

Advice for an incoming government

David Faulkner offers recommendations based on his personal experiences

Servant of the Crown tells the story of criminal justice and public service reform as I saw it during my time as a Home Office civil servant, with later reflections based on my work as a Senior Research Associate at the University of Oxford Centre for Criminology and with various voluntary organisations. It concludes with some suggestions relating to issues which government and the criminal justice services have to face today, and those are the basis of this article.

Penal reformers will have plenty of advice to give to whatever government takes office after the election in May 2015 – about the size of the prison population, how offenders should be treated in prison and in the community, the neglect of women and those suffering from mental disorder and the situation of children and young people, to give a few obvious examples. I will not repeat that advice, most of which the government would do well to heed but which is well expressed elsewhere (most recently, British Academy, 2014), and will concentrate instead on some practical lessons which relate not so much on policies themselves, but to how government and services should set about making decisions and carrying them into effect.

Criminal justice operates in situations that are complex and the outcomes are uncertain. Complexity, uncertainty and risk are part of life: they have to be managed and cannot be avoided or entirely prevented. There will always be unexpected and sometimes shocking events. Governments should not over-react to them with hastily conceived legislation or administrative

measures, or try to show that they always have a solution and always know best. They should avoid wishful thinking and be realistic about what can be achieved. False expectations lead to disillusion and loss of confidence.

Visible success is more likely to be recognised in what people experience for themselves than in statistics or political speeches – they see that things work well, what is supposed to happen does happen, they feel they are treated properly and know what to expect and where they stand. People should be thought of and respected as people, not treated as an assembly of ‘needs’ and ‘risks’ which have to be ‘addressed’ as if the person were a machine to be serviced. Risk assessment of individuals should be a professional judgement about the whole person, not a routine of ticking boxes. The integrity and fairness of the process are as important as the effectiveness of the outcome.

Public service

The culture of public service should be one of continuous, self-motivated improvement, of resourcefulness and responsiveness and of doing things better - not one of constant change for its own sake. Legislation and administrative procedures should be as simple and straightforward as possible.

Progress will often be made more successfully through local initiatives which are adapted to local circumstances and engage local communities than through centrally-

designed schemes ‘rolled out’ on a national scale. Most crime is local and should be dealt with as a local problem and as a responsibility of local services and communities. Governments should not be too concerned about the detail or ‘post code’ differences and should beware of ‘league tables’ which can be misunderstood and manipulated. A government which was seriously interested in reform would set about a programme of localisation, drawing on the experience of youth offending teams, city challenge and ‘justice reinvestment’ (Allen, 2009).

Communication

Governments should maintain a continuous, open and respectful process of communication with those public servants who have to put their policies into effect and with those who are affected by them, including interest groups and academics. The questions asked should not close off options or areas for discussion. Communication should not be confined to formal

processes of consultation. People should understand what is happening and why; they should feel able to contribute, and that they have been heard even

if the outcome is not the one they would have liked. The aim should be to achieve a sense of shared ownership of what is to be done and a shared commitment to its success. People should do things because they believe in them, not just because it is what they have been told to do.

The criminal law should not extend further than is necessary for a civilised society. Human behaviour is for most purposes better regulated by social standards, cultural norms and individual conscience than by law enforcement and punishment. The law should not be misused to ‘send a message’ or for political advantage or operational convenience. A disturbing culture is now emerging of technical compliance and finding means to circumvent the law, and

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not one of personal integrity and principled judgement. The *Human Rights Act 1998* should be seen as a standard to live up to, not as an obstacle to be overcome.

Language matters. Governments should avoid using the images and terminology of exclusion, confrontation and especially warfare, with their implication that some people are of less value, or do not 'belong', because of who they are or the situation in which they are placed. Language should not be 'loaded' to score political points. Obscure expressions, jargon and clichés can give the impression that government is an arcane institution from which outsiders are excluded. Governments should use simple language which shows that they respect their audience and not 'talk down' either to the public or to public servants.

Most issues have arisen before and have been dealt with in the past. Government should not neglect the lessons of history, and should value and encourage a collective memory. Government departments and public services need their own sense of professional identity and continuity; they are not the minister's private estate. Ministers should acknowledge and respect the evidence and expertise that are available, in their departments and outside. They should not dismiss them if they do not suit their purposes (as when the riots in 2011 were dismissed as 'pure criminality'), or appeal instead to 'common sense' or 'what the public wants', especially in criminal justice where much of the evidence is not what people expect or believe. Eric Hobsbawm (2013) described the tension between informed and popular opinion as 'the challenge of the twenty-first century'. Governments adopt an understanding and respectful

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approach to expertise; and be ready to form rounded and inclusive conclusions on its reliability and significance. Experts for their part should respond in the same spirit.

Politicised issues

Democracy should be about more than elections. The fact of having been elected to an office is not by itself enough to give authority or legitimacy to those in positions of power. Democracy should be a continuous, transparent and inclusive process of listening and responding – and not doing so only to the loudest voices, which the print and social media can amplify so that they drown all others. More issues have become politicised, but fewer people feel that they can have an influence on them, and those who want to 'get things done' feel frustrated by the delays and compromises which democratic processes involve (Runciman, 2014). Democracy needs a public that is well informed about the issues, including those such as crime, immigration, and social security where, currently, the facts are widely misrepresented, misunderstood and disbelieved. That situation requires complete

and accurate presentation by government, effective engagement by service providers with users and local communities, and honest and proportionate reporting by the media (Dean, 2013). Public servants themselves should be free to engage directly with the public in ways which generate and sustain mutual understanding and trust, especially if significant numbers of people lack confidence in a country's democratic institutions or do not take part in the democratic process.

Many of the functions performed in criminal justice involve judgements about a person's

character and behaviour. Those are not managerial or commercial judgements: they should be made in accordance with due process and professional standards and by public servants who are accountable both to the law and to ministers and ultimately to parliament, free from considerations of their employers' profitability or commercial advantage. Principles of public accountability should not be replaced by the law of private contract. If services are commissioned from the private sector, the government should insist on professional standards and the mechanisms needed to sustain them. Training, standards and professional qualifications should be set nationally and periodically reviewed, and performance should be inspected for compliance with those standards as well as the performance of the contract. ■

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