

Chief Justice deserves better than outraged screeches from hardliners

Sunday
Star
Times

OUR TOP judge has made a thoughtful and learned speech about crime and punishment: she was bound to get a kicking. The hang 'em high brigade, which has made most of the running on this issue for 25 years now, wants to shame her into silence.

National's constitutional purists say that Chief Justice Sian Elias has shaken the foundations of our democracy, blundering out of Judiciary Square and sowing ruin all the way down Legislature Ave and along Executive Lane. What nonsense.

Is the constitution such a delicate flower that a judge can't give a speech about sentencing? Do judges wilt on the bench when a conservative politician bays for blood and calls yet again for the courts to crack down on crime? Of course not. This is madness dressed up

as constitutional principle, a pseudo-sophisticated way of playing the woman rather than her argument. We should ignore those lofty individuals who want to take away the chief justice's freedom of speech.

Let's think, instead, about what Dame Sian is saying. She is not saying we should open all the prison doors. She is not saying that dangerous criminals must never be locked up for a long time. She is not saying that treating criminals nicely will turn them all into law-abiding lambs. She is not saying that prisons can be turned into academies of rehabilitation. She is not, in other words, building up a pile of liberal shibboleths.

Instead, she is suggesting that the lock-'em-up approach is reaching the end of its useful life. If we continue with it, we will edge ever closer towards American levels of imprisonment.

Dame Sian points out that what evidence we have suggests the level of imprisonment in a society has little to do with the level of crime. In other words, long sentences and bulging prisons don't make us safer, although they will quickly drain a large part of

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the treasury. Quite literally, we can't afford to go on like this.

"There are no easy or quick fixes," says Elias – and that's the point. The hard hats always talk as if there were. The judge makes some modest proposals, such as aiming to reduce sentences. We have become so inured to sense on law and order that the suggestion alone will be treated like

treason. But all of the people who under a more modest regime would receive shorter sentences would have been returning to the community some time anyway. They can't all be locked up forever, although that is what the "sensible" extremists seem to want.

Dame Sian calls for intervention in the families of those at risk of becoming

criminals – it is not, after all, hard to identify them – and for greater numbers of higher-paid probation officers. For some people, prisons are "monster factories" which make them worse than when they went in. Simply to register this fact is to concede that one policy size won't fit everyone. That means our policies must be complex and nuanced. The chief justice's call for

more action on mental health epidemic among prisoners – is hardly controversial. It might even be called banal.

Her plea for a lowering of the temperature over victims' rights is also sane and sensible. If the presence of the victim is used only to increase the level of our rage and thirst for revenge, it will help neither the victim nor the offender. There is something to be said for a return to judicial calm and detachment here. This doesn't mean ignoring victims' rights or being callous and unconcerned. It means refusing to let our natural feelings of outrage, and our urge for retribution, rule our actions.

There is some evidence that voters, if they are treated with respect and given access to facts about how other countries run their prisons and courts, will not always take the knee-jerk

option. New Zealand and other Anglo-Saxon countries have not, contrary to the myth, always chosen the punitive approach. Dame Sian quotes the rather charming fact that in 1907, a British law bringing in the probation service described its functions as "to advise, assist, and befriend" the offender. Many would now merely jeer at the notion of "befriending" an offender.

Finland, as the judge notes, took a national decision to end the law and order auction, to refuse to pour fuel on the fire, to ask journalists, politicians and pressure groups to stop feasting on the gory delights of law and order. Even to raise this is to realise the trouble we face. Is there any prospect, yet, that we might one day refuse to bow to those who want to increase the hysteria and misery in which we are already drowning? Not really. Look at the way they howled at Sian Elias.