



Auckland Unitarian Church

Love beyond belief

David Hines © 23rd September 2018

Does New Zealand put too many people into jail?

The Unitarian Universalist covenant on the wall includes:

the goal of world community, with peace, liberty and justice for all.

but there is a conflict there: If there's justice for all, doesn't that mean some people will have to be punished, with a bottom line punishment of jail. But if some have to go to jail that means that there would not be liberty for all. And our goal would be nonsense?

I think that's a very serious dilemma.

But the first step of the answer is clear: to ask:

Does the harm of punishment outweigh the good it is supposed to cause.

And I thank our government for raising that question - not whether we should have prisons, but do we have too many people in them.

Appeal Court judge takes a lead

And I give the first word to Judge Steven Kos, who is president of the Court of Appeal, speaking to the Legal Research Foundation, and quoted by the Herald on August 29.

I'll list his main conclusions:

Prisons are good places for bad people; they are places in which dangerous people should be kept but:

They are not good for the mentally unwell

They are not good for the mentally unwell, who make up 60 percent of those sentenced to prison.

They are not good for those with decent rehabilitation prospects

They are not good for those with decent rehabilitation prospects. He doesn't put a number on them but he said criminals who pose no danger to society should spend as little time in prison as necessary to denounce their offending.

No evidence that lengthy sentences work

Judge Kos said he had seen no evidence that longer sentences are a deterrent either to the people sent to prison, or to the general public.

He said the best deterrence was the prospect of being caught, rather than what actual punishment followed.

Keeping offenders off the street is a two-edged result

He said there is some short-term truth in the idea that longer sentences keep criminals off the street. But when they are eventually released, they will tend to reoffend more, because prisons teach crime, and disable prisoners from going straight.

Do we need to make society safer?

Do we need prisons to make society safer? Surprisingly, Judge Kos says no. New Zealand already has an exceptionally safe society, second only to Iceland.

In particular: We need more options to prison

Probably, the most most relevant of Judge Kos's conclusions is that we need more options, including greater use of home detentions.

Among those options

1. The need for variable use of home detention

At present, home detentions have an arbitrary cut-off point of two years, for those who don't pose a risk and have somewhere to go. I take this to mean that home detention can only be used if the sentence is less than two years. Judge Kos said this leads to distortive sentencing. I take that to mean there are some offenders who would benefit from home detention, but judges can't use this option because these people have sentences longer than two years.

He said in the United Kingdom there is a four-year cutoff, and Norway has no cutoff at all. (so someone who is sentenced to life imprisonment in Norway, can serve all of it in home detention, if they are not a risk to the community.)

Judge Kos says we should follow suit.

2. Open prisons

Another restriction - New Zealand doesn't have a residential option for people who have no home to go to. He says this discriminates against people who are already at a disadvantage (by having no family).

In Scandinavia, many prisons are open, and this provides a third option for prisoners who are not dangerous. An open prison means they are able to get some employment, and some interaction with the community.

3. Fix the background to crime

Judge said It's well known that Maori are over-represented in our prisons. They make up 15 percent of the overall population but 57 percent of the male prison population. He said this reflects the misdistribution of economic and educational poverty in this country and is a stain on our national character.

He doesn't say what the answer is to these Maori prison rates but this suggests the answer lies in the problem of poverty, and cannot be solved just by tweaking the prison system.

I can't add a lot to that, but ...

I can't add a lot to that, except to say that I think it is brilliant. It is compassionate, but also realistic.

How does New Zealand compare with other countries

One perspective I would add is to compare New Zealand with other countries, beside UK and Norway.

Wikipedia has a list of countries showing the highest to lowest proportion in jail worldwide.

1	The country with highest proportion of people in prison is the US	With 655 per 100,000 0.65% of its people in prison	Doesn't include US territories Samoa, Guam, US Virgin Island juveniles in juvenile detention
1.5	The figure for North Korea is not known, but it is thought to be similar or worse than the US	600-800	
14	Russia is 14th on the list	411	
40	South Africa	280	
61	New Zealand	220	so we're in the top 27% of countries
93	Australia is considerably better than New Zealand on	167	
95	Tonga	166	
98	Mexico	165	(you'd wonder why they would want the US)
99	Fiji ARE All round the 160 mark	158	
110	England and Wales	141	
134	China is	118 (170)	Doesn't include detention centres, or workers
172	Norway has one of the lowest	74	Which has wider use of home detention
189	Syria	60	
206	Japan	45	
210	Iceland	38	Safest country, ahead of NZ
213	India	33	
222	Guinea-Bissau	10	

Some of those figures are hotly contested in the discussion page on Wikipedia .. including China, and Britain

Maori crime rate

One of the reasons we are in the highest bracket is the High proportion of Maori men in jail. If that problem was solved, we would be in the lower half of the world figures instead of the top 27%.

Political will

Our high proportion of prisoners may also reflect the fact that a high proportion of our population think we should get tougher on crime. So there is a fairly high proportion of New Zealanders who will not like the suggestions made by Judge Kos.

Our attitude is part of the problem/answer

To take one example from his suggestions suppose there was no limit on the term of home detention, instead of the present limit of two years, then people on 20 year prison terms could be in home detention for 20 years. But would New Zealand voters favour that?

An example of home detention Donella Knox

A case similar to this has happened this month. Donella Knox from Blenheim was sentenced to four years jail for murdering her autistic daughter. She has now served two years of that sentence in jail, and she came up for parole last month. There were exceptional circumstances: her daughter was increasingly violent, and was in pain but the doctors could not treat it; putting the mother under huge stress. She was not aware she could get help. And so she sedated her daughter with antio-psychotic medicine, and suffocated her. And then turned herself in to the police.

But at her parole hearing, her case was seen in a different light.

She had a number of sessions with a psychologist who said she was not a danger to society and now had an insight into her situation.

So the judge said she should be released on parole this month, into the support of an unnamed person, with a condition she undertake counselling, and for her own benefit she is not allowed to speak to the media.

My interpretation of this case

Now, this next bit is my interpretation. Why was Donella Knox only getting psychological and family help this year. Couldn't she have been put into home detention two years ago. And the reason appears to be that she had a four year sentence, and that ruled out home detention.

But if she had lived in Scandinavia, she would not gone to jail in the first place. Would she have been a danger to other people. Maybe... her parole conditions now say she must not be in a position of care for others, without the approval of her therapist or parole officer. But she is now regarded as safe to take that

risk, under supervision. Not all murderers are a danger to society. Or the dangers may be small enough to be managed in the community.

So it seems she may be an example of the kind of person who should never have gone to jail in the first place.

Christian attitudes

Where did we get this punitive approach to crime? I think the Christian religion has a lot to answer for, including Jesus, who frequently told stories of God as a judge, who sentences people to eternal punishment.

But sometimes he toned that idea down.

One example is his parable of the sheep and goats, which is a parable of punishment with a difference. The judge releases one group of people on the grounds that they visited people who are in prison..... So tho he still described God as a judge, he was a judge who cares about prisoners.

Another quotation from Jesus is that he came to set the captives free. He was not the first Jew to have that goal. He was quoting the prophet Isaiah who was looking for a massive release of people who were in captivity, in exile in Babylon. Other prophets argued that these people deserved to be in exile. God was punishing them. Isaiah said the punishment was too great.

people who didn't deserve punishment at all

The bible has many stories of people who were in prison, most of them were there unjustly: the patriarch Joseph, the Christian missionaries Peter and Paul. Jewish leaders under foreign governments like Daniel, and Jews in the Maccabean revolt against Greek rule.

And many of these people were treated appallingly. I looked up the word torture in my electronic bible and was horrified the stories I read, people who were put on the rack and their limbs torn off, people who were put in ovens, people who were tortured to make them confess to things they didn't do. And this still happens, especially in wartime.

So People who support prison as an answer to injustice need to face the fact that governments are fallible, and judges are fallible, And we should not presume they are always right about who is in prison.

In some cases the treatment of prisoners is far worse than the crimes they are supposed to have committed.

Diverse situations

There are also errors made the other way people freed on bail who go on to commit more crimes.

And laws which are humane, which we should credit the governments that wrote them. Muhammad Ali was sentenced to jail for refusing to be drafted to serve in the US army in Vietnam. He wrote that moving attack on the US jail system, and saying it was a kind of slavery; so he wouldn't be scared of going to jail, because black Americans had already been in jail for 400 years anyway.

But, surprise, his case went to appeal, and he was accepted as a conscientious objector, and was set free.

And another American, in the news here last month ... Chelsea Manning, who was jailed for leaking military secret information to Wikipedia, in protest at the US military. But she was given a pardon by President Obama. So there are already examples of humane treatment of criminals.

So there are signs of compassion in our modern legal systems.

Conclusion

But my conclusion is still that there **are** too many people in prison in New Zealand, that we are in the worst 27% of countries in the world.

It is not black and white issue. I have not seen any serious case that all prisons should be closed ... but there;s a strong case that many people who are in prison should not be there.

And there are many different parts of an answer, and our government and legal experts are reviewing them right now. The alternatives could include:

Shorter jail terms because longer terms are not a deterrent.

More money spent on policing, because that is the best deterrent.

Home detention for a wider range of people who have families who care for them and are not a danger to society.

Open jails for people who are not a danger, but don't have families who care for them.

Psychological treatment for prisoners who have mental disorders

More energy and money spent on relieving poverty, because that is a major factor in the high number of Maori men in prison, and probably a factor in non-Maori convictions as well.

We can Support prisoners and their families personally, as we did for a group of Indian students, facing deportation a few months ago. People who fall foul of our laws are not the enemies of society. They are still members of society, with human rights of their own.

These may sound like dreams ... but other countries such as in Scandinavia are doing them already.

And lastly: we can support our politicians and judges as they struggle with these issues. **They are looking for expert answers, but they will also be looking for public support, because the more support they get, the more humane they can be.**

2220 words /180 = 12 minutes