

# **The social costs of dangerousness:** prison and the dangerous classes

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# The social costs of dangerousness: prison and the dangerous classes

## Introduction

These are worrying times. Almost every day, when we read a newspaper, listen to the radio or watch the television, we are confronted with threats to our safety, health and well-being. These risks are diverse, difficult to detect and manage, and sometimes controversial, ranging across issues such as immigration, pandemics, terrorism, and lifestyle choices such as smoking cigarettes, drinking alcohol and eating unhealthily. It has been argued that this constant barrage of fear and anxiety-inducing risks has affected how individuals view and understand the world around them. One such argument suggests that risk has come to dominate our view of the world and that we have become obsessed with attempts to control these threats. This has been described as 'dangerization', which is defined as: 'The tendency to perceive and analyse the world through categories of menace. It leads to continuous detection of threats and assessment of adverse probabilities, to the prevalence of defensive perceptions over optimistic ones and to the dominance of fear and anxiety over ambition and desire' (Lianos and Douglas, 2000).

One area in which this concern with dangerousness has been particularly prominent is in the field of criminal justice (see Home Office, 2001, 2002, 2006a). Where once there was an optimistic and positive ambition that the criminal justice system should be used sparingly and should rehabilitate offenders and provide welfare and support to those in need, it is argued here that this has been replaced by more conservative and defensive approaches that seek to minimise and contain risk through an expansion of the apparatus of control. This paper sets out to explore how

dangerization plays a role in how the public understand the contemporary prison system, how politicians shape it, and how professionals operate it. The paper argues that this obsession with dangerousness is obscuring deeper social problems of which imprisonment is a symptom and is legitimising a negative and punitive approach to criminal justice.

## Understanding dangerousness

In relation to offenders, dangerousness is a term that is used in many different settings, including legal, administrative, academic and popular discourse. In each of these, the precise meaning will vary. However, there have been a number of attempts to construct broad definitions. For example, Pratt (2000) suggested that dangerous offenders were: 'That group of offenders whose propensity to repeatedly commit crimes of a non-capital but otherwise serious nature puts the well-being of the rest of the community at risk' (p.35). A brief consideration of this definition will highlight a number of issues, including its breadth, imprecision and the fact that such a definition, being based on the concerns of the community, is socially constructed and will therefore be unstable over time. Three questions arising from this definition will be briefly discussed below.

First, what kind of behaviour should come within this definition? In the early part of the 20th century, dangerous offenders were largely seen as prolific, acquisitive offenders. Subsequently, this has encompassed a range of 'moral panics' threatening to tear apart the very fabric of society, including mods and rockers (Cohen, 1972), 'yobs' and 'neds' (Brown, 2005) and dangerous dogs (Tonry, 2004). The definition is also spreading to cover non-criminal but anti-social behaviour (Donoghue, 2006) and into a new category of hyper-dangerousness relating to terrorist activity (Chomsky, 2006). However, the concept of dangerousness within the criminal justice context is largely taken to refer to violent or sexual offending. This may appear to be uncontroversial; however, this can cover a broad range of different acts. For example, the public protection provisions of the *Criminal Justice Act 2003*, which can justify extended or indeterminate detention, can be triggered

by conviction for any one of 65 violent offences and 88 sexual offences, and there is a presumption against liberty in favour of imprisonment for a second conviction of any of 153 different offences. The offences that can trigger indeterminate detention range from some that are obviously serious, such as murder, to others, such as kidnap or manslaughter, that can cover a broad range of circumstances of varying seriousness, to others, such as having intercourse with an animal, voyeurism or exposure that do not involve direct and serious harm (Tonry, 2004). It can be said that, beyond a very narrow core of hard cases, the boundaries of what constitutes the kind of behaviour that can be considered dangerous is open to dispute and contention.

Second, what degree of likelihood of future risk should be required before an individual can be said to present a danger of future offending? In order to justify the imposition of protective measures, should dangerousness be established beyond a reasonable doubt, on balance of probabilities, or by some other (lesser) standard? While a detailed examination of the effectiveness of clinical and actuarial risk assessment tools is beyond the scope of this paper, there are some salient points that can be drawn from research. In terms of risk assessment, it has been established that actuarial tools, drawn from statistical analysis of data on offenders, are generally more reliable than the clinical judgments of professionals alone (Matravers and Hughes, 2003; Monahan 2004), but even then, while the accuracy of actuarial tools will be high for very frequent minor offences, for serious violent and sexual offences their accuracy is not high and there are significant numbers of false positives (Monahan, 2004). As a result, the ability of actuarial risk assessment tools to accurately predict risk in terms of dangerousness is less powerful than is commonly assumed (Broadhurst, 2000). Within the *Criminal Justice Act 2003*, the burden of proof to be applied in deciding whether the public protection provisions should be activated is not specifically defined, and instead the decision is at the discretion of judges. While clinical or actuarial assessments can be used to inform these decisions, experience in other jurisdictions has led to questions being raised about the fairness and competence of courts to make decisions on dangerousness (Ruschena, 2003). It can be broadly stated that the

ability to predict future serious offending is problematic both on instrumental grounds, as a result of questions about accuracy, and on normative grounds, as a result of questions about fairness.

A third question relates to where the appropriate balance is between human rights and protecting the public? Much has been made by the government and the opposition about the appropriate balance between individual civil liberties and the right of the wider community to safety (see Home Office, 2006a). They have argued that the current system is stacked against the 'law-abiding majority' and that human rights law, developed in the wake of the atrocities committed in Nazi Germany and essentially designed to protect individuals against the state, is no longer relevant to contemporary society but instead makes it too difficult for the state to protect its citizens. Such arguments have a direct impact in the field of criminal justice, and also have a much wider impact in shaping the society in which we live. This brings to light the issues of whether the current concern with dangerousness is simply a marginal criminological concern or whether this discourse is embedded in a mode of social organisation more generally. This argument was proposed by Foucault (1977), who described the emergence of the prison as part of a more general social movement that also saw the development of highly controlled and organised institutions such as hospitals, schools and factories. Similarly, Garland (2001) has described how the current approach to criminal justice, which he describes as a 'culture of control', is a fundamental feature of late modernity. It is therefore argued that the approach of a society to dangerous offenders both reflects and influences the nature of that particular society more generally. The debate about dangerousness is not merely a technical or professional concern, but is set within a social context, a context in which the role of the state is contested.

## Representing dangerousness

The idea of the dangerous offender plays on the minds of the public and politicians, and so shapes their view of the criminal justice system as a whole and prisons in particular. Despite the fact the most reliable measure of crime trends, the British Crime Survey,

shows that there has been a decline in levels of crime for over a decade, the public are becoming increasingly concerned about the risk of crime, including serious violent and sexual crime (Roberts et al., 2002; Nichols and Walker, 2004). This has been described as 'the punitive paradox' that faces anyone trying to understand the relationship between crime policy and the public (Ryan, 2006, p.31). The majority of those imprisoned do not present a high risk to the public: simply looking at sentences shows that only 6 per cent of people received into custody in 2005 had received a sentence of four years or more in custody (Home Office, 2006b). Nevertheless, in the public perception, prisons are places brimming with dangerous people. This section will explore the role of politicians and the media in shaping these ideas and this culture of fear, as well as considering the role of the public themselves.

From 1979 onwards, the role of law and order in politics has become increasingly important (Downes and Morgan, 1997). All mainstream political parties now compete on the assumption that they have to demonstrate credible toughness in the face of crime and dangerous offenders (Sparks, 2003). Recently there has been a public commitment not only to manage the reality of crime, but also to manage concern about crime (Home Office, 2001), although this is a notoriously difficult aim to achieve (Roberts, 2002). However, some of the methods that the government chooses to achieve this aim raise significant questions. For example, the White Paper on sentencing, which formed the basis for the *Criminal Justice Act 2003*, contained a sentence that has been widely criticised as emotive, provocative and simplistic: 'The public are sick and tired of a sentencing system that does not make sense. They read about dangerous, violent, sexual, and other serious offenders who get off lightly, or are not in prison long enough' (Home Office, 2002, p.86). The paper went on to support an expansion in the use of indeterminate sentencing for a wide range of offences. A high profile review of the criminal justice system, published shortly after Dr. John Reid took up post as Home Secretary in 2006, also highlighted concerns about 'serious, violent and dangerous offenders' (Home Office, 2006a, p.30), setting out plans for improved detection, increased use of imprisonment and more

stringent supervision. These political statements use terms relating to dangerousness indiscriminately. As has been described above, the *Criminal Justice Act 2003* included a dizzyingly wide range of offences, and the 2006 review made no attempt at all to define dangerousness, although did specifically mention a range of offences from serious organised crime to domestic violence to the carrying of knives. This again indicates that, for politicians, dangerousness is an imprecise, flexible and broad concept.

The media have always been obsessed with crime. However the post-war period has seen both a quantitative change, as methods of communication and electronic media have expanded, and a qualitative change, with an increasing focus on serious sexual and violent crime and an almost exclusive focus on bad news (Reiner, Livingstone and Allen, 2003). In addition, there has been a distinct change in how offenders and victims are portrayed, with the picture of offenders darkening: 'Media criminals have become more animalistic, irrational and predatory ... and ... crimes more violent, random, senseless, and sensational. In parallel, media victims have become innocent. The differences portrayed between the general public and criminals has thus swollen' (Surette, 1998, p.49). The depiction of offenders and victims is seen as a zero sum game, so that any expression of concern for the offender is in itself seen as a direct, insensitive affront to the victim (Reiner, Livingstone and Allen, 2003). This alters the public perception of prisoners. It has been argued that 'ultimately when we present an image of prison we shape the public's expectation about what prison is like, and what happens inside, of who prisoners are and what they have done' (Wilson, 2003, p.28). Drawing these elements together, it is suggested here that the media disproportionately represent serious violent and sexual crime, in particular homicide. This feeds a public view and suggests that serious crime is more prevalent than it really is. Second, the depiction of offenders prevents their perspectives being heard or understood, including issues such as the social context that may help in understanding offending. Third, the public receive a representation that suggests that the criminal justice system in general, and prisons in particular, are largely, if not exclusively, concerned with serious sexual and violent offenders, a representation that does not fit with the reality. This

(mis)representation of the issue of dangerous offenders therefore encourages public support for further measures against a much wider range of people. This also acts to distract the public from wider social issues that may contribute to crime, instead providing explanations based solely on the abnormal psychology of the offenders.

So far, this section has argued that the distorted understanding of crime and punishment among the public is the result of media and political misrepresentation. Others have argued that this is motivated by self-interest, the gaining of votes or selling of newspapers, but it is also an attempt to maintain power in the hands of the elite by marginalising and controlling the population through fear (Chomsky, 1991; Ericson, 2007; Lee, 2007).

While such arguments are important and enlightening, the relationship between media and politics on the one hand, and the public on the other, is more complex. In particular, people are consumers of media and political products and can exercise choice over their consumption (King and Maruna, 2006), and the increase in media, including talk radio and the internet, means that citizens can take a direct role in expressing their views and therefore in shaping the media and political agenda (Ryan, 2006; Pratt, 2007). It is argued here that this dynamic interrelationship between individuals and institutions creates a vicious circle. The public contribute both as consumers and participants to a media and political discourse based on a misrepresentation of crime. Politicians and the media then increasingly respond to this for self-interested reasons, which in turn increases the level of public concern. This has been described as a 'fear of crime feedback loop' (Lee, 2007, pp.133-134). The end result is that the perception of dangerousness is becoming increasingly important, while the reality is increasingly obscured.

## Managing dangerous offenders in prisons

The assumption of politicians is that dangerous offenders who are convicted should be imprisoned (Home Office, 2001, 2002,

2006a). The Prison Service launched its own Dangerous Offender Strategy in 2004 (HMPS, 2004a). This aimed to draw together the work targeted at reducing the risk posed by dangerous offenders and to improve links with other agencies. This strategy defines a dangerous offender as: 'Someone with convictions for sexual or violent offences who is assessed as presenting a high or very high risk of serious harm, i.e. harm that from which the victim would find it difficult or impossible to recover' (ibid). This is another broad attempt at a general definition. The main tasks of the Prison Service are defined as identification, risk management and release. Each of these will be explored further below.

## Identification

As was described in the introduction, identifying who should come within the category of dangerous offenders is contested and complex. There are also challenges in operationalising a definition as wide as that used in prisons. The main tool used in prisons and by probation in order to measure the risk of re-offending is the Offender Assessment System (OASys) (HMPS, 2005a). This is an actuarial tool that measures risk of re-offending and reconviction, and also the risk of the offender causing serious harm. In terms of predicting re-offending, the tool works reasonably well. There was a reconviction rate over a two-year period of 26 per cent for the low likelihood group, 58 per cent for the medium likelihood group and 87 per cent for the high likelihood group (Moore, Howard and Burns, 2006). This is compared to an overall reconviction rate for adult male offenders of 58 per cent (Home Office, 2005a). However, this measure is based on any reconviction and does not take account of seriousness. The issue of seriousness falls within the ambit of the risk of harm element of the assessment, and it is in this area that the most serious concerns have been expressed about the OASys tool. For example, the screening assessment is often incomplete. Indeed, it was suggested that this was only done fully in about 60 per cent of cases, and even when the screening indicated that a full analysis of risk was required, clinical decisions to exempt cases from a full assessment were made inconsistently (Moore, Howard and Burns, 2006). Once a full assessment has been completed, a practitioner then has to grade the risk of serious harm as

low, medium, high or very high. Analysis of the results shows that there is significant variation between local areas in these gradings, suggesting that there is inconsistency in practice (ibid). These results suggest that, while OASys may be a useful tool for measuring the likelihood of reconviction, it is not a reliable or effective tool for measuring the likelihood of serious harm.

In addition to these concerns about accuracy, there are also ethical concerns about the structure of the OASys tool. In particular, the measure of risk includes consideration of issues such as accommodation, education, employment and financial management (HMPS, 2005a). These are factors that draw a link between social exclusion and offending (Social Exclusion Unit, 2002). By embedding these within a structured assessment that may have consequences for an individual's continued detention, there is an argument that this is entrenching social exclusion within the criminal justice system. As has been argued elsewhere, issues such as unemployment, poor housing and poverty are structural features of society, and if used to justify detention, they should, if anything, be extenuating circumstances (Mathiesen, 2006). The approach to identifying dangerous prisoners is therefore open to criticism on normative as well as instrumental grounds.

## **Risk management**

Once individuals are identified as being dangerous, prisons have a responsibility to manage that risk. In some cases this involves managing that risk while prisoners are in custody – for example, through preventing harassment of victims or the potential grooming of children, or it may relate to the risk of violence while in prison. However, the main purpose of this element of the strategy is to reduce the risk that an individual presents of committing an offence that may cause serious harm when they are released. A range of interventions are available in prisons, and these fall into seven different categories or pathways (NOMS, 2005): accommodation; education, training and employment; health; drugs and alcohol; finance, benefit and debt; children and families; and attitudes, thinking and behaviour.

The delivery of offending behaviour programmes has become particularly important in prisons. These are programmes that have been researched and accredited as being effective in reducing the risk of re-offending. Courses available include sex offender treatment programmes, healthy relationships (aimed at domestic violence), controlling anger and learning to manage it, enhanced thinking skills and cognitive self-change programmes. These programmes have been proven to have a beneficial impact overall in reducing re-offending, although for individual courses their success is mixed (Falshaw et al., 2003). There were 7,921 programmes delivered in public sector prisons, including 1,160 sex offender treatment programmes, in 2006-2007 (HMPS, 2007), so about 5 per cent of people who went through prisons received this type of intervention. This is spread across a range of prisons, although there is some targeting of higher risk offenders. For example, 17 per cent of sex offender treatment programmes are delivered in category A or category B adult prisons (which make up 10 per cent of the total population), with the remainder being carried out in medium and low security prisons, or in local prisons with short-term prisoners (HMPS, 2007). For all offending behaviour programmes, 14 per cent are delivered in these higher security prisons.

In relation to substance misuse, research suggests that over half of prisoners have a problematic drug misuse substance problem (see Wheatley, 2007). There were 7,675 interventions delivered to prisoners in 2006-2007 (HMPS, 2007), which means that approximately 10 per cent of the target group received these interventions. These are not targeted at more serious offenders, with only 2 per cent of drug interventions being delivered in category A or B prisons.

There are also interventions aimed at other risk areas more closely linked to social exclusion, such as accommodation, education and employment. These include 16,312 educational accreditations and 48,198 work skills accreditations being achieved, 36,501 prisoners being released with a secured place in education, training or employment, and 65,733 being released with accommodation arranged (ibid). These are not specifically targeted at the more

serious offenders: 6 per cent of education accreditations, 6 per cent of work skills accreditations, 2 per cent of resettlement outcomes and 2 per cent of accommodation outcomes are in the higher security prisons.

In general, these core methods for reducing re-offending are available on a limited basis in prisons and, apart from the offending behaviour programmes, they are not targeted at those identified as being the most dangerous. It is also arguable that they are not designed to deal with the most serious cases, but are designed for high-volume delivery across medium-risk cases. It is also worth noting that many of these interventions do not relate to dangerousness posed by individuals but to addressing issues of social exclusion such as education, employment and accommodation. This is an issue that will be explored later. At this point, it is sufficient to raise the question of whether issues of social exclusion should be dealt with in prison or whether they would be more appropriately dealt with before people reach that stage.

There are a number of specialist facilities available for managing dangerous offenders – in particular, therapeutic communities and dangerous and severe personality disorder units. Prison-based therapeutic communities have been around for over 40 years, most notably at HMP Grendon, and there are now 560 places on six different sites (HMPS, 2004b). Eighty-five per cent of these places are in category B and closed young offender sites, and are therefore targeted at more serious offenders. These units can reduce re-offending where residence is over at least 18 months (Taylor, 2000), and therefore residence is normally for two years or more. The community is a living-learning environment where members participate in community decision-making as well as therapy aimed at emotional and psychological needs that are more complex than can be addressed in a short course. The Dangerous and Severe Personality Disorder (DSPD) project was developed following the publication of a Green Paper in 1999 (Home Office and Department of Health, 1999). The paper suggested that there were approximately 1,400 people who met this category in prison, 400 in secure hospitals and between 300 and 600 in the community. There are now four units – two in prisons providing

164 places (HMPs Frankland and Whitemoor) and two in high secure hospitals providing 140 places (Rampton and Broadmoor). These units are part of a pilot project aimed at bridging the gap between health and prison services for the management of this particularly difficult group. Prior to being identified as meeting the criteria, an extensive assessment process is undertaken based on clinical judgment informed by a range of actuarial assessments, a process that may take three or four months to complete (DPSD Programme, 2005). Once a person is identified as meeting these criteria, they enter an intervention programme that may last several years. While evidence of long-term treatment benefits or risk reduction is not yet available, early results show a reduced level of institutional violence among the group undergoing intervention (Taylor, 2003). Closely linked to this is the development of a pilot programme for psychopathy, developed within the Prison Service, known as CHROMIS (Savidge, 2005). This is a world-leading programme, accredited as being effective in reducing re-offending among this group previously thought to be untreatable.

Although these programmes are limited in their availability, they are nonetheless important. They demonstrate that there is a spirit of inquiry among prison professionals, and a desire to shape an essentially punitive environment into one that can be rehabilitative, even for some of the most difficult offenders that the public and politicians are most antagonistic towards. These can be seen as acts of professional resistance that attempt to ameliorate the potential inhumanity of imprisonment (Cheliotis, 2006). These programmes could also be described as a 'remoralisation' of the penal environment, an attempt to rebalance the priority between security and respect for the individual (Carlen, 2001). They show the potential for taking a more holistic approach to the most difficult offenders and illustrate that, far from taking a negative attitude, in some cases prison professionals are fashioning an approach that is ambitious and optimistic.

## Release

For prisoners serving four years or more in custody, their release date will be dependent upon the decision of the parole board. An earlier release date can be granted where it is considered that

an individual will not offend during the period in which they would have been in custody. Offending rates have always been very low for those released on parole, and this is currently 6.4 per cent (Parole Board, 2006). However, public concern about a small number of high profile offences has led to greater scepticism about releasing offenders who could be perceived as dangerous. In the first half of 2006, the rate of release on parole fell from 49 per cent to less than 36 per cent (Anonymous, 2006). This shows that professional bodies are responding to public concerns, although it could be argued that they are doing so in a draconian and excessive way.

Once prisoners reach the end of their sentence, but are still considered to be dangerous, arrangements need to be made to manage them safely in the community. This is done under multi-agency public protection arrangements (MAPPA) (HMPS, 2004c). These arrangements cover anyone sentenced to more than 12 months imprisonment or longer for a sexual or violent offence. This is a measurable but very wide definition. It is estimated that there is a total caseload of over 48,000 (NOMS, 2006a). There are three levels of cases. Level 1 can be managed by one agency (i.e. usually probation), level 2 requires more than one agency and level 3 requires co-ordination among various agencies. There are approximately 1,300 in level 3. While the development of MAPPA represents some of the lessons learned from what is perceived as good practice (Kemshall, 2003), and there were also hopes that these arrangements would foster positive community involvement through initiatives such as Circles of Support and Accountability for sexual offenders (Bryan and Payne, 2003), the reality may be somewhat different.

Garland (2001) has described the space between the community and prisons as having become more strictly enforced, and that: 'Those offenders who are released "into" the community are subject to much tighter control than previously, and conditions that continue to restrict their freedom. For many of these parolees and ex-convicts, the "community" into which they are released is actually a closely monitored terrain, a supervised space, lacking much of the liberty that one associates with "normal life"' (p.178).

This is illustrated in the new emphasis in probation, away from welfare to enforcement. There are serious questions about whether such measures actually help to reduce risk at all, or whether they perform some other function. American research shows that, in relation to sexual offenders, measures such as notification, registration and assertive supervision do not reduce overall re-offending (Lieb, 1998), and there have been some arguments that such measures may even make re-offending more likely (Silverman and Wilson, 2002). There is also a question regarding whether this is actually picking up real risk behaviour or is simply the instrument of control described by Garland. For example, the largest rise in sexual offending in the UK has been 'breaches of trust', which relates to notification and registration. This now accounts for almost 10 per cent of sexual offences (Home Office, 2005b).

However, the imposition of more punitive conditions and the increasing use of recall to prison have become measures of success in themselves. The minister for criminal justice and offender management praised the success of the MAPPA arrangements, describing how: 'There has been widespread take-up of the new measures which were introduced in 2004, giving the public protection agencies additional tools to take preventative action against offenders. Good examples include the high number of sexual offences prevention orders granted and the number of high risk offenders returned to prison for breach of licence' (HMPS, 2005b). The MAPPA statistics for 2005-2006 show that there has been a 17.92 per cent increase in breach of licence conditions and a 42.47 per cent increase in breach of orders, but a 22.78 per cent reduction in recall as a result of offending (NOMS, 2006a). This is mirrored in the sharp rise in the number of recalls to prison in recent years. For example, in parole cases (i.e. those serving four years or more), there was a recall rate consistently around 10 per cent from 1994 through to 2001, but this has now increased to 17 per cent, and the number of recalled life sentence prisoners has also risen dramatically, from around 30 per year from 1999 to 2002 to 71 recalls in 2004 (Home Office, 2005a). In 2005-2006 this doubled again to 140 (NOMS, 2006b), reaching 178 in 2006-2007 (NOMS, 2007). There are also increases over time in recalls for short-term offenders, including

those on home detention curfew, although this has stabilised (Home Office, 2006b). It has been argued that this dramatic increase is not the result of changes in the behaviour of released offenders or the social circumstances in which they live, but is the result of the use of more stringent licence conditions and a more punitive approach to enforcement (Padfield and Maruna, 2006), a view that seems to be supported by the MAPPA statistics described earlier. Padfield and Maruna describe this as the 'back door' into prison, as opposed to the 'front door' of sentencing, and they highlight a number of concerns that this raises in terms of cost, discrimination in the impact of enforcement, and the ineffectiveness of recall as a tool of reducing re-offending, as well as highlighting human rights concerns.

Those who are identified as being dangerous are likely to be subjected to demanding conditions and stringent supervision in the community, and face the prospect of being returned to custody if they do not meet those conditions. The effectiveness of this approach is highly questionable. Indeed, it may be counter-productive in as much as, for those offenders subject to community supervision, the conditions may be such that they find it more difficult to desist from crime, and it may also deflect concern and resources away from supervision and crime prevention in other areas.

## The social costs of dangerousness

Crime and punishment do not exist in isolation, but both are a reflection of and an institution that shapes the community. In Winston Churchill's famous words, 'the mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country' (cited in Gilbert, 1991, p.214). This section explores the social consequences of the obsession with dangerousness, in particular, the expanding prison population, increasing social inequality and punitiveness.

### Expanding prison population

The prison population has exploded over the last 15 years, increasing from around 43,000 in the early 1990s (Home Office, 2005a) to over

80,000. It is argued here that this increase can largely be accounted for as a result of the obsession with dangerousness.

The expansion in imprisonment is particularly acute for life sentences and sentences of four years and more (Home Office, 2006b). The life sentence population has expanded from 3,000 in 1992 (Shute, 2006) to 9,659 at the end of May 2006 (NOMS, 2007), accounting for 12 per cent of the total prison population. This has resulted from a number of changes. First, there has been an increase in the use of discretionary life sentencing and the introduction of automatic life sentences for a second conviction for a violent or sexual offence, subsequently replaced by the indeterminate public protection sentence. This has significantly expanded the range of offences that can result in life sentences being applied and has fed a dramatic increase in the use of indeterminate detention. Second, there has been an increase in tariffs, a trend that looks set to increase due to the introduction of legislative guidance on the setting of tariffs for mandatory life sentence prisoners contained in the *Criminal Justice Act 2003*. Third, there has been a reduction in the likelihood of life sentence prisoners being released (Shute, 2006; Anonymous, 2006). Therefore more offenders are at risk of indeterminate sentences, they are receiving longer minimum terms and they are less likely to be released at the end. All of this has resulted in the UK having more life sentence prisoners than the rest of Western Europe combined (Solomon, 2004).

The impact of this punishment inflation is also felt at lower levels of the seriousness scale. Tonry (2004) has shown that in society generally there is a greater intolerance of violence and sexual offending. He argues that these offences are declining, but detection is improving and sentencing is becoming more severe, resulting in a higher prison population. He argues that it is not only the most serious offences that are attracting imprisonment, but less serious offences are now coming within the threshold. There is a general ratcheting up in the perceived seriousness of all violent or sexual offences and sentencing is becoming more severe as a result. As well as this front door expansion, as has been described

above, the expansion is also being fed from the back door of reduced use of discretionary release and increased recalls.

As well as physically expanding the prison population, claims about dangerousness provide moral legitimacy to the policy of expanding prison populations. The argument being presented and publicly consumed is that the expansion in the prison population is a result of more dangerous offenders being imprisoned. The government review of 2006 argued that prison was effective at incapacitating offenders, arguing that the increased prison population was 'protecting the public from thousands of offences a year which might otherwise have occurred' (Home Office, 2006a, p.32). There was no meaningful evidence produced for such an argument. The review also announced an expansion of the prison estate, adding 8,000 new places, stating: 'Prison capacity should be determined by the need for places. If people need to be in prison, the places will be made available' (ibid, p.33). This review is based on an undefined view of dangerousness, a contestable argument that prison is effective in dealing with this issue and an assumption that even more imprisonment is required. These arguments are not rationally presented but instead are emotionally charged appeals, exciting and provoking the mood and temper of the public. With the creation of the Ministry of Justice in May 2007, this approach did not significantly alter. Indeed, the ministry signalled its support by re-emphasising the commitment to 'ensure that prison places are available to protect the public from dangerous offenders' (Ministry of Justice, 2007, p.4) and to ensure that 'dangerous offenders are kept in prison until they no longer pose a danger' (ibid, p.9).

### **Increasing social inequality**

The prison population does not mirror the demographic composition of the wider community, but instead is skewed, with an over-representation of marginalised groups. For example, prisons in the UK have an over-representation of black and minority ethnic communities, people who have been in care, have low levels of literacy and numeracy, are homeless or jobless or have mental health problems (Social Exclusion Unit, 2002). People in the most marginalised and economically deprived communities are most likely to be the victims and perpetrators of serious crime (Dorling,

2005). As a result, approaches that lead to an increased use of imprisonment do not fall evenly across the whole of the community but are felt most keenly within these particular groups. It has been argued that prison is an institution that 'is woven deep into the fabric and lifecourse of the lower classes across generations' (Wacquant, 2002). As a result, the obsession with dangerousness and the expansion of the prison population acts to perpetuate, maintain and exacerbate social inequality, based on racial discrimination (Wacquant, 2002) or economic poverty (Marchetti, 2002).

As well as this direct consequence on individuals and communities experiencing social exclusion, the obsession with dangerousness also acts to reinforce social exclusion more generally. First, it deflects and neutralises concerns about social inequality. If particular groups or individuals are represented as being dangerous, this provides a pejorative, emotive and delegitimising effect in as much as it makes the views of that group undeserving of attention. By representing individuals as dangerous, this also focuses attention on their individual accountability and pathology to the exclusion of questions about why this occurs more frequently in certain groups, and whether wider social conditions contribute towards this. It was on this basis that Hillyard and Tombs (2005) argued that the notion of crime was limited, narrow and individualistic and that it would be preferable to consider issues of 'social harm', a concept that is more broad and encompasses a wider range of effects. For example, they argue that an obsession with groups such as offenders, the young and those seeking asylum means that issues that affect a much wider group of people are ignored, issues such as health and safety at work, which result in more deaths than murder (Tombs, 2005), or road traffic accidents. The reason for the differential level of concern and attention is that while employers and other powerful economic groups can avoid scrutiny, it is the harms caused by the marginalised and powerless that are targeted for control rather than those of the powerful. It is argued here that the legitimisation of crime control through the idea of dangerousness is a means to reinforce established power structures and inequality.

A second sense in which the issue of dangerousness acts to reinforce social exclusion is that it reduces the availability of

scarce resources for investment in marginalised communities. Imprisonment is an expensive business, costing £28,734 per place per year (HMPS, 2007). This is money that could be invested effectively in poorer communities. The Justice Reinvestment movement established in the US has sought to 'use funds spent on imprisoning offenders more productively in these areas through local community based initiatives designed to tackle underlying problems that give rise to criminal behaviour' (Allen, 2007, p.5). This process starts by mapping the areas that imprisoned offenders come from. This has shown, for example, that in New York State there were 35 'million dollar blocks', blocks where a million dollars was spent imprisoning residents (Stern, 2006). In the UK, it has been shown that a quarter of prisoners come from 53 of the 1,222 council wards and half come from the poorest 12 per cent of wards (Houchin, 2005). Results of another pilot project in Gateshead have similarly indicated the stark link between exclusion and crime (Allen, Jallab and Snaith, 2007). This information can be used both to improve services in those communities and to encourage the use of alternatives to prison, with the resultant cost savings being reinvested in the community. Initiatives of this nature in Connecticut, Louisiana and Kansas in the US have received political and public support (Cadota, 2007). These initiatives expose the reality of the link between social inequality and crime and point the way towards more ambitious and optimistic solutions.

Although the Justice Reinvestment movement is providing some resistance, the mainstream focus on dangerousness is acting in a manner that provides legitimacy to the increasing prison population and delegitimises marginalised communities as undeserving. The focus on the concept of dangerousness in criminal justice is therefore acting to maintain and entrench existing power structures and social inequality.

## **Punitiveness**

By representing offenders as dangerous and therefore undeserving, more punitive approaches are legitimised in treatment and conditions in prison. This trend has been observed internationally and has been described as the 'new punitiveness' (Pratt et al., 2005) or 'penal populism' (Pratt, 2007). The features

of this approach include harsh and degrading punishments that challenge traditional notions of human rights, such as disproportionate sentencing, including fixed and indeterminate sentences, and punishments designed to shame and humiliate offenders, such as petty rules, exhausting menial work and the withdrawal of 'privileges'. The imposition of such bare power has been described as an 'archaic ... show of punitive force' (Garland, 2001, pp.133-134). This approach can particularly be seen in the increasingly stringent post-release supervision arrangements described above. However, it is also detectable in some prison practices, including an increasing focus on security and ideas of high reliability (Bennett and Hartley, 2006), an approach that can upset the social order in prisons (Sparks, Bottoms and Hay, 1996) or encourage the overuse of security measures to the point that this leads to inhumanity (Coyle, 2003). It can also be seen in regular public and media criticism of perceived luxuries in prisons, such as access to television. It has been argued that the approach of new punitiveness can leave prisons as little more than 'a container for human goods' (Pratt et al., 2005, p.xiii).

In the UK, there is professional resistance to punitiveness in prisons, particularly through the officially promoted 'decency agenda', an approach that supports and encourages the recognition of both the rights of prisoners and their dignity as individuals (see Coyle, 2003). However, the dehumanising of prisoners arising from their representation as dangerous individuals creates a public pressure for dehumanising prison conditions and a public ambivalence about the neglect of prisoners.

## Conclusion: a dangerous state?

In the UK, the population is fearful. Among the most prominent of the myriad of terrifying threats is that of crime, particularly violent and sexual crime. This fear has grown dramatically despite a decline in the actual level of crime. These popular concerns have linked with political posturing and media marketing to form a vicious circle that has constantly hyped the threat from dangerous offenders. Dangerousness has become a widely used but poorly understood concept. It has come to be used to cover

a wide range of offences and has justified the greater use of more punitive sentencing. This exclusive focus, this obsession with dangerousness, has obscured the real nature of the criminal justice system: it builds a picture of offenders as committing more serious offences and presenting a greater risk than is the reality; it excludes consideration of the social issues that contribute towards crime; and it supports the view that imprisonment is the most effective way of dealing with the problem of crime. It has been described that 'the growth of a social and cultural divide between "us" and "them" together with new levels of fear and insecurity, has made many complacent about the emergence of a more repressive state power' (Garland, 2001, p.182). This could be taken further to argue that, as well as the emergence of this culture of control, it has also led to a collective ambivalence about social inequality.

Within prisons, many of the features of the general approach to dangerousness are reproduced, including imprecision, overuse of power and the criminalisation of poverty. However, prisons are distinguished by the important acts of professional resistance, which are particularly evident in the innovative treatment programmes that are being delivered to dangerous offenders and the promotion of a decency agenda. These approaches look beyond the labels to see these people as individuals and to humanise their treatment.

The consequences of this obsession with dangerousness are serious. There is an ever-increasing prison population, which exacerbates social inequality and is underpinned by attitudes that encourage more punitive conditions. It is argued, therefore, that this is contributing towards a moral impoverishment of society and is undermining care and compassion in social policy. Indeed, it could be argued that criminal justice policy has surpassed social policy as the primary approach to domestic civic management. It has been suggested by Nils Christie (2000) that these are the circumstances in which not only should we be asking questions about dangerous offenders but we should also be asking whether the state itself is becoming dangerous to its citizens as a result of its penal policy.

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