

# 'HARD CASES' AND 'U' TURNS

## The 1991 Criminal Justice Act

The Criminal Justice Act 1991 was not merely passed by Parliament - it was promoted to a quite unprecedented degree. In the period between completion of its legislative passage and implementation in the courts, all the criminal justice agencies in England and Wales received extensive training in its principles and in its detailed provisions.

The agencies devoted the major portion of their annual training budgets to the Criminal Justice Act; all grades of criminal justice practitioners received training. Guidance booklets were produced for each agency; colourful wooden models illustrating the 'sentencing slope', with jagged breaks demonstrating the idea of the 'serious enough for community penalties' and 'so serious that only custody is appropriate' thresholds and other training aids were supplied by the Home Office. As well as this training of criminal justice practitioners, press releases, TV and radio appearances explained the ideas behind the new Act to the public.

Yet within six months of its implementation, the Act was being described by sentencers and politicians as 'a shambles'. On August 16th 1993 a new Criminal Justice Act completed its passage through Parliament, an Act which includes amendment, repeal or reversal of some of the 1991 Act's key clauses. In contrast to the time given between legislation and implementation of the 1991 Act for training and persuasion in the philosophy of proportionality of sentence to current offence, the new Act came into effect a mere two days after receiving the Royal Assent.

Much of the controversy about the 1991 Criminal Justice Act has surrounded Clause 29, which (although its meaning was not altogether clear) appears to prescribe that previous convictions are only to be taken into account in throwing light on the present offence, and should not by themselves be used to occasion greater restriction of liberty than the present offence warrants. What the judicial and political opposition to this idea reveals is that whilst the proponents of 'just deserts' theories of punishment argue that the

principal requirement of sentencing is consistent matching of seriousness of punishment to the gravity of the current offence - that the business of the courts is fair punishment rather than the reduction of crime - almost everyone else thinks that it is the business of the courts to do something about crime. Most judges see protecting the public against persistent offenders as something with which they should be concerned, and this is the view of most of the lay public.

### Moral panics

The Criminal Justice Act was legislated and implemented in the context of a moral panic about young offenders. Rhetoric about youth crime has taken on the tone of the US 'war on drugs', with the effect that custody for juveniles and young adults is receiving more strenuous official backing than for many years. In the summer of 1991, inner-city disturbances were associated with police attempts to clamp down on unacceptable levels of lawlessness, especially 'joyriding'.

In Tyneside, in particular, the theme of 'hardened offenders from outside the area' was prominent. We have had lurid stories about individual young offenders allegedly responsible for hundreds of offences and we have had the 'bail bandit' moral panic (Williams, 1993). For these 'hard cases', the provisions available under the 1991 Act seemed insufficient, and the rubric of fair punishment seemed less appropriate than a penal aim of crime control.

In this atmosphere of panics about certain types of crime (burglary, car crime) and certain types of offenders (youth) it is not surprising that there has been a 'U-turn' on the significance of previous offences for sentencing.

Those of us who seek to resist massive increases in imprisonment, especially of juveniles and young adults, need to acknowledge the reasonableness of demands that sentencing must be aimed at reducing crime as well as punishing fairly. A principle of sentencing should, therefore, be that any proposed penalty should have some potential for prevention of reoffending.

The current 'prison works' argument needs to be challenged in terms of effectiveness as well as humaneness. Although

it is of course true that offenders cannot victimise the law-abiding public whilst they are in prison, offences which would not in themselves pass the 'so serious' test, or would only occasion short prison sentences, are not (even in the present political climate) going to lead to sentences long enough to make this incapacitating effect outweigh the increased criminalisation that research consistently shows to result from imprisonment. Prisons may *defer* crime by those who are imprisoned, but will not prevent it.

### Rehabilitation

The policies we need now are those of the so-called 'new rehabilitationists'. Their main argument is that punishment must do something to lessen the likelihood of an offender committing a further crime, and that this means that as well as deprivation of liberty (whether totally, in prison, or partially, in the community) the offender should be given help with problems such as alcohol abuse, drug addiction, aggression etc. They urge an obligation on the state to offer rehabilitative programmes to all offenders over whom it claims the right to punishment in acknowledgement of the state's part in crime causation, and urge on the offender the obligation to take part in such programmes in acknowledgement of his/her responsibility (e.g. Carlen, 1989). Only if an offender refuses a rehabilitative programme would the courts be justified in imposing a preventive - more than proportionate - penalty.

The main responsibility for determining the rehabilitative needs of an offender would most appropriately fall to the probation service, in its pre-sentence enquiry work. This, of course, is a well-established task for the probation service. What would be new would be the requirement on sentencers to take the rehabilitative potential of proposed sentences as seriously as the restriction of liberty or the element of 'tough punishment'. What would also be needed for such an approach to work would be that the proposals contained in the Woolf Report for more constructive regimes in prisons are implemented with speed and thoroughness.

What we should learn from these 'hard cases' and the U-turns on the 1991



# INSIDERS

## An eyewitness account of the riot at Wymott Prison on 6th September 1993.

Interview by Christopher Gale

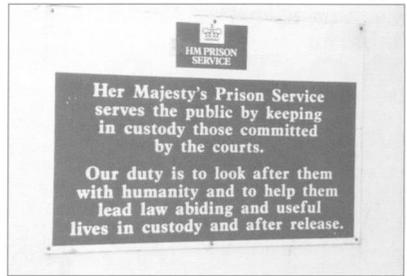
On the weekend of the riot, there seemed to me to be no especially threatening atmosphere. There had certainly been a lack of drugs coming in through visits that weekend. There were numerous dealers in the prison but no particular barons that I knew of. In all honesty, it was very little worse than any other prison I had been in. Drugs would be paid for in phone cards as usual or, more unusually for prison, in cash. I know one lifer was caught with £900 when he hadn't had visits and the consequent opportunity to pass it out for a while. There were 'no go' areas in the prison where drugs were dealt and where no con who wasn't looking for them - or for trouble - would go, and staff would only go in twos and not even like that after about 9 pm. Having said that, it was rough and the staff should have been more in control, but not so very different from many places, even taking the odd mix of cons into account.

I went to sleep as usual on the night of the riot. I was surprised to wake up and hear noises about midnight. At first, I thought that it was the night staff playing football in the gym as they sometimes did, but then I realised that the sound was coming from the wrong direction. I got out of bed and looked out of my window. I saw fires being started in the next house block, and windows being smashed. A walkway collapsed. I saw the night SO and some staff come and look at it from the outside (about 12.30 am I think) and then go away. I am told that one of the Governors came and looked at the scene

and took no action either, but I did not personally see this. The riot squad arrived and I am sure could have stopped things then, but they were not deployed.

About 2am the rioters broke out of their house block and came to the others. They opened doors and encouraged everyone else to join them, threatening us if we did not. It would be fair to say that the majority of the 'hard cases' in the prison were housed in the block that went up, but not many more than 30 were really interested in causing trouble, and only about 80 joined in at any time. I locked my room and went into a room with three others. We hid under the bed. Sounds of the disturbance continued in the distance for some time, but we saw no more.

At about 7 am a policeman with a dog came into the spur and took us out. The prison was now quiet and we were taken into an internal wire compound and left in there were 300-400 other inmates. It was cold but dry. Helicopters kept circling the compound, police and the riot squad were surrounding it, and I remained in there for the next 18 hours until 1 am the next day. We were told nothing, given no chance to collect our belongings, taunted by the police, and the only food and drink to come to us was thrown over the wire. This caused fights as people struggled for it, but many of us took the decision not to get involved for as long as it took. There were no toilet facilities, so the place became unpleasant very quickly.



Peter Dairymple

The noise of the helicopter, arc lights and the taunts made it difficult to sleep. From the early afternoon on, the gates would occasionally open, twenty or so inmates would be taken - it seemed like at random - and then the gates closed again. It was obvious that this was the 'ship out' to other prisons: my turn came as, I say, at about 1 am the next day. We were not told where we were going until we were on our way, but we were taken to our rooms, told to take a few things, and then handed our keys in. These were thrown into a pile - we were told our things would follow in a day or so. When my things arrived - 4 weeks later, I found that most of my tapes, my personal stereo, photographs, books and lot of other possessions - about £550 worth - were missing.

*INSIDE TIME* is the National Newspaper for Prisoners, published by *The New Bridge*. This extract from Issue 13 (December 1993) is reprinted here by kind permission of the Managing Editor, Eric McGraw.

Criminal Justice Act, is that penal policy must be concerned with controlling crime as well as with apportioning fair and consistent punishment. What we should then advocate is the adoption of penal strategies which offer some reasonable hope of reducing an offender's criminality, rather preventing crime for the duration of a prison sentence.

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# THE NEW BRIDGE

*INSIDE TIME* is published by The New Bridge — a charity founded in 1986 and registered under the Friendly Societies Act 1974 — which recruits and trains volunteers to visit prisoners and provides an employment service for ex-offenders.

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