceration practices across the eight independent state and territory jurisdictions in Australia (Tubex et al., 2015). This is demonstrated by the fact that imprisonment rates per 100 000 people range from 133 in the ACT, to 875 in the Northern Territory (ABS, 2020). Additionally, sentencing lengths vary significantly between jurisdictions, led predominantly by judicial discretion within the confines of maximum sentencing legislation (Freiberg, 2010). Incarceration as an element of justice is thus served differently depending on the jurisdiction.

Incarceration effects are also not felt equally across different demographics. Those living in poverty are more likely to have contact with the justice system. In Victoria, a large proportion of people in prison hail from disadvantaged communities, with half of the prison population coming from 6% of the state's postcodes (Victorian Ombudsman, 2015). Indeed, criminal justice policy often has the most impact on people who experience marginalisation. Until 2020, people in Western Australia (WA) who were unable to pay fines, predominantly those living in poverty, were able to be arrested and imprisoned. This policy, although now overturned, remains a clear indication of how poverty is criminalised in Australia's justice system. A review conducted by the Office of the Inspector of Custodial Services (2016) found that a high proportion of incarcerated fine defaulters in WA were unemployed, underemployed or in low paying jobs. The demographic that was found to be most likely to be imprisoned for fine defaulting in WA was unemployed Aboriginal women. Drug policy in Australia is another example of inequities in criminal justice responses. Individuals who are more likely to use illicit substances in public spaces, such as those that are homeless, are also more likely to be exposed to stop and search operations (Mallett, Rosenthal & Keyes, 2005).

The demographics within prison populations clearly indicate that vulnerable groups are more likely to be imprisoned. Data indicates that individuals with intellectual disabilities (Hayes, 1996), mental health issues (Mullen, 2001; Ogloff, 2007) and individuals who experience homelessness (Baldry, McDonnell, Maplestone & Peeters, 2003) are overrepresented in the carceral system. One

of the starkest examples of this inequity is the overrepresentation of First Nations people in the justice system. Nationally, First Nations people are imprisoned at a higher rate than other Australians (ABS, 2020). In NSW the imprisonment rate is ten times higher for First Nations people, and this group represents 25% of the adult prison population (ABS, 2020). Additionally, despite a 5% national decrease in the number of prisoners from 2019 to 2020, the number of Aboriginal and Torres Strait Islander prisoners grew by 2% (ABS, 2020). Bessarab and Crawford (2013, pp. 93-101) write about the importance of acknowledging the connection between high rates of imprisonment for First Nations people, and their overrepresentation in child protection structures, out-of-home-care institutions, and juvenile justice systems. They argue that it is crucial to acknowledge the ongoing impacts of colonialism as an underlying cause of these statistics, experienced as intergenerational trauma and communal grief and loss.

Overrepresentation in the justice system is also a reflection of racism and discrimination in policing practices. An example of this phenomenon can be found in the statistics published in a WA police Briefing Report (2019) regarding differences in driving-related penalties. According to this report, data obtained from automated cameras demonstrates that Aboriginal drivers are equally as likely to break traffic laws as other drivers. Despite this, Aboriginal drivers receive 1.75 times more penalties than non-Aboriginal drivers. This is almost exclusively the result of police initiating traffic stops and issuing more infringements to Aboriginal drivers than other drivers. It thus reflects a concerning level of discrimination in policing practices in WA. In addition, there is some evidence that those who are "younger, male, not of white ethnicity, unemployed and of lower income" are more likely to be targeted by police stop and search operations based on a suspicion of drug possession (Stevens et al. 2015, p. 18). Racism and discrimination are thus factors that contribute to exposure to the justice system. Incarceration thus functions as a tool of justice differently depending on the historical, cultural and environmental context in which it is located. It also disproportionately impacts vulnerable populations, particularly First Nations people.

Punishment

Punishment is an extension of the concept of justice. It is a function of incarceration based on the idea that those who commit wrongs should experience retribution. This involves the relinquishment of their freedom and other liberties. As already discussed, there are inequalities in the way justice is applied that disproportionately impact marginalised groups. Similarly, there are inconsistencies in the way punishments are dispersed within prisons. Rules and systems of governance vary from prison to prison, meaning that prisons have discretionary powers in how punishments are applied (Dawes, 2009, p. 263). Currently there are no mandated independent monitoring systems in place in Australia to oversee prison practices and hold prisons accountable for inflicting harm. From a human rights perspective this is unsafe and unethical, as it means that rights violations and harmful practices may go unchallenged. In recent years there has been a push to address this through the implementation of international law, specifically, the ratification of the

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (OPCAT). Once in place, this national system will monitor conditions in all places of detention in Australia. This system may reduce harms experienced in prison, but it does not address the core function of prison as a punishment that takes away the rights of individuals, nor is it necessarily adequate in protecting particularly vulnerable prisoners.

Common practices within prisons can exacerbate inequalities and distress, particularly for those who experience intersecting marginalisations. People who are older, First Nations, or have a mental illness are especially vulnerable to the various effects of prison as a punishment. For older prisoners, a growing population, significant distress has been attributed to a lack of consistent access to healthcare, the difficulties of changing accommodation, and a lack of comprehensive support in accessing emergency assistance (Dawes, 2009). Sivak et al. (2017, p. 13) argue that First Nations people have cultural needs that are often not addressed in prison, and that disconnection from family and culture compounds trauma and loss, exacerbating mental illness and other chronic health conditions. Research by Haney et al. (2017) found that practices such as solitary confinement exacerbate symptoms and negatively impact on people who experience mental illness. Strip searching is another practice that may create significant distress for individuals, particularly if they have experienced trauma. These examples demonstrate that common practices used to punish prisoners can have particularly hazardous impacts on vulnerable groups.

It is important to note that many people imprisoned in Australia are on remand, meaning that they have not yet been convicted of a crime (ABS, 2020). Individuals may be held on remand if they do not apply for bail, if bail is refused or if they breach the conditions of bail. These requirements disproportionately impact individuals with a lower socio-economic status who do not have access to adequate resources to make bail. Bail conditions may involve curfews and other stipulations that do not account for Aboriginal cultural obligations, thus potentially leading to breaches and imprisonment for individuals attending to family matters (Australian Law Reform Commission, 2018). Thus, the punishing aspects of imprisonment are applied to individuals who have not yet received a custodial sentence, disproportionately impacting groups who experience marginalisation. This conflicts with the rights of individuals and raises doubt regarding the suitability of imprisonment for those yet to be convicted. Ultimately, punishment in prisons is not applied consistently, violates rights and reinforces marginalisation. These social justice issues call into question the appropriateness of punishment as a function of a justice system in the 21st century.

Deterrence

Another core function of incarceration is deterrence. Through the punishing aspects of prison, incarceration exists in part to deter the general public from committing crime. In this way, incarceration is a tool used to control populations. Indeed, incarceration is utilised by governments

as a tool of deterrence. For example, it is named as one of the five purposes of sentencing in Victoria, as stated in section 5(1) of the Sentencing Act 1991 (Ritchie, 2011, p. 1). However, there is no clear evidence that incarceration is an effective method of deterrence. Rather, evidence demonstrates that the chance of apprehension has a deterrent effect more so than any ensuing legal consequences (Bushnell & Wild, 2016, p. 63; Nagin, 2013). Additionally, a meta-data analysis on different sanctions applied in North America found that there was no clear evidence that harsher sanctions such as imprisonment resulted in deterring individuals from re-offending (Smith, Goggin and Gendreau, 2002). Despite a lack of convincing evidence of effectiveness, incarceration as a deterrent continues to operate in Australia, with significant social justice consequences.

Incarceration as a form of deterrence relies on inherently negative discourses that reinforce the undesirability of prison. This idea is reflected by Grabosky (1991) who emphasises the importance of prison in maintaining social order through the public denigration of those who commit crime. He writes that the punishing of individuals who transgress societal rules "is an important element in the maintenance of a cohesive and integrated society" (p. 141). Similarly, McNamara & Quilter (2016) discuss how certain groups become demonised and associated with criminality through public discourse. The negative discourse around incarcerated individuals, then, ideologically distances them from wider society, impacting on the ways they are both constructed and treated. This has social justice implications. Incarcerated individuals, many of whom are from vulnerable groups, receive social sanctions throughout the community post-release. This impacts their ability to successfully integrate into society. Having a criminal record can affect many aspects of life including employment prospects, housing and the accessibility of visas. Indeed, research in Australia indicates that ex-prisoners report experiencing issues with housing (Baldry, McDonnell, Maplestone & Peeters, 2003), and employment (Graffam & Shinkfield, 2012). Borzycki (2005, p. 35) demonstrates that individuals also face challenges in accessing social support post-release such as issues navigating various complex welfare systems. They may not have the required identification to access supports, and may not be aware of what kind of support is available to them. International research also details experiences of stigma, discrimination and social exclusion for ex-prisoners (Hamlyn & Lewis, 2000). With a proportionally high number of people from marginalised groups making up the prison population, deterring discourses can work to reinforce harmful stereotypes, increasing ignorance and misunderstanding among the general public. For example, Gatt (2007) explores how Sudanese refugees in Victoria have been discursively associated with criminality in order to justify exclusionary policies. The result of this included increased community mistrust and misunderstanding of the Sudanese community. This case demonstrates that incarceration as a form of deterrence can contribute to marginalisation, causing social exclusion and the reinforcing of harmful stereotypes.

The segregation and marginalisation that individuals face post-release has implications for their ability to integrate into the community, which in turn affects the likelihood of them returning to custody. Nilsson (2003) argues that an accumulation of issues relating to living conditions and

social exclusion increased the chances of recidivism for individuals in Sweden. Without adequate community supports in place, individuals may be more likely to return to communities and engage in behaviours that were known to them before incarceration. Thus, in attempting to deter people from prison, public discourse and a lack of supportive policy leads to disempowerment for individuals post-release, particularly for individuals who have compounding and intersecting experiences of marginalisation. This has flow on effects for individuals' wellbeing and could lead to increased recidivism.

Incapacitation

Incapacitation is a function of incarceration that involves the removal of individuals from society in order to protect communities. It is the only function that is completely unique to incarceration, while other functions (justice, punishment, deterrence and rehabilitation) could potentially be achieved through different means. Although the justification for incapacitation is the protection of communities, incarceration is utilised for a wide range of nonviolent and "victimless" crimes; crimes that do not cause direct harm to others. Depending on the jurisdiction in which they occur in Australia, these can include offences relating to public order and recreational drug use, among others. Considering the lack of danger to the wider community posed by these offences, the argument for incapacitation is disputable. Additionally, there is evidence that incarceration can have criminogenic effects, meaning it increases the likelihood of individuals committing future crimes (Cullent et al., 2011). This means that harm to the community may in some cases be increased by placing people in prisons who will go on to offend post-release. Incapacitation as a function of incarceration therefore sometimes does not reduce direct harm experienced by the community, and in some cases may create more harm.

The justification of incapacitation as protecting communities from harm ignores the harm experienced by loved ones of those who are incarcerated. Although the current research in Australia is sparse, there is evidence that caregivers of children whose fathers have been incarcerated experience significant social exclusion, particularly in relation to single parent status and financial hardship (Besemer & Dennison, 2018b). Paternal imprisonment places stress on the remaining caregiver and their relationship with the child/ren (Besemer & Dennison, 2018a). Research also indicates that the children of those who have been incarcerated experience stigma from their communities (Saunders, 2018).

It is crucial to acknowledge that individuals who are incarcerated are exposed to distinct harms within prison walls. Data from a steering committee report on government services in Australia found that people are assaulted in prison at a reported rate 14 times higher than outside of prison (Grunseit, McCarron & Forell, 2008, p. 244). This is concerning from a human rights perspective that considers harm experienced by prisoners as equally as important as harm experienced by the wider community. Additionally, incarceration may increase harm towards prisoners because it

contributes to their dependence on institutional care. Individuals who are unable to have their needs addressed in the community may become institutionalised, moving between various custodial care facilities. Ellem, Wilson & Chui (2012) found that disability, mental health and correctional systems in Queensland exacerbated the marginalisation of individuals with intellectual disabilities, and reinforced pathways to incarceration. Prison, then, may be used in place of preventative community support, with individuals being separated from society partly due to a lack of adequate system resources and responses. Thus, incapacitation creates distinct harms for those who go to prison and their families and contributes to the institutionalisation of vulnerable groups.

Rehabilitation

Rehabilitation as a function of incarceration aims to engage individuals in the prison system and prevent them from committing future crimes. In Australia it involves a variety of approaches, primarily focusing on individual motivation and cognitive-behavioural models of intervention (Heseltine, Day & Sarre, 2011, p. 34). These types of programs address behaviours by aiming to assist individuals in recognising and changing unhelpful thinking styles. Despite widespread use, these programs may not be appropriate for some individuals who lack the ability or desire to reflect on their internal cognitive processes. In addition, these models of intervention are highly individualistic and do not incorporate understandings of community, culture or underlying causes of criminality. Indeed, existing programs may be limited in addressing the needs of different groups. The Prison to Work report published by the Council of Australian Governments (2016) highlights the need for cultural competence in program administration, and states that more emphasis needs to be placed on delivering programs tailored to Aboriginal and Torres Strait Islander people, particularly women. The accessibility of rehabilitative programs is also inconsistent across different prison systems, is dependent on budget allocations and thus may be subject to change. There is a lack of consistency in policies on program eligibility, meaning some individuals may be excluded from programs due to internal policy. The Audit Office of New South Wales (2006) found that prison procedures can interfere with individuals being able to complete programs. These procedures include program availability and length, and prison transfers. Rehabilitation options are thus not equally appropriate or accessible for those in prison.

Incarceration means that services can provide support to individuals they may not have otherwise had access to, providing an opportunity for engagement and rehabilitation. Despite this, evidence suggests that incarceration is not an effective method of rehabilitation. Statistics reported by the Auditor-General indicate that a significant number of people who enter the Australian carceral system reoffend. In 2014, 45.8% of people who had been released from prison in NSW returned within two years (Audit Office of NSW, 2015, p. 7). Additionally, despite significant resources being put into addressing crime and reducing recidivism, these rates have increased. According to the NSW Justice report (2018, p. 32) from the Auditor-General, rates of reoffending within 12 months following release increased by 3.7% from 2012. This indicates that rehabilitation in prison

is not operating effectively. Indeed, there is some evidence that rehabilitation occurs more effectively through the community rather than in prison. A study based in Missouri, USA found that offenders sentenced to prison had higher recidivism rates than those who were placed on probation (Spohn & Holleran, 2002). Community rehabilitative responses may therefore potentially have better outcomes than current models involving incarceration.

As already mentioned, there are aspects of imprisonment that have criminogenic factors. This is identified by Cullen et al. (2011) in their review of literature about prison and recidivism, and is particularly true for those convicted of drug offences (Spohn & Holleran, 2002). According to Grunseit and others (2008) this is partly due to cultures within prison environments that involve an "us versus them" mentality in which individuals who offend develop a criminal identity that they may not have had before incarceration. Additionally, the criminogenic effects of prison may be aggravated by prison conditions. For example, a study in California (Ruderman, Wilson & Reid, 2015) found that prison overcrowding predicted the likelihood of parole violations post-release. This is pertinent considering the chronic overcrowding in Australian prisons (Mackay, 2015). Incarceration, then, can hinder the rehabilitation of individuals who commit crime.

Social Work Response

This paper has analysed the core functions of incarceration, demonstrating that they are not only flawed but significantly unjust. Incarceration involves the violation of human rights, and in many ways reinforces existing social inequalities. Social workers have a myriad of roles to play in addressing these injustices on the micro, meso and macro levels. Although there are many ways social workers can respond to issues surrounding incarceration, four key areas are outlined here. Firstly, social workers can embrace an emancipatory social work identity, by promoting the perspectives of individuals with lived experience of the carceral system and their communities. Secondly, they can promote and uphold the rights of these individuals both while they are in prison, and after they leave. Thirdly, social workers can explore and advocate for alternatives to incarceration that offer more socially just responses to crime. Finally, social workers can promote preventative approaches by highlighting and addressing the underlying social causes of crime.

To work in true solidarity, Lorenzetti calls for social workers to adopt an emancipatory identity in which all social work is understood as inherently political (2019, p. 5). This involves committing to a genuine engagement with the perspectives of people that social workers are aligned with. Thus, it is vital for social workers to listen to and promote the voices of individuals with lived experience of incarceration and the communities they come from. Social justice campaigns are important here, as they promote the perspectives of marginalised groups and can be crucial elements of social change. A relevant social justice campaign that gained significant attention in 2020 is Black Lives Matter (BLM) - a movement that highlights the ongoing alarming rates of deaths in custody of First Nations people in Australia. Social movements like this are integral to raising awareness

about the disproportionately high numbers of First Nations arrests, its underlying causes, and potential solutions. Teela Reid, a Wiradjuri and Wailwan woman, told the ABC that BLM "is a movement that tells the truth about our experiences", and said that "it's really about making space for and hearing First Nations voices" (Jash, 2020). Social workers can use their platforms to elevate the voices of these kinds of movements, ensuring that they remain at the forefront of conversations about social change.

Social workers are privileged to work in spaces that directly support the rights of individuals with lived experience of prison. Numerous government and non-government organisations provide services to individuals in prison and to those transitioning back into the community. For example, Sisters Inside is a Queensland-based not-for-profit that provides support to women exposed to the carceral system. It was created by Debbie Kilroy, a social worker with lived experience of being incarcerated who advocates for prison abolition. Sisters Inside works to uphold the rights of women in custody as well as women post-release. It provides a wide range of support to women and their families, including assisting with accessing bail, legal representation, secure housing, health services and sexual assault and violence counselling (see https://www.sistersinside.com.au). Other services include programs that provide assistance travelling to court, and services that involve free driving lessons in order to reduce driving offences (Mcgaughey, Pasca & Millman, 2018). Many similar programs exist that social workers can work in, follow and promote. On a macro scale, social workers can contribute to the uptake of rights-based policies and programs. This may involve advocating for recommendations from reports and inquiries, such as the Australian Law Reform Commission (ALIC) report titled Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report (2018, pp. 13-14). This report recommended reviews in police procedures and court decision-making to reduce discrimination in the application of the law. Social workers may also be involved in advocating for the implementation of international law, such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment (OPCAT). As discussed earlier, OPCAT is a mechanism that, once implemented, aims to enhance protections for those in prison by independently monitoring prison conditions and practices. Social workers can advocate for the uptake and proliferation of these reforms, and others, to support the rights of individuals with lived experience of incarceration.

Another way that social workers can address the social justice issues inherent in the incarceration system is by advocating for alternative responses to crime. Considering the various social justice issues inherent in the functioning of prisons, social workers have an ethical imperative to support alternatives to prison that are both effective and socially just. Indeed, many of the functions of incarceration explored here can arguably be achieved just as effectively through community measures. This aligns with the concept of justice reinvestment; the redirecting of resources from incarceration towards crime prevention and community solutions (Bode, 2011, p. 14). The 2018 ALIC report recommended the establishment of independent justice reinvestment bodies "to

promote the reinvestment of resources from the criminal justice system to community-led, place-based initiatives that address the drivers of crime and incarceration" (p. 137). The same report also recommended an expansion of community-based sentencing options (pp. 14-15). Social workers have a role to play in supporting these initiatives and working in services that divert individuals away from prison. Additionally, there have been arguments made for increased processes of community accountability focused on an approach to justice that is restorative rather than retributive (Daly, 2016). Blagg, Tulich and May (2019) emphasise that restorative justice initiatives involving First Nations people must include understandings of First Nations justice. They argue for a model of justice that emphasises joint involvement in planning and managing diversionary programs, emphasising services owned and run by First Nations groups. As professionals working in an emancipatory space, social workers can, and should, be a part of advocating for these social innovations.

Considering the overlapping intersections between areas such as poverty, homelessness, mental health, alcohol and other drugs (AODs) and crime, social workers are almost certainly involved in work that relates in some way to operation of the justice system. It is thus crucial that social workers understand the underlying causes of crime and work to address them in daily practice. This work may involve engagement with policy and practice relating to housing and homelessness, inequalities in education, services for mental health and AOD issues, programs addressing violence (including domestic and family violence), and work promoting First Nations sovereignty. This is by no means an exhaustive list, but rather meant to highlight the fact that social workers can engage with this work in many areas of practice. Due to the unique injustices experienced by First Nations people in the Australian carceral system, working to address the intergenerational trauma and inequalities experienced by this group should be a priority. This includes advocating for policy change that promotes First Nations perspectives and ultimately facilitates sovereignty over culture, country and justice. In all cases, consultation and collaboration with First Nations communities and organisations is key. Dawn Bessarab, a Bard and Yindjibarbandi woman, writes that

> Our role and responsibility as social workers is to embed Aboriginal and Torres Strait Islander worldviews into our work with Aboriginal and Torres Strait Islander peoples in culturally responsive ways that can facilitate their healing process in becoming a whole person. (2015, p. 3)

Incorporating the worldviews of First Nations people is vital in understanding and responding to their overexposure to the criminal justice system. Although complex and perhaps daunting, social workers who are interested in addressing the injustices of incarceration in Australia must engage with the underlying causes of crime.

Conclusion

This paper has presented an analysis of how the key functions of incarceration are both dysfunctional and unjust. Social justice implications were analysed through human rights and emancipatory frameworks. A human rights approach was utilised to reinforce the inalienable rights of people exposed to the carceral system, while emancipatory theories highlighted the underlying inequalities in social structures that contribute to crime and imprisonment. Utilising a wide range of literature, an analysis was conducted on the core functions of incarceration: justice, punishment, deterrence, incapacitation and rehabilitation. Evidence suggests that these functions have inconsistent application and effects. They result in increased harm and marginalisation towards those in prison, particularly those with intersecting marginalisations, and fail to prevent recidivism. Considering these issues, social workers have a crucial role to play in addressing and challenging incarceration in Australian society. Social workers can address the injustices of the carceral system by listening to those with lived experience and working to uphold their rights, both on a practice and a policy level. Social workers can also campaign for alternative responses to crime that are more socially just. Finally, social workers operate in a variety of fields where they can address the underlying social causes of crime, such as by promoting First Nations sovereignty. Through an informed social justice lens, social workers are well placed to advocate for a society that does not rely on a dysfunctional and unjust carceral system.

References

Audit Office of NSW. (2006). *Performance Audit: Prisoner Rehabilitation.* Sydney, Australia.

Audit Office of NSW. (2015). *Financial Audit: Law and Order & Emergency Services*, *7*. Sydney, Australia.

Audit Office of NSW. (2018). *Financial Audit: Justice 2018*. Sydney, Australia.

Australian Association of Social Workers. (2002). *AASW Code of Ethics*, Canberra: AASW.

Australian Bureau of Statistics. (2020) *Prisoners in Australia* (Cat. no. 4517.0). Canberra, Australia: ABS. Retrieved from https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2020

Australian Law Reform Commission. (2017). *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (Discussion Paper no. 84). Sydney, Australia: ALRC.

Australian Law Reform Commission. (2018). *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*: *Final Report* (Cat. no. 133). Sydney, Australia: ALRC.

Baldry, E. (2018). Community Justice in Australia: Developing Knowledge, Skills and Values for Working with Offenders in the Community, *Australian Social Work, 71*(2), 250-252. https://doi.org/10.1080/0312407X.2017.1347080

Baldry, E., McDonnell, D., Maplestone, P., & Peeters, M. (2003) Australian Prisoners' Post-release Housing, *Current Issues in Criminal Justice, 15*(2), 155-169. https://doi.org/10.1080/10345329.2003.12036287

Besemer, K.L., Dennison, S.M. (2018a) Family Imprisonment, Maternal Parenting Stress and Its Impact on Mother-Child Relationship Satisfaction. Journal of Child and Family Studies *27*(2), 3897–3908. https://doi.org/10.1007/s10826-018-1237-7

Besemer, K.L., & Dennison, S. M. (2018b). Social exclusion in families affected by paternal imprisonment. *Australian & New Zealand Journal of Criminology, 51*(2), 221–238. https://doi.org/10.1177/0004865817701530

Bessarab, D. (2015). Changing How and What We Do: The Significance of Embedding Aboriginal and Torres Strait Islander Ways of Knowing, Being, and Doing in Social Work Education and Practice. *Australian Social Work, 68*(1), 1–4. https://doi.org/10.1080/0312407X.2015.973475

Bessarab, D. & Crawford, F. (2013). Trauma, grief and loss: the vulnerability of Aboriginal families in the child protection system. In Bennett, B. (Ed.), *Our voices: Aboriginal and Torres Strait Islander social work*, 93-113. Palgrave Macmillan.

Blagg, H., Tulich, T., & May, S. (2019). Aboriginal youth with foetal alcohol spectrum disorder and enmeshment in the Australian justice system: can an intercultural form of restorative justice make a difference? *Contemporary Justice Review*, *22*(2), 105–121. https://doi.org/10.1080/10282580.2019.1612246

Bode, A. (2011). What Is Justice Reinvestment? *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs*, *9*(1), 14–15.

Borzycki, M. (2005). *Interventions for prisoners returning to the community*. Canberra: AIC. Retrieved from http://www.aic.gov.au/publications/reports/2005-03-prisoners.html

Buettner-Schmidt, K., & Lobo, M. (2012). Social justice: a concept analysis. *Journal of Advanced Nursing*, *68*(4), 948–958. https://doi.org/10.1111/j.1365-2648.2011.05856.x

Bushnell, A., & Wild, D. (2016). *The Use of Prisons in Australia: Reform Directions*. Institute of Public Affairs. Retrieved from https://ipa.org.au/wp-content/uploads/archive/IPAReport-Criminal-Justice-Web-1122016-sml-a.pdf

Butler, T., Andrews, G., Allnutt, S., Sakashita, C., Smith, N., & Basson, J. (2006). Mental Disorders in Australian Prisoners: a Comparison with a Community Sample. *Australian and New Zealand Journal of Psychiatry*, *40*(3), 272–276. https://doi.org/10.1080/j.1440-1614.2006.01785.x

Cavadino, M., & Dignan, J. (2006). Penal policy and political economy. *Criminology & Criminal Justice*, *6*(4), 435–456. https://doi.org/10.1177/1748895806068581

Choudhury, M. A. (2010). An epistemological inquiry on the definition of law and justice. *International Journal of Law and Management*, *52*(5), 346–355. https://doi.org/10.1108/17542431011075991

Council of Australian Governments. (2016). *Prison to Work Report*. Retrieved from https://www.coag.gov.au/sites/default/files/reports/prison-to-work-report.pdf

Cullen, F., Jonson, C., Nagin, D., Wexler, H., Lurigio, A., & Rodriguez, P. (2011). Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science. *The Prison Journal*, *91*(3), 48S–65S. https://doi.org/10.1177/0032885511415224

Daly, K. (2016). What is Restorative Justice? Fresh Answers to a Vexed Question. *Victims & Offenders: The Future of Restorative Justice*, *11*(1), 9–29. https://doi.org/10.1080/15564886.2015.1107797

Dawes, J. (2009). Ageing Prisoners: Issues for Social Work. *Australian Social Work*, *62*(2), 258–271. https://doi.org/10.1080/03124070902803475

Department of Justice (2003). *Victorian Prisoner Health Study*. Melbourne, Australia: Department of Justice.

Ellem, K., Wilson, J., & Chui, W. (2012). Effective Responses to Offenders with Intellectual Disabilities: Generalist and Specialist Services Working Together. *Australian Social Work*, *65*(3), 398–412. https://doi.org/10.1080/0312407X.2011.625433

Freiberg, A. (2010). Australia: Exercising Discretion in Sentencing Policy and Practice. *Federal Sentencing Reporter*, *22*(4), 204–212. https://doi.org/10.1525/fsr.2010.22.4.204

Gatt, K. (2011). Sudanese refugees in Victoria: An analysis of their treatment by the Australian Government. *International Journal of Comparative and Applied Criminal Justice*, *35*(3), 207–219. https://doi.org/10.1080/01924036.2011.591904

Grabosky, P. (1991). On the history of punishment in Australia and New Zealand. *Australian & New Zealand Journal of Criminology,* *24*(2), 139–143. https://doi.org/10.1177/000486589102400207

Graffam, J., & Shinkfield, A. (2012). The Life Conditions of Australian Ex-Prisoners: An Analysis of Intrapersonal, Subsistence, and Support Conditions. *International Journal of Offender Therapy and Comparative Criminology*, *56*(6), 897–916. https://doi.org/10.1177/0306624X11415510

Grunseit, A., McCarron, E., & Forell, T. (2008). *Taking Justice into Custody: The Legal Needs of Prisoners, 5*, Law and Justice Foundation of New South Wales.

Hamlyn, B. & Lewis, D. (2000) *Women Prisoners: a survey of their work and training experiences in custody and on release*, London, England: Home Office.

Haney, C., Segrave, M., Spivakovsky, C., & Eriksson, A. (2017). "Madness" and penal confinement: Some observations on mental illness and prison pain. *Punishment & Society, 19*(3), 310–326. https://doi.org/10.1177/1462474517705389

Hayes, S. (1996). *People with an intellectual disability and the criminal justice system: two rural courts*. NSW. Law Reform Commission.

Heseltine, K., Sarre, R. & Day, A. (2011). Prison-based correctional rehabilitation: An overview of intensive interventions for moderate to high-risk offenders. *Trends and Issues in Crime and Criminal Justice*, *412*, 1–6.

Jash, T, (2020, June 22). How to learn from Indigenous people about the Black Lives Matter movement in Australia. *Australian Broadcasting Corporation*. Retrieved from https://www.abc.net.au/news/2020-06-22/how-to-engage-with-indigenous-content-black-lives-matter/12373408

Kam, P. (2014). Back to the 'social' of social work: Reviving the social work profession's contribution to the promotion of social justice. *International Social Work, 57*(6), 723-740. doi:10.1177/0020872812447118

Mackay, A. (2015). Overcrowding in Australian prisons: The human rights implications. *Precedent (Sydney, NSW)*, *128*, 37–41.

Mallett S., Rosenthal D., & Keys D. (2005). Young people, drug use and family conflict: Pathways into homelessness. *Journal of Adolescence 28*, pp. 185–199. https://doi.org/10.1016/j.adolescence.2005.02.002

Mcgaughey, F., Pasca, T., & Millman, S. (2018). The road ahead: Driver's licensing and the over-incarceration of aboriginal peoples in Western Australia. *Alternative Law Journal*, *43*(3), 184–191. https://doi.org/10.1177/1037969X18788677

Mullen, P. (2001). *Mental Health and Criminal Justice: A Review of the Relationship between Mental Disorders and Offending Behaviours and on the Management of Mentally Abnormal Offenders in the Health and Criminal Justice Services.* Canberra: Criminology Research Council.

Murdach, A. (2011). Is Social Work a Human Rights Profession? *Social Work*, *56*(3), 281–283. https://doi.org/10.1093/sw/56.3.281

Nagin, D. (2013). Deterrence in the Twenty-First Century. *Crime and Justice*, *42*(1), 199–263. https://doi.org/10.1086/670398

Nilsson, A. (2003). Living Conditions, Social Exclusion and Recidivism Among Prison Inmates. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, *4*(1), 57–83. https://doi.org/10.1080/14043850310005321

O'Brien, M. (2011). Social justice: Alive and well (partly) in social work practice? *International Social Work*, *54*(2), 174–190. https://doi.org/10.1177/0020872810382682

O'Brien, M., Noble, C., & Henrickson, M. (2011). Equality and fairness: Linking social justice and social work practice. *Journal of Social Work*, *11*(2), 143–158. https://doi.org/10.1177/1468017310386834

Office of the Inspector of Custodial Services. (2016). *Fine defaulters in the Western Australian prison system*. Perth, Australia: OICS. Retrieved from https://www.oics.wa.gov.au/wp-content/uploads/2016/05/Fine-defaulters-Review.pdf

Ogloff, J., Davis, M., Rivers, G. & Ross, S. (2007). *The Identification of Mental Disorders in the Criminal Justice System*. Trends & Issues in Crime and Criminal Justice, 334*(1–6). Retrieved from https://aic.gov.au/publications/tandi/tandi334.

O'Malley, P. (2014). Prisons, neoliberalism and neoliberal states: Reading Loïc Wacquant and Prisons of Poverty. *Thesis Eleven, 122*(1), 89–96. https://doi.org/10.1177/0725513614530068

Centre for Policy Development. (2020). *Partners in crime: the relationship between disadvantage and Australia's criminal justice systems*. Sydney, Australia. Retrieved from https://apo.org.au/sites/default/files/resource-files/2020-12/apo-nid310032.pdf

Ritchie, D. (2011). *Does Imprisonment Deter? A Review of the Evidence*. Sentencing Advisory Council. Melbourne, Australia.

Ruderman, M., Wilson, D., & Reid, S. (2015). Does Prison Crowding Predict Higher Rates of Substance Use Related Parole Violations? A Recurrent Events Multi-Level Survival Analysis (Research Article). *PLoS ONE*, *10*(10), e0141328. https://doi.org/10.1371/journal.pone.0141328

Saunders, V. (2018). What does your dad do for a living? Children of prisoners and their experiences of stigma. *Children and Youth Services Review, 90*, 21–27. https://doi.org/10.1016/j.childyouth.2018.05.012

Sivak, L., Cantley, L., Kelly, J., Reilly, R., Hawke, K., Mott, K., Stewart, H., Mckivett, A., Rankine, S., Coulthard, A., Miller, W. and Brown, A. (2017). *Model of Care for Aboriginal Prisoner Health and Wellbeing for South Australia – Final Report*, Wardliparingga Aboriginal Health Research Unit. Adelaide, South Australia: SAHMRI.

Spohn, C., & Holleran, D. (2002). The effect of imprisonment on recidivism rates of felony offenders: a focus on drug offenders. *Criminology*, *40*(2), 329–358. https://doi.org/10.1111/j.1745-9125.2002.tb00959.x

Smith, P., Gendreau, P., & Goggin, C. (2002). *The effects of prison sentences and intermediate sanctions on recidivism: General effects and individual differences.* Ottawa, Ontario: Solicitor General Canada.

Stevens, A., Barratt, M., Lenton, S., Ridout, M. & Winstock, A.R. (2015). Social bias in the policing of illicit drug users in the UK and Australia: Findings from a self-report study. *SSRN.* https://doi.org/10.2139/ssrn.2618393.

Thompson, N. (2002). Social Movements, Social Justice and Social Work. *The British Journal of Social Work*, *32*(6), 711–722. https://doi.org/10.1093/bjsw/32.6.711

Tubex, H., Brown, D., Freiberg, A., Gelb, K., Sarre, R. (2015). Penal diversity within Australia. *Punishment & Society*, 17(3), 345–373. https://doi.org/10.1177/1462474515590891

United Nations. (1948). *Universal Declaration of Human Rights*. Retrieved from https://www.un.org/en/universal-declaration-human-rights/

Victorian Ombudsman. (2015). *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria.* Melbourne, Australia. Retrieved from https://www.ombudsman.vic.gov.au/

Walker, J., Illingworth, C., Canning, A., Garner, E., Woolley, J., Taylor, P., & Amos, T. (2014). Changes in mental state associated with prison environments: a systematic review. *Acta psychiatrica Scandinavica*, *129*(6), 427–436. https://doi.org/10.1111/acps.12221

Western Australia Police. (2019). Briefing Report. Retrieved from https://www.scribd.com/document/445453320/Document-for-Release-the-Guardian-FOI-2019-1912#from_embed-cycle