

# THE SPECTATOR AUSTRALIA

## Is there such a thing as conjugal rights?

Questions about prisoners' right to sex examine the very purpose of imprisonment, says Ross Fitzgerald

When a person has committed a crime so serious that society decides to incarcerate them for it, the main aspect of that punishment is generally a loss of liberty. Without the freedom to associate, people can't offend against the general public anymore and hopefully they learn how painful it is to be kept away from society so they will think twice about committing that offence when they get out.

But what is the effect of cutting off all access and information about sex and sexuality to prisoners? This is the key topic in prison reform circles these days, and some surprising conclusions are being drawn.

There are those in the community who feel that sex is a 'liberty' that should be denied to prisoners. But you could argue the same about nutritious food. Although many prisoners probably regard prison food as little better than airline food, it's not too bad. The state even sends in nutritionists to look at the menus. We could just feed them bread and water and deny them ordinary food as a liberty that they should forgo for their transgressions. But what would that achieve? A huge drain on the public purse when prisoners get sick a lot more than they do, and the cost of coping with emaciated 'madmen' when they were released. Could the ban on all things sexual for prisoners ultimately work against society?

According to Justice Action, prisoner numbers in Australia have increased by about 40 per cent over the last decade. The Australian Bureau of Statistics (ABS) reports that prison numbers increased by 50 per cent between 1993 and 2003, way outstripping the average population growth of 15 per cent. It's hard to find an exact figure for the number of people in Australian jails at the moment, but it would be around 30,000. Some 20 per cent of these are indigenous Australians, and many prisoners are incarcerated because of addiction to alcohol and other drugs.

The overwhelming majority of our inmates are heterosexual men who are locked up together. And that inevitably means huge amounts of sexual tension. With this in mind, it's a no-brainer to suggest that condoms should be freely and legally available under a co-ordinated national scheme as a matter of urgency. They are distributed in some jurisdictions but often they are not used for sex. Although HIV/AIDS could not be said to be widespread in Australian prisons, it's certainly more prevalent than in the general community. According to figures from the Australian

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Federation of Aids Organisations (AFAO), only four cases of HIV transmission have occurred within Australian jails and only one of these could be traced to male-to-male sex, leaving the strong possibility that the other three cases occurred via sharing of needles.

Up to 40 per cent of inmates are infected with Hepatitis C, while the figure rises to 70 per cent among women prisoners. This figure, more than most, could suggest that needle exchange programs need to be looked at. AFAO reports that needle exchange programs in countries like Spain and Germany have lessened blood-borne disease rates in jails without increasing drug usage.

Australia also needs a national appraisal of the effects of conjugal visits in prisons. The ACT has recently announced that it will begin a programme of 'private family visits' for prisoners who meet 'strict' criteria. Victoria already has such a programme in place, but no other jurisdiction does. The ACT policy will allow same-sex visits and prisoners who had been living with someone for six months before conviction, will be eligible.

These moves inevitably stir up debate about the role of a prison. One prison psychologist I spoke to said, 'Is a prison sentence meant to rehabilitate, to punish, to seek retribution, or to act as a deterrent? If it's about rehabilitation, then there's a good argument to allow conjugal visits. But if it's not, then why should people that committed an offence be entitled to conjugal visits? Didn't they give up those rights when they committed the offence?' She has a point. And what about those prisoners who don't have a partner? Should we then allow sex workers into jails? Again, if we are talking solely about rehabilitation, then this may well be a humanising factor that is very helpful for prisoners as they go back out into the community. Then again, as the psychologist reminded me, 'Remember that prisoners get a lot of visiting rights as it is and most would be happier to have a visit from their kids and their partner, than give that up for a conjugal visit.'

The issue of supplying sexually explicit material to prisoners is also a vexed one. Earlier this month a Queensland prison officer was charged with supplying 'pornography' to an inmate. Queensland's censorship laws on adult erotica are so strict that material sold in newsagents in all other states is routinely banned up there, so it's possible that the prison officer supplied nothing more than a copy of Playboy or Picture magazine. The fact that he supplied it on a memory stick was much more important than the content. From a security point of view it is totally understandable that supplying prisoners with sexual material on a memory stick would constitute a major security risk. But it is at least arguable that books and magazines containing sexual imagery and information can only keep prisoners in touch with the sexual world which could be a blessing for their partners and future partners when they get out. There is some access to sexual publications in some prisons through their 'buy up' schemes, and some prisons do allow explicit material. But as we've seen in Queensland, there are no consistent policies in this area, and there should be.

Both major political parties are struggling with prison policy and both seem bereft of new ideas. In NSW, Labor is trying to privatise prisons, much to the chagrin of many in the union movement. In the ACT, the Liberals want to channel all new prison monies into their health budget. There is an assumption that good outcomes to incarceration will come from the top

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down. This may be one area of policy where the real changes happen from the ground up.

There is an attempt in Victoria to have the families of prisoners actively involved in rehabilitation programmes, including anger management and violence prevention, and in particular in courses targeting addictions which so often lead to inmates being recidivists. Such family involvement is all to the good. But it is only one small step in an Australia-wide debate about prison reform.