Perrie Lectures 2009

How, and why, to stop banking on prisons

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It is good when societies feel uncomfortable about punishment, when people see punishment as a necessary evil rather than a good in itself. . . A society which feels morally comfortable about sending thousands of terrified young men and women to institutions in which they are bashed, raped, brutalized, stripped of human dignity, denied freedom of speech and movement, has a doubtful commitment to freedom.[1]

Banking on imprisonment?

The 2008 'credit crunch' has revealed the costs of a lightly-regulated global financial system. It is now apparent that during years of economic growth — at which time they were deferred to and celebrated — bankers took decisions for short-term gain in disregard of the adverse affects of their actions upon others and their long-term costs of their reckless behaviour. The unregulated market has, once again, eaten itself. In the wake of the governmental intervention that was needed to avert financial meltdown and is now required to put the global economy back on track, it appears that an era of careless excess is over and we are at the dawn of a new age of regulated responsibility.

This much is now familiar. But can we not apply this analysis to other domains of public life and in particular to penal policy? Is myopic recklessness not also an accurate description of how in recent decades successive British governments have responded to crime and used punishment: for short-term political advantage, with scant attention to the collateral consequences of, say, mass imprisonment, in careless disregard of the long-term effects of their policies. Might this therefore, by extension, be an opportune moment to take stock; to reflect on the trajectory, temper and impact of excessive punishment, to contemplate a different course? Might this, in short, be a time for moderation?

I think that it might. I therefore want in this lecture to develop the idea of *penal moderation* and promote its virtues as a means of addressing the task posed in my title — that of how, and why, to stop banking on prisons.

Three broad claims underpin this analysis. The first is that the current condition of the penal system in England and Wales is in part the result of that system's lack of a public philosophy of punishment. By this I mean an intellectually coherent account of how, how much and to what end our society punishes that is capable of connecting with beliefs and values to be found within English society. My second claim is that penal moderation is the best available candidate for such a philosophy. It is one that can pinpoint the pathologies of a penal system driven by punitivism and a false promise of public protection, while alerting critics of those pathologies to the danger of over-investing in the idea that a reformed penal system can and should 'do good'. My third claim is that contributing to the formation of public philosophies of punishment, and thereby seeking to clarify what is at stake when societies make choices about whether and how to punish (and use prison), is a legitimate task of social analysts of punishment. It is, in any event, this sense of responsibility that underpins my attempt in this lecture to outline and defend the virtues of moderation as a lens for analysing the state our penal system is in and a vehicle for fostering penal policy that calls upon and, renews, English society's 'commitment to freedom'[2].

What follows is this. I begin with a few words about the value and role of a public philosophy of punishment before setting out the core elements of penal moderation as my preferred candidate for that title. These elements are restraint, parsimony and dignity. I then describe four tasks that penal moderation can usefully perform in current debates about penal policy — naming excess, drawing lessons from 'moderate' times and places, emphasizing that punishment is a social and political choice, and recasting the relation between penal practice and 'public' opinion. I conclude with some reflections on whether penal moderation is — or might usefully be interpreted as — a penal philosophy for conservatives.

Moderating imprisonment

English penal policy stands today in a mess, the English penal system in what seems like a permanent

1. Braithwaite, J & P. Pettit (1989) *Not Just Deserts*. Oxford: Clarendon p.6.
2. Ibid p.6.

state of crisis. There have been signs lately of official acknowledgement of this; yet the British government has no tenable strategy for addressing problems that are, in many ways, of its own careless making. Its response to a prison population standing (as of 29th May 2009) at 82,818, and a system buckling under the strain, is technocratic fix. In recent months, the Ministry of Justice has proposed a Sentencing Commission that may bring use into line with capacity; is devoting scarce public resources to trying to build its way out of the problem; and urges sentencers to use alternatives to short spells of imprisonment. It then hopes for the best and that the topic slips back below the media radar-screen. A politically faltering government can it seems — in this high-voltage policy field — do little else.

The current penal crisis, and the apparently limited room for manoeuvre of political actors who claim they wish to tackle it, is testament to the fact that the English penal system lacks a coherent public philosophy — a story about why and whom, and how and how much, we punish that connects with, and re-articulates, beliefs and values that are current within English society. A public philosophy seeks to clarify what is at stake when a society decides to punish, and to foster debate about the choices we make in response to crime and what they say about who 'we' individually and collectively are, or aspire to become. In so doing, it *starts* from where citizens recognizably are, not from where one might like them to be. But it need and must not end there. Rather, the task of a public philosophy of punishment is to provoke and unsettle, to challenge things that have become taken-for-granted, to raise questions that English society has forgotten how to ask and signal their importance.

Given the condition, cost and manifest failings of English prisons today, our society pressingly requires a public philosophy of punishment that offers a convincing rationale for radically reducing the harshness and scale of the present penal system — and for that milder and smaller system. Penal moderation is, I want to suggest, the best available candidate we have for such a task.

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Moderation is defined by the *Oxford English Dictionary* as 'limitation, restriction' and 'the action of making something less violent, severe, intense or vigorous'. It also, interestingly for present purposes, refers to it as 'control, rule, a system of government'. Applied in the context of punishment, moderation brings together three ideas: restraint, parsimony and dignity. These engage, respectively, with public sentiments towards punishment; the scale and limits of the penal system, and the question of how that system treats those who are brought within its care and control. Let us consider each in turn.

The idea of penal moderation seeks, first and foremost, to inculcate a sense of *restraint* in how English society talks about and delivers punishment. In so doing, it connects with, and builds upon, the moral ambivalence that many citizens feel towards punishing — an ambivalence that rarely registers in current debate, but which has become a stock finding of research into public attitudes to punishment[3]. This research finds that punishment is capable of evoking anger, resentment and a passionate desire to inflict harm on the criminal wrongdoer, or to have the state do so on our behalf — often for reasons that have relatively little to do with people's direct experience of crime and more to do with a faltering sense of secure belonging or their general worldview[4]. But punishment also calls forth feelings of shame, regret and forgiveness, invoking responses that view prison as futile and seek repair and reconciliation.

Penal moderation works with and upon these conflicting emotional states. It seeks, in particular, to bring this often silenced ambivalence to the surface of public discussion and find ways of institutionalizing it. Punishment — for a penal moderate — is an occasion for, and source of, sorrow and regret: it does and should make us feel uncomfortable[5]. Punishment, such feelings remind us, is the organized infliction of pain by the state

3. See Roberts, J. & M. Hough (2005) *Understanding Public Attitudes to Criminal Justice*. Buckingham: Open University Press and King, A. (2008), 'Keeping A Safe Distance: Individualism and the Less Punitive Public', *British Journal of Criminology*, 48/2: 190-208.
4. See Farrall, S. & J. Jackson (2009) *Social Order and Fear of Crime*. Oxford: Oxford University Press and King, A. & S. Maruna (2009) 'Is a Conservative Just a Liberal who has been Mugged?: Exploring the Origins of Punitive Views', *Punishment & Society* 11/2: 147-169.
5. Braithwaite and Pettit (1989) see n.1.

upon an individual in response to that individual's criminal wrong-doing. It is an act whose exercise is and should be restrained — in a double sense. As a matter of law and practice, one must subject penal practices to clear limits and controls, and robust forms of accountability. As a dimension of public culture, its exercise calls for the cultivation of an attitude of care and caution with respect to whether, why and whom, and how and how much, societies punish.

Penal moderation alerts us, secondly, to the scale and limits of the penal system. It begins from the view that punishment is a 'tragic' institution; one destined to disappoint because the levers that conduce individuals to conform lie pretty much beyond the penal system's control[6]. It recalls and works with the well-documented fact that the prison is a perennially failing social institution about which it is wise never to be sanguine, or to invest much hope. The watchword is thus *parsimony*. Penal moderation focuses and re-focuses public attention on the question and benefits of a minimum necessary penal system. It enjoins us to treat, and use, the penal system as an institution of last resort — one that steps in only when other mechanisms of social control have manifestly failed, and then only reluctantly with a view to minimizing the damage that is likely to follow. In the present economic climate, the case for parsimony can be pressed with a Treasury-mindset. Penal moderation reminds us that prisons are a scarce and expensive public resource that need to be used sparingly and with due regard to their cost. At a moment when citizens are focused on restraint and the price of things, there may today be more leverage for this case than existed during times of economic plenty, a point I return to below. But the concern with parsimony also needs to repeat and give practical effect to the criminological truism that there is no penal solution to problems of crime and disorder — and that thinking and intervention about how to create secure societies needs to focus on wider institutions and mechanisms of economic inclusion, social regulation and dispute resolution. This is a lesson that English society has largely disregarded in recent decades — to its considerable cost.

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In these respects, penal moderation is a public philosophy focussed on the limits rather than the purposes of punishment. This is something about which it is worth being explicit. Here penal moderation departs from, or at least stands prior to, the standard menu of perspectives in the philosophy of punishment which, arguably, are carelessly indifferent to the scale of punishment (incapacitation); have few resources for preventing penal expansion (deterrence); runs the risk of encouraging punishment on the grounds that it benefits offenders (rehabilitation); or have restraining purposes whose benign intentions can be, and over recent decades have been, captured by the forces of penal aggravation (just deserts). In the face of these dangers — of the risk of setting goals of punishment that are 'voracious and consuming'[7] — penal moderation's mantra is *limits before purposes*. Whatever one thinks punishment is for, try to get by with as little of it as possible.

The third element of penal moderation addresses penal practice and prison regimes and conditions. The key — moderating — idea here is that the penal system treats with human *dignity* all those whom are brought under its care and control. One can apply this notion to criminal justice institutions generally and propose it as the basic organizing principle governing the treatment of all those — victims, witnesses, suspects — whose lives are embroiled in, and risk being (further) damaged by, the criminal justice process. But one also needs to apply it to those to whom such dignity is least likely to be extended — convicted offenders. For a penal moderate, lawbreakers are and remain both humans and citizens, and must be treated as such. In this way, a public philosophy of penal moderation can inform and reinforce the notion that guarantees of basic human rights can and should apply within penal settings. It also emphasizes the importance of instilling and sustaining notions of harm reduction — a culture of moderation — within the working practices of penal institutions and the occupational outlooks of those who work inside them. Penal moderation reminds us, to borrow a term whose significance Alison Liebling[8] has made clear in recent years, that the 'moral performance' of penal institutions should and does matter; that they are settings whose inescapable asymmetries of power need not prevent them from aspiring to foster and sustain civic virtues. Part of the value of Liebling's work has been to demonstrate that this ethic is partly constituted in the way that some, but by no means all, English prisons are currently run.

6. Garland, D. (1990) *Punishment and Modern Society*. Oxford: Oxford University Press p.292.
7. Braithwaite & Pettit (1989) p.46 see n.1.
8. Liebling, Alison. (2005) *Prisons and Their Moral Performance*. Oxford: Oxford University Press.

Even a sympathetic sceptic may say at this point that — valuable as these ideas may be — they cannot speak to a public imagination suffused with support for harsh penal responses to crime and anti-social behaviour. They may wonder how they can ever possibly persuade politicians who seem wedded to presenting themselves as 'tough on crime' and using prison as the indicator of that toughness. They may worry also that penal moderation fixes attention on the damage caused by, and limits of, the penal system in ways that offer little to those victimized by, or anxious about, crime and which disregard the good intentions of criminal justice professionals and the positive programmes that the penal system does in fact deliver. Moderation, they may conclude, is a counsel of despair.

It is nothing of the sort. To be sure, penal moderation set outs to disturb and transform the current terms of public debate about punishment — to make prison less central to how people think and feel about crime and its control, and to loosen attachment to the notion that there exists a penal solution to crime problems. But given the dead ends of penal policy in England, the ongoing expansion of the prison estate and the ill-temper that pervades public responses to crime, moderation is a vital and *positive* message to inject into societal discussion. This is so, not least, because radically reducing the resort to prison, and society's expectations of it, is a precondition for maximizing any good that the prison system can accomplish (through education, training, work, behaviour management and drug treatment programmes), as well as for harnessing the benefits of alternative ways of responding to crime and addressing conflict, such as restorative justice, problem-solving courts and justice reinvestment. I return to this matter at the end.

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The tasks of penal moderation

Before doing so, I want to consider the tasks that penal moderation may usefully perform in a penal climate that appears inimical to its organizing principles and overall take on the place of punishment in social life. How, in other words, can one connect the idea of moderation to the present trajectories, and possible futures, of English penal policy? Four main tasks present themselves in this regard — naming excess, learning from 'moderate' times and places, emphasizing that punishment is a social and political choice, and rethinking the relation of penal politics and practice to 'public' opinion. I shall deal briefly with each in turn.

The idea of moderation provides, first, a lens through which to re-interpret the recent history and present condition of English penal politics and practice. The starting point here is to note that the antonym of moderation is not simply expansion in some quantitative sense, but the more qualitative notion of excess. This idea, it seems to me, offers a persuasive means of capturing and conveying the main contours that English penal policy has followed since the mid 1990s and the manner in which it has erred[9].

This is so in several respects. It draws attention to the way in which government has materially and symbolically behaved as if crime were *the* rather than a social problem during a period in which volume crime levels have been falling. It helps to explain the hyperactivity that has marked the governance of crime. This has resulted in an incessant flow of new initiatives, policy proclamations, statements of intent, tsars, task forces, agencies and targets for government ministries and criminal justice bureaucracies; as well as in the remarkable fact that the New Labour government has passed more Acts of Parliament dealing with crime, criminal justice and punishment since it was first elected in 1997 (66 as of the end of 2007) than the total number of such Acts passed in the entire 97 years of the 20th century that preceded Tony Blair's election (42). Along the way, more than 3,000 new criminal offences have been enacted. It enables us to make sense of the hostile impatience that government has typically displayed towards things that stand in the way of speedy, decisive executive action against criminal threats (e.g., human rights), or those who can be and have been depicted as 'out-of-touch' with the legitimate anxieties and demands, and the sturdy common sense, of the 'law-abiding majority' (e.g., civil servants, criminal justice professionals,

9. Loader, I. (2009) 'Ice Cream and Incarceration: On Appetites for Security and Punishment', *Punishment & Society*, 11/2: 241-257.

lawyers, penal reformers). And it enables us to re-name the ready and increasing resort that English society has made to imprisonment in recent years as a *binge*; a frenetic feasting during times of economic plenty on what is best interpreted as a myopic but crowd-pleasing 'solution' to the crime question — one whose legacy is a society that is altogether too comfortable with, even keen on, banishing thousands of — typically young, poorly-educated, mentally-troubled and drug-dependant — men and women to institutions of penal coercion.

Against this backdrop, the penal moderate's second task is to remind her co-citizens that it didn't have to, and doesn't have to, be this way. This can be done by placing recent English experience in a comparative context, by pointing to the ways in which England and Wales stands today as one of the punitive outliers among liberal democratic states, and by these means challenging the 'obviousness' of prison as a response to crime. That task can be advanced in part by means of internal historical comparison. One might, for example, seek to bring to public consciousness some relatively recent but now politically forgotten episodes of English penal history such as the practitioner-led movement to reduce custody for juveniles in the 1980s and the coalition of officials, practitioners and criminologists who formulated new policies for reducing prison use in the period from 1987 to 1993.

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But penal severity's obviousness can also be challenged by highlighting and seeking to learn from the variation in penal practice that is to be found across the democratic world, and the persistence of societies that have managed to create or sustain relatively mild penal systems. Several cases in point spring to mind. Across the Channel, in France, prison rates have remained stable over the last decade. More tellingly, Canada has cut prison numbers by 11 per cent since 1997 with policies in marked and conscious contrast to those pursued in neighbouring USA, and while maintaining a fall in crime levels comparable to that found in the US. Finland has in recent decades radically cut its prison population and actively strives to keep the scale and temper of punishment within 'Scandinavian' norms. Norway has long sustained a relatively benign penal culture, as has Germany[10].

Bringing these cases to public notice is today an important moderating task. But so too is pointing to the lessons we can draw from them. These appear to be that relatively mild penal systems, which use prison sparingly, are more likely to be encountered in societies with a broader commitment to egalitarianism and generous welfare support; with consensual rather than winner-takes-all political systems; that retain the levers of penal policy in the hands of (trusted) bureaucrats and professionals not elected politicians, and where the mass media are relatively inattentive to crime and punishment. Yet these features of a society are difficult to change; are not easily transposed to places, such as England and Wales, where the genie of crowd-pleasing, excessive punishment has been unleashed from the bottle, and ought, in any event, to be defended on grounds other than that they conduce to mild punishment.

There is, however, a possible exception to this, one that brings us to the penal moderate's third task. The exception is that those societies which have effected reductions in the use of prison and sustained relatively mild penal systems have done so through acts of political will and leadership. In cultivating the requisite will, the task of the penal moderate is to expose the fallacy that imprisonment rates are a product of crime levels and to remind one's co-citizens that there is much else and more 'going on' when a society decides whether, how and how much to punish. Punishment, in other words, is a mode or regulation, one among a choice of techniques and institutions for governing conduct.

It is thus clear that those societies which retain smaller penal systems and use prison sparingly do so because they have opted to regulate their crime and related social problems otherwise and acted accordingly. Often, it is worth noting, they have done so by drawing on feelings of national pride/shame about how that society punishes and an attendant sense of where it wishes to be located on the world's penological map. Finland reduced its prison population

10. See Tonry, M. (ed.) (2007) *Crime, Punishment and Politics in Comparative Perspective*. Chicago: University of Chicago Press and Lacey, N. (2007) *The Prisoners' Dilemma: Political Economy and Punishment in Contemporary Democracies*. Cambridge: Cambridge University Press.

in part because its political elite wanted to break with the country's Russian past and be, and be seen as, 'Scandinavian'. It thus had to punish accordingly. Germany sustains a mild penal climate in the shadow of its dark past; Canada takes pride in being distinct from the US in criminal justice matters; and post-devolution Scotland is staking out a new penal identity by imagining and realigning itself with (mild) Sweden rather than (punitive) England.

In the light of this, perhaps the most obvious — and usable — lesson that one might draw from recent work on comparative penology is that the political art of penal moderation lies in emphasising these aspects of social and political choice and knowing how to tap into, and work with and upon, the feelings of national shame/pride that punishment can provoke. This, in part, means connecting with and seeking to engage that dimension of national self-understanding that depicts England as tolerant, forgiving, decent and pragmatic — a land of sweet moderation. This may or may not be a mythic construction. But by appealing to it, one asks its adherents to dwell upon the question of why their cherished commitments are routinely violated when it comes to English society's response to law-breakers.

This possibility connects with the final way in which penal moderation may be put to work in a hostile climate — one concerning the interplay between penal policy and practice and 'public' opinion. The turn to incarceration and associated forms of penal severity over the last decade has issued from a government that assumed for itself the role of consumer champion, giving voice and effect to whatever calls for punishment and claims to greater security pressed themselves most forcefully upon it. On this view, the task of government becomes that of ensuring that public opinion (or at least its reading of what constitutes 'public' opinion) has its demands affirmed and sated. It is no part of the legitimate responsibility of political rulers to reason with such opinion, to put another view, point out discomforting facts, or intractable dilemmas, or value trade-offs, or the limits of what police and punishment can do to produce secure societies.

In the face of these tendencies the penal moderate's job is twofold. First of all, she may point out that this stance rests on a misreading of what is known about public sentiment towards crime and punishment. There are those whose daily lives are blighted by crime or whose worldview makes them angry and vocal enthusiasts for 'tough' punishment — they are not always the same people. There are also those — no doubt a smaller group — who express a moral commitment to using punishment sparingly and to positive effect. But there is also evidence — from recent analysis of the British Crime Survey, for example — that the majority of people have little experience of crime, rarely think about it from one day to the next and, when prompted to do so, express ambivalent feelings about the proper response to it[11]. These are not people minded to send a donation to a penal reform group. But when given actual cases to ponder they sentence much like, or more lightly than, real sentencers. They view prison as futile and back the idea of offenders repairing the damage they have caused (for a review of the evidence, see Roberts and Hough 2005). Penal moderation's work here lies in articulating and giving practical effect to these ambivalent postures towards punishment — postures that fall silent or are silenced in a media culture suffused with simple and consoling anti-crime scripts, postures that democratic politicians either wilfully overlook or dare not take the political risks of attending to.

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What follows from this is a pressing need to find ways of recasting the relation of penal politics and practice to 'public' opinion. It is a question that any future government that sets itself to do something English society's excessive reliance on the prison, whether Labour or Conservative, will have to seek an answer to.

A penal philosophy for conservatives?

Following an earlier presentation of these ideas, which prompted discussion of whether moderation was the best way to characterize them, one member of the audience proffered the suggestion that what I was in fact promoting was most accurately described as penal conservatism. If what was meant by this is that what I offer is a rationale for conserving the penal system that 15 years of rising incarceration has bequeathed us, then this is plainly mistaken. Nothing could be farther from my intention. There may nonetheless be ways in which penal moderation could be conducive to those of a

11. Farrall. & Jackson (2009) see n.4.

conservative disposition, or may even underpin a conservative (or future Conservative) penal policy. Two of these are obvious, three others perhaps less so.

The more obvious connections are these. One can point, firstly, to the fact recent historical instances of 'moderating' penal reform — in respect of juvenile offenders in the 1980s and the male adult prison population in the early 1990s — took place under Conservative administrations. Penal reform, and the exercise of political leadership in a bid to reduce the use of imprisonment, is by no means alien to the Conservative political tradition in the UK — as the regular public outings for Churchill's famous remark about prisons being a test of a country's civilization are meant to attest. Secondly, one may highlight conservative unease about state expenditure and its effects, and an attendant concern to ensure that taxpayers' money is never needlessly wasted. Given the parlous condition of Britain's public finances, any future Conservative administration may wish — or simply have — to bring this unease to bear on the question of prisons. It may, in other words, have to find the will and a way to persuade taxpayers of the fact that Britain can no longer afford to make such reckless and costly use of the prison. The days of carefree penal spending are over.

Yet there also exist other — less immediately apparent — ways in which penal moderation may be reconciled with the conservative political tradition. It may appeal first to its anti-utopianism. Conservative writers from Edmund Burke to John Gray have unwaveringly opposed what they see as the misplaced arrogance of any utopian blueprint for re-moulding the social and political order. But by what other name are we to call the prison experiment of the last 15 years? Prison has, during this time, seemed to stand at the heart of a punishment-centred political vision of a society free from crime-risk and has been central to governmental efforts to coerce such a world into existence. This vision has become *the* ideology of a post-ideological age. Those we properly call conservative will stand aghast at the folly of it all.

Penal moderation may connect, secondly, to those aspects of conservatism that have to do with conservation. I do not mean by this the desire to keep things as they are, to freeze the present in aspic; but, rather, the idea that government has a duty to 'look after', and tend prudently, a nation's natural, social and human resources. For a penal moderate, this is just how we should understand imprisonment, as an institution which we use (up) reluctantly, with sorrow, when there really is no alternative. Re-cast in the language of conservatism, prison becomes a scarce resource that wise political leaders know must be deployed sparingly, with immense care, and with due regard to the inescapable costs of doing so.

The prison is, thirdly, a standing offence against one of the key conservative ideas on crime — individual responsibility. As those who analyze or campaign against them never tire of pointing out, and those who work or who are detained inside them know from their daily experience, prisons are responsibility-free zones. It is also important to point out that prisons free inmates from responsibility not because they lack resources or are badly managed, but in large part *because* they are prisons. They are therefore institutions that further rob individuals of the very thing that conservatives believe offenders need to cultivate if they are not to re-offend. To be sure, there are programmes prisons can and do put in place to moderate this basic fact and to get prisoners addressing their behaviour and trying to turn round their lives. But these initiatives will maximise the chances of some success — of generating responsibility for the harm their actions have caused among those who are incarcerated — when our society makes minimal use of imprisonment, and genuinely strives to use prison as a place of last resort. They require us, in short, to stop banking on prisons.

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Penal moderation is not then simply a rallying-call for the usual suspects, of interest only to liberals, defence lawyers and penal reform groups. When we have been governed for so long by those who are, arguably, best characterized as penal extremists, and may now wish to navigate away from the mistakes and costs of such extremism, penal moderation makes sense as a conservative cause.

Perrie Lectures 2009

The Conservative approach to crime and punishment

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I want to start by sharing some of my own personal thoughts on the question of what prison are for, before talking about the current state of Conservative party policy.

The first issue is the public response to the nature of crime, forgetting for the moment about punishments. We live in a society where we know from polling that public tolerance of crime is low and by that I don't just mean crime in the sense of people burgling other people's homes but disorder of a wider kind. We know, for example, that tolerance of violent behaviour is much lower today than it was a hundred years ago. On one level that is desirable; perhaps it indicates that the human condition is improving, given that violence has been endemic in human society for as long as anybody can identify. But of course at the other end there is a problem because tolerance has reduced but human nature hasn't gone along quite as fast, so the pressure builds on politicians, legislators and those in government to fulfil expectations that are probably impossible to fulfil.

Last year, when I was Shadow Home Secretary, I delivered a speech at the party conference which tried to subtly change some of the issues relating to crime generally. I said then that we were in desperate need of getting away from this extraordinary bidding war being engaged in by political parties about who can sound tougher on crime. This has consequences that then cascade down through the system and end up with effects such as the very high prison population. What I said then, and I still stand by now, was that we had to try and start changing the terms of discourse.

We live in a very regulated society. One of the issues that manifested itself during the scandal over MPs' expenses and allowances, is that one of the reasons people are so angry is because they perceive that the gentle regulation that politicians have been enjoying in respect of their allowances is at variance with the way the Inland Revenue might deal with the smallest mistake that they made. The problem is that as this regulated society grows, so the capacity for informal resolution of criminal behaviour evaporates and it all gets chucked back onto the state. This was brought home to me with knobs on when I once carried out a citizen's arrest outside Green Park station on a young man who was smashing a bus shelter. As he was trying to smash the bus shelter I said to him I didn't think he really ought to do it, and he then smashed it, and I said, 'You really ought not to have done that. I'm now going to arrest you; please wait there while I get on my mobile phone and call the police'. He took one look at me, I was wearing a black tie and a beige raincoat, and he saw this mixture of Bertie Wooster and Inspector Clouseau, and hoofed it off round Berkeley Square! He was foolish enough to go to Grosvenor Square, which has rather a lot of police officers as it has the US Embassy and he was arrested. He was in fact a juvenile; he spent 21 days in Feltham, and I'm not sure what happened to him after that. I think that was the remand period, and then probably nothing very much I think thereafter. The reason why I tell this story is that when this story got out I was invited onto every radio chat show conceivable. Politicians try to interest people in policy, which is a total failure, but you get a human interest story and you're away! I told my story and then people would ring in and say: 'I tried to do that once and the police told me I shouldn't' 'I tried to do that once the police never came, they only came because you're an MP'; 'I tried to do that once and the police arrested me'. Now there is a big problem in our society. People won't go out into the street to tell ten year olds to stop misbehaving anymore and the consequence of that is that the people go and ring up the police and the consequence of ringing up the police is that you start the first ratchet into the criminal justice system. If I'd called out the police every time I had to separate my two sons, who are only sixteen months apart in age, I don't know where they'd be in the criminal justice system by now. The fact is that they are now thirteen and fifteen and these problems do seem to be slowly smoothing out, but given that the age of criminal responsibility is ten, we could have had quite a lot of interesting problems around that time.

We have got a serious problem because we live in a society where the media acts as fairground mirrors: they can make things look small, or they can make things look big. They can't produce things that aren't there, but they can reflect and magnify them. That then

creates a political demand. The thing that brought it home to me was the Soham murders and what we did with Maxine Carr. Her role was really peripheral. She was the classic example of the person who was psychologically dependent on the murderer and therefore rather than doing what she should have done, which was to go and tell the police what had happened, she protected the murderer. The Judge, as you will remember, had a terribly difficult sentencing exercise, because actually she'd spent so much time on remand that by any of the allowable sentencing tariff, she was due for immediate release. He probably wanted to avoid that because the public outcry was going to be enormous, so actually we locked her up for a bit longer. I was absolutely shattered when I turned on my television one evening, and I found that the Crown Prosecution Service had released the juicier extracts of her interview under caution, which as far as I could see, the only possible purpose of which was to vilify her. This was taking place at precisely the moment when the prison system was going to have the task of some how trying to rehabilitate her in order to get her back into the community. At the end of the day, we had to spend a huge sum of money going to court to get anonymity, giving her a new identity and all the other things which had to be done. That does seem to me to absolutely highlight some of the problems that we have with the purpose of punishment.

> ... the purpose of the criminal justice system must be, as its priority, to contain, that is to hold and to help.

I don't think the criminal justice system has any role in hurting the people it takes in. Of course there has to be an element of deterrence, and there has to be an element of the expression of public disapproval, and in doing that we pass sentences on people that are inconvenient to them and in some cases distressing and disrupting to their lives. We have to accept that happens. But the purpose of the criminal justice system must be, as its priority, to contain, that is to hold and to help. I don't think that is something with which politicians of any mainstream political party would disagree, although it is true to say that under the pressure of events and with the media knocking on your door, we are all susceptible to trying to echo public mood and engage in the vilification processes.

The Conservative Reform Proposals

I now want to turn to the Conservative party programme for prison reform. The first and most pressing reality is that you don't change the world in a day. I listened with interest to ideas expressed by Ian Loader that we could get back to prison numbers as they were in 1993, and on that I say that if, as Justice Secretary, I succeeded in achieving that, I would be very happy to have that engraved on my tombstone. In the meantime, the most obvious problem if I get this job and we're elected into government is that there is a prison population crisis. The prison population has gone up by 23,000 since 1997; the estates capacity hasn't kept up with it; the government has had an insatiable desire to pass more criminal justice legislation. We've had sixty pieces of criminal justice legislation and we've had three thousand new criminal offences, and of course we've also had a substantial increase in custodial penalties for offences which previously didn't have them. This is all leading to a crisis in legal aid and prisons, where almost 25 per cent of the prison population are doubled or trebled up in cells designed for one person fewer in them, and you can't provide a reasonable rehabilitative, educational regime in an overcrowded environment. *The difference between a prison which isn't overcrowded and a prison which is, is absolutely manifest the moment you go through the doors.* We know that the number of assaults on prison officers has been rising and we know that many people resign from the Prison Service within two years of starting employment, because they are finding that the stress connected with the job is very great and suicides in prison have more than doubled. Prisoners on average spend less that 3.5 hours a day on purposeful activity; 82 per cent of offenders have writing skills at or below those expected in eleven year olds; for reading and numeracy, the figures are 48 per cent and 65 per cent respectively; 55 per cent of prisoners report committing offences connected to drug taking and we also know that there a high percentage are suffering from various mental health problems: the figures I was given say 72 per cent of the male and 70 per cent of the female prison population.

That's the basic problem which we are going to inherit. We do not see that there is any way out of that crisis in the short term unless we can ease the problem of prison overcrowding, which is why our first commitment is to provide 5,000 more prison places than the Labour government have currently projected. What we are absolutely committed to is not having Titan prisons. The model that we would like to aim for is to have much smaller prisons, in an ideal world with a capacity of around 600 inmates each. This would require a transformation of the current prison system,

which I'm certainly not going to be able to deliver if I get this job in the course of one Parliament.

The way we are going to provide that capacity is by the sale of old inner city prison estate sites and their replacement with new ones; or, in some cases, there may be additions to existing prisons. That of course has a number of problems associated with it. The first is whether that would realise sufficient funds, because property values have fallen. However, given that there would be a lead-in time of around two years, there is some hope that the property market would have recovered. Does this mean that I want to have a prison estate of a hundred thousand prison places for ever and a day? No is the answer. If we can start reducing the prison population over time, and I don't think it can be done overnight, then we can start selling off the older estate and concentrating on the new build which we have replaced it with. We will also be trying to move towards local prison clusters which we would like to roll out across the country. There are a number of places where we can pilot these schemes: one is Worcestershire, one is South Wales and the other possibly is in Kent. We would like to set up clusters where you have different types of prison estate available within one area serving one locality, but I want to be realistic about this: this is going to be a difficult plan to deliver and we're talking ten, fifteen years to bring about the transformation that I would like to see take place.

I went to visit Dumfries prison two weeks ago which is about as proto-Dickensian a prison it's possible to find. It is built of red sandstone, it has got walls and turrets and battlements, it has got Queen Victoria's crown over the gate and a large key underneath — all carved rather beautifully in the sandstone. The inside is a bit labyrinthine and smells of carbolic soap in the way I don't remember smelling in a modern English prison for a very long time. It has a mixture of local inmates and the other groups it holds are some difficult prisoners who tend to be sex offenders or long term prisoners who have refused to accept responsibility for their past actions. I was staggered by this prison. What was striking was the relationship between the inmates and the staff. I saw one wing which has twelve cells and one prison officer to look after it during his shift. It doesn't have integral sanitation and at night you ring the bell and you get escorted down to the lavatories down the end of the corridor. But what was quite apparent was that the place was quiet, purposeful, a non-threatening environment, and the basic reason for all this was that it only had 400 people in it. Inadequate as many of the aspects of Dumfries prison might be, I thought it was very striking what could be achieved in that micro environment, which created something entirely different from what you see in a large prison.

In addition, we want to do something about rehabilitation, but before I move on to that, I need to say something about sentencing. Sentencing determines how long somebody currently spends in prison, and the reality of current sentencing is that it is a con trick perpetrated by the state on the public. It enables the reader of the tabloid newspaper to open his paper and see bank robbers get eighteen years each whereas in fact you know and I know that they are not going to serve eighteen years. It is a mockery and it undermines confidence in the criminal justice system. The model we would like to follow is one where the judge sets a maxima and a minima, and the whole purpose of prison will be when a person comes through the doors after sentence, to say to them this is your minimum tariff and nobody can interfere with it under early release or otherwise but our role is to get you out at the minimum point and we will put together the programmes here to ensure that that happens, and we will try to make sure that you also have programmes which follow you afterwards in a seamless transition back into the community. But if you don't do those programmes then you may stay in for very much longer. That is what our transparency and sentencing policy in a nutshell is about. The decisions on that will be taken in short-term cases by the governors and in longer-term cases we will have to have Boards to make that adjudication. We want to provide a real incentive for people to complete programmes and for prisons to deliver those programmes and get people through their sentences faster. We accept that this has the potential of raising the prison population further certainly in the short term. *It is not the idea that the minimum sentences that we are going to have should to be much longer than the 50 per cent points which exist a present.*

We want to provide a real incentive for people to complete programmes and for prisons to deliver those programmes and get people through their sentences faster.

Then we come to rehabilitation, and this, as far as I'm concerned, is the single most important plan in the policy. We want to turn prisons or clusters of prisons into rehabilitation trusts: organisations which, because they are locally based, can commission aftercare services through the voluntary sector, bring in the programmes for prisoners when they're in prison, and

then ensure that nobody is released out of the gates of a prison in this country without there being somebody at the gate who is there to look after them. If we can deliver this then I actually think we can make an impact on re-offending rates because everything I have ever seen in the course of my career as a politician is that the schemes which work are those that look after people both before release but above all afterwards. The thing which has pained me more than anything else in the course of the last five years is seeing projects which seem to me to be worthy collapse because they get three year funding. I remember going down to see C-Far in Devon, which used to take young adults eighteen to twenty-three from the gates of prisons into residential placements to address some of the background of their offending, find them accommodation, try to find them jobs and to look after them afterwards for periods of one or two years. I thought it was exceptionally worthy. The Prison Service at one stage thought it was so worthy they wanted to take it on board and run it themselves, which I have to say I don't think is a very wise idea, but eventually the money just ran out and it folded. You will know other examples of good practice — heaven knows in this business, it's easy enough to find examples of good practice. The challenge for me as a politician is how on earth do we roll that good practice out right across the country. That's what I've always seen as the single biggest challenge.

... everything I have ever seen in the course of my career as a politician is that the schemes which work are those that look after people both before release but above all afterwards.

We want to see a sea change in the approach to addiction. Iain Duncan Smith at the Centre for Social Justice has done a lot of work on this. I note what he said about this and also the questions about whether we are just making a rod for our own back by our criminalisation of drug abuse, a very interesting ethical and social question. What I do think is that in most cases of serious drug addiction only residential rehabilitation has ever worked. The problem I have is that there is no money. Prior to 2005, we persuaded Liam Fox, who was then the Health spokesman, to give us *£400 million* from the NHS budget to help fund the places. At the moment that isn't available — we are operating in a very constrained environment.

We also want to see more work in prison. The Barb Project at Coldingley has been much praised, run by the Howard League with the graphic design studios. We know if you go to Reading that releasing young adult offenders, with their ability to do pipe laying and digging, straight into a job leads to re-offending rates that appear to be absolutely minute compared to the national average. I recognise, of course, that's a self-selecting group, so one can never draw out some complete correlation, but these surely must be the way forward for us and above all we should provide mentoring and work programmes.

We have got a lot of problems and it is nice for me as a politician to blame the government for all of them, but actually some of the problems are rather older than that. We certainly need new thinking, but none of this is going to be possible unless we can carry the public with us. I know that politicians like to stir the public up, we like to tell the public to get worried about things they've never thought about being worried about. I accept that, but in this world if one group of people don't do it somebody else will come along and do it instead, so we do have to have a sensible debate and *give the public a sense that their anxieties are being taken on board*. It is quite easy for us, who live in perhaps more affluent areas, to miss some of the problems which people in the poorest areas in this country have as a result of the social breakdown linked to criminality. There are people who find it difficult to build social links, who can't work together to achieve the common goals necessary to bring communities up because of the level of crime and anti-social behaviour. Those are real issues which we as politicians cannot ignore, but I remain an optimist. I'm convinced that we can make an impact and if we can do this sensibly we can achieve an ethical approach whilst at the same time ensuring that justice secretaries don't find their heads being chopped off because they have been inadequately robust in tackling crime.

Perrie Lectures 2009

Turning the purpose of prisons into practice

Steve Wagstaffe *is the Director of Offender Management for Yorkshire and Humberside. He was formerly Governor of HMP Hull and Morton Hall and was also Director of High Security.*

I have recently been appointed as a Director of Offender Management. We are in the process of working out how we make the new regional arrangements impact even more on the lives of offenders and the communities they return to. It is important to recognise that we are all committed to not just running prisons and probation services but with other key partners helping to integrate a system that helps to create safer communities.

In thinking about today I have posed myself some questions;

- ❒ Could I have been an offender?
- ❒ Does prison feel like punishment?
- ❒ Are we trying to do too much?

I am sure you will all have wondered what it takes to become an offender? Have you thought whether in certain circumstances you could have turned to crime? You will be familiar with the quote in Shakespeare's' *Twelfth night*, 'Some leaders are born great, some achieve greatness, and some have greatness thrust upon 'em'. I think this has some resonance with offenders. I think it is true, sadly, to say that some people are born to be offenders, through a combination of heredity, environment and psychological factors it was always likely. Some people make a rational choice to offend to sustain a lifestyle, not because of any causal factors but a thought out strategy to survive and make money. The third group is the one that is most difficult to define. Those people who have offending thrust upon them through life chances, individual circumstances or just bad luck; I've seen many such people in prison.

I grew up in a working class area. It wasn't a particularly deprived area, and at the time to me there seemed to be relatively little crime. I always knew I had other options when temptation presented itself. I think I was lucky; others that I have since learnt were not so lucky and ended up as offenders often because they thought did not have a viable second option. How many of our current prisoners were born to go to jail, how many chose crime as a lifestyle, and how many were just unlucky and made some bad choices. My guess is most are in the latter group, but the ones who get the most profile in the former two.

The world has changed since then in the sixties and become more complex, and our response has been to lock more people up, and create a very large number of offenders as the best way of dealing with it. We then have such a large number of people to manage that our job in prisons becomes very difficult indeed. When we do it well, sentencers want to use us more, which makes our problem worse; and when we do it badly the media and reformers tell us prisons don't work. I wonder if some of the 'Asylums' work of the sixties still applies today with a much more complex and demanding population. The world of *Porridge* is long gone. Whereas then prisoners might engage in some form of temporary resistance, work the system, find a niche or try and impress the authorities. Today those coping mechanisms are not so obvious. There is not as much commonality amongst prisoners but greater individualisation and much more resignation.

As practitioners we don't normally get as much time as we would like to reflect on what prisons are for because we are far too busy making them work. Normally for us we assume that the police have arrested the right people, the courts have convicted the right people and given them appropriate sentences and that the politicians have passed the right laws to ensure that those behaviours and actions that deserve imprisonment are reflective of a decent and civilised society.

Because we have so many people in prison the stakes seem that much higher. A significant number of foreign national people, a disproportionate number of Muslim prisoners, many more with mental health and drug dependency issues, and the eroding of old style family values all within a much larger system with people serving much longer sentences, some without any idea of when they will be released, make for a very different state of affairs than when prison communities were much more homogenous.

And the role of practitioners has to change with changing times. So now any prison without a strategy to manage foreign national prisoners, deal with Indeterminate Public Protection prisoners, combat suicides and tackle drug abuse would be rightly pilloried by commentators and regulators alike. This can lead to a reactive approach to changing social circumstances, rather than a proactive approach which aims to tackle problems at source.

To Hold?

Our statement of purpose clearly states that we are here to protect the public. So yes, we do hold people in a safe place away from society. Protecting the public is straightforward in that it is fairly obvious that if someone is sent to prison it is our duty to keep them there, it is after that, that it becomes difficult. If the prison sentence is the punishment, how much do our regimes add to the punishment and how much of them are a perfectly acceptable consequence of imprisonment. Prisons are indeed small communities. I think that is how many practitioners' view them where the prison community operates like any other community notwithstanding the deprivations of liberty, autonomy, goods and services, and heterosexual relationships. Is it therefore not true to say that what goes on in prison is not important as long as it is no more than what the poorest and most disadvantaged citizen should experience.

... some offenders see imprisonment as a temporary sanctuary, somewhere to go to get away from some of life's pressures, either financial, relationship or personal threat.

When we introduced a test of decency it was to provide a framework for our staff to operate within. Our current test is that we should treat prisoners as we would expect our own children to be treated if they were in prison. This has proved to be a good test but clearly has limitations. If imprisonment is the punishment then some people might expect their children to have access to SKY TV, computer games, educational packages, mobile phones etc. If they were in another country, and we have over 10 per cent of our prisoner population from other countries, then access to English speaking people and a quick transfer back to the UK. These are just values; others will have totally different ones, but to get a clear consensus on what is acceptable we need much more engagement with the public, and I think we might be surprised by the outcome.

There is an interesting corollary in terms of health. Prisoners' health services should be consistent with those of the rest of the population. Taken forward then prison regimes might include anything consistent with imprisonment. Prison should be an environment where inequalities are removed where personal wealth should not be factored in. If we use this as our central tenet then prisoners would be able to purchase whatever they can afford from their earnings within prison. How this is done is pretty immaterial, we could pay higher wages and charge high board and lodging, or pay low wages and provide free board and lodging. The debate about rights and privileges would be much better regulated and less of a media football.

To Hurt?

I think the sentence of imprisonment is meant to hurt, isn't that what punishment is about? As prisons become more decent, don't they become less punitive?

But to say that imprisonment is the punishment, I think is too simplistic, it is more than that, and also punishment means different things to different people. In fact prison is not punishment for many people. Now that may not be a widely held view by many, but some offenders see imprisonment as a temporary sanctuary, somewhere to go to get away from some of life's pressures, either financial, relationship or personal threat. This particularly true for short term offenders. I don't make this point lightly, but from a non——criminal middle class background, prison might seem totally abhorrent. The stigma, fears of personal safety, mixing with criminals, all very shocking. But if you are from a group in society where crime is the norm, where you have been to prison before, where you know people, where it's for less than a year, then in those cases I don't think imprisonment is either perceived as a punishment or feels like a punishment, and as our prison standards continue to improve the punishment element may appear to diminish.

I once knew a prisoner, let's call him Carl. He was responsible for many burglaries on a Leeds estate over a period of time. You might say he was from a criminal background, father and brothers all been to

prison, often at the same time as him. Eventually he received a prison sentence. He once told me that he quite liked prison; a chance to do things that he didn't have time for on the outside, meet his mates, time away from his responsibilities.' My needs are pretty simple Gov to be honest' he once told me. 'I get a buzz out of nicking and this is just an occupational hazard'. Now I'm not saying that Carl shouldn't have been sent to prison, but it does illustrate a different perspective on the punishment aspect of crime. Aaron was a prisoner in Hull when I was Governor. He was a regular short termer in for property and drug offences, and a regular on adjudication for failing his drug tests. I had a battle of wills with Aaron …. which I well and truly lost. We had a tariff for failed MDT tests of Additional Days, obviously a while ago before the introduction of the independent adjudicator; 14 extra days for the first offence (suspended), and then fourteen extra for subsequent offences. I think it was when we reached the 42 day point that I knew I was losing, on his sixth adjudication even before I had chance to read out the notice of report he jumped in.'Gov can you just give me the days, I quite like your jail'. Prison wasn't punishment for Aaron.

Trying every possible option to stop people coming to prison for the first time is then key in maintaining the punishment ethos of prison.

In listening to those two stories you will all have pictured in your minds what Aaron and Carl were like; stereotypical prisoners, probably relatively short term, almost certainly socially excluded with not many life chances? The problem is that when we talk about prisoners there is no stereotype. It is not that prisoners like prison, but many can tolerate it. Most people who come to prison do not intend to come back but there are some who view it as an occupational hazard. The dichotomy we have is that the first time in prison probably feels more like punishment than the third or fourth, and yet it is the third or fourth timers who warrant a custodial sentence most. Trying every possible option to stop people coming to prison for the first time is then key in maintaining the punishment ethos of prison.

In my last job in the High Security Estate we hold the most dangerous people in society. Now whether these are terrible people, or just people that have done terrible things, the fact remains that they are difficult people who are dangerous to society. When I had to read through case files of category A prisoners as part of the review process and read some of the horrific offences committed it brought into sharp focus how much an important role we have in just containing very difficult people, who even without the concept of punishment it would be very risky to do anything other than confine to prison. I have to say though that this group is a small minority, but one that does need a totally different approach.

For the majority of prisons to balance the feeling of punishment with that of resettlement we have to focus on lower risk offenders differently. We clearly need secure and well controlled prisons for those people who are the most dangerous to society, my experience within the High Security Estate has reinforced that more than ever, but we need to rethink how we can normalise prisons. Where people can stay in their home area, and keep family ties particularly with children, and where separation from society is still punishment but where reintegration is more straightforward. We have to go local as much as we possibly can and make sure we engage with other agencies' offender agendas rather than they just engaging with ours.

To Help?

The second part of our statement of purpose is to reduce re-offending. This is where we do HELP: a big task not achievable by any one agency. Most of what we measure is proxy measures for reducing re-offending. So the more people we help with addiction problems, the more we help get into jobs the better, the more people into accommodation the better, the more offending behaviour programmes the better are our chances of helping people to stop coming back into prison. A lot is being asked of us. We have previously advocated ourselves as the ultimate social service picking up where all other agencies have failed in helping socially excluded people, or the safety net of society, the measure of last resort.

Most Prison Governors will be familiar with the concept of prison staff in residential areas being required to maintain contact with their prisoners when they are moved into a segregation unit. I quite like this analogy. When members of the public can access services and those with most needs are known to local agencies; but as soon as someone goes to prison those links are almost immediately severed. There is little requirement to maintain contact and it is left to prisons to sort out the shortfall in provision

of whatever service was needed. Non criminal justice agencies can do much more in this respect and with our help in trying to create prisons which match home areas I think there is the chance for a major pay off.

We have made great strides in improving and maintaining access to services for offenders particularly in education and health, but there is still more to do, and this more needs the endorsement of the public and local communities, making prisons more a part of the local community will help. If we can do this and get more out of prisoners and ex-offenders, the gains will be significant for all concerned.

If we believe that we can turn people away from crime we should look to how we can employ ex-offenders more. If we really believe that what we do helps reduce reoffending we should have confidence to do just that.

We have to engage more with communities on how they think offenders should be dealt with, we have to engage with victims on what appropriate reparation is required, what is real punishment and what the balance to be struck between cushy prisons and successful reintegration into society. The fear of crime is rising at a time when actual crime is falling, people think crime is more prevalent in areas other than their own, and the view of prisons is driven by newspapers and TV programmes. We need to do more in helping local communities feel safer by better integrating our work with that of other agencies who are much more locally focussed, and our new structures will help that.

The debate on the purpose of imprisonment will go on and that in itself is a good thing, we would all be in trouble if this ever stopped.

Perrie Lectures 2009

Everybody Hurts:

The social costs of the failure of prisons

Frances Crook *is Director of the Howard League for Penal Reform.*

The scandalous state of prisons

The Howard League for Penal Reform is a law firm, as well as a charity. Over the last four years we have represented hundreds of children and young adults detained in prisons, local authority secure children's homes and the privately run secure training centres. Our lawyers challenge criminal justice agencies, government departments and local authorities when they fail to care for our young clients. There are two fundamental principles to this work: the first is that young people in custody deserve the same levels of service as any other young people, and second that failure to treat people with respect, look after them properly and respond to their significant needs is likely to lead to catastrophe.

The terrible story of Dano Sonnex illustrates this failure. In June 2008, Dano murdered two French students in London. At the time he committed the murder, he was on parole as part of an eight year sentence for violence and robbery. Within a few days of being released, he had tied up and threatened a pregnant woman and her partner. He was issued with a warning rather than being recalled to prison as the victims were too scared to give evidence. A decision was eventually made to recall him to prison for handling stolen goods but there was a month-long delay issuing the warrant following which he could not be tracked down for over two weeks, until after the murders.

It was claimed by politicians and many in the press that the failure lay in the fact that Dano should have been recalled to prison and spent a few more weeks there or because the probation officer responsible for him was dealing with a caseload in excess of more than a hundred. However, the real reason for the failure lies with the prison system.

Dano came from a family well known for its criminal involvement. His father was erratically violent to the children and was involved in serious crime. The father drank heavily and would kick the family out onto the street in his rages. The police raided the house regularly looking for drugs and firearms. The family was well known to social services, although, bizarrely, his cousins when they were removed from their heroin addicted parents were placed with Dano's family. Dano was excluded from primary school aged 10 and was told to go to a tuition centre for a couple of hours a day, but he never attended. Instead, as a young child, he spent his days drinking, smoking cannabis and getting involved in crime. Aged 17 he was sentenced to eight years for robbery, grievous bodily harm and possession of a firearm.

Arguably, this lad could have been another scandalous case that recently became a cause celebre in the media and public mind. It is possible that had 'Baby Peter' grown up instead of being killed by his chaotic and abusive family, this child who had experienced repeated violence and serious emotional and physical neglect from his dysfunctional and unloving family, where social services and other authorities failed to intervene, could have turned into another dangerous and angry teenager.

Once given a lengthy prison sentence at a seminal time in his young life it was surely an opportunity to change. Dano was still young and the state had taken responsibility for restricting, guiding and influencing his development as he was going to spend years in penal custody. This is a critical challenge for the state. At 17 this young man was still a child under domestic and international penal law. These laws recognise that young people are still developing and need additional protection and support if they are to develop into responsible and productive citizens and extra effort has to be made with the young people who have exhibited dangerous or challenging behaviour. Their youth confers special responsibilities on us; but it also provides opportunities. Instead what happened only compounded his problems and sent him on the road to murder. It was obvious he had anger and violence problems and there was evidence that he wanted help. He spent several months in prison on remand and during this time he was not allowed to go do any work as he was told he was a security risk and so spent these months idle, lying on his bunk for day after day. Most of his contact was with other disaffected and angry teenagers. By the time he was sentenced he was 18 years old and was sent to a prison hundreds of miles from his mother, the family member who had shown the most support and care

for him and who now could not visit. He got into a fight and spent the first of many spells in the segregation unit as a punishment. He was moved from prison to prison, sometimes spending only a couple of weeks in each. He has admitted taking drugs in prison and getting into fights when he was placed on a wing with other vulnerable prisoners including sex offenders. The fights became increasingly violent, with lads trying to cut each other with razor blades and throwing boiling water over each other. Gangs inside the prison would lay in wait for him. He was being held in solitary confinement for weeks on end as a result of fights or drug taking. He was stabbed five times by other inmates. He spent months doing nothing, being locked in his cell with nothing to do all day. On one stretch he spent five months in solitary confinement being allowed out for only 30 minutes a day and a shower every two days. He was allowed one book. His days were spent alone in stone cell. His mental health was deteriorating and he became increasingly angry and frustrated. He had talked to the prison doctor who was also deeply concerned about his mental health and he told the doctor that he thought the 'block makes me mad'. For five years this dangerous and violent young man was held in these conditions.

I cannot see how this was in any way designed to show him a better life, to turn his life round and make him safe for return to society. I don't know if intensive therapeutic intervention for five years, within a caring and supportive environment, might have changed him. I don't know if, had he have been provided with a secure, consistent and loving family life he would have changed. I don't know if anything could have saved the lives of the two students who he tortured and murdered. But, I do know that his treatment in prison made that tragedy more likely, not less.

The terrifying thing is that today there are thousands of young men who come from similar backgrounds who are being treated the same way in prisons. There were 29,704 recorded incidents of prisoner on prisoner assaults in young offender institutes between 2002 and 2008 and 948 recorded incidents of deliberate self-injury inside Feltham in the same period.[1]

What are prisons for?

It was interesting that the public furore about the Sonnex case concerned the failure of the probation service which was meant to be supervising him in the community and the person who lost their job as a result was the head of London probation. No one asked the more complicated questions about what had been happening to him for the last five years and whether that had in any way contributed to, or failed to prevent, his violence on release.

Surely, that is the most important question. The question posed by the Perrie Lectures this year, 'What are prisons for? To hold, to help or to hurt?' is critical because if prisons merely hold and hurt they exacerbate rather than heal. Prisons should be based on helping, but this is not confined to helping prisoners because that is the right thing to do, but rests on the premise that helping people to become law-abiding citizens benefits us all. The problem is that we are very far from this vision.

Prisons should be based on helping, but this is not confined to helping prisoners because that is the right thing to do, but rests on the premise that helping people to become law-abiding citizens benefits us all.

Prisons are the repository of the acceptable face of hate, they sweep up the people we don't like, they are expedient politically, they are lucrative and they provide a convenient net for the poor that makes us all feel a little better about inequality. So what are prisons for?

As I have just said, prison has become the repository of the acceptable face of hate. It is acceptable, or politically correct, to talk about hatred of prisoners in a way that no other group of people could be identified. The consequence of this public display of fear and loathing is increased insecurity in shared space, both physical and moral space. Countries that have high levels of fear tend to indulge in increased penal severity and high prison populations. The work of Tapio Lappi-Seppälä from the National Research Institute of Legal Policy in Finland, which we drew on heavily when constructing the framework for the final report of the Commission

1. Written answers, Hansard, 27 February 2009.
2. Howard League for Penal Reform (2009) Do Better Do Less Commission on English Prisons Today.

on English Prisons Today[2] has revealed this clear link. Countries like the UK and Poland with high levels of public fear and social inequality tend towards penal severity, whereas countries with social and institutional trust like Norway and Italy tend towards lower imprisonment rates. The high level of state violence inflicted on citizens through the use of prison exacerbates fear rather than alleviating it. High penal severity is a contributory factor to public feelings of insecurity and deepens social mistrust.

My second argument about what prisons are for deals with the 'sweep factor'. We don't know what to do with difficult people, the homeless, the addicted, the mentally ill and the unemployed. They get swept into institutions. In Victorian times the ironically rather more benign social policy was the use of the large asylums for the mentally ill or indigent. These have been closed and prisons have taken their place. In London there were five huge asylums that were all closed in the 1980s and on the south London site two prisons were built, Downview and High Down, and they now accommodate men and women who previously would have been in the hospital. In the West, prisons are for housing black people. In the USA there are more black people in prison that were ever enslaved during more than a hundred years of slavery. The two million in prison in the United States reduces the registered unemployment rate by 1 per cent.

Democracies that have an adversarial political system tend to have high prison populations and the use of prison is a party political weapon. In the UK and USA the two major political parties use crime and the fear of crime as a weapon against each other and compete to imprison more of their citizens. Our current government is proud of having built 25,000 additional prison places and that the prison population has grown by more than 30,000 men, women and children since 1997. Prison serves an electorally expedient purpose.

The involvement of the private sector and the creation of a prison market has added a further dimension to the purpose of imprisonment. Now that 10 per cent of England's prisons are run for a profit the private companies have been running a sophisticated lobbying exercise to increase their share. The government has given in to this and promised five new prisons all to be run by private companies. We have 'kiddie jails' that hold children as young as 12 and are run for the benefit of the shareholder. It is in these establishments that two children have died, one 15 year old died whilst being physically restrained by staff and a 14 year old hanged himself with his own shoelaces after having been restrained.

Finally, prisons do provide respite care and support for people who fall through the social welfare net. People who have nowhere else to go for drug treatment or basic skills education. I recently met a woman in Holloway who had assaulted a member of staff and it turned out she had done it deliberately to prolong her stay as she was mid-way through dental treatment and it was the first time she had been to a dentist.

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What prisons are not for is reducing crime or creating a safer society. Experiments in radical reduction in prison populations have not resulted in increased crime. Indeed, New York state with a population of 19 million has reduced crime and at the same time reduced the prison population. This city of New York has seen a dramatic drop in both and an increase in public confidence. There is no detectable link between high prison populations and low crime rates rather the reverse is true in many countries.

So where does this leave us? Prisons do hold people; that is axiomatic. There have been very few escapes in recent years and surprisingly few people abscond. They certainly hurt people as we have seen with the high levels of violence and well-publicised suicides. They do help a few and I have met some amazing people working in prisons who are making a real difference to the lives of individuals. But that is not the point. The benefit provided by the efforts of hard working staff for a few individuals supports and legitimises a system that is rotten. It is the structure of imprisonment, its central focus at the heart of an over-weaning penal system that is corrosive and expensive and counter-productive. Only radical reform that shrinks and overhauls the system of custody will make our society a safer and better place.