

Responsibility in Sentencing

In addressing the theme of 'the responsible prisoner' Stephen Pryor also saw the need for greater accountability from courts and prisons.

To someone unfamiliar with the criminal justice process it may come as a surprise to learn that those responsible for the most expensive and most disabling sentence of the court are largely unaccountable for what happens during that sentence. Prison governors receive no guidance or instruction from the courts. Prisoners are given no clue as to what is expected of them. Victims can only hope that there might be a connection between what they have suffered and what the offender might be required to do. And the tax payer and voter are left in ignorance of how the system works to protect the community and why it costs so much.

That person might also puzzle as to why, when presumably custody is the most extreme sentence that the court can impose, there is such a steady trickle of damning inspection reports which show a system amok. In the half-world of prison, where nothing means quite what it says, where prison appears to include a close approximation to a summer school, where a 1 year sentence in fact means 12 weeks in custody before release on an electronic tag, it is seemingly impossible to grasp the

not behave responsibly by definition of their criminal record. Any suggestion that not all were bad, and that some might be allowed to exercise some responsibility, might be tolerable, but only so long as the public was not exposed to risk. To suggest that a prison's proper function was to assess risk so that it could be managed rather than avoided was seen as playing with fire. Ministers and the leaders of the Prison Service were humiliated in the '90s by Strangeways and serious escapes, and those of us governing in that decade took no risks, even if we believed that they were likely to result in reduced offending or better chances of resettlement. Since the late '90s those in the Prison Service have experienced a culture of 'Just Do It' (without questioning why), a culture of fear and blame. And the exploration of the consequences showed how difficult it would be to expect prisoners to begin to take responsibility as citizens in such a culture. Now 'Just Do It' is mainly targeted at packing them to the rafters.

It was clear that the Prison Service would not dare to take its own line on this. If no one was going to share risk management

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beast by the tail. Clearly it is out of control. Clearly it doesn't stop crime. And clearly no one is in charge, no one is responsible. Lots of people, with ever grander titles, have a finger in 'corrections', but still the Prison Service is not answerable to the courts, and neither is the prisoner.

In The Responsible Prisoner – An exploration of the extent to which imprisonment removes responsibility unnecessarily I had not intended to take the beast by the tail. The exploration was just that; it asked what was happening. I then drew on current practice to suggest how the worst effects of imprisonment – and some of its cost – might be alleviated. The intention was not to blame the Courts, or the Probation Service, or the families, or the Home Secretary, but to make clear that the immense void in responsibility occupied by the Prison Service – and the prisoner – was a main cause of further reduction in what was already seen by the courts to be a most irresponsible section of society which needed a spell behind bars. And the exploration confirmed not only that the void existed, but that it was unquestioned. It was shown to be highly variable, highly dependent on individual experience and judgement, immensely costly in all sorts of ways from setting staffing levels to honouring commitments to voluntary organisations. And the prison system was presumed by many to be doing its job as long as it stopped escapes and generally turned people into compliant prisoners.

There was widespread acceptance that prisoners are bad, mad and dangerous to know, and that this justified the discretion given to prisons, and was self-fulfilling in that prisoners did

– and every offender represents risk by definition – why should the Prison Service bother to get its nose bloodied again as it had with the sacking of Derek Lewis and the humiliation of the entire service in report after report?

It was thus already clear that a prisoner was more likely to act responsibly if the courts passed a responsible sentence which required accountability from the Prison Service and the Probation Service and the offender. I therefore ventured into what was for me the largely unknown territory of sentencing. This was after all the moment when the choices were made and the reasons for those choices might be made clear. There is nothing inevitable about prison: it is the judge's job to 'deliver' the sentence. There were a few emerging features such as the new Youth Justice system, a punishment-based Probation Service, a blurring of illness with dangerousness, the deliberate playing on the fear of crime and ignorance of the causes of crime, and something called 'human rights' which the Home Secretary told me that I should not respond by freezing in fear 'like a rabbit in the headlights', but challenge any attempt at their assertion. After all, no sentencer had ever consulted me, let alone told me what to do or expected me to answer for what I chose to do. And if they had tried to do so, they certainly would not have extended that to the offender. I was going to be on my own if I agreed to manage risk.

A questionnaire to some of those involved in sentencing and prison work showed that there was a strong consensus, among those with an interest, that there should be more accountability between the sentencer, the Prison Service and the prisoner. They



Peace Garden, Imperial War Museum.

also agreed that there was unlikely to be a consensus on how the system might achieve that. Governors have a difficult enough job as it is. Expecting offenders to take responsibility does not look like punishment. Responsible prisoners did not look like bad people, and prisoners need to look like bad people to justify what society was doing to them 'as a last resort'. The community will tolerate leniency with the young offender, and perhaps with women, but only when it has locked them up in the first place – and in record numbers. Responsibility is conflated with apologising and making amends, which is all very well, but must follow the pain of punishment. So the only good prisoner is an ex-prisoner. If we try hard enough, we prison people can make prisoners good, but that is not for sentencers to suggest, and certainly not for the offender who has caused all the trouble in the first place.

The proposal that offenders should remain responsible and that they should be expected to commit themselves to their own sentence might appear illogical, and as typical of the thinly-disguised liberal NIMBY-ism of those who never experience crime.

That proposal is nevertheless much more sensible.

If the courts are to use their powers of punishment to tailor a sentence to repair the social fabric, and to make clear that those who are supposed to serve the courts include the gaoler and the offender, the court should not only be the fount of justice but also its engine. The current use of time spent in prison defeats justice and goes no way towards repairing the social fabric. It is also the main reason for bursting prisons. And the choice of currency is wholly the sentencer's responsibility.

It is possible to 'sentence responsibility' even now, with no

change in the law or regulation. A sentencer can ask the executive and the offender their view. A sentencer can ask if they are willing to make a commitment to carry out the sentence. Some would say that the Youth Justice model goes a long way towards this, but that it is too costly and impractical, and that it doesn't tackle the root causes. But as things stand, the adult prison branch of the executive can shelter behind its historic right to reject such responsibility, and any commitment or proposal on the part of the offender can be disregarded against the claim of retribution, and runs the risk of being seen as plea-bargaining.

It may well be that prison would be exposed for what it is, with bare cupboards, patchy decency, an inward focus and poor accountability, should the Courts ask, 'What can you do for us?' But at least Inspectors would know what they were supposed to be inspecting and prisoners would know how they were expected to regain the position and momentum which their offending had interrupted. And the Prison Service would be able to bid for resources to do the job required by the courts rather than dreamed up by itself. ■

*Stephen Pryor retired in November 2001 as a governor after 37 years in the Prison Service at the same time as publishing *The Responsible Prisoner* – an exploration of the extent to which imprisonment removes responsibility unnecessarily (available on the Home Office and Prison Service web-sites). He is following this up with an exploration on the extent to which the courts might engage with the correctional services and the offender to provide a framework for prisoners to take responsibility. This will be published as *The Responsible Sentence* this autumn.*