

JANET CHAN, *Doing Less Time: Penal Reform in Crisis, No 2*, Institute of Criminology Monograph Series, Sydney University Law School, Sydney, 222pp, ISBN 0 86758 5668.

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On matters of penal reform, we like to think we know what to expect. Things will go wrong. Always — or so it seems. If we introduce new sentences as alternative to custody, they will be used only as alternative to other alternatives; if we introduce new legislation to curb the sentencing powers of judges, like all good lawyers they will find loopholes in the law; if we introduce measures designed to reduce the prison population, this will be a guarantee that we will end up increasing it. At least, these are some of the assumptions we have come to associate with the decarceration/diversion debate and policies of the last two decades. These assumptions have largely come about as a result of (i) commonsensical correlations about the relationship between the plethora of penal reforms introduced in this period designed in one way or another to reduce the prison population, and the significant growth of prison populations in most of the countries where these reforms have taken place and (ii) the impact of the powerful theoretical/descriptive insights into contemporary penalty by Stan Cohen<sup>1</sup> in particular over the same period.

What we still know remarkably little about, though, is how and why policies go wrong, and indeed whether or not this is likely to be so in every case. And this, I think, is why Janet Chan's *Doing Less Time* will prove to be such an excellent contribution to our understanding of the politics and dynamics of penal reform. Using the introduction of an early release on license scheme in New South Wales in the early 1980s to reduce that state's prison population, she goes on to produce a very graphic and detailed account of these issues: one of the very few studies that I am aware of that actually achieves this.

I think a good subtitle for her book would have been "From 'Last Resort' to 'Truth in Sentencing'", since this is effectively what happened from the introduction of the scheme in 1982, its discreditation and withdrawal in 1984 and the introduction of the New South Wales *Sentencing Act* 1989, which abolished all forms of remission: such had been the taint left by the abuse of administrative discretion that the early release scheme had come to be associated with.

The starting point is the introduction of the scheme designed to bring about less use of prison — which in itself marked an important and decisive departure from the organising principle of decarceration — the use of prison as a last resort. From here, Chan then takes us down the remarkably convoluted route of penal policy working its way through and being mediated by the criminal justice process. We are shown the full array of competing interests, impediments to reform, bureaucratic manoeuvring and so on that are to be found there. She very ably guides us along this route, although perhaps a few more summaries here and there would have been helpful at times — one of the strengths of the book is the way it draws our attention to the complexity of the social organisation of the institution of punishment.

We are also in for some surprises as we make our way along this route. For example, opposition to the scheme for the Probation Service (p65), because of its loyalty to the courts, judges and by implication due process of law — not what we would have expected

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1 *Visions of Social Control* (1985).

from an organisation that bases its expertise on its “para-legal” ability to judge people. Then there is the almost total disregard by the relevant Minister for the pressures that this extreme workload created for those who had to administer the scheme; and the rivalries and conflicts it created between the already existing parole board, and the Department of Correctional Services which had to administer the scheme.

In addition, the Foucauldians amongst us should seem to be aware of the dangers of exaggeration and of our sounding too conspiratorial in our representations of the “seamless web” of social control. Justice and, here, early release, can seem much more like a lottery at times. The information gathering that had to be undertaken prior to a prisoner being released early on license was incredibly haphazard: “home visits were made whenever possible ‘having regard to economies and after consultation with senior officers’ ” (p71).

Also, as Chan illustrates, the scheme itself bears all the warning signs of how not to implement penal reform if “unintended consequences”, if not total disaster, are to be avoided. Thus: the scheme was too much the brainchild of one person — the Minister; no attempt was made to win over other interested parties/organisations; no attempt seems to have been made to do any public relations work with or through the media to win over public opinion; no pilot work seems to have been undertaken which would have enabled potential difficulties to have been spotted early on — most notably, perhaps, the enormous amount of confusion, inconsistency and downright unfairness that administrative release for some but not all prisoners on very uncertain and regularly changing criteria created within the gaols. But not only this, of course. As many readers will be aware, it was subsequently shown that this form of executive release was also liable to foster corruption, as well as inconsistencies in sentencing — to the point where the Minister himself eventually received a prison sentence for his role in this.

This leads me to two final points I wish to raise here. The first relates to the politics and tactics of penal reform. Despite its swift abandonment, here was a scheme that for a time did “work” — did reduce the prison population — by around 2.6 per cent (p93); however, although it might have “worked” on this criterion, whether it worked as a money saving device in view of all the inquiries and so on that the scheme itself generated, would seem highly dubious. Nonetheless, it helped to bring down the prison population and its main body of support seems to have come from liberals and penal reform groups. I know it is easy to be wise after the event, but I do wonder if *any* measure that seeks to cut prison numbers is worthy of support. In the short term, should we put so much faith in administrative discretion? In the long term, the furore the scheme provoked perhaps only further entrenched the prison and with the subsequent reversion to “Truth in Sentencing”, perhaps helped to bring about longer sentences for later prisoners. In developing opposition to the prison as an institution, maybe we need to be rather more focussed and specific on tactics and strategies.<sup>2</sup> Cohen and Taylor<sup>3</sup> for example take the stance against both prison and executive release.

Secondly, I would also be concerned if this scheme was simply held up as an example of how not to go about penal reform — with the inference being that with careful planning, inter-agency cooperation and the like, it will be possible to successfully implement policies. However, my feeling after reading this account is to wonder why it is still expected that policies will go according to plan. It still seems that despite all the evidence

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2 See Mathieson, T, *The Politics of Abolition* (1974).

3 Cohen, S and Taylor, L, *Prison Secrets* (1978).

that should lead us to think otherwise, there is still a deeply engrained modernist belief in “expertise”, planning, rationality and so on — in complete ignorance that any outcome will have to be mediated through the range of processes detailed here. And what is really needed, as this book infers, is for penologists to take far greater note of the sociology of organisations and bureaucracies if the dynamics of reform are to be better understood.

Criticisms that I have of this book mainly relate to its own organisation. I did think, for example, that the historical background to the idea of prison as a last resort was dealt with rather briefly. And I would have liked to have seen included a chapter on Chan’s methodology, outlining the numbers, nature and scope of her interviews and so on. However, as the book is taken from her PhD thesis I am sure it will be found there anyway. In summary, I found this to be a stimulating and very interesting book that sheds important light on subject matter that has been left in the dark for too long.

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