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**Contraction in an age
of expansion**

Sentencing Reform and Prisoner Mental Health

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Introduction

Mental illness and distress in prison has been well documented. Indeed research and reports have argued that the number of mental disorders among prisoners is much higher than in the general population.¹ Furthermore, specific evidence linking the prevalence of mental ill health to specific sentences of imprisonment, such as indeterminate sentences for public protection (IPP),² open the debate on how best to manage this area of contemporary punishments. The deleterious effects of prison life on mental well-being are, and continue to be, a pressing matter for prison authorities and the staff engaged in the support and treatment of remand and sentenced prisoners. Mental illness in prison is nothing new; rather the existence of what was once termed as 'lunacy' and psychiatric symptoms among those detained can be traced to the rise of the early modern prison and the confinement era of the eighteenth and nineteenth centuries.³ In Britain and elsewhere, as the nineteenth century progressed, society witnessed a 'separating out' of criminals, psychiatric patients and those deemed as 'criminal lunatics', with purpose built institutions pervading urban and rural areas of the country. However, these developments in confinement did not necessarily mean that mental illness or distress was eradicated from the prison setting, on the contrary; rather this situation is something that continues to be topical in the contemporary era of offender management.

Mental Illness and the Criminal Justice Process

Over recent decades, the development of specialist schemes and practitioners has given rise to enhancing opportunities to address mental illness at various points of the criminal justice process. Diversion schemes, mental health liaison practitioners and in-reach services have become an ever-growing part of the pre-punishment and punishment stages of the process. The twenty-first century has been marked by a growth in the convergence of criminal justice and psychiatric policy, practice and legislation⁴ something intended to improve the wellbeing of those subject to criminal proceedings. Despite some radical and innovative systems being instituted across criminal justice and health services, concern remains over how best to tackle what has been seen as a growth of psychiatric disturbances among those subject to criminal justice sanctions.

Several reports released in the first decade of the twenty-first century have attempted to judge the extent of the challenges that the criminal justice system faces. INQUEST's *Dying on the Inside*,⁵ the Prison Reform Trust's *Too Little Too Late*⁶ and The Lord Bradley Report⁷ are just some of the more recent explorations of responses to mental vulnerability within the criminal justice system. Whilst reports such as Lord Bradley's have undertaken a broad-reaching analysis, many campaigning group's evaluations, official inquiries and academic scholarship have focused upon the prison as the key territory for reform. Indeed, self-inflicted deaths in custody have received significant attention.

1. Fazel, S. & Danesh, J. (2002) Serious mental disorder in 23,000 prisoners: a systematic review of 62 surveys. *Lancet*, 359, 545–550.
2. Sainsbury Centre for Mental Health [The] (2008) *In the Dark: The Mental Health Implications of Imprisonment for Public Protection*, [available from]: http://www.centreformentalhealth.org.uk/criminal_justice/sentencing.aspx
3. Seddon, T. (2007) *Punishment and Madness*, London, UK: Routledge.
4. Sainsbury Centre for Mental Health [The] (2010) *Blurring the Boundaries: The Convergence of Mental Health and Criminal Justice Policy, Legislation, Systems and Practice*, [available from]: www.centreformentalhealth.org.uk/pdfs/blurring_the_boundaries.pdf
5. INQUEST (2008) *Dying on the Inside: Examining Women's Deaths in Prison*, [available from]: <http://inquest.gn.apc.org/website/publications/dying-on-the-inside>
6. Prison Reform Trust [The] (2009) *Too Little Too Late: An Independent Review of Unmet Mental Health Need in Prison*, [available from]: <http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/95>
7. Bradley, Rt Hon Lord Keith (2009) *Lord Bradley's Review of People with Mental Health Problems or Learning Disabilities in the Criminal Justice System*, [available from]: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_098694

The problems that present themselves may well be grounded in the ideologically opposed custodial setting whereby care and therapy are administered against a backcloth of punishment and control. Research has shown and concluded that it is challenging to see the therapeutic aims of custody in the context of a high prevalence of neurotic and psychotic disorders, substance dependency and personality disorders.⁸ As Smith⁹ remarks, 'the debate around the relationship of mental ill-health and crime... has been well rehearsed and it is now widely recognised that the mentally ill should not be in prison'. Such sentiments are echoed by Lord Bradley, indicating that individuals suffering with mental ill-health could be diverted more often, and that for those who enter prison, support arrangements could be drastically improved. Clearly addressing the issues raised across a variety of reports is not a simple task. Indeed the mechanisms that drive current systems and are the basis for reform in this area are complex (such as the sentencing practices of the courts). Moreover, in a contemporary austere climate coupled with an extensive use of imprisonment, surpassing 88,000 people at the end of 2011,¹⁰ meeting expectations in this area is a challenge for officials, policy writers/makers and practitioners alike.

Prison Life and Mental Ill-Health

Dhami, Ayton and Loewenstein¹¹ present a theoretical interpretation of adaptation to prison life that prisoners make. They detail an *indigenous* and *importation* approach to understanding patterns of

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adaptation that prisoners experience. Using an *indigenous* approach to understanding, Dhami, Ayton and Loewenstein highlight the impact of prison life on the adaptations to behaviour that prisoners make. Prison regimes, discipline and sentence lengths all have the potential to influence behaviours and be a source of frustration, stress or have a more serious bearing on the mental well-being of the prisoner. The *importation* approach on the other hand observes how adaptations to the prison environment are a reflection of pre-prison life. In such circumstances a prisoner's former background and lifestyle will impact on their ability and capacity to adapt to prison and thus a prisoner's former mental health or ill-health may be significant in this respect.

Several analyses indicate that many people in prison already experience mental illness or distress prior to being sent there.¹² Adjustment to the prison environment and regime has also been cited as a potential catalyst to initiate or exacerbate symptoms.¹³ For many, entry into the custodial environment is traumatic and coping with the demands of authority, regimes and fellow prisoners requires a personal resilience, which for many is not achieved. Many authors have sought to explain what social and interpersonal aspects of prison life are likely to contribute to the mental distress and suffering of an inmate. O'Donnell and Edgar¹⁴ and Edgar¹⁵ locate victimisation (criminal or otherwise) as a key concern for prisoners, whilst Ireland¹⁶ draws similar conclusions in her analysis of bullying and exploitation by fellow inmates. Although it is difficult to earmark one particular dimension of prison life as the key contributor of mental or emotional stress, it is

8. Burki, T. (2010) Grasping the nettle of mental illness in prisons, *The Lancet*, 376(9752), 1529-1530.

9. Smith, C. (2002) Healthy prisons: a contradiction in terms? *Howard Journal of Criminal Justice*, 39(4), 339-353. p.348.

10. Ministry of Justice (2012) *Offender Management Statistics Quarterly Bulletin January-March 2012: England & Wales*, [available from]: <http://www.justice.gov.uk/statistics/prisons-and-probation/oms-quarterly>

11. Dhami, M.K., Ayton, P. & Loewenstein, G. (2007) Adaptation to imprisonment: indigenous or imported? *Criminal Justice and Behavior*, 34(8), 1085-1100.

12. Prison Reform Trust [The] (2009) *Too Little Too Late: An Independent Review of Unmet Mental Health Need in Prison*, [available from]: <http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/95>

13. Hochstetler, A.L., Murphy, D.S. & Simons, R.L. (2004) Damaged goods: exploring predictors of distress in prison inmates, *Crime & Delinquency*, 50(3), 436-457.

14. O'Donnell, I. & Edgar, K. (1998). Routine victimization in prison. *Howard Journal of Criminal Justice*, 375, 266-279.

15. Edgar, K. (2005) Bullying, victimization and safer prisons, *Probation Journal*, 52(4), 390-400.

16. Ireland, J. L. (2000) Bullying among prisoners: a review of research, *Aggression and Violent Behavior*, 5(2), 201-215.

likely that any number of imposed social arrangements can be potentially harmful to the mental well-being of a prisoner.

Captured within Dhimi, Ayton and Loewenstein's *indigenous* approach to unveiling patterns of adaptation are the perspectives presented by sociologist Gresham Sykes.¹⁷ His seminal work in 1958 provided an analytical lens that captured the essence of the social arrangements of the prison. Sykes contended that there were five 'pains' of imprisonment felt by inmates. These amounted to a series of deprivations that prison life had imposed; deprivation of liberty, deprivation of goods and services, deprivation of heterosexual relationships, deprivation of autonomy and a deprivation of security. Similarly, Cohen and Taylor¹⁸ illuminated the difficulties long-term prisoners faced in custody. They discuss the 'psychological survival' of prisoners and the challenges of long-term incarceration, in particular the impact that time has on a prisoner's mental well-being. More recent studies have directed attention towards time being a great source of suffering¹⁹ echoing the sentiments of earlier work whereby the ownership and control of time has shifted from the individual to the institution.^{20,21}

Research in a general prisoner population has already indicated a 'patterned difference between suicidal and coping prisoners in their relationship to prison time'.²² For a prisoner serving an indeterminate sentence or a life sentence the relationship between their sentence and time deserves special recognition.

In contrast to short-term or determinate sentenced prisoners, these prisoners may never be certain when normal scheduling of their life will re-commence,²³ thus potentially fueling anxieties and contributing to distress.

Indeterminate Sentences for Public Protection (IPP) and Mental Illness

In terms of crime control and public protection, the New Labour years certainly had a distinct risk-minimisation character to them with a range of policies and legislations being generated during this time aimed at managing 'risky' populations.²⁴ Whilst indeterminate detention has long been something established in the application of the Mental Health Act (for example, Section 37(41)) such approaches have been sparsely used in criminal justice until recently.

Of the various sentencing options available to judges, the IPP sentence has attracted the most critical commentary. Campaigning organisations such as the Howard League for Penal Reform have labelled the IPP as 'ill-conceived', 'flawed', 'Orwellian' and 'draconian'.^{25,26} Elsewhere the perceived injurious impact of these sentences on the mental health

of prisoners has been evaluated.²⁷ Their introduction under the Criminal Justice Act (2003) and subsequent high usage sought to provide an answer to a growing public and political concern over offenders thought to be dangerous but whose offences existed outside of the mandatory life sentence for murder. The IPP

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17. Sykes, G. (1958). *The Society of Captives: A Study of a Maximum-Security Prison*. Princeton, NJ: Princeton University Press.

18. Cohen, S. & Taylor, L. (1972) *Psychological Survival: The Experience of Long-Term Imprisonment*, Middlesex, UK: Pelican.

19. Medlicott, D. (2001) *Surviving the Prison Place*, Aldershot, UK: Ashgate.

20. Goffman, E. (1961) *Asylums*, Middlesex, UK: Pelican.

21. Cohen, S. & Taylor, L. (1972).

22. Medlicott, D. (1999) Surviving in the time machine: suicidal prisoners and the pains of prison time, *Time and Society*, 8(2-3), 211-230. p.211.

23. Cohen, S. & Taylor, L. (1972).

24. See Taylor, P. (2012) Severe personality disorder in the secure estate: continuity and change, *Medicine, Science and the Law*, 52(3), 125-127.

25. Howard League for Penal Reform [The] (2007) *Indeterminate Sentences for Public Protection: Prison Information Bulletin 3*, [available from]: <http://www.howardleague.org/ipp/>

26. Howard League for Penal Reform [The] (2012) *Briefing Paper Legal Aid, Sentencing and Punishment of Offenders Bill: Report Stage and Third Reading in the Lords*, [available from]: <http://www.howardleague.org/briefings/>

27. Sainsbury Centre for Mental Health [The] (2008).

sentence has allowed the courts to impose a minimum time in prison before the offender goes before the Parole Board. The Parole Board must then be convinced that the offender no longer poses a risk to the public, however the number of offenders who have had release denied has remained consistently high.²⁸

It perhaps comes as no surprise that the level of mental distress among the IPP sentenced prisoner population is high. Research carried out by the Sainsbury Centre for Mental Health in 2008 indicated that more than half of all IPP prisoners experienced problems with emotional well-being and one in five IPP prisoners had previously received psychiatric treatment. The IPP sentence has been regarded as a catalyst for mental and emotional distress in prison, with authors citing the damaging effects of indeterminacy on a prisoner's sense of hope and familial relationships, refusals by Parole Boards and denial of access to necessary behaviour programmes due to mental health problems.^{29,30,31}

Predicting future offending behaviours is a challenging task and critics would argue that a concentration on minimising risks to the public overshadows more integrative/rehabilitative systems of offender management, resettlement and reparation. The high numbers of those receiving IPP sentences who serve beyond their tariff suggests that issues exist in the willingness of different risks to be accepted or not. Risk assessments, practitioner reports and inquisitorial Parole Board processes all serve to inform a judgment by the Parole Board to recommend or defer a release from custody. Deferrals are high and statistical trends

that highlight the high numbers of prisoners remaining in custody beyond their tariff have been apportioned to various concerns over the process. Delayed decisions by Parole Boards,³² failures to provide resources for rehabilitation schemes necessary for IPP prisoners³³ and risk-averse decision making trends by Parole Boards³⁴ have culminated in the rights of offenders being eroded. When considering these issues in the context of a prisoner's

own mental well-being these analyses can serve to provide additional context to an experience that will inevitably have the potential to invoke feelings such as aggravation, infuriation and a dispiriting especially when coupled with a return to the everyday stressors of prison life.

Sentencing Reform

As the preceding discussion of the literature indicates, the legitimacy of IPP sentencing has been called into question. Such approaches to the control of offenders appear to be significantly weighted in the interests of public protection rather than the individual and collective rights of offenders. As research has shown, indeterminacy of detention has a hugely negative impact on the outlook for prisoners and it is not surprising that so many

experience emotional and mental distress in addition to the already burdening 'pains' of prison life. Difficulties are likely to be experienced by many, as in the case of the IPP several questions can be raised; how are such prisoners to pass time when they do not know how long for, how are they to mark time when they have not end point and, how are they to 'do time' when they do not know how much time

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28. 'At the end of March 2011 there were 6,550 prisoners serving an indeterminate IPP sentence. 3,500 of this group are being held in custody beyond expiry of their minimum term in custody, or tariff' (The Howard League for Penal Reform, 2012, p.3-4).
29. Sainsbury Centre for Mental Health [The] (2008).
30. Cluley, E. (2009) Imprisonment for public protection and mental health issues, *Probation Journal*, 56, 73-75.
31. Rutherford, M. (2009) Imprisonment for public protection: an example of 'reverse diversion', *The Journal of Forensic Psychiatry and Psychology*, 20(1), 46-55.
32. Prison Reform Trust [The] (2010) Bromley Briefings Prison Factfile: July 2010, [available from]: <http://www.prisonreformtrust.org.uk/Publications/Factfile>
33. HM Chief Inspector of Prisons & HM Chief Inspector of Probation (2008) *The Indeterminate Sentence for Public Protection: A Thematic Review*, [available from]: www.justice.gov.uk/downloads/.../joint.../hmip_ipp_thematic-rps.pdf
34. Epstein, R. (2010) Imprisonment for public protection: does it serve the public interest? *Criminal Law and Justice Weekly*, 174, 465-478.

they have to do? Philosophically and theoretically, the IPP sentence is a denial of traditional penal thought whereby the courts, in response to the wrongdoing of the offender, hand down commensurate punishments.³⁵ Certainly the question that has begged to be answered is 'can *indeterminacy* ever be understood as a *proportional* response to offending behaviour?'

From their legislative introduction in 2003 and their implementation since 2005, the lawfulness and legitimacy of the IPP sentence (and offender behaviour programmes) has been called into question and challenged officially through a case heard at the Court of Appeal in July 2007.³⁶ Moreover, 2008 saw the IPP sentence subject to reform under the Criminal Justice and Immigration Act.³⁷ The most recent and radical amendment is taking place at the time of writing, whereby under the Coalition Government's 'intelligent' sentence reforms and the recently passed Legal Aid, Sentencing and Punishment of Offenders Act (2012), the IPP sentence is to be repealed.

The Legal Aid, Sentencing and Punishment of Offenders Act (2012) outlines the provision of new extended and life sentences. Crucially, these new sentencing options for offenders are determinate rather than indeterminate. However, whilst the Legal Aid, Sentencing and Punishment of Offenders Act (2012) has received Crown assent, many of its timetable of measures are yet to be implemented and it does not mean that current IPP sentenced prisoners are re-sentenced.

Implications for Practice

Caring for prisoners with mental health issues carries with it an array of complex challenges and

tensions, not least in the delivery of care within an explicit remit of control.^{38,39} Furthermore, services such as NHS mental health prison in-reach teams have been regarded as facing a formidable challenge in the support of prisoners in terms of resource availability⁴⁰ and the 'complicated clinical picture' that some prisoners present.⁴¹ Initiatives such as the Assessment Care in Custody and Teamwork (ACCT) approach have been widely regarded as making a positive contribution to the treatment and management of mental illness and distress in prison custody. With its focus on the reduction of suicide and attempted suicide, the ACCT approach framework of risk management and reporting has gathered momentum

since its rollout between 2005 and 2007. The formalising of concerns for at-risk prisoners and the development of care plans to mitigate risks of self-injury or suicide has become a normative aspect of prison and offender management. Central to approaches such as ACCT is that any member of staff can undertake reporting and therefore ownership of the risk of self-injury or suicide has become wider and multidisciplinary.⁴² Moreover, additional positives can be felt, as at the same time, such approaches to working with mental health and risk in custody have the potential to enhance the skills of workers

individually, collectively and across professional disciplines.⁴³

Innovations in sentencing options will have a direct (albeit not immediate) impact on the character of mental ill-health in the prison environment. The character and nature of psychiatric symptoms or distress that healthcare practitioners are confronted with is likely to change; although this does not necessarily equate with improvement. Prison population statistics would indicate that prison

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35. Prison Reform Trust [The] (2010) *Unjust Deserts: Imprisonment for Public Protection*, [available from] <http://www.prisonreformtrust.org.uk/Publications/ItemId/44/vw/1>

36. See Rutherford, M. (2009).

37. ee Wood, J. (2012) MAPPA level 3 offenders: reconviction as a measure of effectiveness, *Probation Journal*, 59, 111-123.

38. Willmott, Y. (1997) Prison nursing: the tension between custody and care, *British Journal of Nursing*, 6(6), 333-336.

39. Sim, J. (2002) The future of prison health care: a critical analysis, *Critical Social Policy*, 22(2), 300-323.

40. Forrester, A., Chiu, K., Dove, S. & Parrott, J. (2010) Prison healthcare wings: psychiatry's forgotten frontier? *Criminal Behaviour and Mental Health*, 20, 51-61.

41. Steel, J., Thornicroft, G., Birmingham, L., Brooker, C., Mills, A., Harity, M. & Shaw, J. (2007) Prison mental health inreach services, *British Journal of Psychiatry*, 190, 373-374. p.373.

42. See Shaw, J. & Turnbull, P. (2009) Suicide in custody, *Psychiatry*, 8(7), 265-268.

43. Mullins, J. (2012) A multidisciplinary approach to mental health care for prisoners, *Mental Health Practice*, 15(10), 30-31.

remains a favoured method of disposal by the courts and as such practitioners are likely to interact with more offenders; some of which will be spending longer in custody.

Whilst the IPP sentence has been rescinded, this is not to say that its replacements will benefit the mental well-being of prisoners. Indeed, the Howard League for Penal Reform⁴⁴ has raised concern over the inclusion of automatic life sentences for a second offence under the Legal Aid, Sentencing and Punishment of Offenders Act (2012). In such circumstances it is plausible to suggest that whilst there would be a reduction in the IPP sentenced prisoner population, the number of prisoners serving a life sentence may increase. Taking direction from existing perspectives⁴⁵ in respect of *indigenous* and *importation* approaches to analysis of adaptation, similar issues remain, not least in the authors concluding that ‘those who spent longer in custody felt more hopeless and were more frequently charged with infractions’. Furthermore, the increased use of extended or life sentences have an abundance of practical implications. Whilst there is a general ministerial and parliamentary wish to reduce the prison population overall, longer custodial sentences may maintain conditions of prison

overcrowding. This is certainly undesirable as the impact of overcrowded conditions invariably impacts upon conditions, staffing and regimes, conceivably worsening the experience of prisonization,⁴⁶ evoking poor mental health among prisoners and potentially enflaming the prison’s crisis of legitimacy further.

The positive impact and the established assessment and treatment strategies already employed by prison-based and in-reach practitioners

will continue to evolve as the knowledge and understanding of mental ill-health in custody develops. It is clear that mental illness or distress in prison is likely to be the product of concurrent issues, however as we note here, sentence tariffs cannot be ignored as a key contributor. In this vein, it is crucial to approach assessment and treatment that is grounded in the context of the type and length of a

sentence. As authors have shown, time (and how to manage it) has an unmistakable effect on the experience of imprisonment (not least in terms of indeterminate or long-term sentences) and suicide prevention strategies can be enriched through an understanding of time in this context.⁴⁷ Coupled with proven obstacles (for example, problems accessing offender behaviour programmes discussed earlier in this article and opportunities for improvements to be made to the mental health screening of prisoners),^{48,49} these structural hurdles must be understood and short and long-term goal setting developed with this in mind.

Whilst legislative and organisational matters affecting prison life should be recognised, these should not be viewed in isolation. Rather, assessments of social relationships maintained by prisoners and identifying the social needs of prisoners can be

useful in the process of planning responses and proactively eliminating potential triggers of mental distress. Research has shown⁵⁰ that factors such as isolation, a lack of meaningful activity, drug misuse, a breakdown of family contact, animosity between staff and prisoners and bullying between prisoners can serve as potential stressors. Interaction, then, be that between prisoners themselves, prisoners and their family or between prisoners and prison staff

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44. Howard League for Penal Reform [The] (2012).

45. Dhami, M.K., Ayton, P. &Loewenstein, G. (2007). p.1097

46. According to Clemmer’s (1940) original work this is the process of the values of the prison being impressed upon the prisoner. Clemmer, D. (1940) *The Prison Community*, Boston, USA: The Christopher Publishing House.

47. Medlicott, D. (1999).

48. Senior, J., Birmingham, L., Hartly, M.A., et al. (2012) Identification and management of prisoners with severe psychiatric illness by specialist mental health services, *Psychological Medicine*, Available on CJO doi:10.1017/S0033291712002073.

49. Ginn, S. (2012) Dealing with mental disorder in prisoners, *British Medical Journal*, 345.

50. Nurse, J., Woodcock, P. &Ormsby, J. (2003) Influence of environmental factors on mental health in prisons: focus group study, *British Medical Journal*, 327, 480.

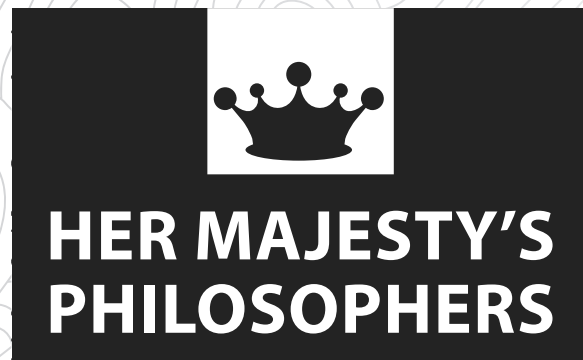
could be conceived as a key assessment priority. Whilst none of these stressors could be considered as a static entity, it is plausible to suggest that long-term sentences may aggravate or prolong these stressors, thus affecting the mental health of prisoners adversely.

Conclusions

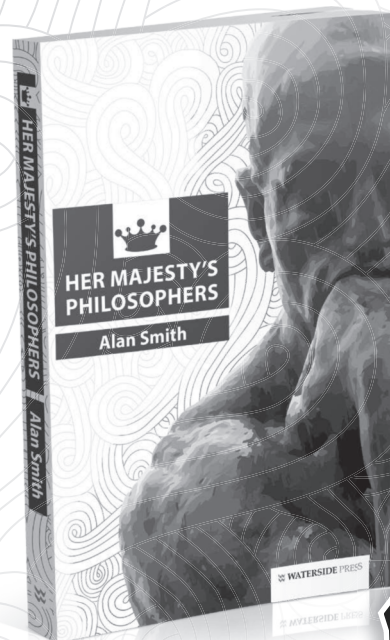
The abolition of IPP sentences and the introduction of alternatives for dangerous offenders under recent legislation herald an opportunity to explore their impact on the mental well-being of this particular group of prisoners. We anticipate that the removal of indeterminacy in prison sentencing will have a positive impact on mental ill-health in the prison context. However, in line with the concerns already raised by The Howard League for Penal Reform,⁵¹ alternatives may also be harmful. Within current risk theory, discourse and practice there is a persistent appetite for (some) legislators, politicians, policy writers and (some of) the public to service the needs of public protection above and beyond the fair and proportionate treatment of offenders.

Dominant, official, academic and subjugated accounts of mental ill-health in custody remain an important and evolving area of critical debate. The recurring analyses that indicate that mental illness should not be present within the prison environment pose significant challenges for those involved in addressing these issues. However at transitional points such as this, changes in sentencing for example, offer an opportunity to reflect on what has come before and how the future presents opportunities to develop multiagency forward-thinking interventions in the area of prisoner support and well-being. It is imperative that a new era of sentencing involves a shared and multi-professional (for example, policy makers, state officials, the courts and prison authorities) understanding of the implications of imprisonment on those who experience it. Such an informed approach has much greater potential to develop criminal justice responses that are legitimate, balanced and proportionate.

51. Howard League for Penal Reform [The] (2012).



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