

JOURNAL

PRISON SERVICE

November 2011 No 198



Contents

Professor Alison Liebling is Director of the Prison Research Centre at the Institute of Criminology, University of Cambridge.

Michael Spurr is Chief Executive Officer of the National Offender Management Service.

Amy Ludlow is a PhD candidate in law and is based at the Faculty of Law and Institute of Criminology at the University of Cambridge. She is currently conducting fieldwork at HMP Birmingham.

Lars Thuesen and **Laura Schmidt-Hansen** work for the Danish Prison and Probation Service.

Dr Kimmett Edgar is Head of Research at the Prison Reform Trust and **Chris Bath** is the Director of Projects at UNLOCK.

Dr Liz Hales is a Senior Research Associate at the Institute of Criminology, University of Cambridge. **Professor Loraine Gelsthorpe** is University Professor in Criminology and Criminal Justice at the Institute of Criminology, University of Cambridge.

- 2 Editorial Comment**
- 3 Perrie Lecture: The cost to prison legitimacy of cuts**
Professor Alison Liebling
- 12 Perrie Lecture: Reducing costs and maintaining values**
Michael Spurr
- 17 Regulating Prison Strikes and Industrial Conflict**
Amy Ludlow
- 22 Learning from the behaviour of inmates and guards helps solving wicked challenges in the Danish Prison and Probation Service**
Lars Thuesen and Laura Schmidt-Hansen
- 27 Time is Money: The role of personal finance in reducing re-offending**
Dr Kimmett Edgar and Chris Bath
- 33 Research on Criminalisation of Migrant Women**
Dr Liz Hales and Professor Loraine Gelsthorpe

Editorial Board

Jamie Bennett (Editor)

IRC Morton Hall

Steve Hall

SERCO

Dr Karen Harrison

University of Hull

Professor Yvonne Jewkes

University of Leicester

Dr Helen Johnston

University of Hull

Martin Kettle

HM Inspectorate of Prisons

Monica Lloyd

Rehabilitation Services Group NOMS

Alan Longwell

Criminal Justice Division, Northern Ireland Prison Service

Margaret Adams

Dr Rachel Bell

HMYOI Feltham

Maggie Bolger

Prison Service College, Newbold Revel

Alan Constable

HMP Winchester

Dr Ben Crewe

University of Cambridge

Paul Crossey

HMYOI Portland

Eileen Fennerty-Lyons

North West Regional Office

Dr Michael Fiddler

University of Greenwich

William Payne

Public Sector Bids Unit

Dr Basia Spalek

University of Birmingham

Christopher Stacey

Unlock

Ray Taylor

HMP Pentonville

Dr Azrini Wahidin

Queens University, Belfast

Mike Wheatley

Directorate of High Security

Ray Hazzard and Steve Williams

HMP Leyhill

November 2011

- 38 Alexander Maconochie's 'Mark System'**
John Moore
- 47 The English Prison during the First and Second World Wars: Hidden Lived Experiences of War**
Professor Yvonne Jewkes and Dr Helen Johnston
- 52 Book Review**
The power of positive deviance: How unlikely innovators solve the world's toughest problems
Jamie Bennett
- 52 Book Review**
Debating for a Change: Improving prison life through prisoner/staff working groups
Tim Newell
- 53 Book Review**
Victims and Policy Making: a comparative perspective
Dr. Rachel Bell
- 54 Book Review**
Offending Women: Power, Punishment, and the Regulation of Desire
Aylwyn Walsh
- 55 Interview: Danny Dorling**
Jamie Bennett

John Moore is a Senior Lecturer in Criminology and Deputy Director of the Criminal Justice Unit at the Department of Health and Applied Social Sciences, University of the West of England.

Yvonne Jewkes is Professor of Criminology at the University of Leicester and **Helen Johnston** is Lecturer in Criminology at the University of Hull.

Jamie Bennett is Centre Manager of IRC Morton Hall.

Tim Newell is a retired prison governor.

Dr. Rachel Bell is a senior officer at HMYOI Feltham.

Aylwyn Walsh is based at the University of Northampton and has previously worked as a Writer in Residence at HMP Lowdham Grange and HMP Ashwell.

Cover photograph by **Brian Locklin**, Health Care Officer, HMP Gartree.

The Editorial Board wishes to make clear that the views expressed by contributors are their own and do not necessarily reflect the official views or policies of the Prison Service.

Printed at HMP Leyhill on 115 gsm Claro Silk
Set in 10 on 13 pt Frutiger Light
Circulation approx 6,000
ISSN 0300-3558
© Crown Copyright 2011



Editorial Comment

Prison Service Journal and the *Perrie Lectures* have a long-standing partnership. The Editorial Board are proud to be publishing two of the lectures from June 2011. These lectures took the theme: 'Imprisonment and its values: the cost of cuts'. The Perrie Lectures Committee is to be applauded for taking on such a theme and situating the crisis of public finances in a social and moral context.

The lectures published here are by Professor Alison Liebling, a world-renowned prison researcher, and Michael Spurr, Chief Executive Officer of the National Offender Management Service. Spurr takes an operational perspective, arguing that tighter managerial and financial control has enabled improvements in prisons, the experience of prisoners and re-offending rates. He also argues that whilst practitioners cannot choose how much finances are reduced by, they do have choices about what is cut and how this is done and through this discretion there is a space in which they can act with values. In contrast, Liebling argues that 'economic rationality' is becoming a pervasive way of viewing the world, excluding moral perspectives. She argues that in prisons this is pushing a move towards more commercially-informed practices including managerial monitoring and the increasing size of prisons. She argues instead for practices that are attuned to the human experiences of imprisonment, work and society at large. These two contributions are fascinating in themselves, but they also illuminate critical questions for the contemporary prison system. Most obviously, these questions are economic. How can expenditure of prisons be controlled or reduced? Can the expansion of the prison population be halted or reduced in order to stabilise costs? How can the market contribute towards economy either directly through competition or indirectly through importing ideas and practices? However, the questions facing prisons are also moral and go to the issue of legitimacy. How will the experience of prisoners and staff be affected? What do the public want and expect from the prison system? The system is at a particular time and place and a particular juncture where the future will be forged. These articles invite the reader not only to reflect upon those issues but also to actively participate in creating that future.

In the rest of this edition, there are articles on a range of issues. Amy Ludlow makes an important contribution to the analysis of prison unions, charting the regulation of their ability to take strike action. The article rightly ends by highlighting that the current challenges place the union at a critical juncture as much as the rest of the prison system. In their article, Kimmett Edgar and Chris Bath summarise the findings of research carried out for the ex-prisoner charity UNLOCK, which addresses the need to help people managing what are often already

limited finances. This article explores the individual effects of poverty and economic recession for those in prison.

Another area where economics and social policy intersect in a highly charged way is in the approach to migration. Liz Hales and Loraine Gelsthorpe contribute an article that sets out the expansion of migrant women in custody and outlines a research project focussing on the experiences and circumstances of these women. This is an example of how research can inform and challenge public policy, highlighting hidden issues such as trafficking. Although this is a work in progress, it is nevertheless a valuable insight into an unexplored world.

Other articles in this edition address how prison crises have been addressed at different times and in different places. Lars Thuesen and Laura Schmidt-Hansen describe work carried out in Denmark using a technique known as positive deviance which, like appreciative inquiry used in the UK, focuses on examples of good practice as a means of understanding and solving problems. The article describes how this approach has been used in order to understand and improve the practice of front-line prison workers. John Moore contributes a fascinating account of the innovative work of Alexander Maconochie, a prison governor on the Norfolk Island penal settlement in Australia, and at Birmingham prison in the mid 19th century. Many of his ideas, including conditional rewards, reducing offending on release, and developing meaningful work, can be seen echoing down the years to this very day. His eventual failure also stands as a poignant warning to those who follow in his footsteps.

Another fascinating historical piece is Yvonne Jewkes and Helen Johnson's emerging work on prisons during the two world wars. Their article is a tantalising glimpse of a forgotten history, delving into the impact on imprisonment and crime, the particular effects of war including air raids on prisons and questioning how the everyday world of the prison changed during those years. Their article introduces a research project they are developing and ends with a call to those who chart the history of individual establishments to contribute.

This edition closes with an interview with Danny Dorling, a professor of human geography who has a growing public profile. In this interview, he discusses inequality and wealth in the UK and its effects on society including crime and punishment. These are crucial issues that directly return to the questions posed in the Perrie Lectures.

There is a spread of articles in this edition, ranging from the narrow to the broad, from contemporary to historical and from the local to the global. What they have in common is the ability to challenge and excite the reader with the ideas, debates and controversies that characterise prison life.

The cost to prison legitimacy of cuts

Professor Alison Lieblich is Director of the Prison Research Centre at the Institute of Criminology, University of Cambridge¹.

I welcome the opportunity to be part of this conversation. The topic is an important one, and range of relevant issues large. We could talk about prison governors, or privatisation, or what is happening to the prison officer, or about longer sentences and changing population composition and their effects, amongst other things. I hope to pull some of these strands together in this paper. My main argument is that cuts *in themselves* do not necessarily threaten values, but *economic rationality* and aspects of the new economy do. I shall explain further.

The last twenty years have seen a major reorganisation of prison life and work. The scale and pace of change are enormous, and increasing. Stringent financial constraints entered the scene relatively recently. How does this change the landscape? Is there a direct relationship between cost and prison quality? What are the risks of financial austerity in criminal justice? Does economic rationality secure or threaten moral values? These are tough questions, so my aim today is to share some thoughts with you, based on my research and observations over a considerable number of years, as well as on the work of others. I have drawn on a number of relevant books, whose authors say something that resonates with my view of the world, so let me begin by identifying my current favourites.

But before I begin, let me declare a position: I read Politics at York University in the early 1980s, and liked Political Philosophy a great deal. I prefer Rousseau (the idealist democrat) to Hobbes (the pessimist), Rawls to Nozick, and social democracy to Conservative neo-liberalism.² I am probably a 'utopian realist', that is, someone who adheres to a political version of appreciative inquiry, where we always try to imagine a

better future, but where this better future is created out of real current trends^{3,4}. I don't like violence, brutality, indifference or words like 'robust'. I think human and social relationships matter a great deal. I believe in something called 'moral dualism' — by that I mean an equal commitment to 'soft values' like care and harmony, and to 'hard values' like safety, order, power (I mean 'good power') and efficiency. These value positions inevitably influence my response to the questions set. So what about those books?

First, Tom Hodgkinson, in a book called '*How to be Free*', suggests that human beings are meant to be idle⁵. Efficiency is an invention of the global capitalists, he says, and is generally intended to make a profit for the privileged and greedy few. In his words:

The Western world has allowed freedom, merriment and responsibility to be taken from it, from ourselves, and substituted with greed, competition, lonely striving, greyness, debts, McDonald's and GlaxoSmithKline. The consumer age offers many comforts but few freedoms.

He adds, later:

'Anxious people make good consumers and good workers'.

As others have argued too, and as the precarious British middle classes are beginning to detect, the enormity, the impossible, dizzying scale of late modern capitalism 'saps the spirit'⁶. So my first sub-question is, how anxious or secure should the workforce be? In whose interests is workforce insecurity? What do we

1. Some of the ideas in this paper were first outlined in earlier publications. I have drawn on those papers here, where relevant, but have also developed a more general argument here about the risks of, and rationale for, cuts.
2. That is, I prefer social policies supporting greater inclusion, social justice and equality (see Giddens, A. (1998) *The Third Way: The Renewal of Social Democracy*, Polity Press).
3. Giddens (1998) see n.2, Giddens, A. (1990) *Consequences of Modernity*, Stanford, Cal.: Stanford University Press, and Loader, I. (1998) 'Criminology and the Public Sphere: Arguments for Utopian Realism', in P. Walton and J. Young (eds) *The New Criminology Revisited*, Palgrave, Macmillan, pp.190-212.
4. Loader argues that 'a utopian realist criminological stance endeavours to connect issues of crime and social regulation with questions of ethics and politics, and enter the public conversation about crime equipped with an articulated, principled and future-oriented set of normative values and political objectives (the utopianism). But it also seeks to engage with the *realpolitik* of crime and criminal justice, and formulate (for example, crime reduction) proposals that have some immanent purchase on the world (the realism)'. Utopian realism is 'systematic', 'normative in orientation', and 'prudent' (ibid.) as opposed to instrumental and technical. It never loses sight of 'the intimate connection between crime, politics and ethics' (p. 207).
5. Hodgkinson, T. (2007) *How to be Free* London: Penguin.
6. Hodgkinson (2007) see n.5: see also Giddens (1990) see n.3, and Sennett, R. (2006) *The Culture of the New Capitalism (Castle Lectures in Ethics, Politics, & Economics)*, Yale University Press: New Haven.

lose when we reduce certainty? Richard Sennett suggests we lose 'character' as the virtues of the efficient workplace become different from the virtues of good character⁷. Sennett argues that the human consequences of the 'new flexibility' are profound. Our new high-risk, low-loyalty, lean workplaces corrode our moral identity, as we are forced to abandon habits of dependability, service and routine and the concept of 'the career', and must embrace a modern work identity consisting of short-term, short-notice, outcomes-driven 'projects'⁸. Such an environment breeds anxiety and brings in its wake new controls which are hard to understand. Character, a term linking personality to civic or public ties, is lost in this new short term, non-linear environment. Loyalties and commitments cannot be fostered. The iron cage of bureaucracy with its reward of upward social mobility for the diligent time-serving worker, has given way to a less predictable and individualised form of work, where, 'the qualities of good work are not the qualities of good character'⁹. Rapid institutional change is part of this dynamic, redefinable, flexible and flatter world of work. This environment is not conducive to trust, loyalty and commitment and may be dysfunctional for the individual and for the organisation.

Are there any alternative methods for getting more prison officers to look like the outstanding ones? Is there anything, in POA resistance to current trends, which should be preserved? Some of you may have seen our summary of the findings of our public-private sector comparison in the *Prison Service Journal*¹⁰. In it we say that the public sector have unappreciated strengths in the use of authority. Compared to the private sector, public sector prison officers get this right more often. They also get it wrong — there is a heaviness to public sector officer culture — but when they are at their best, public sector prison officers are better at professionalism. This is important, and might be worth paying for¹¹.

. . . when they are
at their best, public
sector prison
officers are better at
professionalism.
This is important,
and might be worth
paying for.

This brings me to my second favourite book, also by Richard Sennett. Sennett's *Culture of the New Capitalism*¹² argues that apparently rapid economic growth has come at a high price: ever greater economic inequality and social instability. He asks, 'what values and practices can hold people together as the institutions in which they live fragment?' (p. 3). His reply to himself: 'Only a certain kind of human being can flourish in unstable, fragmentary social conditions'. Most people need a 'sustaining life narrative'. Our organisations are increasingly future-oriented, so that *potential* results, *potential* ability is gambled on above past experience and track record. I like to think that my 20+ years of serious hard work in prisons research counts for something in my work place. What seems to count more is the research income I might bring in next

year. There will soon be few people above or around me who have witnessed this performance. This dispensing with memory is especially existentially troubling for people working in prisons, where experience — doing things the way they were done yesterday — is trusted, and known to be related to safety. Officers with experience get assaulted less often than officers with little experience. This is precisely because they have learned to use their authority well.

The values of the new economy are in conflict with our nature. There is so much unstable energy about, many of us just want to stand still and breathe. One of the features of the new economy, Sennett explains, is that 'transactions' have replaced 'relationships' in people's dealings with one another. There were problems with the old model. As Sennett puts it: 'The political and social rationale of fat bureaucracy is inclusion rather than efficiency', loyalty is rewarded, bureaucracies teach delayed gratification. They risk stagnation. We can no longer afford these luxuries, but we need to reflect on what we are giving up, and what the unintended consequences might be.

-
7. Sennett, R. (1998) *The Corrosion of Character: Personal Consequences of Work in the New Capitalism*, New York: W. W. Norton and Company, Ltd.
 8. Sennett (1998) see n.7; see also Pollitt, C. and Bouckaert, G. (2000) *Public Management Reform: A Comparative Analysis*, New York: Oxford University Press.
 9. Sennett (1998): 21, see n.7; and see Liebling, A.; assisted by Arnold, H. (2004) *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life*, Oxford: Clarendon Press, chapter 8.
 10. Liebling, A., Crewe, B. and Hulley, S. (2011) Values and Practices in Public and Private Sector Prisons: A Summary of Key Findings from an Evaluation, *Prison Service Journal No.x p.x*.
 11. See also Crewe, B., Liebling, A. and Hulley, S. (2011) Staff culture, use of authority and prisoner quality of life in public and private sector prisons, *Australian & New Zealand Journal of Criminology*, 44(1): 94-115.
 12. Sennett (2006) see n.7.

Short-term labour alters how workers work together. There may be problems of exaggerated or dysfunctional peer loyalty among officers in some public sector prisons, but in private sector prisons, where turnover is higher, and in public sector prisons with large numbers of new generation recruits, staff relationships are 'thin' and less reliable than they used to be. We have been in prisons recently where staff do not seem to come to each other's assistance when the temperature changes. This might be a function of new working conditions.

To illustrate a new risk of lack of accountability, Sennett uses the example of Harvard academic Jeffrey Sachs, a consultant to the Polish state ministry, who apparently treated Poland as a free-market experiment, but who did not remain in Poland as a government official. 'Having reorganised the economy, which is still trying to recover from this experiment, Sachs returned to the United States and moved on to problems in the environment' (p. 58). Does this make anyone else in this room think about prisons we might name? There is something to be said for commitment to the organisation. The three structural deficits caused by the new capitalist model are 'low institutional loyalty', a reduction in 'informal trust among workers', and a 'weakening of institutional knowledge' (p. 63). Accumulating knowledge about how the institution works means 'knowing when to make exceptions to the rules', as well as knowing when attractive looking strategies are likely to backfire. It is just possible that prison officers who get the use of authority right — neither avoiding it, incapable of it, or over-using it, have the kind of identity that makes this part of their job make sense.

Let me talk a bit more about prisoners, and the quality of prison life. How might cuts impact directly on prison quality? One important issue is prison size, and another is numbers.

Lord Carter's 2007 Report *'Proposals for the efficient and sustainable use of custody in England and Wales'*¹³, was commissioned to explore ways of saving money, and building new prison capacity in England and Wales. You will all remember, I am sure, that it recommended the building of two to three 'larger, state of the art' or 'Titan' prisons accommodating around

2500 prisoners each. Considerable problems were foreseen, and I think, some problems experienced in securing sites. What seems to have happened instead is the speedy emergence of the large, cluster concept, alongside the commissioning of 3 (?) new prisons of 1500 places each. These prisons will allow for a programme of closures of old, inefficient, and ineffective prisons offering better value for money and much improved chances of reducing reoffending and crime' (p.1). Carter's Report, we should note, has the sub-title, 'Proposals for the efficient and sustainable use of custody in England and Wales', not 'Proposals for the legitimate use and operations of custody in England and Wales'. Much yearned for cost effectiveness is driving these policy choices.¹⁴ What matters in prison quality, according to Carter, are staff culture, management processes, buildings, and crowding. Aspects of existing practice are not ideal, and 'we are not living in an ideal world'¹⁵. We are hearing this mantra a lot at the moment: 'this is the real world'. This commentator suggested that 'smaller communities, or prisons of around 400 prisoners, are more successful but about four times more expensive'. This is 'not feasible in the current political climate', or acceptable to the contemporary tax payer.

This efficiency-utilitarian position is a seductive and dangerous one. Swansea was the smallest prison of 12 we included in a study of suicide prevention and it was better on almost all measures of moral performance than any other prison in the study, despite its dilapidated (and therefore expensive) buildings. The other small prison in the study, Eastwood Park, was successfully improved by a performance test process as well as being the most successful implementer of the new suicide prevention strategy. Swansea housed 366 prisoners in old and expensive accommodation in a research study conducted in 2002-4 (it was built in 1861), had the major advantage that it was staffed disproportionately by local people, and prisoners accommodated there were not too far away from their homes. It was a high risk prison with fewer than the expected number of suicides, given its population. It also had good staff-prisoner relationships, and was described as unusually safe by prisoners. They 'trusted in the environment' and felt that staff cared about

How might cuts impact directly on prison quality? One important issue is prison size, and another is numbers.

13. Carter, Lord (2007) *Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales*, Lord Carter's Review of Prisons, London: HMSO.

14. There is a feeling that the Prison Service was treated generously in the past, with high expectations about the returns on this additional investment in programmes and regimes. These expectations (which were not directly about legitimacy either) have not been met.

15. Member of the Carter Working Group, personal communication (2008).

them, for example on entry into custody¹⁶. We have just found Shrewsbury prison to be significantly better than its comparator prisons on everything. We could do to explore more systematically the evidence on size, quality and outcomes. It is possible that small is beautiful — or at least less cumbersome, complex and resistant. I shall return to this possibility below.

There may be a case for the replacement of some old prisons with new facilities. Governors argue that dilapidated, Victorian, prisons are 'almost unmanageable'. They generally mean the larger, inner city prisons. Other jurisdictions, such as Western Australia and some American states, having adopted our Victorian designs, have closed their oldest prisons and turned them into museums. There is a need for something better than police cells, or Brixton, and new prisons offer the opportunity to experiment with potentially better design and facilities. New prisons have several advantages including: the chance to establish a specific ideology or culture, to design in safety, to unite staff around positive goals and to take advantage of new thinking about first night centres, and to locate prisoners closer to home. New prisons are notoriously difficult to open, however, so attention needs to be paid to ways of accomplishing stability in the early years. Our smaller older prisons may have hidden strengths — relationships trump buildings in Swansea and Shrewsbury.

The Isle of Sheppey cluster currently houses 2,224 prisoners and is expected to house a new houseblock shortly, so scale is increasing to around this size.¹⁷ The main rationale for moving upwards in size, overtly acknowledged by all, is economies of scale rather than prison management philosophy. The 'operational challenges' associated with large prisons include the possibility of large scale disturbances, difficulties in meeting the needs of specific groups of prisoners, or managing prisoners of different types on the same site,

and the 'management complexities associated with a large staff complement'. There is also a widespread consensus that most existing old Victorian local prisons 'need reinventing'¹⁸. But this is true of large Victorian locals, not necessarily of smaller ones. The clustering process is relatively new, and I have not seen any independent evaluations of its implementation or effects. The Prison Service is still learning about the complexities of shared services, facilities, and multiple function sites. The claim made in the Carter Report was that larger prisons 'should improve the prisoner experience'¹⁹. Concerns discussed by the Workgroup include 'management grip, order and control, and the (distinctive, tight) style of governing necessary to successfully manage this kind of establishment'²⁰:

'Our strategy is to have our best people, the best processes, to get it right, initially ... we need more evidence on what works and what doesn't work in running prisons'²¹.

I worry that 'number 1 Governors' will be remote, and less experienced or competent Governors will actually govern the satellite sites. Private companies favour the large prison model (they argued that the Titan concept was workable).

There are some measures to 'moderate the use of custody', and efforts being made to modernise (that is, lower the cost of) prison by reducing the cost of the workforce, supported by a market testing of new capacity, as well as of existing prisons. So we have some new, large prisons, all awarded to the private sector, I think, and a plan to reduce the 'costly, outdated and inflexible pay and grading structure' applied to prison officers up to 2010. There are some good reasons to be pursuing this agenda, and legitimate reasons to be considering the role, pay and professional standing of prison officers. But it is not clear what the right balance is, or what the vision is that is driving these changes. There is talk of

There are some good reasons to be pursuing this agenda, and legitimate reasons to be considering the role, pay and professional standing of prison officers. But it is not clear what the right balance is, or what the vision is that is driving these changes.

16. Liebling, A., Durie, L., Stiles, A. and Tait, S. (2005) 'Revisiting prison suicide: the role of fairness and distress', in A. Liebling and S. Maruna (eds) *The Effects of Imprisonment*, Cullompton: Willan, pp 209-31.

17. Clusters exist on the Isle of Wight (1,617) and in Redditch (1,427).

18. Personal communication.

19. Personal communication (2008).

20. Personal communication (2008).

21. Personal communication (2008.)

'modest' sentence control and some closures of older and more inefficient prisons. As I said in my opening remarks, some inefficiency is not all bad. We could save a lot more money by reducing the prison population to what it was in 1992 — half of what it is now. Reversing the fetish for long and indeterminate sentences would achieve that, if we really wanted change.

Scholars of the prison have used a wide range of language with which to talk about the use of imprisonment. Nils Christie refers to the 'carceral texture' of society, arguing that prison population size is a policy choice²². We should remember that examples exist of deliberate and successful decarceration (Finland, and West Germany) and of countries maintaining exceptionally low and 'liberal' penal regimes (Norway, Sweden, Denmark). David Downes talked of the 'depth of imprisonment' when comparing penal policy in The Netherlands with that of England and Wales²³. Attitudes towards, and practices relating to, normalisation, welfare, discipline, punishment and rehabilitation, the role of prison staff, and rights and privileges including home leave and visits, impact on how psychologically invasive and damaging prison sentences are. These attitudes and practices differ between jurisdictions in ways that are indicative of visions of the offender and broader social and cultural relations. Roy King and Kathleen McDermott talked later of the 'weight', or psychological burden of a prison sentence, reserving the term 'depth' for practices relating to security and control²⁴. Their preferred term, 'weight' included the quality of staff-prisoner relationships, material conditions, rights and privileges, and the nature and quality of staff-prisoner relationships. These differ between jurisdictions but also between prisons within a jurisdiction. Recently Ben Crewe has referred to the increasing 'grip' or 'tightness' of imprisonment, as prisoners are required to actively engage with the

complex requirements of new sentences²⁵. David Garland referred to this phenomenon as 'responsibilisation'. On all measures, then, quantity, depth, weight and tightness, the prison has grown and deepened in England and Wales since the early 1990s²⁶. We are the highest user of imprisonment in Western Europe, and hold more life sentenced prisoners than all of the rest of Western Europe put together.

Let me recap on where I think we are, so you don't think I am arguing for the status quo. Problems faced by contemporary prisons in England and Wales include overcrowding and unpredictable population growth, the need to control costs, expensive and unsuitable accommodation, prisoners located in the wrong parts of the country far away from their homes, high levels of risk of disorder and suicide, cultural resistance to change and in some cases, care for prisoners among (some public sector) staff, industrial unrest, and poor outcomes. We are assured that the private sector can 'do better' but the evidence suggests their performance is very variable²⁷. There is continuing uncertainty about what is required of the contemporary prison: safe care, drug treatment, punishment, containment or future crime prevention. There is increasing and often incoherent political use made of whimsical penal strategies, which often have far reaching effects on the tricky business of getting through the day peacefully. A strategy is needed that will address all of these problems.

There is increasing and often incoherent political use made of whimsical penal strategies, which often have far reaching effects on the tricky business of getting through the day peacefully. A strategy is needed that will address all of these problems.

There are some 'essential features' of British prisons which are enduring and which emerge continually in research. One of these is that prison staff identify strongly with their landing or houseblock and also very powerfully with 'their prison'. They have faith in 'what worked yesterday', but are perturbed by future-oriented reorganisations of their work, and they need to feel safe in order to care for prisoners²⁸. But

22. Christie, N. (1993) *Crime Control as Industry: Towards Gulags, Western Style?* London: Routledge.

23. Downes, D. (1988) *Contrasts in Tolerance: Post-War Penal Policy in the Netherlands and England and Wales*, Oxford: Oxford University Press.

24. King, R.D. and McDermott, K. (1995) *The State of Our Prisons*, Oxford: Oxford University Press.

25. Crewe, B. (2009) *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*, Clarendon Studies in Criminology, Oxford: Oxford University Press.

26. Liebling assisted by Arnold (2004) see n.9

27. Liebling et al (2011) see n.10.

28. Liebling, A. and Price, D. (2001) *The Prison Officer*, Leyhill: Prison Service (and Waterside Press).

there are good and bad models of safety, and different staff cultures favour different visions of it. Prisons are special, place-based communities whose form is shaped by social and political ideas held about crime, punishment, social order and human nature. They suffer from an 'inherent legitimacy deficit'²⁹ and are susceptible to brutality, indifference to human needs, abuses of power and breakdowns in order. Prison staff have always been difficult to manage, and somewhat oddly represented by the POA (why is this?), and they engage in 'low visibility work'. Prisons pose daily moral and management problems, and getting thorough the day peacefully is a difficult and contingent task which has to be continually worked at. Staff and prisoners frequently express the need to be individually known. Highly competent Governors capable of leading and motivating staff, keeping an eye on the detail, orchestrating an effective senior management team, of ensuring that sometimes competing targets are reached in ways that make sense, and who manage to be visible to staff, are in short supply. So things could be better.

So let me come to my last 'favourite book of the moment', Michael Pusey on 'economic rationalism' and its risks. Pusey argues that an older generation of economists, who typically come from modest social backgrounds, who had some historical memory of the Great Depression, and who learned a kind of economic sets within a liberal arts framework and thus within a philosophically informed view of society, the state, and the human condition, came to be replaced by a new generation of more socially privileged economists with a trained incapacity to be social or think socially. The new 'economic rationalism' reduces the norms of public policy to those of private enterprise. This 'whizz kids' accumulated disproportionate power in the Treasury and Cabinet and killed off their elders by 'branding them with accusations' of being 'not sufficiently hard nosed', of being 'inconsolable value-intellectuals', not properly equipped for life in the 'real world'. This development came at a cost to civil society, culture and identity in Australia. The economy takes precedence over 'the

political order', and even social order, and society is represented as some sort of resisting sludge, an opponent of the economy. The state loses its deliberative capacity, and instead, decontextualised goals are pursued in ways that seem to ignore 'real tasks and situations'³⁰. A 'technocratic positivism' reigns, and what Pusey calls the 'manipulative sciences': psychology, accountancy and neoclassical economics, rise to power. He says:

In a shakeout that is more like an organised forgetting, whole departments have lost not only their dead wood but also, and not by accident, their wise men and their corporate memories, in reforms that have been depoliticised in the name of 'flexibility, responsiveness and effectiveness'³¹.

The case for new, larger and competed prisons is constructed as a legitimate outcome of contemporary fiscal and social circumstances. Previous analyses have shown that the concept of efficiency is 'ethically blind'.

He raises some important questions about what the bounds of legitimate economic behaviour and reasoning might be. What he seems to be saying is that when 'captains of business' and top civil servants think only as businessmen, and not as social citizens, we run into trouble. What looks like a 'fiscal crisis' might be a 'legitimation crisis', or an 'overload crisis', or a 'modernisation crisis', or a 'crisis of society'. If we organise labour only according to this narrow rationality, we violate something

in our culture and identity.

The risks inherent in the concept of efficiency

The case for new, larger and competed prisons is constructed as a legitimate outcome of contemporary fiscal and social circumstances. Previous analyses have shown that the concept of efficiency is 'ethically blind'. American scholars Feeley and Simon identified an 'emerging constellation of discourses and practices, knowledge and power' known as 'actuarial justice' in the 1990s, which promotes the concept of efficiency and provides a rationale for it. Actuarial models of justice risk neglecting the moral agency of persons³². They prioritise the identification, classification,

29. Sparks, R. (1994) 'Can Prisons be Legitimate?', in R. King and M. McGuire (eds) *Prisons in Context*, Oxford: Clarendon Press.

30. Pusey, M. (1998) 'Economic Rationalism, Human Rights and Civil Society', *Australian Journal of Human Rights*, 4 (2): 131-153.

31. Pusey, M. (1992) *Economic Rationalism in Canberra: A National Building State Changes its Mind*, Cambridge: Cambridge University Press.

32. Feeley, M. and Simon, J. (1992) 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications', *Criminology*, 30: 449-74.

incapacitation and management of unruly risk groups rather than the understanding or handling of them as moral, psychological or economic agents. According to Feeley and Simon, actuarial justice invites new forms of custody and surveillance, including 'no frills' varieties of prison use and high parole revocation rates³³. It emphasises utilitarian purposes over moral considerations.

We need to be very wary of a preoccupation with efficiency that brings in its wake, moral indifference. There are of course good moral arguments for being careful with and held accountable for public expenditure. But general questions of value have come to be *replaced*, rather than *restrained*, by questions of technical efficacy³⁴. Bureaucracy and its framing of problems in a technicist language, geared towards the twin (internal) goals of efficiency and efficacy, 'kills' morality³⁵. There can be a sinister edge to large, efficient, bureaucratic organisations, which can become impersonal or at worst, horrifying^{36 37}. The question of what kind of institutions, indeed prisons, we design, shapes the state of our society, civilisation and culture. Larger, cheaper prisons are likely to become the new norm³⁸. The warning we should heed, already noted by classic prison scholars, is that large bureaucratic institutions tend to displace external goals with internal, self-maintenance purposes: internal order and security are prioritised over any rehabilitative aspirations. Richard Sennett has provided a persuasive analysis of the speeded up 'new economy' and its threats to institutional loyalty, informal trust, and the build-up of institutional knowledge³⁹, as I have argued earlier. In the new economy, he argues, politicians behave like consumers rather than craftsmen. They lack direction and commitment, favouring consultants, and working to a shortened time-frame. Institutional life becomes superficial. These are dangers we should heed. As well as innovation, employees need a 'mental and emotional anchor; they need values which assess whether

changes in work ... are worthwhile'⁴⁰. Without such an anchor, some form of revolt against the new economic imperative and its 'fragile politics' is likely⁴¹. Efficiency is one important value. It should be balanced against others, like the building and safeguarding of just institutions.

The Carter Review recommended an 'aggressive programme of cost and activity profiling across the public sector estate' resulting in an 'efficient cost' for each prison⁴². It is clear that the financial management of prisons is going to become much tighter. We hear talk of 'the Tesco's model': that is, large and cheap. Personally, I prefer Waitrose. Governors are expressing concern about the search for cost savings being too savage. There is an important distinction to be made between reducing inefficiencies and doing business on the cheap. Prison staff turnover is low in public sector prisons and high in private sector prisons: what does this tell us and where is the optimum rate? Conversations about whether prison officers receive enough training for their increasingly complex role increasingly raise the question of cost: 'if we provided more professional training, we would have to pay them more'. These are moral as well as policy choices. Imprisoning less rather than more cheaply is one alternative policy option.

More and larger prisons means more prison staff recruitment and training. Addressing the 'costly, outdated and inflexible pay and grading structure that currently exists' in the public sector is important, but we should also look closely at whether staff working in the private sector are too loosely bonded to their organisations and whether an unintended price is being paid for cheaper, high turnover labour⁴³.

Prisons are inherently complex, morally dangerous, and unstable institutions, with other less obvious or instrumental purposes besides reducing reoffending, such as the expression of public rage, the demarcation of moral boundaries, the realisation of political

33. Feeley, M. and Simon, J. (1994) 'Actuarial justice: The Emerging New Criminal Law', in D. Nelken (ed) *The Futures of Criminology*, Sage, London, pp. 173-201.

34. Garland, D. (1990) *Punishment and Modern Society*, Oxford: Clarendon Press.

35. Boutellier, H. (2001) *Crime and Morality: The Significance of Criminal Justice in Post-Modern Culture*, Dordrecht, Boston, and London: Kluwer Academic; see also Daems, T. (2008) *Making Sense of Penal Change*, Clarendon Studies in Criminology, Oxford: Oxford University Press.

36. Bauman, Z. (1992) *Modernity and the Holocaust*, Cambridge: Polity Press passim.)

37. Bauman argues that atrocities can emerge in modern societies when old, unresolved tensions (such as fears and conflicts) meet the 'powerful instruments of rational and effective action that modern development itself brought into being' (p. xiv). His warning is that apparently civilised, modern, bureaucratic social and technological developments used for social engineering have hidden within them the potential to dehumanise as well as the potential to enhance life (p.1-9). The Holocaust, he argues, 'was a legitimate resident in the house of modernity' (p. 17). Modern bureaucracies have the ability 'to coordinate the action of a great number of moral individuals in the pursuit of any, also immoral, ends' (p. 18). He reminds us, after Elias, that 'right policies' do not mean the elimination of human problems (p. 12).

38. As Bauman starkly warns us, it was budget balancing, means-ends calculus, and expert advice, that led to a decision to exterminate rather than export the Jews (p15-19).

39. Sennett (2006) see n.7.

40. Sennett 2006: 185, see n.7.

41. Sennett 2006: 197 see n.7.

42. Carter (2007: 36) see n.13.

43. See Liebling et al (2011) see n.10; Crewe, Liebling and Hulley (2011) see n.11.

authority, and the shaping of values⁴⁴. Prisons differ, their cultures range from constructive and pro-social to indifferent or at worst, brutal. To forget that prisons suffer from an inherent legitimacy deficit, that order has to be worked at, or that their moral performance differs significantly, is to invite catastrophe. As Woolf argued in 1991, prisoners have legitimate expectations of certain standards of treatment including fairness, openness in decision-making and respect⁴⁵. Very few prisons meet high standards of legitimacy, and most establishments suffer from 'value imbalance' of one kind or another. Our understanding of what makes prisons more rather than less legitimate, the role of culture, management, and values in shaping this equation, and the possible links between 'interior legitimacy' and prisoners' well-being or other important outcomes, has only just begun⁴⁶. We actually don't know what the impact will be of cheaper prisons on these important dynamics.

Prisoners are beginning to express hopelessness and frustration with longer and more arduous sentences, which are difficult to manage one's way through. The requirements placed on prisoners to obtain declassification, parole and home leave, are increasingly stringent (and in many cases, unobtainable). As Richard Sparks argues in his article, 'Can Prisons be Legitimate?'⁴⁷, there is a complex interplay between the material (I would add, emotional and moral) conditions of prison life, and the external, ideological, structural and economic conditions in which such prisons exist. Increasing sentence lengths, a harshening climate, and continued population growth, make the prison experience feel less legitimate in the eyes of prisoners, even if the interior conditions are reasonable. Questions of exterior legitimacy include the fairness and transparency of policy decision-making (including any bidding process), accountability, and the extent of democratic deliberation involved in such decision-

making. Current penal discourse risks sweeping the concept of legitimacy under the carpet, privileging 'economic efficiency' over morality. The combined effects of this new 'economic rationalism'⁴⁸, with a re-emerging 'scientism' and unrestrained punitiveness in public and political thinking about offenders, is 'altering the contours of the penal realm'⁴⁹ in ways that are troubling.

Conclusion

The Carter report ended by reminding us that the rise in the size of the prison population since 1945 has been constant and steady, saying:

The combined effects of this new 'economic rationalism', with a re-emerging 'scientism' and unrestrained punitiveness in public and political thinking about offenders, is 'altering the contours of the penal realm' in ways that are troubling.

There is therefore a need for a focussed and informed public debate about penal policy. It will be important to consider whether to continue to have one of the largest prison populations per capita in the world and to devote increasing sums of public expenditure to building and running prisons and responding to fluctuating pressures as they emerge. Not only is it costly, inefficient and a demand on scarce land, but the sporadic way in which the pressures emerge and are responded to inhibits the delivery of effective offender management and rehabilitation⁵⁰.

Many critics would prefer to see a thorough and well-informed re-evaluation of the role of the prison, and a diversion of these funds into 'justice reinvestment'. How problems are defined limits the dialogue or possibilities of authentic communication and then policies are crafted out of these limited rationalities. More prison, achieved cheaply, is one policy option but it fails to take account of David Garland's critique that the prison is a 'tragic' option,

44. See for example, Garland (1990) see n. 34.

45. Woolf, H. and Tumim, S. (1991) *Prison Disturbances April 1990: Report of an Inquiry* London: HMSO .

46. See for example, Liebling assisted by Arnold (2004) see n.9; Drake, D. H. (2007) *A comparison of Quality of Life, Legitimacy, and Order in Two Maximum-Security Prisons*. Unpublished PhD Thesis: Cambridge University, Tait, S. (2008) *Prison officer care for prisoners in one men's and one women's prison*, unpublished PhD Thesis, Cambridge University.

47. See Sparks (1994) see n.29.

48. Pusey (1992) see n.31.

49. Sparks (1994: 24) see n. 29.

50. Carter (2007: 30) see n.13.

beset by irresolvable tensions and symbolising broken social relations. The 'conditions which do most to induce conformity ... lie outside the jurisdiction of penal institutions'⁵¹. Even if we were to agree that new prisons, with better designs are desirable, in opting for larger, cheaper prisons and more clusters we are privileging a certain economic kind of understanding of the problems faced. We risk forgetting there are other shared aims (such as social justice, crime prevention and inclusion, or legitimate prison communities) and there is a moral language which has been excluded from this debate⁵².

What does it mean for us socially, morally and politically when the main determinant of policy is the loaded and now frequently used term, 'we have to be realistic'⁵³? There are different visions of what is realistic. I come back to a distinction we may wish to pursue further between utopian realism versus cynical or pragmatic realism. Jonathan Sacks and Hans Boutellier

both remind us there are meant to be limits to legal sanctions — they put 'seal on the wax of moral sentiments'. In other words, methods of social control should be embedded in social arrangements, with the law only stepping in at the margins⁵⁴. We are placing the law and the prison centre stage, and it simply cannot do, nor was it ever intended to do, this amount of work. What we are seeing is the politics of fear overriding the politics of hope⁵⁵. This suggests a change in our values, from maximum freedom for all, to maximum security, and at the lowest cost. I propose that we think again. The question we should bear in mind is what 'image of society' lies behind our decision-making? How is power being reorganised? What are we choosing to spend our limited resources on? Cuts are not a threat in themselves. Economic rationalism, punitiveness, and lack of intelligent deliberation, pose the real dangers.



Prison Service Library & Information Services

PSC Newbold Revel

Delivers a quality Library and Information Service to staff working in HM Prisons. Provides access to Prison Service related information to other organisations in the criminal justice system.

For further information:

Tel: 01788 804119

Fax: 01788 804114

Email: catherine.fell@hmpr.gsi.gov.uk

51. Garland (1990: 289) see n. 34.

52. An 'instrumental rationality' dominates; see Dryzek, J (1995) 'Critical theory as a research program', in S. K. White (ed) *The Cambridge Companion to Habermas*, Cambridge: Cambridge University Press, pp. 97-119.

53. Some 'facts' are really values.

54. Boutellier (2001) see n. 35.

55. Sacks, J. (2000) *The Politics of Hope*, Vintage Press.

Reducing costs and maintaining values

Michael Spurr is Chief Executive Officer of the National Offender Management Service.

Introduction

Imprisonment and values

The title of this year's lectures 'Imprisonment and its values: the cost of cuts' is not one that I myself would have chosen. My immediate reaction was to respond (rather pedantically) by asserting that imprisonment itself cannot have values — and that the debate should therefore be about the values which we seek to uphold when imprisoning our fellow citizens and whether they are at risk from the public spending cuts which are impacting on the Prison Service. This is the approach I intend to take and as this is a 'practitioner' rather than an 'academic' perspective I will spend rather less time on the values themselves and rather more on the potential impact of the spending cuts — focusing on what we can do to maintain and improve the experience of prison in England and Wales notwithstanding the financial challenges we face. However, I should begin, at least for the record, by setting out the values which are core to delivery of offender management — including imprisonment — within the National Offender Management Service (NOMS). The Agency Framework Agreement sets these out as follows:

- Be objective and take full account of public protection when assessing risk;
- Be open, honest and transparent;
- Incorporate equality and diversity in all we do;
- Value, empower and support staff, and work collaboratively with others;
- Treat offenders with decency and respect;
- Embrace change, innovation and local empowerment;
- Use our resources in the most effective way, focusing on outcomes and delivering value for money for the taxpayer.

Values such as integrity, honesty and transparency are generic to all reputable organisations — but within our particular sector there are key values which define how we deal with individual offenders and the nature of imprisonment. In his speech to the NOMS Agency Conference in 2009 my predecessor, Phil Wheatley, provided a clear and compelling exposition of the relevance and importance of these values to our work.

I do not intend to rehearse the arguments again today, other than to summarise what they mean for prisons and for prisoners. For prisons, our values mean running secure, safe, decent (legitimate and fair) establishments, managing risk, maintaining public protection and providing opportunity for rehabilitation. For individuals, our values mean a commitment to treating prisoners in the way we would expect our own son or daughter to be treated were they in custody.

These values are now generally well understood and accepted across the Prison Service and have underpinned the real and sustained improvements which have been achieved over the last decade.

Prisons Today

Before moving on to consider the impact of public spending cuts, it is important to briefly set out where we are today in order to be clear about what we must preserve and where we need to do more.

Despite the well documented, sustained, year on year growth in the prison population, prisons today are more ordered, secure and decent than they have ever been. Riots and escapes can and do occur — that goes with the territory, but since the mid 1990s these have become relatively rare events — in stark contrast to the previous two decades. There were only 2 escapes last year (the lowest total ever recorded) and the level of absconds from open prisons has reduced from 1310 in 2003/04 to 240 last year. These are incredibly good outcomes.

The population has become more challenging, characterised by longer sentenced, more violent offenders, with a substantial increase in indeterminate sentences but offences of prison violence (measured by 'offences of violence punished per 100 prisoners) have remained fairly constant and (despite a worrying rise in recent weeks) the rate of self inflicted deaths at 68/100,000¹ remains at its lowest level since the mid 1980s.

Overall levels of purposeful activity have been maintained and the level and range of education provision, offending behaviour programmes, interventions and resettlement activity provided in prisons has been substantially increased. Outside agencies and community groups now operate routinely in all establishments, with multi-agency partnership working the accepted 'norm'. Transfer of responsibility to the NHS has resulted in sustained improvement in health care provision, and whilst availability of drugs in

1. 3 year average rolling rate.

prison is unacceptable and a major current issue, the rate of drug use has been reduced from 18.3 per cent in 1998/99 to 7.8 per cent last year. And whilst I do accept that MDT figures probably understate usage — this has always been the case — and the improvements achieved should not be undersold.

Analysis from HM Chief Inspector of Prisons (HMCIP) reports confirms that overall quality of delivery against the 'healthy prison tests' has been consistently improved. Specifically, the proportion of prisons/Units inspected which achieve outcomes which are 'good' or 'reasonably good' for each of the four healthy prison tests has improved over the last five years ^{Note 1:-}

HP Test	Prisons/Units Achieving Good or Reasonably Good	
	2006/7	2010/11
Safety	61%	78%
Respect	61%	73%
Purposeful Activity	49%	70%
Resettlement	64%	77%

The full data for each of the years is set out below:-

	HMCIP Safety				
	2006/07	2007/08	2008/09	2009/10	2010/11
4	16%	18%	19%	22%	25%
3	45%	49%	48%	53%	53%
2	34%	31%	30%	23%	20%
1	4%	2%	3%	2%	2%

	HMCIP Respect				
	2006/07	2007/08	2008/09	2009/10	2010/11
4	10%	9%	9%	12%	14%
3	51%	56%	58%	61%	59%
2	35%	32%	30%	26%	26%
1	3%	3%	3%	1%	1%

	HMCIP Purposeful Activity				
	2006/07	2007/08	2008/09	2009/10	2010/11
4	4%	9%	14%	18%	18%
3	45%	45%	49%	50%	52%
2	41%	36%	30%	28%	26%
1	10%	9%	7%	5%	4%

	HMCIP Resettlement				
	2006/07	2007/08	2008/09	2009/10	2010/11
4	4%	6%	10%	12%	18%
3	60%	63%	62%	61%	59%
2	33%	29%	26%	26%	23%
1	3%	1%	2%	2%	1%

This level of progress would not have been possible without targeted investment in key areas such as education, health, drug treatment, offender management and interventions, combined with really effective management of resources and budgets, which has enabled not only improved outputs, but genuine efficiency improvements including an overall reduction in unit costs per prisoner (from £41,000 in 2008/09 to £40,000 in 2009/10).

These changes have contributed to significant improvements in the rate of re-offending. The figures published in March record that the 12 month actual reconviction rate for all offenders in 2009 was 39.3 per cent compared to 43 per cent in 2000, an improvement of 8.5 per cent. When controlled for offender characteristics the improvement is 10.4 per cent, and in terms of the frequency rate (number of offences actually committed) the improvement is 24 per cent. For custody cases the improvements are 10.7 per cent (actual reconviction rate) and 16.6 per cent (frequency rate) ^{Note 2.}

	Re-conviction Rate	Frequency Rate
Court Orders/Probation Supervision	-9.4%	-24.3%
Custody	-10.7%	-16.6%
Less than 12 months	-6.5%	-5.1%
12 months to less than 2 years	-12.4%	-26.0%
2 years to less than 4 years	-23.0%	-33.6%
4 years and over	-25.6%	-32.5%
TOTAL	-10.4%	-24.0%

These are really encouraging figures — much better than we might have anticipated — making a real difference to peoples' lives, contributing significantly to the overall reduction in crime and translating into many fewer victims.

Today there are no 'hell hole' prisons — and I would argue, with a strong evidence base, that the prisons, in a real sense, have been transformed. But that doesn't mean they are where we would want them to be. I am conscious of the former Chief Inspector's comment some time ago that Governors can run a 'virtual prison', believing that things are much more rosy than the reality on the ground. This is not a good state and one where no Governor wants to be. Equally I don't want to live in a virtual Prison Service world and I certainly would not want to pretend that our prisons

Note 1: The proportion of Prisons/Units given each 1-4 rating for HMIP Safety, Respect, Purposeful Activity and Resettlement since 2005/06.

- 4: outcomes for prisoners are good against this healthy prison test
- 3: outcomes for prisoners are reasonably good against this healthy prison test
- 2: outcomes for prisoners are not sufficiently good against this healthy prison test
- 1: outcomes for prisoners are poor against this healthy prison test

Note 2: Extract from National Statistics Audit reconvictions: results from the 2009 cohort, England and Wales. MoJ Published 2011.

are where, ideally we would want them to be. As our Minister and our new Chief Inspector point out — whilst the improvements I have recorded are real, there still remain significant issues to tackle:-

- ❑ prisons are insufficiently purposeful — with too many prisoners still having too little to do
- ❑ drugs and mobile phones are too freely available
- ❑ reoffending rates in general and for short sentenced prisoners in particular remain unacceptably high
- ❑ conditions in some of the older/ageing parts of the estate are unsuitable for a modern Prison Service.

These would be substantial challenges to overcome at any time — but they are made even more daunting by the real cuts in funding — which we now face — amounting to 23 per cent of the Ministry of Justice (MoJ) budget over the spending review period.

There is an understandable fear that over the next few years — not only will we be unable to tackle the deficiencies identified — but that the Service will suffer real decline — impacting adversely on the experience of imprisonment for individuals, undermining our values and reversing the progress we have made in reducing re-offending and in maintaining safe, secure and decent prisons.

I do not under-estimate the challenge — life is going to be tough — but I am not fatalistic and believe we can navigate our way through the next few years maintaining the key gains we have made, whilst driving forward the Government's agenda to create more purposeful prisons focusing on rehabilitation.

Reducing costs and maintaining values

There are three reasons why I would argue that the 'cost of cuts' will not undermine our core values and our ability to run secure, safe and decent prisons, providing opportunities for prisoners to reform.

First, savings requirements are being properly targeted with acknowledgement that the costs of imprisonment will only reduce substantially if the population stabilises and reduces. The Secretary of State has been clear about the Government's ambition to improve rehabilitation outcomes so that the prison population stops growing — and then reduces by around 3000 over the next four years. This is not a huge reduction in the prison population — it would mean in

effect a prison population of 82,000 (the level in 2008) — but it would be a significant change of approach which, if successful, will allow savings to be made by closing capacity we no longer require. This is a key planning assumption on which savings identified for NOMS have been made. If this is deliverable — if we can cut crime by more effective sentencing and better rehabilitation outcomes — which is the objective behind the *Breaking the Cycle* Green Paper — then this is surely good news which all of us would welcome.

There are also real financial benefits. We have not yet completed the new prison capacity programme. Additional places come on stream over the next 12 months at Moorland, Featherstone II and Belmarsh

West. But over the last year the prison population has been relatively stable. Between December 2009 and December 2010 the population increased by only 0.38 per cent. This means that we can now look to close high cost, poor, unsuitable accommodation and make savings, improving the overall standard of the estate at the same time. We have already been able to close two high cost prisons (Lancaster Castle and Ashwell) and convert a third (Morton Hall) for use as an Immigration Removal Centre. In addition on this occasion we have been able to reduce overcrowding across the estate by terminating the option to purchase additional crowded

places in private sector prisons. If we can deliver on the ambition set out in *Breaking the Cycle* we will have the opportunity to close more capacity that is costly or no longer fit for purpose — achieving cost reduction and value for money for the tax payer at the same time.

The Government has made clear its commitment to provide the places required to accommodate all those sent to custody by the courts. So if the population does not stabilise or reduce there is an acknowledgement that funding will have to be found to provide the necessary places. This is a realistic approach and one which incentivises us to improve rehabilitation outcomes to make it work. That for me is very welcome.

Second, efficiency savings of 10 per cent from prison operating budgets over the four year spending review period are challenging but deliverable. The real test for individual prisons will be delivering around 10 per cent cost reduction over the next four years. Achieving this without damaging the improvements we

There are three reasons why I would argue that the 'cost of cuts' will not undermine our core values and our ability to run secure, safe and decent prisons, providing opportunities for prisoners to reform.

have made, whilst driving forward a new and ambitious reform agenda will be difficult — but I am increasingly confident that, with a determined focus where we target resources effectively and where we rigorously benchmark processes and costs to maximise efficiency — this can be done. This would be an example of delivering cost reduction without impact on the overall quality of service.

Whilst the recent competition announcements were uncomfortable for many in the public sector — the outcome does reinforce the argument that 10 per cent cost reduction without adverse impact on performance, is achievable over the spending review period. It is important to be clear that this is not about simply taking the lowest cost option. A quality threshold was set for each of the competitions. Not all bidders met the threshold and only those who did progressed to the final stage. At that final stage all bidders — including the public sector — committed to delivering better outcomes with significantly reduced costs. This was true for Buckley Hall. Already an efficient low cost establishment, as well as for Birmingham, where the size of the establishment and the potential for efficiencies meant that the scope for savings was greater. Of course I recognise that at this stage — we simply have bid commitments — and we will need to monitor delivery, performance and outcomes both against contract requirements and for individual prisoners very closely to ensure that the quality requirements are met and maintained. But the fact is that experienced professional prison operators are confident that they can deliver a positive, decent regime — in line with our values, at considerably less cost — with a significant level of innovation, for example in terms of developing substantially more purposeful activity at Buckley Hall, or better resettlement opportunities through partnership work at Birmingham. The viability of the bids has been properly and carefully evaluated by competent, experienced, operational staff and this provides a good level of assurance and delivery confidence.

In addition, at Doncaster we have commitment to deliver not only to the current operating standards but to put at risk a proportion of the contract price — with payment only being made if re-offending is reduced. This is an exciting development and the fact is that the prison will now have to work ‘through the gate’ with

partner organisations to achieve a minimum 5 per cent reduction in reoffending (actual 12 month reconviction rate). If this is not achieved, 10 per cent of the contract price will not be payable. If it is achieved, the contract will have significantly reduced crime for a cost at least £1m below what we currently pay. Payment by results is a developing concept and requires careful piloting — but the model does have real potential to incentivise a genuinely different, integrated ‘through the gate’ approach which could have a marked impact on reoffending, particularly for those serving short term prison sentences.

We can debate these issues in more detail later on

— but my point here is that the actual savings challenge for prisons over the next four years is achievable — without detriment to the control, care and work we do with prisoners. It will require us to re-think and re-configure what we do to achieve the most cost effective model of delivery in every establishment. It will require us to think differently. But there is evidence that the 10 per cent level of savings required in prisons is achievable through efficiency and effective prioritisation of resources — rather than from simply cutting services. This must be our aim.

Third, the focus on rehabilitation set out in the *Breaking the Cycle* Green Paper combined with a commitment to devolved decision making and

local flexibility in delivery provides a positive policy framework to develop prison regimes — despite the cuts. The challenge to develop more purposeful regimes incorporating initiatives such as ‘Drug Recovery Wings’ and the ‘Working Prison’ concept provides a necessary and appropriate balance to the requirement to cut costs. As previously stated, the focus on rehabilitation is right and welcome.

Over recent years a positive performance culture has been embedded within prisons — which is a key reason why in the last 12 months we were able to meet or exceed all key performance measures, whilst also exceeding our cost reduction targets. This is a strong foundation on which to go forward. The nature of imprisonment and the level of risk being managed means that prisons will always have to operate within a clearly prescribed framework — but there is scope for much greater local initiative and flexibility to respond to the policy agenda and this is something which I believe governors will welcome and respond to. Indeed

... there is evidence that the 10 per cent level of savings required in prisons is achievable through efficiency and effective prioritisation of resources — rather than from simply cutting services. This must be our aim.

I know from my own visits to establishments and from feedback from my Board colleagues that many prisons are already stepping up to the challenge.

A stable or reducing prison population, which does not require constant managerial attention, and removes the need to constantly increase capacity creates a very different operating environment. It will provide opportunity to develop more stable senior management teams with the scope to increase the tenure of Governing Governors and to develop more effective long term planning at establishment level, creating greater local ownership and accountability for decision making. This must be welcome and provides a much better opportunity for local development and innovation.

We will continue to monitor and to measure performance — prisons cannot be allowed to 'fail'. But there will be an increasing level of local flexibility to determine 'how' things should be done, with much more emphasis on outcome measures, including the development of reliable re-offending data for each individual prison which will incentivise establishments to maintain a focus on rehabilitation including effective work with partners. This policy is an important counter to the potential for simplistic 'cuts' philosophy which focuses only on the short term without regard to future consequences and impact. A prison which is committed to developing a purposeful regime and working to support effective rehabilitation is much more likely to remain decent and true to our values.

This is the policy challenge we face. It is not just about cuts — it is about developing even more effective regimes and, whilst that is a significant challenge, it is one that I believe the Prison Service can rise to.

Conclusion

In conclusion, I do not want to understate the risks and difficulties we are likely to face over the next few years. I am very conscious that the pace of change, the financial pressures and the operating context are immensely challenging, but in times such as these, having values, sticking to them and living by them, becomes even more important. We will have to take some very difficult decisions but the choices we make must be consistent with our purpose, our vision and our values.

I am proud that we have made the prisons more decent, more humane and more effective than they have ever previously been. I am determined that we will not lose the gains we have made and convinced that, despite the difficulties, we can do more. I'm sure that my determination to maintain our values and to keep improving is shared by Governors, managers and staff across the Service. That gives me confidence that the Service will rise to the challenge and the 'cost of cuts' will be painful but not fatal.

Regulating Prison Strikes and Industrial Conflict

Amy Ludlow is a PhD candidate in law and is based at the Faculty of Law and Institute of Criminology at the University of Cambridge. She is currently conducting fieldwork at HMP Birmingham.

Black describes industrial relations in the UK prison service as the 'Jurassic Park' of public sector industrial relations.¹ Despite industrial relations being identified as an obstacle to good performance or a contributory factor to a crisis in numerous reports, an industrial relations problem persists. In fact, Black argues that many penal reforms, including prison market testing and privatisation, can be 'construed as aimed more at diversification in order to resolve the industrial relations crisis, than to enhance penal reform and identify levels of accountability'.²

The Prison Officers' Association (POA) lies at the heart of any industrial relations discussion. The union has been described as a 'narrow, outdated and militant relic'.³ In response, the POA argues that the removal of their right to take lawful industrial action renders them unfairly limited in the face of new and increasing challenges for their members. The POA argues that the industrial action ban is symptomatic of a broader lack of understanding, respect and trust from their employer and more strongly, a determination by the government to oppress the union and their members.⁴

This article reviews the law and practice of managing social conflict between prison officers and their employer. It concludes by discussing the future of conflict management in light of recent estate restructuring and workforce changes.

Why is it unlawful for prison officers to take industrial action?

Unlike many continental legal systems, the law in England and Wales does not provide any workers with a right to take industrial action.⁵ The law instead provides for a limited immunity for trade unions from liability in tort where their conduct is in contemplation

or furtherance of a trade dispute (s. 219 Trade Union and Labour Relations (Consolidation) Act 1992 [TULR(C)A 1992]). Employees who are dismissed while participating in official industrial action which is protected within s. 219 (that is, industrial action which is in contemplation or furtherance of a trade dispute and which has been appropriately balloted for and notified to the employer) may also claim automatic unfair dismissal (s. 238A TULR(C)A 1992).

However, in England and Wales prison officers and the trade unions representing them may not take industrial action: they do not enjoy any immunity from liability. In *Home Office v. Evans* [1993] (unreported), the Court confirmed that since prison officers enjoy 'all the powers, authority, protection and privileges of a constable' under s. 8 Prison Act 1952, they share the same status as police officers and therefore may not take industrial action. The Criminal Justice and Public Order Act 1994 (CJPOA 1994) made this ban explicit in s. 127 by creating an actionable duty which was owed to the Secretary of State not to induce a prison officer (1) to withhold his services as such an officer or (2) commit a breach of discipline. For the purpose of this section, the definition of prison officer includes prison custody officers — prison officers who work in prisons which are managed by private companies.

In 2001, New Labour announced plans to repeal s. 127 CJPOA 1994 and replace it with a legally enforceable voluntary agreement with the trade unions (which retained the restriction on industrial action), coupled with an independent pay review body.⁶ On the basis of trade union agreement, s. 127 was disapplied on 21st March 2005 by order under the Regulatory Reform Act 2001.⁷ However, after the trade unions gave notice to terminate the agreement on 8th May 2007, and following the first ever national strike by prison officers on 29th August 2007, the government

1. Black, J. (1995) 'Industrial Relations in the UK Prison Service: The 'Jurassic Park' of public sector industrial relations', *Employee Relations*, Vol. 17, No. 2, pp. 64-88.

2. *Ibid.* p. 87.

3. Bennett, J. and Wahidin, A. (2008) 'Industrial Relations in Prisons' in *Understanding Prison Staff*, Bennett, J., Crewe, B. and Wahidin, A. (eds), Cullompton: Willan Publishing, p. 117.

4. See especially the former General Secretary of the POA, Brian Caton, speaking at the 2008 Trades Union Congress. For extracts, see Evans, D. and Cohen, S. *The Everlasting Staircase: A History of the Prison Officers' Association 1939-2009*, London: Pluto Press, pp. 247-249.

5. For further on the distinction between immunities and positive rights, see Wedderburn, K.W. (1995) *Labour Law and Freedom*, London: Lawrence & Wishart.

6. For further see Home Office (2004) 'Further Consultation Document: The proposed amendment of section 127 of the Criminal Justice and Public Order Act 1994 by Order under the Regulatory Reform Act 2001', London: HMSO.

7. The constitutionality of using so-called 'Henry VII' clauses to amend the law in this way has been questioned. See further Barber, N.W. and Young, A.L. (2003) 'The rise of prospective Henry VIII clauses and their implications for sovereignty', *Public Law*, pp. 112-127.

reinstated the statutory ban in s. 127 via the Criminal Justice and Immigration Act 2008.⁸

Challenging the statutory ban

In August 2004, the POA, which has sole recognition rights for collective bargaining in respect of most prison staff, lodged a complaint before the Committee on Freedom of Association (CFA) of the International Labour Organisation (ILO), relying upon Conventions 87 and 98 on freedom of association and collective bargaining.⁹ The POA argued first that prison services are not essential services demanding a prohibition of industrial action and secondly, that prison officers do not enjoy adequate compensatory guarantees to protect their interests in the absence of a right to strike. While the two limbs of their argument are closely related, the second limb is discussed instead below in reference to the Prison Service Pay Review Body.

As for the first limb of the POA's argument, that prison services are not essential services demanding a prohibition on industrial action, the CFA reiterated that '[t]he right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests'.¹⁰ However, it followed previous decisions in recognising that the principle of freedom of association in the case of public servants does not necessarily imply the right to take industrial action.¹¹ Moreover, industrial action by public sector workers may be prohibited or restricted in services which are essential or in the civil service with respect to officials acting in their capacity as agents of the public authorities. Essential services are defined as 'services the interruption of which would endanger the life, personal safety or health of the whole or part of the

population'.¹² The POA argued that service interruption merely causes discomfort and inconvenience. However, drawing upon a list of duties performed by prison officers, the CFA concluded that 'interruption of this service would endanger the life, personal safety or health of part of the population — primarily, the prisoners but also the wider public'.¹³ Prison services are therefore essential and it follows that prohibitions or restrictions upon industrial action are permissible.

While the CFA has accepted that industrial action by prison staff may be prohibited or restricted, it does not follow that the government has been given a *carte blanche* or that prison staff are now not entitled to have their grievances redressed. Given that the government has opted for a total ban on industrial action, rather than pursuing a minimum service delivery approach as is in place in most European states, the CFA made clear that it must work hard to demonstrate that prison staff are adequately protected. The CFA last met in early 2011. Despite the CFA having given its view of the case on the merits, the POA's complaint is not yet closed. The CFA will only do so once it is satisfied that its recommendations concerning worker protection in the absence of a right to take industrial action have been adequately responded to by the government. It seems clear then that as of early this year, the CFA was not sufficiently satisfied with the government's response (see further below for discussion of the

. . . drawing upon a list of duties performed by prison officers, the CFA concluded that 'interruption of this service would endanger the life, personal safety or health of part of the population — primarily, the prisoners but also the wider public'.

Prison Service Pay Review Body).¹⁴

How is social conflict managed?

Despite not enjoying a right (or more accurately, immunity from liability) to take lawful industrial action, prison staff retain the right to organise themselves collectively, that is to form a trade union or other representative body.¹⁵ Prison officers are represented for

8. For the statement to the House of Commons see Straw, J. (2008) 'Oral statement to the House of Commons — Prison Service: Industrial Relations'.

9. The UK ratified these conventions on 27.06.1949 and 30.06.1950 respectively.

10. ILO CFA *Digest of Decisions 2006*, para. 522.

11. ILO CFA *Digest of Decisions 2006*, para. 572.

12. LO CFA *Digest of Decisions 2006*, para. 576.

13. ILO CFA (2005), Vol. LXXXVIII, Series B, No. 1, Report 336, Case No. 2383, para. 767.

14. ILO CFA (2011), Vol. XCIV, Series B, No. 1, Report 359, Case No. 2383.

15. ILO CFA *Digest of Decisions 2006*, para. 232. See also Article 11 of the European Convention on Human Rights and Article 12 of the Charter of Fundamental Rights of the European Union.

collective bargaining purposes principally by the POA.¹⁶ The POA's role is generally more limited however in the eleven privately managed prisons in England and Wales, where other trade unions or staff associations fulfil the staff representation function (such as the Prison Service Union or the Public and Commercial Services Union).¹⁷

Prior to 2007, prison officers enjoyed specific dispute resolution procedures which guaranteed their trade union representatives access to those with bargaining power and a process through which social conflicts could be redressed. Dispute resolution procedures were first provided for in the Cubbon Formula of 1987, then in the 1993 Industrial Relations Procedure Agreement (IRPA), thirdly in the Voluntary Agreement (VA) of 2001 and finally in the Joint Industrial Relations Procedure Agreement (JIRPA) of 2004. The VA and JIRPA provided for binding arbitration of disputes on a pendulum basis by arbitrators which were appointed by the Advisory, Conciliation and Arbitration Service (ACAS).¹⁸ This encouraged early settlement since any gains made in the initial negotiation stage would be lost if the parties failed to agree and the dispute had to be escalated for final resolution. However, the agreements suffered from a lack of clarity in definition of their scope, which led to a constant tension about whether an issue was policy or terms and conditions and whether it fell

inside or outside the procedure. In 2007 the POA gave notice that they would withdraw from the JIRPA. There has not been a formal national dispute resolution mechanism since the JIRPA although some local arrangements remain in place. Negotiations for a new national mechanism are currently on-going.

In March 2001, a statutory pay review body, the Prison Service Pay Review Body (PSPRB) was established (The Prison Service (Pay Review Body) Regulations 2001 (SI 2001 No. 1161)). The Body's remit is to examine and

report on matters relating to the rates of pay and allowances to be applied in the prison services of England and Wales and Northern Ireland. The PSPRB was established as part of the Voluntary Agreement package, in compensation for the industrial action prohibition. However, in 2002 and 2007, the Government staged implementation of the Body's recommended pay awards, arguing that the recommended pay rises were unaffordable. It was this 2002 pay award process and decision which led the POA to argue that the PSPRB lacks the necessary independence and power.

As was explained above, the 2002 pay award staging led the POA to make a complaint before the ILO CFA that the PSPRB is an inadequate compensatory guarantee of worker protection. The POA argued that the government's staging of pay awards was unjustified and that a concern for independence and impartiality was inadequately reflected in the qualities which are required for appointment to the PSPRB. Furthermore, they argued that the power of the Secretary of State (under Regulation 4 of the PSPRB Regulations) to give the PSPRB directions in the form of a remit letter as to considerations to which they must have regard, is an unwarranted fetter on the Body's discretion. Finally, they highlighted the position of prison custody officers working in the private sector, who do not fall

within the PSPRB's remit and yet are in the same position as public sector prison officers in respect of the industrial action prohibition.

The POA's arguments have been relatively successful before the ILO CFA. For compensatory guarantees to be adequate there must be 'impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented'.¹⁹ The Committee held that

Prior to 2007, prison officers enjoyed specific dispute resolution procedures which guaranteed their trade union representatives access to those with bargaining power and a process through which social conflicts could be redressed.

16. For further on the history of prison officers obtaining the right to organise, see especially Evans, D. and Cohen, S. *The Everlasting Staircase: A History of the Prison Officers' Association 1939-2009*, London: Pluto Press and Bennett, J. and Wahidin, A. (2008) 'Industrial Relations in Prisons' in *Understanding Prison Staff*, Bennett, J., Crewe, B., and Wahidin, A. (eds), Cullompton: Willan Publishing.

17. The private management of prisons was enabled by the Criminal Justice Act 1991. The first private prison in England and Wales was HMP Wolds which opened in 1992 under the management of Group 4 (Remand Services) Limited.

18. ACAS is a non-departmental body which helps with employment relations by supplying information, independent advice and training, and working with employers and employees to resolve employment problems.

19. ILO CFA *Digest of Decisions* 2006, para. 596.

the following rules should apply: 'i) the awards of the Prison Service Pay Review Body are binding on the parties and may be departed from only in exceptional circumstances; and (ii) the members of the Prison Service Pay Review Body are independent and impartial, are appointed on the basis of specific guidance or criteria and have the confidence of all parties concerned'.²⁰ As yet, the CFA has not been persuaded that the PSPRB meet these criteria. The National Offender Management Service (NOMS) has agreed to suspend use of the remit letter unless specific reasons require it to be used and in such an event, has agreed to write to the POA to explain its reasons. However, in its most recent decision, the CFA 'notes with regret that the complainant has not been able to obtain representation on selection panel for the Board, despite the Government's previous declared intention to satisfactorily respond to the POA's request'.²¹ The Committee also urges NOMS to reinstate consultation about reforms to the PSPRB to ensure the Body's impartiality and requests information about the procurement provision made for compensatory guarantees in respect of private sector prison custody officers.²²

It would therefore appear that further reform of the PSPRB is due. However, the government might be reticent to grant the Body greater independence and power at a time of public sector spending cuts and fiscal crisis. Moreover, if the government were minded to ignore the CFA's recommendations, the Committee does not have any enforcement powers upon which it might draw. While it might therefore be politically embarrassing for the UK to remain in disfavour with the CFA, it is possible for government to ignore the Committee's recommendations with little consequence.²³

Current sources of social conflict

Strikes by prison officers, in the sense of a total withdrawal of labour by staff, are rare in England and

Wales. The first and only national strike by prison officers occurred on 29th August 2007 in response to a dispute over Contract Supplementary Hours (CSH) (a scheme whereby prison officers could voluntarily enter into contracts for additional working hours) and the Government's decision to stage implementation of the Prison Service Pay Review Body recommendation for the 2007 pay award. The government responded by obtaining an interim injunction. However, significant damage was incurred at some establishments, especially at YOI Lancaster Farms, and the cancellation of court appearances, prisoner transfers and the use of police cells caused disruption and expense.

Lower level industrial action by prison officers, such as overtime bans and working to rule is more common although such action is mostly still unlawful as it is either a breach of contract or interferes with contractual performance and therefore falls within s. 219 TULR(C)A 1992. Disputes have generally concerned staffing levels, pay and overtime and more recently, the market testing and privatisation of prisons. Working conditions for prison officers have been subject to much recent change. In 2008, the government came close to agreement with the trade unions on a package of change called 'Workforce Modernisation'. The Government provided a £50 million funding incentive but the package was

rejected by unions in 2009 in the final stages of negotiations.²⁴

Since 2009 many of the reforms to prison working conditions which were proposed in the Workforce Modernisation package have in any event been implemented. These changes include the introduction of a two-tier prison officer workforce, with a new pay structure and terms and conditions and the closure of the Principal Officer grade, which was the most senior uniformed prison staff grade. A Job Evaluation Scheme has commenced and in March 2011, the Government accepted Lord Hutton's proposals in relation to the reform of public sector

While it might therefore be politically embarrassing for the UK to remain in disfavour with the CFA, it is possible for government to ignore the Committee's recommendations with little consequence.

20. ILO CFA (2005), Vol. LXXXVIII, Series B, No. 1, Report 336, Case No. 2383, para. 773.

21. ILO CFA (2011), Vol. XCIV, Series B, No. 1, Report 359, Case No. 2383, para. 182.

22. ILO CFA (2011), Vol. XCIV, Series B, No. 1, Report 359, Case No. 2383, paras. 183-184.

23. See further Gravel, E., Duplessis, I. and Gernigon, B. (2001), *The Committee on Freedom of Association: Its impact over 50 years*, Geneva: International Labour Office.

24. For a brief summary of Workforce Modernisation see http://www.pcs.org.uk/en/prison_service_group/workforce-reform-and-restructuring/achive/workforce-modernisation-wfm.cfm.

worker pensions.²⁵ These changes have of course caused tension although industrial action has remained isolated and low-level. Highly significantly, one outcome of union rejection of Workforce Modernisation has been the further market testing of public sector prisons with the consequence that in March 2011, it was announced that HMP Birmingham would be transferred to private sector management under G4S from October 2011. This will be the first transfer of an operational public prison to the private sector. It is noteworthy however that the POA's recent ballot for industrial action in the wake of this decision produced a negative result.²⁶ It may be that the recent change in POA leadership on the National Executive Committee and the shockwaves sent by the decision to privatise HMP Birmingham, are heralding in a new phase in prison industrial relations.

Discussion

Prison officers and the unions which represent them currently find themselves in the middle of a huge amount of change. Prison privatisation was introduced in the 1990's in part to break the power of the POA, which has been seen as a powerful obstacle to change. It might be overstating the case to describe the POA as broken, but privatisation, and particularly the recent decision to transfer HMP Birmingham to the private sector, appears to have weakened the union. The market testing and privatisation agenda has proved divisive between national union policy and local union branches. While national union policy remains one of total opposition and disengagement, local establishments have had to engage with the process or else forfeit the right to bid to retain public sector management of their prison. This has tended to undermine the union's relevance in the eyes of its membership at establishments which are subject to market testing. Moreover, the POA's inability to have prevented a public sector establishment being taken over by the private sector, might serve to undermine perceptions of the union's credibility and power. This may be compounded by the on-going renegotiation of facilities' agreements between NOMS and all relevant trade unions. These agreements define the number of union hours and extent of establishment facilities which are paid for by NOMS. A reduction in the POA's facility

seems likely. This may redistribute power between the different unions in the prison sector and, coupled with the private sector's recognition of unions other than the POA, challenge the POA's dominance among unions and power vis-à-vis management.

Privatisation and the broader employment changes which have been described above have combined to create huge occupational and industrial uncertainty. The POA is struggling to find a meaningful voice in the midst of this change and this may have been exacerbated by the absence of any formalised dispute resolution process. With hindsight, their withdrawal from the JIRPA is perhaps regrettable. While the formal legal position with respect to industrial action remained the same under the JIRPA (prohibited on a contractual basis) as s. 127 CJPOA 1994 (prohibited on a statutory basis), the voluntariness of the contractual model set a less combative and conflictive tone for industrial relations. Furthermore, continuation of the JIRPA may have staved off or softened the privatisation and market testing programme.

The absence of recourse to industrial action is an important symbol of the balance of power between employer and employee and will inevitably influence a trade union's bargaining strategy. However, given the vulnerable state of many prisoners, some limitation upon industrial action to ensure that prisoners' basic needs are met appears both morally and legally justified. In any event, since prison officers are such a highly unionised workforce, the impact of the statutory ban in practice appears limited. Moreover, progress is still possible through negotiation, compromise and dialogue, even in the absence of industrial action as the ultimate threat. The ILO CFA's approach to the POA's complaint is encouraging. The Committee has taken a robust and searching attitude and some progress, particularly in respect of the use of remit letters in the PSPRB, has been made. However, the length of time the case has taken, coupled with the CFA's lack of enforcement powers, means that the ILO process is unlikely to significantly alter the management of prison staff social conflict in England and Wales. There are limits to what law can achieve. It is perhaps now time for the POA to leave behind its traditional baggage and move beyond law and industrial action towards a more professional, conciliatory and realistic future.

25. For further on pensions see http://www.hm-treasury.gov.uk/indreview_johnhutton_pensions.htm.

26. 8,312 voted against and 4,078 in favour of industrial action. See POA circular 94, 16.06.2011.

Learning from the behaviour of inmates and guards helps solving wicked challenges in the Danish Prison and Probation Service

Lars Thuesen and Laura Schmidt-Hansen work for the Danish Prison and Probation Service.¹

Once upon a time in the little Kingdom of Denmark the Prison and Probation Service experienced a set of really complicated and wicked problems. Many things indicated a tough and stressful environment — both for the inmates and the front line staff. Though most of the inmates and guards stuck to the common, daily routines, there were a few local, hidden heroes. A few inmates and guards managed to behave in distinct, different ways than the others, thereby succeeding in coping with and overcoming the challenges of the system environment. They led lives that were more meaningful than the others, thus being able to avoid stress, burn-out and alienation.

This is the story of the hidden local heroes, their successful behaviours and coping mechanisms, and how we all — finally — began to learn from them. This story evolves from a process that began in the Danish Prison and Probation Service two years ago. It was a process that started out with an ambition of finding new ways to solve wicked problems in the Danish Prison and Probation Service, to add new perspectives to the way we deal with problem solving initiatives, and to initiate social changes.

A large inspiration in the process has been the Positive Deviance Approach, as well as collaborate and user-driven methodologies. This means, among other things, that it has been a process characterized by practical field work with inmates and front-line staff. And a process that has taken place out in our facilities — out where the wicked problems are, and among the people who know the problems, work with the problems, experience the problems and are the true experts on the problems.

The description in this paper is not based on academic research, but on actual fieldwork. The paper entails the notes and reflections as a change practitioner working within our system.

In brief, Positive Deviance is a method used to solve wicked problems by discovering uncommon and

successful behavioral strategies of individuals. According to Sternin and others² Positive Deviance can be summed up as follows:

The basic premise is this: 1) Solutions to seemingly intractable problems already exist, 2) they have been discovered by members of the community itself, and 3) these innovators (individual positive deviants) have succeeded even though they share the same constraints and barriers as others³

The origin of the Positive Deviance approach is found in different theoretically approaches and methodologies. Firstly, there is inspiration from anthropology, which requires a new role from the facilitating team, for example mastering neutral observation, understanding behavioral patterns, asking good questions and active listening by the facilitators. Secondly some roots come from positive psychology, because focus is on assets rather than problems and behavior that already exists and works well. Then Positive Deviance is an evidence based approach, which implies being driven by facts, data and measurable behavior. Finally the approach is holistic, aiming at understanding the whole of the system, and focusing not just the usual suspects but the whole community in finding solutions to the wicked challenges.

According to this approach, positive deviation is:

... the uncommon behaviour that holds a key to success and the behavioural difference that helps a person or a group to overcome the same adversities that overwhelm most of the neighbours.

In other words the Positive Deviance approach tries to discover uncommon, successful coping strategies that individual use to survive under conditions that is often seen as impossible by traditional experts. The approach seeks out the latent behaviour and design

-
1. Our facilitating team and the facilities have been really helpful. The team consists of Mads Fly-Hansen, Laura Schmidt-Hansen, Peter Dexters and Anne Bunimowicz.
 2. Pascal, Richard Tanner, Sternin, Monique and Sterning, Jerry. *The Power of Positive Deviance: How Unlikely Innovators Solve the World's Toughest Problems*, Harvard Business Press 2010.
 3. See the end of the paper for a more detailed description of the method Positive Deviance.

interventions that enable others to practice the behavioural strategies as well. It is different from traditional problem solving, where you move from problem analysis towards solutions. In positive deviance you flow from problem identification and analysis of successful solution to solving the problem. It is suitable for complex changes that can be seen as adaptive, which means it is not suitable for technical changes where best practices are useful and applicable. Also it is suitable, when problems are wicked and intractable and need new approaches. The problems and solutions share are rooted in the local community, which means that solutions are to be found among local community members.

Positive Deviance has been applied all over the world within various fields, for example Vietnamese child nutrition, HIV in Thailand, MRSA in the USA, and gang-related crime in the USA.

Thus this approach differentiates itself from traditional best-practice, expert-driven approaches, where externally imposed solutions often meet resistance and rejection. Traditionally it is argued that knowledge will change behaviour, but such an approach often produces poor results. In Positive Deviance the solution is born in the community and behavioural patterns are analysed and then trained and spread to others in the group. It is easier to act your way into a new way of thinking than to think your way into a new way of acting. In other words there should be a change in behaviour then values, instead of trying to change values and attitudes first. It is practice oriented rather than knowledge oriented. Another important factor is that the deviant practice one identifies must be transferable to others or in other words a resource that is available to everyone⁴.

The wicked challenges in the Danish Prison and Probation Service

The Danish prison system is acknowledged worldwide for low rates of recidivism, high numbers of inmate re-socialisation, high security standards, and a healthy working environment. Nevertheless severe social challenges in fulfilling overall goals of reducing criminality by balancing between tough and soft approaches exist. The nature of the challenges is often systemic, complicated, and rife with dilemmas in the daily working routines. It is a system that, on one hand entails a lot of control and regulatory mechanisms and, on the other requires a lot of both system flexibility and individual judgement in order to function effectively (see Table 1).

Security	Re-socialisation
Strict	Soft
Punish	Support
Decide	Listen
Stick	Carrot
No	Yes
Distance	Closeness
Professional	Personal
Judicial principles	Pedagogical principles
Rules	Creativity
Brain	Heart

The dual purpose of the prison service mission makes it complicated to manoeuvre at the operational level. The Staff constantly needs to balance between strict and soft approaches in tackling their work with the inmates. Accordingly, the inmates need to adopt and accept a variety of behaviours from guards that might seem conflicting, though necessary to pursue the goals. Over the last decade there has been a 'tough on crime' policy due to government decisions. Combined with a clearly stated political goal of reducing recidivism, this is complicating mastering the balance between strict and soft approaches even more.

At the same time the nature of crime has changed dramatically, as has the profile of the inmate population. Previously the inmates could be characterised as relatively homogenous which is no longer the case, mainly due to globalisation of crime and rise in gang-related criminality. The fact that alternatives to sentencing have been introduced, further adds to the complexity of the clients.

Human resource issues are also complex and deeply connected to the system dynamics. Many front-line officers feel a lack of meaningful work, and they often fear and sometimes experience threats and violent incidents. Furthermore the tone among staff and in relation to inmates can be harsh, and one out of five employees has recently experienced some kind of harassment from either colleagues or immediate managers. The front-line staff also experience that management do not handle conflicts adequately. In short, the system lacks social capital, and the level of trust and confidence needs to be improved. The result is too often stress and burn-out among guards, an average rate of absenteeism of over one month per year in the maximum security sector, and an average retirement age of 48, which is alarming compared to working places in Denmark.

4. See Pascale, Richard Tanner and Sternin Jerry, Your Company's Secret Change Agents, Harvard Business Review, pp.1-11, May 2005 for a brief description of the approach and cases.

The process of social changes in the Danish Prison and Probation Service

As mentioned the social change process was initiated about two years ago, just after we met Jerry Sternin during management programme at Oxford University. During the course we worked together on the prison case as an example of how to apply the positive deviance methodology in a complex system facing wicked problems. Shortly after, we began to plan the processes in the Danish Prison Service. Unfortunately Jerry got seriously ill and died in December 2008. His friend and colleague Mark T. Munger was very generous and took over and has since then helped us understanding and applying the methodology in the Danish Prison Service. It has been a long journey, and senior management has been impatient and eager to see results. But exactly the slowness of the process is maybe one of the strengths. Or as Jerry puts it: 'You have to go slow to go fast'.

Only recently over the last six months we have seen distinct individual behaviours among, what we call our secret local heroes — that is the front-line staff working daily in several facilities with inmates and clients. It is an emerging journey and we do not claim to have solid hardcore results yet, though some interesting patterns

have been discovered among staff and inmates that others just like them can learn from.

Design of the Positive Deviance Initiative

It is crucial to design the positive deviance processes the right way. We did three things at a general level.

Firstly, we decided to train a team of internal positive deviance facilitators. The facilitators participated in a program that was a mixture of theory and practice. Their role is to facilitate rather than attempt to be experts — the real experts are the people in the facilities, and the people who own and feel the problems. This has been crucial in the progress of our initiative, because internally trained staff have much more street credibility than external consultants.

Secondly, we designed and initiated Living Universities, where facilitators and practitioners could meet and share experience of all kind. We have had five half-day sessions during the process, where reflections, knowledge sharing and burning questions were on the agenda. External practitioners and other interested partners have been invited to participate throughout the process. We named these sessions 'kitchen table' discussions, because you usually have good and useful discussion, while you eat together. Often we asked

**Table 2:
Approaches to Change**

TRADITIONAL APPROACH	POSITIVE DEVIANCE APPROACH
<i>Leadership as a Path Breaker</i> Top Down approach	<i>Leadership as Inquiry</i> Community takes ownership of the quest for change — bottom up
<i>Outside in</i> Expert and best practise driven	<i>Inside out</i> Community identifies pre-existing solutions
<i>Deficit Based</i> Deconstruction of problems and design of best practice solutions. Implication: 'Why aren't you as good as your peers?'	<i>Asset based</i> Community leverage pre-existing solutions practised by those who succeed against odds.
<i>Logic driven</i> Think, then act	<i>Learning driven</i> Act into new thinking
<i>Vulnerable to Transplant Rejection</i> Resistance to imported ideas	<i>Open to Self-replication</i> Latent wisdom is tapped
<i>Flows from Problem Solving to Solution Identification</i> Best practice applied to problems within the context of existing parameters	<i>Flows from Solution Identification to Problem Solving</i> Solution space is expanded through the discovery of new parameters
<i>Focused on Protagonists</i> Engages stakeholders who would be conventionally associated with the problem	<i>Focused on Enlarging the Network</i> Identifies stakeholders beyond those directly involved with the problem

ourselves 'who else should be at the kitchen table' with the result of enlarging the group and enriching the knowledge sharing.

Thirdly, we decided not to manage the initiative in a traditional top-down manner from the central office. It was decided to develop a framework and a set of processes that could facilitate local initiatives instead of coming up with solutions to their problems. This change in mental model has proven very effective, and was a bit frightening, because there was an expectation of the usual management style where the central level finds solutions to problems (not that they always work in practice). On the other hand the central level had to give up control, which has been a challenge, especially, when things and processes get tough.

The secret behaviour of the local heroes — three stories

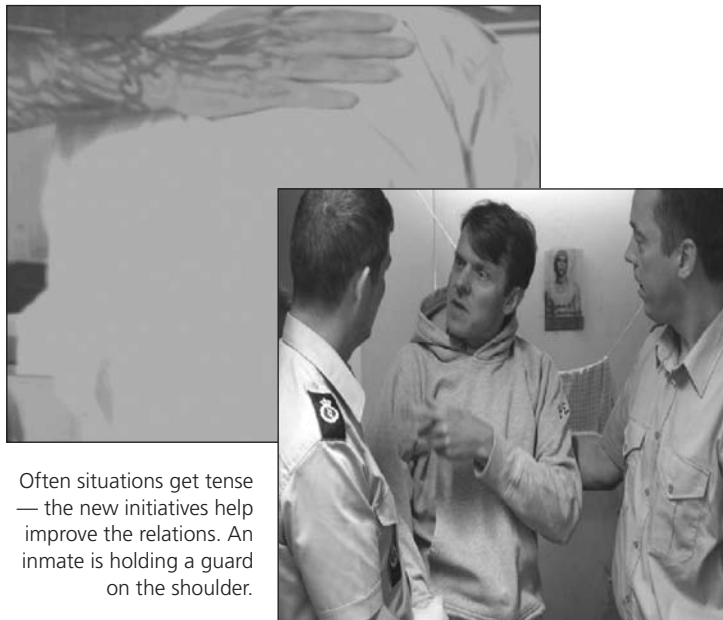
At one maximum security prison facing exactly the wicked challenges mentioned above, we starting a user-driven process where inmates together with guards began discovering the secrets of a meaningful daily routines. Both inmates and staff were bored, but a few inmates and guards were more active during the day than the others. These individuals managed to cope and get by despite the inherent systemic barriers. Together with a group of both other inmates and guards they began applying and developing new behavioural routines and activities during the day that created more energy and life in the prison, for example a 12 week health and nutrition programme including physical training — together. Though this might seem banal and almost simplistic, it was not done before in a wider scale for larger groups of inmates and staff. It has created new energy and meaningfulness for both



The left picture illustrates the life of a prisoner before the initiative, where an ashtray, an empty coffee cup and a play station were a major part of life. The right picture illustrate the life after the initiative was launched, where inmates and staff — together — engage in physical training, health and nutrition counselling, and various sport activities.

inmates and staff. People within our system from other facilities are now beginning to question their practices and want to learn from the initiative.

Another maximum security facility facing high rates of harassment and a harsh tone among staff and in relation to inmates discussed the behaviours of 'softeners' and tighteners' among the guards. They found out that the 'softeners' had distinct



Often situations get tense — the new initiatives help improve the relations. An inmate is holding a guard on the shoulder.

communicative behaviours that were very different from the others. Interestingly enough there is a tendency that the 'softeners' experience fewer incidents with threats and violence. This is social proof that their behaviour is successful in coping with the difficulties of the system logic. Together the staff found out that the 'softeners' are using distinct communication and feedback techniques that help improve the psycho-social environment of the prison. Now the others are learning how to apply the techniques.

A third maximum security prison with the same challenges as mentioned above and additionally a high turnover rate of inmates and a lot of first timers has been working on lowering stress, burn-out and the rate



of absenteeism among guards. They began a process of identifying staff with less than five days of absenteeism over the last two years. The behaviour of these guards turned out to be very interesting. Three distinct behavioural patterns emerged. Firstly the deviants all have some kind of a helper gene. They are warm-hearted people, who want to help others in getting a better life and getting out of criminality. While being at work, though, they are able to manage and control their desire to help in order to keep the right professional distance. In their spare time though, they are very active in the social sphere, involving themselves in sport club, NGO's etc. This helps them survive the system dynamics that might result in stress, burn-out and higher absenteeism. Secondly, another deviant behaviour is that some guards throughout the process admitted that they stopped reading the dossiers of the inmates in order to meet the inmate as an equal human being and without prejudice. This behaviour is closely related to human respect and is named 'kill your curiosity'. Thirdly, the deviants are able to ask for help in stress-full and painful situations, so the problem becomes a working place and common problem instead of only an individual one. This pattern is called 'swallow your pride'.

Reflections and recent learning points

Finally, it is worth reflecting on our observations about the process as a change management and diagnostic tool in the prison environment. These observations are summarised below:

- ❑ It is an emerging process and the Prison Service still has a long way to go, though some interesting evidence is being found. The deviant behavioural patterns are now being analysed and the process of teaching other how to act differently has been started up.
- ❑ Framing and defining the right problem is an art and very difficult. It requires a lot of facilitation skills, active listening, being quiet and asking qualified questions.
- ❑ The process of identifying individuals with distinct positive behavioural patterns that others can learn from is an emerging process that takes a lot of effort and time. The approach should be taken into account, unless other approaches are not applicable.
- ❑ The process creates a lot of energy and frustration among the inmates and staff. It is about acting your way into a new way of thinking, which is new, uncommon and often human beings want to jump to conclusions quickly.
- ❑ Leaders and middle managers need to change their mental models by loosening control and living with the fact that traditional hierarchies are turned upside down. When things get tough they have a tendency to try to roll back in the expert trap and 'fix' instead of letting the change process emerge. The real experts are the local problem owners.
- ❑ Finding the right evidence is a hard nut to crack too. Social proof: 'somebody just like me is doing it, so can I' is hard to identify.
- ❑ How to get people involved and motivated constitute a challenge. Formulating an inspiring invitation that makes people join the process is crucial. It is crucial that the processes are engaging and demand-driven. It should not be driven, only facilitated from the central office.
- ❑ Finding the right data is difficult, though crucial. Skilled facilitation helps, but does not entirely do it. The community needs to demand for data, facilitators can help to organise and structure them, so social proof can be presented and discussed.
- ❑ Managers responsible of other wicked areas are becoming aware of the positive deviance approach. For example it is now being considered using it in one maximum security prison in relation to gang-related crime challenges.
- ❑ A lot of wicked social challenges move across 'silos', both within the prison system and across boundaries to other institutions, private companies and NGO's. It is challenging to engage people outside the smaller community, because for example financial, cultural, managerial inducements are not present and levers change.
- ❑ The process has given us some seeds than are slowly developing and spreading in a sustainable way.

Time is Money:

The role of personal finance in reducing re-offending

Dr. Kimmett Edgar is Head of Research at the Prison Reform Trust and Chris Bath is the Director of Projects at UNLOCK.

'Financial exclusion might play a role in, and be reinforced by, custodial sentences.'
(Legal Services Research Centre)

The Legal Services Research Centre (LSRC) has previously produced useful evidence which shows how a lack of access to financial products and services is linked to the risk of offending. However, it is perhaps less clear how a custodial sentence might reinforce financial exclusion. In this article, we consider the impact of imprisonment on the person's financial status and their capacity to manage their personal finances. The evidence comes from a recent report, *Time is Money*, jointly published by the Prison Reform Trust and UNLOCK, the National Association of Reformed Offenders¹.

The LSRC defined financial exclusion in terms of five factors : having no bank account, holding no savings, using high interest credit, owing priority debts, or having an annual income less than £14,500. Research conducted by the LSRC found that:

- ❑ 54 per cent of prisoners (58 people) had a total household income of less than £10,000 per year before going to prison.
- ❑ 40 per cent of prisoners (53 people) were unemployed before going to prison.
- ❑ Looking at the *number* of times interviewees had gone to prison, results showed that financially excluded prisoners had served significantly more prison sentences than financially included prisoners².

Time is Money produced new evidence about the financial exclusion of people in prison, considering; banking; insurance; credit, debt and saving; and money advice³. We discuss each of these, with particular attention to the ways that custodial sentences create barriers to accessing basic financial services.

Banking

Access to a basic transactional bank account is critical to successful resettlement and, in turn, reducing

re-offending. In addition to being a prerequisite for employment, it can make it easier to secure stable accommodation, improve access to benefits, allowances, grants and other mainstream financial services and can encourage more responsible attitudes to spending.

A third of people surveyed in prison said they did not have a bank account. This compares to only 5 per cent of low income households in the UK⁴. Most of those had previously held one at some time, but about one in ten surveyed had never had one. Half of the women interviewed had a bank account, in contrast to almost three-quarters of men. Some people described the difficulties they had faced in opening accounts. The main obstacle appeared to be a lack of the required identification. For example, few former prisoners are likely to have a utilities bill.

I've never been abroad, so no passport. I've been disqualified since I was 14 years old, so no licence. They need a photo I.D. So I had my mother, who had been banking with them, to vouch for me. So we got it. We still had to argue the case.

Since 2004, UNLOCK has been working with prisons and banks to facilitate the opening of new bank accounts. As far back as 2005, NOMS accepted the need to increase the number of prison/bank partnerships, while conceding that resources may not be available in all prisons. In December 2009, NOMS published a revised Prison Service Instruction (PSI 35/2009) which instructed governors to support access to banking by using the ID solution developed by a pilot run by UNLOCK. However, there remains no guarantee that banks will accept the form as identification and open accounts, causing frustration for people in prison and prison staff and often local bank staff. Work to secure partnerships between prisons and banks continues.

-
1. *Time is Money*, funded by the Friends Provident Foundation, can be downloaded from the websites of Prison Reform Trust (www.prisonreformtrust.org.uk) and UNLOCK (www.unlock.org.uk).
 2. Legal Services Research Centre (2007) *Putting Money Advice Where the Need is: Evaluating the Potential for Advice Provision in Different Outreach Locations*, by A Buck, T Tan, and C Fisher, London: LSRC.
 3. *Time is Money* surveyed 144 people in prison and interviewed 47 of them; it also surveyed 24 former prisoners and 29 families of people with convictions. Other topics include benefits, the discharge grant, and the reform of the Rehabilitation of Offenders Act 1974.
 4. DWP (2010), *Family Resources Survey, 2008-2009*, London: DWP.

Of the 47 people interviewed in prison, 40 had a bank account, but only three said they could manage it directly during their sentence. Five others depended on their families to manage their bank account.

As a direct result of going to prison, I ended up bankrupt. I have now got a deposit only account.

I can't work or access my bank [in prison] which is the only reason I am in debt.

People interviewed in prison were asked whether they expected to need any banking services after release. Just under half (45 per cent) said that they would need new or further services from their banks when they were released, which included, for example, a credit card, an overdraft facility and new savings accounts.

Insurance

Access to insurance is fundamental to full financial participation in a modern society. It supports stable housing, employment and self-employment. For example, employer's liability insurance is a legal requirement for many small businesses. However, mainstream insurers often have a blanket exclusion policy against people with any unspent convictions or a policyholder living in the same home.

As there are around eight million people on the government's Offender Index, the ambiguities regarding insurance and convictions affect a significant proportion of society; and eight million under-estimates its impact, as many more are involved as family members or potential employers.

Under insurance law, unspent criminal convictions (as defined by the Rehabilitation of Offenders Act 1974) must be disclosed to insurance companies irrespective of whether the insurer asks about them. The onus is on the customer to disclose any material facts which a prudent insurer would consider relevant in setting premiums or deciding to cover. Non-disclosure can invalidate insurance and potentially lead to prosecution.

In 2004, UNLOCK found that when someone posed as a reformed offender with a conviction for assault, five out of the six leading insurance providers refused to provide cover because of the criminal

conviction⁵. The charity has since established a list of specialist brokers who can provide cover to individuals and households with convictions.

Time is Money indicated that a minority of people in prison have insurance, at least while they are in prison. Comparing the people interviewed in prison to the general public gives an indication of their lack of access to insurance.

- ❑ 83 per cent (39) people interviewed in prison had relatively stable accommodation (council rent, private rent or mortgaged).
- ❑ Of these, 77 per cent (30) did not have home insurance. This compares to 22 per cent of UK households who have no contents insurance; and 35 per cent, who have no buildings insurance.

Many social landlords now offer simple, straightforward and inexpensive tenants contents insurance (TCI) policies, specially designed for their tenants. TCI policies have low premiums (often from £1 per week), no excess to pay on claims, no requirement for a bank account, options on frequency of payments, and often integration into rent payments. However, the issue of convictions as a material fact also hold true for TCI policies, often preventing former offenders from benefitting from them.

Over four in five former prisoners said it was harder to get insurance and four-fifths said that, when they did get insurance, they were charged more. Only two people said that their conviction made no difference to the price. Interviewees highlighted how the inability to get insurance can prevent access to mortgages and many forms of employment or self-employment.

The surveys also showed how the decisions that insurers make on the basis of a criminal conviction can often harm the person's family. Many respondents considered it particularly unfair that the family should suffer penalties in insurance due to their conviction:

My parents told their home insurers and motor insurers of my conviction and they were refused cover. This has stayed on record and now they cannot get cover at all even though I don't live with them any more. It makes me really furious that my family are being punished as well as me.

Interviewees highlighted how the inability to get insurance can prevent access to mortgages and many forms of employment or self-employment.

5. Allison, E. (2004) 'Insurance companies deny cover to ex-prisoners', *The Guardian*, 1 June, 2004.

Credit, Debt and Saving

The LSRC found that imprisonment exacerbates debts. 16 per cent of people in prison were already unable to repay their bills when they entered prison. 12 per cent had fallen into debt since being in prison. They also estimated that over three million people are unable to access mainstream credit. The main sources of credit for these households are the social fund, home credit companies, and hire purchase, some of which lead the customer into high interest debts.

Time is Money found that over half of people interviewed in prison said that, while in the community, they had been rejected for a bank loan and 8 per cent said they had tried to borrow from a loan shark (a rate over 10 times higher than the average UK household). One in four people surveyed in prison had been threatened for a debt while in the community. People who had borrowed from a loan shark were four times more likely to have been threatened over a debt.

Two thirds of people interviewed in prison who had debts said they owed over £1000 and one third said they owed money for housing.

I need to pay a lot of money before they'll re-house you. That's wrong because you'll be homeless. They should give you a flat and let you pay off so much a week.

Other likely reasons for debt included crisis loans (25 per cent), court fines and mobile phone bills (about one in five).

Imprisonment creates obstacles for people who try to correspond directly with creditors. There are currently no industry guidelines regarding the suspension of interest charges on loans when someone is in prison. Convicted people are not permitted to use credit cards or enter into any loan or credit agreement while in prison. However, people in prison are permitted to make payments to reduce an outstanding balance or any other debt re-payment, though this is not always facilitated:

My overdrawn current account is increasing whilst in prison and so is my credit card balance. I think this will affect my ability to rehabilitate successfully. I don't want to set up a home, get a job etc., and then have creditors banging on the door.

People in prison also spoke about the impact of their debts and imprisonment on their families' finances:

My husband can't get any credit now because of me. My father gets letters from the council saying he'll lose his home — it's my debt at the end of the day, I can't understand why they threaten to kick him out of his home because of it.

Over half of the families surveyed had had to borrow money since the conviction. Two thirds of the families who were already in debt said their debts had increased since the imprisonment of their relative. Ten per cent of families said they were 'in real financial trouble,' and one in three said dealing with bills was a constant struggle.

Former prisoners were asked to gauge what impact, if any, being in prison had had on their levels of debt; 20 responded.

- 30 per cent (6/20) said they had no debts
- 9/14 for whom it was relevant said that being in prison had made their debts worse

With me in prison not working, my partner run up some extra debts. Also, when I came out, I found it hard getting work, which made it worse.

Two thirds of people interviewed in prison who had debts said they owed over £1000 and one third said they owed money for housing.

Under the National Minimum Wage Act 1998, while in prison a person 'does not qualify for the national minimum wage in respect of any work which he does in pursuance of prison rules', this does not include those who work for outside employers doing a normal job on a working out scheme. Prison pay is controlled by individual governors to reflect regime priorities. People are eligible for pay when employed in work, induction, education, training or offending behaviour programmes. Average wages are between £7 and £12 a week (around 30p per hour). Expenditure in prisons is paper-based and people do not handle cash or conduct electronic payment methods. Recent Ministry of Justice policy announcements have indicated a desire to move towards a full working week in prisons. If realised, this would increase the opportunity for people in prison to repay their debts in preparation for release and require a fundamental shift in the way the finances of people in prison are managed.

In addition to work with banks, local partnerships between prisons and credit unions have begun to emerge. Credit unions are financial co-operatives owned and controlled by their members, without external shareholders. Their central purpose is offering affordable financial services, including savings and affordable credit to their membership. An example is Leeds City Credit Union, which has been working with HMP Leeds and HMP Wealstun since 2007. This collaboration led to the opening of 600 savings accounts. Some larger credit unions, including Leeds, also offer full current accounts.

Money Advice

Almost two-thirds of people interviewed in prison said they struggled to pay bills, or were in real financial trouble, before coming to prison. On entry to prison, people are effectively severed from their financial life, losing access to products and communication with creditors. Yet three quarters of them (and the same proportion of *former* prisoners) said no one had ever asked them about their finances while in prison. Only 5 per cent of people in prison said they had been asked about how their families would cope financially while they were in custody.

Assessment of a person's financial situation, and the likely impact of prison on their finances, is best delivered early in a prison sentence. Effective assessment is essential if resources are to be efficiently and properly allocated. Early assessment can also alert the individual to problems that they can tackle during their sentence and help them make links to specialist services. Conversely, a lack of priority given to the person's finances in prison reception or induction processes can seriously exacerbate any existing financial problems.

In making referrals to specialist services following an assessment, it is important to distinguish three different elements of money advice; the development of personal financial capability, general information and advice about financial matters, and formal debt advice are related but distinct concepts. For example, debt advice is typically a crisis intervention to solve a current problem, as opposed to focusing on developing the skills necessary to choose and use financial products such as bank accounts. Similarly, generic information

and advice is unlikely to solve a significant debt crisis but will help individuals to become more self-sufficient in the future.

Money Advice: financial capability

Most of the people surveyed in prison expressed confidence about their money management skills. Only 28 per cent (38/138) said that they were unsure or very unsure about handling finances. However, people interviewed in prison were less confident in dealing with banks. Just over half of those interviewed said that they were unsure or very unsure about dealing with banks (23/44). This suggests that, while people who are often on very low incomes may develop effective budgeting skills they may be less confident in dealing with new technologies (such as online banking) or communicating with staff who provide financial services.

The Vale of Glamorgan Citizens Advice Bureau ran a project to develop the financial skills of people in prison, based on UNLOCK's 'UNLOCKing Financial Capability' training resource. The project found that

- ❑ The greatest benefit came when the workshops were close to release.
- ❑ Many participants felt there should also be personal support upon induction.
- ❑ Over half left the workshops feeling confident about the financial capability issues covered.

... a lack of priority given to the person's finances in prison reception or induction processes can seriously exacerbate any existing financial problems.

- ❑ Confidence about dealing with debt rose from 17 per cent at the outset to 45 per cent at the end.
- ❑ The most marked improvement was in confidence getting insurance and mortgages when you have previous convictions: rising from 9 per cent to 58 per cent⁶.

The Skills for Life curriculum (the national strategy in England for improving adult literacy, language and numeracy skills) can be delivered through contracted providers in prisons to learners who 'will require at least one year for progress to be achieved.' Therefore some education providers within prisons may deliver financial literacy courses as a way of embedding practical numeracy and literacy skills.

Evidence from the survey of families suggests that sending a relative to prison not only increases the families' debts, but also undermines their confidence about managing finances. The proportion of offenders'

6. Ipsos MORI (2010), *Improving Financial Capability among Offenders*, London: Ipsos Mori.

families who felt unsure in managing money more than doubled after their relative was imprisoned.

People in prison have little opportunity to practise financial skills in their every-day lives. They cannot visit branches and the modern tools of internet and telephone banking are forbidden. However, offenders are now a recognised financially excluded group within the national financial capability strategy, aligned with the finance, benefits and debt pathway. The prison environment could increase self-reliance by providing opportunities to practise normal financial operations and develop the increased awareness, confidence and skills required to use modern financial services.

Money Advice: information and advice

Information and advice is not routinely available to people arriving in prison regarding how best to organise their finances to avoid the worst consequences of imprisonment. For example, people are unsure whether to update their bank with their prison address or contact their loans company to advise that they are in prison. Even those confident enough to act without advice find it difficult to communicate with financial services providers.

I didn't know if I had to change my address or if I could keep it at my home address. It wasn't easy to find out what you could and couldn't do.

A survey by Citizens Advice, whose Bureaux currently provide advice in 43 prisons and 29 probation settings, found that only 6 per cent of people in prison had received advice on day-to-day money management⁷. The LSRC found that 90 per cent of people in prison who were in real financial trouble had not received any advice for their problems.

Once effective assessment is in place, advice services can make a constructive impact. Nearly all of those who were asked about their finances on arrival in prison subsequently received advice and eight out of ten said it had been useful. Providing basic information, and facilitating its use, would allow people the

opportunity to take responsibility for tackling their financial issues.

Money Advice: debt and benefits

The LSRC research also explored the kinds of advice topics likely to interest people in prison. Almost half (45 per cent) wanted advice about how to get out of debt; over a third (35 per cent) would want advice about handling debts after release; and a third wanted practical advice about managing debts while in prison.

Time is Money also found that imprisonment is likely to increase levels of debt. Just over half of the people interviewed in prison had debts. Of those who had debts, 40 per cent of people in prison and 64 per

cent of former prisoners felt that their debts had worsened during their sentence. Limited communication and access to creditors, combined with negligible prison wages can lead quickly to exponentially rising debts and even legal action.

81 per cent of people discharged from prison claim benefits. People discharged from prison have the same rights to housing, healthcare, and community support as anyone else. However, the local authority must be informed of their situation and given an opportunity to assess their needs in good time prior to their release. An article by Paul Bowen *et al.* describes the duties mandated under the National Health Service and Community Care Act (1990):

The prison environment could increase self-reliance by providing opportunities to practise normal financial operations and develop the increased awareness, confidence and skills required to use modern financial services.

The duty to assess the needs of a potentially vulnerable person is triggered when a local authority becomes aware of an individual who might need support. The duty may apply before the services are required (as, for example, a prisoner prior to his/her release) when it appears that the person may need services after discharge from prison. If the local authority thinks the person might need health care or housing, the local authority must notify the relevant PCT or housing authority and invite them to assist the assessment.⁸

7. Citizens Advice (2007) *Locked out: CAB evidence on prisoners and ex-offenders*, London: Citizens Advice.

8. Bowen, P. Markus, K. and Suterwalla, A. (2008) *Discharged prisoners' rights to health care, housing and community care — Part 1*, Legal Action Group, January 2008.

Former prisoners generally supported the idea that better money advice in prison would have helped them to lead a law-abiding life after release. One-third said that advice, delivered while they were in prison, would have helped 'a lot', and half agreed that the advice 'might have helped a bit' in leading a law-abiding life.

Conclusions

A substantial proportion of people in prison were already experiencing extreme and persistent financial exclusion before being sentenced. Imprisonment tends to increase financial exclusion and reduce personal responsibility, creating problems with housing, insurance, employment, and family relations; all of which can increase the risk of reoffending. Changes within prisons to promote financial inclusion and responsibility would contribute directly to effective resettlement and a reduction in the rate of reoffending.

Restrictions on people's ability to manage their finances in prison must be questioned, and only continued where there are genuine security risks which could not be mitigated in other ways. Making it difficult for someone in prison to manage debts, access their bank accounts, or prepare for the financial responsibilities they will face on release is wasteful of public resources and damaging to the prospects of successful resettlement. In addition to necessary national policy changes, *Time is Money* proposes a number of practical steps that should be taken by prisons in order to reduce the impact of the prison on financial exclusion. These include the following: -

- ❑ Prison induction processes should include a section on practical financial matters, backed up by provision of relevant services within reasonable timescales .
- ❑ Prisons should promote money awareness through staff training, posters, money awareness days etc.
- ❑ At the start and throughout a sentence, prisons should facilitate bona fide financial communications and transactions in support of resettlement
- ❑ People in prison should be given all possible support to open a bank account before release.

Where this is not possible, they should be given information on how to open one after release

- ❑ All people in prison should be made aware of the Rehabilitation of Offenders Act 1974 and offered information and guidance on the long-term impacts of having a conviction, including on employment and insurance
- ❑ People in prison should be supported in managing any ongoing commitments (e.g. direct debits) and dealing with existing debt from the start of a sentence or time on remand.
- ❑ Information on accessing affordable credit (e.g. credit unions) should be given to the families of people in prison
- ❑ Financial capability initiatives should be recognised as distinct from, but integrated with, basic skills, financial advice and debt advice provision. They should also go beyond budgeting to develop the awareness, understanding, skills and confidence to choose, access and use modern financial products and services
- ❑ Prisons should facilitate access to free, mainstream national advice services (such as The Money Advice Service and National Debtline) either by phone, web, or face-to-face, as appropriate
- ❑ Sources of independent advice should be actively sought and promoted
- ❑ The potential for prison peer supporters to be trained in generic money advice, linked to qualifications (such as NVQ Level 3 in Advice in Guidance) should be explored.
- ❑ Prisons must ensure that all people receive the money that is held in their private cash (prison) account on release.
- ❑ Resettlement units in prisons should alert local authorities to people in need of benefits, housing, and other support (e.g. with learning disabilities) well before the anticipated release date to ensure that the mandated duties to vulnerable people are met.

Research on Criminalisation of Migrant Women

Dr Liz Hales is a Senior Research Associate at the Institute of Criminology, University of Cambridge.

Professor Loraine Gelsthorpe is University Professor in Criminology and Criminal Justice at the Institute of Criminology, University of Cambridge.

The work of a number of key organisations, such as the International Organisation for Migration, means that there is now greater awareness of the extent of national and international people trafficking and exploitation by smugglers or agents of people seeking to leave their country to seek work or asylum. Within the UK, public knowledge has been influenced by the setting up of the UK Human Trafficking Centre in October 2006, the work of a number of human rights organisations and media interest in some cases. However, to date, there has been no formal recognition of the numbers of potential victims in custody on criminal charges, nor systematic prison based research that provides evidence of how these individuals have been managed within the Criminal Justice System and by the United Kingdom Border Agency (UKBA). Our research on the criminalisation of migrant women, funded for 18 months by the ESRC, aims to fill this knowledge gap.¹ In this article we outline the background to this work, our research design, and initial findings as we approach the final phase of this work.²

Background to the research

The latest published figures on the female prison estate show a 34 per cent growth in the female sector between 1999 and 2009. The number of new receptions peaked at 12,676 in 2008, with a gradual fall since then.³ However, during this period of time, within the population where nationality has been recorded, receptions of foreign national prisoners increased from 8 to 19 per cent of the total.⁴ In 2009 foreign nationals accounted for 26 per cent of all new untried receptions and for 16 per cent of receptions with an immediate custodial sentence.⁵

Alongside this increase there has been a shift in the balance of offence categories. In the past women arrested at port of entry on importation of drugs were identified as the dominant group. However, in the latest static population count, one third had been charged in relation to their immigration status or related offences of deception and fraud to enter, remain, leave or secure work within the UK.⁶ There is also evidence of an increased number of those involved in organised illegal activity such as cannabis production, selling of fake goods or street robberies. Data from voluntary sector organisations working with foreign women in custody indicate that those charged within this offence group tend to be migrant women, that is, those who have entered the UK to seek work or asylum, rather than as temporary visitors or for reasons of current employment, education or marriage.

This period of increase of migrant women in custody is perhaps not surprising — with the tightening up of border security, the introduction of a points based system for those seeking rights to enter for work, and raids on premises to identify and prosecute those employing illegal migrants.⁷ It has also been a time of tighter regulation of foreign nationals in terms of rights to remain in the country. Automatic deportation provisions came into effect in August 2008 for those who had been sentenced to a period of imprisonment of at least 12 months.⁸ This necessitated much closer working and information sharing between the prisons and the UKBA Criminal Casework teams and, as foreign prisoners are rarely deported at the Earliest Release Date, this has contributed to a parallel growth of those held solely on Immigration warrants. The legal routes of entry into the country, to seek work or asylum and legally accessing employment once within the UK, have therefore been closing down at a time when women seeking asylum or the opportunity to support their

1. ESRC GRANT No: RES-062-23-23-2348.

2. In carrying out this research with women in custody we also recognise that there are similar victims of trafficking and smuggling within the male estate and YOIs.

3. Ministry of Justice (2010) *Offender Management Caseload Statistics 2009*.

4. Within the figures presented by the Ministry of Justice (2010) 1.5 per cent are of 'unrecorded nationality'.

5. Ministry of Justice (2010), *Offender Management Caseload Statistics 2009*.

6. Women and Young People's Group, Ministry of Justice (2008) *A Strategy for Managing Foreign National Prisoners in the Female Estate*. Ministry of Justice.

7. This was resultant on implementation of the Asylum and Nationality Act 2006 in February 2008.

8. Under the UK Borders Act 2007.

families by seeking labour overseas and sending money home have been increasing. Many of these women have been employed in the informal sector⁹ in their country of origin and as pointed out by the Global Alliance Against Traffic in Women there is a strong link between trafficking, migration and labour opportunities.¹⁰ In addition, non EEA overstayers or 'undocumented migrants' have found that access to work has become increasingly difficult where they are competing with increasing numbers of A8 and A2 nationals.¹¹

Interlinked with this is the increase in illegal recruitment, transportation and employment of these migrants, who are effectively managed as profitable commodities to be bought and sold and whose illegal status is a coercive tool used by their agents. To challenge this area of crime the UK Government ratified the Council of Europe Convention on Action against Trafficking in 2008. This was implemented in the first half of 2009, with the imposition of custodial penalties for those found guilty. The Convention defines trafficking as *acts* such as recruitment, receipt, transportation, by *means* such as threats, coercion, deception, abuse of position of vulnerability, for the purpose of *exploitation* such as sexual exploitation, forced labour or slavery. It also accepts that the relationship with smugglers, whose assistance is initially sought to escape persecution, can become equally

abusive and fall within the same category. One weakness relating to the effectiveness of the legislation, however, concerns the problem of charging those who exploit trafficked labour without evidence of their direct involvement in the recruitment and transport aspects of trafficking. Additional legislation was thus introduced in Section 71 of the Coroners and Justice Act 2009 — of holding someone in slavery or servitude or requiring a person to perform forced or compulsory labour. This came into effect in April 2010.

The Convention defines trafficking as *acts* such as recruitment, receipt, transportation, by *means* such as threats, coercion, deception, abuse of position of vulnerability, for the purpose of *exploitation* such as sexual exploitation, forced labour or slavery.

The objective of these two additional elements of legislation is thus to ensure the punishment of those guilty of what some have seen as modern day slavery, but a key element is also the recognition and appropriate treatment of anyone subject to these crimes as a 'victim'. A formal method of identifying potential victims of trafficking and ensuring they receive appropriate care has thus been introduced through the National Referral Mechanism (NRM). This approach necessitates facilitating and responding appropriately to disclosures made by

victims and, with the individual's consent, making referrals through the NRM, so that a decision can be made on whether there are 'reasonable grounds' to believe the individual is a potential victim of trafficking. If confirmed, the victim is then provided with protection and support and currently offered 45 days of 'reflection and recovery' during which a 'conclusive grounds' decision can be made before their removal from the UK is enforced. There is the potential to increase this to a year if the victim has agreed to assist the police in their criminal investigations. Any further stay in the UK is at the discretion of the UKBA. Unfortunately, anyone who does not want to be formally identified as a victim, due to fear of retribution or stigmatisation is not eligible to be referred in this way.

In cases where the victim of trafficking is in court on a criminal charge, Crown Prosecution Service

(CPS) legal guidance advises prosecutors that where the criminal offence has been committed whilst in a coerced situation, there is a strong public interest to stop the prosecution¹². It provides clarity for prosecutors about the circumstances of the person's situation which might support a defence of duress in law, relevant factors when deciding where the public interest lies, and clarity around the more subtle forms of coercion exercised by traffickers and exploiters. This guidance has been recognised by the Court of Appeal in the case of *R v O* [2008].¹³

9. Informal sector refers to those doing work that is not recognised or protected under existing laws, such as domestic work, street vendors and small traders.

10. Global Alliance Against Traffic in Women *Beyond Borders; exploring links between Trafficking and Labour*. GAATW Working Paper Series 2010.

11. A8 refers to the eight countries from Eastern Europe who joined the EU in 2004 (Poland, Hungary, Slovakia, Latvia, Lithuania, Czech Republic, Slovenia and Estonia) and A2 to the two who joined in 2007 (Romania and Bulgaria).

12. CPS (2010) *Legal Guidance on Human Trafficking and Smuggling*.

13. *R v O* [2008] EWCA Crim 2835.

Against this background we are aware that there are still victims of trafficking, smuggling and forced labour in the female prison estate. In 2008, the Poppy Project, which was the main provider of accommodation and support to women who have been trafficked into prostitution or domestic servitude, reported that 21 per cent of their referrals between 2001 and 2007 had been held within the prison or immigration estate and this has continued over the last three years despite the new legislation.¹⁴ The Anti-trafficking Monitoring Group raised concerns in relation to this in their report in 2010, identifying flaws in victim identification by the NRM and stating that victims of trafficking are still routinely prosecuted for offences they commit when coerced.¹⁵

The main aim of our research is therefore to take a more in-depth look at migrant women who are being processed through the criminal justice system in the South East of England, targeting those who may be victims of trafficking, smuggling or enforced labour. Through this we aim to identify the extent to which there are victims in the system, to understand the reasons for this, and to look at how these women are being managed. We are doing this by identifying and gaining consent to interview those in custody who have been changed with illegal entry, offences of deception and fraud to enter, leave, remain or secure work within the UK, or involvement in organised illegal work activities such as cannabis production. We are also interviewing women charged with importation of drugs, who state that their experiences of threats, deception and coercion were as described in the definition of trafficking that we gave.¹⁶ Where the initial interview indicates that the women have entered the country in the hands of traffickers or smugglers and/or have been working under duress we seek the interviewees' consent for engagement in the research, to gather information and monitor management of their cases.

The goal has been to gradually gather relevant data in a number of key areas, but to allow those interviewed to recount their experiences and feel in control of the meeting.

The key task of this research has been to gather information from potential victims through individual interviews. The interview format was prepared in anticipation that the most likely victims would not have English as a first language, could well be traumatised by their experiences and might still be in fear of those who brought them into the U.K. or controlled them once here. Great care has thus been taken in guaranteeing confidentiality and anonymity of data gathered and in the choice of professional interpreters. The goal has been to gradually gather relevant data in a number of key areas, but to allow those interviewed to recount

their experiences and feel in control of the meeting.¹⁷ The key areas of information sought have revolved around:

- Place of origin, first language, need for interpreter support, socio-economic background and childcare responsibilities.
- Reasons given for leaving country of origin and seeking entry to the UK.
- Method of contact and recruitment by the travel facilitator, method and amount of payment and information offered in terms of work, payment, intended destination and legality of position on arrival.
- Journey to the UK, including work en route, control of travel documents and stated experience of threats or coercion.
- Access to and control over work choices once within the UK, payment received and experiences of coercion or violence and, for those who escaped from a controlled work situation in the UK, awareness of options and support available.
- The criminal justice proceedings, including disclosures made in court, advice on plea, history of court appearances, sentence given and period of time in custody on court and immigration warrants.
- The immigration proceedings, including access to legal advice, details and location of initial, full

14. Stephen — Smith, S (2008) *Prisoners with no Crime. Detention of Trafficked Women in the UK* The Poppy Project, Eaves Housing for Women.

15. The Anti-Trafficking Monitoring Group (2010) *Wrong Kind of Victim? One Year on: an analysis of UK measures to protect trafficked persons*. Anti Slavery International.

16. In relation to this it is not insignificant that the new EU directive adopts a broader definition including exploitation of criminal activity where elements of forced labour or services occur in activities such as drug trafficking.

17. This is in line with the ethical and safety recommendations for interviewing trafficked women provided by the World Health Organisation (WHO) (2003).

immigration interviews, appeal cases, and outcomes.

- ❑ In respect to criminal justice and immigration proceedings, the level of understanding expressed, level of interpreting services provided and access to legal representation, including times, location and nature of contact.
- ❑ Stated problems in relation to physical and mental health and indicators of stress evidenced at interviews.
- ❑ Referral for assessment as victims of trafficking through the NRM.

Progress to Date

As we reach the final phase of this work we have completed initial interviews with 103 migrant women in custody and from this we have identified 43 women who entered the UK in the hands of traffickers and worked under the control of others, 5 who entered independently but ended up working in 'slavery like' conditions in the UK and 10 who entered in the control of smugglers¹⁸. Follow up work with this target group of victims has (to date) consisted of sixty six follow up interviews. These have been mostly in the prison estate, but a few have been carried out at Yarl's Wood IRC and seven have been with women in the community after release. We have also attended and observed their court appearances whenever possible. With the women's permission we have also talked with those supporting them on the criminal justice and immigration matters and looked at their communications with their legal representatives and the UKBA. In addition, a number of those interviewed have welcomed the opportunity to stay in contact with us by letter between visits. Through this work we have built up a comprehensive understanding of their experiences in relation to those who have recruited, transported and worked them, their experiences, after escape, of attempting to return home or survive as undocumented migrants, and from the point of arrest their experiences within the criminal justice and immigration system.

We have also gathered information around their greatest stated anxieties and looked at their needs for, and access to appropriate protection and support, in the custodial environment and in the community.

Key Themes

At this point in the research it is too early to outline the full findings, evidence relating to compliance with

the Convention on Trafficking and victim protection and Human Rights Legislation, and good practice issues in relation to the way these women have been managed. However the key themes that are emerging from the data analysed to date are as follows:

- ❑ The number of identified victims of trafficking, within the total sample of all those interviewed within the female estate, is not insignificant.
- ❑ The practice of processing of victims through the NRM may be extremely limited.
- ❑ The largest nationality groups represented within the sample of victims concern those from Nigeria, followed by those from Vietnam and China.
- ❑ Victims of trafficking tend to come from lower socio-economic groups, and over half agreed to come to the UK in anticipation of earning money to support their families.
- ❑ At the same time, there is evidence to suggest that a number also leave their country of origin to seek asylum, due to threats from within the immediate family as well as political conflict.
- ❑ Many of the women have described weighing up the risks of staying in their country of origin compared with moving away from existing family support to seek a new life. For most it was their first experience away from home.
- ❑ A number within our sample were brought here by force, but the majority were recruited by traffickers who marketed their product to suit what they saw their victims' greatest needs. A number had been initially brought into the UK as children and others had been trafficked between countries.
- ❑ Once within the UK, forced work was most common in the provision of sexual services, followed by cannabis production, domestic servitude and a number of other controlled criminal activities. Irrespective of the key area of work, rape was a common experience.
- ❑ Most victims knew that there were other women, and in some cases children, trafficked and worked by those who had controlled them.
- ❑ Two women sentenced for importation of drugs were also victims of trafficking and information gathered from others indicates a close link between those who profit from trafficking people and those who profit from trafficking drugs.
- ❑ Almost all of those interviewed had experienced violence and intimidation and many still felt in the hold of traffickers after their arrests. This intimidation impacted on what they felt they could safely say on arrest and in court.

18. Victim identification by the researchers was based on the key indicators outlined in the Trafficking Toolkit and used in the NRM referral form.

- ❑ With the exception of those working on cannabis farms, most arrests were after the victim had escaped and was trying to return home or survive in the UK as an undocumented migrant.
- ❑ A high percentage of those interviewed were in need of support in relation to physical and mental health problems resultant on all they had been through.
- ❑ Only one had been granted leave by Immigration to remain in the UK, having been trafficked in and then detained as a child.
- ❑ How these victims are processed through the immigration system in terms of awareness of procedures, access to legal representation and the management of asylum interviews within a custodial setting.
- ❑ Outcomes of asylum applications and appeals and the impact of the UK Borders Act on victims of trafficking.
- ❑ Access to appropriate protection and support for those identified and those who are not processed through the NRM.

Why are these victims in custody?

In the group of 43 women who appear to be victims of trafficking, to date only ten have or are being processed through the NRM and in only four cases did this happen in time to stop criminal proceedings. The focus of our current work is therefore revolves around the analysis of the reasons for this. The key issues being explored are:

- ❑ Evidence of failures to facilitate and respond appropriately to victim disclosures from the point of arrest onwards.
- ❑ The relationship between the defendant and her legal representative and the barriers presented for non-English speakers being processed through a foreign criminal justice system.
- ❑ Management of cases where the fact that the defendant is a victim of trafficking is raised in the context of court proceedings.
- ❑ In relation to the above, interpretation of current legislation within the courts and failures to stop criminal proceedings where the victim is involved in cannabis production
- ❑ How well relevant professionals understand the NRM mechanism and the responsibilities of those who are recognised as first responders.

Linked in with this we are also looking at:

- ❑ The level of investigations carried out by police in response to disclosures.

- ❑ The long term outcomes for those released into the community, dependant on the National Asylum Support System, as they await final decisions on their immigration status.
- ❑ Issues impacting on the welfare of children and other dependants, in the UK and the country of origin, as their mothers are managed through the criminal justice and immigration systems.

The final stage

Over the final three months of the research we will continue to monitor the progress of our current cases as well as completing our data analysis and writing up the full report on our findings. Through publication of this report we aim to identify and evidence areas of management where changes in policies and practices might be warranted to ensure better compliance with the Convention on trafficking and wider Human Rights Legislation. All of this will be shared with relevant policy makers within the Ministry of Justice and UKBA. We also hope that this will contribute to a better understanding of relevant issues for the UK Government during the transposition phase of the new fuller EU Directive on Trafficking.¹⁹ We also plan to submit a further article to the Prison Service Journal, summarising the findings and any recommendations of our report, once it is published.

19. This is due for completion in April 2013.

Alexander Maconochie's 'Mark System'

John Moore is a Senior Lecturer in Criminology and Deputy Director of the Criminal Justice Unit at the Department of Health and Applied Social Sciences, University of the West of England.

Introduction

In 1836 Alexander Maconochie accepted the post of private secretary to Sir John Franklin, the recently appointed Lieutenant Governor of Van Diemen's Land. Before his departure he was commissioned by the Prison Disciplinary Society to undertake a review of transportation within the Australian penal colony. On arrival in Hobart Maconochie swiftly drafted this report, which Franklin sent, together with the largely unfavourable responses of local officials, to the Colonial Office in October 1837. He enclosed in the bundle sent to London a summary of the findings Maconochie had prepared for Lord John Russell, the Home Secretary. Russell saw the report's relevance to the ongoing Molesworth Committee's review of transportation and published Maconochie's summary as a Parliamentary Paper¹. The Colonial Office ordered the full set of dispatches to be printed for consideration by Molesworth and his committee.² Maconochie's reports not only provided a damning indictment of the operation of the transportation system but also set out an innovative alternative penal theory, which was to become known as the 'Mark System'.

Sheldon Glueck's claim that 'there is hardly a reform in the correctional field in our epoch that cannot be traced, at least partially, to the fertile imagination of Maconochie' remains true.³ Not only did Maconochie inspire the Irish Convict system and the Reformatory Movement in the United States but indeterminate sentences, borstal, open prisons, reward schemes and stage regimes can also all be directly traced back to his ideas.

Maconochie's 'Mark System'

Maconochie's 'Mark System', which he claimed was equally applicable to both men and women, had five key

characteristics. Firstly it was unashamedly reformative, placing the individual reform of the lawbreaker over both deterrent and retributive objectives. Secondly it advocated task sentences rather than time sentences. The convict was not guaranteed liberty after a set period but only on completion of the required task. Thirdly, it introduced marks as a currency through which task achievements could be measured, rewards for desirable behaviour paid, fines for misconduct levied and rations and indulgences purchased. Fourthly it developed a staged approach to penal discipline with a clear division between the punitive, punishment stage and the subsequent reformative or moral training stages. Lastly Maconochie's system was not tied to a particular institution; whilst other theories focused on the best prison regime his was a theory of punishment and reform with wider applications than 'any other form of mere imprisonment.'⁴ He was not 'suggesting a form of apparatus' but seeking 'to introduce a new object and spirit into our whole penal administration.'⁵

A convict would therefore be sentenced to complete a certain task, measured in marks. Release required the lawbreaker to achieve a balance of marks on her or his account equivalent to the sentence. But marks were also required for provisions, so the convicts' purchase of anything other than bare necessities prolonged the length of their subjection to penal discipline. A refusal to co-operate resulted in a bread and water diet and an increasing debt to be paid off.⁶ The system was carefully designed so release could not be obtained by mere endurance of the punishment; his system was intended to 'uniformly subjugate all brought under its influences'.⁷ The system was calculated to internalize approved behaviour; convicts' desire to complete their punishment provided the initial incentive but Maconochie believed the good habits promoted would persist, becoming, with respect to the discharged convict's future life, 'fetters which would be only the more effectual because they are unseen'.⁸

1. Home Office, (1838), *Report on State of Prison Discipline in Van Diemen's Land*, London.
2. Colonial Office, (1838), *Despatch from Lieutenant Governor Sir J Franklin, October 1837, relative to present System of Convict Discipline in Van Diemen's Land*. London.
3. Glueck, S. (1958), Foreword to J.V. Barry *Alexander Maconochie of Norfolk Island*, Melbourne: Oxford University Press p.xi.
4. Maconochie, A. (1839a) *General Views regarding the Social System of Convict Management*, Sydney: Tegg & Co. p.19; Maconochie, A. (1846), *Crime and Punishment: The Mark System*, London: Hatchard & Son p.27.
5. *Ibid* p,28.
6. Maconochie, A. (1853), *Penal Discipline: Three Letters*, London: Thomas Harrison p.6.
7. Maconochie, A. (1857), *The Mark System of Prison Discipline*, London: Mitchell & Son p.1 (emphasis in original).
8. Maconochie (1839a) p.24.

Maconochie's penal philosophy asserted that the primary aim of public punishment should be the reformation of the criminal. Deterrence, whilst 'highly useful in its place', was, for Maconochie, always subsidiary to reformation.⁹ This was not a common perspective; within official and public discourse the overwhelmingly dominant justification for state punishment was deterrence. Under the Bloody Code deterrence had operated on the basis that the spectacular execution of a small minority of felons was more effective than a high probability of arrest and conviction. Whilst the first half of the nineteenth-century saw a revision of these arrangements, with new penal economies requiring the arrest and punishment of far greater numbers, it was still generally considered necessary to retain the public spectacle in punishment for it to be a successful deterrent.

Beccaria proposed public enslavement and Bentham's Panopticon incorporated public viewing galleries, both schemes providing the visibility their authors perceived essential for deterrence. Maconochie's view of the causes of crime was fundamentally different, anticipating future psychological, social and medical theories, he believed the criminal was morally deficient and socially inadequate; a person whose faults needed correcting through training and treatment rather than a rational being whose criminality could be controlled by a fine tuning of crime's cost benefit ratio.

Maconochie's opposition to deterrence highlights the significant differences between his philosophical beliefs and those of the Utilitarians for whom punishment was 'an evil' justifiable only where its benefits to society outweighed the pain inflicted on the individual. For Beccaria and Bentham punishment was state-inflicted pain, justified by its deterrent effect on future crime; criminals were in effect sacrificed for the greater benefit of the whole society. Maconochie claimed that the promotion of deterrence was 'selfish' and inevitably led to 'injustice' and 'disproportionate severity'.¹⁰ Society's right to sacrifice any member,

whatever their crime, was an attack on the 'sacredness (of) *individual* interests' which he believed characterized 'the advance of true freedom and civilization'.¹¹ By rejecting the Benthamite assertion that punishment was always an evil Maconochie was able to develop an alternative legitimization. In his hands the infliction of punishment became 'medicine for the individual'; transforming it, in its reformatory guise, from a necessary evil to a desirable end in its own right.¹²

The concept of 'less eligibility' was continually exploited in this period to critique reformatory aspirations. Charles Dickens gave voice to these concerns when he claimed:

*we have come to this absurd, this dangerous, this monstrous pass, that the dishonest felon is, in respect of cleanliness, order, diet, and accommodation, better provided for, and taken care of, than the honest pauper.*¹³

Maconochie's penal philosophy asserted that the primary aim of public punishment should be the reformation of the criminal.

Although Maconochie was not insensitive to the demand that punishments retain a punitive dimension, from his earliest writings he had recognized an inherent conflict between the infliction of punishment and the promotion of reformation. The failure of the existing system resulted, he argued, directly from its attempt to simultaneously deter and reform, requiring 'existing Penal Institutions ... (to) constantly fluctuat(e) ... between these two horns of a dilemma'.¹⁴ The infliction of punishment, Maconochie argued, inevitably placed a person in an 'unnatural position' that 'interferes especially with the free agency' crucial to appropriate social life.¹⁵ Reformation involved promoting 'voluntary exertion and self denial', which could only be generated when, on however an unlevel playing field, the choices of idleness and immediate gratification were also made available.¹⁶

Maconochie criticized the existing 'penal apparatus (as being) nearly all retrospective (and) framed to punish the past' whilst failing to 'guard against the future'.¹⁷ It

9. Maconochie (1853) p.2.

10. Maconochie, A. (1848) *Secondary Punishment: The Mark System*, London: John Olivier p.4

11. Maconochie (1839a) pp.9-10 (emphasis in original).

12. Maconochie, A. (1847), *Comparison between Mr Bentham's views on punishment, and those advocated in connexion with the Mark System*, London: Compton p.2.

13. Dickens, C. (1997), 'A Walk in the Workhouse' (Household Words, 25th May 1850) in *Selected Journalism 1850-1870*, Edited by David Pascoe, 239-245, London: Penguin Classics p.241).

14. Maconochie (1839a) p.18.

15. Ibid p.18.

16. Ibid p.18 (emphasis in original).

17. Maconochie, A. (1846), *Crime and Punishment: The Mark System*, London: Hatchard & Son p.3.

was for this reason that the many reformatory initiatives failed and he therefore rejected the usual compromise in which '(r)eformation and example must be conjointly provided for', instead arguing for 'dividing the processes employed into specific *punishment for the past* and *specific training for the future*'.¹⁸ The two objectives were 'essentially different', one 'subdued the individual ... in just retribution for past offences' whilst the other 'raised him again ... (and) made him again worthy to be a free man.'¹⁹ They could not be practically combined; each had its own 'science' which demanded radically different regimes to achieve their diverse objectives.²⁰ The initial punishment phase, Maconochie argued, 'should be severe, — but short' and be enforced 'if necessary, by *direct physical violence or constraint*, because in this stage it is desirable to subdue the prisoners' minds, and fix them, in painful retrospect, on their past guilt'.²¹

Punishment's focus, Maconochie declared, should be on achieving 'a comprehensive and manly reform' requiring the convict to display 'sustained submission and self-command'.²² Progress towards release would be the convicts' responsibility, the system being designed to require that 'all must confess themselves subjugated, for otherwise they would never be released from it.'²³ The key to his system's inevitable success, Maconochie argued, was that it aligned the interests of the prisoner with those of society. He saw his penal system as including a corporal dimension, advocating that punishment's 'iron should enter both soul and body,' though its application required skilful measurement, for its purpose was to reshape rather than 'to scar and harden'.²⁴ Physical suffering, inherent in punishment, was to be given a new function; those undergoing punishment were to be 'trained to virtue, and not merely sentenced to suffering.'²⁵ In this sense

Punishment's focus,
Maconochie
declared, should be
on achieving 'a
comprehensive and
manly reform'
requiring the convict
to display 'sustained
submission and self-
command'.

Maconochie and other advocates of reformation were not concerned with abolishing the corporal, their task was rather to legitimize and civilize it.

In reviewing transportation Maconochie had claimed that the records of convicts focused exclusively on their misdeeds, whilst 'good ordinary behaviour, (such) as diligence, sobriety, obedience, honesty, fidelity, zeal, or the like' was unrecorded.²⁶ As a result they had no impact on decisions on matters such as the issuing of tickets of leave and tended 'to warp the judgement in forming estimates of moral character'.²⁷ In the hulks and local

prisons, as well as in the Australian penal colonies, the regimes' focus on misbehaviour he felt removed any incentive for good or virtuous behaviour. The inevitable consequence of this was that the 'good prisoner ... (was) usually a bad man.'²⁸ Refocusing attention on positive behaviour Maconochie argued would allow 'the manly virtues ... to be ... sedulously cultivated'. By structuring the regime to reflect the adversity experienced in ordinary life the Mark System sought to make the prisoner the agent of his or her own reformation.²⁹ From this adversity there was to be 'no escape but by continuous effort',

rations beyond bread and water, indulgences, and eventually freedom all depend on the prisoner's capacity to 'struggle manfully'.³⁰

Sentences to imprisonment, hard labour, the galleys and transportation prior to this period were either in perpetuity or for a fixed period of time. Where forfeiture of the lawbreaker's labour was part of the intention of the sentence its measurement was problematic. Release came with time and the quantity and quality of the labour extracted were normally poor. Maconochie advocated a system that 'would set a proper value on time' and in which evasion from labour would be penalized.³¹ Whilst English prisons under Du Cane later in

18. Maconochie (1839a) p.7 (emphasis in the original).

19. *Ibid* p.7.

20. Home Office (1838) p.9.

21. Maconochie (1839a) p.18 and Maconochie, A. (1839b), *Australiana: Thoughts on Convict Management and Other Subjects Connected with the Australian Penal Colonies*, London: John W Parker p.100 (emphasis in original)

22. Maconochie (1853) p.2 and Maconochie (1839a) p.5.

23. Maconochie (1857) p.1.

24. Colonial Office (1838) p.7.

25. Maconochie (1839a) p.15.

26. Home Office (1838) pp.5-6.

27. *Ibid* p.6.

28. Maconochie (1846) p.29.

29. Maconochie (1853) p.4.

30. Maconochie (1846) p.43.

31. House of Commons, (1850) *Report from the Select Committee on Prison Discipline; together with the proceedings of the committee, minutes of evidence, appendix and index*, London p.5.

the nineteenth century were to be characterized by deliberately useless labour, Maconochie advocated 'useful labour in the open air, in employments in which improved skill would facilitate the subsequent earning of honest bread'.³² Hard labour needed to act both 'as (a) warning to the idle' and as 'preparation for the penitent to meet the difficulties which necessarily beset them after their discharge.'³³

Time sentences, Maconochie argued, were 'the root of very nearly all the demoralization which exists in prisons' and gave prisoners 'a direct interest in idling, and whiling away time instead of employing it, directly corrupt them, and destroy whatever little habit of industry they may previously have had'.³⁴ Instead of time sentences Maconochie proposed the introduction of task sentences 'with *minima* times annexed to them, but not *maxima*', under which completion of punishment would not be determined by the passage of time but by the completion of a specific task.³⁵ Maconochie argued that the minimum period of punishment, even for 'the least offence', should be two, or ideally, three months.³⁶ These prisoners would, like everyone else subjected to Maconochie's system, have received, in terms of time, no maximum sentence, effectively removing their capacity to endure and resist their gaoler confident in the knowledge that there was a future date beyond which they could not be detained. When asked how long an 'obstinate' man who 'does nothing' could remain in confinement Maconochie responded: 'For ever; but that is an unsupposable Case.'³⁷ He was confident that his system was so carefully crafted that whatever intentions the prisoner arrived with, it would soon be clear that it was in their interest to co-

operate, they would realize that once 'under the lash of the law ... (they) must work out of it (and) no time will take them out'.³⁸ For prisoners who had traditionally received longer sentences Maconochie's system offered the prospect of much speedier release. Maconochie suggested that a prisoner sentenced to transportation for life was likely to be released in five or six years as incarcerating them for longer would compromise his

reformatory objectives.³⁹ Those exposed to his system who were reconvicted, Maconochie argued, should have their second sentences significantly increased irrespective of the severity of their subsequent offence.⁴⁰

At the heart of Maconochie's system were marks; the currency of his model penal institution. They measured the length of sentence, rewarded work and other desirable conduct, purchased both the necessities of life and luxuries and were deducted as fines for misconduct. The exact value varied over time, sometimes linked to a monetary value, normally a penny, and on other occasions to an hour's labour.⁴¹ In his theoretical writings Maconochie argued for a wide range of behaviours to be evaluated daily and marks allocated accordingly. In his initial report written in 1837 he advocated awarding marks to convicts who had been:

At the heart of Maconochie's system were marks; the currency of his model penal institution. They measured the length of sentence, rewarded work and other desirable conduct, purchased both the necessities of life and luxuries and were deducted as fines for misconduct.

*orderly, obedient, zealous, attentive, active, industrious, cleanly in their persons and rooms, civil, temperate under provocation (should such have been offered), punctual in their attendance at prayers, school, work etc., or have in any other way deserved commendation.*⁴²

32. Maconochie (1846) p.31.

33. *Ibid* p.7.

34. House Of Commons (1850) p.447; Maconochie (1846) p.6.

35. (Maconochie (1857) p.1 (emphasis in original).

36. Maconochie (1846).

37. House of Lords, (1847), *Second report Select Committee of the Lords into the execution of the criminal law, especially respecting juvenile offenders and transportation*, London p.106.

38. House of Commons (1850) p.455.

39. House of Lords (1847) p.108.

40. Maconochie (1857) p.2.

41. Maconochie, A. (1856), *Prison Discipline*, London: T Harrison p.18; House of Lords (1847) pp.100-101.

42. Home Office (1838) p.10.

Two decades later Maconochie was proposing that they be allocated in prisons on the basis of seven criteria:

*General demeanour, Diligence in labour, Efficiency in Labour, Amount of Religious instruction possessed, Zeal exhibited in acquiring more, Amount of Literary instruction possessed, and Zeal shown in acquiring more of it.*⁴³

Marks were also central to maintaining discipline. Fines were levied in marks and thus impacted both on a prisoners existing purchasing power and ultimately on the length of their sentence.

During the initial punitive stage prisoners would be required to earn a specific proportion of the total marks required for their release before being allowed to progress to the training stage. For women, Maconochie argued the initial stage should involve 'a Magdalen seclusion ... (with) moral and religious instruction and ... tuition in ... arts and occupations' but which was less punitive than the regime for men.⁴⁴ Whilst solitary confinement could be incorporated into the initial stage of Maconochie's system, the training stages always involved association. The importance of association was stressed during the second stage by the establishment of groups of convicts. These groups, who in the case of single male convicts he believed should be of about six men, would be formed by the men themselves, who became accountable for each other's conduct.⁴⁵ Women were to be organized in smaller groups as Maconochie considered that selfishness was not a female vice.⁴⁶

Once the convicts had been organized into groups the Mark System became collective with all the marks earned by group members being pooled. Likewise when one member was fined the whole group suffered, generating a common interest among group members.⁴⁷ Groups would be disbanded if members fell out or if a

member committed a serious offence. Members of disbanded groups would return to the punishment stage where they were required to form themselves into new groups. Trouble makers, the lazy and dishonest, Maconochie was confident, would, under this arrangement, be marginalized within the convict community.⁴⁸ Central to this thinking was his belief that vice and criminal behaviour were evidence of selfishness. By forcing convicts to consider the interests of others he believed he was promoting their social feelings and that they would learn to modify their behaviour both during the group stage and when they re-entered society. These groups, Maconochie argued, would make all prisoners: 'Mentors, entitled to advise, restrain, instruct, and influence their neighbours to good'.⁴⁹ Maconochie planned that during this group stage married men should be assigned cottages where they would live with their families. His family's conduct, as well as his own, would determine the convict's progress, providing the married convict with a strong incentive to be a disciplining force within his own home.⁵⁰

The major mechanism of reform for Maconochie was not solitude or religious instruction but productive labour. Penal Labour, he argued, should be demanding, making a prisoner 'work both out of this position, and into the means of subsequently keeping out of it' thereby developing 'those habits of independent voluntary exertion which constitute at once the best proofs of immediately improved character.'⁵¹ Work should be meaningful and relevant to the convicts' future employment and in particular women should be engaged in 'feminine' employment.⁵² His regime was not however to be entirely focused on hard work, he believed strongly in providing prisoners with access to education, a wide range of literature and the capacity to make and enjoy music. When Governor Gipps offered twenty pounds towards establishing a Library at Norfolk Island Maconochie, in characteristic style, responded with a long and detailed memorandum setting out why

By forcing convicts to consider the interests of others he believed he was promoting their social feelings and that they would learn to modify their behaviour both during the group stage and when they re-entered society.

43. Maconochie (1857) p.1.

44. Maconochie (1839b) p.130.

45. Home Office (1838) p.10.

46. Maconochie (1839b) pp.130, 105-106.

47. Maconochie (1846) p.44.

48. Home Office (1838) p.10.

49. Maconochie (1839b) p.74 (Emphasis in original).

50. Ibid p.106.

51. Maconochie (1848) p.7; Maconochie (1846) p.15 (emphasis in the original).

52. Maconochie (1839b) p.155.

his specific and considerable requirements made a significantly higher sum necessary. Gipps increased the library budget to a hundred pounds. Maconochie then persuaded Gipps to allocate a further hundred pounds for the purchase of musical instruments, which he followed up by forwarding to the Governor the invoice for the cost of the entire stock of a sheet music retailer which Maconochie had impulsively purchased at an auction for another forty six pounds.⁵³

Whereas for advocates of deterrence the fate of the discharged prisoner was often of limited importance, for those promoting reformation as the primary function of punishment it was crucial. Cynicism about the chances of reform were widespread; Prison Governor, George Chesterton, spoke for many when he declared that

*the discharged convict will fly to his accustomed haunts, and the most superficial knowledge of those polluted localities will determine the question, as to how long his recent appreciation of wholesome counsel and pastoral instruction may be expected to survive!*⁵⁴

Such views, anticipating the environmental criminology of the early twentieth-century, claimed that the neighbourhoods from which 'criminals' emerged where so thoroughly 'polluted' that, whatever the merits of prison regimes, the discharged prisoners were virtually doomed to return to their criminal lifestyle. Maconochie agreed that many ex-convicts were returning to crime and former prisoners were a criminogenic influence within the communities they were released into. However, he placed the blame primarily on the failure of the regimes. His system, by resisting the temptation to construct an artificial world within the prison, acknowledged the problems prisoners would face on release and through his training regime he

believed it would produce individuals not only able to resist the temptations offered by the 'polluted localities' but capable of returning to them as civilizing influences.⁵⁵

His confidence in the success of his reformatory regime led him to argue against restrictions and supervision for released convicts; who should be dispersed 'unknown and unrestricted, at their own free will,' able to engage fully in life free from any stigma.⁵⁶ Maconochie (1857:2) even argued that prisoners at the end of their sentences 'should have the power of remaining, up to a given time, in precisely the same circumstances as before'.⁵⁷ This extended confinement would earn the convict, on their eventual discharge, 'a money payment (say a penny per mark), for whatever surplus they may have within this time accumulated'.⁵⁸

Whereas for advocates of deterrence the fate of the discharged prisoner was often of limited importance, for those promoting reformation as the primary function of punishment it was crucial.

From Theory to Practice

Although this paper has focused on his theories Maconochie had two opportunities to put his theories into practice. In 1840 he was appointed as Superintendent of the Norfolk Island penal settlement nine hundred miles east of Sydney, a post he held until 1844. In 1849 a second opportunity presented itself when he was appointed as the first Governor of the new Birmingham prison at Winston Green.

Most of the available literature on Maconochie focuses on his time at Norfolk Island. The island's second settlement between 1825 and 1855 has been widely portrayed as a 'hell on earth' populated by prisoners who were 'incurable doubly convicted capital respites, guilty of awful crimes' and subjected 'to extra-legal punishment and tortures' by 'commandants (who) were brutal and sadistic'.⁵⁹ Recent research by Tim Causer based on a detailed examination of the convict records has revealed a somewhat different picture; in fact the majority of convicts were sent to Norfolk Island for non-

53. Colonial Office (1841) pp.121-122, 17, 23, 27-28.

54. Chesterton, G.L. (1856), *Revelations of Prison Life; with an enquiry into Prison Discipline and Secondary Punishments*, Volume 2, London: Hurst & Blackett. p.41.

55. Maconochie (1839a).

56. Ibid p.36.

57. Maconochie (1857) p.2. This idea was not novel. William Brebner, Governor of the Glasgow Bridewell, allowed prisoners to remain beyond the term of their sentence and permitted the poor and destitute of Glasgow voluntary entry. By 1842 there were nearly forty voluntary prisoners.

58. Maconochie (1857) p.2.

59. Causer, T.J. (2010) 'Only a place fit for angels and eagles': *the Norfolk Island penal settlement, 1825-1855*, Unpublished PhD Thesis, Kings College London p.23.

violent property offences, their average length of detention on the island was three years, and that the scale of punishments imposed on the prisoners was significantly less than previously claimed.⁶⁰ Maconochie's regime on the Island has been portrayed an exceptional event in the history of the second settlement; a period of enlightened penal management characterised by the humanitarian treatment of convicts; who responded by rejecting their criminal habits and adopting civilised modes of behaviour. This account can be found widely in the literature with the most recent example being Norval Morris's fictionalized account of Maconochie's regime which he used as a platform to argue for humane reforms of the contemporary prison.⁶¹ All these accounts rely heavily on John Barry's hagiographic *Alexander Maconochie of Norfolk Island* which celebrated Maconochie as 'a man of great nobility of soul who dedicated himself in the prime of his life to the reform of a barbarous penal system.'⁶²

The evidence however suggests a more ambiguous story. The remote location allowed the Superintendent scope for a level of autonomy way beyond what is usually experienced by those running penal institutions. Instructions from London had to firstly be dispatched by ship to Sydney and then forwarded, again by ship, to Norfolk Island. A request for the Secretary of State to confirm an instruction would gain the colonial administrator over a year's grace and Maconochie was an administrator who had no qualms about declaring the Colonial Secretary misguided, requesting he reconsider whilst continuing his own local policies. He used this facility to remove the obstacles on the Island that impeded his full implementation of his Mark System.⁶³

The system of marks implemented on the Island was focused on the convict's labour; a 'Tariff of Wages' was applied covering 'every description of labour.' Significantly these tariffs allocated greater value to some labour than others with Maconochie declaring that: 'A

Person possessing Skill would have more than a working Man.'⁶⁴ Maconochie also encouraged the growth of an informal economy, rewarding convicts who advanced through his stages firstly with small plots of land to cultivate and later tickets of leave which allowed them freedom within the Island. They were encouraged to grow vegetables, rear stock and cultivate tobacco; all of which they were free to trade. He embarked on an ambitious programme of public works; Roman Catholic and Anglican churches, new barracks and a new prison were all constructed. He established a local police force employing in excess of a hundred convicts and many other convicts were directly employed on Government business. With these factors in mind it is perhaps not surprising that the production of maize and wheat fell significantly during Maconochie's time. What he was unable to do however was give his marks his true intended value — release from the Island was not within his gift — and as a result the initial decline in both disciplinary infringements and the consequent corporal punishments was soon reversed.

One of the most powerful Maconochie myths is that he rejected corporal punishments. Whilst it was true that the marks fine provided an alternative punishment to the existing options of solitary confinement, the wearing of irons and flogging, Maconochie used them all on Norfolk Island. Under

Maconochie being absent from prayer earned a fine of 25 marks; refusing to bathe, 12 marks; careless field labour, 84 marks; insolence 100 marks; stealing potatoes, 200 marks and the false confession of a murder, 1,000 marks. However serious offences were often dealt with by a mark fine accompanied by a corporal or carceral punishment: 'being in the bush in an improper situation' earned a 2,000 marks fine and 6 months in jail, 'insolence and threatening language to Captain Maconochie', earned a fine of 2,000 marks and one month in jail; whilst a conviction for an 'unnatural crime' earned a 1,000 marks fine and 100

Whilst it was true that the marks fine provided an alternative punishment to the existing options of solitary confinement, the wearing of irons and flogging, Maconochie used them all on Norfolk Island.

60. Ibid pp. 100, 50.

61. See for example Hughes, R (1987) *The Fatal Shore*, London Collins and Clay, J. (2001) *Maconochie's Experiment*, London, John Murray. Morris, N. (2002) *Maconochie's Gentlemen*, New York, Oxford University Press.

62. Barry, J.V. (1958) *Alexander Maconochie of Norfolk island*, Melbourne, Oxford University Press, p.2.

63. For example he advised the Governor of New South Wales that his instruction to restrict the Mark System to new prisoners transported from England and Ireland was impractical so he had unilaterally included the colonial prisoners already on the Island. When Governor Gipps rebuked Maconochie he responded that as the colonial prisoners had already been included it was unfeasible to reverse the policy.

64. House of Lords (1847) p.96.

lashes.⁶⁵ It is clear that under Maconochie the number of floggings decreased significantly; Causer has shown that number of lashes which were over 11,000 in 1839 and over 10,000 in 1845 but did not reach 5,000 in the Maconochie years and indeed in 1840 had reduced to 1,000.⁶⁶ Paradoxically the average lashes administered on Maconochie's order, ninety-three, was higher than under any other Governor in the penal settlement's history. The evidence suggests that although life properly improved for convicts during Maconochie's tenure the scale of changes claimed by Barry is overstated.

In 1849, with the construction of Birmingham prison nearing completion, the local Justices met to discuss the appointment of a Governor. They agreed to appoint Maconochie with the specific intention of allowing him to carry out an experiment with his 'Mark System'. However the local authorities attempt to gain the approval of the Home Secretary to the introduction of the 'Mark System' was refused and instead a local arrangement was made permitting Maconochie to carry out a modified 'Mark System' experiment with prisoners under sixteen. Maconochie's second practical attempt to achieve the reformation of prisoners was carried out in a mid-nineteenth-century local prison where sentences were short — more often measured in days rather than years — and the Governor was subject to detailed national and local regulations and supervision. He also faced many of the everyday practicalities which are all too often ignored in theoretical models. In particular his 'Mark System' had identified productive labour as the key mechanism for reforming prisoners but whilst at Birmingham Maconochie had difficulty providing work and most of the adult male prisoners were confined alone in their cells without work or other occupation. His experimental regime however required the boys to work for their food and to achieve this Maconochie resorted to the crank mill and shot drill. Labour was performed on the crank machine by turning the handle upon which a 5lb weight had been attached. The boys were required to make 10,000 revolutions a

In particular his 'Mark System' had identified productive labour as the key mechanism for reforming prisoners . . .

day, 2,000 before breakfast, 4,000 before lunch, and a further 4,000 to receive their supper. Those who did not earn their food by meeting this target were issued with a bread and water diet.⁶⁷ The shot drill involved boys moving a pile of cannon balls from one side of the exercise yard to the other. When completed they would be required to return them to their original location.

Maconochie rapidly found himself in conflict with the local justices and his own deputy. His attempts to experiment were increasingly curtailed and within two years he was dismissed from his post. Two years after his dismissal the prison was the subject of a Royal Commission investigation following the suicide of Edward Andrews a 15 year old prisoner. The report of the Commission was detailed and in particular highlighted a number of illegal punishments Maconochie

had introduced into the prison. These included, for idleness, standing against the wall during work hours, more dramatic was his introduction of flogging by instalments. Under this arrangement, he admitted in evidence to the Royal Commission, obstinate and strong-willed boys who were not co-operating with his regime would be flogged on a daily basis until their submission was obtained. He introduced the straight jacket into the prison and on a number of occasions had

women strapped to the railings in the prison's central hall on display to the other prisoners; a humiliation that he ended only on obtaining the woman's compliance to his authority. He also on a number of occasions delayed the lawful release of prisoners.⁶⁸ Michel Foucault writing about the emergence of the prison in France has highlighted the conflict between the discourses of law and discipline. For Foucault reformatory discipline draws on 'a theoretical horizon that is not the edifice of law, but the field of the human sciences'.⁶⁹ Under deterrent and retributive punishments the focus is on the offence for which the court can determine a specific punishment. For reformation this focus moves to the offender and the court must inevitably hand them over to the gaoler to manage their treatment. This process leads to what Foucault has termed the 'declaration of carceral

65. Colonial Office, (1843) 'Letter from Maconochie to the Colonial Secretary New South Wales 4th April 1842', in *Convict discipline. correspondence between the Secretary of State and the Governor of Van Diemen's Land, on the subject of convict discipline Part I*, London pp.17-22).

66. Causer (2010) p.238.

67. Royal Commission (1854) *Report of the Commissioners appointed to Inquire into the Condition and Treatment of the Prisoners confined in Birmingham Borough Prison*, London p. vii.

68. Royal Commission (1854) p. xxviii.

69. Foucault. M. (2003), *'Society Must Be Defended' Lectures at the College de France 1975-76*, London: Picador p.38.

independence'; with the gaoler increasingly operating unrestrained by the law.⁷⁰ In Birmingham Maconochie, committed to introducing a reformatory regime, constantly felt the virtue of his intentions allowed him to introduce and implement illegal punishments.

Maconochie's Legacy

Walter Crofton's appointment to the Chairmanship of the newly established Board of Directors of the Irish Convict Prisons in 1854 provided an opportunity for Maconochie's ideas to be put into practice on a significant scale. Crofton's progressive stage system, developed in the 1850s, incorporated Maconochie's belief that convicts should be prepared for release. The 'intermediate prisons' of the third stage of that system can be regarded as the first 'open' prisons.⁷¹ Back in England both the regimes of Joshua Jebb (1850-1863) and Edward Du Cane (1869-1895) incorporated elements of the Mark System. Lionel Fox the Chairman of the English Prison Commission in the middle of the twentieth century claimed that 'from the time of Maconochie on Norfolk Island, the conception of Progressive Stages, coupled with Maconochie's mark's system, became almost the dominating idea in prison reform in both Europe and America.'⁷² Maconochie's ideas directly influenced popular writers like Hepworth Dixon, Henry Mayhew and Charles Dickens and made an important contribution to the changing conceptualization of the criminal during the nineteenth century.

In America Maconochie's penal theory made a deep impact on the leading reformer Enoch Wines who sought to place him at the very pinnacle of prison reformers proclaiming in a report to Congress that:

among prison reformers Maconochie holds the most conspicuous place; that he stands pre-eminent in the 'goodly company.' In him head and heart, judgement and sympathy, the intellect and the emotional element, were developed in harmonious proportions; were equally vigorous and equally active; and all

*consecrated to the noble work of lifting the fallen, reclaiming the vicious, and saving the lost.*⁷³

Maconochie's penal theory underpins the *Declaration of Principals* adopted in 1870 by the American Prison Association. His ideas and Crofton's deployment of them within his Irish system provided the inspiration for the highly influential regime developed at the Elmira Reformatory in New York State from 1876. Elmira in turn impressed the Gladstone Committee whose report of 1895 raised the possibility of engaging in an experiment along similar lines; an aspiration which led to the initiation of the borstal experiment from 1909 in England. The ideas of Alexander Paterson, who dominated the English Prison Commission between the two World Wars, are a faithful reproduction of Maconochie's.

The penal theories developed by Maconochie anticipated subsequent developments in state punishments: group dynamics, indeterminate sentences, behavioural modification, token economies, and incentive schemes can all be traced back to his penal blueprint. Yet whilst his theories remain embedded within the contemporary penal system and central to the agendas of prison reformers we need to also recognise that his own attempts to implement these ideas were highly problematic. Indeed on his death *The Athenaeum* highlighted that the two opportunities he had been given to try out his theories had 'both ended in failure, one in misery and disaster.'⁷⁴ If it is to Maconochie's ideas we must, as Norval Morris suggests, look to for 'the roots of modern prison reform' then maybe it is to his penal experiments at Norfolk Island and Birmingham that we should look to understand why so often prison reform fails.⁷⁵

70. Foucault, M. (1979), *Discipline and Punish: The Birth of the Prison*, London: Penguin p.247.

71. Open Prisons were introduced in England early in the twentieth century on the initiative of Alexander Paterson using arguments identical to those set out by Maconochie to justify the innovation. (Thomas, J.E. (1972) *The English Prison Officer since 1850: A Study in Conflict*, London, p.155) Many of the criticisms directed at Open Prisons in the twentieth century are almost identical to those directed at Crofton's 'Intermediate Prison'. With one opponent asserting 'that to call it a *Prison* is a misnomer.' (An Irish Prison Chaplain, (1863) *The Intermediate Prisons, A mistake*, Dublin, p.7; emphasis in the original).

72. Fox, L. W. (1952) *The English Prison and Borstal Systems*, London p.149.

73. Wines, E, C (1872) *International Congress on the Prevention and Repression of Crime including Penal and Reformatory Treatment: Preliminary Report of the Commissioner appointed by the President to represent the United States in the Congress in Compliance with a Joint Resolution of March 7, 1871*, Washington p.204.

74. *Athenaeum* 3 November 1860.

75. Morris (2002).

The English Prison during the First and Second World Wars:

Hidden Lived Experiences of War

Yvonne Jewkes is Professor of Criminology at the University of Leicester and *Helen Johnston* is Lecturer in Criminology at the University of Hull.

This article describes a research study still in its earliest days. Our primary reason for publishing so soon in the project's life is that we want to appeal for information. If you have any official or personal information or documentary material — including private diaries and journals, letters, service medals or simply informed thoughts — about prisons in England during either of the World Wars, please see the contact information at the end of the article and get in touch. We would particularly value any information from ex-prisoners, prison officers and governors — or relatives of such individuals — who experienced prisons during the Wars

The reason for our interest in this topic is quite simply that it is a forgotten history. Despite a wealth of data (including photographic images and autobiographical literature) on prisoners-of-war, internees and conscientious objectors, there are surprisingly few scholarly accounts of ordinary prisoners and prison staff during these periods of conflict. Commonly, the criminological literature jumps from the end of the nineteenth century to the 1960s when the death penalty was abolished and Lord Mountbatten devised the security classification system with which we are familiar today, and penal historians have tended to peg their studies on a handful of key dates rather than discussing longer periods and trends: 1901 when the first Borstal opened; 1921 when the Howard League was set up; 1932 when the first recorded prison riot occurred at HMP Dartmoor; 1936 when the first open prison was established in 1936 at New Hall in Wakefield; 1945 when a new Prison Commissioner was appointed; 1948 when the Criminal Justice Act was finally passed (having first been introduced by Home Secretary Sir Samuel Hoare in 1938 but dropped at the outbreak of the Second World War because time could not be found to pass it into law); and 1951 when the Franklin Report reviewed punishment in penal institutions. Aside from these landmark dates, existing academic studies offer virtually no discussion of prisons in wartime; either the Great War of 1914-1918 or the Second World War, 1939-1945. This is astonishing given what vivid and, at times, desperate and frightening periods these were.

We felt convinced that there was a forgotten history of prisons waiting to be written in the light of the narratives related in *Madness in its Place*¹; an oral history of Severalls Hospital, a psychiatric institution in Essex established in 1913 that held long-term patients in a custodial environment. The Great War brought with it staff shortages, including 21 Reservists who were immediately called up to fight (followed over the course of the next year by many others who had enlisted) and numerous female nurses whose services were required in other types of hospital as the wounded were repatriated. Equally disruptive to Severalls' usual regime was the fact that from August 1914, the Suffolk Brigade of the Territorials was quartered in some of its buildings and the surrounding grounds. In both wars illnesses such as scarlet fever, tuberculosis and typhoid broke out, many patients suffered dangerous levels of weight loss, and at least two members of staff died from their symptoms². In 1942, 38 patients were killed and 23 were injured when Severalls was bombed³. Scarce and/or disrupted resources, in the form of water, coal, heating, clothing, medical supplies and food were severe obstacles to the normal functioning of residential psychiatric hospitals and resulted in the recruitment of inexperienced, unqualified staff, some of whom were 'elderly and incompetent' and, for inmates, 'the return of the locked door, of inactivity, of isolation'⁴.

It is hard to imagine that war did not have equally profound effects on prisons. We have conducted preliminary, relatively small-scale research — which we are currently developing into a much more detailed study — using documentary sources, including Prison Commissioner Reports, *The Times* digital archive, local news sources, autobiographies of prison staff and the *BBC WW2 The People's War* website. Our intention here is merely to give a flavour of what we have found so far; of the stories, activities and official records which together provide a fascinating glimpse into how world war affected English prisons. We have grouped our initial findings under three headings: fluctuations in the prison population and expansion of the prison estate; bombings and evacuations; and everyday life in prison.

1. Gittins, D. (1998) *Madness in its Place: Narratives of Severalls Hospital, 1913-97*, London: Routledge.
2. Ibid: p. 61-2.
3. bid: p. 181.
4. ibid: p. 63.

Fluctuations in the prison population and expansion of the prison estate

While there is a general dearth of literature on prisons during the Wars, what information exists tends to concern a handful of key historical figures, including the charismatic Alexander Paterson, appointed to the Prison Commission in 1922, and his successor, Lionel Fox. The latter is especially interesting because, as an Editorial in the *British Journal of Criminology* recording his death notes, he became Chairman in 'a period of unparalleled difficulty' when 'our penal system had been seriously affected by the war'⁵.

Fox oversaw a vast prison building programme between 1945 and 1952 when — due to a 50 per cent rise in the prison population between 1938 and 1946 — 17 new prisons and borstals were built. At the same time as the prison population was growing, both staff and inmates were being conscripted, and the *Times* reports that Home Secretary, Chuter Ede, had to defend staffing and conditions at HMP Holloway where the prisoner population doubled during WWII but staff numbers remained the same and included many more temporary, inexperienced personnel which, Ede acknowledged, weakened staff overall and impaired pre-war standards of administration⁶. But the possible reasons for the dramatic rise in numbers of people sentenced to prison, leading to a rapidly growing problem of overcrowding (which might include, for example, large numbers of young men returning home from active service; issues around homelessness, fractured family ties, mental illnesses related to the experience of armed combat, etc.) can currently only be guessed at. Further, while criminologists and psychologists now acknowledge the link between Post-Traumatic Stress Disorder and offending — underlined by a recent NAPO report⁷ that nearly one in ten current prisoners is a former member of the armed forces — there is little historical documentation of similar

While there is a general dearth of literature on prisons during the Wars, what information exists tends to concern a handful of key historical figures . . .

phenomena during and immediately after the World Wars.

While the years immediately after WW2 witnessed dramatic increases in prison numbers, also worthy of consideration are the significant falls in the prison population which accompanied war. For example, in 1915-16, numbers of sentenced prisoners dropped from 114,283 to 64,160 — a decrease of 50,123. The Prison Commissioner at the time, Evelyn Ruggles-Brise, argued that a fall in petty crimes was linked to enlistment: 'There is every reason to believe that the country's call for men appealed as strongly to the criminal as to other classes'⁸. Yet at the same time, and somewhat contradictorily, the *Times* reports that short prison sentences for crimes committed *because* of the war (e.g. stealing, looting, hoarding food and rations coupons etc.) became very common. Moreover, given the shortage of medical and other qualified staff, potentially as interesting as the reasons for the fall in numbers of convicted inmates, is the comment in the same article that receptions into prison are largely confined to the 'physically and mentally weak'⁹.

Bombings and Evacuations

Reporting on the early years of the Second World War, 1939-1941, the Prison Commissioners described the period as one of 'disruption and destruction, during which the total effort of the Prison Service was devoted to keeping the machine working in conditions which were always difficult and often dangerous'¹⁰. Despite the robust nature of prison buildings (at Wandsworth, for example, some of the prison staff's children were brought inside the prison because it offered more secure shelter¹¹) and the presence of competent, trained staff, the Commissioners were preoccupied with Air Raid Precautions (ARP), appointing an ARP Officer at Head Office, and selecting individual officers at prisons who were trained at ARP schools or instructed by local fire brigades. Training exercises were held in which prisoners also 'cheerfully co-operated'¹².

5. *British Journal of Criminology* (1961) 'Editorial', 2(2): p. 109.

6. *Times*, 18th October 1945.

7. NAPO (2009) *Armed Forces and the Criminal Justice System*, [http://www.lifechangeuk.com/_webedit/uploadedfiles/All%20Files/Veterans%20Case%20Studies%202009%20\(2\).pdf](http://www.lifechangeuk.com/_webedit/uploadedfiles/All%20Files/Veterans%20Case%20Studies%202009%20(2).pdf)

8. *Times* 26th September 1916.

9. *Ibid.*

10. Report of the Commissioners of Prisons and Directors of Convict Prisons for the Years 1939-1941 (1945) Parliamentary Papers, Cmd. 6820, p. 4. (from now on RCP & DCP).

11. McLaughlin, S. (2001) *Wandsworth Prison: A History*, London: HMP Wandsworth.

12. RCP & DCP, 1939-1941 *Ibid.*, p.5.

When war broke out it had already been decided that there should be an immediate discharge of all prisoners with less than three months left to serve and all Borstal inmates who had served not less than six months of their term. In total 5,624 prisoners were discharged¹³. Shortly afterwards, over 2,000 prisoners and Borstal inmates were transferred over a three day period by road with all their personal property and records. The idea was to reduce or remove the prison populations in areas thought to be liable to attack and to totally or partially clear selected establishments and redistribute the population. With that in mind, Wormwood Scrubs, Pentonville and Brixton were wholly cleared except for a few prisoners awaiting trial at Brixton and prisoners on remand or awaiting trial were transferred to Wandsworth. Those in other committal areas were diverted to prisons outside London. Holloway retained a small number of convicted prisoners for domestic service and those on remand or awaiting trial at an early date and the remainder were transferred to Aylesbury. Outside London; only Portsmouth was wholly cleared but five prisons — Birmingham, Hull, Leeds, Liverpool and Manchester — and one Borstal, Rochester BI, were partially evacuated¹⁴. Other prisons were re-organised to house prisoners-of-war (e.g. HMP Stafford) or military prisoners (e.g. HMP Reading).

In the summer of 1940 the air-raids came. Borstals were the first to suffer and before the end of August, Portland, Borstal and Feltham had all reported bomb damage. Portland was severely affected during the Battle of Britain with prisoner working parties frequently bombed or machine gunned by hostile aircraft. By July 1940 day-bombing had become so serious that large working parties had to be split up, and several parties had narrow escapes¹⁵. In September 1940 the heavy air-raids on the capital began, and four of the London prisons were hit within a few weeks. The raids went on for months with intermittent strikes, one of the most serious of which occurred on the night of 10th May at Pentonville. The prison was hit by several heavy incendiaries causing fires and severe damage to buildings and leading to tragic loss of life, as heard by a child living nearby:

I was five when the war began and we lived in a block of flats in Islington, London...Our air-raid shelter was next to the wall of Pentonville Prison...One night I remember an incendiary bomb fell and set fire to the roof of the prison

and we could hear the prisoners screaming to be let out. They'd been moved from the top floor to the bottom floor and carried on screaming until the fire was eventually put out. Of all the things I remember I always remembering hearing them screaming, these were hardened men, but in the end they were screaming like little girls¹⁶.

In total seventeen people, including officers, their families and prisoners, were killed. As a result the entire prison population was immediately transferred and the prison was closed.

Outside of the capital, bombing raids also inflicted serious damage. The first provincial prison to be attacked was HMP Walton in Liverpool. On 18th September 1940 three bombs struck the prison, resulting in severe destruction and human casualties. One wing was put out of action, six prisoners were killed and two were injured. Air-raids continued into December and then, after a brief lull, heavy raids began again in March 1941. The most severe strikes occurred in late spring of that year. On 26th April 1941 a large number of incendiaries fell on Walton Prison, starting fires which were eventually brought under control 'with great courage and resource' by prison staff assisted by the Auxiliary Fire Service (AFS)¹⁷. There followed a series of eight raids by the Luftwaffe on successive nights, placing immense strain on the prison. On the night of the 3rd May, Walton received eight direct hits by heavy bombs; very serious damage was done and 22 prisoners were killed. Five days later, on the 8th May another heavy bomb demolished an entire wing and caused serious damage to the administration block. Again, a neighbour's testimony describes the terror of the bombing and its aftermath:

We lived next to Walton Prison which was bombed one night and we could hear from our garden the prisoners screaming. Years later some bones were found when they were renovating the Prison Hospital. It was reported that these were prisoners lost during the air raid¹⁸.

Following the prolonged airstrikes in May 1941 the authorities had no choice but to close Walton Prison and evacuate the prisoners while repairs were carried out. A substantial part of the prison was quickly made ready for

13. This discharged group was made up of 3,482 Males in Local Prisons, 318 Females in Local Prisons, 127 Males in Convict Prisons, 8 Females in Convict Prisons, 8 Males in Preventive Detention, 1563 Males in Borstals and 118 Females in Borstals, RCP & DCP, 1939-1941 (1945), p.6.

14. RCP & DCP, 1939-1941 (1945), p.6.

15. *Ibid.*, p.11.

16. Contributor to BBC WWII *The People's War* website, <http://www.bbc.co.uk/ww2peopleswar/stories/91/a5961891.shtml>

17. RCP & DCP, 1939-1941 (1945), p.12.

18. Contributor to BBC WWII *The People's War* website, <http://www.bbc.co.uk/ww2peopleswar/stories/55/a1986555.shtml>

use again and on 28th July 1941 it was reopened. The rest of the year was spent in comparative peace but no other provincial prison suffered so heavily as Liverpool.¹⁹

As the quotes from the BBC website illustrate, the prisoners had good cause to be terrified during the German bombing raids. One interesting point of discussion that emerges from the Commissioners reports is whether or not prisoners should be locked in their cells during air-raids. The report notes that as the 'behaviour of prisoners, considering their unenviable position during air-raids, was on the whole remarkably good and rarely occasioned anxiety to the staff'²⁰ they should be allowed to remain in their cells: in fact, it was decided that, with the exception of those on the top floors, cells were one of the best forms of air-raid shelter and were the safest place for prisoners to be. The question of whether or not the cell should be locked during a raid was, however, a more contentious issue. On the one hand, it was recognised that being locked alone in a cell during a raid was unpleasant and frightening. On the other hand, experience showed that if a wing was hit by an incendiary the landings were likely to collapse and, where casualties occurred, they were often due to prisoners rushing out of their cells as the landing was falling through. It was decided that physical safety should take precedence over psychological anxiety and a rule was laid down that, during air-raids at night, prisoners should be kept locked up²¹, although at HMP Wandsworth bolts were added to the cell doors to allow for a rapid evacuation of inmates if necessary²².

According to the Commissioners, subsequent experience regularly proved the soundness of this decision. Harley Cronin, later General Secretary of the Prison Officers Association (POA), but then working at Holloway Prison, notes in his autobiography that he urged the Home Secretary to revise Holloway's policy of leaving cell doors open at night:

I had seen some of the unsavoury results of this policy at Parkhurst... My case there was proved when Pentonville, reoccupied, was actually hit

by a bomb. Most of the killed and injured were amongst those sheltering on the ground floor of the prisons. Men locked in cells were unharmed by bomb or blast²³.

Everyday Life in Prison

Prison work may not have become more purposeful during the wars but it did enable inmates to contribute to the war effort and thus provided an 'outlet for the patriotism of convicts'²⁴ with, for example, the manufacture of articles for Government Departments and the armed forces (e.g. coal sacks for the Navy and kit bags for the Army). During the Great War, the *Times* comments that many prisoners volunteered to work overtime to support the war effort despite the menial nature of the work for, as the paper notes, it had become impossible for prisoners to engage in work that competed with the occupations of the working-classes outside. The article ends by noting that 'it is hoped that the improvement which has been shown with regard to work will help them when they are discharged'²⁵; a sentiment reflecting the growing faith in new forms of 'treatment' which brought psychotherapeutic and rehabilitative discourses into prisons, as well as into 'asylums' and hospitals in the early decades of the twentieth century.

In World War II female prisoners contributed to the war effort by making dolls and teddy bears for evacuee children²⁶. Mary Size, then Deputy Governor at Holloway Women's Prison, notes in her biography that both staff and prisoners knitted comforts for men and women which were sent to the Red Cross Depot at Oxford for distribution. The prisoners were highly commended for their work and a supply of wool was then provided by the Red Cross. The Mayor of Aylesbury set up a Comforts and Welfare fund which many prisoners contributed to from their modest wages. Most of the women donated a penny a week out of their earnings of three-pence: some paid three

One interesting point of discussion that emerges from the Commissioners reports is whether or not prisoners should be locked in their cells during air-raids.

19. RCP & DCP, 1939-1941 (1945), p12.

20. RCP & DCP, 1939-1941 (1945), p14.

21. Ibid.

22. McLaughlin, Ibid.

23. Cronin, H. (1967) *The Screw Turns*, London: Long: p. 154.

24. *Times*, 9th February 1915.

25. Ibid.

26. Industrial Training in Borstals, PRO 45-19688-442964/15, /16 7 Oct 1943 cited in Forsythe, W. J. (1990) *Penal Discipline, Reformatory Projects and the English Prison Commission, 1895-1939*, Exeter: Exeter University Press, p.236.

half-pence, others a halfpenny. A bank account was opened and £1 a week paid into the Mayor's account. When the balance reached £5 it was sent to the Spitfire Fund which resulted in the prison receiving a letter from Lord Beaverbrook saying he was deeply touched by the gift²⁷.

Many prisons also had their own small-holdings and farms during the Second World War. Prisoners at Aylesbury cleared gardens and small areas of land to grow their own food, and donated what they could to people who had been evacuated to Aylesbury after air-raids on London²⁸. At New Hall, the new, open training prison in Wakefield, 'trusted prisoners' lived simply in huts in the middle of a wood, with 'no walls or fences and just a splash of paint on a tree to mark the boundary'²⁹. Prisoners kept pigs and hens and grew soft fruit trees, strawberries and some fields of cereals. They baked their own bread and sold it to local people, as well as supplying other nearby prisons³⁰. Once again, reflecting penal ideologies of the time, Home Secretary Herbert Morrison decided to see New Hall's 'enlightened methods in dealing with offenders' for himself³¹. His visit in March 1944 convinced him that some prisoners could be handled well in 'minimum security' establishments: in fact the experience was described by the *Times* newspaper as an 'eye-opener to him — the only one [prison] he had ever visited from which he came out happier than he went in'.

As was the case in the wider population, war also brought positive experiences to prisoners in the form of morale-boosting leisure activities such as musical bands, concert parties and sporting competitions. Another contribution to the BBC *The People's War* site notes the importance of social events (at a Naval prison for military offenders) for prison officers, as well as inmates, who 'became almost as institutionalised as the prisoners'³². He describes 'Saturday Open Socials', when staff, who mostly lived in prison lodgings, invited local residents to come and enjoy the entertainment. This was a good PR exercise because not all the locals were happy to have a large prison on their doorstep, but this gave them an opportunity to meet the staff and 'find they were human and not monsters'³³.

Prison staff were, of course, adversely affected by the war in numerous ways. Research from psychology has noted the presence of 'shell-shock' (a term first used in *The Lancet* in 1915) among staff at secure hospitals

returning from active service in both Wars and, given that 80,000 cases of shell-shock had been diagnosed by 1918³⁴, and that alcoholism became increasingly common in this period, it seems highly likely that both were represented among the officers who staffed prisons.

Conclusion

Academic research into the history of prisons and punishment has a long and distinguished history but it has been dominated by studies either which examine the 'birth of the prison' at the end of the eighteenth and beginning of the nineteenth century, or which focus on the 1960s and 1970s when several important developments occurred and when there was a growing politicisation of both prisoners and prison officers. There exists little, if anything, about any of the events described in this article in the academic 'prison studies' literature. Our aim, then, is to explore the impact and effects of war on the management of the prison population; on the buildings in which prisoners and officers lived and worked; on the lives and careers of prison officers and governors; and on the everyday experience of imprisonment for those in custody. As this article has hopefully demonstrated, there is a rich vein of information waiting to be uncovered — data which might not only shed light on a forgotten chapter in penal history but might also offer valuable insights into current problems and issues facing the prison service; coping with rises and falls in prisoner numbers, the re-rolling of institutions to accommodate different populations, and the relatively high numbers of ex-military personnel within the prison population to name but a few.

CONTACT US

Do you have any information or stories to tell about prisons, prisoners, prison officers, or anyone else connected in any way with prisons during World War I or World War II?

We are interested in hearing from anyone who has anything that might add to our research — from diaries, letters and reports to simply a story to tell. Please contact us: Yvonne Jewkes, Department of Criminology, University of Leicester, LE1 7QA yj25@le.ac.uk; and/or Helen Johnston, Centre for Criminology and Criminal Justice, University of Hull, HU6 7RX H.Johnston@hull.ac.uk

27. Size, M. (1957) *Prisons I Have Known*, London: George Allen & Unwin, p. 136.

28. Ibid.

29. Contributor to *BBC WWII The People's War* website, <http://www.bbc.co.uk/ww2peopleswar/stories/08/a4093508.shtml>

30. Ibid.

31. *Times* 29th March 1944.

32. Contributor to *BBC WWII The People's War* website, <http://www.bbc.co.uk/ww2peopleswar/stories/43/a5343743.shtml>

33. Ibid.

34. Busfield, J. (1996) *Men, Women and Madness: Understanding Gender and Mental Disorder*, Basingstoke: Palgrave Macmillan.

Reviews

Book Review

The power of positive deviance: How unlikely innovators solve the world's toughest problems

By Richard Pascale, Jerry Sternin and Monique Sternin

Publisher: Boston: Harvard Business Press (2010)

ISBN: 978-1-42211-066-9 (hardback)

Price: £17.99 (hardback)

This is a book that makes some bold claims. The authors assert that they provide:

'...compelling evidence of a proven remedy for overcoming intractable problems. Its success in 'impossible' situations demonstrates that we can make meaningful inroads against many of the seemingly insurmountable problems that confound the present and cast a shadow on our future...' (p.4)

On this basis, this should be a book that is required reading for every one on the planet. The book's approach has three elements: first, that solutions to problems are often latent, that is that they already exist; secondly, that these solutions have been discovered within the communities or groups that face those problems; and thirdly, that those solutions have been discovered by 'positive deviants' — that is people within those communities or groups who have found different ways of doing things and have therefore enjoyed more success.

The authors illustrate these elements by describing a range of projects in which they have been involved where this approach has been successfully used. These settings range from projects in the developing world — such as malnutrition in Vietnam, refugees in Uganda and female circumcision in Egypt — to initiatives the developed world aimed at reducing hospital-acquired infections and increasing corporate performance. This approach is one of a number that have attempted to

provide bottom-up ideas, focussing of good examples rather than problems, and which have attempted to work with existing cultures. Other similar approaches have included strength-building and appreciative inquiry, which has been widely used in prisons in England and Wales most notably in the development of the Measuring the Quality of Prison Life approach.

These approaches certainly have their place and managers are well advised to have knowledge of these in order to use them as a tool to manage change in a creative and motivational way. However, as is often the case with such books, the claims are grandiose, the tone evangelical.

There is also a question over whether this approach really is the universal management panacea that is claimed. Would the logic of the authors' approach provide solutions to, for example, the financial crisis simply by identifying traders who are doing well and by getting those who are not to copy them? Similarly, in marginalised, high crime communities would crime be reduced by encouraging offenders to follow the example of those who stay out of trouble? Of course not: such problems are linked to wider social structures and cannot be attributed to individual behaviour alone. Therefore 'positive deviants' do not have all of the answers. Another example would be whether good footballers could be created by looking at what Wayne Rooney or David Beckham do on the pitch? Of course this is not the case, and similarly good prison or police officers, teachers or nurses cannot be created just by looking at those who are good. These are professions where there is skill and craft involved which cannot easily be replicated and transferred.

This is a book that has much to recommend it and it is certainly the case that positive, bottom-up management techniques have their

place, but a little more modesty and critical faculty would not have gone amiss.

Jamie Bennett is Centre Manager of IRC Morton Hall.

Book Review

Debating for a Change: Improving prison life through prisoner/staff working groups

By Andrew Fleming-Williams and Anna Gordon

Publisher: Ministry of Justice (2011)

Available free at:

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/DebatingforaChange.PDF>

Human beings yearn to be in social environments that contain certain virtues, like fairness and respect. The experience of being in a punitive and disrespectful environment is traumatic and damaging. Without respect, dignity or fairness personal development is impossible.

Prisoners remain citizens and preserving a notion of citizenship even within a prison is vital for the maintenance of their human rights. These rights are connected to basic human needs for meaning (fairness and justice), for connectedness (belonging, a sense of community), for security (emotional as well as physical), action (empowerment, autonomy), and recognition (respect, acknowledgement and dignity). Difficult to maintain in prisons, but crucial if we seek personal development and a sense of personal responsibility.

The issue for prison regime planners is constructing a form of imprisonment whose basic structure and daily practices are more or less acceptable to those who endure it, despite their

domination and commonly low social position.

This publication looks at a process that seeks to give a voice to all parties working together to improve the context within which they have to live and work. It describes the work of Andrew Fleming-Williams and Anna Gordon in 17 prisons in the South East with a prisoner and management forum project. The experience built up by Andrew Fleming-Williams, treasurer of the Prison Reform Trust and Chairman of the Friends of Wandsworth Prison, in 39 forums in prisons using management development techniques to increase prisoner involvement in the prison's operation, was researched through the project in 17 prisons. The findings are very positive from all parties involved — prisoners, officers, senior management team members and others. The evidence is that such forums (run very differently to prison councils) are capable of delivering real benefits across a wide range of prison issues. There was strong support from all parties to the introduction of such events to be held regularly.

This publication shows what can be done within the context of a focussed dialogue between staff and prisoners to consider the quality of life issues in the prison and to have a say in aspects that need to be improved. As well as the immediate issue of developing progress on rubbing points of daily living in the prison the process is respectful and empowering for all, meeting their need to have a say, to feel they belong in the prison community and recognise the fairness of decision making. Everyone benefits.

The author of the report can be contacted on:
andrew@flemingwilliams.co.uk

Tim Newell is a retired prison governor.

Book Review

Victims and Policy Making: a comparative perspective

By Matthew Hall

Publisher: Willan Publishing (2010)

ISBN 9781843928256 (hardback)

9781843928249 (paperback)

Price £80.00 (hardback) £26.99

(paperback)

Victims and Policy Making is the product of an ambitiously wide-ranging research project comparing victim policies in nine countries. It aims to update and complement Brienen and Hoegen's (2000) analysis of victim provision in 22 European countries¹, whilst also testing Hall's own framework for conceptualising the relationships between cultural attitudes towards victimhood and justice, and international and national policy networks. The methods include documentary data gathered from policy instruments and the secondary literature, complemented by qualitative interviews with policy makers and victim support representatives.

The first substantive chapter presents a compelling narrative describing the influences international declarations and measures have had on domestic legislation and practice in the nine countries under review. It is convincingly demonstrated that seminal documents such as the 1985 *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* prompted and shaped the writing of national victim legislation and policies — and this despite the fact that the international measures tend not to be binding. But, Hall argues, although the international agreements have gone some way towards recognising non 'ideal' victims (that is towards recognising as victims those who do not conform to the stereotype of the innocent and respectable citizen unknown to the offender), domestic responses tend to

revert towards approaches which favour the ideal victim and overlook other forms of victimhood. A further study into the influences underpinning this asymmetry could prove a valuable contribution towards more inclusive policy and practice towards the victims of crime.

The following chapters address the roles of 'policy networks' in domestic policy making, the recognition of victims' rights, and compensation and restorative justice. These chapters lack the clarity of the first substantive chapter and it becomes difficult to follow the author's decisions about what material to present or to remain sympathetic to the series of new and distinct theoretical approaches he keeps introducing. As Hall attempts to describe the wide ranging body of data he appeals to a number of poorly defined and applied theories and models. For example he refers often to the concept of policy networks without using it to contribute to an analysis of the basic finding that a range of interest groups influence the development of victim related policies.

The three conclusions seemed like a poor reward for having laboured my way through to the end of the book. The first finding that 'wide, cultural influences [...] are a contributing factor to the development of victim policies' (p. 216) is so broad that it borders on banal. Insofar as there is specific evidence for the claim, Hall can be credited with substantiating, in an international study, aspects of Boutellier's (2000) account of the 'victimization of morality'² (the thesis that as secularisation leads to the decline of common standards of morality, a common appreciation for the suffering of others remains); however the evidence presented in this book does nothing to show secularisation is responsible for the

1. M. Brienen and H. Hoegen (2000) *Victims of Crime in 22 European Criminal Justice Systems: The Implementation of Recommendation (85)11 of the Council of Europe on the Position of the Victim in the Framework of Criminal Law and Procedure*. Niemegen: Wolf Legal Productions.
2. H. Boutellier (2000) *Crime and Morality: The Significance of Criminal Justice in Post-modern Culture*. Dordrecht: Kluwer.

change, nor to prove that 'cultural influences' are the cause, rather than the effect, of changing victim policies. Similarly, the second finding that policy networks are implicated in the development of victim reforms never fully makes the transition from theoretical assumption to constructive conclusion. And thirdly, reference to the over-used and under-defined concept of 'globalisation' contributes little to an understanding of victim-related policy. This is an ambitious and wide-ranging book, but it is an exasperating and sometimes turgid read. I closed it with a sense of frustration.

Dr. Rachel Bell is a senior officer at HMYOI Feltham.

Book Review

Offending Women: Power, Punishment, and the Regulation of Desire

By Lynne A. Haney

Publisher: University of California Press (2010)

ISBN: 978-0520261907 (hardback), 978-0803259751 (paperback)

Price: £41.95 (hardback), £16.95 (paperback)

Sociologist Lynne Haney has written an ethnography of two community-based facilities for female corrections in the United States. Her fieldwork, spanning over a decade, locates the institutions within differing social and political contexts.

The book demonstrates how the political status quo in the 1990s translated to an institution for young offenders constructed around 'dependency discourse'; whilst the adult institution observed a decade

later was framed by the 'recovery discourse' — both of which served to disentitle the women whilst claiming the path to successful reintegration. The former was concerned with limited government, and weaning women from a sense of entitlement to support from the state. The second, and perhaps more insidious, pathway aimed to refashion women's 'dangerous desires' by unravelling addictive behaviours, to result in women understanding the difference between 'needs' and 'desires'.

The underlying critique of both of these approaches, is, for Haney, the fundamental issue of programmatic approaches which do not appear to take contextual issues into account. There are several outstanding examples in the book, which explore how narratives of 'dependency' and 'recovery' are out of touch with the social realities of the women's lives, serving to flatten and eliminate the multiple ways women experience incarceration, as well as the multiple contingencies they face imagining a life after incarceration; including lack of education, few job opportunities, and social support.

For Haney, both programmes fell foul of 'alternative' narratives, as they attempted to position themselves against mainstream corrections, whilst simultaneously being dependent on the state and such discourses for funding and resource support. The result was that institutional tensions filtered through to daily uncertainties for the women incarcerated in the institutions, many of whom rallied against the system in order to feel they were getting what they deserved, rather than remain in uncertain, contingent programmes full of empty promises.

The two central exploratory lenses are those of gendered

governance and hybrid states — in the sense of decentralized state authority and the hybrid services that proliferated in the wake of federal support for programming; but also hybrid states of the women incarcerated in these institutions.

The book is divided into two parts: the first deals with Alliance, and the 'state of dependence', and the second with Visions and the 'state of recovery'. Across both, descriptions of the daily routines, stories and characters provide a rich and vigorous image of the institutions, while the concluding chapter returns to a sociological framing of the ethnographic account to critically analyse the questions raised by the stories.

The volume is compelling, clear, and concise; providing a sense of the frustration and anxieties women faced in the institutions in which motherhood and healthy lifestyles were incentivised. The shift between reporting on women's reactions and rebellions and the institutions' changes and daily rhythms is insightful. Whilst such an ethnography is firmly located within its US (and state-specific) context since it refers so directly to the resources and policy context of its milieu, the study is valuable for UK readers because many of the concerns facing incarcerated women remain the same, and the lessons to be learned from Alliance and Visions would be well worth transferring to this context.

Aylwyn Walsh is based at the University of Northampton and has previously worked as a Writer in Residence at HMP Lowdham Grange and HMP Ashwell.

Interview: Danny Dorling

Danny Dorling is Professor of Human Geography at the University of Sheffield. He is interviewed by Jamie Bennett who is Centre Manager of IRC Morton Hall.

Danny Dorling is Professor of Human Geography at the University of Sheffield. His work has focused on trying to understand and map the changing social, political and medical geographies of Britain and further afield, concentrating on social and spatial inequalities to life chances and how these may be narrowed. His work has included detailed maps of changing patterns of inequality and wealth¹ and the impact of the economic recession². He has also considered how this has had an effect on people's lives, including the risk of being the victim of the most serious crimes³.

He has attracted growing public attention for his work and has been the subject of a glowing editorial in *The Guardian*⁴. His most recent books have taken a broader approach by questioning the orthodoxies that underpin contemporary society. In *Injustice: Why social inequality persists?*⁵, Dorling exposed the values, beliefs and prejudices that justify and sustain inequality and his most recent book, *So you think you know about Britain?*⁶, examined major social issues such as diversity, ageing, North-South divide, family life and population growth. His analysis is eye-opening and innovative, revealing a new way of looking at these issues.

This interview took place in August 2012.

JB: How would you define human geography?

DD: Human geography is about what happens to people as they are distributed around the Earth; what is important about where you are in what happens during your life. Anything that is spatial is human geography, but as almost everything is spatial this enables you to look at many different issues ranging from economics, to health, to crime. The question is how the geographical location, postcode or country is important in the arguments you are engaged in.

JB: You have created a role as a public intellectual or public human geographer. You do not only work in academia, but have broadened out into work on TV, radio, publishing accessible popular books and even talking at festivals. Why

have you taken on this role? What do you see as the value of it? And why do you think you are particularly suited to it?

DD: I didn't do it deliberately it slowly happened and then accelerated. It still isn't huge. I think it happened because I write in a colloquial way although I do that as I can't write in a more complicated way. The way I write and a lot of the way I talk uses simple English and is uncomplicated. The reason I did it is because academia can become boring and this was more challenging than only talking to eighteen, nineteen and twenty year olds from fairly privileged backgrounds, which is what most lecturing is. Also lecturing isn't that varied year to year, so it can feel like Groundhog Day. The outside work helps me to escape from that and go back into University life with something new to say. It's more challenging talking to a wider group of people than it is talking to fellow academics and students.

JB: A number of your works have focussed on the spatial distribution of wealth and poverty. What has your work revealed about inequality in this country and how it has changed over the last half a century?

DD: There has been a staggering concentration of wealth in particular parts of the country. Over the last half century, if you take house prices which are a large part of wealth, they have gone up most in the places where they were higher to start with. Not just gone up most in absolute price, but gone up most relatively: percentage-wise. We have now reached the point where over half of the marketable wealth in this country, that is the wealth that you can do something with such as lend it to someone else or spend it, is held by just 1 per cent of people. When I went to University in 1986, it was about 18 per cent. There has been an incredible concentration of wealth.

We have looked at poverty, which is not quite as dramatic but there has been an increase in relative poverty over this period, the poor have become more spatially concentrated away from villages and away from other now generally more affluent areas. The poor have had to move further towards cities, and in the last

1. Dorling, D., Rigby, J., Wheeler, B., Ballas, D., Thomas, B., Fahmy, E., Gordon, D., and Lupton, R. (2007). *Poverty, wealth and place in Britain, 1968 to 2005*, Bristol: Policy Press.
2. Dorling, D. and Thomas, B. (2011). *Bankrupt Britain: An atlas of social change*, Bristol: Policy Press.
3. Hillyard, P., Pantazis, C., Tombs, S., Gordon, D., and Dorling, D. (2005). *Criminal Obsessions: Why Harm Matters More Than Crime*. <http://www.guardian.co.uk/commentisfree/2010/apr/30/in-praise-of-danny-dorling?INTCMP=SRCH>
4. Dorling, D. (2010) *Injustice: Why social inequality persists?* Bristol: Policy Press.
5. Dorling, D. (2011) *So you think you know about Britain?* London: Constable & Robinson.

year for the first time since the 1930s we have seen an increase in absolute poverty, which we never expected to see again.

This is an interesting time in terms of income and wealth distribution. Things have been going in the wrong direction for quite a long time but currently that pattern is accelerating. House prices in the most expensive parts of London are going up at an unprecedented rate with properties costing many millions of pounds in some places, at the same time, with benefit cuts and other changes coming in, we are seeing people who are finding it more difficult to buy food or heat their homes at the bottom of society, so the gaps are widening in terms of money.

JB: What has your work revealed about links between economic inequality and other social issues such as education and health?

DD: As the work that I and many other colleagues have been involved in over the last couple of decades has progressed, we have produced tighter estimates of how much income people have and as the data has become better, the predictive power to understand issues such as how likely someone is to do well in education or how likely they are to die, has increased. The dots on the graph begin to line up in a straighter and straighter line. Economic inequality is progressively explaining more and more of the distribution of people's chances of having poor health or poor education. By that I mean that the fit between the distribution of little money by area, and the distribution of premature deaths, or poor exam grades is becoming tighter. Society is becoming more predictable by geography than it used to be. You don't find that many areas where people are poor but they do well in education or live for a long time. There used to be a bit more geographical variety. Similarly, you won't find many places where the people are relatively rich but the schools (in aggregate) are not particularly good and overall health is poor. Over time that relationship has tightened up but also our data has got better.

JB: Sometimes people talk about a 'post code lottery' but this doesn't sound like luck, this sounds like a phenomenon constructed by society.

DD: Yes, it's constructed in an unconscious fashion. It isn't that there is a committee sitting there saying 'let's plan and drive this'. Instead it is a process, to use a social science term. Whatever has happened and why ever it has happened, progressively year on

year any aberration in the system, such as relatively cheap houses near a good school, has been sorted out by — for example — those houses becoming more expensive. So, people sort themselves out to make the lines on the graph line up. That is what happens in a country where inequalities are increasing in line with economic wealth. It is more important where you live as concerns what is likely to happen to you in future than it was in the 1960s or 1970s, when you were a bit freer to choose and a richer person might live in a poorer area without worrying so much about the implications. In the past there were some relatively well-off people in council houses, but that hardly ever happens now.

JB: What about links with crime and victimhood?

DD: Economic wealth links up with people's chances of experiencing victimhood, particularly crimes of violence or burglary, and also their chances of being or becoming a perpetrator. The victims and perpetrators tend to live relatively near to one another with these crimes. There are other crimes that the wealthy are far more likely to commit, but for which we have less data. The classic example is speeding. That is the crime most likely to involve killing someone in Britain. It is a crime that is commonly committed by very large numbers of people almost every day. Generally the chances of someone speeding will increase the more affluent is

Economic wealth links up with people's chances of experiencing victimhood, particularly crimes of violence or burglary, and also their chances of being or becoming a perpetrator.

the area they come from. That is because they are more likely to own a car and they are more likely to drive a longer distance. It would be useful to get data on the full gamut of crimes. We can get information on robbery, burglary and the crimes committed by poorer people, but it is more difficult to get data on the crimes committed by the more affluent, and often those harms are not thought of as crimes.

JB: Crime and victimhood are largely centred in poorer neighbourhoods. Is this as a result of how people in those neighbourhoods behave, the conditions in which they live or how crime is defined?

DD: All of those and more. I've seen some lovely work from schools recently where they took a local paper, looked at the court reports from Magistrates courts and mapped them by post code across their local town. This showed that concentration by perpetrator was not as marked as may be assumed, of course it was more prevalent in some areas, but it was also widely

spread. It is just that a few areas in any town are often notorious, so when you read the local paper you notice addresses in those areas and tend not to clock the ones in other areas. Thinking that most crime occurs in just a few parts of town is the geographical equivalent of thinking that most buses arrive in pairs (you notice when they arrive in pairs). How crime is defined does have a great effect too. We do it less often now, but we used to imprison people for not paying their TV license. That would clearly have a massive effect on those who found it difficult to pay for a TV license. If you were to step back from the situation and ask what are all of the acts that are currently illegal, including paying people cash in hand when you should pay tax and so on, and you drew a map of illegal activity that you could be taken to court for and immoral activity (immoral such as forms of tax avoidance that verge on illegality as being theft), you would find a different picture from crime mapping based on convictions or punishments.

JB: You have been part of a group that have talked about 'harm' rather than 'crime', for example there are many harmful and anti-social behaviours that are not considered criminal. A classic example would be that tax evasion is largely dealt with as a civil and administrative issue where as benefit fraud is treated as criminal.

DD: Yes, tax and benefit prosecutions are a classic example of this, of what is most harmful — in this case to all of us through depriving the exchequer of money — as not being labelled a crime. It isn't just that we have people or institutions avoiding say £90,000 of tax, it's that the sums of money are so much more enormous than people fiddling their job seekers allowance. The harm caused by tax avoidance/evasion (its all bad) is far greater than the harm caused by fiddling benefits. The general attitudes to benefit fraud as compared to tax fraud shows how crime and how it is defined is all mixed up with the idea that some people are more or less worthy. Many of our attitudes are still pretty Victorian.

What I am not arguing is that we should create a huge police state where we criminalise all of the

behaviour of the upper and middle classes as well as the poorer members of society. We would need storm troopers on the streets to do that. What we should do is to look at other countries, other times and other places where people rich, poor and average are more likely to act in a way that is social and moral and where they don't want to harm others by stealing from shops or not paying tax.

JB: If we looked at those times and places where such attitudes prevailed, what would we find? Would we find that they were more equal societies?

DD: They would tend to be more equal, although there are very unequal societies such as Singapore, which is the most unequal society in the rich world but has low crime rates. In general, Scandinavian countries and more equal richer countries such as Korea and Japan have lower rates of crime and violence. In Japan this was revealed tragically after the earthquake and tsunami. Many people have a safe in their house where they keep savings and thousands of these were washed up and people simply handed them in. They didn't think of opening them up and trying to get the money out. It was anathema to do that, even though the people who owned the money may well have been dead. Had that been here, I don't think people would have acted in quite the same way. Also in a country like Japan, you can see people bend over and

These differences are part of a way of behaving when you think you are contributing to something greater than yourself as opposed to thinking you are a mug if you don't take what you can get. Going down the mug route creates an increasingly dysfunctional society.

pick litter up without thinking about it, and being extremely reluctant to drop litter. These differences are part of a way of behaving when you think you are contributing to something greater than yourself as opposed to thinking you are a mug if you don't take what you can get. Going down the mug route creates an increasingly dysfunctional society.

JB: As we talk, it is a week after the riots around the cities of England. What are your initial observations on the nature and patterns of that disorder?

DD: What we need to look at is the log of incidents that were recorded, which has to be analysed properly. We also need the postcodes of those who have gone through the courts. That would give a

7. Hillyard, P., Pantazis C., Tombs, S., Gordon, D., and Dorling, D. (2005). *Criminal Obsessions: Why Harm Matters More Than Crime*.

proper assessment rather than picking out one millionaire's daughter and saying 'it's people from all walks of life'. There is an anodyne immediate reaction, but that work needs to be done.

My own view is that in many ways this is similar to riots we have had in the past. One difference has been a spill out into slightly different areas. We did some work on Charles Booth's maps of London, which showed the distribution of poverty and wealth in London in the 1880s, compared that with the middle of the last century and the most recent period. On the back of that research, which was conducted a decade ago, we showed that London has again become pitted by areas of poverty near areas of wealth as it was in the 1880s, a situation that had been changed in the 1950s and 1960s. The riots are partly reflecting the geography of poverty and wealth in London. However, more work is needed to analyse the situation and compare it with previous riots. I would also say that the immediate language and reaction was predictable and similar to what I remember of the riots in the early 1980s.

JB: The current Government has described what they perceive as a 'broken society'. In your view is that an accurate description of all or parts of the UK?

DD: It is better to say slowly breaking rather than broken. We were a more cohesive society in the 1950s, 1960s and particularly the 1970s. The 1970s is a period that the current government hates because it was a time that was very bad for wealthy families (the tiny group of families from which almost all current cabinet ministers are descended). Since then we have been breaking and the gaps between us have been becoming larger (the rich have been getting richer, which is why so many in government are now millionaires). There hasn't been a point of breaking but if we carry on this course for another three or four decades then it would be fair to call the country 'broken' because it would be so extremely divided when compared to any other affluent country in the world.

JB: In your work you have discussed some of the reasons for the persistence of social inequality. What do you see as the beliefs that underpin this?

DD: There is a difficulty in countries that are becoming more unequal in that as they become more unequal, then people from the better-off part of society begin to justify their position as being something about them: they are bolder, a bit more special, they work harder, and they deserve it. The wider the gaps grow between people, the easier it is for the people at the top to justify these enormous gaps because the less they mix with and know about less well-off people. The set of

reasons I have seen in how people justify this include that 'greed is good', 'we need to have wealth creators', 'the lower classes don't have it in them to do very much', and fallacious comments such as 'it's all about talent'. The language, where some people are seen as 'talented' and others as 'useless', becomes more prevalent in an unequal society. That language dies off in countries where inequality is reduced, where people are paid more similar amounts, it is then that they begin to realise that there aren't great differences in ability.

JB: Are there any international or historical examples of societies where inequality has been reduced successfully?

DD: It is worth starting at home. The greatest reductions in inequality in the UK took place between 1918 and 1978. This reductions were hardly visible in the 1920s but they were beginning (we can see that now in hindsight). After the Crash of 1929, there were incredible reductions in wealth and inequality, so that by 1939 half of the inequality that had existed in 1918 had gone. The Second World War helped to cement this and these reductions in economic inequality between families in

Britain carried on improving afterwards as well. As I was growing up as a boy in the 1970s, the richest 1 per cent of people in Britain only earned six times the average and four times after tax. Can you imagine a top banker earning only four times the average working wage? Not twenty times or two hundred times. You only have to look

The riots are partly reflecting the geography of poverty and wealth in London.

around the world to see that this is still possible. The bankers of Switzerland are paid less and there is much lower economic inequality in Switzerland as compared to the UK. We are an extreme. The only large rich country that is more unequal than us is the United States. However, the United States is moving in the opposite direction and becoming a little more equal and we are about to overtake it in the inequality league table, so we might well soon be the most unequal large country in the world in a couple of years time the way things are currently going. These views are based on figures produced by the International Monetary Fund as to how they view current trends in things like public spending altering. The fund predicts today that by 2015 the UK will spend a lower proportion of its GDP on public services than the USA for the first time ever. The UK already spends a lower proportion than anywhere else in Western Europe. Given this, though all kinds of direct and indirect routes, it is hardly surprising that more people end up in prison as a proportion of the population in the UK than end up imprisoned anywhere else in Western Europe.

JB: The Government have proposed a 'rehabilitation revolution' where they aspire to

reduce reoffending by people released from prison. One of their major strategies is to incentivise services to achieve this aim through social impact bonds and payment by results. How do you view this strategy?

DD: There is so much that is wrong it is hard to know where to begin. When I was first looking at criminology, I thought we had one of the highest rates of imprisonment in Western Europe because our judges and magistrates were being vindictive but there was good research I came across that showed like-for-like we were less likely to imprison people for similar offences than countries with a lower prison population. What has actually happened is that we have become more violent people; crimes are committed in Britain that are more vicious and cause more damage. We have one of the highest crime rates and it is because of those rates that we have one of the highest imprisonment rates in Western Europe. You have to ask what makes us such violent people.

Social impact bonds are not going to address the underlying rates of violence and anger. They won't increase commitment to a society where it makes sense to steal because all around you people are obviously stealing, just many of them are stealing legally through conning you into phone deals where you spend more than you thought for making a call, or they are conning you by paying less tax than you despite earning more. The general message in Britain is that you are a often mug not to steal, whether that stealing is petty theft or 'trousering' a banker's bonus made up of hundreds of thousands of pounds from the savings accounts of pensioners. In the UK, more than anywhere else in Western Europe, people are told its getting money that matters.

Much of the reasons that people end up in prison are to do with the nature of our society. Rates of violence amongst men are often related to status and if you make people feel incredible unequal by the time they are young adults, you get more violence in general. You cannot have a country where the prospects at the bottom are declining and the prospects at the top are growing and not expect a high degree of violence and many other social problems. The idea that a private company will address this without touching the underlying social issues, that social impact bonds might use the power of the market to install cohesion, leads me to conclude that so little thought of any worth has

gone into these plans that they almost certainly won't work.

However, what is scarier is what would have to be done in order to make these plans work? We should not be afraid of social impact bonds failing as much as we should be fearful of them succeeding. This is because they rely on a black box. They want to pay by results and not interfere in the means that are used to get that result. Singapore shows how a society can be culled into certain types of behaviour. With a strict enough police force you can stop people chewing gum. You can control rowdy children in schools by giving them drugs. We already do that. They do it far more in the USA. An entrepreneur funded by social impact bonds might come up with the bright idea of putting young people across a neighbourhood on some kind of sedative. He or she

could give them a cash incentive to take the 'medication'. What kind of drugs would they have to get people to take? What kind of supervision or control would have to be in place? In a sense the risk of 'the market' working in creating a low-crime society is much more concerning than it not working.

JB: A number of alternative strategies to criminal justice have been proposed. In particular, the Justice Reinvestment model is based upon principles of human geography: it is based on the argument that money can be saved by reducing the use of imprisonment and that saving should be reinvested in

addressing the social causes of crime in the communities where prisoners come from. How do you view this approach?

DD: You have to start by looking at the amount of money there is in the criminal justice system. The higher education system is a £8 or £9 billion a year business and serves to recreate itself. We are hardly likely to become turkeys voting for Christmas. This is why universities in Britain have accepted mass privatization over the course of the last twelve months and the introduction of fees of (for now) up to £9000 a year to study at a university. Similarly, with the criminal justice system, there is an impetus to keep the system working as it is. You will have a problem unless you find a way to develop these schemes from within, so that prisons start to have an involvement in implementing them. It's a great idea it's like turning swords into ploughshares. But it won't work while budgets are being cut so rapidly. You have to have the same people producing the ploughshares who

We have one of the highest crime rates and it is because of those rates that we have one of the highest imprisonment rates in Western Europe. You have to ask what makes us such violent people.

produced the swords otherwise they will keep producing the swords. Underlying all of this, there is a group of people who want to keep the country as unequal as it is but also make it more peaceful. I just don't think that is possible. A justice reinvestment model relies ultimately on a desire to reduce underlying inequalities and to live in a country with far less crime. For those who just think that many people are simply 'criminal' or have 'criminality' within them this is just a liberal fantasy and what are needed instead are more prisons.

We need to start by setting a target at government level so that as a country we become less unequal each year. We don't need to do anything more radical than move towards becoming the same as the median country in the OECD, which is the Netherlands. Look at crime, victimhood and imprisonment rates there. This isn't about socialist utopia it is just about not being/becoming the most unequal rich country in the world. Aspiring to such a target would mean that you can have rational hope for your children's future if you are in the bottom half of the country economically. If politicians mean that and convince people that you mean that, then the majority will rationally have a reason for working hard and staying out of trouble. At the moment, if you at the bottom of society, or even in the middle, your chances aren't very high of 'doing well' even if you do those things you are supposed to do and instead you might have a better chance if you behave badly.

Think for a minute to how people might react upon hearing that some group of bankers in London are now receiving part of their bonuses out of the government welfare budget for the profits they are making advising their clients on investing in social impact bonds. I'm sure the bankers would be clever enough to find statistical ways to pretend that what they were investing in was having a social impact. Making a profit is what they are employed to do and if that involves diddling the tax payer out of money what's the difference between that and convincing someone to opt to move to a mobile phone tariff that actually costs them more but is also very complex? In short — you don't get a better world by trying to harness and encourage selfish instincts.

JB: What do you see as the future prospects for the UK in relation to poverty, wealth and inequality?

DD: At the moment, for the super rich their holding of assets and wealth are escalating in a way that they have never escalated before. Property rates are dividing in a way that they haven't since at least the 1930s. We currently have massive housing prices rises in the most expensive parts of London and dramatic house price falls in poorer parts of Northern England. Inequality in wealth

in particular is rising faster than at any point it has before. None of this was expected. Normally recessions bring about a little more equality, at least in the short-term. This one hasn't.

I cannot see it carrying on for five or ten years like this. It isn't sustainable. I also don't think people at the top end of society want it to carry on like this. It is not part of plan 'A'. I suspect that we will start to move together if there is a second dip or a sustained stock market crash, in a similar way we did in the 1930s. It's not necessarily a happy way for this to happen, but that is my guess of where we are moving towards.

We are currently living in strange times as concerns the statistics on social, health and economic inequality where things that have not happened for decades are happening. We are currently a haven for the super rich of the world but that cannot continue for much longer as it depends on how safe London is seen as a place to live and a place to invest. It is hard to predict, though. I couldn't have predicted the crash in 2008 and the immediate impression afterwards was that it would be a great leveler, but actually it was the opposite.

JB: What is next for you?

DD: I am writing a short book discussing what is good about living in a country that becomes slightly more equal. I am writing about the benefits of achieving greater equality. I am interested in describing the nature of the prize of beginning to reverse the growing inequality trend. It's been such a long time since inequalities were last reduced in Britain that it sounds like rose-tinted reflection when people talk of the more equitable past. A lot of people write about what is bad about inequality but there isn't enough produced about what is good about equality. I'd like to focus on how many aspects of your life, not least freedom, can be improved by living in a place that is a little more equal than Britain, such as freedom to choose what job you might want to do, whether to have a job, where you want to live. I am looking at the positive reasons to change the direction in which we are moving at the moment. For people at the very top of society in particular, those who think they could live in gated estates in the future, I think they might not realise that living in gated estates is not as nice a life as living with other people where you have more in common and you don't have to be afraid. The rich are building high fences around their land and putting up gates at the entrances of where they live. I think growing inequality reduces everyone's freedom, but quickly we become acclimatized to being imprisoned in a particular way of living and can all too easily think that there is no alternative to ever growing inequality.

PRISON SERVICE JOURNAL

Purpose and editorial arrangements

The *Prison Service Journal* is a peer reviewed journal published by HM Prison Service of England and Wales. Its purpose is to promote discussion on issues related to the work of the Prison Service, the wider criminal justice system and associated fields. It aims to present reliable information and a range of views about these issues.

The editor is responsible for the style and content of each edition, and for managing production and the Journal's budget. The editor is supported by an editorial board — a body of volunteers all of whom have worked for the Prison Service in various capacities. The editorial board considers all articles submitted and decides the outline and composition of each edition, although the editor retains an over-riding discretion in deciding which articles are published and their precise length and language.

From May 2011 each edition is available electronically from the website of the Centre for Crime and Justice Studies. This is available at <http://www.crimeandjustice.org.uk/psj.html>

Circulation of editions and submission of articles

Six editions of the Journal, printed at HMP Leyhill, are published each year with a circulation of approximately 6,500 per edition. The editor welcomes articles which should be up to c.4,000 words and submitted by email to **psjournal@hotmail.com** or as hard copy and on disk to *Prison Service Journal*, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge, Gloucestershire, GL12 8HL. All other correspondence may also be sent to the Editor at this address or to **psjournal@hotmail.com**.

Footnotes are preferred to endnotes, which must be kept to a minimum. All articles are subject to peer review and may be altered in accordance with house style. No payments are made for articles.

Subscriptions

The Journal is distributed to every Prison Service establishment in England and Wales. Individual members of staff need not subscribe and can obtain free copies from their establishment. Subscriptions are invited from other individuals and bodies outside the Prison Service at the following rates, which include postage:

United Kingdom

single copy	£5.00	
one year's subscription	£25.00	(organisations or individuals in their professional capacity)
	£18.00	(private individuals)

Overseas

single copy	£7.00	
one year's subscription	£35.00	(organisations or individuals in their professional capacity)
	£25.00	(private individuals)

Orders for subscriptions (and back copies which are charged at the single copy rate) should be sent with a cheque made payable to 'HM Prison Service' to *Prison Service Journal*, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge, Gloucestershire, GL12 8BT.

PRISON SERVICE JOURNAL

This edition includes:

Perrie Lecture: The cost to prison legitimacy of cuts

Professor Alison Liebling

Perrie Lecture: Reducing costs and maintaining values

Michael Spurr

Regulating Prison Strikes and Industrial Conflict

Amy Ludlow

**The English Prison during the First and Second
World Wars: Hidden Lived Experiences of War**

Professor Yvonne Jewkes and Dr Helen Johnston

Interview: Danny Dorling

Jamie Bennett