

PRISON SERVICE JOURNAL

SEPTEMBER 2010 No 191



Race in Prisons

Contents

Jonathan Jackson is a senior lecturer at the Mannheim Centre for Criminology, at the London School of Economics, **Tom R. Tyler** is based in the Department of Psychology at New York University, **Ben Bradford** is at the Scottish Centre for Crime and Justice Research at the University of Edinburgh, **Dominic Taylor** works for the National Offender Management Service in the Ministry of Justice and **Mike Shiner** is in the Department of Social Policy at the London School of Economics.

Claire Cooper is Acting Head of the Equalities Group in the National Offender Management Service.

Matt Wotton was until recently Acting Head of the Race and Equality Action Group in the National Offender Management Service. He is currently Private Secretary to the Lord Chancellor and Secretary of State for Justice.

Chris Barnett-Page is based in the Equalities Group of the National Offender Management Service.

Dominic Taylor is a policy manager at NOMS Equalities Group and was previously an officer at HMP Brixton.

Richie Dell is based in NOMS Equalities Group.

Baroness Vivien Stern is Senior Research Fellow at the International Centre for Prison Studies at Kings College London.

- 2 Editorial Comment**
- 4 Legitimacy and Procedural Justice in Prisons**
Jonathan Jackson, Tom R. Tyler, Ben Bradford, Dominic Taylor and Mike Shiner
- 11 Equality in the Prison Service — a lot done, a lot still to do**
Claire Cooper
- 15 No One Left to Blame?**
Matt Wotton
- 18 Seeing the wood for the trees**
Chris Barnett-Page
- 24 Structured Communications in Prison: a project to achieve more consistent performance and fairer outcomes for staff and prisoners**
Dominic Taylor
- 27 Equality Progress? — Slow, but Sure**
Richie Dell
- 31 ‘Why do prisoners have rights? The lessons of our history.’ Eleanor Rathbone Lecture Series**
Baroness Vivien Stern

Editorial Board

Jamie Bennett (Editor)
HMP Morton Hall

Margaret Adams
Public Sector Bids Unit
Maggie Bolger
Prison Service College, Newbold Revel
Alan Constable
HMP Winchester
Dr Ben Crewe
University of Cambridge
Paul Crossey
HMYOI Portland
Dr Michael Fiddler
University of Greenwich
Steve Hall
SERCO

Dr Karen Harrison
University of Hull
Professor Yvonne Jewkes
University of Leicester
Martin Kettle
HM Inspectorate of Prisons
Monica Lloyd
Interventions & Substance Misuse Group

Alan Longwell
Criminal Justice Division, Northern Ireland Prison Service
William Payne
Public Sector Bids Unit
Dr Basia Spalek
University of Birmingham
Christopher Stacey
Unlock
Dr Azrini Wahidin
Queens University, Belfast
Mike Wheatley
Directorate of High Security
Ray Hazzard and Steve Williams
HMP Leyhill

September 2010

- 35 Book Review
The Excellent Mrs Fry
Martin Kettle
- 36 Book Review
Fifty year stretch: Prisons and imprisonment 1980-2020
Jamie Bennett
- 37 Book Review
The lost British serial killer: Closing the case on Peter Tobin and Bible John
Jamie Bennett
- 38 Book Review
Criminal Justice: Local and Global

Book Review
Crime: Local and Global
- 39 Book Review
Thinking about Punishment: Penal policy across space, time and discipline
Dr Karen Harrison
- 40 Book Review
The Crisis of Imprisonment: Protest, Politics and the Making of the American Penal State, 1776-1941
Dr Helen Johnston
- 42 **Interview: Sir Alan Beith**
Jamie Bennett

Martin Kettle works for HM Inspectorate of Prisons.

Jamie Bennett is Governor of HMP Morton Hall.

Steve Hall is a Prison Manager currently working for SERCO.

Karen Harrison is Lecturer in Law at the University of Hull.

Helen Johnston is Lecturer in Criminology at the University of Hull.

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 2009



Editorial Comment

Black people and those from some minority ethnic communities are far more likely to spend time in prison than white people. In 2001, a little under 8 per cent of the general national population were Black or from minority ethnic communities but in prisons this is 28 per cent. Of course, this is not uniform across all minority ethnic groups, and it is young Black, African-Caribbean men that are most likely to be in prison.

The dramatic over-representation of Black people in American prisons has been criticised by many commentators, including sociologist Loic Wacquant, who has described that the disparity is so dramatic that it amounts to a recreation of racial segregation and domination that has been manifested in slavery, the Jim Crow system of separation, and urban ghettoisation. He has described that in America, some young black men from deprived neighbourhoods are so likely to experience imprisonment that it 'is woven deep into the fabric and lifecourse of the lower classes across generations'. Whilst the UK and USA are historically, culturally and politically distinct and the views of Wacquant would not represent a mainstream analysis of race in the UK, the fact that minority ethnic groups are over-represented by over 400 per cent in the UK does raise serious concerns and the warnings from across the Atlantic should not be ignored.

This edition of Prison Service Journal takes the issue of race as its focal point and has been co-edited with members of the National Offender Management Service's Equalities Group, Matt Wotton and Claire Cooper. The aim of these themed articles is to explore the issue of race in prisons with a focus on analysis and discussion but also on action and the shaping of practice.

The articles include an overview of the recent history of race in prisons, written by Claire Cooper. This sets out the changes that have taken place over the last decade and assesses their impact. This article sets out that whilst policies and practices have improved and overt discrimination has been virtually eliminated, there remains unconscious bias and differences in the use of discretionary power by staff including decisions about prisoner discipline and rewards, and the recruitment and selection of staff. A more personal account of the changes that have taken place over the last decade and the impact that they have had is contributed by Richie Dell. As well as

drawing on his own personal experiences, he also draws upon quotes and observations made by prisoners.

This issue of unconscious judgements and the use of discretion are explored in depth in two articles, by Matt Wotton and Chris Barnett-Page respectively. These articles explore how people form judgements, not simply about race but in all social interactions and in making discretionary choices. These judgements are shaped by a variety of factors including parenting, education, media, politics, social norms and personal experiences. These judgements are intuitive, instinctive and often unconscious. These articles will provide a valuable source of reflection for practitioners and will encourage them to deeply question their own thinking and behaviour.

A further practical example of what is being done in order to manage race in prisons is provided in an article by Dominic Taylor. This describes the use of structured communications tools. These are used in order to shape effective communication, make sure that valuable information is passed between groups and to provide a means through which discretionary decisions can be made. These tools have been adopted from other professions including health and are an important step forward in ensuring that the lessons are learned about effective communication from serious incidents in the past.

The other themed article, which is the one that opens this edition, is written by Jonathan Jackson, Tom Tyler, Ben Bradford, Dominic Taylor and Mike Shiner, and addresses the issue of legitimacy and procedural justice in prisons. In other words, this discusses whether having effective procedures makes prisoners feel that they are being treated in a way that is just and fair. This article is particularly important as it raises the point that race equality is not simply an issue in itself but is related to the wider moral texture of the prison. Where prisoners feel that they are treated fairly, reasonably and politely there is a knock on impact on improved safety including reduced self harm, engaging with opportunities for rehabilitation and perceptions of racial equality. Race is therefore part of the wider culture of care within an establishment.

This point can also be taken further by returning to the observations made by Loic Wacquant, cited earlier. His observations make the important point that prisons are not institutions that sit in isolation but

instead they reflect and enact wider social issues including power and inequality. The over-representation of Black and minority ethnic people within prisons is a reflection of wider social issues including poverty and discrimination. As prison managers and staff do not choose who comes into prisons they are to a degree powerless in resisting or changing this. However, what they can do is to take an active role in their own practice in ensuring that inequality is recognised, resisted and challenged and that diversity is valued and promoted. As the articles in this edition make clear, making this change is not simply a matter of adopting new policy statements or procedural documents but requires each individual to draw out and question their own unconscious assumptions, values and beliefs and the organisation to provide the tools, expertise and training in order to enable this to happen.

In the remainder of this edition there are non-themed articles that address other issues including Baroness Vivien Stern's recent lecture on prisoners' rights. This sets the development of prisoner rights in their proper historical and international context and illustrates the progress that has been made over the last half a century. There is also an interview with Sir Alan Beith, the Chair of the House of Commons Justice Committee. In this interview he discusses the Committee's recent work including a widely read report on the future role of the prison officer and another on developing 'Justice Reinvestment' as a more socially conscious alternative to the ever-increasing prison population.

It is hoped that this edition will provide a source of ideas and debate for a range of audiences including academics, practitioners and policy makers.

Legitimacy and Procedural Justice in Prisons

Jonathan Jackson is a senior lecturer at the Mannheim Centre for Criminology, at the London School of Economics, *Tom R. Tyler* is based in the Department of Psychology at New York University, *Ben Bradford* is at the Scottish Centre for Crime and Justice Research at the University of Edinburgh, *Dominic Taylor* works for the National Offender Management Service in the Ministry of Justice and *Mike Shiner* is in the Department of Social Policy at the London School of Economics.

*'...every instance of brutality in prisons, every casual racist joke and demeaning remark, every ignored petition, every unwarranted bureaucratic delay, every inedible meal, every arbitrary decision to segregate or transfer without giving clear and unfounded reasons, every petty miscarriage of justice, every futile and inactive period of time — is delegitimising'*¹

*'One of the most amazing things about prisons is that they 'work' at all....'*²

All social situations are 'ordered' in some way, comprising a constantly changing set of relationships that establish the structure within which human action occurs. In many circumstances this order is hidden, even ephemeral; we are barely aware of its presence. But this is not the case in prisons. Social order in prison is in many ways highly visible: it is established and managed by the omnipresent rules that govern prison life. In large part these rules are oriented toward reproducing the extant regime. They lay down apparently strict criteria for what constitutes order and what is to be done if it is breached.

But what is meant by order in prison? Most social scientists would agree that order is not merely the absence of disorder (or violence) brought about by adherence to a set of implicit or explicit rules or norms. Rather, social order has an effective or 'positive' dimension. It implies a degree of regularity and a sense of trust among those involved that their social environment will reproduce itself in comprehensible ways. Liebling³ defines order in prison as 'the degree to which the prison environment is structured, stable, predictable and acceptable', adding the last criterion in recognition of the fact that

concentration camps and other highly oppressive settings might be structured, stable and predictable but, by their very inhumanity, are not *orderly* in any normatively viable sense of the term.

Social order in this sense — of structure, stability, acceptability — is vital for the smooth running of prisons as much as it is vital for any other social institution. Indeed many have argued that such order is paradoxically *more* necessary in prison than elsewhere⁴. Despite the coercive methods of control available to prison authorities, it remains the case that order in prison depends on the acquiescence and cooperation of the prisoners themselves. Without the active cooperation of most inmates, most of the time, prisons could not function effectively. Absent such cooperation, at the very least prisons would have to be far more oppressive and institutionally violent than is currently the case, with all the implications this would have in terms of the well-being of the inmates, staff safety, and probably cost. Furthermore, in most UK prisons staff/inmate ratios and security arrangements are such that the prisoners could simply take over if they chose to do so. As Cressey⁵ noted, that they do not — and that prisons do function in a more or less orderly fashion — is in itself something of a mystery.

Prisons are not only — or even primarily — warehouses for incarceration. Recidivism rates may remain high, but it is still a goal of prisons to act as agents of rehabilitation. The crimes for which people are in prison are in most instances crimes against the values of society, and it is important to address these value deficits in an effort to reconnect prisoners with mainstream social values. After all, most prisoners will not spend their lives in prison and it is hoped that they can rejoin society more willing to follow social rules.

In the face of these apparent contradictions, several students of prison and prison life have turned to the idea of legitimacy⁶. But what does it mean for

1. Sparks, R. and Bottoms, A.E. (1995). 'Legitimacy and Order in Prisons', *The British Journal of Sociology*, 46, 1, 45-62 (p.60).

2. Cressey, D. (ed.) (1961). *The Prison: Studies in Institutional Organization*. NY: Holt, Rinehart, Winston (p.2).

3. Liebling, A. (2004). *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life*. Oxford: Oxford University Press (p.291).

4. See Sparks, R., Bottoms, A.E. and Hay, W. (1996). *Prisons and the Problem of Order*. Oxford: Clarendon Press.

5. See n.2.

6. See Liebling 2004 n.3; Sparks and Bottoms 1996 n.1, and Sparks *et al.*, 1996 n.4.

an authority to *be* legitimate? What does it mean for a prison to command willing acceptance of its rule by those subject to it? And how do processes of legitimation operate — how do authorities come to be seen as legitimate by those they govern? Notwithstanding the role of naked coercion, or conversely ‘dull compulsion’⁷, in prison life, these authors have stressed that legitimacy — and its attendant problems — can offer important insights into how and why order is maintained in these institutions.

In this paper we apply the key precepts of the procedural justice model to the legitimacy of British prisons. Our contribution is conceptual — what do these ideas mean in relation to prison life? But it is also practical — what are some of the policy implications for a model of legitimacy that stresses procedural justice above all else?

Legitimacy in the criminal justice system: Procedural justice, legitimacy, and prison life

In criminal justice settings, legitimacy is the widespread belief among members of the public (and inmates) that the police, the courts, the prisons and the legal system are authorities entitled to make decisions and who should be deferred to in matters of criminal justice⁸. Recent discussions of policing suggest that the police help secure public compliance and cooperation when the public feels that the police are entitled to make decisions and issue directives⁹. Broadening out the psychological research of Tom Tyler¹⁰, we might say that to see the police as legitimate is to feel personally obligated to obey officers (even if one disagrees with

the specifics of the order); to judge the police to be very broadly in line with one’s own ethical and moral value systems; and to believe that the police follow their own internal rules and regulations¹¹. Importantly, cooperation and compliance with criminal justice agencies obtained via legitimacy is ethically more desirable, more cost effective, and ultimately more durable than systems maintained ‘down the barrel of a gun’¹².

Court administrators have also focused their efforts on designing court systems to gain and retain the trust and confidence of the public¹³. The importance of understanding how individuals who deal with legal authorities experience their encounters is being more widely recognized. Crucially, research suggests that legitimacy (irrespective of how it is defined) is linked to the fairness of the procedures through which authorities exercise their authority¹⁴. This includes allowing people a voice to present their side of the story when dealing with authorities; to be governed by rules neutrally and consistently applied; to be treated with dignity and respect for their rights; and to be under authorities who are sincerely concerned about their well being. When authority is exercised in these ways, people feel that they are receiving procedural fairness.

Crucially, research suggests that legitimacy, irrespective of how it is defined, is linked to the fairness of the procedures through which authorities exercise their authority.

Applied to correctional settings, legitimacy in the sense outlined in Tyler’s work entails prisoners accepting prison authority and authorizing prison officials to dictate appropriate behaviour (irrespective of whether prisoners agree with the need for the specific behaviours and the rules which govern these behaviours). According to the procedural justice perspective this authorization springs most importantly

7. Carrabine, E. (2004). *Power, Discourse and Resistance: A Genealogy of the Strangeways Prison Riot*. Aldershot: Ashgate.
 8. Tyler, T. R. (2006a). ‘Legitimacy and Legitimation’, *Annual Review of Psychology*, 57, 375–400 and Tyler, T. R. (2006b). *Why People Obey the Law*. Princeton, NJ: Princeton University Press.
 9. Sunshine, J. and Tyler, T. R. (2003). ‘The Role of Procedural Justice and Legitimacy in Public Support for Policing’, *Law and Society Review*, 37, 3, 513-548 and Tyler, T. R. and Fagan, J. (2008). ‘Legitimacy and cooperation: why do people help the police fight crime in their communities?’, *Ohio State Journal of Criminal Law*, 6, 231-275.
 10. Tyler, T. R. and Huo, Y. J. (2002). *Trust in the Law: Encouraging Public Cooperation with the Police and Courts*. New York: Russell Sage Foundation and Sunshine & Tyler (2003) see n.9.
 11. Jackson, J., Bradford, B., Hough, M., Tyler, T. R., Myhill, A. and Quinton, P. (2010). ‘Public Trust and Police Legitimacy: Theories and Concepts for the British Context’, *LSE working paper*, Beetham, D. (1991). *The Legitimation of Power*. Basingstoke: Palgrave Macmillan and Sparks et al., (1996) see n.4.
 12. Tyler, T. R. (2008). ‘Psychology and Institutional Design’, *Review of Law and Economics*, 4, 6.
 13. Burke, K. and Leben, S. (2008). ‘Procedural Fairness: A Key Ingredient in Public Satisfaction’, *Court Review*, 44, 4–25 Rottman, D. B. (2005). *Trust and Confidence in the California Courts*. San Francisco: Office of the California Courts, Rottman, D. B. (2007). ‘Adhere to Procedural Fairness in the Justice System’, *Criminology & Public Policy*, 6: 835–842, and Rottman, D. B. (2008). ‘Procedural Fairness as a Court Reform Agenda’, *Court Review*, 44, 32–35.
 14. Tyler & Huo (2002) see n.10.

from the fairness with which prisoners feel they are treated. Sparks and Bottoms¹⁵ describe this as the 'representational dimension' of encounters and treatment: people view the behaviour of officials as representing the system as a whole. One such authorization is granted, and irrespective of the risk of sanction or detection (the chances of being caught and punished if one broke the rules) or whether a particular rule is seen as right or wrong, prisoners will comply with rules in part because they (a) believe it is right and proper that a prison regime has rules and laws, and (b) that the prison officers enforcing those rules are fair in their means of exercising power and therefore command authority. In other words, prisoners who perceive the prison regime to be legitimate believe that the prison should have rules and that these rules should be followed.

These patterns will be found in any system of legitimate power relations, or when a process of legitimation is occurring. But this notion of legitimacy seems particularly apposite in the prison setting. On the one hand, any particular prison is in essence governed by externally developed and mandated rules (laid down by the Prison Service and ultimately Parliament). The provenance and empirical content of a given rule is likely to be rather distant from the situation and certainly the personnel involved in its application. Many rules will often therefore seem unnecessary, pointless or even capricious. A sense that a rule should be followed because it emanates from a legitimate authority will at the very least lubricate the cogs of prison life, easing friction between guards and inmates and reducing the number of 'trigger points' for tension.

On the other hand, prison is unlike other contexts in that surveillance and force are much more readily available than elsewhere. Prisoners *can* (up to a point) be forced to do as they are told to a far greater degree than those on the outside. Yet prison could not function on this basis. Order in the sense outlined above could certainly not be maintained, and it is likely that excessive use of force against prisoners who

did not see the regime as legitimate would result in more rule-breaking, inducing a downward spiral of resistance and retribution. Ironically, in a setting where legitimacy might appear unnecessary because force is apparently so available, ways to avoid using force may be even more important than elsewhere. The central focus becomes one concerned with how the authorities exercise their authority, since none of those involved — prisoners or guards — play an important role in defining what the rules will be¹⁶. We turn, therefore, to a more detailed discussion of procedural fairness.

A sense that a rule should be followed because it emanates from a legitimate authority will at the very least lubricate the cogs of prison life, easing friction between guards and inmates and reducing the number of 'trigger points' for tension.

How does procedural justice 'work'?

According to US work on procedural justice, the core factor that shapes people's evaluations of the police and the courts is the fairness of the ways in which the authority was exercised—procedural justice¹⁷. The idea here is that legal authorities legitimate their decisions by making them through fair procedures. This then leads people to be more willing to voluntarily accept those decisions¹⁸ and to follow them across time, irrespective of whether their behaviour is being monitored. Furthermore when authorities act fairly, they create legitimacy and encourage general rule-following behaviour

in the everyday lives of people. General judgments about the fairness of the authorities shape people's everyday compliance with the law as well as their willingness to cooperate with efforts to maintain social order in their communities. When the police and the courts are viewed as acting fairly, they are seen as legitimate and they enjoy public trust and confidence. This then motivates supportive public behaviour, including compliance with rules and cooperation with authorities.

The four key issues affecting the generation of procedural justice in prisons have already been mentioned: voice, neutrality, treatment with respect and dignity, and trust in authorities. Voice means providing opportunities for inmates to participate in

15. See n.1.

16. See Liebling's (2004) discussion of prisoner officers as peace keepers. See n.3.

17. Tyler, T. R. (2007). *Psychology and the Design of Legal Institutions*. Nijmegen, The Netherlands: Wolf and Tyler, T. R. (in press). 'Legitimacy and Criminal Justice: The Benefits of Self-regulation', *Ohio State Journal of Criminal Justice*.

18. Tyler & Huo (2002) see n.10.

decision making processes. It is important to provide opportunities for inmates to state their case before decisions are made by the staff in situations of everyday disagreements and conflicts. One reason why informal dispute resolution mechanisms are popular is that participating in decision-making allows people to voice their own personal concerns, stating what they think the issues involved are and make suggestions for how they should be handled. Such opportunities for voice need not involve a formal or elaborate mechanism; studies of police street stops, for example, indicate that when officers provide people an opportunity to tell their side of the story before they take action, people are much more likely to feel fairly treated¹⁹.

Neutrality refers to making decisions based on the consistent application of rules based on proper procedure rather than on personal opinions or prejudices. A prison environment provides considerable opportunity for the capricious and arbitrary exercise of power, and for authorities to act based on personal prejudice and implicit bias. By acting based on rules and by applying those rules evenly across people and time, authorities are viewed as acting fairly. Because rules typically are explicitly specified in prison settings, the authorities have considerable capacity to shape and explain their actions by reference to the rules. It is relatively easy for prison authorities to be seen to be following the rules in many situations because the rules are codified and known to all (at least in theory).

Treatment with respect and dignity is consistently one of the most important issues that concern people when they are dealing with authorities. When people feel demeaned or subjected to negative stereotypes, they view themselves as diminished as people and disrespected beyond what is appropriate when dealing with the law. Conversely, acknowledging people's rights and acting with courtesy leads them to feel fairly treated. Finally, people are influenced by their inferences about the motivations of the authorities with whom they are dealing. If people feel

that authorities are acting out of a sincere desire to do what is right, then they view the authorities as acting more fairly. If people think that an authority is not concerned about their well-being then they react negatively to its actions. How can authorities communicate trust? They can give people a chance to explain their concerns, show that what people say is being considered, and explain why and how decisions are made.

The exact manner in which the elements of fair treatment are enacted depends on the setting and will vary depending on whether that setting involves the courts, the police, or prisons. For example, in the courts, judges have been encouraged to explain the basis for their actions and to avoid actions that communicate disrespect, such as reading or signing orders when litigants are speaking. For the police, model procedures involve presenting people with a written statement that specifies their rights, tells them how they can complain if they feel that unfair treatment has occurred, and explains why actions such as street stops are occurring. General courtesy toward the people with whom they are dealing is another method for creating legitimacy. It is not necessary for all four elements outlined above to be present — indeed, the absence of one, for example of 'voice' in settings, such as arrest suites, where it would be inappropriate or dangerous if it would lead to

A prison environment provides considerable opportunity for the capricious and arbitrary exercise of power, and for authorities to act based on personal prejudice and implicit bias.

conflict with others present, can be compensated for by an emphasis on one or more of the others (such as treating people with dignity and respect even in difficult or otherwise oppressive situations).

In a prison setting — where contact between authorities and inmates is more involved and longer term — several types of policy can be enacted to create more procedurally just correctional practices. A core contribution of recent work by Franke et al.²⁰ is its suggestion that a larger set of issues might be involved in reactions of inmates to their experience. Beyond the quality of interpersonal treatment and the fairness of decision making²¹, inmates might react to the degree that authorities help them learn

19. Ibid.

20. Franke, D., Bierie, D. and MacKenzie, D. L. (2010). 'Legitimacy in Corrections: A Randomized Experiment Comparing a Boot camp with a Prison', *Criminology & Public Policy*, 9, 1, 89-117.

21. See Reisig, M. D. and Mesko, G. (2009). 'Procedural Justice, Legitimacy, and Prisoner Misconduct', *Psychology, Crime & Law*, 15, 1, 41-59 and Henderson, H., Wells, W., Maguire, E. R., and Gray, J. (2010). 'Evaluating the Measurement Properties of Procedural Justice in a Correctional Setting', *Criminal Justice and Behavior*, 37, 384-399.

meaningful skills and develop opportunities to enter the post-prison world with viable possibilities for a noncriminal life. They also might react to whether the guards create a safe and less dangerous environment for them to live in as prisoners. Recognizing the importance of inmates' feelings about their treatment as this affects the legitimacy of prison authorities suggests a general need to examine the sources of those feelings. This point clearly includes traditional procedural justice issues, but it also might extend beyond those issues to other sources of legitimacy that can be tapped to enhance the positive consequences of imprisonment. We thus move beyond the idea of legitimacy, which typically refers to authority, expressed consent and the moral justification of power relations. Liebling's²² broader notion of the 'moral performance' of a prison brings in a range of relational and quality of life issues, including include safety, dignity, humanity, respect, opportunities for personal development, and so forth — all of which may themselves be important to the construction and reproduction of legitimacy.

Some barriers to justice and legitimacy in prisons

In prisons in England and Wales, particular challenges in achieving justice and legitimacy are the consistent and disproportionate negative outcomes and the subsequent feelings of procedural injustice experienced by a large number of inmates. Consider the position of Black and minority ethnic (BME) prisoners. BME prisoners are overrepresented in the use of a range of sanctions: in their experience of 'Use of Force' where Black prisoners are 90 per cent more likely to have force used on them by staff than White prisoners;²³ in segregation for reasons of good order or discipline (GOOD), where Black prisoners are 76 per cent more likely to be subject to this sanction;²⁴ and in the allocation to one of the three privilege levels of the Incentives and Earned Privilege scheme (IEP) where

Black prisoners are 54 per cent more likely to be placed on the lowest 'Basic' level.²⁵ These disproportionate outcomes occur in a prison system that suffers from a more fundamental race imbalance: BME prisoners make up 26.5 per cent²⁶ of the prison population compared with 8.7 per cent of the UK population.²⁷ Race inequality is thus seen first by BME prisoners overrepresented within prisons in England and Wales, and second in specific outcomes experienced by individuals (as well as arguably constituting a harm to prisoners in itself).

What does this have to do with procedural justice and legitimacy? Disproportionate outcomes — such as use of force, segregation and privilege levels — are chiefly issues of distributive not procedural justice. And the experience of distributive justice has been shown (in US research) to be less important than procedural justice in explaining levels of legitimacy. Might unequal outcomes amongst prisoners have little impact on prison legitimacy?

On the contrary, it seems likely that unequal outcomes are experienced by those prisoners concerned as procedural as well as distributive injustice. In a prison in which many individuals from minority ethnic groups experience a loss of privilege, the use of force, and so forth, prisoners will likely experience this most keenly as the failure of procedure: a failure to treat them fairly and with dignity; a failure to be clear about what the rules are and to apply them consistently and fairly; and a

failure to be neutral in decision-making and treatment. Disproportionate use of force, or greater use of segregation, seem almost certain to communicate disrespect, a denial of voice, and the failure to wield authority in a fair, unbiased and neutral manner. The subsequent de-legitimising sense of unfairness may be chiefly procedural.

Since the highly critical report in 2003 by the Commission for Racial Equality on the state of race equality in the Prison Service, there has been widespread agreement that substantial improvements

In prisons in England and Wales, particular challenges in achieving justice and legitimacy are the consistent and disproportionate negative outcomes and the subsequent feelings of procedural injustice experienced by a large number of inmates.

22. See n.3.

23. National Offender Management Service – Ethnic Monitoring SMART reports April 2008 – June 2009.

24. National Offender Management Service – Ethnic Monitoring SMART reports April 2008 – June 2009.

25. National Offender Management Service – Ethnic Monitoring SMART reports April 2008 – June 2009.

26. National Offender Management Service – Ethnic Monitoring SMART report December 2009.

27. UK Census 2001.

have been made through actions and monitoring aimed at tackling race inequality. The figures above illustrate, however, that the experience of BME prisoners has not been transformed. The common perception among BME prisoners of unfair negative treatment has not been eliminated by local and national ethnic monitoring of many sanctions and activities, a closely scrutinised and managed racist incident reporting system, or equality management teams chaired by governing governors or their deputies.²⁸ This is hardly surprising given the data pointing to significant race-inequality. Neither the numbers nor the subjective experience of prison life have moved far enough in the right direction. Until they do so the experience of unfairness among BME inmates will continue to threaten the legitimacy of prison regimes.

Improving procedural justice and legitimacy

We finish with some policy implications that emerge from the perspective outlined in this paper. Analysis of the ethnic monitoring data for activities and sanctions within prisons suggests that race disproportionality is less likely where a more structured and formalised process is involved, such as in adjudications (disciplinary proceedings against prisoners, administered by senior prison managers locally). In outcomes where use of discretion (by autonomous staff in front-line operational roles) is a significant determining factor — as in all three categories detailed above — disproportionately is more likely to result.²⁹

In the light of this, and the race-neutral factors consistently identified by staff as driving their use of discretion (despite the consistent net effect of all these decisions being disadvantageous along race lines), the Race and Equalities Action Group within NOMS has considered a number of studies of potential relevance

in tackling this disproportionately. The notion of aversive racism³⁰ suggests that individuals who believe themselves to be non-prejudiced and are ‘conscious, explicit, sincere supporters of egalitarian principles’ may nonetheless hold ‘unconscious negative feelings and beliefs about Black and other historically disadvantaged groups’. Results from Harvard’s Implicit Association Test support this idea³¹, providing further incentive to explore the potential benefits of approaching the problems of guard-prisoner interactions in new ways.

Even unintended unfairness powerfully affect prisoners. The procedural justice approach stresses that it is the subjective experience of unfairness which is a key determinant of dissatisfaction, anger and the delegitimisation of prison regimes. Such a process poses a significant problem for the reproduction of order in prison. Simply assembling prison staff in classrooms and working towards overt consensus on egalitarian professional practice is not fully addressing this issue. We need now to focus on changing situational factors, slowing down and structuring interactions in order to improve decision-making. This is analogous to work already undertaken in military, aviation and clinical settings to improve professional communication.

REAG is piloting in Spring 2010 a project aimed at evaluating a set of structured communication tools. It is hoped

that three structured communication tools; SBAR (Situation, Background, Assessment and Recommendation), surgical-style checklists and an assertiveness tool designed to work alongside them (RECODE), may reduce cognitive error overall as seen in surgical setting (WHO study of use of Surgical Safety Checklist), and also help avoid negative outcomes resulting from communication breakdowns

Even unintended unfairness powerfully affect prisoners. The procedural justice approach stresses that it is the subjective experience of unfairness which is a key determinant of dissatisfaction, anger and the delegitimisation of prison regimes.

28. Race Review 2008, Race and Equalities Action Group, National Offender Management Service.

29. Race Review 2008, Race and Equalities Action Group, National Offender Management Service.

30. Dovidio, J. F., & Gaertner, S. L. (1986). Prejudice, discrimination, and racism: Historical trends and contemporary approaches. In J. F. Dovidio & S. L. Gaertner (Eds.), *Prejudice, discrimination, and racism* (pp. 1-34). Orlando, FL: Academic Press.

31. Banaji, M. R. and Hardin, C. D. (1996). ‘Automatic Stereotyping’, *Psychological Science*, 7, 3, 136-141, Cunningham, W. A., Preacher, K. J., and Banaji, M. R. (2001). ‘Implicit Attitude Measures: Consistency, Stability, and Convergent Validity’, *Psychological Science*, 12, 2, 163-170, Greenwald, A. G., and Banaji, M. R. (1995). ‘Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes’, *Psychological Review*, 102, 1, 4-27, and Greenwald, A. G., Banaji, M. R., Rudman, L. A., Farnham, S. D., Nosek, B. A., and Mellott, D. S. (2002). ‘A Unified Theory of Implicit Attitudes, Stereotypes, Self-esteem, and Self-concept’, *Psychological Review*, 109, 1, 3-25.

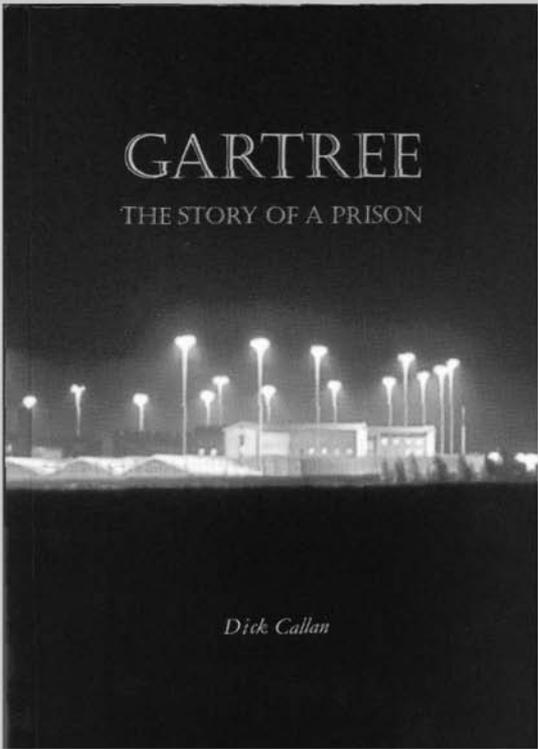
affecting; the way prisoners make requests and respond to instructions and staff use their discretion. Individuals and groups of prisoners currently treated less favorably in prisons as a result of decisions influenced by irrelevant factors of race may be protected from these outcomes by a structured communication approach. Where unequal treatment does still occur, or is perceived, prisoners may benefit from the use of a authorized and supported structured communication tool to address the situation. That is, they may benefit from being given a voice. Widely understood communication tools within a prison setting may embed reflective practice, reduce unwitting discrimination through a simple and easily understood check-list approach and create a framework in which prisoners are encouraged to express their concerns and other important information, pro-socially and with the authority of simple recognized tools. By enabling parties in a transaction to focus more effectively on its important aspects, the significance of unconscious bias may be reduced.

To be sure, structured communication tools may have an adverse important impact: they may take spontaneity and warmth out of encounters, thus eroding some of the more nebulous dimensions of procedural justice. This is important because prisoners should not feel they are being subjected to a rather

clinical and bureaucratic form of exchange. To be successful, structured communication tools need to become part of everyday interaction: embedded in routine and professional ways of behaving.

Final words

We began this article by discussing the issue of order in prison. Prison regimes are orderly not only when there is an absence of disorder, but when they are acceptable to the prisoners living within them. The problem of order in prisons is at least in part a problem of legitimacy³² 1996). The procedural justice framework described briefly above provides consistent empirical evidence that the legitimacy of criminal justice authorities is established and reproduced through the fairness with which those authorities treat those they govern. This is not some abstract argument, or merely an issue of 'tea and sympathy.' The experience of BME and other prisoners — both historically and in terms of new projects such SBAR — demonstrates that issues of voice, neutrality, respect, and trust are deeply embedded in Prison Service procedures and practices. We can — and should — work to improve procedures and practices, to increase the experience of procedural fairness among prisoners, and therefore enhance the legitimacy of prison regimes.



An exciting new book by Dick Callan examining the history of this unique establishment.

'Well written, interesting and a fascinating read' -Roland Adams OBE - Governor of Gartree 1971-73.

'An important bringing together of a fascinating period of penal history' Tony Pearson Governor of Gartree 1977-81 and Director of Operations HMPS

'A sheer delight-A splendid piece of work' Bob Duncan Governor of Gartree 1987-92.

'A remarkable job of capturing the mood of the place over the years' Sir Richard Tilt Governor of Gartree 1985-88 and Director General HMPS.

'A gripping story and a vivid example of how criminal justice policy and changes impact on a single establishment' -Phil Wheatley- Deputy Governor at Gartree 1982-86 and Director General HMPS

'Gartree – The story of a Prison', details the often traumatic and turbulent events that have occurred at the prison since opening in 1966. These include:

- ◆ Gartree's place as one of the first maximum security dispersal prisons
- ◆ Major riots in 1972 and 1978
- ◆ The cataclysmic helicopter escape in 1987
- ◆ Gartree's subsequent removal from the dispersal estate

'Gartree – The story of a Prison', utilises numerous historical records to give an accurate picture of events at the prison since 1966. These include the Governor's Daily Journal, local historical records and interviews with a number of past and present Gartree staff, including a number of ex Governing Governors.

The book is available (price £7.50 plus £2.00 p&p) from: Dick Callan, Head of Finance, HM Prison Gartree, Gallow Field Road, Market Harborough LE16 7RP

Cheques must be made payable to R. Callan

32. Sparks et al (1996) see n.4.

Equality in the Prison Service — a lot done, a lot still to do

Claire Cooper is Acting Head of the Equalities Group in the National Offender Management Service.

History of race equality in the Prison Service

In March 2000, Zahid Mubarek — a young Asian teenager — was murdered by his white racist cellmate, Robert Stewart, at Feltham Young Offender Institution. Zahid’s murder was brutal. The 19 year-old was beaten unconscious with a table leg while he slept. He died a few days later. Robert Stewart was later sentenced to life imprisonment for the murder. At the conclusion of the internal Prison Service investigation, Martin Narey, the then Director General, stated that the problems of the Prison Service went beyond institutional racism to ‘pockets of malicious and blatant racism’.

Almost a decade before Zahid’s murder, the Prison Service had begun taking steps to improve the way it managed race equality. A Race Relations Manual was published in 1991¹ and ethnic monitoring of prisoners introduced. Until the mid-1990s, the Prison Service was the only criminal justice agency providing detailed ethnic breakdowns. However, it was Zahid’s tragic murder that marked a watershed in the history of tackling race issues in the Prison Service. Zahid’s murder, along with negative reports on a number of prisons and a successful tribunal case brought by a Black prison officer against HMP Brixton, led to a formal investigation by the Commission for Racial Equality (CRE).

The CRE’s investigation focused on three prisons — Brixton, Feltham and Parc. They made several findings of unlawful racial discrimination and identified 14 failure areas². Criticism focused less on policy and more on practices in establishments and, in particular, on the use of discretion by staff which often impacted negatively on BME prisoners. This was compounded by the long-standing difficulties in recruiting BME staff — in December 2000, only 3.5 per cent of staff were BME, compared to a BME prisoner population of approximately 18 per cent.

The CRE could have taken further legal action but, instead, the Prison Service agreed to implement an action plan aimed at putting right what was wrong³. The Service embarked upon an ambitious programme of work. A Race Equality Action Group was created at Headquarters; a national Race Equality Action Plan was developed; and a Programme Management Board, led by a Director, put in place to oversee its delivery. Progress was also regularly reported to a Ministerial Scrutiny Panel, chaired by the Prisons Minister and CRE Commissioner.

In 2005, the Chief Inspector of Prisons’ thematic review of race was published⁴. It painted a worrying picture of ‘parallel worlds’ — White managers and staff thought that prisons operated in a broadly fair way but BME staff and prisoners were less positive. BME prisoners consistently had the most negative perceptions of all. At the same time, the House of Lords ruled that there had to be an independent inquiry into Zahid’s murder. In 2006, Mr Justice Keith published his findings⁵. He spoke of ‘a culture within the Prison Service...to treat race relations as divorced from the basic operational requirements of prison work.’ He made a total of 88 recommendations for improvement, including ten relating specifically to race and diversity. The Inspectorate’s areas for development and the recommendations of the Inquiry were incorporated into the national action plan, which grew to include over 100 actions.

The end of the five year agreement with the CRE (now Equality and Human Rights Commission (EHRC)) provided a good opportunity to look back at what had been achieved and a review was commissioned to assess progress made⁶. The methodology adopted was a first for the Prison Service. Premised on the principles of openness and transparency, the views of external stakeholders took centre stage. Some of the Service’s harshest critics visited establishments to report on progress and highlight where more work was needed. An Independent Advisory Group was set up to provide further scrutiny and advice. Co-

1. Prison Service (1991) *Race Relations Manual*.

2. Commission for Racial Equality (2003) *The Murder of Zahid Mubarek: A Formal Investigation by the Commission for Racial Equality into HM Prison Service of England and Wales. Part 1*. Commission for Racial Equality (2003) *Racial Equality in Prisons: A Formal Investigation by the Commission for Racial Equality into HM Prison Service of England and Wales. Part 2*.

3. Commission for Racial Equality and HM Prison Service (2003). *Implementing Race Equality in Prisons: A Shared Agenda for Change*.

4. HM Inspectorate of Prisons (2005) *Parallel Worlds: A Thematic Review of Race Issues in the Prison Service*.

5. Keith, Justice (2006) *Report of the Zahid Mubarek Inquiry, Volumes 1 and 2*.

6. National Offender Management Service (2008) *Race Review 2008. Implementing Race Equality in Prisons – Five Years On*.

Chaired by Lord Rosser, a former non-executive member of the National Offender Management Service Management Board, and Farida Anderson, Chief Executive of Partners of Prisoners, the group comprised 20 individuals from a wide range of organisations, including the EHRC lead Commissioner. The review process was hailed as a model of good practice by EHRC who described it as ‘honest and rigorous’.

The findings of the Race Review: A lot done but a lot still to do

There can be no doubt that a lot has been done. There’s a general consensus that blatant forms of racism have been largely eradicated.

Systems and processes have been put in place that were absent at the time of the CRE investigation. At a national level, a policy on race equality was developed⁷, with an accompanying Standard used to audit delivery. A programme of impact assessments was introduced with all new and revised national policies being subject to race equality impact assessment prior to issue. A national Race Advisory Group was created to act as a critical friend, supporting and challenging the Service’s work.

Given the CRE’s criticisms focused mainly on local practice, considerable attention was devoted to developing systems and structures that would enable effective management of race equality in establishments.

Race Equality Action Teams (REATs) were created in every establishment, including external members from partner organisations as well as prisoner representatives. The creation of the prisoner rep role was a significant development and has become central to communication with prisoners. A comprehensive training programme for REATs was rolled out with over 1700 REAT members being trained and the role of Race Equality Officer (REO) was created in each establishment. Two Key Performance Targets on race were introduced — an operational KPT focusing on service delivery and a staff KPT combining measures of BME staff in post, and in contact roles, with audit results. Establishments carried out local impact assessments on the ten key areas derived from the CRE failure areas, including adjudications, Incentive and Earned Privileges (IEP) and use of force. Over 1500 impact assessments were completed. SMART was developed — a range-setting tool enabling the monitoring of outcomes of key functions and processes by ethnic group. Data is aggregated on a quarterly basis

to produce a national picture of the effect of key policies. There is also an annual Staff Ethnicity Review — now Diversity Review — that publishes monitoring data for key employment functions. There were improvements to the handling of racist incident reporting forms; improved training for investigators was introduced; and mediation awareness training piloted. Specific improvements were made to food and the list of goods in the prison shops to ensure they met the diverse needs of prisoners. The CRE heavily criticised provision for Muslim prisoners. In response, it became mandatory to allow Muslim prisoners to attend Friday prayers and to perform ablutions before prayers. Recruitment and retention of BME staff improved. BME representation increased from 3.5 per cent in December 2000 to 6.2 per cent in April 2008, against a target of 6.3 per cent for 2007/08. All this amounted to an annual investment of nearly £9m — three times the £3m committed in 2001.

However, despite all these changes, the review concluded that the experience of BME prisoners and staff had improved but not been transformed. There remained evidence of differential treatment of BME prisoners. National monitoring data showed, and continues to show, significant differences between minority groups, as well as between the BME and White groups. Outcomes for Black prisoners, in

particular, are concerning and three figures are striking. At the time of the review, Black prisoners were 30 per cent more likely than White prisoners to be on the basic regime, 50 per cent more likely to be in the segregation unit for reasons of Good Order or Discipline and 60 per cent more likely to have force used against them. The latest data shows that this trend continues. In contrast, the adjudications process — a formal and structured way of responding to prisoner misconduct — does not show the same level of disproportion. This suggests that where issues are resolved less formally through day-to-day interactions and relationships, the result is disproportionate outcomes. Where discretion operates, this tends to result in more negative outcomes for BME prisoners. The perceptions of BME prisoners also remain more negative than those of White prisoners, with the most significant differences being in perceptions of their relationships with staff. A number of issues are also emerging in relation to the treatment and experience of Muslim prisoners, as highlighted in the recently published thematic report by the Prisons Inspectorate. This is a particularly sensitive area given the Service’s work on extremism and radicalisation.

There’s a general consensus that blatant forms of racism have been largely eradicated.

7. Prison Service Order 2800 Race Equality.

Although there has been a huge investment in the HR infrastructure, specific challenges also remain in relation to staff equality issues. For example, White staff are 50 per cent more likely to get an exceeded marking in their SPDRs than BME staff. White staff also tend to have higher pass rates in the recruitment process and in assessments for promotion.

What next?

It seems obvious that, if disproportionate outcomes for Black prisoners can be attributed to the use of discretion by staff, then this is where attention now needs to be directed. But tackling this is easier said than done. The use of discretion is a vital part of maintaining good order in prisons. It's not possible, or desirable, to simply formalise all processes and remove the element of officer discretion.

Given the problem is primarily located in the staff-prisoner interaction, interventions are being developed that aim to impact directly on these front-line interactions. A tool has been developed that will provide a model for interactions that allows staff and prisoners to use a pro-social communication method to share relevant information. This approach is borne out of growing evidence that structured communication tools have been highly successful in environments in which accurate information transmission across hierarchical divides is crucial. A series of checklists are also being developed which will help ensure that decision-making is accurate and consistent with best practice. Evidence suggests that using checklists to structure complex choices and processes can lead to significant improvements in performance. But to have an effect, tools alone are not sufficient. Strong, effective leadership is also vital. Governors and other leaders in establishments need to be making the business case for race equality, articulating the benefits of a consistent focus on fairness. They must ask difficult questions about what the SMART data is telling them and take swift and effective action where issues are identified.

Reducing disproportionality in outcomes for BME prisoners and staff is still high on, arguably at the top of, the list of must-dos. But, as prisons have had to manage an increase in numbers entering custody, combined with the impact of longer sentences, and budgets become

ever tighter, the diversity of the prisoner population has also become more complex. At the same time, legislation now places particular duties and responsibilities on the Service with regards to gender and disability, as well as age, sexual orientation and religion or belief. This means there are some fundamental and difficult questions that must now be addressed. Not only to ensure compliance with the law but also because it's the only way in which to run an effective service that achieves its aims of protecting the public and reducing reoffending. Get equalities right and you're more likely to enable prisoners upon release to live law-abiding lives. Treat them poorly, reinforce and confirm their feelings of grievance and discrimination, and you fail in your core purpose.

But none of this is necessarily easy. The problems that require solutions are complex and challenging. For example, with an aging estate and inherent physical limitations, how do ensure disabled prisoners are able to access all aspects of the regime? How does a prisoner with severe learning disabilities take part in offending behaviour programmes when they can't engage with the material provided or delivery method? How do you improve the negative perceptions of Muslim prisoners who report feeling unable to attend Friday prayers for fear their names will be sent to the security services? In the hypermasculine environment of a male prison, how do you capture accurate monitoring data on sexual orientation? Where should a prisoner transitioning from male to female be located? A male prison? Female prison? These are tricky questions but not impossible to answer.

Just like the Prison Service in 2003, when responding to the CRE's investigation findings, the attention must be on putting appropriate systems and processes in place. Getting the basics right is vital. The NOMS Single Equality Scheme sets out what these basics are and what actions will be taken over the next few years. In the same way that the new Equality Act⁸ brings together and simplifies disparate equality legislation, a new policy framework is being developed that will specify the required outcomes for prisons across all equality strands. This will build on the lessons learned from race. The framework will ensure effective arrangements are in place in establishments for managing equality.

Getting robust data across all equality strands is also key. Without this, it's impossible to know whether

Governors and other leaders in establishments need to be making the business case for race equality, articulating the benefits of a consistent focus on fairness.

8. Equality Act 2010 (http://www.opsi.gov.uk/acts/acts2010/pdf/ukpga_20100015_en.pdf)

services are being delivered fairly. Now that the new information system — Prison-NOMIS — has been rolled out across the public sector prisons we are better placed to collect more consistent information on other protected characteristics. A tool has already been rolled-out that allows establishments to see SMART-style analysis of outcomes by any protected characteristic over a limited period of time and a project initiated to capitalise on the roll-out of NOMIS, which will see SMART-style analysis being available on the NOMS Hub (the web-based corporate reporting service). SMART II will also be replaced with a tool that will complement the planned Hub reports and allow prisons to monitor outcomes by any protected characteristic on an ongoing basis. This data will be invaluable to the new impact assessment process which extends across all equalities issues. The streamlined process includes a prioritisation exercise which enables prisons to focus on those issues that matter to them most. A checklist-style electronic tool has been developed to help establishments work systematically through the process. Identifying and taking action to mitigate against adverse impact is a key way of ensuring services are delivered fairly.

An appropriate system to enable prisoners and staff to report hate-related incidents will also be implemented, building on the racist incidents reporting system. There are also plans to expand the role of prisoner race representative to cover all equalities issues.

There are also specific actions needed to begin to answer some of the questions posed above. Getting disability equality right is arguably one of the greatest challenges. Work in this area will focus on improving data quality; measuring and monitoring outcomes; providing guidance on reasonable adjustments; ensuring appropriately adapted interventions; and developing a directory of accessible services and facilities across the estate.

The Chief Inspector's thematic report on Muslim prisoners also presents the organisation with a significant challenge — how to improve the overwhelmingly negative perceptions of Muslim prisoners and prevent a 'security-led' approach to this group resulting from our work to combat violent extremism? Although many of the issues and concerns raised in the thematic are distinct in certain obvious respects, they are also of a piece with those facing other groups of prisoners who sometimes have aspects of their identity overlooked. The issues to be

tackled are almost identical in nature to the challenges that still remain on race equality — improving prisoner perceptions; ensuring the use of discretion is sensitised; developing more effective communication between prisoners and staff; and getting management of day to day operations and leadership, based on the values of fairness and decent treatment, right. Going forward, work must therefore be centred around achieving fair outcomes for all prisoners.

Work will also get underway to find a sensitive and appropriate method of collection of sexual orientation data. At the same time, a guide to assist in supporting and working with gay prisoners will be developed, drawing on existing good practice. Finally, a Prison Service Instruction on the management, treatment and care of transgender prisoners will be published. This will cover difficult issues such as searching, guidance on living in role, and appropriate location of transgender prisoners.

Going forward,
work must
therefore be
centred around
achieving fair
outcomes for all
prisoners.

Conclusion

Following evidence to the CRE in 2003 that promised procedural and cultural change, there can be no doubt that there have been significant procedural changes, even beyond those promised. The important and much-needed foundations have been laid and the future looks very positive. It won't always be easy and there's no guarantee that

mistakes will never be made but the Service is much better placed than ever before to make further progress. To tackle the remaining challenges, attention must turn to taking effective and consistent action in the operational line. Improvements in outcomes are unlikely to be achieved through a separate programme of activity which sits outside everyday interactions in establishments. As the then Director General, Phil Wheatley, said in his foreword to the Race Review — 'right relationships are the key to progress, and good prison officers, good managers, and good leaders are the means of achieving that'.

A twenty-first century Prison Service is one that recognises all aspects of an individual's identity and manages equalities like any other area of the business. Whether the motivation for doing equality work is legal compliance, saving money or fear of regulator intervention, it doesn't matter provided the focus remains on ensuring delivery of fair and decent treatment which is integral to our core business of protecting the public and reducing reoffending.

No One Left to Blame?

Matt Wotton was until recently Acting Head of the Race and Equality Action Group in the National Offender Management Service. He is currently Private Secretary to the Lord Chancellor and Secretary of State for Justice.

Mahzarin Banaji and ordinary prejudice

Earlier this year, Mahzarin Banaji was in a shop when she saw a young woman dressed in what she describes as a Goth outfit. The young woman was covered in tattoos and had a number of facial piercings. Banaji turned away in distaste. Then she checked herself. She remembered her resolution to engage with people she might otherwise have avoided. She turned back. She made eye contact. She smiled, and initiated a conversation.

The reason Mahzarin Banaji talks to strangers is because in 1995, while working at Harvard University, she developed a test to measure unconscious racism¹. Except she doesn't call it unconscious racism. Others use that term about her work, but she doesn't. She calls it 'ordinary prejudice', and it is that ordinary prejudice that she has resolved to overcome in her everyday life — anyway she can — sometimes by smiling and talking to complete strangers. Because having created the test, she took the test herself; and she didn't like what she found. In fact she couldn't believe it. She found she had unconscious bias — what others might call racism. Banaji says, 'Being in a minority myself, I didn't feel I would have any biases ... I was shocked and humbled ... and I was deeply embarrassed'.

The origins of the Implicit Association Test began a year earlier when Banaji's PhD supervisor realised that when you group flowers with pleasant words it is very easy to make a quick association between the two, but when you group insects with pleasant words, or flowers with unpleasant words, the task becomes unexpectedly tricky. It turns out to be harder to form a mental association between 'insect' and words like 'dream' or 'heaven', and similarly difficult to form a mental association between 'flowers' and words such as 'evil' or 'poison'. Simply put, it takes longer to complete the task of linking the two. The next step was to substitute flowers and insects for white-sounding names, and black-sounding names. And that was how the test began — with names later being replaced with faces.

The reason Banaji and her colleague at Harvard, Robert Greenwald, still find it difficult to associate black

names or black faces with pleasant words, they believe, is the same reason it is harder to associate lightning with horses than with thunder: connecting concepts that the mind perceives as less compatible simply takes extra time. The time difference can be quantified and serves as an objective measure of people's implicit attitudes. When Banaji and her supervisor took the test they were more inclined to associate positively to white people. They were astonished and they wondered if they were alone.

They were not. During this time Banaji also began developing tests for bias against gay people, women and foreigners. Her embarrassment, having taken the test, was felt just as keenly by others who took these new tests. Two prominent gay activists who took the test for a recent article in the *Washington Post*² were both so horrified by the results, they withdrew their consent to be named in the article. The results seemed impossible to them. 'I am surprised' one of the activists said, 'And disappointed in myself', she added. Perhaps she needn't have been so hard on herself — she was certainly not alone. In the years since, 40 per cent of gay and lesbian people showed bias for heterosexual people over homosexual people. She might also have drawn comfort from the fact that a staggering 80 per cent of the 4.5 million people worldwide who have now taken the original race test, have more positive associations to white people. More arresting yet is the fact that 50 per cent of black respondents also have more positive associations to white people.

If you think that's unlikely — and frankly I did — you can take the test yourself: <https://implicit.harvard.edu/implicit/demo/>. It takes 10 minutes. You will probably find the same. It will probably surprise you, especially if you think you are the sort of person who's committed to treating everyone equally and you reckon yourself to be without bias. Two thirds of respondents claim exactly that. And yet over 80 per cent of respondents show a bias towards white people, and over 80 per cent of heterosexuals show implicit biases for heterosexual people over homosexual people. Banaji thought of herself as being without prejudice. That's how the gay and lesbian activists who

1. Banaji, M. R. Bazerman, M., & Chugh, D. (2003). 'How (un)ethical are you?' *Harvard Business Review*, 81, 56-64 and Banaji, M. R. (2003). 'The opposite of a great truth is also true' in J. Jost, D. Prentice, & M. R. Banaji (Eds.), *The yin and yang of progress in social psychology: Perspectivism at work* (pp. 127-140). Washington, DC: American Psychological Association.
2. Shankar Vedantam 'See no bias' *Washington Post Sunday*, January 23, 2005. <http://www.washingtonpost.com/wp-dyn/articles/A27067-2005Jan21.html>

were profiled by the Washington Post thought of themselves. That's what I thought; before doing the test.

How does this relate to the Prison Service?

When we measure who gets what in the Prison Service, we find outcomes for black prisoners in particular are consistently outside the range that we would expect in a number of key areas: most noticeably in relation to use of force, location in the segregation unit and being on the basic regime. In other words, there are patterns of disproportion between different ethnic groups, and black prisoners in particular do worse. In brief, we find disproportionality. These differences are more than can be explained with relations to other factors such as age and nationality. We don't find disproportion across the full range of indicators, but we do find it in key areas and to such an extent that it matters.

Typically we have assumed it is either the consequence of racist behaviour by front line staff, or poorer behaviour by black and minority ethnic prisoners, depending which side of the debate we come down on. Some suggest it is something of each. But perhaps it is neither. Perhaps the problem is of an entirely different sort. Perhaps we are up against what Banaji calls ordinary prejudice. Perhaps *ordinary prejudice* is at work in how we give out services and is influencing our day to day interactions in ways we had not realised.

Having a race-bias is not the same as being racist

Banaji and her research team suggest that what the Implicit Association Test tells us is not that we are racist, but that we have a *race bias*; most people prefer white people³. Same difference — you might say. But let's look again at some of the test results:

- ❑ 50 per cent of African Americans have a positive association to white people — to put that another way, they feel more negatively about black people and they show a pro-white/ anti-black bias. Is it really sensible or meaningful to suggest that they are racist?

- ❑ Are the 10 year olds with pro-white bias who take the test racist? The six year olds who show the same?
- ❑ How do we make sense of the 36 per cent of Muslims who showed an anti-Muslim bias?
- ❑ Or the 38 per cent of gays and lesbians who showed a bias for straight people over gay people. Are we really going to suggest they are homophobic?

Banaji suggests minorities internalise the same biases as majority groups. And indeed, why wouldn't they? Banaji says such results show the pervasive power that cultural biases have even on those who are themselves the victims of such biases and on those who are explicitly committed to having none. Minorities can just as easily harbour biases, absorbed from the larger culture. Most likely, say the team of researchers at Harvard, what they are doing is reacting to the things they see around them — same as everyone else.

The reality is we tend to be more favourably disposed to people like us and to people who are socially favoured over people who are not. This is manifested in a variety of ways: thin people over fat people, tall people over short people and white people over black people.

The team at Harvard suggest we are picking up on social cues all the time, even when we don't

know it. The brain doesn't always learn simply just what it's taught. We can consciously teach people that certain attitudes are right or wrong, but much of what we learn is through repetition and making associations. When you're watching television, for example, the brain is watching who is being shown in positions of authority and influence. This is how a race bias or an implicit association is formed. This is how it comes to be that most people seem to prefer white people. And this is why Banaji asserts that it is an ordinary prejudice.

By the time a child is one or two or three or four, he or she has seen hundreds of thousands of these kinds of associations, and over time begins to respond more favourably to the dominant group. This kind of prejudice is formed in an ordinary way, without your knowing, and it's almost impossible to avoid or control against. The odds that you're going to see a gay family on TV are very slim, so it's not surprising that people think of heterosexual relationships as being more normal. If people are always seeing A associated with B,

The reality is we tend to be more favourably disposed to people like us and to people who are socially favoured over people who are not.

3. Greenwald, A. G., Poehlman, T. A., Uhlmann, E., & Banaji, M. R. (2009). Understanding and using the Implicit Association Test: III. Meta-analysis of predictive validity'. *Journal of Personality and Social Psychology*, 97, 17-41.

by the 1,000th time, that association becomes hard-wired in the brain. If we are always seeing A associated with B, it also means we don't get a chance to associate A with C. 'The Implicit Association Test measures the thumbprint of the culture on our minds' according to Banaji. The overwhelming majority of the powerful images that we are encountering every day of our lives prime us to respond this way. This is ordinary prejudice, and we all have it — whether we like it or not, whether we admit it or not.

The need for a different approach

So could ordinary prejudice be operating in the Prison Service? And could this account for the disproportionality between different ethnic groups? We think so. Certainly the Service has made great progress since the murder of Zahid Mubarek in 2000. That progress is reported in the Race Review⁴ and was endorsed by some of our harshest critics. That report concludes that we have largely eliminated the most blatant forms of racism. But we don't know as an organisation how to tackle the systemic biases that seem to be in operation and which result in black prisoners being more likely to receive informal punishments, than for formal punishments. As the Race Review concludes: the situation is much improved, but the experience of BME prisoners (and staff) is not transformed. We are a bit stuck. The old ways of diversity training in classrooms have helped us eliminate the blatant and the egregious. But Banaji's work tells us that prejudice and bias are not errors of conscious thought that can be corrected through education. Banaji tells us that such training can only take us so far; it is essentially based on the wrong idea of how people form biases.

The finding that over 80 per cent of all people taking the test, and 50 per cent of black people have more positive associations to white people has the potential to turn on its head what we think we know about prejudice and racism. It radically recasts the debate and runs counter to a number of anti-discriminatory narratives which tend towards fault-finding — whether the fault be found in the black and minority ethnic prisoners and their supposed poorer standards of behaviour, or the staff and their supposed predisposition towards penalising particular groups. The Implicit Association Test research shows that hostility is

not needed for discrimination to occur. Discrimination can and does occur even when no one means for it to. So we need a different approach; one based on ordinary prejudice.

It's what you do, not what you think, that matters...

And that is precisely what we are trying to provide. Just because ordinary prejudice is formed largely without you knowing or consenting to it, it does not follow that nothing can be done. The aim of Banaji's research is not to suggest that prejudice is ok or not that serious or not worth worrying about, rather it demonstrates that prejudice and bias are still very much a part of the world. Banaji thinks prejudice is ordinary and not 'evil in your heart', but she is committed to studying it because she is committed to taking action against it. If anyone thinks Banaji is an apologist for bias they ought to think again. She has been the subject of death threats by white supremacists who understand very clearly that her motivation is to let us know that prejudice is alive and well and operating in every one of us. The prejudice and the implicit associations may be ordinary, but associations lead to assumptions, and assumptions lead to attitudes, and attitudes lead to choices and action.

So what you do matters, and it certainly doesn't follow that you will always act in a biased way. Banaji says people should be judged on how they behave, not how they think. She goes further: she is so convinced about the ability to influence implicit thoughts with explicit behaviour she and her colleagues will testify in court against any attempt to use the test to identify biased individuals. If we know we have a default to a particular racial group — in effect we *prefer* one racial group to another and yet we are also committed to fairness and equality, we better do something about it. That's why Banaji talks to strangers — people who she wouldn't ordinarily seem to get along with — she recognizes that while she may not be to blame, she has a race bias and she goes out of her way to compensate for it, finding conscious ways of compensating for her unconscious tendency to discriminate. We need to think of ways to do the same, and it probably starts with something as simple as finding ways to structure conversations with people we might not usually have conversations with; that is both simple and difficult.

4. National Offender Management Service (2008) *Race Review 2008. Implementing Race Equality in Prisons – Five Years On.*

Seeing the wood for the trees

Chris Barnett-Page is based in the Equalities Group of the National Offender Management Service.

Rick is trying to get promotion from Officer to Senior Officer. He's passed the exam and the assessment centre, but there are no vacancies at his jail. So he's just been for an interview at another prison — his third in the last few months — and once again the job has gone to someone else. 'From the moment the interview started I just knew it wasn't going to happen' he tells his mates in the bar that night. 'They just didn't like the look of me.' 'Rubbish', says one of his friends, 'I used to work with one of the guys on the panel. I reckon you were just unlucky — they probably had someone local lined up for it. There'll be other jobs advertised soon.' Rick isn't so sure that even if more jobs are advertised any of them will go to him, or to any other black candidate.

Workshop instructor Ray operates a policy that prisoners who are absent without authorisation are warned twice and on the third occasion sacked. One afternoon Tommo turns up having missed the morning session — his third absence. He jokes about it being his anniversary and how he'd be single — and in all probability dead — if he hadn't stayed back on the wing to call his missus. Ray smiles sympathetically — his wife was far from happy when he forgot her birthday the week before — and says he'll let it go this time, but this really must be the last. The next morning Mr Diouf appears, having been absent (for the third time) the previous afternoon. He apologises for missing the session and asks politely to be given another chance. Ray shakes his head, reiterates the policy and tells him he needs to sort himself out and get more organised. Mr Diouf walks sadly back to the wing, reflecting that he should never have got involved in translating and explaining his cell mate's letter from the Parole Board — just like the previous times that he missed work, he had been so focused on helping someone out that that he had missed the tannoy announcement for prisoners to leave the wing to go to work.

Understanding and Explaining Behaviour

How should we understand and explain the behaviour of the people in these stories? Was the panel

biased, or is Rick's just a case of sour grapes? Why does Ray choose to let one prisoner off but not the other?

We think the causes of some types of behaviour are obvious. For example, every parent knows that sugar causes hyperactivity in children.

Except that it doesn't. Scientific studies have shown this theory to be unfounded¹.

So why do we think that it does? We've been thrown by a confounding variable. It's the fun and excitement — and not the cake and fizzy drinks — at the party that cause the children's restlessness when they get home. And then we suffer from confirmation bias — once the theory is in our heads we take notice only when events support it and not when they don't. In fact after a while, our mistaken belief starts to create its own confirmation. The children know that we think that their treats will lead them to act up, so that's precisely what they do. We even convince ourselves that we get a sugar rush when we eat a chocolate bar ourselves.

What if the reasons for other sorts of behaviour — including a lot of our own behaviour — are also less obvious than we think? We tell ourselves that we are the agents in our lives: that we act in the world on the basis of our conscious beliefs and assessment of the evidence in front of us. So we should just ask those involved why they did what they did, right? The panel will reply that they chose the best candidate, and Ray will say that he applies the rules but uses his discretion professionally where the circumstances merit it. But the science says that this is just as wrong as believing in the behavioural effects of sugar. In reality much of our behaviour is caused by factors that we are not aware of. Those involved simply won't be able to tell us the whole story.

Implicit Drivers

Experiments show that holding a hot drink makes us more likely to make a positive assessment of a stranger². After receiving a subliminal prompt about an old person we remember less in a test and walk more slowly down the corridor afterwards³. And we are more likely to ask a stranger for a date if we meet them when we've just walked across a rope bridge than when

1. Wolraich, M.L., Wilson, D.B. and White, J.W. (1995) 'The effect of sugar on behaviour or cognition in children: a meta-analysis', *Journal of the American Medical Association*, vol 274, no 20, pp1617-21.
2. Williams, L.E. and Bargh, J.A. (2008) 'Experiencing Physical Warmth Promotes Interpersonal Warmth', *Science*, 24 October 2008, vol 322, no 5901, pp606-607.
3. Bargh, J.A., Chen, M. and Burrows, L. (1996) 'Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action', *Journal of Personality and Social Psychology*, vol 71 no 2, pp230-244.

we've crossed the same river on a solid, permanent structure⁴.

In none of these cases are we aware of the effects of the situation on our behaviour. We continue to assert to the experimenter that we chose how to act and made the choice on the basis of a conscious assessment of the evidence. It is the warmth I am feeling because of the coffee in my hand (or the exhilaration I feel from the adrenaline rush of crossing the rope bridge) that leads me to view the new person in front of me more favourably, but I think I've made a judgement about their personality (or sexual attractiveness). Unbeknown to me I have been confronted with the image of someone that I see as forgetful and frail. I probably don't even notice that I'm not doing so well on the test that follows, but if I do I just think that some of the questions are tricky. And I'll either claim that I walked at normal speed down the corridor or attribute my slowness to soreness from the gym the day before.

In psychological terms, we insist that our behaviour is driven by our explicit attitudes and cognitions — the ones that are available to us through introspection. But experiments consistently demonstrate that there are other drivers that we cannot access — our brain has an implicit aspect that influences our behaviour in a way that we are not aware of.

Whilst we cannot access these implicit drivers through introspection, we can come to understand them through testing. Matt Wotton's article in this issue of the journal centres on one of these tests, the Implicit Association Test⁵, which shows that we have different patterns of associations about different groups. These associations are typically based in part on group membership and in part on identification with powerful groups in society. Ninety per cent of people associate negative concepts with the group 'elderly'. Three quarters of people (men and women) associate women with home more readily than they do with career. And three quarters of White people

(and 50 per cent of Black people) show more positive associations to White people than to Black people.

There is evidence that these uneven patterns of implicit associations develop at an early age — tests have shown that babies at 3 months respond differently to faces of different colour to their parents⁶, and at 3 years most white children (including those brought up in ethnically diverse areas) will select white faces over black faces when asked whom they'd like as friends⁷.

Most importantly, these uneven patterns of associations do not correspond with explicit attitudes as expressed in surveys — they are present in people who show a conscious commitment to egalitarian values, including many of us who spend our working lives tackling discrimination and promoting equality.

This matters because these associations have been found to drive behaviour. Both in experimental situations and in real world studies, such as observations of doctors treating patients from different racial groups⁸, implicit associations have been found to be better predictors of behaviour than reported explicit attitudes.

... our brain has an implicit aspect that influences our behaviour in a way that we are not aware of.

The Role of the Situation

Another key fact about our behaviour is that it changes according to the situation.

Some of the most famous experiments in psychology demonstrate this. The Asch conformity experiments⁹ established that when surrounded by fellow participants (in fact confederates of the experimenter) all giving the same, obviously incorrect response, most of us will answer a very simple question (for example about the length of lines drawn on a sheet of paper) incorrectly.

In the Milgram experiments¹⁰, people are found to conform with instructions from an authority figure, even where this leads them to administer an apparently fatal electric shock to another person. Where the circumstances are varied — for example there are two authority figures who appear to disagree, or where the instructions are received by

4. Dutton, D.G. and Aron, A.P. (1974) 'Some Evidence for Heightened Sexual Attraction Under Conditions of High Anxiety', *Journal of Personality and Social Psychology*, vol 30, no 4, pp510-517.
5. www.implicit.harvard.edu
6. Bar-Haim, Y. (2006) 'Nature and Nurture in Own-Race Face Perception', *Psychological Science*, vol 17, no 2, pp 159-163.
7. Katz, P.A. (1982) 'Development of children's racial awareness and intergroup attitudes', in Katz, L.G. (ed) *Current Topics in Early Childhood Education*, vol 4, pp17-54.
8. Green, A.R., Carney, D.R., Pallin, D.J., Ngo, L.H., Raymond, K.L., Iezzoni, L.I. and Banaji, M.R. (2007) 'Implicit Bias among Physicians and its Prediction of Thrombolysis Decisions for Black and White Patients', *Journal of General Internal Medicine*, vol 22, no 9, pp1231-1238.
9. Asch, S. E. (1951). Effects of group pressure upon the modification and distortion of judgment. In H. Guetzkow (ed.) *Groups, leadership and men*.
10. Milgram, Stanley. (1974), *Obedience to Authority; An Experimental View*.

phone rather than in person — people are less likely to obey. And in the Stanford prison experiment¹¹, randomly allocated people took on their roles as guard or prisoner in such an extreme way that the experiment had to be ended early.

Another striking demonstration that behaviour is situational is an experiment in which students training to become Christian ministers are sent to give a talk on the parable of the Good Samaritan, and on the way to the venue are confronted by a stranger in distress¹². We might expect them to stop and help. But in fact, some do and some don't. Why? They all clearly subscribe to the explicit attitude that it is the right thing to do — they've even had a recent reminder of this by being required to prepare the talk. And 60 per cent of those who have been told that they have plenty of time to reach their destination do stop. But only 10 per cent of those who have been told that they are in a hurry. The situation, is driving the behaviour, not their explicit attitude, even when it has recently been reinforced.

Implicit Drivers in Different Situations

These two factors — implicit associations and the features of the situation — interact.

This can be seen from the results of a series of variations on the 'Good Samaritan' experiment described above¹³. The basic scenario remains the same — students walking across campus are confronted with someone in need of help. What changes is the ethnicity of the stranger in distress, and the precise conditions in which they are found.

In these experiments, Black strangers are treated less favourably than White strangers where the subject perceives the stranger to have caused their own problem, and where it is the stranger themselves who asks for help. By contrast, there is no difference between the treatment of White and Black strangers where the subject perceives the problem to have been externally caused, or where the request for help is from a third party. Also, when non-helping bystanders are present, subjects are significantly slower to help Black strangers than White strangers.

What we can take from this is that our uneven patterns of implicit associations start to influence our behaviour when it is not clear from the situation what the right thing to do is, or where there is a reason unrelated to race that we can use to justify (to ourselves or others) different behaviour.

Where the stranger seems like an innocent victim, or the subject is asked by a third party to help them, it is very clear what the right thing to do is and there is no readily available excuse not to do it. So, regardless of the ethnicity of the stranger, the subject either helps or doesn't.

Where the damage appears self-inflicted the situation is more nuanced — should the fact that they hold the stranger responsible for their predicament influence how they react? — and the stranger's own call for help is more ambiguous — could it be a trap, perhaps? This lack of clarity in the situation allows people's implicit associations to impact on their decision-making, with the result that more people elect to help White strangers than Black strangers.

Similarly, where there are bystanders who are not helping it is less obvious how the subject should behave — if others are

. . . where there are bystanders who are not helping it is less obvious how the subject should behave — if others are doing nothing, is it really the subject's responsibility?

doing nothing, is it really the subject's responsibility? And, as in the Asch experiment, the subject feels pressure to conform to the way that the others are behaving. Again when these factors are present and making the situation more complex, people's implicit associations enter the picture, with the result that more people help White strangers than Black strangers.

As well as producing less favourable outcomes for Black people than for White people, what this means is that we do not experience our behaviour as being related to race. Just as we don't spot the impact of the cup of coffee, or the rope bridge, on our judgement, so we don't spot that the ethnicity of the person in need of help has affected our choice. In our minds there's always another reason — 'it was their fault', 'it was probably a trap', 'it wasn't my problem — the other guys were there first and they didn't help'.

And not only will we not spot that race influenced us, but in any individual situation it will be invisible to an outsider. Our non-race reason will always be good

11. Haney, C., Banks, W. C. and Zimbardo, P. G. (1973). Interpersonal dynamics in a simulated prison. *International Journal of Criminology and Penology*, vol 1, pp69-97.
12. Darley, J. and Batson, C.D. (1973). 'From Jerusalem to Jericho: A study of situational and dispositional variables in helping behaviour'. *Journal of Personality and Social Psychology*, vol 27, pp100-108.
13. Kunstman, J.W. and Plant, E.A. (2008), 'Racing to Help: Racial Bias in High Emergency Helping Situations', *Journal of Personality and Social Psychology*, vol 95, pp1499-1510.

enough to satisfy any scrutiny that is applied to a particular decision. It is only when we are able, as we are in these experiments, to analyse patterns of behaviour across large numbers of cases that the difference begins to appear and we can see that race is affecting outcomes.

Self-fulfilling Prophecies

As if this doesn't make the problem of explaining the decision made by the interview panel or the workshop instructor difficult enough, there is a further twist. These decisions do not take place in isolation, but as part of an interaction, as in the interview. In fact in many cases they form part of ongoing patterns of interactions — or relationships — as in the workshop example.

So, just as the panel's assessment of Rick will have been based on his behaviour in the interview, so Rick's behaviour will have been influenced by the panel — and not just by the questions that they asked, but also by the way in which they asked them and the non-verbal features of their communication (which will be driven by their implicit associations, and of which they may themselves be unaware).

The impact of this has been demonstrated in a particularly clever two-part experiment¹⁴. In the first part, a series of White interviewers were filmed interviewing two candidates, one White and one Black, who — unbeknown to the interviewers — had been trained to use the same content in their answers and to adopt the same behavioural styles. The interaction styles adopted by the interviewers were then analysed.

As we might have predicted from the findings of the IAT, the results were that when interviewing Black candidates the interviewers showed less 'immediate' non-verbal behaviours — these are the behaviours that we display when we feel positive towards someone, such as closer interpersonal distances, more eye contact, more direct shoulder orientation and more forward lean. They interviewed them for shorter periods of time, positioned themselves further away from the candidate, and committed a higher rate of speech errors, such as incomplete sentences, repetitions and stuttering, during the interviews.

In the second part of the experiment, two actors were trained to adopt the two different interaction styles seen in the first part. One actor behaved precisely

as the interviewers had behaved with White candidates — more immediate non-verbal behaviour etc — whilst the other acted as the interviewers had done with Black candidates first time around.

But this time all the candidates were White. And the camera was on them, and not the interviewers. The result? When White candidates were interviewed in the way that Black candidates had been in the first part, they were judged (by independent viewers of the tapes) to perform more poorly than those who received the same treatment that White candidates had first time around. They were less calm and composed, adopted less immediate interactional styles themselves, and committed more speech errors.

So, my unconscious behaviour can have an impact on the behaviour of others — a process known as behavioural confirmation.

. . . my unconscious behaviour can have an impact on the behaviour of others — a process known as behavioural confirmation.

As if that wasn't bad enough, I then witness the behaviour that is adopted in response. But rather than understanding that it has been caused by the situation, I will probably believe that it is typical of the person — or the group to which they belong — what psychologists call fundamental attribution error. This is a well-attested finding — we tend to explain our own behaviour with reference to the situation ('I was late because the Victoria Line was not running') but other people's with reference to their traits, or those of a group ('He's late because he can't get out of bed in the morning' or 'Typical Arsenal supporter — lazy and unreliable').

This will not only reinforce the uneven pattern of associations with which I started. It will also lead me to expect particular types of behaviour from that person or group, and through the process of confirmation bias that we came across earlier, to look only for that type of behaviour. So, even where there is no behavioural confirmation, there can be perceptual confirmation — that is even where my unconscious behaviour does not impact on the behaviour of others, I can become convinced that they are acting as if it has.

The power of this kind of self-fulfilling prophecy is well known. For example it applies when the police question suspects — studies have found that interrogators believing in the guilt of the suspect are able to elicit behaviour assessed by third parties as implying guilt from both guilty and innocent suspects¹⁵.

14. Word, C.O., Zanna, M.P. and Cooper, J. (1974) 'The nonverbal mediation of self-fulfilling prophecies in interracial interaction', *Journal of Experimental Social Psychology*, vol 10 pp109-120.

15. Kassin, S.M., Goldstein, C.C. and Savitsky, K. (2003) 'Behavioural Confirmation in the Interrogation Room: on the dangers of presuming guilt', *Law and Human Behaviour*, vol 27, no 2, pp187-203.

And its capacity to reinforce racial stereotypes is well-documented, for instance in observational studies of 'tableside racism'¹⁶, in which White waiting staff's assumptions that Black customers will be poor tippers leads them to provide inferior service, leading in turn to them receiving poorer tips from Black customers, thereby confirming their assumptions.

Returning to the interview situation, whilst I may be unaware of the effect that my unconscious behaviour is having, it may be more apparent to the interviewee than to me. When Rick says 'they didn't like the look of me', it might just be that he has picked up from the non-verbal communication that he has entered a room where uneven patterns of implicit associations are driving behaviour and judgements in a way that will have a negative impact on him, but of which the panel is unaware.

Or, to add a further level of complexity, the uneven patterns of association in play could be his, rather than — or as well as — the panel's. Members of minority and socially stigmatised groups have been found to hold what the literature calls metastereotypes — assumptions about how they are seen by members of the majority or socially powerful group. These can operate at a conscious or unconscious level. But either way they can act as a self-fulfilling prophecy in just the same way as the unconscious associations of the majority or powerful group. So, experiments find that the higher the expectations of prejudice amongst the minority group member, the more negative is their experience of interaction with a member of the majority group¹⁷. And metastereotypes may cause the kind of behavioural confirmation that we saw above — if Rick enters the interview believing (consciously or unconsciously) that the panel will be biased against him, confirmation bias may come into play and he may act as if he is receiving the kind of negative non-verbal cues that we saw above, even if in fact he is not.

All this complexity in a single interaction. And so much more when we come to consider ongoing relationships. Patterns of implicit associations will — along with other factors — affect whether or not these relationships get established in the first place and how

they develop over time. The amplification spirals of which I wrote in a previous article in this journal¹⁸ are in play. Mr Thompson and Mr Diouf started work in Ray's workshop on the same day. Ray has not consciously set out to relate to them differently, but very different relationships have arisen. Mr Thompson is loud and outgoing and will frequently engage in conversations about the previous night's football or TV. Mr Diouf is very quiet and he tends only to come to Ray with a question about the work. And Ray's response differs. Without knowing it he does not seek out conversations with Mr Diouf, but he does drift over to Mr Thompson's work station to discuss his team's prospects at the weekend. Within a few days Mr Thompson has become Tommo, but even after several weeks Mr Diouf remains Mr Diouf.

In normal circumstances these differences have little impact. But when things go wrong, Ray's decision-making is affected. And probably without him knowing. Tommo is able to invoke his sympathy in a way that Mr Diouf cannot. The chances are that it would not occur to him to think about it — and the question is unlikely ever be asked — but if required to justify the different decisions, he will probably say that Tommo is a good team player and he used his discretion because he didn't want to disrupt the workshop and adversely affect output. Whereas it was important to be firm with Mr Diouf — he needed to learn that the rules are there to be followed and it was important to send a message to other prisoners in the workshop.

... experiments find that the higher the expectations of prejudice amongst the minority group member, the more negative is their experience of interaction with a member of the majority group.

Outcomes Data

This is why the ethnic monitoring of outcomes is so important.

Even if Rick makes a complaint — or Mr Diouf comes to believe that he has been disadvantaged because of his ethnicity and submits a Racist Incident Reporting Form — an investigation into what has happened in these particular instances will not be able to identify the impact of patterns of implicit associations. All that the investigator will be able to do is to hear the accounts of both parties, and in these

16. Rusche, S.E. and Brewster, Z.W. (2008) '“Because they tip for shit!”: the social psychology of everyday racism in restaurants', *Sociology Compass*, vol 2, no 6, pp2008-2029.
17. Shelton, J.N., Richeson, J.A. and Salvatore, J. (2005) 'Expecting to be the target of prejudice: Implications for interethnic interactions', *Personality and Social Psychology Bulletin*, vol 31, no 9, pp1189-1202.
18. Barnett-Page, C. (2006) 'Common Sense and Institutional Racism: *Blink* or think', *Prison Service Journal*, no 163.

cases neither party has access to the crucial information, precisely because the patterns of associations that are in play are implicit.

So, to return to our original question, we are not going to be able to explain or understand behaviour in these individual cases without reference to broader trends, and these can be found only if we are collecting and analysing outcomes data by ethnicity.

This is something that has been going on in our prisons for some time now, and we find precisely the trends that the research discussed in this paper would lead us to expect. Black prisoners are significantly more likely than White prisoners to be subject to the use of force, to be segregated for reasons of good order or discipline and to be on the basic level of the privileges scheme. By contrast, in the more formal situation of adjudications for offences against prison discipline, Black prisoners are no more likely than White prisoners to be found guilty.

How can we make prisons fairer? The research in this article would suggest that it will not be by analysing individual cases and trying to find the reasons for the bias, nor by diversity training.

Instead, as individuals we need to become aware of our implicit attitudes and take action to mitigate them in the short term and change them in the long term. Knowing that I might have a bias against a particular candidate in an interview, I can take extra care to ensure that I do not act on it. And over time I can seek out experiences of positive interactions with members of unfamiliar and stigmatised groups. Even surrounding oneself with positive images of minorities has been found to help¹⁹. And across the organisation we can change the features of the situation that lead implicit biases to drive action by deploying the structured communication tools as is currently being piloted by the Prison Service.

The fact that our behaviour is driven by these unconscious forces does not mean that we are not responsible for it or that we cannot change it. On the contrary, we have the capacity to understand our implicit drivers and the tools to prevent ourselves from acting on them. Only when we do so will we see fair outcomes in prisons.

W P

New books on prisons from Willan Publishing

<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 10px;"> Handbook on Prisons <small>Edited by Yvonne Jewkes</small> WILLAN PUBLISHING </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 10px;"> Handbook on Prisons Edited by Yvonne Jewkes (The Open University) </div> <p>This is one of the most comprehensive and ambitious book on prisons to have been published, a key text for anybody studying the subject and an essential work of reference for practitioners working in prisons and other parts of the criminal justice system. It is especially timely in view of the many changes and debates about the role of prisons and their future organisation and management as part of the National Offender Management Service. Chapters in the book are written by leading scholars in the field, and reflect the range and depth of prison research and scholarship.</p> <p>Published: June 07</p> <p>Price: £31.50 (paperback) £67.50 (hardback)</p> <p>ISBN: 9781843921851 (pbk) 9781843921868 (hbk)</p>	<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 10px;"> Dictionary of Prisons and Punishment <small>Yvonne Jewkes and Jamie Bennett</small> WILLAN PUBLISHING </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 10px;"> Dictionary of Prisons and Punishment Edited by Yvonne Jewkes (The Open University) and Jamie Bennett (HM Prison Service) </div> <p>This will be the essential source of reference for the increasing number of people studying in, working in prisons and working with prisoners. This Dictionary covers key terms, concepts, legislative provisions and the institutional, social and political context. It takes full account of emerging occupational and Skills for Justice criteria and is edited by a leading academic and practitioner in the prisons and penology field. Entries are contributed by leading academic and practitioners in prisons and penology.</p> <p>Published: November 07</p> <p>Price: £22.00 (paperback) £50.00 (hardback)</p> <p>ISBN: 9781843922919 (pbk) 9781843922926 (hbk)</p>			
<p>Other New Titles</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top; padding: 5px;"> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> The Prison Officer </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> The Prison Officer (2e) Alison Liebling and David Price with Guy Schefer </div> <p>Due: May 08. Price: £17.50 (Pbk) ISBN: 978-1-84392-269-8</p> </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Prison Governors </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Understanding Prison Staff Edited by Jamie Bennett, Ben Crewe and Azrini Wahidin </div> <p>Pub: Oct 07. Price: £22.00 (Pbk) ISBN: 978-1-84392-245-2</p> </td> <td style="width: 33%; vertical-align: top; padding: 5px;"> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Who to Release? </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Who to Release? Parole, fairness and criminal justice Edited by Nicola Padfield (University of Cambridge) </div> <p>Pub: Apr 07. Price: £37.50 (Hbk) ISBN: 978-1-84392-227-8</p> </td> </tr> </table>		<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> The Prison Officer </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> The Prison Officer (2e) Alison Liebling and David Price with Guy Schefer </div> <p>Due: May 08. Price: £17.50 (Pbk) ISBN: 978-1-84392-269-8</p>	<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Prison Governors </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Understanding Prison Staff Edited by Jamie Bennett, Ben Crewe and Azrini Wahidin </div> <p>Pub: Oct 07. Price: £22.00 (Pbk) ISBN: 978-1-84392-245-2</p>	<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Who to Release? </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Who to Release? Parole, fairness and criminal justice Edited by Nicola Padfield (University of Cambridge) </div> <p>Pub: Apr 07. Price: £37.50 (Hbk) ISBN: 978-1-84392-227-8</p>
<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> The Prison Officer </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> The Prison Officer (2e) Alison Liebling and David Price with Guy Schefer </div> <p>Due: May 08. Price: £17.50 (Pbk) ISBN: 978-1-84392-269-8</p>	<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Prison Governors </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Understanding Prison Staff Edited by Jamie Bennett, Ben Crewe and Azrini Wahidin </div> <p>Pub: Oct 07. Price: £22.00 (Pbk) ISBN: 978-1-84392-245-2</p>	<div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Who to Release? </div> <div style="background-color: #333; color: white; padding: 5px; text-align: center; margin-bottom: 5px;"> Who to Release? Parole, fairness and criminal justice Edited by Nicola Padfield (University of Cambridge) </div> <p>Pub: Apr 07. Price: £37.50 (Hbk) ISBN: 978-1-84392-227-8</p>		

WILLAN PUBLISHING

19. Dasgupta, N. and Greenwald, A.G. (2001) 'On the malleability of implicit attitudes: combating automatic prejudice with images of admired and disliked individuals' *Journal of Personality and Social Psychology*, vol 81, no 5, pp800-814.

Structured Communications in Prison:

a project to achieve more consistent performance and fairer outcomes for staff and prisoners

Dominic Taylor is a policy manager at NOMS Equalities Group and was previously an officer at HMP Brixton.

What do prison landings have in common with aircraft cockpits and operating theatres?

This article is based on the idea that these are all situations in which the accurate transmission of information across hierarchical boundaries is crucial to solving complex problems. It argues that lessons learned — and in particular the tools developed to structure communications — in these parallel environments will prove useful to prison staff, improve prison performance on a range of indicators and reduce the levels of disproportion seen in outcomes for prisoners of different racial groups.

It goes on to outline the structured communication approach being piloted in HMYOI Aylesbury and other prisons during 2010. This has been adapted from similar techniques already used in aviation, medical, military and financial sectors¹, and argues that as well as helping staff to achieve greater consistency, and therefore operational effectiveness, this approach may also change factors in a situation sufficiently to change default responses, and thereby reduce the level of inequality in outcomes that we see across a wide range of activities and interventions in prisons.

Unconscious Bias

'Race Review 2008'² argues that the disproportionality in outcomes for prisoners of different racial groups seen in prisons, occurs principally where individual staff enjoy a high degree of autonomy in making decisions directly affecting outcomes. This leads us to examine the role of discretionary decision making and the potential for race bias to affect outcomes. Research on pervasive, unconscious race bias and its significance in predicting behaviour, described in more detail in Matt Wotton's article in this issue, as well as the progress already made in reducing the incidence of expressions of explicit bias, suggest that it may be fruitful to

invest at least part of our organisational effort to ensure equality on tackling the effects of unconscious, or implicit, bias (as well as, or instead of, continuing to work on explicit bias through conventional, classroom-based diversity training sessions).

It is important to note that recognising the existence and impact of pervasive implicit bias does not mean that an organisation is relieved of responsibility for its consequences in terms of the unfair service that is provided for particular groups of prisoners. Just as a haulage firm or coach operator would not be permitted to manage shift patterns without taking account of the well-known phenomenon of driver fatigue, so a prison cannot continue to operate services without reference to the fact that the implicit biases held by its staff are likely to lead to unfair outcomes.

This is not an entirely new thought. Prison officers are trained to anticipate stress and 'tunnel vision' during the use of control and restraint techniques because we know that these naturally occurring phenomena can contribute to serious negative outcomes without mitigating strategies in place. We need to accept that implicit bias is a similar naturally occurring phenomenon in the operation of the brain, and to prepare for it in a parallel way.

Evidence from helping studies, described in more detail in Chris Barnett-Page's article in this issue, and research on strategies to compensate for prejudice³ suggest that the impact of implicit bias on behaviour can be reduced or increased by changing situational factors. A structured communication approach, as well as having the performance benefits found in clinical, aviation and military settings (where it mitigates the effects of tendencies such as forgetfulness, stress, cognitive overload and over-familiarity or over-confidence), may also be a method of changing the situation in a way that reduces the disproportion in outcomes. And doing so without necessarily addressing explicit attitudes to race.

1. Soar, J., Peyton, J., Leonard, M. and Pullyblank, A.M. (2009) 'Surgical safety checklists' *British Medical Journal*, 21 January 2009 (338:b220).
2. National Offender Management Service (2008) 'Race Review 2008'.
3. Singletary, S.L. and Hebl, M.R. (2009) 'Compensatory strategies for reducing interpersonal discrimination: the effectiveness of acknowledgments, increased positivity, and individuating information', *Journal of Applied Psychology*, 94(3):797-805.

The tools

The remainder of this article introduces a suite of three tools that form the structured communication approach that is being piloted in a number of prisons in England and Wales during 2010. The first two, the Checklist and the briefing tool SBAR (Situation, Background, Assessment, Recommendation), are taken directly from the clinical setting and are for use between staff. The third has been developed specifically for the prison environment.

The Checklist

The checklist (as when surgeons ensure the correct personnel, instruments, machinery, drugs and patient details are in place before surgery) is inserted into a range of staff briefings at routine moments in the working day where vital information can be conveyed or lost. In prisons, from the governor's morning meeting, where an orderly officer's report is already recognisable as a kind of checklist, to a senior officer's wing briefing with landing staff, the checklist ensures each team begins operational tasks with a common understanding of essential details. Where factors such as disparate, conflicting individual assumptions and lack of specificity tend toward operational inefficiency or failure, the checklist creates a reliable team focus.

Experience of its application in clinical settings suggests that important factors in its usefulness are: that teams create their own checklists which are therefore of direct relevance, use language already commonly understood locally, and take account of local exigencies; that a given team checklist is then a consistent document physically present at the time of its use; that all its elements are verbally confirmed out loud among the relevant staff; that the checklist is brief, including only those elements critical to the success of the following operational tasks⁴. The

checklist reduces human error and supports team effectiveness as seen in international trials of the surgical safety checklist, where mortality rates (death due to surgical error) fell by over 40 per cent.⁵

SBAR

SBAR is a briefing tool⁶, usually used by one person passing information to one or more others, for example in routine scheduled staff handovers, other staff interactions where accurate and timely transmission of information is important, and in handling incidents. Like the Checklist, SBAR is aimed at consistently ensuring the timely understanding and application of critical information.

'Situation' is the punch line in 5-10 seconds. 'Background' is the context — objective data on how we got here; 'Assessment' is specification of the current status of the problem — in the medical context, the vital signs. 'Recommendation' is a positive suggestion of immediate next steps.

SBAR helps staff to get the important information across in a few seconds in a predictable and reliable way under conditions of stress and high cognitive load, conditions under which we know that communication and decision-making can be impaired. SBAR is also intended to benefit outcomes when staff alert senior colleagues of operational exigencies and the 'hierarchical

gap' (as seen in aeroplane cockpits, military operations and hospital wards) can inhibit the flow of necessary, timely information.

SBAR provides a flexible and reliable aid to staff deploying sound professional judgement more consistently: for example the first on scene knows more precisely what is expected of their communication.

So, structured communication used in an operational environment between staff achieves greater consistency through simple memory aids.

SBAR helps staff to get the important information across in a few seconds in a predictable and reliable way under conditions of stress and high cognitive load, conditions under which we know that communication and decision-making can be impaired.

4. Gawande, A. (2010) *The Checklist Manifesto: how to get things right*, London, Profile Books.
5. Haynes, A.B. et al (2009) 'A Surgical Safety Checklist to Reduce Morbidity and Mortality in a Global Population', *New England Journal of Medicine*, 360 (5):491-499.
6. Haig K.M., Sutton, S. and Whittington, J. (2006) 'SBAR: A shared mental model for improving communication between clinicians' *The Joint Commission Journal on Quality and Patient Safety*, 32(3): 167-175.

RECODE

RECODE also aims at consistency of skilful practice: in this case, the ability of prison officers to manage the needs and expectations of prisoners. It aims to help officers create conceptual simplicity and order when dealing with the myriad needs and requests of prisoners and also when communicating necessary instructions to prisoners.

This prototype assertiveness tool follows the principles underlying assertive communication models in Offending Behaviour Programs (OBP) delivered within NOMS, using a predictable sequence of informational categories to achieve the best result for both parties in a potentially contentious exchange. RECODE is a memory and communication tool for staff to get the best outcomes from exchanges with prisoners. It differs from SBAR in that it is a framework for dialogue (rather than briefings and reports of incidents), but makes available the benefits of clarity and consistency to officers and prisoners in the massive volume of their interactions.

The mnemonic RECODE refers to:

<i>Prisoner</i>	<i>Officer</i>
Request	Restate
Context	Consequences
Describe impact	Decision

This prototype is intended to be refined through operational testing, in concert with guidance from NOMS colleagues responsible for authoring and managing our Offending Behaviour Programmes. RECODE may give landing officers, and all staff, routine opportunities to reference and reinforce the learning and development occurring already in OBP group room settings. The pilots will investigate the effectiveness of RECODE and its refinements, in giving staff and prisoners an opportunity to slow down an interaction and insert a value-neutral exchange of information, so as to understand each others' perspective quickly and efficiently.

The piloting of communication tools found useful in diverse professional settings with recognised formats for a variety of conversations may help avoid adverse outcomes caused in prison by such universal experiences as memory-lapse, hierarchical gaps, interdisciplinary unfamiliarity and even the fundamental and absolutely necessary power difference between officers and prisoners. Structured communication's potential contribution to race equality is being tested in an attempt to translate the growing understanding of the impact of unconscious bias into a practical means of reducing its harmful effects on the lives of prisoners and staff. If successful, as measured by a reduction in indicators of stress, conflict and ethnic disproportionality within prison, the findings will be of wide significance.



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@hmps.gsi.gov.uk

Equality Progress? — Slow, but Sure

Richie Dell is based in NOMS Equalities Group.

A Practitioner's View

Zahid Mubarek — the name will sit with me for the rest of my life. A young man, serving a short sentence in HMYOI Feltham, who I never met (and who was murdered by the hands of a racist Robert Stewart) in March 2000. A young man who has been an inspiring factor for me as a BME staff member, who has sent the past decade trying to support equality on the 'shop floor'.

In the years succeeding Zahid's death the Prison Service has had many successes in ensuring the safety and the equality of service for all offenders. But, the journey is nowhere near its end. It has been 10 years since his death and some elements of the service are unrecognisable from that time. My experience of the 1990's and very early 'noughties' saw overt racism as fairly common place. Even something as basic as considering how people's needs may have differed was unthinkable in many establishments. So what has actually changed in the last 10 years?

I have seen so many improvements that have taken place from dealing with foreign national prisoners to reporting racist incidents.

Manjit Sandhu (HMP Bullingdon)

The Race Equality Officers

REOs (formally Relations Liaison Officers) have had a fundamental part to play in developing the understanding of staff and prisoners, with regards to the equality agenda. Prior to Zahid's death RRLO's were lucky to get the mandatory minimum eight hours (PSO2800). Now almost everywhere has a full time equality officer on hand to give advice to everyone living, working in and visiting the prison.

At times those carrying out this role have felt it to be one which is lonely, even career limiting at times. Some of the REOs I have met over the years have spoke of being alienated by their colleagues and mistrusted by prisoners. Despite this, those who have done this role have educated, instigated, investigated, integrated and celebrated to bring staff and prisoners along the road to equality and understanding. REOs have answered thousands of questions, debated hundreds of topics and questioned dozens of

outcomes, all in an attempt to ensure all prisoners have a fair chance in prisons. But it's not been all smooth sailing! REOs have often been seen as the 'guru' for anything with race in the title. This has enabled some of the wider staff group to ignore their professional responsibilities in this area, leaving the REO to deal with any and every race related issue. This remains a challenge in many establishments to this day, one which the Race and Equalities Action Group will have to bear in mind as it develops its strategies to manage the wider equality agenda.

S.M.A.R.T.

Another useful tool in the fight to ensure fairness is the use of monitoring data. For the past 10 years establishments have been using a data monitoring tool called Systematic Monitoring and Analysis of Race equality Template (SMART). This tool has continued to be developed over that period and is effective in offering data analysis for main service delivery activities. In recent years establishments have been measured against any disproportionality highlighted by the SMART tool. But, this has turned out to be a double edged sword. On one hand it has meant that attention has been paid to areas where it appears there is inequality, but on the other hand, this has become somewhat of an end in itself, rather than a tool which can display potential for unfair treatment. I have sat in a prison manager's meeting where the governor announced 'it's all about the numbers', meaning that the SMART data had become a target, failing to understand the real benefits of using the monitoring data. Again NOMS needs to consider this issue and perhaps find a way of keeping the issue of disproportionality high profile, whilst not making numbers the focus of people's efforts.

Prisoner Involvement

If I were asked to highlight just one factor which has led to the progress made by NOMS (in race equality) over the past ten years it would have to be 'the use of prisoner representatives (reps)'. Used properly these 'reps' can transform the delivery landscape upon which the prison equality work is based. Engaged and trained correctly, they are often extremely enthusiastic, very creative and fair.

They have helped introduce an atmosphere of 'zero tolerance' of racism amongst prisoners and staff alike,

whilst helping eliminate the fear sometimes held by staff and prisoners that 'you can't say nothing these days'.

In prison I have witnessed white inmates ridicule other white inmates for using what they believe to be prejudice words.

Mark Wallace (HMP Bullingdon)

I have seen prisoners who I had trained as reps in a local prison at the early part of their sentence, support others in open prisons some years later, still with the same commitment and enthusiasm. I have literally, just come from a cell here in Bullingdon, where a prison rep is showing another prisoner how to ask for 'Magic Powder' (a shaving aid), in a way that will ensure his cultural needs are at least listened to.

It was decided that race equality needed to be promoted more to prisoners to make them aware of the services provided by our team, so we started by introducing ourselves to all prisoners who entered the establishments and gave talks on a daily basis during the induction process.

Mark Wallace (HMP Bullingdon)

Both of those prisoners felt they have a voice, which has a chance of being heard. Very different from how they might have felt ten years ago. Prisoner race equality reps have helped raise the expectations of all prisoners held in our jails today. They (with NOMS blessing) have sent a message that they can be used to communicate how fairness is seen and felt by all prisoners.

I am very grateful for the opportunity I have had to do this kind of work in prison and although it sounds bad to say, this has been the best job I have had in that it has given me the confidence to know that I can do a job that makes a difference. I feel confident now to apply for jobs outside that before would not have passed the thinking stage.'

Mark Wallace (HMP Bullingdon)

Training prisoners to fulfil this role has provided me with many highlights in my career in NOMS. Long live the prisoner rep!!

The NOMS Single Equality Approach

As we enter further into a world of strict limitations on budgets and resources, we are faced with the challenge of expanding the success and management difficulties already faced by race equality into age, religion, sexual orientation, gender and disability will not be easy, but we need to ensure that all those equality strands have an equal place at the 'ensuring fairness' table.

As we have learnt from previous experience, fairness doesn't happen by chance. It takes deliberate actions to improve the life chances of the disadvantaged and now we have the challenge of ensuring that fairness with the same or less resources. Prisons are looking to save millions of pounds to support the government in reducing the national debt and this means finding ways of working smarter within those constraints. Some difficult questions have to be answered like, how do you up-skill the current prisoner race reps into equality reps, with no staff available to train them? How do you ensure that the care

plans for aging prisoners are effectively managed, whilst hardly having enough staff to deliver a reducing reoffending regime? Difficult questions — yes, impossible situation — no. Maybe we can't be as good as would like to be, but we can be as good as we need to be and for now that is our target.

Equality Impact Assessments

Race equality impact assessments have proved difficult to conduct in a meaningful way in many establishments. It has been a challenge to get staff to see them as anything more than a bureaucratic exercise, invented to keep those who work in the 'ivory tower' busy. Ensuring staff understand the real service delivery benefits has been a major objective of REAG over the past year and there is some evidence that that objective is being achieved. Recent conversations with staff in Aylesbury Young Offender Institution indicated that their impact assessment programme has been developed to manage the equality risks as they see them and whilst I can't say

Some difficult questions have to be answered like, how do you up-skill the current prisoner race reps into equality reps, with no staff available to train them?

that's true of all of our establishments, I do believe that we can set ourselves a target of using impact assessments as a precise tool and not a blunt instrument.

Leadership

The Race Review (NOMS 2008) pointed to the importance of 'Leadership' if race equality is to be attained. In my experience this is definitely true. I think my biggest successes in developing an equal system came when I worked in HMP Brixton. I have since spent quite a bit of time considering what elements made up that success and I think one of the biggest contributing factors was the prison's leadership. I was lucky enough to work with a governor who gave me one hundred percent support. All staff knew that they were expected to engage with agenda and be prepared to talk about what they had done, or will be doing to ensure equality where they worked. All of this was quite a contrast to my earlier experiences in a prison where senior managers actually instigated racist jokes or paid total 'lip service' to the merest notion of caring about fairness.

Race Equality Prisoner Forums

Ten years ago talking to prisoners in groups and exploring their needs would have been seen as pandering to a 'prisoner's union', today it forms a key part of business objectives for all prisons and provides valuable information towards conducting needs analysis. The conducting of impact assessments, the completion for MQPL (Measuring the Quality of Prisoner Life) surveys, safer custody and other prisoner related areas either mandate or recommend as good practice, the collection of prisoner's views.

Monthly consultancy meetings were being held and BME forums were being held monthly too and prisoners would attend to air their concerns and give suggestions as to where and how the prison could make improvements when it came to R/E issues.

Manjit Sandhu (HMP Bullingdon)

How useful are these forums? When these forums were introduced and became wide spread the prisoners who attended took some time to understand their true purpose. We (the facilitators) would have to constantly stop the discussion traversing into 'we've got no ping-pong balls on 'A wing', steering the discussions back to matters of race equality. In 2010 many establishments now have functional meetings, with prisoners either co-facilitating or even facilitating themselves.

Racist Incident Reporting Forms — RIRFs.

When I first joined the team a lot of prisoners had no faith in the racial complaints process and thought of it as just a paper exercise.

Manjit Sandhu (HMP Bullingdon)

All of this was quite a contrast to my earlier experiences in a prison where senior managers actually instigated racist jokes or paid total 'lip service' to the merest notion of caring about fairness.

The system devised to address one of the concerns raised by the CRE. When they came to call the Prison Service found it very difficult to give them substantive details and figures regarding the number of racist incidents that had taken place in prisons over a given

period. So, the Service devised a specific form and a computer-based logging system. I remember thinking that this was real progress, a dedicated form and a database which was both confidential and secure (rather than the paper log book previously used). Boy, did we create a monster!! Whilst the form and database did appear to help reporters confidence it also gave some licence to pass on their responsibility. Staff have used the form to counter accusations of racism made by prisoners, somehow thinking that if I say 'he called me a racist', will insure against any future allegations that might be made by the prisoner.

I think it is totally counter productive for the RIF forms to be used by staff who have been accused or pre-empt being accused of being racist.

Mark Wallace (HMP Bullingdon)

Another major draw back of the RIRF system has been the tendency for staff to pass on any race related issues to the REO. This action may be to absolve them

of their individual responsibility to engage with the race related issue, or it might be because of a fear that they may 'get it wrong'. Either way it does not help us encourage staff to not fear the issue of race, but to embrace it and question when necessary and that is a continuing challenge for the future.

Managing an uncertain future

NOMS now applies a broader equality approach, which encourages prisons to look at wider equality risks such as disability, age and sexual orientation etc. Of course all of this takes time and effort and with resources being cut further and further, establishments will need to manage their major risks and alert others of what they can't manage due to those resource constraints. REAG/NOMS still has a great challenge ahead if we are to get establishments to use equality impact assessments as a tool to address equality based risks. It will need to develop an integrated approach which eventually see real ownership of fairness across all the functions in a prison. For that to take place those who have been central to the progress made need to continue to work on this, but it will also require the wider audience to stand up and be counted. If the past ten years is anything to go by, we can progress equality and if I write something similar in ten years, I hope it is still showing forward momentum. Good luck to those trying.

Another major draw back of the RIRF system has been the tendency for staff to pass on any race related

issues to the REO. This action may be to absolve them of their individual responsibility to engage with the race related issue, or it might be because of a fear that they may 'get it wrong'. Either way it does not help us encourage staff to not fear the issue of race, but to embrace it and question when necessary and that is a continuing challenge for the future.

Managing an uncertain future

NOMS now applies a broader equality approach, which encourages prisons to look at wider equality risks such as disability, age and sexual orientation etc. Of course all of this takes time and effort and with resources being cut further and further, establishments will need to manage their major risks and alert others of what they can't manage due to those resource constraints. REAG/NOMS still has a great challenge ahead if we are to get establishments to use equality impact assessments as a tool to address equality based risks. It will need to develop an integrated approach which eventually see real ownership of fairness across all the functions in a prison. For that to take place those who have been central to the progress made need to continue to work on this, but it will also require the wider audience to stand up and be counted. If the past ten years is anything to go by, we can progress equality and if I write something similar in ten years, I hope it is still showing forward momentum. Good luck to those trying.

'Why do prisoners have rights? The lessons of our history.'

Eleanor Rathbone Lecture Series, 13 May 2010

Baroness Vivien Stern is Senior Research Fellow at the International Centre for Prison Studies at Kings College London.

Vivien Stern is Senior Research Fellow at the International Centre for Prison Studies (ICPS) at King's College, London. She has been a Crossbench Peer since 1999 and was a member of the Parliamentary Joint Committee on Human Rights from 2004 to 2008. She is a member of the Advisory Council of the International Legal Foundation in New York, and a member of the Advisory Council of the Legal Policy Research Centre in Kazakhstan. In September 2009 she was appointed by the UK Government to lead a review of how rape complaints are handled from when a rape is first disclosed until the court reaches a verdict. Her publications include *Bricks of Shame: Britain's Prisons, A Sin Against the Future: Imprisonment in the World, Alternatives to Prison in Developing Countries, Developing Alternatives to Prison in East and Central Europe and Central Asia and Sentenced to Die? The problem of TB in prisons in Eastern Europe and Central Asia. Her latest book, *Creating Criminals: People and Prisons in a Market Society*, was published by Zed Books in May 2006.*

It is an honour to be invited to give one of these lectures in a building named after perhaps Liverpool's greatest woman. Eleanor Rathbone is a towering figure and for me one of the greatest — an inspiration, a human rights activist, a great democrat and Member of Parliament, an anti-poverty campaigner, a fighter for the rights of women. So to give an Eleanor Rathbone lecture is an honour, a privilege and a great challenge. I want to tell you something Eleanor Rathbone could not have known: what she did in her life not only saved many lives at the time but improved the lives of so many others all over the world. Even more than this, what Eleanor Rathbone did shaped one of the most powerful unifying ideas that gives an ethical framework to our world today.

Human Rights Law and Practice

Let me begin by telling you a story, a story that would have amazed and delighted Miss Rathbone. It is a small story about a small event but for anyone with a sense of history it is a marvel. This story is about a Polish national, Mr Krzysztof Iwa czuk. In 1993 he was in prison in Poland having been remanded in custody for fraud. During the long time he was on remand, a parliamentary

election took place; and he asked the prison authorities to take him to the voting room that was set up in the prison so that he could cast his vote. In Poland all prisoners can vote.

Instead of being taken to the voting room, he was taken to the guards' room. There the four guards in the room told him that if he wanted to vote he had to get undressed and undergo a full body search. So he took off all his clothes except his underpants. At that point, it is alleged, the prison guards made fun of him, exchanged humiliating remarks with each other about his body, and abused him verbally. Mr Iwa czuk was then ordered to take off his underpants and strip naked. He refused. He repeatedly asked for permission to go and vote. The guards said no. And he was taken back to his cell without being allowed to vote.

He then did something no Polish prisoner had ever done before. He took a case to the European Court of Human Rights saying his treatment was against the European Convention on Human Rights which Poland had acceded to in 1991. The Court heard the case. The Court noted that Mr Iwa czuk was ordered to strip naked in front of a group of prison guards; that the guards verbally abused and derided him; that they intended to make him feel inferior and humiliated. The Court said this 'showed a lack of respect for the applicant's human dignity' and ruled that Poland was in violation of Article 3 of the European Convention, which 'enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour'. The Court is saying to everyone who has power over other people when they have lost their liberty, 'you cannot do that. If it is inhuman and degrading you cannot do it. You are not allowed to degrade another human being or be inhuman to him or her because every human being is as human as you are. No human being, prisoner or not, is less human'.

I choose to tell you about this case from the European Court of Human rights (there are many others, a fair number involving the United Kingdom) because it is a Polish case about a Polish man living in Poland and imprisoned in Poland. Auschwitz too was also in Poland, a concentration camp where about one and a half million people, Poles, Jews, Gypsies and homosexuals were exterminated with gas or were worked to death or shot or

used for medical experiments. A few of those might have been people that Eleanor Rathbone had tried to save but failed because of the excuses and delaying tactics of the Government.

This is worth thinking about for a moment. In 1946, the year that Eleanor Rathbone died, the world was coming to terms with this carnage that Europe had wrought upon itself; barbarism scarcely to be believed. Why? Why did this happen? Well in a sense it happened because one group of human beings decided that another group was not worthy of being treated as human because that other group was different in some way, differences of skin colour, of ethnic origin, maybe of sexual orientation. If these groups were human then they were a lesser form of human. We, the human family, learnt from this that we have to try and build a new world order, built on a view derived from all the great religions of the world, a view of the intrinsic worth and dignity of each human being. There are no lesser forms of human. By 1953 the European Convention on Human Rights had been ratified by enough countries to ensure it came into force, and in 1959 the European Court of Human Rights began its work.

Had she lived a little longer Eleanor Rathbone would no doubt have been amongst the drafters of the Convention. Had she been, she could have felt that her life's work to create an ethical framework which defined how governments had to treat each human being — was richly rewarded. This new ethical framework which began with 14 countries now covers 47 countries stretching from the Atlantic to the Pacific, from Lisbon to Vladivostok. It is not just Europe.

Another Eleanor, Eleanor Roosevelt in New York, was doing her bit to put through the United Nations the Universal Declaration on Human Rights. That led to the International Covenant on Civil and Political Rights which at Article 10 states that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. 165 countries have signed up to this Covenant.

Something very important happened in the world in those years: an internationally accepted human rights framework was created based on the idea of the equal humanity of each human being. It applied to everyone, including those deprived of their liberty, whatever they had done, however much we might dislike or abhor their actions if they had murdered, or raped they were still

within that framework. A consequence was that in Poland, where so many millions had been degraded, humiliated, used as objects and murdered, a prisoner — one single individual could say 'they can't treat me like that. I am entitled to respect and to keep my dignity intact. This is wrong and I will do something about it. These were world-changing developments, and Miss Rathbone from Liverpool was a part of making them happen. This framework expresses the vision of that post-war generation.

But is that vision realised? Has the world changed for its 10 million or so prisoners? Yes, it has. Proper prison conditions and humane treatment of prisoners are seen almost everywhere in the world as a human rights obligation by governments. The 47 countries in the

Council of Europe have all opened their prisons to international inspectors through a system called the European Committee for the Prevention of Torture, and the United Nations has recently set up a similar worldwide detention inspection system. The progress is indeed substantial. In most places it is still very much a 'work in progress' but every day in every continent something is going on to try and make the human rights framework a reality.

We, the human family, learnt from this that we have to try and build a new world order, built on a view derived from all the great religions of the world, a view of the intrinsic worth and dignity of each human being.

Pursuing Human Rights Internationally

I remember the fall of the Berlin wall and the crumbling of the gulag, the prison camp system of the Soviet Empire, a prison system designed for enemies of the state, a vast economic enterprise. Prison sentences were served in labour camps with a wall around. Everything ten metres in from the wall was called the zone. If you were in the zone you could be shot. Prisons in the western sense were only used for pre-trial prisoners.

I was at the first penal reform conference there in 1992. It was suggested we should visit a prison. We heard there was an internal battle, foreigners visiting a prison! Even the fact the prison was there was a state secret. The modernisers won and we went, the first foreigners into Butyrka prison. Its façade was hidden by a block of flats inhabited by agents who worked for the KGB, the Russian secret service. No one in the prison knew what to do when the foreigners arrived. This had never happened before. The cell doors opened. The air of 100 men living in a space for 30 hit us. The prisoners blinked as the doors opened and light flooded into the cells. We all shook hands and the foreigners took photographs. It was a bit

like Beethoven's opera *Fidelio* where the prisoners emerge from the dungeon into the light.

Did Russian prisoners come into the light? Well Russia embarked on a huge prison reform programme led by the man who won the battle to open the doors of Butyrka to the foreigners. They changed many of the prison laws. Putting prisoners in straitjackets was no longer allowed. Prisoners in special secure units and those awaiting sentence had to be given bedding and allowed daily exercise outside. Prisoners were not to be kept in special units for longer than six months. Freedom of conscience and the right to participate in religious activities and have religious books were recognised. Adult women prisoners could wear their own clothes. Male prisoners were allowed to have beards and moustaches and no longer had to have their heads shaved. The restrictions on prisoners' correspondence were abolished. More family visits were allowed and some prisoners were allowed home. Prisoners could use telephones where these were available. They were given the right to receive parcels from the very beginning of their sentence and to receive more in the parcels. They were allowed to send letters to the prosecutor, the court and other supervisory agencies without them being stopped or read by the authorities. Neither visits nor parcels, nor the right to buy food from the prison shop, could any longer be withheld as a punishment. Minimum wages were guaranteed for prisoners who met the production quotas.

Prisoners became entitled to twelve working days paid holiday — some even were allowed to spend the holiday outside the camp. Time spent in prison could now count towards the calculation of pension rights. A very good list for anyone wanting to reform a totalitarian prison system

Russia joined the Council of Europe and ratified the European Convention on Human Rights. Altogether they have become rather European. They lose cases at the European Court like everyone else. They are into electronic monitoring like everyone else. They are moving away from camps with dormitories and building prisons with cells like everyone else.

I remember my first visit to a Japanese prison and walking through a workshop. They were all working away and not one prisoner raised his eyes to look at us nor even swivelled them round surreptitiously. Not one prisoner spoke to us or to anyone else. We discovered later that raising the eyes was not allowed and speaking was only allowed for one hour a day. The movement to

reform Japanese prisons has been energetic and got a big boost after a scandal in 2002. A prisoner had died after prison staff applied a high-pressure water hose to his rectum.

Then another prisoner was placed in a restraining device with handcuffs. The hands are cuffed to the waist in a belt and the belt was tightened to the point where his liver was damaged and he died. Following the scandal the Minister for Justice apologised to the Japanese people for what had happened. There were reforms including introducing independent monitoring boards for each prison on the English model.

Finally a word about Jamaica. St Catherine's district prison in Jamaica is a place of darkness. As you walk further into the cell block past the ancient British built

crumbling compartments called cells it gets darker and darker till you can see nothing, just hear and smell. The death row is at St Catherine's district prison. When I went there the prisoners awaiting execution had hung out a huge banner across the front of their block which read 'Greetings and thanks to the UK solicitors'. This was a reference to two heroic British solicitors who have devoted 20 years of their lives to getting Caribbean prisoners off death row, to ensuring fair trials and to limiting the death penalty's application.

Has Human Rights Law been Effective?

So what can we say about all this? It's all good. We are

optimistic. Things are getting better. Or do we conclude, as some Americans did at a conference on penal reform a couple of years ago, that whilst they had laboured away at fighting court cases to get prisoners their rights under the Constitution things were getting no better. For while they sought change, resisting the death penalty, getting private health care providers to prisons replaced because too many prisoners were dying at their hands, the prison population increased. It went up from just over half a million in 1987 to 2.3 million in 2008, from a rate of 354 per 100,000 Americans to 753 prisoners per 100,000. America now has five per cent of the world's population and 25 per cent of the world's prisoners. Statistics which should make us shudder:

- ❑ a white male imprisonment rate of 727 prisoners per 100,000 U.S. residents; and,
- ❑ a black male imprisonment rate of 4,777 prisoners per 100,000 U.S. residents. A ratio of around 7 to 1.

. . . Russia embarked on a huge prison reform programme led by the man who won the battle to open the doors of Butyrka to the foreigners. They changed many of the prison laws.

The American penal reformers said that while this was happening, they were looking the other way — reforming what went on inside the prison — but concluded that they got it wrong. I do not take that path. What I conclude is this. We inherited a human rights framework that changed fundamentally the way deprivation of liberty is seen, and to a considerable extent the way it is done. And that vital work must continue. But we now have another job to do as well and if we do the first without this second we shall have failed.

We must now face up to the injustice that has taken over many justice systems including our own. A justice system is the bedrock of a civilised society. It sets out the values and standards. It reinforces the norms. It should protect the weak and keep the power of the strong under check. It should allow people's sense of right and wrong to be vindicated without revenge or vindictiveness. When it is pervaded by injustice we have cause to worry.

Now we face new battles. What should we be concerned about today when we look at the prisons of the world? Perhaps we should be concerned not only about how prisons are but who is in them. Prisons have become the place for the unwanted people of our consuming society. Crime control is impacting substantially on people with problems that society has failed to deal with. Children from care are highly over-represented in prison: because the care system fails. Children who did not go to school are highly over-represented in prison: because the education system fails. Women who have been abused and ill-treated to the point of trying to kill themselves are over-represented in prison: because the mental health services fail. Here in the UK, we are choosing to punish many people whom life has already punished severely in other ways.

Let me end with a quotation from a letter written by a boy to his mother. The letter says:

I can't last much longer and I will end up trying to kill myself, and this time I will probably succeed. At least I will be with Nana and Grandad (that is, in heaven). If I could have the chance to be at home with my family I will never get into trouble again in my life. Anyway, I have got to go now because I am too upset to write.

This is an extract from the last letter that Adam Rickwood wrote to his mother. He was 14. He was 5ft 1in tall. He had severe emotional problems. He was admitted to hospital seven times after he had harmed

himself. He got into trouble. Eventually he appeared in court charged with 'wounding with intent' and was sent to a children's home to wait for the legal proceedings to take place. He settled well. His mother bought him a rabbit which he looked after. Then suddenly he was sent away, 150 miles from home to a Secure Training Centre. A Secure Training Centre is a prison-like place for teenagers as young as 12 run by a private security company. There are four of these and they are run, not by companies that specialise in child care but companies that are all-purpose service companies. They also transport cash, run private prisons for adults and own electricity meter reading businesses.

On the night of 9 August 2004 there was a bit of bother at the Secure Training Centre. Adam refused to go to his room when told to do so. Then, according to a press report, a 'First Response' team was called in, and four prison staff carried Adam, facedown, to his room. When Adam attempted to bite, one of them employed a controversial technique known as a 'nose distraction'. This involves placing brief upward pressure on the nose to cause severe pain. Adam's nose bled. He then flooded his room as a sort of protest. Between 11.45 and 12 that night he hanged himself with his shoelaces from a curtain rail.

There was an inquest. At the inquest it emerged that the use of force to restrain children with the addition of inflicting pain was being used to get the young people to obey orders. It appeared that this was against the rules laid down by the Government. According to the rules, force should only have been used to prevent harm or serious damage. The Government then changed the rules to allow the Secure Training Centres to restrain the young people with these pain-infliction methods. Eventually the Court of Appeal reversed that decision: it quashed the new Rules and said the way they were introduced was unreasonable and unlawful. What they permitted was in breach of Article 3 of the European Convention on Human Rights, which forbids inhuman and degrading treatment, and in breach of Article 8, respect for family life.

So in the end Adam got his rights. But, sadly, by then he was dead. Miss Rathbone would not have stopped there, nor should we. Thank you for inviting me and thank you for listening.

We are grateful to the Eleanor Rathbone Lecture Series organisers for kindly permitting this lecture to be published in the Prison Service Journal.

We must now face up to the injustice that has taken over many justice systems including our own. A justice system is the bedrock of a civilised society.

Reviews

Book Review

The Excellent Mrs Fry

By Anne Isba

Publisher: Continuum (2010)

ISBN: 978-1847-25039-1

(hardback)

Price: £25.00 (hardback)

In her foreword the author reports that 'There are many biographies of Elizabeth Fry and at times I wondered whether the world needed another'. There are indeed nine such listed in her footnotes, but there is no harm in another when the subject offers so many paradoxes. Someone born into great wealth who became a 'plain Quaker'; a woman in a fiercely patriarchal age who shamed and shook powerful men into action to reform prisons; a parent who bore eleven children and spent a good deal of time away from home doing good; a self-doubting and often frail person who was a genius at delegation and persuading people into sacrificial commitments.

Isba's stated aim is to focus on Mrs Fry's career in prison reform, and so to distance herself from previous biographers who have endeavoured to construct a story of the whole life of the whole woman. This makes the book useful to readers of PSJ: the author sets Fry as a campaigner for reform of imprisonment (especially of women) in a context that reaches from Elizabeth Hooten, a Quaker pioneer of the latter 17th century, through to the Corston report of 2007. Religious intensity burned strongly in Fry throughout her life, but it led to a broad concern for dispossessed humanity rather than to a narrow confessional enthusiasm.

Her serene and positive but forceful personality, expressed

through the instrument of a 'magical' voice which charmed perhaps birds out of trees but certainly large sums of money out of pocket-books, made a double impact. The first impact was on the brutalised women incarcerated in conditions whose evil squalor she was eloquently describing well before Dickens conjured his lurid images of the same. Isba describes imprisoned women falling silent under her reading and simple explanations of the Bible, and then enthusiastically consenting to be organised into something resembling structured monastic communities, complete with rules and roles and uniforms. The second impact was on her peers and on the great and the good, from royalty downwards, to whom she increasingly had privileged access as her fame and her travels reached across Europe. By the end of three decades of work, hers was itself a kind of royal progress. The author claims for Fry a formative role in prison reform (without detracting from the extraordinary achievements, within a far shorter period, of John Howard before her) and also in nursing; she might also have added that Elizabeth Fry was in there at the beginning of the cult of celebrity, as the early 19th century opened up swift travel routes across Britain and Europe.

Mention of nursing leads to the chief reservation about this book. Without quite wishing to dethrone Florence Nightingale as the mother of modern nursing and substitute Fry (who was indeed responsible for the first truly professional approach to nurse training), the author produces with an air of triumph a British Medical Journal article of 1897 hailing Fry as 'the founder of modern nursing'. And in the field of prison reform, to

which the nursing business is a very small footnote in the author's tale, she will hear very little ill of the woman whom the book's subtitle calls an 'unlikely heroine' and whose title itself uses the word 'excellent' without irony. It is disconcertingly near to hagiography; and its style not infrequently recalls the tone of those improving and inspirational lives of heroic figures, missionaries and the like, which were so popular for a century from 1850. At the beginning, in fact, in her account of Betsy's childhood and youth, with emotional and religious tides running strong and simple, Isba almost takes up residence amidst the clichés of that genre. It feels as if the academic historian is striving to achieve a popular tone, and ends up sounding something like Malory Towers. Readers should not be put off by this; the book becomes perhaps not less uncritical, but certainly less coy as it charts the achievements of the adult.

Elizabeth Fry was no one's fool. She understood the complexity of her own motivations, she knew her limitations (including, perhaps, her limitations in the domestic roles expected of her); she knew the ambivalences of 'doing good' and she understood the ways in which more devious people made use of her. She was an extraordinarily quick and reliable judge of people's ability and aptitudes, and with her quiet steady look and voice she could command any room or hall. She achieved much, and her range of reforms look no less strategic today: the importance of constructive work (for which she established an evidence base, that reoffending was cut by a third among prisoners given employment at Newgate) and learning in prisons, diet and sanitation, the

'ladies' committees' which she established for a great number of prisons and which were the direct forerunners of today's Independent Monitoring Boards, classification of prisoners, a consistent national system of discipline, that those with mental health problems should not be in prison but in asylums, that independent inspectors should be appointed. Though the motivations, the language and the pervasive acceptance of a rigid class structure make the early 19th century seem a long way from the early 21st, the core of this book offers a useful historical perspective to anyone interested in the reform of prisons.

Martin Kettle works for HM Inspectorate of Prisons.

Book Review

Fifty year stretch: Prisons and imprisonment 1980-2020

By Stephen Shaw

Publisher: Waterside Press (2010)
ISBN: 978-1904380573 (hardback)
Price: £17.95 (hardback)

Stephen Shaw has an impressive pedigree. He was Director of the Prison Reform Trust for 18 years and then Prisons and Probation Ombudsman for over a decade, where he was responsible for investigating not only complaints but also deaths in custody. He therefore has an intimate knowledge of prisons over the last 30 years and is well qualified to act as a commentator. This short but lively book attempts to provide a history of changes in prisons over those three decades and offers some predictions for the future.

In the first chapter, Shaw sets out the purpose of his book. He

starts by applying Francis Fukuyama's¹ theory of the 'end of history' to prisons. Fukuyama argued that capitalist liberal democracy has reached its apogee, with the structure of society established and broadly accepted. Shaw suggests that the aims of prison reformers have now been achieved and that the role and purpose of prisons is generally agreed, with only minor disagreement about the degree to which it is used.

The second and third chapters contrast the low use of imprisonment during the first half of the 20th century with its much greater use in the second. He highlights how the ageing prison estate came under increasing strain, and how the loss of faith in rehabilitation undermined the established purpose of prisons. Shaw characterises the period prior to the last 30 years as a time in which the prison population was less diverse. Prisoners were more likely to have been sentenced for property offences and staff would manage through a mixture of brutality and indulgence.

Shaw goes on to argue that the contemporary prison system was forged in the fire of three crises: the crises of order, security and industrial relations. The crisis of order was defined by the riots and disturbances that plagued prisons from the late 1960s to the early 1990s. The crisis of security was a running sore throughout much the period demarcated by the escapes of spies and train robbers in the 1960s to the those from Whitemoor and Parkhurst in 1994 and 1995 respectively. The crisis of industrial relations saw frequent strikes and conflicts marring relationships until a more settled

period came during the 1990s as legal controls and then partnership working smoothed the waters to a degree. Shaw argues that these crises required to become more closely concerned with prisons. He also describes that there has been increasing public concern about safety and crime, although he resolutely refuses to try to analyse why this has happened.

Shaw asserts that there is political consensus around 'law and order'. He sees no credible alternative to accepting the fact that crime has fallen for the last fifteen years but prison populations have risen. However, this ignores the experience of European neighbours and even neighbours in Scotland who have devised policies to reduce the use of imprisonment². It also ignores that even in America, where rates of imprisonment are much higher, states such as California and New York are planning to reduce the use of imprisonment³. Rather than being inevitable as Shaw appears to suggest, these policies reflect a particular time, place and culture.

This is followed by the fifth chapter, which is a paean to the contemporary UK prison system, describing it a not only improved in terms of physical conditions, but also more decent, more diverse and better able to reform and resettle prisoners. He describes the prison system as 'both kinder and gentler' than what has gone before (p.64). There is certainly a case to be made for this and the material conditions of prisons are much improved compared with the early 1990s. However, Shaw does not sufficiently consider the more problematic aspects of imprisonment including continuing race issues⁴, the persistence of a traditional staff

1. Fukuyama, F. (1993) *The end of history and the last man* Harmondsworth: Penguin.

2. See Prison Service Journal (2009) *The Interview: Kenny MacAskill* in *Prison Service Journal* No.182 p.56-62.

3. See Howard League for Penal Reform (2009) *Do Better Do Less: The Report of the Commission on English Prisons Today* London: Howard League for Penal Reform.

4. See National Offender Management Service (2008) *Race Review 2008: Implementing race equality in prisons five years on* London: Ministry of Justice.

culture⁵ and the sometimes poor services available in prisons, particularly larger ones⁶. The experience of prisoners is also important in this respect. Ben Crewe's recent study⁷ highlights that although material conditions have improved, other aspects of imprisonment have come to be experienced as painful by prisoners including the uncertainty of early release and the discretionary nature of power through means such as incentives and earned privileges. As one prisoner in that study described, prisons had become 'softer but shitter'⁸. There is therefore a more complex discussion to be had about how prisons have changed.

The book is particularly strong in the sixth chapter, which describes some broader social trends and how these have been played out in prison. These include the development of managerialism, a movement to larger organisations and units as economies of scale are sought, and the development of information technology. Shaw draws on his experience to present a balanced view of both the problems and benefits that have been derived from these trends.

In the final two chapters, Shaw looks towards the next two decades. What he predicts is more of the same: a growing prison population albeit held in reasonably decent conditions. In other words, Shaw senses that we have come to the end of history. However, one feels that this misses major challenges facing the world including climatic change and the passing of peak oil production, as well as shifting global power. These changes may have more

dramatic impacts on the world economy and individual nation states than this book recognises and may lead to changes that penetrate deep into society including the issue of crime and punishment.

This book is engaging, well written and is produced with a detailed knowledge of both the practicalities and the academic analysis of prisons. It will certainly serve as a good introduction for those new to prisons and will be of interest to those currently working in the area. However, it does feel like a book that has played safe. There is much more to be said about the problematic issues about prisons, including the relationship between crime and poverty and how criminal justice maintains and entrenches power and inequality. The Whiggish contemporary history presented in this book seems to be aimed at supporting and reinforce consensus and the status quo rather than exposing division and fragmentation or making a case for change.

Jamie Bennett is Governor of HMP Morton Hall.

Book Review

The lost British serial killer: Closing the case on Peter Tobin and Bible John

By David Wilson and Paul Harrison
 Publisher: Sphere (2010)
 ISBN: 978-0-7515-4232-5
 (paperback)
 Price: £6.99 (paperback)

Over recent years, David Wilson has made the step from the academic community into wider

public attention. This has come about largely through his work covering serial killing in British newspapers, television and true crime books. This is the third popular book that Wilson has produced on this subject and the second he has authored with journalist Paul Harrison, the first being a book on the murder of five young women in Ipswich in 2006¹. As with these previous books, Wilson uses this popular medium in order to engage a wider audience with more sophisticated criminological thinking.

This book looks at two cases. The first, which has become known as the 'Bible John' case, concerns the unsolved murders of three young women in Glasgow in the late 1960s. The second is the case of Peter Tobin who was convicted in 2006 and 2007 of the murder of three women over a 15 year period. The book examines each of the murders in detail as well as other crimes committed by Tobin and makes the case that he is the Bible John killer.

What makes this book different is that it does not simply retell the story of the murders with their grisly detail but uses this as a starting point for examining a number of crucial issues. In particular, the book discusses police investigation techniques and uses these to expose the reasons for the failure of the investigation in the late 1960s and the success of the later investigations. The analysis shows that rather than the systematic and logical process of inquiry that is presented in the popular media, such as the successful *CSI* series, investigations are often improvised, tentative, and they rely upon the discretion

5. See Sim, J. (2009) *Punishment and prisons: Power and the carceral state* London: Sage.
 6. See HM Chief Inspector of Prisons for England and Wales (2008) *Annual report 2007-08* London: The Stationary Officer and HM Chief Inspector of Prisons for England and Wales (2009) *Annual report 2008-09* London: The Stationary Officer.
 7. See Crewe, B (2009) *The Prisoner Society: Power, adaptation and social life in an English Prison* Oxford: Clarendon Press.
 8. Ibid p. 110.
 1. Wilson, D. and Harrison, P. (2008) *Hunting Evil: Inside the Ipswich Serial Murders* London: Sphere, Wilson, D. (2009) *A History of British Serial Killing* London: Sphere.

of senior investigators. It also discussed the development of the process and 'science' of investigation including DNA evidence.

The book is particularly strong in exploring offender profiling techniques. There are lengthy discussions of analyses of the behaviour of serial killers and discussion of the foundation of profiling, pragmatically mixing psychology, sociology and detective work. Some books about profiling, such as Paul Britton's *Jigsaw Man*², have glamorised this and presented profilers as heroic individualists. This book is more open, discussing some of the research on which profiling is based, examining its strengths and limitations and exposing its vagaries. These techniques are applied to Peter Tobin as a case study in order to test the credibility of some of the cold murder cases that Tobin has been linked to, dating back to the Bible John case.

This book will no doubt attract some attention for its conclusion that Tobin is Bible John. That may be true and readers will have their own view about the evidence presented. However, what is perhaps more important about this book is the fact that it shows how the true crime genre can be used as a means of discussing broader criminological issues and providing a space for better understanding the police, criminals and the victims of crime. Once again, Wilson has shown that popular culture does not have to be dumbed down but instead can be a place for intelligent ideas and debate.

Jamie Bennett is Governor of HMP Morton Hall.

Book Review

Criminal Justice: Local and Global

Edited by Deborah Drake, John Muncie, Louise Westmarland
Publisher: Open University and Willan Publishing (2009)
ISBN: 1-843925-14-1 (paperback)
1-843925-13-3 (hardback)
Price: £22.99 (paperback)
£58.00 (hardback)

Book Review

Crime: Local and Global

Edited by John Muncie, Deborah Talbot, Reece Walters
Publisher: Open University and Willan Publishing (2009)
ISBN: 1-843925-16-8 (paperback)
1-843925-15-X (hardback)
Price: £22.99 (paperback)
£58.00 (hardback)

Criminal Justice: Local and Global and its sister textbook *Crime: Local and Global* are two new teaching texts by the Open University that aim to give the reader a critical understanding of the globally contested nature of 'crime' and 'justice'. *Criminal Justice* is perhaps best described as a definitive text book: it is broad based, covering just about every aspect of criminal justice systems both nationally and internationally, with short easily digestible sections of discussion followed by analysis and follow up questions for students. *Crime: Local and Global* challenges our conceptions about the nature of crime, not in a philosophical sense but by looking at the nature of the harm that 'crime' causes. It is particularly topical in light of the recent global financial scandals that have brought greater media exposure of these sorts of issues.

Through an examination of key concepts and criminological approaches, the books skillfully provide a mosaic of the different ways in which crime is constructed,

conceived and controlled. International case studies are used to demonstrate how 'crime' and 'justice' are historically and geographically located in terms of the global/local context, and how processes of 'criminalisation' and punishment are measured and moderated in today's world.

It is more than a text book though: equally useful to students and practitioners. I found myself loaning out the book to colleagues who wanted a quick summary of a recent issue or idea over a cup of coffee. Sections are deliberately brief but do manage to comprehensively cover what is an amazingly wide and varied collection of subjects.

Criminal Justice: Local and Global covers the way the 'local' can be widened out to look at international, transnational and supranational aspects of justice. This allows the authors to discuss issues such as corporate crime and human rights in a comparative and critical way, examining the possibility, for example of an International Criminal Court, cross-national jurisdictions of regulation and control (such as Interpol) amongst other ideas. Each chapter covers a different area of regulation, punishment and process. The book takes an innovative approach to widen 'justice' to encompass considerations beyond simple, local jurisdictions; taking instances of 'justice' in one jurisdiction and using global examples to illustrate how ambiguous the concept of 'justice' can be. It is both critical and challenging, asking the reader to reflect on current trends that are impacting across the world whilst at the same time identifying contradictions and exceptions. One example which is of particular relevance to PSJ readers is the recent policy u-turn in California toward the imprisonment of young

2. Britton, P. (1997) *Jigsaw Man* London: HarperCollins.

people, reducing incarceration rates by 75 per cent over a ten year period and bucking the national trend —leading to a debate about the increasingly punitive nature of governments in response to crime.

Crime: Local and Global encourages us to re-visit the way local events (such as prostitution) impact on society. It picks up links with other areas of crime such as people traffickers, international organized crime and violence and challenges current responses to this virtually ignored area until recently. Each crime or area of activity selected within this text has a global reach, and is made ever more possible due to the way globalization has opened up markets, both legitimate and illegitimate. The book's approach and scope emphasizes that we can no longer view 'crime' as something which occurs within certain jurisdictions, at certain times and in particular places. For example, the chapter on cybercrime highlights the 'illegal' acts that can be perpetrated by anywhere in the world, and provides a focus for recent emerging themes around intellectual property and the limits of crime.

The book takes an interesting approach to source material, combining academic writing and articles with media reports and even television drama (including at one point a reference to *Monty Python's The Holy Grail*) as a means of stimulating thought and debate. I enjoyed moving backwards and forwards through the chapter index picking out sections of interest but found myself increasingly going back to read whole sections of the two books as themes were cleverly cross-referenced and linked together.

Overall an interesting read, that was thought provoking, introduced new ideas and re-visited old ones and left me feeling thoroughly updated and well informed. For students on a budget

(both books sell for just over twenty pounds) this is an easy quick win for those who want to get a quick grasp of the complexities of the Criminal Justice system and our understanding of Crime yet still meets the requirements of academic rigor with good use of referencing throughout.

Steve Hall is a Prison Manager currently working for SERCO.

Book Review

**Thinking about Punishment:
Penal policy across space, time
and discipline**

By Michael Tonry.

Publisher: Ashgate (2009)

ISBN: 978-0-7546-2905-4

(hardback)

Price: £85.00 (hardback)

Thinking about Punishment by Michael Tonry, is the fifth title in a new series from Ashgate which focuses on Pioneers in Contemporary Criminology. Edited by David Nelken, the series endeavours to draw together the best published and unpublished work by leading authorities in the area of contemporary criminological theory. Joining the criminological 'greats' of David Downes, David Greenberg, Paul Rock and James Sheptycki; Tonry draws together articles from a wide range of journals and books on his specific theme of punishment. Described by the author as a 'Greatest Hits' book, the collected articles and book chapters complement one other to provide a retrospective view of his work and show the development of his contribution to criminology as a whole.

The book begins with a 12 page introduction, written by Tonry, which whilst a significant piece of scholarship in its own right, frames the subsequent chapters and writings. This opening is very

interesting: not just because the author explains why he has written what he has over his academic lifetime to date, but also because he sums up what he has learnt along the way. For example, he explains that his interest in racial disparities came about because he came of age at a time in the US when the Civil Rights movement was at its peak; American politics became more right-winged; and 'wars' were initiated against crime and illegal drug taking. Categorising the majority of his work into three themes (race and ethnicity, crime control policy and circumstances in countries other than the US), Tonry explains how he has been significantly influenced in his writings and thinking by his late mentor Norval Morris, who he worked with on and off from 1971 until his death in 2004. With these themes in mind the remainder of the book is divided into five parts: race and ethnicity; comparative penal policy; American penal policy; sentencing policy; and, punishment theory.

Race and ethnicity, Part I of the book, is a collection of three book extracts which together make a number of important points. One such point is that racial disparity in prison in the US is largely due to legislation which targets those offences which black Americans are disproportionately more likely to be convicted of than their white counterparts. This therefore suggests that it is not the fact that blacks commit more crime, but that the law is biased in the crimes which it targets and thus focuses upon. For example, Tonry (in chapter 1) found that crime control policies adopted in the 1990s punished crack offences (which blacks are more likely to be convicted of) as severely as powder cocaine offences (which whites are more likely to be convicted of) which were 100 times larger in size; with such a conclusion also valid as recently as 2008 (chapter 3).

Complementing this work is also an extract (chapter 2) dealing with comparative research looking at the existence of racial disparities in England and Wales, Canada and Australia; with perhaps the surprising conclusion that the least marked discrepancies were those found in the US.

Race, Tonry argues, is therefore 'at the beginning and the end of the search for what causes American punishment policies to be so severe', although is unlikely to be the only influence in forming penal policy. Part II therefore begins to evaluate the determinants of penal policy in Westernised countries quickly dispelling the oft cited reasons of rising crimes rates, cynical electoral policies and public punitiveness. Instead, Tonry considers the factors of 'late modernity' as summed up by David Garland, although concludes that changing penal policies are often due to local rather than global phenomena (chapter 4). Using this work to inform American penal policy, Part III further explains how explanations of US developments in penal policy focus on 'a combination of the history of American race relations, constitutional arrangements that make policy decisions highly vulnerable to short-term public emotion, long-term cycles of intolerance of crime and criminals, and a series of moral panics about violent and sexual offences' (chapters 7 and 8). This argument is further explored by a 2009 extract found in chapter 9.

Part IV of the book then moves on to sentencing policy and opens (chapter 10) with one of the earliest overviews of the American sentencing reform movement, which was written with Norval Morris in 1978. Building on experience and research with, and for, a number of sentencing commissions, Tonry went on to become perhaps the most influential sentencing policy

commentator of his time, with other extracts in this Part focusing on mandatory penalties (chapter 11) and the purposes and functions of sentencing (chapter 13). Much of this work was later summarised in his 1996 book 'Sentencing Matters', of which the introductory chapter is attentively included (chapter 12). This is then further explored and commented upon in the final part of the book which explores the theory of punishment. Tonry claims that sentencing policy encompasses both normative and practical issues and these factors are discussed and fully explored in chapters 10, 12, 14, 15 and 16. From such exploration, he concludes that it is possible to create a sentencing framework, whereby the least severe punishment within an allowable range (justified on deserts theory) should be imposed upon an offender. How this would work in a practical sense is explored in chapter 16.

As the author describes himself and as previously mentioned, this is a 'Greatest Hits' book and is reminiscent of how I would envisage an academic version of a 'This is your life' 'red book' on Michael Tonry to be. There is no doubt that Tonry is recognised as being amongst one of the greatest contemporary criminologists, and it is through such a collection that we are reminded of why this is the case. Unlike other books in the series, this does not include previously unpublished contributions, (although of course the introduction is an original contribution), but nevertheless is an easy to access collection of some of Tonry's most influential writings dating from 1978 to 2009. The price tag of £85 may, however, put some practitioners off, especially when much of what is written is focused on theory rather than practice; but the book would nonetheless make a valuable contribution to any public library

shelf and be of value to anyone who is interested in the development of contemporary penal thinking.

Karen Harrison is Lecturer in Law at the University of Hull.

The Crisis of Imprisonment: Protest, Politics and the Making of the American Penal State, 1776-1941

By Rebecca McLennan
Publisher: Cambridge University Press (2008)
ISBN: 978-0-521-53783-4
(paperwork) 978-0-521-83096-6
(hardback)
Price: £19.99 (paperback)
£40.00 (hardback)

This book is a scholarly and detailed study of the origins of the American penal state and the relationship between contractual penal labour and imprisonment from the end of the American War of Independence, through the nineteenth and into the twentieth centuries. The text focuses on the relationship between contractual penal labour and imprisonment over this period, but contributes a much broader theoretical dimension to understand the 'crisis' of imprisonment and the contested nature of the boundaries of punishment, particularly imprisonment, in a society which holds freedom as 'official religion' (p.470). The text is divided into three parts; from the early years of the Republic to 1895, demonstrating the rise of the use of penal servitude, its origins and its downfall, after a series of crises; from 1895 to 1913, when new solutions were offered to the problem of productive labour in the aftermath of these crises and the curtailment of contracted penal labour in many states. The final period is from 1913 to 1940s, the Progressive Era, during which a new

penology developed and recast some of the central questions regarding labour and prison discipline more broadly.

This is an excellent account which contributes an interesting and important dimension to the study of American penal history in particular, but penal history in Western societies more broadly. As McLennan notes it is surprising that some of the key historical texts such as David Rothman's (1971) *The Discovery of the Asylum*, have had little to say on prison labour. However, to say that this book charts the development of legal punishment and contracted prison labour in the US is doing a disservice to this exhaustive study, but it is probably not for the casual reader, who is just dipping their toe into the history of the modern prison. McLennan traces the origins of contractual penal labour to the 'reform' period of early nineteenth century and the separate (Pennsylvania) and silent (Auburn, New York) systems of imprisonment and the importance of these penal philosophies in influencing penal strategies of this period, in the US and in Europe. McLennan argues that the silent system was important not merely for the reformatory potential it was thought to offer, but instead for the focus on labour which was crucial to the regime. The use of contracted prison labour rose throughout the nineteenth century, becoming the dominant mode of punishment in almost all Northern

and later all Southern states of America, enforced by the lash and the paddle. At the height of the use of contracted penal labour in prisons in the 1860s it contributed over 30 million dollars from contracted work. This proved problematic in the later decades of the nineteenth century as contracted prison labour was abolished and the prison system faced a fiscal and ideological crisis.

The book examines the ways in which contracted penal labour was viewed by a number of different interested parties; politicians, the public, prisoners, labour organisations and workers, and the different and often competing discourses on the contested nature of labour in prison. The final section of the book examines the development of a new penology in the first half of the twentieth century, predominantly focussing on the state of New York and providing detailed analysis of Auburn and Sing Sing prisons. This section illuminates the prison crisis in this state and the various interested parties contributions to the reformatory endeavour. It is a fascinating discussion of the competing voices on reform and the highly politicised debates within state governance. Through a discussion of the creation of the Mutual Welfare League (aimed for self-government by prisoners, promoted by reformer Thomas Mott Osborne) at Auburn and Sing Sing prisons, and the various prisoner publications such as the

Star of Hope, it also possible to hear the often missing voices of prisoners and the ways in which they utilised the reformers own discourses to achieve their own goals (e.g reduce times in cells, better quality food); this I found particularly interesting.

In analysing these discourses on contracted penal labour and the boundaries of legal punishment, this study provides a historical dimension to questions that persist today in relation to employment and industries in prison, perhaps in different ways or with different levels of intensity; what type of employment should prisoners undertake? Should it be productive? Should the aim of penal labour be reformatory or deterrent? Should prison industries be able to compete with manufacturers or industries in the external marketplace? Can or should this occur in communities where certain industries or manufactures have declined and the unemployed outside prison are competing with cheap labour inside? More importantly, this text is skilful in providing for a much broader analysis of punishment, in examining the meaning and boundaries of punishment, imprisonment, reform, prison discipline, and the treatment of prisoners in the development of the America prison system.

Dr Helen Johnson is Lecturer in Criminology at the University of Hull.

Interview: Sir Alan Beith

*Rt Hon. Sir Alan Beith has been a Liberal Democrat MP since 1973. He is currently Chair of the House of Commons Justice Committee. He is interviewed by **Jamie Bennett** who is Governor of HMP Morton Hall.*

The Right Honorable Sir Alan Beith is a Liberal Democrat politician who was first elected as MP for Berwick-upon-Tweed in 1973. He has continued to serve the same constituency ever since.

He has had a distinguished career, serving as Deputy Leader of the Liberal Party from 1985 to 1988 and then Deputy Leader of the Liberal Democrat Party from 1992 to 2003. He has held a number of shadow portfolios for the Party including Treasury, Foreign Affairs and Home Affairs.

He is also a respected Parliamentarian, having been a Privy Councillor since 1992. He has chaired a number of Select Committees including those that have scrutinised the Lord Chancellor's Department, Constitutional Affairs and the Ministry of Justice. He has been the Chair of the House of Commons Justice Committee since its creation in 2007 and was elected Chairman following the 2010 General Election. In 2008 he was knighted for his public service.

The Justice Committee is formally appointed by the House of Commons to examine the administration, expenditure and policy of the Ministry of Justice, including prisons, probation, court administration and the Crown Prosecution Service. The Committee also examines the work of the Attorney General, Solicitor General and the Treasury Solicitor's Department, the Serious Fraud Office and the Sentencing Guidelines Council.

The Committee have produced a number of reports directly relevant to prisons, in particular, in 2009 they produced a report on the role of prison officers¹ and in 2010 they have produced a report examining the case for a new approach to criminal justice known as Justice Reinvestment².

*The interview took place in London
in March 2010*

JB: What do you see as the role of the Justice Committee and your particular role as chair?

AB: The Justice Committee acquired its new name, having previously been the Constitutional Affairs Committee, when penal policy and administration of justice was moved from the Home office and became part of the Ministry of Justice. That then gave us responsibility for all aspects of penal policy, sentencing and administration of justice. It is an important role because new thinking is required, and as Chair I have encouraged that. Equally important we are trying to build all-party consensus and both of our reports have been unanimous. They try to cut across the tendency, particularly in an election period, for the debate to become a competition to see who can sound toughest. When I say 'toughest' I would say that what appears tough may not necessarily be tough. The tough thing to do may not be locking people up in prison,

The tough thing to do may not be locking people up in prison, but may be trying to engage people in ways that change their behaviour.

but may be trying to engage people in ways that change their behaviour. That's tough for staff to do, but it is also much more challenging for the person concerned, certainly more challenging than simply sitting in prison for a couple of years before going out to commit more crimes.

JB: So you see it not only as a body to exercise accountability, but also one that generates new ideas?

AB: The two go together. When you hold a system to account, you ask whether it is fulfilling its purpose. Our view has been that the primary purpose of the entire criminal justice system is to stop people suffering as a result of crime. It's not to promote particular ideas about how to do it, but to identify and promote what will work.

JB: During the expenses debate last year, there was some discussion about Parliamentary

1. House of Commons Justice Committee (2009) *Role of the Prison Officer* London: The Stationers Office.

2. House of Commons Justice Committee (2010) *Cutting crime: The case for justice reinvestment* London: The Stationers Office.

Committees having a role in reinvigorating democracy and providing greater independence for MPs. Is that something you see as possible and would welcome?

AB: Yes and it is really happening. Over the years I have seen an increase in influence and the ability to engage with policy and the delivery of policy through departments and agencies. The House has just struck a blow for independence with the decision to hold elections for the Chair and members of Committees, which will come in during the next Parliament. Any attempt to water that down was firmly resisted in the vote on the issue. This is a welcome change. There are some things that the Committee process can't do. There is still a distinction between Committees that scrutinise and those that take Bills through their stages. Those that take through Bills are seen to be dominated by the Whips but those that scrutinise are not.

JB: In 2009, the Committee produced a high profile report on the work of prison officers³. What was the aim of producing this report?

AB: We wanted to look at the role of prison officers, so we didn't start with any preconceptions. Personally I know and represent prison officers and have a degree of support for what they do and sympathy for some of the problems that confront them.

We were provided with some really interesting evidence. It confirmed and developed a view I had and which other members of the Committee came to share, that there are aspects of the role of prison officer that many people just don't understand. In particular, the way that the prison officer is often the only person in authority that some prisoners have related to in their lives. That is particularly the case for male prisoners who often come from dysfunctional households and in that context, the people that they have looked up to have often been from the criminal community. To have somebody who offers a different role model is crucial. All of this depends upon the ability of prison officers to interact. People who haven't been in prisons sometimes think that prison officers just lock and unlock doors and order people

about, but the reality is that you can't run a prison without developing an understanding and relationships with prisoners. That process is potentially of huge benefit and the best prison officers, as long as they are given the time and opportunity, make the best use of it.

JB: The Report argues that there needs to be clarity about the purpose of prisons and that should inform the role of staff. Do you think this is possible? As Nicholas Hardwicke, the new Chief Inspector recently said to the Committee: '... the purpose of prison? Ask 20 people and you get 40 different answers'⁴. Is it not the case

that the purpose of prisons will always be contested and therefore the kind of clarity sought is unrealistic?

AB: It ought to be possible. It is true there is more than one purpose, but the overriding purpose of the criminal justice system is to prevent crime. What you actually want is for people never to have to suffer from acts of violence against them or have their property violated or be defrauded. We wish to protect people. Prison does this in a number of ways. It does it by removing people from society who pose a serious danger. In other cases a period in prison will allow you to send that person out less likely to commit crime in the future. Prison isn't working properly if it can't do that. There is an assumption

that people make that prison is a significant deterrent. That is greatly exaggerated, largely because many people who commit crime do not consider the consequences of their crime when they carry them out or believe that they will be caught and punished. Prison also performs another role that we need to find a way of replacing, that is that for many people they look to prison and the length of a custodial sentence as a way of expressing society's disapproval. That distorts the system in my view. It is understandable that people want to see some sort of ranking so that a person who has committed a serious violent crime gets a punishment that is more significant than for another offence. People want to see a moral order. However, if you look for that only in the length of a custodial sentence, you are not

People who haven't been in prisons sometimes think that prison officers just lock and unlock doors and order people about, but the reality is that you can't run a prison without developing an understanding and relationships with prisoners.

3. See n.1.

4. House of Commons Justice Committee (2010) *Appointment of HM Chief Inspector of Prisons* London: The Stationers Office.

asking the question 'what will actually prevent this person committing crimes in the future?' That is a more important question. We need to find a way in practice and in the tabloid press of saying that the most effective sentence is the appropriate response to a crime, and that is not necessarily measured only by the length of a sentence.

JB: The report had much to say about the recruitment and training of prison officers. However, in publicity terms, the Committee were perhaps gazumped by the Howard League publishing their evidence separately and in advance of the report, and in which they called for prison officer to be a graduate profession and this generated significant media coverage. Do you think that the Committee can work in a way to have a similar media impact?

AB: I don't think that the Committee was trumped because it was good to hear prison officers talked about positively. The Report did get coverage, of course this was not as much as we would have liked, but it never is as much as we would like. The Howard League is a campaigning organisation that gave useful evidence to us and we have no quarrel with them. Our conclusions on the training side were different from theirs, but we shared the view that prison officers in this country do not get the training that they are entitled to. When we looked at other countries they all had much more ambitious programmes for training prison officers.

JB: The Report did not support making prison officer a graduate profession, instead supporting longer basic training and the use of National Vocational Qualifications, but also called for investment in basic skills, numeracy and literacy training for some prison officers. Do you think that having identified such a fundamental gap in the skills of some prison officers, this calls into question the current levels of training and expertise? Is this really fit for purpose?

AB: We had evidence that some prison officers genuinely had difficulty in producing reports and talking to people in prisons we had confirmation that some prison officers lacked the basic skills that they

needed. We didn't go into individual cases and some of them may have had well developed skills in other areas. However, there was clearly a gap there and that should be filled. When you have a prison officer who needs basic IT training or basic literacy training and they can't get that but prisoners do have access, that can be frustrating.

JB: The report specifically discussed prison culture. This is of course a complex area. The Report particularly highlighted that the growth of managerialism had led to more 'box ticking' as opposed to moral leadership. It was also highlighted that in a competitive world, there was a rapid turnover of managers. As a result it was identified that some prisons developed entrenched negative cultures that were either masked by performance figures or unaddressed by short-tenure managers. What do you think can realistically be done in order to change this structurally and in terms of attitudes and values?

AB: The Chief Inspector of Prisons, Anne Owers did a very good job in identifying where some of these problems existed. It is clear that prisons have cultures and in some prisons, even where the right boxes are ticked, there can still be problems that can't be resolved unless you have good leadership

by prison officers as well as managers. That leadership needs time and not be frustrated by having to take larger numbers of prisoners and experience overcrowding. All the evidence suggest that you can correct failings in culture more effectively in smaller prisons rather than larger. This raises questions about having 1500 place prisons, let alone the now abandoned Titan prisons. There are also some questions about clustering, which should be done in a way that does not rob prisons of the leadership they need. We have expressed concerns that sometimes clustering is done for a mixture of geographical convenience and money saving and not on the basis that each prison will receive the leadership it requires.

JB: The need for prison to focus on reducing reoffending is echoed throughout the report. In the final sentence the Committee concluded that: 'Reducing the ratio of officers to prisoners

We need to find a way in practice and in the tabloid press of saying that the most effective sentence is the appropriate response to a crime, and that is not necessarily measured only by the length of a sentence.

in pursuit of short-term economic savings will damage long-term re-offending rates, creating more victims, more fear of crime and all the social and financial damage that arises from criminality'. Are you therefore calling for significantly increased investment in prisons?

AB: No. In the Justice Reinvestment report we were calling for a shift away from prisons towards more investment in services that would prevent people ever needing prisons in the first place. What we are saying is that for prison to work you can't just push into prison everyone that comes through the criminal justice system. If you allow yourself to be on a treadmill to build more and more prison places for more and more people, you are left with increasingly ineffective prisons because you won't have the officer numbers to do a proper job. The answer to the problem that we identified was not to build more prisons and employ more prison officers, but instead we wanted prison officers not to be given more prisoners than they could reasonably cope with. We were arguing against any system that does not maintain a proper ratio of officers to prisoners. We recognised that it's a vicious circle to get trapped with an ever-expanding prison system because those resources could be used elsewhere. For example, if you don't ensure that children who need it get special support at school from a young age, then they will be up before the courts in a few years getting community sentences that will fail because the ground work hasn't been done and then they'll be in prison.

JB: In 2010, the Committee published this report on Justice Reinvestment. This idea is premised on the fact that prisons reflect social problems, so people who live in poverty and people in marginalised groups, particularly minority ethnic communities, are more likely to end up in prison. As a result, this idea suggests that spending on criminal justice should be reduced and savings reinvested in addressing these underlying social problems. Why did you decide to examine this particular issue?

AB: Two things. The first was standing back and asking what are we spending? Is it achieving what we want it to achieve? Could we spend it differently? They are the questions that any Committee should answer. Second it was based on international experience, looking at other countries. From that it is obvious that there are other ways of doing things. Even in the United States there is a serious attempt to

look at different approaches. Some states have done this for philosophical and ideological reasons, such as Washington state, but others such as California, have realised that they simply can't carry on with policies such as 'three strikes and you're out'. We were also interested that other European countries have avoided being dominated by a political debate characterised by who can talk toughest, instead there is a much broader debate taking place amongst politicians and in the media.

JB: The report is critical of what it describes as the "arms race" on being "tough on crime" and instead calls 'for encouraging and informing sensible, thoughtful and rational public debate and policy development'. This is call that has been made by many academics and interest groups over the last two decades. Does the

Justice Committee have the capacity to take this forward more effectively and act as a launch pad for these alternative approaches to justice?

AB: That is what we have tried to do. The Committee was unanimous on this. It has also given some political cover so that politicians in key positions, if they are attacked for exploring more radical ideas,

can at least say that the ideas have already had the support of an all-party committee.

JB: What has been the response to the report?

AB: The response from the government has been generally positive. The Justice Reinvestment Report struck a chord with people across the political parties and in the Ministry of Justice and the Treasury, who were ready to look more radically at the prison system. There have already been people asking the question of whether we can go on like this? This idea has therefore attracted their support. To be fair to Ministers, this is going along the same direction they have tried to travel in relation to youth justice and women. I have had experience of the Government responding to reports by issuing press statements dismissing the whole thing, which then has to be retracted. That happened to me in 2001 with the Privy Council report on the anti-terrorism legislation. However, with this report there has been a more considered response. There is still some institutional traditionalism that is not open to the ideas. Until we get to the point where decisions are made at a more local level, then we will preserve a situation where prison is a free commodity and everything else is too expensive to do. Many is the time when what the

. . . for prison to work you can't just push into prison everyone that comes through the criminal justice system.

district judge wants to do to address the offender's problems is not available locally, but if custody is given the prison van comes to the door and collects them.

JB: I am sure that in your research you looked at Oregon where they introduced justice reinvestment policies as they were concerned about the level of juvenile imprisonment. They calculated how much it had cost to imprison people from each county in the state, gave that money to each of them and said that from now on they would have to pay directly for the cost of imprisonment. If they imprisoned more they would have to raise taxes or cut other services, and if they imprisoned less they could invest the money elsewhere. As a result the use of imprisonment fell dramatically and money was invested in deprived areas that prisoners came from.

AB: Mapping is an issue we explored in the Justice Reinvestment report, which feeds into that. It

is extraordinary that we have these elaborate systems for deciding where to allocate resources throughout the system, but prisons seem to be exempt from that. That derives from the idea that if the judiciary decides that prison should be used then the executive has to provide that. However, courts are often precluded from doing what they consider best because that is not available but prison is.

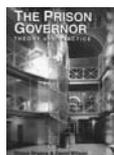
JB: What is next for you and the Justice Committee?

AB: Individually the current members are promoting the justice investment ideas inside and outside of Parliament. We have also have other reports to complete before the election. After the election we cease to exist for at least a month as new members are appointed. I do want to go back to this Committee and continue the work.



PRISON SERVICE JOURNAL

PUBLICATIONS



The Prison Governor: Theory and Practice by Shane Bryans and David Wilson

Describes in one closely argued book, the history of imprisonment, the management of prison staff, the understanding of prisoners, the developing role of the Governor and some well governed prisons.

Order Form (Please photocopy this page)

The Prison Governor

£4 for prison staff

£5 for non Prison Service staff

Include £3.00 p+p per book

Copies



Total

.....

Cheque Value

.....

Enclose a cheque made out to 'HM Prison Service' and send to:
Prison Service Journal, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge,
Gloucestershire, GL12 8BT. Tel: 01454 264007

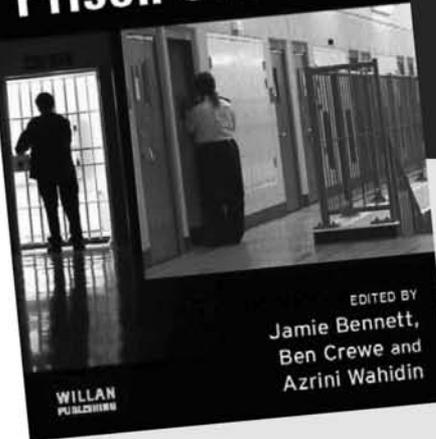
Name..... Address

.....

..... Signature

New Book for Prison Staff

Understanding Prison Staff



EDITED BY
Jamie Bennett,
Ben Crewe and
Azrini Wahidin

WILLAN
PUBLISHING

Understanding Prison Staff

Edited by **Jamie Bennett**
(HM Prison Service), **Ben Crewe**
(Univ. of Cambridge) and **Azrini
Wahidin** (Queen's Univ. Belfast)

Published in association with The Prison Service Journal.

The past decade has seen dramatic growth in every area of the prison enterprise. Yet our knowledge of the inner life of the prison remains limited. This book aims to redress this research gap by providing insight into various aspects of the daily life of prison staff. It provides a serious exploration of their work and, in doing so, will seek to draw attention to the variety, value and complexity of work within prisons.

This book will provide

- practitioners, students and the general reader with a comprehensive and accessible guide to the contemporary issues and concerns facing prison staff.
- information on relevant research studies, key debates, and on operational and procedural matters.
- reflective material for practitioners working in the field
- an edited collection which academic and training staff can adopt for core or specialist modules which focus on prison management, prison officer training, and the occupational cultures of prison staff.

**10%
Discount**
With
PSJ

ISBN: 9781843922742(pbk)/9781843922759(hbk)

Published: November 2007

Price: ~~£25.00~~ **£22.50** (pbk) / ~~£50.00~~ **£45.00** (hbk)

WILLAN PUBLISHING

Culmcott House, Mill Street, Uffculme, Devon EX15 3AT, UK.
Tel: 01884 849085 Fax: 01884 840251. Email: sales@willanpublishing.com



TO FIND OUT ABOUT ALL OF OUR PRISON TITLES VISIT www.willanpublishing.com

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 2005 selected articles from each edition are available in the Resource Centre of the HM Prison Service website. This is available at www.hmprisonservice.gov.uk

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:

Legitimacy and Procedural Justice in Prisons

Jonathan Jackson, Tom R. Tyler, Ben Bradford, Dominic Taylor
and Mike Shiner

Equality in the Prison Service — a lot done, a lot still to do

Claire Cooper

No one left to blame?

Matt Wotton

Why do prisoners have rights? The lessons of our history. Eleanor Rathbone Lecture Series

Baroness Vivien Stern

Interview: Sir Alan Beith

Jamie Bennett