



DECARCERATION?

The CJA 1991: Objectives and Opportunities

The Criminal Justice Act 1991 is the latest in a series of significant Acts designed to reduce the use of custody for non-violent/sexual offenders by restricting courts' powers to sentence 'on record', reducing the executive discretion associated with parole and remission and reducing the inequality of impact of fines (and so imprisonment for non-payment) by introducing unit fines related to disposable income. The Act seeks to increase the use of probation, now a formal sentence in its own right, possibly entailing specified activities, attendance at a centre, hostel residence or treatment for drug/alcohol dependency where the dependency contributed to the offence. The Act also, probably for the benefit of the Government's more punitive supporters and the private sector security business, permits curfew orders with electronic monitoring, albeit only with the offender's consent.

From all this several objectives may be distilled, though I have space to address only one: reducing the prison population while making the punishment fit the crime.

Reducing the Prison Population while making the punishment fit the crime

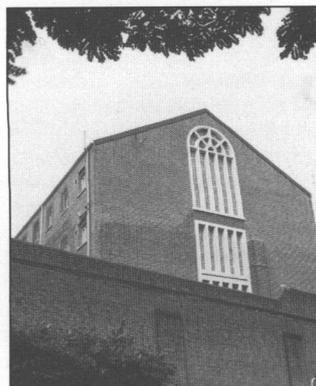
The technical question of likely future prison numbers is notoriously difficult to answer. While projections are necessary for rational planning they can address few variables affecting prison usage. Though demographic variables can be projected with relative confidence, in that crime and punishment are the products of, respectively, human conduct and system responses to it, they are, literally, unpredictable (Harris 1992).

Nor can the extent to which legislative change directly affects the prison population be straightforwardly determined, and the tendency of the best laid plans to go badly wrong is well-documented:

- elements of flexibility, even ambiguity, are necessarily built into most human systems;
- in this particular system there is resistance from key players (notably some judges and police organisations) to the objectives of the policymakers: subversion from within is omnipresent;
- system objectives are beyond the comprehension of other players, including some magistrates;
- support for reducing custody is very limited among the Government's own supporters. Cheapness and humanity's capacity to diminish the political popu-

larity of prisons is vulnerable to crime rate fluctuations and individual 'notorious cases', any of which may be used quite unpredictably to justify a more *revanchiste* approach.

These arguments are well-rehearsed, of course, and the question now is what if anything about the Act makes it different from past endeavours. To answer this we need to look less at the specific restrictions imposed by the Act which, radical as they are, remain in the longer term vulnerable to the pressures I have described, than at the alternative structures Government is developing, structures revolving closely round the probation service. If the service comes to see itself as provider of a range of non-custodial community punishments, engages in local systems of criminal justice and provides facilities in which courts have continued confidence for serious offenders, prison usage may indeed be reduced. Courts will, however, only use these facilities for offenders whose crimes they deem in kilter with the nature of the facilities. This will become increasingly apparent once those who have reoffended following (or during) punishment in the community appear for further sentence.



Peter Daltymple

The Criminal Justice Act: Political Objectives

It is seldom sufficient to perceive the objectives of legislation in terms of overt purpose. Legislative change seldom simply 'causes' changes in social actions; it simultaneously reflects the changes to be enforced, emerging when an 'incoherence in the arrangements of the society' presses convincingly for remedy (Oakeshott 1962: 124). Law, in short, is both cause and consequence of social change. So while it would be incorrect to dismiss law's creative and generative functions they co-exist with the reflective purpose of codifying and legitimating changing forms of social behaviour. Hence Government is seeking, by means of this legislation, to resolve a political as well as technical problem. The issue is not only excessive expenditure on

prisons, but:

- the public and judicial attitude to crime in particular and the Government's peace keeping function in general;
- the power of powerful unionised interests in police and prison services to define this attitude;
- the relative unaccountability of some professionals charged with enforcing its criminal justice policies.

The issues have, therefore, to do not only with the substance of penal policy but with broader issues of public policy: the power of professionals and the trade unions, the constitutional question of the separation of powers, the obligations of Government to secure public safety. In encouraging citizen involvement in criminal justice, victim support schemes, reparation and compensation, Government is redefining its contemporary role of 'keeping the peace': it cannot guarantee safety but it can:

- minimise the distress of, and give new rights to, victims;
- ensure the legitimacy of the system in the eyes of victims and non-offenders;
- ensure the endorsement of the increasingly politically significant minority communities;
- support and encourage citizen self-help in crime prevention.

Conclusion

Whether the Act will reduce the prison population is for the *clairvoyant*. Though the historical analogies are not promising it would be wrong to ascribe Delphic status to precedents: social changes constantly occur, there is nothing immutable about high custody rates and new factors do exist.

The role of the probation service is crucial. At present it sometimes seem an unwilling bedfellow of other criminal justice agencies, but its capacity to solve Government's political problems is considerable. If it fails (or declines) to do so the chance of making inroads into the prison population is slight.

I have also argued that it is incorrect to take the 'aims' of the Act at face value. The legislation has a context in social, educational and employment policy, and in yet more fundamental constitutional concerns. These considerations, however, are for another more substantial paper.

Robert Harris is Professor of Social Work and Head of the Department of Social Policy & Professional Studies at the University of Hull.

References

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