

Is penal reform working? Community sentences and reform sector strategies

Helen Mills and Rebecca Roberts consider the opportunities and challenges for progressive penal reform followed by responses from George Mair, Jamie Bennett and Mick Ryan.

So, 'is penal reform working?' This is one the questions the Centre for Crime and Justice Studies set out to explore in the Reform Sector Strategies project. Funded by the Esmée Fairbairn Foundation, Reform Sector Strategies explores the arguments, approaches and strategies employed by the progressive penal reform sector since the late 1990s. Our aim is to generate open, forward looking dialogue about the development of coherent and credible policies to turn around our reliance on criminal justice.

At the outset of this project we were aware this has been a challenging period for the cause of penal reform. Criminal justice reformers devoted their energies to the promotion of community sentences in a bid to stabilise and hopefully reduce the numbers in custody. Yet this period saw community sentences increase, alongside a record high prison population, and the overall size, reach and scope of criminal justice interventions ballooned.

We initially explored some of the challenges facing penal reform in two working papers. Through sharing these ideas with a variety of people engaged with the process of penal reform, including representatives from penal reform organisations, we are now in the process of developing two publications.

The first, 'Community sentences: a solution to penal excess?' will be published in the summer. A second publication will consider the broader challenges facing penal reform as well as learning from non-reformist approaches to achieving criminal justice change. This will be published later in the year.

In this article we describe some of the ideas explored in the working papers to date, followed by comments from those who have read one of these papers. We then include a longer piece non-reforming strategies authored by Rachel Herzing and Isaac Ontiveros.

Community sentences: a solution to penal reform?

In 1998 the Home Affairs Committee published *Alternatives to Prison Sentences*. Noting the growth in prison numbers, the report considered how community sentences could replace some custodial sentences. In the period since there have been successive government attempts to control the predicted growth in the prison population by promoting community sentences as a 'tough' alternative to short-term custody. Such a strategy,

on the surface of it at least, would seem in tune with reformist ambitions. The penal reform sector has long championed community sentences as a tool for working with people caught up in the criminal justice system and, over several decades, as a way of stemming and, it was hoped, reducing the massive increase in prison numbers. Yet in terms of reducing the overall numbers held in prison and the size and scope of criminal justice, we know there has been little for progressive penal reformers to celebrate in this period.

In practice, community sentence reform has been shown to have serious limitations as a mechanism to reduce the use of custody:

- Sentences introduced as explicit alternatives to custody have failed to act as like-for-like replacements of prison sentences.
- Community sentences do not appear to leverage a sustained reversal in the numbers sentenced to short-term custody.
- Reforms have produced tougher community sentences without the desired reduction in the use of custody.

Community sentence promotion appears to have been a mechanism for *maintaining* short-term custody by putting a hold on possible future growth. Given the position of community sentences in the sentencing tariff it is reasonable to propose that they can continue to be reformed to manage or adjust the flow into short-term custody. Hence community sentence promotion can be said to have been an 'alternative to custody' within the limited political consensus regarding the overall desirable prison population, i.e. to stem future growth or adjust the overall prison population. However, for those with ambition beyond this, community sentences do not offer a credible, coherent way to address a long-term vision for a significantly different, reduced, custodial population.

Community sentences' 'poor results' as a reducer of custody are not in themselves a criticism of the penal reform sector. But this does raise an important question for those investing in community sentence reform as a way to achieve progressive change. Community sentence reform could always be done differently to how it has been over the last decade. And making these changes to adjust prison numbers or change the demographics in who we imprison is both a legitimate exercise and no easy feat. *But is this enough?* There are inherent limits to

what change this reform can be expected to achieve for the overall size of the prison population.

The consensus that the promotion of community sentences is *the* alternative to prison has had a clear price: a lack of credible, coherent strategies regarding longer-term decarceration. We now face a prison population dramatically different from that of a generation ago and a significant gap in the debate about how to tackle these record prison numbers beyond mere adjustment.

Missing the target? Understanding criminal justice reform

While the dominant targets of reform have changed over time a feature of recent attention has been on prison numbers and conditions. In the construction of reform demands and the positioning of campaigns we identify a number of rationalisations or explanations given by reformers to justify the need to bring about change in criminal justice. These are categorised into three areas:

- (1) **Crime fighting:** Presenting campaigns and reforms as tough, cutting crime and reducing recidivism.
- (2) **Humanitarianism:** About working with vulnerable populations, fewer people in prison, and a better prison system for those people who are incarcerated.
- (3) **Managerialism:** Counting and cutting the costs of imprisonment; cost benefit analyses and managing resources.

The public face of progressive penal reform shifts depending on the audience and context. While humanitarian intentions are often at the core of much progressive penal reform, crime fighting and managerialism tend to be promoted in public and political arenas.

In thinking about the reform successes of the last 10 to 15 years, prison conditions and access to support services for people in prison have improved. Many of the reforms have had positive outcomes but at times they have also had unintended and potentially negative consequences, something that Carlen (2002) describes as 'carceral clawback'.

In private and away from the public spotlight, reformers often articulate a clear set of limitations of criminal justice with a considerable lack of optimism and confidence in the solutions and reforms being promoted. In reflecting on the progressive penal reform we outline a series of risks that are often a feature of campaign demands and activities.

- **Exaggeration:** Overstating the effectiveness of criminal justice interventions and penal reform.
- **Restraint:** Focusing on short-term, incremental steps and limiting vision to what is implementable.
- **Compliance:** Diluting messages to appeal to a broad range of stakeholders, funders and the media.

- **Incorporation:** Becoming part of and shoring up the criminal justice system, and sharing the language and goals of those in power.

The risks outlined here raise serious questions about the activities and focus of progressive reform sector activities. There is ambivalence and timidity about how and if it is possible to really change the terms of debate to one that is less reliant on criminal justice as a solution to the problems of injustice, harm and insecurity in society. Tackling the short-term questions of improving prisons and criminal justice processes are legitimate, yet not sufficient or sustainable in the longer term for anyone wanting to challenge the growth, reach and impact of criminal justice. The work of reformers to support vulnerable people and unpopular causes is essential, particularly in the current political economic climate.

But there are some difficult questions to be asked about future directions of reform and how to set out honestly and clearly the limits of criminal justice and, subsequently, the limits of *reform*. Reform is not always positive; it can be, but there are limitations. As the evidence on community sentences and 'alternatives to custody' show, change can be short-lived and bring unintended consequences. Government, funders and the media want the next quick fix – the pilot that will 'work' and surpass all others. There are temptations and benefits of trying to supply this in a bid to deliver whatever humanitarianism is possible in such a punitive and pro-criminal justice environment. Linking up with wider, social, political and economic analyses and campaigns is something that reformers do, but inconsistently.

The penal reform lobby is set to have a difficult time ahead. At times of increasing social need emerging from massive spending cuts, unemployment and economic troubles, there are new challenges and opportunities for campaigners and lobbyists – potentially to take the debate in a more critical and expansive direction than has previously been the case. In such a climate it will be critical to situate criminal justice in a wider framework of social injustice, inequality, racism, poverty and power in society. While some may be satisfied with the progress the sector has achieved in recent years, the dilemmas and challenges outlined here raise questions about whether it is enough. ■

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References

- Carlen, P. (2002), 'Women's imprisonment: models of reform and change', *Probation Journal*, 49, pp. 76-87.
- Home Affairs Committee (1998), *Alternatives to Prison Sentences*.
- Cohen, S. (1985), *Visions of Social Control*, Cambridge: Polity Press.

George Mair: To keep going back continually to a policy that has consistently failed shows only a failure to learn from mistakes and a lack of creativity

While the idea that community sentences can act as an alternative to custody is an attractive one and has been a significant aspect of criminal justice policy for at least 30 years, it has to be noted that there is little evidence to suggest that it has worked in practice. Given the number of so-called alternatives that have been introduced over the years (parole, the suspended sentence, community service, probation day centres, the combination order are only some examples) we have a right to expect the prison population to be at rock-bottom levels. Yet the very number of 'alternatives' is surely a clear sign of desperation: as one fails to make any impact on prison numbers, another is introduced. And this is where the problem lies; the policy of using community sentences as alternatives to custody is based on a remarkably simplistic idea of how the practice might work. Simply introducing a new sentence, making it known that it might be used to divert those who otherwise would receive a short custodial sentence (but failing to make this mandatory) and leaving it up to the courts is not a recipe for success.

If sentencers are already passing the sentence they think is most appropriate, it is a difficult matter for them to consider an 'alternative'. If there is no political will to push the appropriate use of an 'alternative', why should sentencers consider it in this way? These are basic issues that have never been adequately addressed, but neither

has the more practical question of: What has driven the growth of prison numbers? Over the years this could have resulted from a number of reasons, among them an increase in: the number of offenders; the number of fine defaulters; the use of remands in custody; the number of prison sentences; the length of prison sentences; and the number of breaches of community penalties. Using a policy of community sentences as alternatives to custody would only impact on some of these issues. Analysis of the details of the problem (in this case, prison numbers) is vital so that a solution can be precisely tailored. The alternatives to custody approach requires focus if it is to be effective.

There are, of course, various other approaches to cutting prison numbers such as: early release (using Home Detention Curfew); greater discretion over how to deal with breaches of community sentences; terminating specific policies, such as Indeterminate sentence for Public Protection (IPP); constraining the discretion of sentencers; changing sentencing policy with respect to the length of prison sentences; putting a cap on prison numbers; and talking down the punitive culture that has dominated since 1993. To keep going back continually to a policy that has consistently failed shows only a failure to learn from mistakes and a lack of creativity. ■

George Mair is Professor of Criminal Justice at Liverpool John Moores University.

Jamie Bennett: Can change come from within?

As Mills and Roberts suggest, attempts to reform the criminal justice system from within are frequently mounted, often in collaboration with the progressive reform sector. However, it is argued that the aims are distorted and reshaped through the processes of carceral clawback or managerialism. From this perspective, the prospects of reform from within are futile and act merely to legitimise the dominant ideology and the expansion of the criminal justice system.

There is no doubt that these processes are powerful and that the critique rightly identifies a trend in criminal justice practice. However, the prospects for reform from within are not futile but instead there are examples of ambitious programmes that illustrate how progressive reform can flourish within a criminal justice system that

is properly focussed and professionally diverse.

The first example is the therapeutic prison at Grendon, which has continued for over half a century and spawned several further units in other prisons. This has proven success in rehabilitating those who have committed serious sexual and violent offences and has achieved this by providing a space where the relationship between staff and prisoners, between prisoners themselves and the nature of the prison environment are radically changed, to become more open, equal and trusting. More recently, the Dangerous and Severe Personality Disorder Unit at Whitemoor high security prison opened in 2001. Despite its labelling and punitive sounding name, it has been crafted into a compassionate facility providing a clinical service to

some of the most damaged people in the prison system. Another example is the development of the world-leading sex offender treatment programmes, delivered in some 25 sites. These programmes not only work with some of the most publically vilified prisoners in the system but they do so in a way that treats them as individuals deserving of support in changing their lives.

These are three examples of how the prison system and individual professionals have created environments that run counter to popular punitivism and have been demonstrated to be successful in changing behaviours over a sustained period. They illustrate that carceral and managerial clawback are not inevitable but that there is

space for an alternative approach. These programmes are focussed on the most difficult, damaged and dangerous people in society and draw upon a diverse range of professional expertise including prison staff, psychologists and medics. Their success does, however, raise challenging questions about the role of prisons in society: Which offenders are best dealt with in prison and which are best dealt with in other ways? How should prisons operate and who should operate them? In this way, reform from within has the potential not only to deliver practical change and affect people's lives but also raises fundamental questions about what prison is for. ■

Jamie Bennett is editor of the *Prison Service Journal*.

Mick Ryan: We need to constantly question the basis of our intervention

The UK's prison population has continued to expand at the same time as the number of those under supervision in the community has also expanded. For the progressive wing of a vastly enlarged (and expanding) penal lobby this is undesirable because imprisonment is a harsh, inappropriate, and expensive way of making convicted offenders worse. Yet alternatives to prison are not what they are talked up to be, not least when it comes to reducing recidivism. So the trends Stanley Cohen in *Visions of Social Control* (1985) sketched out a quarter of a century ago are now firmly entrenched.

Among the several matters the *Reform Sector Strategies* project addresses is the role of progressive wing of the penal lobby in negotiating this formal, and apparently ever expanding, network of social control. My own reading is that this expansion has been largely driven by forces outside the direct control of the penal lobby per se, as indeed, are the many economic, racial and gender inequalities that underpin our social order and which feed through into the penal system.

Although this realistic assessment suggests that there are limits to what the penal lobby can achieve, we should continue to engage with the criminal justice

system, responding critically to individual penal innovations as they arise. While the authors implicitly suggest that we cannot use *a priori* reasoning to determine which reforms to support, it does at least invite us to think critically about the principles we should apply when deciding whether or not to engage with such reforms. And for me, high on the agenda here would be support for measures that offer *empowerment* and *consent*, principles which put the offenders back towards the centre of the penal equation, treating them as *subjects* and not simply as objects. This may be sustained by the Rights agenda, but that too has been shown to have its own limitations.

This interpretation of *Reform Sector Strategies* which, in its more optimistic moments, suggests the progressive lobby might do better may seem on the negative side. I disagree, reinforcing the point that we need to constantly question the basis of our intervention and this is always more desirable than exaggerating what the progressive lobby has and can achieve, not least at time when social expenditure is about to be slashed under the cover of the 'Big Society'.

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Would you like to join in the debate? If you have any comments, thoughts or a response to the arguments presented here please send these to rssproject@crimeandjustice.org.uk.