

THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT IN THE USA

A Cautionary Tale or a Vision of the Future?

By Helen Codd

The impact of imprisonment on prisoners' families in the UK has been the subject of a steady stream of research publications since the early work of Pauline Morris, whose important account of the impact of imprisonment on prisoners and their families was published in 1965.¹ More recently, there has been increased attention paid to the needs of prisoners' children, coupled with recognition of the significant role played by stable family relationships in facilitating ex-prisoner resettlement and preventing re-offending. However, the UK-based research is not as wideranging in its scope as recent American research, which has documented not only the impact of imprisonment of offenders and their families, but also on offenders' 'home' communities. This research has been undertaken in the context of a rising prison population and an ongoing programme of prison building, and has attempted to assess the broad range of consequences of imprisonment for offenders, communities and society as a whole, outlining and analysing a range of 'collateral consequences'. A key concept in this research is that it has been undertaken within the context of what has been labelled 'the mass imprisonment epidemic'; that is, alongside a high prison population and rate of imprisonment there has been an increasing focus of incarceration on certain socio-economic and ethnic groups.

A key question for prison managers, policy-makers and academics in the UK is whether or not the American research is of value outside the USA. This article briefly summarises the major collateral consequences of imprisonment documented in the American literature, and concludes with an assessment of the implications of this research for the Prison Service in England and Wales.

Introduction: the context in the USA

In recent years there has been a significant expansion in the scope of published research analysing the impact of mass imprisonment in the USA.

David Garland has discussed how ‘mass imprisonment’ has emerged in the US during the last twenty-five years, identifying its two defining features. The first is ‘sheer numbers’, that is, a rate of imprisonment and a prison population which is markedly above the norm for similar societies. Second, ‘the social concentration of imprisonment’s effects’: as he explains,

*Imprisonment becomes mass imprisonment when it ceases to be the incarceration of individual offenders and becomes the systematic imprisonment of whole groups of the population.*²

Writing in 2001, Garland argued that we have scarcely begun to address the question of the extent of the impact of ‘mass imprisonment’, pointing out that

*we have libraries of criminological research about the impact of imprisonment upon the individual offender but scarcely anything on its social impact on communities and neighbourhoods.*³

These social impacts, as discussed by Garland, have also been called the ‘collateral consequences of imprisonment’ and include the social and financial costs of imprisonment; the impact on public sector spending of high prison costs; the criminogenic consequences of custody for offenders and their families and, in the USA, disenfranchisement of some whole sectors of the community.⁴ Since 2001, academic and policy-orientated research publications have begun to assess these broader implications of the mass imprisonment epidemic, some of these addressing the precise question of the impact on communities.⁵ This recent research on the unintended and associated consequences of imprisonment has focused not only on the impact of incarceration on prisoners themselves, their families and their children, but also on their communities and on society as a whole, building on research into the impact of imprisonment on families which has been published in the USA since the 1960s. JR116 2 Echoing the language of the military, some writers have labelled these unintended impacts the ‘collateral consequences of imprisonment.’ These ‘invisible punishments’ have, in the words of Marc Mauer and Meda Chesney-Lind ‘*transformed family and community dynamics, exacerbated racial divisions and posed fundamental questions of citizenship in a democratic society*’.⁶

The Collateral Consequences of Imprisonment

Most prisoners do not exist in a vacuum. They may appear alone in the dock in court and serve a prison sentence alone, but most prisoners are members of family, kin and friendship networks.⁷ The impact of imprisonment goes beyond

the prisoner; rather like ripples on a pond, a range of consequences may result. It is important to begin by recognising that some of these consequences may have positive benefits. For example, the imprisonment of a drug-using parent may lead to a better experience of parenting for their children where children experience stability and good substitute care.⁸ Similarly, if a parent is imprisoned for offending within the family, then the quality of life of the family could be substantially enriched by their absence. Removal of a dangerous persistent offender from a community may promote public safety. However, the steady stream of research on these ‘collateral consequences’ of imprisonment in the US show that, for many prisoners and their families, there is a range of associated negative consequences. Some relate to the offenders themselves; others, more subtly, to their family members. In the UK-based literature, there has been a tendency to draw a distinction between prisoners and ‘prisoners’ families’: the recent US-based research has adopted a more holistic approach and has linked the impacts of penal sanctions on offenders themselves with other impacts on communities.

For offenders themselves, imprisonment may result in a number of additional civil consequences, some relating directly to citizenship and opportunities. A task force report by the American Bar Association (2002) found that these consequences include disenfranchisement, deportation, loss of professional licences, felon registration and ineligibility for many welfare benefits. Additional consequences can include prevention from serving on a jury, from running for public office, from collecting military benefits, parental rights, possessing firearms and receiving public assistance.⁹ The consequences of imprisonment in the US are extensive, but are not simply limited to incarcerated individuals and ex-prisoners. Far more than in the UK, the consequences of a felony conviction alone can be substantial, and there are at least an estimated nine million ex-felons in the US at the moment.¹⁰ The controversial US Presidential election in 2000 made the question of felon disenfranchisement more visible both inside and outside the US, and prompted debates around the operation of disenfranchisement legislation which, for a number of reasons, has had a significantly racialised impact.¹¹ A majority of states have laws restricting the voting rights not only of imprisoned felons but those on probation or parole; some states also include exfelons.¹² Four states bar convicted felons from voting for life. An estimated 1.4 million African-American males, 13 per cent of the adult African American population, have lost the right to vote under this legislation.¹³

The challenges of obtaining employment have been augmented by challenges in relation to education, following recent changes to the eligibility of ex-prisoners for student financial aid:¹⁴ Wheelock states that 92,841 students have been denied funding due to a drug offence and that the estimated number of disqualified students is growing.¹⁵ Of particular concern in relation to families are the restrictions on public assistance for ex-felons. Individuals in violation of a condition of their parole or probation can be barred from receiving federal welfare benefits;¹⁶ food stamps, Supplemental Security Income and access to public housing.¹⁷ Individuals convicted of a drug felony can be permanently barred from receiving TANF or food stamps.¹⁸ When set in the context of offending patterns, these provisions can have a profound impact on African-American families and families of female offenders. Families of colour are most affected by welfare bans: Allard reported that 92,000 women face collateral welfare restrictions, and of these women, 35,000 (38 per cent) are Black.¹⁹ This, of course, affects families: there are an estimated 135,000 children whose mothers are disqualified from public assistance as described. Similarly, in relation to public housing, a high proportion of those relying on public housing are Black women with children.²⁰

These civil consequences are underpinned by legislative foundations. In addition, questions of family life, rights to intimate relationships and parent-child interaction have occupied the US legal system in relation to both legislation and recent case law. One aspect of imprisonment which can have a direct impact on prisoners' family relationships is that of 'permanency planning' for prisoners' children. Under the federal Adoption and Safe Families Act 1997, where a child 'has been in foster care under the responsibility of the State for 15 of the most recent 22 months' then the State is required to file a petition to terminate the parents' rights. The average length of sentences served by both men and women means that termination proceedings will be legally mandatory in the majority of situations involving incarcerated parents whose children are cared for by State agencies.²¹

A number of recent court cases have questioned aspects of the rights of prisoners: these cases, while ostensibly about prisoners' rights, have a direct impact on families. For example, whilst existing as a privilege in some states, after being first introduced in California by Ronald Reagan in 1968, there is no constitutional right to conjugal visits between spouses. Linked to this is the much-publicised judgement in *Gerber v Hickman* where the US Supreme Court held that the applicant had no legal right to access to facilities which

would enable him to provide sperm with which his wife could be artificially inseminated.²² In this, and similar, so-called ‘procreation by Fed-Ex’ cases, the courts have made clear that prisoners do not have a right to procreate.²³ However although the question of the rights of prisoners’ partners is under challenge in the UK context, following the Mellor case,²⁴ and the recent judgement in Dickson²⁵ which has specifically addressed the rights (or otherwise) of a prisoner’s wife, the question of the impact on partners has been less important in the US. A key issue has been that of gender equality: if men are granted rights to father children whilst incarcerated, then it would appear that equal facilities should be made available to female prisoners.²⁶ These cases, of course, have an impact on prisoners’ family relationships, not in the sense of maintaining links with existing children, but in relation to the non-creation of other children of the relationship. The legal, practical and philosophical questions alongside research into the impact of incarceration on marriage rates and, controversially, suggested that these and similar restrictions amount to ‘the new eugenics’.²⁷

The US research has documented very vividly the challenges faced by prisoners’ partners in maintaining their relationships. The extensive fieldwork carried out by Megan Comfort at San Quentin provides the material for her vivid accounts of the experiences of family members waiting for processing and admission in ‘the Tube’, and she documents the challenges of capricious and frequent change in prison rules on dress, goods to be taken in, and so on.²⁸ The constant uncertainty of families, along with the additional stress of being a first-time visitor, means that for many of the family members with whom she waited, visiting was difficult, time-consuming, stressful and expensive. Johnna Christian (2005) has discussed the process of ‘riding the bus’ up to a prison, recounting the stress, stigma but also camaraderie of the regular visitors who have to travel long distances to visit their partners in jails which, thanks to prisonbuilding programmes in economically-declining rural communities, are often situated a long way from major urban conurbations.²⁹

As recounted vividly in Asha Bandele’s autobiographical memoir³⁰ and also documented in research by Megan Comfort (2003), Lori Girshick (1996) and others, prisoners’ partners go to extraordinary lengths to maintain some semblance of a ‘normal’ family life, constructing the prison as a ‘domestic and social satellite’.³¹ Families attempt to relocate everyday activities into the prison visiting room.³² The economic effects of imprisonment for families

in the US can be severe. Alongside the costs of visits, privately-contracted telephone services mean that prisoners and their family members are paying inflated rates for telephone calls and State Departments of Corrections also receive 'commission': for example, collect calls from prisons can be up to 20 times as expensive as standard collect calls, and as long ago as 1997-8 the New York State Department of Corrections received \$20.5 million in revenue from telephone service 'commission'.³³ The costs for families of providing extra goods, food, treats, toiletries and so on via the prison commissary system is also higher than the goods would cost if bought outside the prison.³⁴ All these additional costs can present families and substitute care-givers with extreme financial pressures.³⁵

One of the most significant contributions to the debate has been the development of awareness of the impact of mass imprisonment not only on individuals and their families, but also on communities, including children.³⁶ As Donald Braman writes in the context of policy debates, both liberals and conservatives 'forget that offenders not only offend against, but come from, communities'.³⁷ More than two million children are estimated to have parents in prison³⁸ and many more experience the incarceration of a parent at some time during their childhood.³⁹ Other writers have assessed the impact on offenders' 'home' communities.⁴⁰ One of the most immediate social shifts is the change in 'the ratio'; that is, the gender ratio of males to females.⁴¹ Combined with the impact of HIV/AIDS and drug use, the levels of imprisonment of males, specifically African-American males, mean that many children are growing up in matriarchal communities. This has effects on the behaviour of both men and women, with exaggerated perceptions of the 'male shortage' meaning a decline in men's accountability and responsibility within relationships and the community.

Linked to this is the rising number of children raised by grandparents, one of the consequences of shifts in drug policies which have contributed to the drastic rise in the number of women prisoners.⁴² When this situation is assessed in the context of research on the links between parental imprisonment and subsequent offending, the future impact of these policies may well lead to more crime, rather than less. The situation is complex however and recognised by Donald Braman (2004) in his book based on ethnographic research in Washington DC. It is the same communities that experience high levels of imprisonment which also experience high levels of criminal victimisation, and so sometimes there are high levels of community support for the imprisonment of offenders.

Conclusion

Whether the US situation offers us a cautionary tale or a vision of the future is difficult to answer and of course, these two descriptors are not mutually exclusive. Since the 1990s penal policies in the UK have been more significantly influenced by America than by Europe, and the consequences of this, combined with new punitive trends in penal policy, have been the subject of discussion and debate in a number of recent publications.⁴³ However, there are key differences between the situation in prisons in the UK and the US. For example, the majority of prisoners in the US are African American or of Latino origin,⁴⁴ and imprisonment is emerging as a new stage in the life course of young, low-skilled black men who, as one recent study suggests, are more than five times as likely as white men to have served time in prison by the time they reach their early thirties.⁴⁵ There is no research of which I am aware which identifies such a profoundly racialised focus to mass imprisonment here, in contrast with the situation in the US where the collateral consequences of imprisonment have had their most significant and damaging effects on members of minority ethnic groups.⁴⁶

In terms of prisoners' legal rights, the implementation of the Human Rights Act 1998 means that Articles 3, 8 and 12 of the European Convention on Human Rights in particular are providing fruitful grounds for attempts to challenge prison regimes and conditions, albeit with mixed results,⁴⁷ and Andrew Coyle has recently reiterated the importance of recognising prisoners as citizens.⁴⁸ While in the UK serving prisoners still cannot vote, we do have not the equivalent of felony disenfranchisement. From the point of view of prisoners' families, there is a growing awareness in the UK of the relevance of the European Convention on Human Rights to children's rights,⁴⁹ and recent cases have considered contact, visits, artificial insemination and mother-and-baby units.⁵⁰ Yet it is clear that the number of prisoners continues to rise, and many family members continue to struggle to maintain family relationships with one member absent due to imprisonment.

Having read this far, the reader may well be asking how this research relates to the Prison Service. Clearly, the ongoing rise in the prison population in the US, and the projected rise in the UK between 2005 and 2011⁵¹ are the results of factors over which prison managers and staff have no control; that is, crime patterns, sentencing policies and judicial decision-making. Some of the most damaging collateral consequences, however, may be ameliorated by prison policies and practices, such as those which promote

family relationships. In the last decade, many new initiatives have been established in England and Wales to promote family relationships, ranging from courses such as the 'Family Man' course, homework clubs, play schemes and extended visits. These and similar initiatives could, in the future, play a fundamental role not only in facilitating prisoner resettlement on release but also in minimising the impact of imprisonment on nonsentenced family members, such as children. Although some prisoners' family members continue to recount their experiences of negative attitudes, lack of information, and difficulty visiting,⁵² other initiatives are being recognised as demonstrating good practice in promoting family ties, as the 'Daisy and Tom' awards scheme run by the charity 'Action on Prisoners' Families' illustrates. The research from the US offers us a glimpse of the extensive possible consequences of high rates of imprisonment coupled with other policy initiatives which have clearly had a profound impact on offenders' families and communities. Whether or not the same path is followed in England and Wales remains to be seen. However, prison governors and staff could offer a significant contribution to ameliorating the negative collateral consequences of imprisonment for families and communities.

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Notes

- 1 Morris, 1965.
- 2 Garland, 2001, p.6
- 3 ibid
- 4 Garland, 2001
- 5 Travis and Waul, 2003; Braman, 2004; Mauer and Chesney-Lind, 2002
- 6 Marc Mauer and Meda Chesney-Lind, 2002 p. 1
- 7 Paylor and Smith, 1994
- 8 Eddy and Reid, 2003
- 9 Wheelock, 2005
- 10 ibid
- 11 Uggen, Manza and Behrens, 2003
- 12 Manza and Uggen, 2004
- 13 Mauer and Chesney-Lind, 2002
- 14 Page, 2004
- 15 Wheelock, 2005; Levi and Appel, 2003
- 16 Temporary Assistance to Needy Families (TANF)

- 17 Rubinstein and Mukamal, 2002
- 18 Travis and Waul, 2003
- 19 Allard, 2002
- 20 Wheelock, 2005
- 21 Gentry, 1998
- 22 Gerber v. Hickman 273.F.3d 843 (9th Cir. 2001)
- 23 Bozzuti, 2003
- 24 Mellor v. Secretary of State for the Home Department (2001) 3 WLR 533
- 25 Kirk Dickson, Lorraine Dickson v Premier Prison Service Ltd., Secretary of State for the Home Department (2004) EWCA Civ 1477
- 26 Dunn, 2002
- 27 Sutherland, 2003
- 28 Comfort, 2003
- 29 Greene, 2002
- 30 Bandele, 1999
- 31 Christian, 2005: Comfort, 2002
- 32 Comfort, 2002
- 33 Braman and Wood, 2003
- 34 ibid
- 35 Bates et.al., 2003
- 36 Hairston, 2003: Wacquant, 2001
- 37 Braman, 2004: p4
- 38 Mazza, 2002
- 39 Seymour, 1998
- 40 Travis and Waul, 2003
- 41 Braman, 2002
- 42 Minkler and Roe, 1993: Dressel and Barnhill, 1994: Cox, 1999
- 43 Tony, 2004: Jones and Newburn, 2002: Pratt et.al., 2005
- 44 Wacquant, 2001
- 45 Pettit and Western, 2004
- 46 Braman, 2004: Travis and Waul, 2003: Anderson, 2001
- 47 Codd, 2004: Foster, 2003
- 48 Coyle, 2005
- 49 Munby, 2004a and Munby, 2004b
- 50 Munro, 2002: Brooks-Gordon and Bainham, 2004: Codd, 2004: Codd, 2005
- 51 Home Office, 2005
- 52 Brown, 2002: Loucks, 2004