THE AGE

The Government turns a blind eye to Aboriginal disadvantage

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By Sarah Gill

Our laws were not drafted with the intention to discriminate, but discriminate they do.

Imagine, if you can, a scenario where a privileged young Australian woman is taken into police custody for a string of minor offences. She complains of escalating pain in her side and pleads to see a doctor. Over the next two days she's taken to hospital on three occasions – the last time, she's dragged.

Despite assessments by a parade of healthcare professionals, not a single blood test is ordered, nor a chest X-ray – triage nurses fail to even take her temperature. Fuelled by the staggering misjudgments of emergency doctors, her jailers form the view that she's perfidious. It's a belief that seals her fate.

As her blood-borne infection progresses, she collapses in her cell, unable to move her legs. She's berated, manhandled, then handcuffed and bundled into a police van for what will be her final journey. With only minutes to live, and in intense distress, her captors admonish her to "shut up".

She's in cardiac arrest as she's delivered to hospital for the last time and, even then, police inform emergency department staff that she's malingering.

Needless to say, this story – a litany of prejudice and neglect – didn't happen to a privileged white girl: it happened to a 22-year-old Yamatji woman in Port Hedland in 2014, in a part of Australia that can best be described as a prison-state for our nation's First Peoples. The horrific experience of Ms Dhu, who died of septicemia and pneumonia after 43 hours in custody for unpaid fines, was a calamity of mythic proportions: a classical Greek tragedy set in the Pilbara where Cassandra – doomed to be eternally disbelieved – is a black woman and her downfall is inexorably linked to the systemic injustice that compounds Aboriginal disadvantage.

Emergency physicians have suggested that hospital staff doubted Dhu's veracity because she was in custody – a disturbing claim in itself – but what circumstances conspired to put her there in the first place? Her story may be incredible, but it some ways it was always bound to happen.

In the last decade, the national imprisonment rate for Indigenous women has doubled. In the cohort of females aged 15 years and over, one in five have been arrested by police. Figures sourced from the Australian Institute of Health and Welfare and the Law Council of Australia reveal that it's no better for Indigenous children, who are 26 times more likely to be locked up than their non-Indigenous

counterparts, and when they are, they're 74 per cent more likely to be reconvicted than those who receive a non-custodial penalty – a statistic that grimly underscores how imprisonment itself confers further disadvantage.

According to Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda, we're better at keeping black kids in jail than we are at keeping them in school. And in doing so, their risk of developing mental health problems and substance abuse is intensified, while their prospects of further education, training or employment diminish apace. It's a vicious circle of despair, neglect, and punishment – and yet more despair. It's 'almost like the royal commission never happened', Gooda says.

Chronic socioeconomic disadvantage is clearly a factor. Indigenous Australians are significantly more likely to be removed from their families, experience childhood trauma, to lose a job, lose a baby, suffer chronic disease, be raped, assaulted, or hospitalised for self-harm, to live in poverty and to die in it. But the unpalatable truth is that disadvantage alone cannot explain the scale of Aboriginal incarceration, nor do arguments about recidivism or increased offending. Make no mistake – this is inequity turbocharged by injustice.

State and territory chief justices – a group leery of making unfounded claims – say sentencing laws are to blame. There may well be increased offending among Aboriginal people, but here's the thing: when they do offend, all other things being equal they're more likely to be questioned, arrested, and remanded; more likely to plead guilty than go to trial; more likely to be convicted and imprisoned; and less likely to be paroled at the end of their sentence than non-Indigenous offenders. So says the Chief Justice in Western Australia – a state described as the "mother of all jailers" – and his views are supported by multi-jurisdictional research and echoed by contemporaries around the country.

The Australian constitution aside our laws may not have been drafted with the intention to discriminate, but discriminate they do – and how could they not? Police move-on powers target the itinerant – the young, Indigenous and mentally ill – in much the same way that jail for unpaid fines disproportionately affects the poor. And at the risk of stating the obvious, the homeless are more apt to drink in public, which makes the ongoing criminalisation of public drunkenness deeply disturbing. In the area of these relatively trivial public-order offences, there is evidence of bias and overpolicing from the Walpiri communities in the Top End all the way to the Koori communities of Victoria. We're indulging in a collective delusion if we think that the application of our laws will do anything but add to the deprivations of our First Peoples.

Despite this unfolding catastrophe, the Commonwealth government continues to resist calls for a justice target to reduce Aboriginal incarceration. Indigenous Affairs Minister Nigel Scullion says that targets would "send the wrong message", that the focus should be, instead, on the cause of offending. But aside from being an illogical argument – justice targets would indeed address Indigenous offending – Scullion's response sounds depressingly like something straight out of John Howard's playbook: a neat way of evading responsibility and laying the blame elsewhere.

In the same way that Howard refused to see the systematic discrimination that created the stolen generations – a "denial of an unsavoury truth in the face of irrefutable evidence", according to former parliamentary secretary for social inclusion Ursula Stephens – the refusal to accept the need for legal reform, despite pleas from Indigenous leaders and the dispassionate assessment of senior legal figures, signals the perennial disavowal of institutionalised discrimination. It turns a blind eye to the way Aboriginal people are treated in our criminal justice system – to the bias that guarantees their ongoing marginalisation – in much the same way that her jailers and doctors turned a blind eye to Ms Dhu.

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