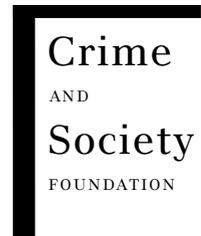


Does criminal justice work?

The 'Right for the wrong reasons' debate



Edited by
Richard Garside
and
Will McMahan

Crime and Society Foundation
26-29 Drury Lane
London WC2B 5RL
Tel 020 7848 1685
Fax 020 7848 1686

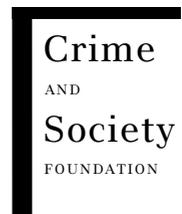
info@crimeandsociety.org.uk
www.crimeandsociety.org.uk

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Introduction

Is criminal justice failing?

Richard Garside and Will McMahon

In July 2006, the Crime and Society Foundation published a pamphlet that examined the Labour government's claim that the criminal justice system required fundamental reform if it was to tackle crime and protect the public. Though substantially correct in diagnosing a failing criminal justice system, the government failed to understand the real nature of this failure, the pamphlet argued. The government was, as the pamphlet's title put it, 'right for the wrong reasons'.

A clear understanding of the nature and extent of criminal justice failure, the pamphlet concluded, implied a set of policy responses that diverged significantly from the government's current approach. In place of the largely fruitless drive to 'improve' criminal justice 'performance', the pamphlet argued that the real policy challenge involved greater honesty about what criminal justice could not achieve and a genuine openness to thinking on a much broader social policy canvas. Only then would we start to tackle the wide array of crimes and related harms that blight the lives of far too many of our fellow citizens.

This collection reprints the original essay, along with responses to it from a number of knowledgeable and respected figures in the field of crime and criminal justice. Two of these responses – by Rob Allen and Geoff Dobson – are based on presentations that they gave to a roundtable discussion held by the Crime and Society Foundation in June 2006. The contributions by Professor Ian Loader, Professor Joe Sim, Edward Garnier QC MP and Nick

Clegg MP are essays submitted for inclusion in this publication. The final paper in this collection is a reproduction of a speech given by the Prime Minister in June 2006. Though not in any sense a response to *Right for the wrong reasons*, Mr Blair's speech does, in our view, summarise the government's view on crime and criminal justice.

We do not intend, in this short introduction, to offer a point-by-point commentary on the contributions to this collection. But we would like to touch briefly on one point of concern, raised by some of the contributions, that relates to one of the original pamphlet's key arguments.

According to *Right for the wrong reasons*, crime and related harms are far more common and widespread than official statistics – such as the British Crime Survey and police recorded crime incident data – would suggest. Indeed when the true scale of crime and related harm is acknowledged, the negligible impact of criminal justice, with its comparatively narrow and small caseload, becomes clear. Only by moving beyond criminal justice, will we start to bear down on crime and related harms.

But by making such an argument, do we not risk presenting a gift to those who would argue for the ever greater expansion of the criminal justice system? For Geoff Dobson, the answer is a resounding 'yes'. Talk of 'an epidemic of lawlessness will provide hugely welcome ammunition for more resources for retribution and incapacitation in the "war against crime",' he writes. 'The "evidence" in this paper will,' he argues, 'be used to bolster the case for a massive reallocation of funds from other social policy areas to the criminal justice system'.

Ian Loader raises a similar concern. 'If crime is high, and crime is centred as the problem,' Loader writes, 'the forces that dictate an immediate, crowd-pleasing form of "toughness" have a pronounced tendency to prevail'. 'Talking up' the problem of crime is a dubious strategy 'in the present feverish climate... We really must be careful what we wish for,' he cautions.

We put to one side Geoff Dobson's use of scare quotes when referring to the 'evidence' of crime and harm levels presented in *Right for the wrong reasons*. The reader can judge for him- or herself its reliability, while the general point he and Ian Loader raise is an important one.

In answering this concern, one might acknowledge that 'talking up' crime might risk spurring an ever more punitive turn, but that talking it down has not itself been conspicuously successful in recent years. So, the Prime Minister acknowledges 'the blunt reality' that the government's criminal justice policies 'will mean an increase in prison places'. As Rob Allen points out, the government's commitment to expanding the prison system has 'provoked scarcely any political debate'. Yet the prison population has gone up by a quarter since 1997, during a period when we have been led to believe that crime has been falling.

Of course the failure of a 'talking down' strategy does not imply the success of a 'talking up' one. We would, in any case, challenge the characterisation of *Right for the wrong reasons* as being engaged in 'talking up' crime. In our view, the question is a very simple one. If public policy in the field of crime and related harms should be based on the best available evidence of its prevalence – a few would argue that it should be based on ignorance - do the current official crime statistics offer such an evidential base? If we think that they do then the arguments put forward in *Right for the wrong reasons* are at best flawed and at worst fallacious and potentially counterproductive.

On the other hand, if we think that there is much that we do not know, we should not be afraid of saying so, nor of seeking to quantify and acknowledge the many crime and related harms we currently tend to ignore. In a small way, *Right for the wrong reasons* might then offer a pointer to what might be involved in doing this, and what policy framework might be implied.

The dilemmas that follow on from a more open acknowledgement of the prevalence of crime and related harms

– not least of all being the risk that such an exercise might fuel greater punitiveness - are essentially political questions. This is not to deny their validity. But it is important to be clear about the nature of the questions one is raising. We should also be clear that greater punitiveness is only one of a number of possible policy trajectories opened up by greater honesty about the scale of crime and related harms. It is perfectly plausible to assume that it might be the beginning of a ‘progressive’ turn, not its death knell.

Finally, we would like to thank all those who took the time and trouble to pen responses to *Right for the wrong reasons*. We received many of them, though space has not permitted us to publish all of them here. They can however be found on the Foundation’s website. Some people agreed with elements of the original argument. Few agreed with all of it. A number disagreed strongly with much of it. But then, in a public policy area often notable for strong consensus, differences of opinion are necessary and refreshing. For disagreement, as Ian Loader points out, ‘is what an informed public debate about our criminal justice system should properly seek to foster’.

ABOUT THE AUTHORS

Richard Garside is the Chair of the Crime and Society Foundation and the Acting Director of the Centre for Crime and Justice Studies.

Will McMahon is the Acting Director of the Crime and Society Foundation.

Right for the wrong reasons:

Making sense of criminal justice failure

Richard Garside

These are curious times for criminal justice. The risk of being a victim of crime, according to the government, is at a 20 year low. The official rate of crime, as measured by the British Crime Survey, stood at nearly 20 million incidents in 1995. Ten years on the comparable figure is just under 11 million, a near 50 per cent decline in a decade. The government's self-imposed target of a 15 per cent reduction in British Crime Survey measured offences between 2002/03 and 2007/08 (Home Office 2004a), now appears more timid than ambitious, so significant has been its apparent success.

Meanwhile, those agencies that make up the so-called 'criminal justice system' face regular attack and criticism, much of it from government ministers. In his speech to the 2005 Labour Party Annual Conference, the Prime Minister told delegates that having 'battered the criminal justice system to get it to change' over the previous eight years, he now understood that 'the system itself' was 'the problem' (Blair 2005). Mr Blair returned to the theme earlier this year, during the launch of the government's 'Respect' agenda. 'Traditional' criminal justice processes were, he said, 'utterly

useless' for getting 'on top of twenty-first century crime' (Blair 2006). Developing this point in an email exchange with Henry Porter of the Observer newspaper, the Prime Minister wrote:

If the traditional processes were the answer to these crime and law and order problems that are an age away from *Dixon of Dock Green* and the stable communities of 50 years ago, then we wouldn't be having this debate. But they're not. They've failed. They are leaving the innocent unprotected and the guilty unpunished. That's why we need them changed.

'We are trying', the Prime Minister continued, 'to fight twenty-first century crime by nineteenth-century means. It hasn't worked. It won't work' (Porter and Blair 2006).

The Prime Minister has not been alone in attacking the criminal justice system. Following controversy over the conviction for serious offences of a number of individuals who were under probation supervision at the time, Charles Clarke, the former Home Secretary, reportedly described these perceived failings as 'a dagger at the heart of the criminal justice system' (Johnston 2006). One of John Reid's first public acts as incoming Home Secretary was to tell the House of Commons Home Affairs Committee that the Home Office was 'dysfunctional' (Wintour 2006).

This paper attempts to get to the bottom of this apparent paradox: that during a period of rapidly falling official crime levels, criminal justice appears mired in almost permanent crisis. It begins by examining the nature of criminal justice failure as the government sees it and traces the policy implications that flow from this analysis. The government's analysis and policy prescriptions, it points out, have a certain consistency and plausibility. But this consistency and plausibility rest on faulty reasoning. In the second section, the paper goes on to unpack this faulty reasoning, in the process shedding fresh light on the problem of criminal justice failure.

Taken together, these two sections illustrate the first of this paper's two main arguments: that though the government is

right to have identified criminal justice failure as an important policy question, its analysis of the causes and extent of this failure is profoundly flawed. Ministers are, in other words, right about criminal justice failure, but for the wrong reasons.

From this flawed analysis has flowed a number of erroneous policy conclusions and decisions about criminal justice, which have diverted resources and political energies into a set of initiatives that are largely irrelevant to the fundamental challenge of engendering a safer society in which the prevention and resolution of crime and related harms is taken seriously. This point is explored in the final section of the paper, in which the second main argument is developed: that government can and should pursue policies that promote greater safety and security, but that this entails escaping the criminal justice *cul-de-sac* into which Labour has charged. The real policy challenge involves greater honesty about what criminal justice *cannot* achieve and a genuine openness to thinking on a much broader policy canvas, beyond the usual suspects of the police, the courts and the prisons.

Criminal justice failure: the view from Whitehall

The government's analysis of criminal justice failure is at heart very simple. It was set out in two seminal publications released either side of the 2001 General Election: *Criminal Justice: The Way Ahead* and *Justice for All*, the White Paper that laid the ground for the 2003 Criminal Justice Act (Home Office 2001a; 2002).

The basic problem, according to *Criminal Justice: The Way Ahead*, is that crime rates took a sharp upward turn from the early 1980s, while the criminal justice system treaded water. During these years, the criminal justice system had 'not kept pace with the growth in crime nor with new types of crime and criminality'. This lack of performance itself contributed to the development of a vicious circle. There were 'many reasons' for the growth in crime, but 'one important underlying factor' was the fact that the

criminal justice system had ‘not been effective enough in dealing with crime or offenders’ (Home Office 2001a:18). Far from simply being a matter of bureaucratic dysfunction, criminal justice failure was itself a major cause of crime. This in turn contributed to public cynicism and declining confidence that criminal justice was up to the job and to a disproportionate fear of crime.

The policy implications that flow from this analysis are straightforward, at least in their general articulation. The criminal justice system ‘must keep pace’ with changes in crime and criminality. This ‘is the broader challenge of modernisation’. Appropriately modernised, the criminal justice system will be ‘able to keep pace with changing patterns of crime... so that it can drive down crime’ (Home Office 2001a: 20).

In practice, criminal justice modernisation has meant a policy mix, combining steps to *increase entry* into the criminal justice system by suspected offenders with moves to *improve the processing* of suspected and convicted offenders once they are in the criminal justice system. The former has included increasing police numbers and targeting so-called persistent offenders. The latter has included the development of drug treatment and other so-called offender rehabilitation programmes in prison and the community, investments in infrastructure and IT and attempts to join up and speed up various agencies and processes. These two strands overlap and are mutually reinforcing. For instance, *Justice for All* recommended the extension of the use of fixed penalty notices, originally introduced in the 2001 Criminal Justice and Police Act, to cover a range of ‘disorder’ offences. Rolled out across England and Wales in April 2004, their use has expanded significantly the coercive embrace of the criminal justice system. But it has also reduced dramatically the time taken to process the individuals so targeted (see Roberts and Garside 2005).

The visceral appeal of the analysis set out in *Criminal Justice: The Way Ahead* (and the policy agenda that has flowed from it) is one of its strengths. It chimes with a Middle England mindset that assumes that the country is losing the war against crime, with hardened criminals and their clever lawyers running rings round

the police and prosecution. This is why the Prime Minister's claim that 'it is also a miscarriage of justice when the guilty walk away unpunished, as it is when the innocent are convicted' (OCJR 2004: 6) has genuine purchase, rather than merely being dismissed as spurious.

But it also chimes with a reforming desire to make complex and apparently underperforming bureaucracies work better. After all, if criminal justice 'exists to fight and reduce crime and to deliver fair, efficient and effective justice' (Home Office 2002: 26), modernising it to keep up with shifting crime rates and crime patterns is a natural corollary. In this it reflects a commonsense view of criminal justice as being on the frontline in crime reduction.

For all these reasons the government's analysis has proved remarkably influential, setting the trajectory for criminal justice policy ever since. It is one of the reasons why successive Home Secretaries have pursued much the same policies as their predecessors, regardless of talk of fresh starts and new beginnings on their appointment. The Home Office and criminal justice system strategic plans, both published in July 2004 (Home Office 2004a; OCJR 2004), take as a given the analysis of the problem set out in *Criminal Justice: The Way Ahead* and *Justice for All*. It also underpins much of the policy prescriptions outlined in Labour's crime 'mini-manifesto', published in the run-up to the last General Election (Labour Party 2005). The intellectual ballast it has lent to the 'anti-social behaviour' and 'Respect' agendas is also telling. Without it, the government's rather quaint fixation with policing petty irritations and minor disorder, rather than engaging seriously with their underlying causes, would be rather more apparent.

The ripples of influence have also spread beyond the bounds of government, populating some of the core thinking of both the Conservative and Liberal Democrat Parties in the run-up to the 2005 General Election (Conservative Party 2005; Liberal Democrat Party 2005). As a result, all three main Parties went into the last General Election offering policy prescriptions more notable for their agreement than for their distinctive and

divergent positions (Kaletsky 2005). Beyond Westminster, its influence can regularly be detected in journalistic analyses and in the policy positions adopted by a range of think tanks, non-governmental organisations and pressure groups from across the political spectrum. Indeed, it is hardly an exaggeration to say that something approaching a stifling fug of consensus about the nature of the policy challenge facing criminal justice has descended on the body politic. Differences remain between the main players on points of implementation, but these differences are played out on a very narrow terrain in which the centrality of criminal justice is rarely questioned.

Such a consensus can make for rather dull politics. But it arguably would not otherwise matter, were the analysis correct. But what if the analysis were faulty? What if the core assumptions guiding government policy on criminal justice were erroneous? This indeed is the case, though the picture is complicated. The government has correctly identified criminal justice failure as a reality and as an important question of public policy. But it has started in the wrong place in its attempts to pin down the nature of this failure. As a result, the policy conclusions it has drawn are flawed. To understand this point better, let us examine the basis for the government's claim that criminal justice has failed to keep up with the changing patterns and trends in crime.

Getting to the bottom of criminal justice failure

It has long been noted that there is a significant gap between the number of crimes known about through official figures and the number of individuals successfully convicted of those crimes. Generally referred to as 'attrition', and more recently by the Home Office as the 'justice gap', it forms the basis of the government's case for criminal justice failure. A detailed critique of the government's justice gap analysis is available elsewhere (see Garside 2004), so a brief discussion will suffice here.

The government's analysis is based on a comparison of criminal justice throughputs, in particular successful convictions against suspected offences recorded by the police. According to *Criminal Justice: The Way Ahead*, 'the ability of the CJS [criminal justice system] to detect and sanction offenders has not kept pace with the marked increase in recorded crime'. Until the late 1970s, 'recorded crime, clear-ups, indictable prosecutions and convictions... tracked each other closely' (Home Office 2001a: 114). From then on, a gap opened up. In 1980, it notes, around six offences were recorded by the police for every individual successfully convicted. By 1999-2000 the police recorded around eleven offences for every successful conviction. Over a 20-year period the conviction rate apparently declined quite significantly, from 18 percent in 1980 to nine percent 20 years later.

What are we to make of this? It sounds reasonable enough. Criminal justice performance, it appears, has only slipped in recent times. Given the political will and the correct policies, it should not be impossible to turn this around. But note that the government's analysis starts with suspected offences recorded by the police. This matters because it defines down massively the scale of the problem that criminal justice is put forward to solve.

If ministers were simply concerned with quantifying and improving the inner workings of the criminal justice system, with the efficiency with which one agency or department related to another, or with the impact of these agencies on those offenders and victims, suspects and witnesses who are known to criminal justice agencies, then it might make sense to start with suspected offences recorded by the police. On the whole, the criminal justice process begins with a suspected offence coming to the attention of the police. The effectiveness with which the various agencies then discharge their duties can be compared against the number of suspected offences the police record.

But police-recorded offence data is precisely that: details of alleged crime incidents catalogued by the police. And it is *only* that. It is an elementary error, though one regularly made, to assume that

such data offers a satisfactory insight into the scale and scope of crime in the real world. If the policy challenge is to reduce crime in the real world – as the government claims – it would only make sense to start with suspected offences recorded by the police were it to be assumed that the police figures accounted for *all* crime. Or, alternatively, that only those crimes catalogued by the police mattered, were of interest or were of relevance.

The government does not believe this, which is one of the reasons why it prefers the British Crime Survey over police data as a means of measuring crime trends. The British Crime Survey came about partly from a recognition that police crime figures fell a long way short of measuring all crime. Let us see what happens if we compare successful convictions against crime measured by the British Crime Survey, the government's preferred means of quantifying crime levels.

In 1981, the first year for which British Crime Survey data is available, around one individual was successfully convicted for every 25 offences estimated by the British Crime Survey. By 2000 around one individual was convicted for every 30 offences estimated by the British Crime Survey, as was the case in 2003/04. According to this data, the justice gap that supposedly opened up during the 1980s and 1990s largely disappears. Expressed differently, a gaping justice gap was the norm throughout that period. Criminal justice was about as ineffective at successfully resolving suspected offences in 1981 as it was nearly 20 years later, and as it is now.

Ironically, the government's core analysis understates, rather than exaggerates, the scale of criminal justice failure; a scale of failure the government does acknowledge in its more candid moments. During a speech given to launch, of all things, *Criminal Justice: The Way Ahead*, the Prime Minister observed that the government's social programmes amounted to a 'crime-fighting strategy for tackling the 97 per cent of crime that never gets to the courts' (Blair 2001). That Mr Blair saw no tension between this statement and the government's core analysis says much about the ability of policy-makers to evade the implications of their own positions. But there are obvious advantages in doing so.

Measured against suspected offences recorded by the police, the conviction rate is poor. But one conviction for every ten suspected offences is not disastrous. Closing the gap appears a reasonable proposition, holding out the promise of reduced crime levels should it be achieved. The rationale for closing the justice gap largely evaporates when the British Crime Survey becomes the starting point. The sheer scale of the justice gap makes closing it a far greater challenge. It would also be rather beside the point, given that the vast majority of crime would still not result in a successful conviction even were criminal justice performance to be enhanced.

So far we have considered two means of measuring crime: police records of suspected offences and victimisation incidents estimated by the British Crime Survey. The police recorded 5,301,187 suspected offences during the 12 months to April 2000. The British Crime Survey figure for 1999 was 11,716,000. Both datasets have their strengths, but both fail to measure much crime (Garside 2004). This raises the question of whether criminal justice failure may be worse even than a comparison with the British Crime Survey suggests. Just how badly does criminal justice perform in relation to crime? To answer this question we need to get a better sense of the scale of crime.

What is the 'real' level of crime? The Prime Minister's former 'blue skies' thinker, Lord Birt, must have pondered much the same question back in 2000, as he prepared his confidential report on reducing crime. The estimate he came up with posed a fundamental challenge to the government's approach to criminal justice. For a 12-month period in 1999-2000, he estimated that 'the real level of indictable offences was as high as 130 million' (Birt 2000). This is around nine times the British Crime Survey estimate and nearly 26 times the police recorded crime figure. Lord Birt came to his figure by adding the British Crime Survey and police-recorded crime figures to an estimate of unreported drug and non-drug offences.

In terms of the justice gap problem, this means that more than 250 offences were committed for every one successful conviction. If Lord Birt's estimate is taken at face value, more

than 99 per cent of indictable offences probably did not result in an individual being convicted. This estimate will presumably have been on the Prime Minister's desk in the run-up to the publication of *Criminal Justice: The Way Ahead*, with its faulty and partial estimate of the justice gap. Not surprisingly, Downing Street decided against publishing Lord Birt's report, only relenting following applications under the Freedom of Information Act.

Lord Birt's figures have a 'back of an envelope' feel about them. No clue is given to the methodology adopted, making independent verification impossible. But other, more rigorous, exercises likewise come up with estimates far higher than 'official' crime rates. A Home Office study published in 2000 put the figure at around 60 million offences in 1999-2000 (Brand and Price 2000), roughly midway between Lord Birt's figure and the police and British Crime Survey figures. On this basis, around 125 offences were committed in that year for each successful conviction.

This latter Home Office study is not a 'total crime' estimate. It excludes a number of offences from consideration. The authors also emphasise that some of their estimates, of sexual violence for instance, are 'likely to underestimate the true level of victimisation' (Brand and Price 2000: 15). But attempting to make an estimate of 'total' crime is in any case a rather futile activity. Apart from the inevitable guesswork involved, 'crime' covers such a vast array of different behaviours that a total figure would be rather meaningless. Crime is also not a cut-and-dried category of actions, distinct from other actions. Even something as extreme as one individual killing another will not always be considered a crime if the individual concerned was deemed to be acting in self-defence, or indeed in defence of the realm. The many millions of knocks, shoves and pushes that individuals inflict on each other on a weekly basis are not generally considered to be assaults, often for good reason.

Instead of attempting to measure all crime, let us consider some actions that all would agree involve significant harm or trauma

to those who experience them and see how comprehensively the criminal justice system deals with them. Here we look at three groups of offences: rape and sexual assault of females, child abuse and homicide.

Table 1 gives the conviction rates for the 12 months to 31 March 2000 for rape and sexual assault of females, child abuse (including sexual abuse) and homicide¹. The incidence rates are based on suspected offences recorded by the police. The conviction figures are for the year 2000.

TABLE 1: CONVICTION RATES FOR RAPE AND SEXUAL ASSAULT ON FEMALES, CHILD ABUSE AND HOMICIDE 1999/2000 (ENGLAND AND WALES)

Type	Incidence	Convictions	Conviction rate
Rape and sexual assault of females	28,473	2,780	10%
Child abuse	3,996	641	16%
Homicide	766	501	65%

(Source: Home Office 2001b: Tables 5.11 and 5.12; Simmons et al 2002: Table 3.04)

What conclusions should we draw from this comparison? Recalling the analysis of *Criminal Justice: The Way Ahead*, which pointed out that the overall conviction rate in 2000 was nine per cent, we might say that criminal justice performance in 2000 was about average for rape and sexual assaults of females. It performed above average in the cases of child abuse and homicide. The conviction rate for child abuse was pretty good, being more or less comparable with the 1980 average. In the case of homicide the rate was very good.

But it sounds odd, if not downright complacent, to describe as ‘good’ a situation in which, at least on the face of it, more than four-fifths of suspected child abuse cases and a third of suspected homicides possibly do not lead to a successful conviction. This points to a problem at the core of the government’s drive to improve the performance of the criminal justice system. For all

¹ These three offence groups comprise, respectively, rape and indecent assault; cruelty or neglect and gross indecency with a child; and murder, manslaughter and infanticide.

the energy and resources it has devoted to this enterprise, it in essence is attempting to turn a system that performs dreadfully into one that performs badly.

But then the comparison above only examines the conviction rate against suspected offences recorded by the police and we have already noted that the police do not log much crime and related harmful behaviours. This suggests that the criminal justice system's performance is far worse than merely dreadful.

RAPE AND SEXUAL ASSAULT OF FEMALES

It has long been suspected that police data on rape and sexual assault understate the scale of the problem. A detailed questionnaire appended to the 2001 British Crime Survey attempted to fill this gap. The researchers estimated that there were some 720,000 sexual assaults on over 400,000 female victims in the 12 months leading up to the survey (Walby and Allen 2004: 24), giving a conviction rate of less than one per cent.

This is a disturbing figure, and it probably underestimates the scale of male sexual violence directed at women. This is partly because many women may choose not to reveal a traumatic experience in the context of a research project, however sympathetic or well turned-out the researcher might be and regardless of promises of confidentiality. Given the likely scale of intimate partner abuse, for instance, the perpetrator will often be in the same house as the victim. But the survey also adopts the standard criminal justice definition of rape and sexual assault that makes the principle of *consent* of the victim, or the lack thereof, a key consideration. Whether consent should be the means of drawing the line between coercive and non-coercive sexual relations has become a pertinent issue in recent months following the controversial acquittal of a man accused of a sexual assault on a woman. She admitted in court that she could not remember whether she had 'consented' to sex because of the amount of alcohol she had drunk. The prosecution dropped the case, on the grounds that 'drunken consent is still consent' (Dyer 2005).

Sexual assault and rape can involve lack of consent – indeed, it is difficult to think of any sexual contact to which a woman withholds consent that would not be an assault. But there are many ways that a woman can be sexually violated while apparently consenting. A woman may ‘consent’ to her male partner’s sexual advances out of fear of rejection, or after being pressurised. She may ‘consent’ to a superior’s advances on the promise of promotion, or the threat of demotion or the sack. She may ‘consent’ because alcohol or drugs have dulled her better judgement and a man has decided that drunken consent, after all, is still consent. She may ‘consent’ to sex with clients in return for payment. Indeed, when the various means by which men sexually exploit women are thought through, it is difficult to disagree with Steven Box’s assessment that ‘it is no longer a tiny minority of women who are raped or sexually assaulted, but a substantial proportion’ (Box 1983: 130). When this is acknowledged the impact of the criminal justice system on such violations is minuscule.

CHILD ABUSE

Social attitudes to violence against children make reliable estimates difficult. From bullying in the school playground to slaps in the sitting room, we expect our children to put up with levels of violence that adults would find intolerable. Many will, perhaps uncomfortably, walk past a parent hitting his or her child in the supermarket. Were a man seen hitting a woman in the same aisle, many would probably intervene, or at least call a security guard. Underneath these very public forms of violence lies an epidemic of routine violence inflicted by adults on children.

A study published in 1997, commissioned by the Department of Health, examined physical punishment of children in two-parent families. Summarising the research, Felicity de Zulueta observes:

About 91% of children had been hit, with the youngest and most vulnerable hit the most often. Almost half of the children were hit weekly or more often and one-fifth were hit with an implement. Around 35% of children were severely punished, with the intention of causing harm to the child, and these included actions that were repeated, prolonged or involved the use of implements (de Zulueta 2006: 261-2).

As de Zulueta points out, much of this abuse takes place against the background of the social acceptability accorded to the hitting of children by adults under the cloak of ‘reasonable chastisement’. She notes: ‘The need to grant parents the “freedom to smack” their children reflects the society we live in, one that condones violence against children with all that this entails in terms of developmental damage’ (de Zulueta 2006: 261). The occasional smack and regular and serious abuse are clearly not comparable, either in relation to the trauma experienced by the child or the relative culpability of the adult. But the fact remains that current policy around adult violence towards children centres on the question of *how much* violence is acceptable, not *whether* it is acceptable.

The question of the social context in which violence unfolds is one we will return to. For the present, we should simply note that the just under 4,000 suspected incidents of child abuse recorded by the police in 2000 must dramatically understate the scale of the problem. The British Crime Survey does not measure crimes perpetrated against children, so we need to start elsewhere for figures that might offer a more comprehensive picture of the scale of child abuse.

An analysis by Susan Creighton of the NSPCC Research Department breaks down the various ways that child abuse might be known about, or ignored, into five layers (Creighton 2004). The figures for layers one to three relate to the year ending 31 March 2003. The layer one figure – 5,989 – relates to those abuse incidents recorded by the police in England and Wales. The layer two figure – 32,809 – is the number of children officially recorded on child protection registers in England and Wales. The layer three figure relates to those children reported to social services in England as in need of protection – for instance by neighbours or teachers – but who have not been added to the child protection register. This latter figure is 570,000. Layer four is those children recognised as abused by relatives or neighbours but who are not reported to any professional agency. Finally, layer five is those children who have not been recognised as abused by anyone, including the victim and perpetrator.

By definition, no accurate figures are available for layers four and five. Layers one to three point to the possible scale of child abuse in England and Wales. They also put in perspective the impact of criminal justice on such violations. In 2003 there were just 775 convictions for child abuse.

Creighton also refers to a self-report study published by the NSPCC in 2000 that gives further clues to the possible scale of child abuse. According to the study 16 per cent of females and seven per cent of males said that they had been subjected to some form of child sexual abuse involving contact. If non-contact sexual abuse such as exposure is included, the proportions rise to 21 and 11 per cent respectively. This points to a far higher prevalence rate of child abuse even than the layer three figures suggest. Indeed, on this basis, literally millions of children, and adults when they were children, will have been sexually abused. Given the difficulties in gaining intimate and personal information via a self-report survey, these figures may themselves be underestimates.

CRIME, HARM AND CRIMINAL JUSTICE

Before we consider the case of homicide, let us draw together some initial conclusions from our analysis of rapes and sexual assault of females and child abuse. Most obvious of all, there are far more unacceptable violations, as well as gross and serious violence, directed against women and children than official, criminal justice-based statistics would lead us to believe. Whatever insights official crime statistics offer – be they from police data or the British Crime Survey – they comprehensively fail to quantify the many day-to-day deprecations perpetrated by men against women and by adults against children. In the face of the magnitude of such crime and related harm the scale of criminal justice failure, and the hubris involved in calls to close the justice gap, is only too apparent.

Our analysis also throws into sharp relief much of the current policy focus on the seemingly more everyday offences like burglary or robbery, as well as the government's current preoccupation with tackling 'anti-social behaviour' and fostering 'Respect'. A serious engagement with the evidence-base leads us

to conclude that offences such as sexual assaults and child abuse may well be far more common than burglary and robbery. In the case of the many petty irritations and infractions that fall under the banner of ‘anti-social behaviour’, no one would seriously suggest that they should be a higher priority than men abusing women or adults abusing children.

This in turn challenges the credibility of the criminal justice system as a mechanism for dealing with crime and protecting the public, because its credibility rests in part on its ability to deal successfully with the most serious and odious of crimes. If significant amounts of serious suspected offending is left unresolved by the criminal justice process, this calls into question the claims made for it as a means for resolving crime and protecting the public.

It is perhaps worth stressing at this point that the criminal justice system is similarly ineffective in addressing what some might see as its ‘core business’: offences such as burglary and robbery. In 2004, for instance, the conviction rate for burglary was between two and four percent and for robbery was between three and nine percent, depending on whether police data or the British Crime Survey is the starting point.

We need not collapse into pessimism at this point, unless we are to assume that the prevalence of sexual assaults and child abuse is mostly, or perhaps just significantly, down to the failure of criminal justice to bring offenders to justice. Rather than looking for answers in a narrow configuration of government agencies collectively known as ‘the criminal justice system’, we might instead look for answers in a broader constellation of social, economic and political interventions. For as becomes clear when we turn now to examine the case of homicide, changes in the rate at which people are unlawfully killed has little to do with the criminal justice process.

HOMICIDE

When it comes to dealing with homicide, the criminal justice system looks pretty effective, at least compared with most other offences. The majority of killings formally recognised as murder,

manslaughter or infanticide apparently result in an individual being convicted. This is a desirable state of affairs. Few would want to live in a society that treated with indifference the taking of life of one by another. But is it *because* of the criminal justice system that more people are not victims of homicide? Put differently, to what extent do the workings of the criminal justice system influence the number of murders, manslaughters and infanticides in any one year?

Let us start by examining the conviction rate for homicide in more detail. As Table 1 above shows, in the year ended 31 March 2000 the police recorded 766 suspected homicides. In 2000, 501 individuals were convicted of homicide, giving a conviction rate of 65 per cent. In 1980, 564 suspected homicides were recorded by the police and 370 individuals were convicted (HMSO 1981: Tables 4.3 and 4.7), giving a conviction rate of 66 per cent. The justice gap stayed the same during the 1980s and 1990s at the same time as homicide increased, suggesting that the reason for this rise is more complex than that of supposed criminal justice failure. Whether this is considered a plausible explanation depends in part on the assumptions one brings to the understanding of the crime problem. As recent analysis by Danny Dorling illustrates, a different and far more compelling explanation for the rise in homicide rates is available than that furnished by assertions about criminal justice failure.

For his study, Dorling undertook a detailed study of homicides in England, Scotland and Wales between January 1981 and December 2000 (Dorling 2005). Approximately 13,140 people were murdered during that period. Dorling looked at who was murdered, when, where and how they were murdered, and why they were murdered. Through such an analysis the underlying causes of murder, rather than their superficial ones, became clearer.

Over the 20 years covered by the analysis just under two murders were committed per day. Men were more likely to be murdered than women and young men most likely of all to be murdered. Significantly, the rate of murder increased as the 1980s rolled into the 1990s.

The increased rate of murder during the 1980s and 1990s was not distributed evenly across the population. From 1981, the risk of being murdered increased for men but decreased for women. But the strongest determinant of an individual's likelihood of being murdered was poverty. The risk of being murdered decreased for the rich but increased for the poor. Indeed, the rise in murder victimisation in Britain was concentrated almost exclusively in men of working age living in the poorest parts of the country, who grew up in the era of mass unemployment that was the 1980s.

Rather than being an artefact of a failing criminal justice system, the rising homicide rates during the 1980s and 1990s were the result of profound and lasting social, economic and political changes. As Dorling points out, there is 'no natural level of murder.' He continues:

For murder rates to rise in particular places, and for a particular group of people living there, life in general has to be made more difficult to live, people have to be made to feel more worthless. Then there are more fights, more brawls, more scuffles, more bottles and more knives and more young men die (Dorling 2005: 36-37).

So it was that rates of poverty and income inequality rose significantly in the 1980s and 1990s. This overwhelming social fact, rather than any marginal criminal justice impact, exerted by far the strongest influence on the murder rates. While it would be a travesty to suggest that the Conservatives in the 1980s and 1990s pursued particular social and economic policies with the intention of increasing the number of people who were murdered, it is reasonable to conclude that increased murder rates were an unintended, though arguably predictable, consequence of those policies.

Taking crime and harm seriously

When Labour came to power in 1997, it made reform and 'modernisation' of the criminal justice system a priority.

Criminal justice had apparently been losing ground in the fight against crime. As crime increased through the 1980s and 1990s a justice gap opened up, itself contributing to further increases. Decisive action was needed to close this gap. Enhancing the ability of the criminal justice agencies to catch criminals and generally improving the efficiency and effectiveness of the system were necessary.

This, at least, is the story Labour likes to tell. In its telling and retelling it has both spurred and validated a particular set of institutional arrangements and reforms embarked on by the government in the field of criminal justice since 1997. But weaknesses in the story are not hard to detect. According to the government's favoured measure, crime fell from the mid-1990s, during the period the government now claims criminal justice was failing so badly. This suggests a certain fuzziness of thinking on the government's part. Underlying this is a more fundamental confusion, between the question of criminal justice reform and the question of crime prevention and reduction. Ministers assumed precisely what needed to be questioned: that criminal justice processes are the means by which crime is controlled and reduced.

Comparing criminal justice performance, first with police data and the British Crime Survey and then with research that attempts to uncover what official figures miss, has given us a fresh perspective on the question of criminal justice failure. At best, the justice gap stayed largely unchanged during the 1980s and 1990s. In truth the question of the justice gap is almost wholly a distraction, for the vast majority of crimes and harms we examined never came to the attention of the police, never mind the courts or prisons. Ministers have been right to identify criminal justice failure as an important public policy question. But they have dramatically understated the scale of this failure through faulty reasoning. They have been right, but for the wrong reasons. This has led them into a policy cul-de-sac in which the pressing need to address serious crimes and harms has been supplanted by a bureaucratic obsession with structures and processes that are largely irrelevant to this challenge.

A fresh approach is needed. An approach that takes seriously the lack of impact criminal justice has on the vast majority of

crime and related harms, without denying that it does have *some* impact on *some* crimes. One that takes seriously the need to reform and humanise a criminal justice system that too often is degrading and alienating to those caught up in it – be they offenders or victims, witnesses or suspects – but which does not confuse this important task with the challenge of resolving and reducing crime and of enhancing safety and security. One that takes seriously the role of government in championing and pursuing policies that lead to greater security for the individual, but that also recognises that endless changes to the criminal justice system are a distraction from this task, rather than being central to it. An approach that does not seek to minimise the scale of crime and related harms in contemporary society but also does not seek to highlight them simply for the purposes of scaremongering, or as a counsel of despair.

This final section does not attempt to map out in any detail a policy programme that might constitute such a fresh approach. Detailed work is needed in this area, but it is beyond the scope of this paper. Nor does it offer a shopping list of practical and achievable policies for implementation today, tomorrow, next week, next month, or next year. This is not because short-term improvements and reforms are unnecessary or undesirable – far from it. But as should be clear from the preceding discussion, of themselves these will never be enough. Instead, here is attempted the rather more modest task of pinpointing some of the foundations for a fresh approach. If the policy imperative is crime reduction and harm minimisation, rather than criminal justice reform, where should we start?

To set us on our way, let us remind ourselves of what we have discovered so far. First, crime and related harms are far more prevalent than official statistics would have us believe. This includes some of the most serious and traumatic of crimes and harms. Second, criminal justice processes do not resolve the large majority of these crime and harms, if successful conviction is considered the measure of success. Third, it is upon those members of society with proportionately less power – the poor, children, women – that some of the most serious and traumatic crimes appear to fall most heavily. Fourth, at least in the case

of homicide, the intensity of vulnerability and victimisation has changed over time. The strongest influence on this change has been broader social and economic processes rather than either criminal justice failure or individual wickedness or irresponsibility. We might also conclude, at least provisionally, that fifth, a wider range of crimes and related harms are likewise significantly influenced by broader social and economic processes rather than individual failings or criminal justice processes.

Three broad policy challenges flow from this. The first relates to the quantifying and acknowledging of crime and related harms; the second, to the role of criminal justice and the limits of the reformist agenda; the third, to the broader social, economic and political challenge of crime reduction and harm minimisation.

QUANTIFYING AND ACKNOWLEDGING CRIME AND RELATED HARMS

The basis of any coherent policy is a clear and honest assessment of the scale and nature of the problem or challenge that needs to be addressed. In this context that means acknowledging that crime and related harms are far more widespread, common, everyday and endemic than official statistics suggest and than the current government would have us believe. It means making genuine and serious attempts to quantify and talk about the real likely levels of crime and related harm.

This is difficult territory in public policy terms. An unhealthy consensus has developed within government circles, among its supporters in the media and among criminal justice reformers about the need to ‘talk down’ the problem of crime. A fearful public will also make for a punitive public, so the argument goes. Highlighting the scale of hidden crime levels leaves one open to charges of scaremongering and to wittingly or unwittingly playing into the hands of revanchists.

Though an understandable reaction in one sense, the alternative, of championing a ‘noble lie’ of diminishing crime, is hardly more appealing. At best, proponents of such a view risk charges of smug elitism. The knowing experts, they keep the public in the dark in the interests of the greater good. At worse, they risk

charges of complacency or, hardly better, mere ignorance. Ardent in their commitment to official measures of crime they are either unbothered or unaware of the real scale of crime and harm.

Evidence that public opinion is far from fixed and hard-line on the issue of crime and punishment (for example, Roberts and Hough 2002) suggests that the opportunity for a more open and honest debate about crime should be embraced rather than feared. But the basis of such a debate must be an honest acknowledgement of the probable scale of the crime problem and a commitment to talking about it openly. For many people will come to the crime debate with a range of unacknowledged experiences, both past and present, that deeply affect the way they understand the problem. It should not surprise us that public fears and personal anger appear at levels not warranted by the official crime statistics. Given that official statistics do not quantify the real levels of harm, apparently disproportionate fear and anger might be a largely rational response to lived experience. In this context, 'talking down' the crime problem may only be serving to exacerbate fear and anger and feed the very punitiveness that is the subject of concern.

The overriding imperative must therefore be to base the debate about crime reduction and harm minimisation on an honest assessment of the scale and nature of crime, not on misleading, albeit reassuring, myths.

THE ROLE OF CRIMINAL JUSTICE AND THE LIMITS OF REFORMISM

The ineffectiveness of criminal justice as a means of addressing crime and harm has been a major theme of this paper. Of course the rate of convictions is only one, rather crude, way of measuring effectiveness. Looked at differently, criminal justice undoubtedly has a big impact on individuals. Indeed, far more are subject to some form of criminal justice intervention than ever end up being convicted of an offence.

Around two million arrests are currently made by the police every year (Phillips and Brown 1998; Hillyard and Gordon 1999). In 2003-04 nearly one million stop and searches were

undertaken (Murray and Fiti 2004). Around a quarter of a million police cautions were issued in 2004, along with nearly 64,000 penalty notices for disorder (Home Office 2005a; 2005c). There were more than two million prosecutions in courts in England and Wales in 2004, of which around one and a half million ended in a conviction, mostly for petty and trivial offences. Almost 20 times as many people were found guilty of television licence evasion in 2004 than were found guilty of sexual offences, for instance, and there were almost 18 times as many convictions for minor motoring offences as there were for offences of violence against the person (Home Office 2005c). Around 100,000 prison sentences were imposed by the courts in England and Wales in 2004, along with more than 200,000 community sentences and over one million fines (Home Office 2005b). Behind these striking figures lie millions of people whose lives were changed, in many cases dramatically and permanently, by the operations of the criminal justice system.

It goes without saying that in the course of their operations the various criminal justice agencies do deal with some crime and some criminals. Some serious crimes are resolved. Some individuals who pose a threat to others are incapacitated or otherwise controlled. But while individuals come to the attention of the criminal justice agencies ostensibly because they are suspected of having committed a crime, the broader function of criminal justice, particularly the police, as a means of bolstering a particular set of institutional and social relationships should not easily be discounted. Criminal justice, as Nicola Lacey has pointed out, is ‘a related but not entirely coordinated set of practices geared to the construction and maintenance of social order’ (Lacey 1994: 28). In a complex society within which social antagonisms and tensions are the norm, rather than the exception, criminal justice performs ‘regulatory tasks’ (Lacey 2004: 144). This point was made vividly by former Home Secretary Jack Straw in a recent exchange in the House of Commons. The purpose of the Home Office, Mr Straw observed, was to deal with ‘dysfunctional individuals – criminals, asylum seekers, people who do not wish to be subject to social control’ (Hansard 25 May 2006: Column 1640).

This helps to explain not only why politicians so readily resort to criminal justice mechanisms whenever a new social problem is identified, but also why criminal justice rarely has the promised impact on crime and related harms as far as successful resolution is concerned. After all, regulating a problem is not the same as resolving it.

It also helps to explain why those individuals who end up in the criminal justice system as suspects and convicted offenders are so disproportionately drawn from the poor, marginalised and excluded populations. For if criminal justice tends to regulate rather than resolve social problems, it is likely to entrench rather than address the wider inequalities and imbalances that give rise to such problems. As Lacey points out:

In a society in which people are very differently situated in relation to the proscriptions of criminal law, and in which factors such as race, ethnicity, nationality, class, gender, and age widely affect not only life chances in general but also official and unofficial beliefs about people's predispositions to break criminal laws, the impact of criminal justice is virtually certain to be very unequal (Lacey 1994: 6).

This highlights the importance of reforming the criminal justice system but also the inherent limitations of such an agenda. That criminal justice processes reproduce rather than ameliorate deeply rooted inequalities, if anything strengthens the moral case for civilising and humanising them. It also places a premium on recruiting and retaining skilled individuals committed to maintaining the highest standards of care and professionalism.

Yet precisely because criminal justice is a regulatory response to a set of problems, the causes of which it is not constituted to resolve, reforming the criminal justice system and civilising its practices will always fall short of what is really required. This is not an argument against reforming the criminal justice system, nor against the need for high quality criminal justice professionals. It *is* an argument for not confusing this important task with the more fundamental one of crime reduction and harm minimisation.

BEYOND CRIMINAL JUSTICE: TACKLING CRIME AND HARM AT SOURCE

The scale of crime and related harm, combined with the inability of criminal justice to deal effectively with so much of it, might understandably result in a certain despondency or pessimism. Indeed the need to avoid such despondency partly explains the embrace of what has become known as the ‘what works’ agenda: the largely futile attempt to ‘reform’ convicted offenders through various criminal justice interventions. The tragedy lies not in the desire to address the causes of criminality, but in the concentration of energies on various criminal justice programmes that at best have had a marginal impact. The challenge now is to step beyond criminal justice and to formulate a policy response on a much broader canvas.

Tackling the high levels of poverty and income inequality has its own inherent worth. One should not embark on such a task merely because it might lead to falls in crime and related harms. But a serious attempt to tackle poverty and inequality is likely to have benefits far beyond simply making the poor better off. For as Richard Wilkinson has shown, poverty and inequality levels blight the lives of those people living in the poorest areas of all the developed countries in ways far more significant than the mere issue of financial hardship. So it is that the average life expectancy of the poorest in societies such as Britain today is five to 15 years shorter than that of the richest. ‘This huge loss of life, reflecting the very different social and economic circumstances in which people live,’ writes Wilkinson, ‘stands as a stark abuse of human rights... [and calls] into question the humanity, morality and values of modern societies’ (Wilkinson 2005: 1).

Richard Mitchell and his colleagues examined overall mortality rates across Britain for a study funded by the Joseph Rowntree Foundation. They estimated that 7,500 people aged under 65 would not die prematurely *each year* if income inequality levels were to be returned to the levels they were at in the early 1980s. In the Prime Minister’s own constituency of Sedgefield, this would equate to around 13 premature poverty-related deaths being prevented each year, a much higher figure than

the couple of suspected homicides recorded annually by Mr Blair's local police force of Durham (Mitchell *et al* 2000).

The impact of such policies on a wider range of violent confrontations should also not be discounted. Behind every homicide will be thousands of violent assaults that could easily have ended in death, as well as millions of serious assaults. Homicide, as Dorling argues, is but the tip of a pyramid of social harm. Policies that tackle inequality are thus likely also to address the causes of a wider range of violence.

Tackling poverty and inequality will never be enough on its own, not least because much violent victimisation is also heavily gendered, directed by men against women. This means that much violence suffered by some of the most vulnerable in our society will not begin to be addressed until the systemic misogyny and sexism of British society is confronted.

The challenge is partly an attitudinal one. Far too many men, when asked, can think of plenty of reasons when it might be appropriate to hit a woman. Some 40 per cent of heterosexual men questioned by Jayne Mooney, for instance, felt that they would be justified in hitting their partner if she slept with someone else. Nearly 20 per cent thought they would be justified in hitting her if he felt that she was neglecting their children (Mooney 2000: 182). In other words, millions of adult men have no difficulty in justifying in their own minds the violent assault of women. Other research has found that an uncomfortably large proportion of young men and adults can think of scenarios when it might be appropriate to force a woman to have sex with them. As Steven Box once observed, 'the engine of rape is not to be found between a man's loins, but in his mind' (Box 1983: 161).

But attitudes themselves are rooted in a number of things, not least of all the lived realities of men and women, boys and girls. Women's own vulnerability to male violence, for instance, would be reduced by strategies aimed at addressing poverty and income inequality, given that socio-economic position itself is an indicator of victimisation risk. The Home Office analysis of

sexual assaults cited earlier found that women in the poorest households were more vulnerable, women in richer households less vulnerable, to sexual assault, domestic violence and stalking (Walby and Allen 2004: 75, 76).

In societies such as Britain, where wealth and power is highly stratified, boys and men in positions of comparative powerlessness will also tend to resort to one of the few resources they have left – their own brute strength – to achieve power and prestige. The resulting violence will often be directed against other males, which explains why young men are the group most likely to be murdered in Britain today. But women will also be on the receiving end. Boys engage in violent behaviour, argues Bob Connell, ‘not because they are driven to it by raging hormones, but in order to acquire or defend prestige, to mark difference and to gain pleasure. Rule-breaking becomes central to the marking of masculinity when boys lack other resources for gaining these ends’ (Connell 2000: 163).

The way in which gender roles are understood and enacted in any society thus has a powerful impact on the levels of crime and related harm that any society might experience. Inasmuch as material inequalities are a driver for a particular and destructive form of masculinity, it is plausible to argue that systematic attempts to address income and power inequalities in society will have a positive impact on gendered violence by helping to address the causes of male violence.

Male violence towards women is only one of the ways in which unequal power relationships are enacted and reinforced through violence and coercion. Any set of policy interventions aimed at reducing crime and minimising harm would need to confront the dangerous attitudes and behaviours all too frequently directed by adults towards children and young people, for instance. It would need to think seriously about how crimes of the powerful, and not just the powerless, should be addressed. The purpose of this paper, however, has been to examine the problems of current policy and debate around crime and related harms, not map out in detail what a new agenda should look like. This challenge will be undertaken in future papers.

Concluding remarks

This paper started by highlighting the seeming paradox of perceived criminal justice failure at a time of apparent falls in crime. Ministerial arguments that criminal justice agencies were failing the public sat oddly with their claims that crime had fallen under Labour; fallen indeed to historically low levels.

We have seen that ministers are right to have argued that criminal justice is failing to protect the public, but that they have been right for the wrong reasons. The government's flawed analysis has masked the true scale of criminal justice failure. Once this scale is identified and acknowledged the drive to improve criminal justice effectiveness becomes largely irrelevant to the challenge of promoting a lower crime and safer society.

Thinking across a broader policy terrain, we have started to explore what a new agenda on crime and harm might look like. It is one that takes seriously the relationship between a range of violent offences, poverty and inequality. It is one that also takes seriously the relationship between victimisation and a wider set of power inequalities in society.

This does not mean that criminal justice reformism has no place. Some of the most marginalised and vulnerable members of society end up in the coils of the criminal justice system. Criminal justice agencies are an alienating and dehumanising experience for many who come into contact with them, be they offenders or victims, suspects or witnesses. This places a premium on reforming these agencies and recruiting staff of the highest calibre to work within them. It reinforces the need to ensure that responses such as imprisonment are minimised; that those who are subjected to criminal justice sanctions are given the help and support they need to rebuild their lives; that victims are properly supported.

But important though this essentially humanising and civilising agenda is, it should not be confused with the challenge of reducing crime and making society safer. For it has become

clear that the question of how crime can be tackled and harm minimised can only begin to be considered seriously when the criminal justice system, which looms so large in current debates, is put to one side. When the Prime Minister told the Labour Party conference last year that it was the criminal justice system itself that was ‘the problem’ he was indeed right, but for the wrong reasons.

ABOUT THE AUTHOR:

Richard Garside is the Chair of the Crime and Society Foundation and the Acting Director of the Centre for Crime and Justice Studies.

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DOES CRIMINAL JUSTICE WORK?
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Be careful what you wish for

Professor Ian Loader

It is accepted in many quarters today – among those who differ radically in their diagnoses and prognoses – that we urgently require a public debate about the purposes and performance of the police and criminal justice system. *Right for the wrong reasons* is to be welcomed as a thoughtful and, in the best sense, provocative stimulant to that debate, especially against the backdrop of the Prime Minister, having in one breath, called for such a debate only in the next to announce its conclusions and press on with business as usual. Two elements, in particular, mark out Garside’s intervention as worthy of consideration and discussion.

First, he treats ‘attrition’ rates – the filtering process that separates the commission of a crime from the conviction of its culprit – with due seriousness, properly registering their import. I am often struck by just how often attrition – the fact that not all crimes are reported or recorded and not all of those which are, result in detection or conviction – are acknowledged only to be glossed over or ignored¹.

¹ In 2005/06, for example, the British Crime Survey found that 65 per cent of burglaries, 49 per cent of robberies and 33 per cent of thefts from the person were reported to the police. Of those which were reported and recorded as such, the ‘sanction detection’ rates stood at 16 per cent for burglary, 17 per cent for robbery and 3 per cent for thefts from the person. The sanction detection rate for all recorded crime was 24 per cent (Walker et al. 2006).

Criminologists tend to be fully apprised of such facts, yet too often proceed to study courts, or probation, or prisons as if they are, or can be, key societal, key mechanisms of crime reduction. The government has, in turn, come to view attrition in criminal justice as a policy problem and set out to close what it calls the 'justice gap'. But all this neglects what Garside so usefully insists upon: namely, that the police and criminal justice are institutions for selecting and processing some crimes, some victims and some offenders. To recognise this is not to be complacent or fatalistic in the face of human suffering. Nor is it to deny that we should take steps to facilitate crime reporting, improve detection rates, or convict the guilty. It is simply to state a basic sociological fact, the acknowledgement of which seems to me a precondition for having any serious conversation about what the criminal justice system can and cannot contribute to the task of producing more secure societies.

Garside's second contribution follows from him having recognised this. He persuasively, in my view, takes the government to task for responding to the 'failure' of the criminal justice system to get a grip on crime (because, as Tony Blair (2006) has become fond of saying, it cleaves to a Victorian preoccupation with due process that has passed its use-by-date) by engaging in yet more rounds of frenetic reform designed to make it fit for this purpose. The government, in other words, over-invests in criminal justice as a crime control device, thereby expressly and implicitly perpetuating one of the 'myths we live by' (Samuel and Thompson 1990) – that there exists a policing or penal solution to the problem or order². Garside, instead, seeks to relocate debate – and rather more sketchily action – on crime and harm reduction squarely in the realm of economic and social policy in ways that refuse to sever crime and the responses we make to it from the economic, social and political conditions with which it is ineluctably entangled.

² There is of course one – perennially failing - Victorian institution that the government persists in relying upon as a means to fight 'twenty-first century crime', one whose failings Tony Blair rarely sees fit to mention: the prison. I am grateful to Richard Sparks for pointing this out to me.

By restating and reaffirming these simple – but often neglected - sociological truths, even truisms, Garside has done public debate in this field a great service. If others – in government, or the media, or elsewhere – were to heed the practical wisdom that inheres in their restatement and act accordingly, the quality of public debate on crime and the policies that flowed from it, would in my judgement, rise considerably. But this is not all that Garside has to offer to that debate. He also advances two further claims - both of which repay more careful scrutiny. First, that crime and related forms of social harm are much more common than is commonly supposed, something that makes a mockery of the claim that volume crime has in the last decade, been falling. Second, that the chief tasks that confront us are ‘humanising’ the criminal justice system for all those who are embroiled in it on the one hand and tackling criminogenic forms of economic and social inequality on the other.

I was minded, on first reading, to give these calls a resounding welcome. There are variants of both claims which are plausible and defensible and which stand in need of defence. But on reflection, I recoiled a little from this instant judgement. I am now not nearly so sure, concerned that these arguments, if pressed fully and without due care, might lead up some unnecessary and worrisome paths. My concern – to invoke the rhetoric of the pamphlet’s title – is that having chided the government for being ‘right for the wrong reasons’, Garside has ended up ‘wrong with the right motives’. Let me explain why I believe this is so before briefly sketching an alternative way of framing the issues at stake.

Garside argues that there exist many more criminal acts and related forms of harm than are ever acknowledged by the standard measures of the British Crime Survey (BCS) and police recorded crime statistics – the vast bulk of which goes unreported and thus not officially known and acted upon. He draws the conclusion from this – citing hidden violence against women and children as especially troubling cases in point – that crime is a much more pervasive social phenomenon than is commonly supposed. He then calls for an honest public debate about the scale of the problem that confronts us and depicts those who deny that problem as

lofty paternalists striving to keep bad news from the children. These claims are, in certain respects, well-founded – the necessary selectivity and attendant limits of criminal justice flow in large part from the fact that so many offences are never drawn to its attention and Garside cites several forms of violence that fall into that category. To this one might add a range of white-collar and other everyday crimes of the ‘law-abiding’ middle-classes (Karstedt and Farrell 2006), or even invoke those common-sense shattering ‘self-report’ quizzes that are sometimes administered to novice criminology students which invariably discover that the lecture room is full of repeat offenders.

All this is clearly significant and raises some serious, if today unfashionable, questions about the criteria of selection that determine which among many offences, offenders and victims the criminal justice system acts upon. But one also needs – in the febrile atmosphere that currently suffuses the politics of crime – to tread carefully here, exercising some caution as to the conclusions one draws and the lessons one seeks to discern. There are, let us be clear, many instances in which all this adds up to a social problem, whether in terms of the lack of recognition accorded to some offences and their victims (such as crimes against children and young people, and sexual violence against women), or in respect of the individual or systemic biases that may influence what is brought under, or kept from, the police and criminal justice gaze. But do we really want to name all these hidden crimes ‘crime’ and act accordingly? I rather suspect not and herein lies several dangers with Garside’s ‘crime is everywhere, let’s be honest about it’ approach. It seems, first of all, to licence the conclusion that the measures we routinely use for measuring crime tell us very little indeed – such that it is pretty much impossible ever to have an informed conversation about the extent, distributive pattern and trajectory of different offences. It seems, second, to clash with recent BCS-based analyses of criminal victimisation which find crime to be a rare event for most citizens but a series of recurring events for an already multiply disadvantaged few (Hope 2006) and it reinforces the apparent inability of politicians, police officers, tabloid journalists and many citizens in our society to accept that levels of crime can fall as well

as rise and respond accordingly (Mooney and Young 2006). Garside risks, in short, ‘talking up’ the crime problem in a manner that finds him keeping company I suspect he would find uncongenial, whether it be the current occupant of 10 Downing Street, the leader-writers of the Sun and Daily Mail, or the conservative doomsayers at Civitas (Dennis and Erdos 2005). He also, in the present feverish climate, risks placing a further obstacle in the path of the second objective he wishes to pursue. We really must be careful what we wish for.

That second objective, as mentioned, is to ‘humanise’ criminal justice and reframe crime reduction as a question of economic and social policy. There is, let me repeat, much of merit in this, focussing attention, as it does, on the comparatively understated half of the government’s famous anti-crime mantra, ‘tough on crime, tough on the causes of crime’. But it also throws up a number of issues that remain unresolved in Garside’s analysis. The first concerns how or whether it is possible to foster public support for such reframing in a setting in which people believe crime and disorder are escalating and vulnerable people are left unprotected by a failing criminal justice system – conditions which drive government time and again to act upon, or at least rhetorically invoke, the more emotionally seductive part of that New Labour couplet. It is here, I think, that Garside’s ‘crime is pervasive’ honesty is likely to make life harder for the project of re-socialising the crime question. If crime is high, and crime is centred as the problem, the forces that dictate an immediate, crowd-pleasing form of ‘toughness’ have a pronounced tendency to prevail.

But Garside’s second argument also brings us to what I think is the twofold dilemma confronting a progressive politics of crime today. Its first limb can be expressed thus: how does one recognise and articulate the limitations of criminal justice as a vehicle for producing order in liberal democracies whilst also having something to say about what it can contribute within those limits? Garside’s insistence here is on minimising the harm that the criminal justice system can inflict on the victims, witnesses and offenders who become embroiled within its processes. Fair enough. But is there not

more that might positively be said about the relationship between criminal justice and citizen security that can move us beyond the tired formulas of, say, incapacitation or deterrence? Its second element is this: how can one emphasise that crime reduction is, first and foremost, a matter of economic and social interventions without having crime colonise public policy – exercising undue influence on the allocation of resources and determination of effective outcomes? Garside is clearly alive to this danger. But his prognosis raises rather than resolves the riddle of how to address crime through social policy whilst preventing it becoming the driver of such policy – and hence a deep and pervasive element of social relations and public life.

I have no easy solution to these conundrums and certainly not one that I can articulate properly in this short response. But I think – and have argued at greater length elsewhere (Loader 2006; Loader and Walker 2007) – that one such way forward lies in framing the issues at stake, not in terms of crime reduction but as a question of enhancing citizen security. Security, it seems to me, is not only a matter of the objective risk of threat or harm to person, property and neighbourhood. It also possesses an important and irreducible subjective dimension which has to do with the material and symbolic resources which enable individuals to feel relatively at ease with, and develop thresholds for managing, the risks posed by their environment. Security plainly has something to do with controlling objective risk – reducing crime if one prefers. But equally plainly, there is more to making citizens secure than this³.

The advantage of reframing the issues at stake in this way – as a question of increasing security rather than reducing crime – is that it focuses attention not principally on removing or

³Think, if one doubts this, of those individuals who are generally safe but deeply insecure (say, denizens of gated communities); those who are relatively unsafe but who feel secure (e.g., young professionals inhabiting gentrified inner-cities) and those whose place in prevailing economic and social hierarchies leaves them unsafe and insecure (e.g., residents of multiply disadvantaged communities). Safety and security is not the same thing.

eradicating criminal or disorderly behaviour – and thereby invoking insatiable fantasies of absolute security - but, instead, on creating the conditions in which individuals can live together securely and confidently with risk. This, fundamentally, has to do with finding institutional means of ensuring that people’s legitimate expectations and loyalties as members of a political community are recognised and that their sense of effortless, confident belonging to that community is routinely affirmed (Margalit and Raz 1990). This, in turn, means not seeking uncritically to satisfy the demands for order and punishment of individuals posited as consumers but fostering forms of inclusive public deliberation among citizens about problems of crime and disorder and what can reasonably be done (and not done) to tackle them. Indeed, creating and sustaining such dialogue is itself to contribute to the security of all those who feel able to participate in it.

The further advantage of a focus on security is that it enables one to develop and transcend Garside’s concern to ‘humanise’ or ‘civilise’ criminal justice. His emphasis here, as stated, is on reducing the harm that may be done by criminal justice institutions, an orientation that is sceptical towards, and has little expansive to say concerning, any more positive role such institutions may play as a crime control actor. The focus on security reconnects these two – superficially competing – concerns by highlighting the fact that what matters to citizen security is not reducing crime and disorder per se (for this can be done in ways that increase feelings of insecurity; erode the legitimacy of police and criminal justice agencies, or even chip away at the foundations of liberal democracy), but the manner in which such reduction is effected. Here one can see how an individual’s security can be enhanced or undermined by every act or omission of police and criminal justice agents – all of which communicate a message about whose voices are to be heard or silenced, whose claims are to be judged legitimate and whose security-enhancing membership of society is to be affirmed or denied. But one also begins to see that such things as human rights, due process, complaints procedures and prison inspectorates are not illegitimate burdens on the capacity of the police and criminal justice system to protect the public, nor the outmoded hangovers of nineteenth-century liberal

reformism, but preconditions for tackling crime and disorder in ways that contribute to, rather than detract from, the security of all citizens.

I have tried, in these final few paragraphs, to offer a sketch – or at least a set of orientations – for a viable progressive approach to what has become a febrile political and policy field. This course differs in some important respects from that which Richard Garside has sought to navigate in this pamphlet whilst also sharing some of the goals which he has set himself. But such disagreement is what an informed public debate about our criminal justice system should properly seek to foster, and it is to Garside's, and the Crime and Society Foundation's immense credit that they have so thoughtfully and provocatively sought to extend the all too often narrow horizons of that debate.

ABOUT THE AUTHOR

Ian Loader is Professor of Criminology, Director of the Oxford Centre for Criminology and a Fellow of All Souls College.

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Criminal justice is complex

Geoff Dobson

I welcome this opportunity to stand back from the daily media frenzy about crime and the criminal justice system. I am pleased that the Crime and Society Foundation has conducted an analysis that looks beyond our familiar frames of reference, challenging assumptions with the possibility of eventually presenting a new paradigm. I also endorse the view that an effective response to crime must involve the broad social policy agenda rather than simply a narrow criminal justice focus. The Crime and Disorder Act 1998, section 17, provides a useful platform for developing crime prevention through local partnerships. More could be done to build on this initiative and to strengthen local responses to crime and the fear of crime.

The Foundation's paper explores the apparent paradox of perceived criminal justice failure at a time of reported falls in crime. It concludes that criminal justice is failing to protect the public, even more dramatically than is realised, because current indicators of criminality are gross underestimates. In this context, criminal justice effectiveness is seen as largely irrelevant to the goal of promoting a lower crime and safer society.

My starting point is crucially rather different. The criminal justice system exists to fulfil a wide range of functions. The Police and Justice Bill (at the time of writing, currently passing

through parliament) defines the system's remit as including ten different elements - only half of one of which is the prevention or reduction of crime and disorder. Another of the ten is to do with treating, managing and dealing with persons convicted of offences. For this one tenth we need to have in mind the five purposes of sentencing defined in the Criminal Justice Act 2003 (punishment of offenders; reduction of crime – including reduction by deterrence; the reform and rehabilitation of offenders; the protection of the public; and the making of reparation by offenders to persons affected by their offences).

Thus, the contribution of the system to society is far more complex than portrayed in Richard Garside's paper. A more accurate statement of its remit also allows us to recognise that other factors, especially demography and economic factors, are far better predictors of trends in crime than the performance of criminal justice agencies.

It is a relatively recent series of diktats that have tried to shoehorn the criminal justice system into the one-dimensional yardstick of public protection. Thus, each crime committed by an offender, on early release or under supervision, can be portrayed as a 'failure' by the system. Someone must be to blame and the whole system is tainted by association. This phenomenon of hoisting the system on the public protection petard would be worthy of rigorous study - it is one that we must be careful not to collude with.

I would not pretend that the system is not beset with problems at the moment. These I attribute to:

- Too much being expected of it without adequate attention to resources, preparation, governance, leadership and management.
- Many people being dealt with by the system who should be dealt with elsewhere; for example the thousands who are mentally ill or have drug or alcohol problems.
- The government's obsession with legislative and structural change. Harold Wilson, when he was Prime Minister in the

1960s said, 'The Labour Party is like a stage-coach. If you rattle along at great speed everybody inside is too exhilarated or too seasick to cause any trouble. But if you stop, everybody gets out and argues about where to go next.' It feels as though this philosophy is today being applied to criminal justice.

It is my task to turn over stones. I do have other concerns about the paper, most of which concern the context in which it will be considered:

I am not a criminologist and hope that others will be able to comment on the thesis that crime is far more prevalent than is officially recognised. Many of us have hitherto accepted that the British Crime Survey, with acknowledged limitations, provides a pretty solid picture of the prevalence of most crimes.

What is this paper seeking to achieve? If it is simply to get at 'the truth' about levels of crime then perhaps it should stop there, leaving us to debate its accuracy.

The current political climate is frighteningly repressive, with little to choose between the main parties. The clamour for ever more punitive measures is fed by relentless media attention to lurid stories and examples of the system 'failing'. Studies such as those carried out by Rethinking Crime and Punishment and SmartJustice with Victim Support make it clear that the public, when asked about individual cases, is discerning and nowhere near as punitive as the tabloid press would have us believe. *Right for the wrong reasons* however, accepts that 'apparently disproportionate fear and anger might be a largely rational response to lived experience.'

Continued loss of confidence in the system and in the institutions of home security leads inevitably to scapegoating of the weak and vulnerable. 'Evidence' of an epidemic of lawlessness will provide hugely welcome ammunition for more resources for retribution and incapacitation in the 'war against crime'. Notions of personal responsibility, albeit with mitigation, and holding to account are unlikely to diminish. In the present climate it would take a

Postman Pat view of the world to believe that the political foot will be taken off the punishment accelerator.

The section linking poverty and crime is interesting as are the important comments about attitude and gender. I would suggest that racism be given further attention in future papers. The toxic mix of race and criminality in the recent furore over foreign national prisoners has been palpable. Mental health, drug and alcohol misuse also require more consideration.

Hitherto there have been many attempts to shift the focus in tackling crime from the criminal justice system to a broader social policy agenda. Within the National Offender Management Service at present, the pathways which would determine funding priorities under contestability are derived from the excellent government Social Exclusion Unit (2002) study of nine key factors that have been shown to reduce re-offending. The Carter (2003) report provides a sensible strategy, with a hierarchy of measures, beginning at the broad base with proposals for large-scale diversion from the system for low-level crime, then a revival of financial penalties using the concept of day fines. Prison would be at the top of the pyramid, above community penalties and reserved for the most serious and dangerous offenders.

Right for the wrong reasons suggests that the criminal justice system is largely irrelevant, given the scale of crime and harm and its incidence among the poorer sections of society. Criminal justice agencies are seen as limited in function and the notion of 'failure' is allowed to hang over them in a rather casual way.

From a quick count, the phrase 'criminal justice failure' features in the paper no less than 18 times, with fail, failing and failed also included. I have already explained why I think this is misleading. It is worrying that repetition of the mantra will contribute to the myth.

The paper describes an, 'unhealthy consensus within government circles, its supporters in the media and among criminal justice reformers about the need to "talk down" the problem of crime.'

This is an interesting notion, given the hostile press and active punishment lobby, which is given further pep by the introduction of the profit motive into correctional services. I had not thought that the liberals were being so effective!

The criminal justice system has, in recent years, been exhorted to spearhead the so-called 'war on crime'. Bizarrely, key agencies such as prison and probation have recently been shown to have met most of their key performance targets, and yet they face unprecedented condemnation for failing to protect the public. The logic of the Foundation's paper, if followed, and which as I say, I have serious doubts about, would take such agencies away from the front line. Whether the backwater they might subsequently inhabit would turn out to be an idyllic lagoon or a neglected, stinking sewer is a matter of conjecture.

Next to my desk at the Prison Reform Trust is a cupboard which serves as a radio studio, complete with an ISDN line. I mention this because it brings my colleagues and me into daily contact with what is often mistaken for public opinion. The 'evidence' in this paper will, I suggest, be used to bolster the case for a massive reallocation of funds from other social policy areas to the criminal justice system. Let me just read what could easily be the script for UK prisons in a few years time:

This is what conditions are like at one of California's best prisons, the California Rehabilitation Center. Built to hold 1,800 inmates, it now bulges with more than 4,700 and is under nearly constant lockdown to prevent fights. Portions of the buildings, which date to the 1920s, are so antiquated that the electricity is shut off during rainstorms so the prisoners aren't electrocuted. The facility's once-vaunted drug rehab program has a three month waiting list, and the prison is short 75 guards. It is even worse in California's 32 other prisons. The state has the nation's highest recidivism rate. ...Like much of the rest of the nation over the past three decades, it enacted get-tough laws with long sentencing provisions. ...There is a real and substantial threat to the public and fears of riots have only increased. ...When it comes to prison systems, California is the 800-pound gorilla – the problem in California is that all hope is lost (Pomfret 2006).

In summary:

- there is a need to address crime prevention more determinedly in localities and across the broad social policy agenda, but
- the criminal justice system should not be judged against the simple yardstick of public protection, and
- the Foundation should carefully consider the authenticity of its ‘evidence’ and the context within which its views will be utilised.

ABOUT THE AUTHOR

Geoff Dobson has been Deputy Director of the Prison Reform Trust since 2001 after working for 31 years in the Probation Service. He was chief probation officer in Hertfordshire for 12 years and chair of the Association of Chief Officers of Probation from 1999-2000.

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Being honest about criminal justice

Rob Allen

Countries vary enormously in the proportion of their population who are behind bars. Among Western nations, the USA is at one extreme. Its two million plus prisoners represent more than 700 per 100,000 of the population. At the other extreme, Scandinavian countries have rates some ten times lower. The obvious explanation - that America has ten times more crime than Scandinavia - turns out to be wrong. International surveys suggest that more Swedes say they have been the victims of crime than Americans. Of course the rate of serious violent crime is higher in parts of the USA than in most of Europe but this only explains part of the differential use of prison. The homicide rate per head in Finland is about half that of the USA, not a tenth.

A central contention in *Right for the wrong reasons* is that how much use societies make of criminal justice (and its proxy imprisonment) does not flow naturally from the amount of crime. It is the result of a policy choice about how to reduce and deal with harms. For Richard Garside, extending and expanding the role of criminal justice in order to create a safer and more crime free society is a venture of almost Sisyphean pointlessness. Given the size and nature of the pool of harmful events which can potentially

be classified and dealt with as crimes, criminal justice is destined to fail. Politicians need to be honest about the roots and reality of crime and look outside the criminal justice system to solve them.

The Labour government has, of course, been increasingly looking within the system to find them. It has presided over a 26 per cent increase in the prison population since 1997. The recent announcement of 8,000 more prison places – a ten per cent increase - provoked scarcely any political debate. Yet the Home Secretary was effectively committing more than £800 million of public money. Latest Home Office projections suggest the prison population could reach 106,000 by 2013 - equivalent to a rate of over 190 per 100,000. It was less than 100 in 1995.

Notwithstanding tough rhetoric and punitive policies, public confidence in the criminal justice system is not high. Despite substantial falls in crime, whether reported to the police or to Home Office researchers, the public stubbornly refuse to believe it.

This is usually laid at the door of a bloodthirsty media who like nothing better than to report the continuing breakdown of lawless Britain. But it may partly be that harmful events are much more widespread than we are led to believe. We have been encouraged to think of more and more of them as crimes and worry both about the consequences of becoming victims and the failure of criminal justice agencies to punish the perpetrators. Legislative hyperactivity accompanied by a non-stop diet of crackdowns, initiatives and action plans has stoked fears and inflated expectations. If, as the Prime Minister thinks, the criminal justice system needs, ‘a complete change of mindset, an avowed, articulated determination to make protection of the law-abiding public the priority’, then are we not right to be fearful and dissatisfied?

The orthodox view that the answer to crime lies in a more and more vigorous application of criminal justice is thoroughly deconstructed in *Right for the wrong reasons*.

What’s missing is some detail on what an alternative approach might involve; the broader range of policies we need to reduce

crime and the direction criminal justice reform should take. In particular, there is a need to think how a progressive agenda might be turned into a political project which might interest a younger generation of leaders and the general public. Before sketching out what such a project might look like, there are three points which need making in respect of the arguments in the paper.

First, there is some evidence that increased punishment can lead to lower crime rates - but so, of course, can more constructive measures. American social scientists estimate about a third of the crime drop in the USA since the 1990s is due to deterrence and incapacitation. That means that about two thirds was due to other things. But if we are to be honest about the scale and nature of crime, we must be honest about the impact of criminal justice. As far as prison is concerned, there is every case for identifying the considerable costs - financial, social and ethical - and for assembling evidence that equal or better impact could be achieved in other ways. But it is important to accept that prison can and does play a role.

Second, the importance of the 'regulatory' role of criminal justice should not be underestimated. Democratic societies must offer their citizens justice as well as safety. Many less serious offences and infractions committed by the young and the sick can and should be diverted away from formal criminal justice. When a serious crime takes place, victims and the wider community expect a response from the state which is just and proportionate. Without such a response, there is the danger of impunity and a breakdown in the rule of law. While the paper is right to say that criminal justice may not resolve crime, it does at least provide an impartial system acquitting the innocent and punishing the guilty. In doing so, it generally considers the culpability of the offender as well as the harm they have caused. The response in terms of a sentence can involve a wider range of measures than simply punishment. Rolling back the frontiers of criminal justice may be an attractive idea, but something at an individual level needs to take its place.

There is evidence that the justice people want is not necessarily as punitive as that which the state provides. There

is a great deal to be said for expanding the opportunities for restorative justice in which victims can explain the impact of the crime on them and the offender can make an apology and some form of reparation. But some mechanisms need to exist to hold individuals and organisations to account when they breach societal norms in a serious way. There is nothing wrong with bringing offenders to justice; it is the kind of justice that is the issue.

The third caveat concerns the role that criminal justice can play as a gateway into treatment. Flowing from the mantra ‘tough on crime, tough on the causes of crime’ it is a New Labour orthodoxy that there is more to criminal justice than punishment. As Anti Social Behaviour Tsar, Louise Casey told the Guardian: ‘Many people think Respect is all about ASBO’s, but for me it is about a Trojan horse so that we can deal with a lot of other things such as child poverty, repeat homelessness, repeat offending and under-attainment in schools.’ Quite why a Labour government is unwilling to develop policies to deal with these problems without a Trojan horse of civil injunctions and criminal convictions may puzzle many.

But it is a legitimate question, how far the criminal justice system should seek to act as a conduit to measures which can help individual offenders solve underlying problems. Should it limit itself to dispensing punishments, while leaving it to the health and social care systems to meet the treatment needs of offenders alongside other citizens? Or should it seek to incorporate within it, a range of services which can assist offenders to solve the personal, social or health problems which lie behind their offending? There is, after all, a long tradition of humane reform of criminal justice which has sought to replace punishment with treatment or help, the most obvious example being the Probation Service, 100 years old next year, whose origins lay in advising, assisting and befriending offenders.

The latest model for linking criminal justice with the kind of social services needed to tackle offenders’ problems is community justice. Incongruously contained in a document entitled, *Delivering Simple, Speedy, Summary Justice* (Home Office

2006) are proposals to extend community justice centres, one of whose key principles is problem solving - 'making use of a range of service providers in order to address and tackle the underlying causes of offending.'

What should we make of it? Is it, as the government claims, a way of improving social bonds and cohesion within the community, 'developing pathways to support the re-integration of offenders back into their community.' Or, does it embody the criminalisation of social policy in a way which delivers basic social entitlements as part of breachable court orders, creating a range of perverse incentives along the way?

Whatever are the best organisational structures, if we want to produce a safer society while adopting a sparing use of criminal justice, there are three areas which need attention. First, is a need for a vastly enhanced infrastructure of education, health and social services in England and Wales.

A comparative analysis of the treatment of young people in trouble in England and Wales and Finland found that Finland has tiny numbers of young offenders locked up but accommodates 'very large numbers of children and young people in non custodial residential institutions of one type or another' (Rethinking Crime and Punishment 2004). These include reformatories, children's homes, youth homes and family group homes. By far the largest number – almost 4,000 – are held in special psychiatric units. If England and Wales had the same number of psychiatric beds for adolescents per head of population as Finland, there would be 40,000. In fact there are fewer than 1,200 (O'Herlihy *et al.* 2006).

Second, there is a need for much better support for the families of children in poverty. Early intervention can work but has to be done properly. Steven 'Freakonomics' Levitt claims that much of the crime drop in the US in the mid 1990s resulted from the legalisation of abortion in the 1970s. He makes it clear though that, 'crime might just as easily be curbed by providing better environments for those children at greatest risk for future crime.'

His analysis of the failure of Head Start programmes - designed in the US to provide those better environments - is instructive. 'Instead of spending the day with his own undereducated, overworked mother, the typical head start child spends the day with someone else's undereducated, overworked mother and a roomful of similarly needy children.' Proper investment in these kinds of programmes is needed if they are to bear fruit.

Third, there is a case for a much more local approach to the governance of criminal justice. The areas with the highest concentrations of offenders tend to be ones which suffer from high levels of disadvantage. They score highly on indices of poverty, ill health, unemployment, and other social problems. Sending large numbers of low risk offenders to prison does little to alleviate such problems and may make them worse, consuming substantial resources in the process. Integrating offender supervision and rehabilitation in locally coordinated patch based services offers a more socially just and cost effective approach. This could be funded by some of the £3.5 billion spent each year on prison and probation. This resource is currently dispensed nationally, with local people having little or no say on how it is used. A local community based approach would focus on places not cases, looking beyond 'cops, courts and corrections' to create a wide range of more socially productive alternatives to punishment. While dangerous, serious and persistent offenders would still go to prison, keeping others in the community at a fraction of the cost provides savings for local reinvestment. Current government proposals for restructuring the probation and prison services are a missed opportunity to build on local linkages and instead look to create a market approach.

In his Dimpleby lecture in November 2005, Metropolitan Police Chief, Sir Ian Blair, identified an increasing sense that anti-social behaviour, as the opposite face of a civil society, is threatening our ability to lead free lives. He blamed a decline in community cohesion, the disappearance of informal social control and the closure of psychiatric institutions. 'This has left many people looking - in the absence of anyone else - to the police service for answers to the degradation of communal life - for answers to the neighbours from hell, the smashed bus stop, the lift shaft littered

with needles and condoms, the open drugs market, the angry, the aggressive and the obviously disturbed.’ Clearly, as *Right for the wrong reasons* argues, responding effectively to such problems is not solely or even mainly a matter for police or for criminal justice. Arrangements are needed in local areas which deal quickly, effectively and constructively with these problems.

Prison is an important social institution, which in a democracy valuing freedom, should be used sparingly - for dealing with dangerous offenders, grave crimes and persistent criminals who repeatedly fail to comply with alternative sanctions. The remainder of crime and anti-social behaviour needs to be dealt with at a local level in a way which properly addresses the needs of both victims and offenders. Putting appropriate levels of resources into creative ways of doing so must be a priority if we are to produce the social as well as criminal justice which this important paper demands.

ABOUT THE AUTHOR

Rob Allen is Director of the International Centre for Prison Studies, King’s College, London. He was a member of the Youth Justice Board from 1998 to 2006.

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DOES CRIMINAL JUSTICE WORK?
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Protecting who from what?

Professor Joe Sim

Right for the wrong reasons raises a number of very important questions regarding the baleful state of the contemporary criminal justice system. As such, it is to be welcomed as a serious and scholarly contribution to the current debate on law and order both in terms of the breadth of its discussion and in its attempt to move beyond the political platitudes and media hype which dominates this debate which, for civil liberties, is leading to dangerously authoritarian policy responses.

Right for the wrong reasons begins by identifying a paradox: the recorded crime rate appears to be falling while the government continues with its relentless focus on crime and the failings of the criminal justice system, hence New Labour's drive to 'modernise' the system and its institutions. This position may well be paradoxical but it is a paradox that cannot be understood outside of the heavily politicised and symbolic use of crime, and the fear of crime, mobilised by New Labour and their Conservative predecessors, to legitimate authoritarian policies. The government's discussion paper, *Rebalancing the Criminal Justice System in Favour of the Law-Abiding Majority*, published in July 2006, despite recognising that recorded crime has fallen, nonetheless bases its arguments on the idea that crime, and the fear of crime, are too high and that further changes are necessary in order to respond to public concerns. Thus, while the government describes these changes in modernising terms, in practice the document contains a number of proposals which will tilt the criminal justice

system even further away from the rights of both the accused and the convicted. For the accused, it reinforces the drive towards summary justice through the expansion of Conditional Cautions and through the development of the sinister sounding 'bulk processing' (p.7). Similarly, new recruits to the Parole Board will either need to have direct or indirect experience as a victim of crime or be able to 'demonstrate a sound awareness of victims' issues' (p. 15). This is further privileging and institutionalising the voices of victims, or rather those victims who are regarded by the government as legitimate victims of crime. These are insidious developments, introduced on the back of the discourse of modernisation, by a political class steeped in, and saturated with, a narrow and legalistic definition of crime and social harm.

Furthermore, it is important to recognise that the government's perspective on modernisation is built on an idealisation of the past where informal social controls held crime in check and brought order to community life. This communitarian past is juxtaposed with a vision of an apocalyptic present which is then used to justify an authoritarian future based on a further clampdown on civil liberties and legal rights. However, for many of those living in these idealised communities - women, children, minority ethnic groups, gay men and lesbian women – the fear of crime, and their actual experiences of it, including violence, incest and harassment, was a feature of their daily lives. It is therefore important to recognise this point in order to respond fully and comprehensively to the discourse of modernisation that is so prevalent in the government's thinking, otherwise there is a danger of implicitly or explicitly accepting the premise on which the government's strategy rests, namely that, in many respects, life in the well-integrated communities of the past was both better and less fearful. It is from this nostalgic position that the government makes its zero sum case for radically altering the balance of the criminal justice system away from the 'law breaking minority' towards the victim and 'the law abiding majority'.

Right for the wrong reasons points out that crime is far more common and widespread than the official criminal statistics recognise. The document also recognises that there are a range of social harms that also need to be considered in order to arrive

at a more fully developed and analytical definition of what constitutes crime. *Right for the wrong reasons* then utilises crimes such as sexual assault, child abuse and murder to illustrate the weaknesses in the official criminal statistics, the often highly problematic official responses to these crimes and, in the case of murder, the differential impact of this crime on the poor. *Right for the wrong reasons* therefore provides a much more critical account of criminal statistics and their reification as officially defined ‘truth’ about law and order.

However, I would suggest that in places the document comes close to presenting a deterministic position on crime, particularly with respect to its relationship to poverty. Clearly the relationship between crime and social inequality is important but I think there is a danger, that in focusing on the question of poverty and crime, the corrosive social harms generated by those who are not poor and powerless, but who are rich and powerful, will be marginalised. Thus, while there is a relationship between poverty and murder in terms of perpetrators and victims, as Danny Dorling has so convincingly argued, and which is cited in *Right for the wrong reasons*, I think it is also important to widen the definition of what constitutes murder. If, for example, many of the deaths which occur at work were dealt with as potential murder cases, then the perpetrators, if found guilty, would not necessarily be those from poor and deprived backgrounds. This, in turn, raises issues of individual responsibility for particular social actions which is something I also think needs to be discussed, especially in the current political climate where the definition of responsibility articulated by the government, is both narrowly defined and overwhelmingly applied to the behaviour of the powerless while the irresponsible behaviour of the powerful, which underpins many of their detrimental and death-inducing activities, remains effectively beyond scrutiny.

Similarly, *Right for the wrong reasons* considered analysis of rape and sexual assault is to be welcomed. There is a discussion concerning the relationship between poverty, masculinity and violence against women. However, while radical feminists would recognise the impact of the social construction of masculinity and femininity on women’s lives, they would not reduce this to

a question of poverty and working class masculinity but would see such violence as cutting across all of the institutions and organisations of a society based on structures of patriarchal power that transcend social class. This work has inspired research around hegemonic masculinity such as that of James Messerschmidt which focuses on ‘power structuring relations among men’ which, in turn, ‘has...enabled the relationship between particular crimes and men’s specific positions in gender/race/class relationships to be explored.....’ (Jefferson 2001: 139). This work has been important in shifting the debate away from constructing a deterministic relationship between male violence and poverty. Instead, it focuses attention not just on the behaviour of men as individuals, but also on the broader organisational and cultural networks of power that underpin and give meaning to their behaviour. Therefore, I think it is important to avoid solely concentrating on the relationship between social inequality and crime (important though it is) as it could lead to a reductive and deterministic analysis.

Right for the wrong reasons also rightly recognises that reform of the criminal justice system has a place but that this ‘should not be confused with the challenge of reducing crime and making society safer.’ To this end the document discusses reforming the agencies of the criminal justice system through ‘recruiting staff of the highest calibre to work within them’ as part of a strategy for developing a broader range of policies to address crime and social harm. I would suggest that this point needs more developing because reforming the criminal justice system is not only about recruitment but it is also about the nature and quality of the *training* that criminal justice personnel receive. It is possible to have highly developed recruitment policies in place but it is the training that both new recruits, *and* those already in the system receive, which will determine their response to offenders. Training procedures also need to be robust enough to immobilise and fragment the informal canteen and landing cultures that still prevail in police forces and prisons as well as exposing new and established workers in the criminal justice system to a range of critical, contemporary academic and policy debates around crime and the responses to it. In turn, these more empathic responses should be tied to promotion prospects so that it is these workers

who become the established norm rather than being regarded, as they are at present, as eccentric exceptions to the punitive rule.

These reforms should be tied in with broader questions concerning the funding of the criminal justice system and the democratic accountability of criminal justice institutions. There are a number of other radical policy options I could suggest, such as more socially inclusive youth clubs and less net-widening Asbos, but a detailed discussion of these options is beyond the scope of this response. The important point is that these, and other reforms, would shift the response of the criminal justice system away from the legalistic authoritarianism that dominates the system at present towards a more empathic understanding of crime and deviance. This would take the debate beyond the zero sum approach currently employed by the government while enhancing public protection and safeguarding victims in ways that, as *Right for the wrong reasons* so graphically illustrates, the current system often fails to do.

Overall, I very much welcome *Right for the wrong reasons*. The document makes an important contribution to the current debate about law and order and sets out a number of key challenges for the government with respect to its current policies around criminal justice. Whether Ministers take up this challenge is an entirely different matter.

ABOUT THE AUTHOR

Joe Sim is Professor of Criminology, School of Social Science, Liverpool John Moores University. He is the author of a number of texts and articles on prisons as well as the forthcoming book *The Carceral State: Power and Punishment in a Hard Land* to be published by Sage.

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There is no consensus on policy

Edward Garnier MP QC

In Right for the wrong reasons: Making sense of criminal justice failure

Richard Garside poses some interesting questions regarding the criminal justice system - some more valid than others. As Mr Garside says, the fight against crime appears to be failing. He argues that the criminal justice system has ‘not been effective enough in dealing with crime or offenders’ and that it is inherently limited in its ability to prevent crime. In this response I will argue: first, that statistics are a tool and should not become a distraction; secondly, that it is surely uncontroversial that the criminal justice system is not the only nor even the main agency of crime prevention; thirdly, that the criminal justice system’s limitations must nevertheless not be exaggerated; and lastly, that there is no political consensus over policy, not least because as a Conservative I see a criminal justice system which is being mismanaged and misused by this government and which is therefore underperforming.

Richard Garside concentrates a good deal of his paper on the suggestion that during a period of rapidly falling official crime levels, the criminal justice system nonetheless appears to be in a state of more or less permanent crisis. It is of course perfectly possible for crime to fall and yet for the criminal justice system simultaneously to be mismanaged leading to foreseeable problems and crises; the two are not mutually exclusive. It is important that any discussion of our criminal justice system recognizes the problems that can flow in both policy formulation and application

from a slavish use of statistics. There are different measures of crime and each can be interpreted to suit a particular political cause. What we need to do is to try to see what produces real and sustainable reductions in crime levels whilst always realising that the ideal of the crime-free society is unattainable. Nor should we be satisfied that small reductions in crime, however measured, mean that the criminal justice system is beyond reform or improvement, that only a few hundred homicides or rapes are acceptable and that no more needs to be done.

I agree with Mr Garside's contention that there is a need to question whether our criminal justice processes are the main means by which crime is reduced. The criminal justice system can play a role in crime prevention both through, to some extent, acting as a deterrent, and through keeping offenders off the streets for the duration of their time in custody, but even if operating at a fully effective level the criminal justice system will never prevent most crime. It follows that blame for most crime cannot be laid at its door. The criminal justice system is not an indivisible whole but is the police, the courts and the state's mechanisms for punishment and rehabilitation, which together form a process that, save in certain circumstances only enters the picture after an offence has occurred. It should not therefore be deployed as a weapon to fight something it largely cannot affect, namely, the causes of crime.

More important in reducing crime are factors outside the criminal justice system; as Garside argues, 'the challenge now is to step beyond criminal justice and to formulate a policy response on a much broader canvas.' Indeed modern, compassionate conservatism believes that reducing crime must begin before the criminal justice system comes into play. A far more efficacious and cost-effective way of dealing with the problem of crime, is to prevent crime before it occurs.

The causes of crime are almost as varied as the crimes in the statute book, but in most cases flow from complex combinations of social, familial, demographic, medical, educational and other factors, making it difficult either to identify or to resolve them. A simplistic explanation which makes a direct causal link

between economic policy and crime has no place in a serious discussion on criminal justice and crime reduction. Indeed, to blame Thatcherite economic policy as the direct cause of a rise in crime (Mr Garside tastefully says this was not a deliberate Conservative policy) is to ignore the Great Depression of the 1930s when the gap between the rich and the poor was far more apparent and yet crime rates were not as high as 20th century levels - indeed Britain was known for its culture of unlocked doors.

However, when the statistics are examined, there are some indicators of social, educational and other factors which tend to lead to offending, and if more were done to tackle these early before the criminal justice system even featured, a great deal of money, time and wasted lives could be saved. For example: over 47 per cent of those in custody ran away from home as a child; 67 per cent of offenders are unemployed when they go to gaol; 72 per cent of male and 70 per cent of female prisoners suffer from two or more mental disorders; 73 per cent of prisoners have taken an illegal drug in the year before entering prison; 52 per cent of men and 71 per cent of women prisoners have no educational or employment qualifications; 65 per cent of prisoners have a numeracy level at or below the level expected of 11 year olds; and 48 per cent have a reading ability at or below that expected for that age group. Should not an effective policy for crime reduction have at its heart the encouragement of and support for stable family structures, the value of employment and educational achievement, the curbing of truancy, and measures to deal with drug and alcohol misuse?

It is not original to say that I recognise that prevention is better than cure or that cure is better than nothing but still there is a lack of political will in this government to do what ought to be done and to use the criminal justice system to achieve what it can do to assist. If it cannot do everything, as the Prime Minister in his more breathless speeches seems to complain, nor should Richard Garside underestimate the importance of the criminal justice system and its potential both to act as a deterrent and to prevent re-offending. Our over-crowded and politically mismanaged prison system is not doing the job it should be

doing in educating, rehabilitating and making fit for life back in society those in its custody. To refuse to see or to ignore what is happening - or more often, not happening - in our prisons, catering for all age groups and both sexes, is to allow something that could and should be repaired to continue and to excuse too easily that part of the criminal justice system's failure to deal more effectively with offenders within its control. Indeed, the fact that half of all crime is committed by ex-offenders and that within two years of release 67.4 per cent of all prisoners will have reoffended, shows that the criminal justice system possesses a unique window of opportunity (even if it does not currently make use of it) to dramatically reduce crime.

More effective ministerial management of resources and strategic political leadership from the government could do far more to improve the education, training, purposeful activity, family ties, mental health treatment, drug rehabilitation, and overcrowding problems inside prisons, all of which have been shown to be vital in rehabilitating offenders and reducing reoffending. We know from parliamentary answers to my written questions that less than three per cent of the Prison Service budget is spent on education; an estimated 40 per cent of prisoners use drugs inside prison; 78 prisons (53 per cent of the estate) were overcrowded at the end of January 2006; and a report by the Prison Service's own Anti-Corruption Unit and the Metropolitan Police this year found that at least 1,000 prison service staff are corrupt and another 500 staff have inappropriate relationships with inmates. This failure to rehabilitate on the inside, combined with the inappropriate early release of dangerous offenders who then strike again, is a clear failure of the government to make best use of this section of the criminal justice system.

The criminal justice system presently fails to exploit effectively its opportunities to reduce crime through preventing reoffending; nor does it seem to be providing much of a deterrent. Contrary to Mr Garside's argument, as well as differences over policies to tackle the root causes of crime, there is no political consensus over the policy challenge facing the criminal justice system. While there may be agreement on some issues, and

we certainly do not believe in opposition for opposition's sake, this government has spent the last decade failing the criminal justice system through concentrating on government by headline, reviews, commissions and re-announcements rather than on the practical application of thought-through policy.

As Mr Garside explains, the government's criminal justice policy has essentially combined steps to increase the numbers coming into the criminal justice system with moves to improve the processing of offenders once they are in the system. With regard to the former, I clearly agree (who would not?) that more of the right people should be apprehended but in too many instances the government has multiplied the number of people into the criminal justice system who would be better treated in the community, in mental health services or in drug rehabilitation centres. Based on visits to local prisons HM Chief Inspector of Prisons, Anne Owers, recently estimated that 41 per cent of prisoners being held in health care units should have been in secure NHS accommodation. Indeed, much of the growth of the prison population over the last few years has come from non-violent female offenders and the mentally ill. Are we not entitled to ask, especially with an overcrowded prison estate, whether these types of prisoner could not be better dealt with through alternative means?

Consider also the torrent of criminal justice legislation - this government has pushed through Parliament 54 such Bills since 1997 - and ask whether it has achieved what it was supposed to achieve. Even allowing for the fact that much of this legislation has been repealed or not even brought into force, the government seems not to realise that passing more and more legislation does little to guarantee a fall in crime. It is surely reasonable to conclude that they pass legislation in order to look and sound tough on crime whilst being wholly ineffective or careless about the causes of crime as well as its incidence.

Richard Garside's paper raises some vital issues that reflect upon the criminal justice system. I know that the criminal justice system cannot be the main, still less the only means of crime prevention, but its limitations must nevertheless not

be exaggerated but recognised in order to use it better. The task ahead of an incoming Conservative government will be difficult and all the more so because of what we will inherit. But government is difficult and good government more so. We are ready for the challenge.

ABOUT THE AUTHOR

Edward Garnier QC MP is the Conservative Shadow Home Affairs Minister.

Crime and criminal justice:

A Liberal Democrat perspective

Nick Clegg MP

Crime has become a totemic issue for politicians in a way that could never have been imagined 25 years ago. It is an article of faith for those involved in the New Labour project that the party's perceived 'softness' on crime jeopardised their chances in the wilderness years under Margaret Thatcher. The Conservatives, notwithstanding David Cameron's new rhetoric, have long cherished their reputation as a party of law and order hawks. Politicians of all parties are under relentless pressure from large parts of the press to come up with instant solutions to highly complex problems.

In such a climate of oversimplification, of breathless soundbites and twenty-four hour media demands, carefully researched papers such as Richard Garside's are all the more important. At the tail-end of Tony Blair's premiership, Garside's argument is a salutary reminder that there is little point being 'tough on crime', if we are not also 'tough on the causes of crime'.

Persuasive though Richard Garside's arguments are, however, I am not ready to throw up my hands and give up on the criminal justice system altogether. Whilst a greater focus on the social and economic causes of crime is long overdue, a

properly functioning criminal justice system, which enjoys the confidence of the public, is crucial too. Changes to the system can affect both crime and – crucially – the perception of crime.

CONFIDENCE IN JUSTICE

It is true that the proportion of all crime directly touched by the criminal justice system is low. But the criminal justice system has a function over and above the simple administration of justice. Its impact on the fear of crime must not be underestimated.

Liberals understand the importance of dealing with the fear of crime. For people who are afraid to leave their homes, it is a very real constraint on their day-to-day freedom. Restoring confidence in the system and injecting a sense of proportion into the debate is an essential precondition for a wider, more rational debate on crime itself. The fact that the public believe that crime has risen, even though non-violent crime appears to have fallen according to the best available evidence¹, is a sign of the wholesale loss of public confidence in the system.

Maladministration in the criminal justice system has profound effects, not just on those directly affected, but on the public at large. The government has created over 3,000 new criminal offences since 1997 and has overloaded the system with constant legislative changes, to the point where it is failing in fulfilling the most basic tasks.

More focus needs to be given to getting the essentials right and a Home Office bombarded by torrents of new, often ill-considered legislation, is not capable of doing that. Developing a simpler, more manageable criminal justice system would enable justice to be done and seen to be done more effectively. Restoring the

¹ Garside correctly points out that the British Crime Survey (BCS) has its limits, as it misses a number of crimes and therefore fails as a 'total crime' analysis. However, whilst it is unwise to focus exclusively on reducing crime as measured by the BCS, as a measure of trends – and therefore as a (partial) framework for public debate – it remains better than any current alternative.

confidence that has taken such a beating from recent revelations is at the heart of the Liberal Democrat approach.

SENTENCING

We need, as a matter of urgency, to restore transparency to sentencing. One of the most striking poll findings on crime is that the public overwhelmingly believe sentences are too lenient – but when presented with real-life cases, they tend to recommend equivalent or lesser sentences than are currently handed down. This is partially due to the political and media attention devoted to specific cases which lead to the impression that sentences, in general, are more lenient than they actually are, and partially due to the opacity of the present system, in which ‘life’ sentences are served without any intention of the prisoner concerned serving anything approaching life and where automatic reductions in many other sentences mean that they bear little relationship to the sentences actually served.

Liberal Democrats have advocated a new system, where only those who will serve their whole natural life in prison are given a Life Custody sentence. We also propose Public Safety Sentences for serious offenders with a minimum term, and Fixed Term Sentences for other prisoners with minimum and maximum terms (as practised in the United States). This would make the system simpler, more transparent and easier for the public to understand. The aim is not to ratchet up sentences, but to stop the steady erosion of public confidence in our sentencing system.

COMMUNITY JUSTICE

Many of Labour’s reforms to the criminal justice system have taken justice out of the community. Closures of magistrates’ courts may have realised some efficiency savings but, when courts are taken away from people, we reduce the extent to which justice is seen to be done.

Liberal Democrats have pioneered approaches to justice focused on the community. In Chard, in Somerset, the community formed a panel of trained volunteers to whom the police agreed they would send appropriate offenders who agreed to being dealt with by the panel rather than by a court. The focus of the panel is on

restorative justice and encouraging offenders to make amends for the harm they have inflicted.

Victims explain to the panel the nature of the offender's conduct and the effect that this has had on them. Importantly, offenders are asked to confront the victims of their crimes face to face. Together, victims, offenders and the panel agree on the way the offenders can help redress the wrongdoing for which they are responsible.

Whilst the project is still in its early days, the panel has achieved an impressive re-offending rate of just five per cent - and crucially, it has given local people a sense of ownership of the justice system. That strength of community feeling in turn helps tackle crime in a way which extends well beyond those specific crimes that come before the justice panel.

In addition to such restorative community-based options, a greater use of rigorous community sentences should play a greater role too. They have the advantage of creating a sense of direct 'payback' to the community – painting, sweeping, clearing litter and so forth helps to repair damage done by low level offenders and improving the quality of life in communities which have been affected. That in turn helps those communities from descending into a spiral of dirt, poor housing and anti-social behaviour that encourages crime.

LOCAL APPROACHES

A key strength of our philosophy is our localism. Not only do crime levels and types of crime vary considerably by region and locality; allowing different local authorities to experiment allows for best practice to be demonstrated in action. Lib Dem authorities up and down the country have demonstrated this.

One of the best examples and one in which the specific aim of dealing with crime rather than just criminal justice was addressed, comes from Liverpool. To help deal with burglaries in the area, the Lib Dem council there has pioneered the largest programme to install gates at the ends of back alleys running between rows of terraces in the country. By May 2006, Liverpool had installed 5,200 alley-gates – to which residents have keys and potential burglars do not.

Within the first year of the programme, it is estimated that burglary fell by 37 per cent in alley-gated areas. There are now fewer burglaries in Liverpool than in Oxford – which belies the relative socio-economic profiles of the two areas. Louise Casey, director of the government’s Anti-Social Behaviour Unit said that, ‘We want Liverpool’s success to be emulated across the country.’ We agree.

Islington’s creation of Acceptable Behaviour Contracts (ABCs) is another good example. Unlike ASBOs, ABCs are not a statutory punishment, but agreements between those involved in anti-social behaviour, their families and the police, local authority, housing association or other relevant body. They are therefore, much more flexible than ASBOs, where a court hands down a set of rigid restrictions. They can bring an offender’s family into the equation, when all the evidence indicates that their early involvement is a significant factor and they allow for the parties involved to agree on acceptable behaviour, while addressing the causes of anti-social behaviour. The evidence suggests that ABCs are often strikingly effective – even Charles Clarke, when Home Secretary, stated that they were, ‘better than an ASBO’.

THE REVOLVING DOOR OF CRIME

By developing, then, a criminal justice system that is connected to communities, honest and open, we could have a much wider effect on both crime and the fear of crime than simply dealing with cases that reach court.

But no serious attempt to tackle crime is possible without a far more ambitious approach to the current crisis of re-offending. The UK has one of the highest rates of recidivism in the western world – a major factor behind the size of our prison population, which at 80,000 is the highest for our overall population in the EU-15. All the evidence is clear, that investment in rehabilitation work in prisons is central to reducing re-offending, but far too many prisoners are simply locked up in overcrowded, under-resourced prisons where any meaningful training, education and pre-release support is made almost impossible.

I want to see a new programme of compulsory education and training in British prisons. This should be rigorous, with real

penalties paid for failing to participate and the emphasis should be on vocational and technical qualifications rather than simply standard modules in basic education – encouraging offenders to see them as relevant to their lives outside of prison. One of the most important reasons why re-offending is so rife is that, upon release, prisoners – well over half of whom lack any qualifications – find themselves unable to secure work or employment, or even basic housing. We need to tackle this head-on.

We also need to ask whether short prison sentences are necessarily effective in tackling re-offending. Evidence suggests that for many offenders, especially repeat non-violent offenders, a short spell in prison provides little or no deterrent, whereas the public nature of community sentences can be much more effective. This, in turn, would help create the extra space needed in our prisons to provide adequate training and education facilities.

EDUCATION

Crime cannot only be tackled on the wrong side of the prison gate, however. Liberal Democrats have always been clear that the links between poverty, unemployment and crime are well attested and we believe that the fight against poverty is therefore central to reducing crime. As a party, we are currently revisiting our policies on poverty and inequality; but a key strand of any liberal approach to these questions is a strong focus on education and supporting children and families in the early years. It is obviously natural for liberals to place particular importance on education from the point of view of maximising individual freedom, but the evidence that early intervention has long-term effects on poverty and opportunity is now overwhelmingly proven.

We have, therefore, argued for a redirection of funding towards early years education, axing the government's Child Trust Fund programme to fund a reduction in class sizes for 5 to 7-year olds and 7 to 11-year olds and we are determined that the key elements of the 10-year Childcare strategy should be implemented, including provision for 3,500 Children's Centres, and for extended rights to part-time education for 3 and 4-year olds. In government in Scotland, the Liberal Democrats have already secured the introduction of free nursery places for 3 and

4 - year olds. This investment will be recouped in later life and should feed into lower levels of crime and disorder.

In a country with one of the highest proportion of 16-year olds leaving education in the world – and in which so many of those without qualifications end up involved in crime – we need to ensure that education is seen as relevant to 14 to 19-year olds. The government’s decision not to implement the Tomlinson Report’s proposals in full, which would have gone a long way towards breaking down the barriers between academic and vocational education, was a significant missed opportunity.

Conclusions

A piece such as this is inevitably limited in its scope. The issues associated with crime are enormously complex and it would take a far larger essay than this to address them in full. However, some of the key elements of a Liberal Democrat approach to crime reduction are laid out here.

We want to make the criminal justice system carry out its basic duties well – rather than overloading it with ill-conceived, populist measures designed to win headlines rather than cut crime. Restoring confidence in the system and increasing its transparency is a crucial condition for a more considered debate about crime overall.

But the causes of crime will not go away, however sophisticated a criminal justice system we develop. We must tackle them head on and our focus on community empowerment, on cutting re-offending and on education is an essential part of any longer-term agenda to address the causes of crime. This kind of approach is not only right in principle; I believe it is also far more effective in practice than any other political approach presently on offer.

ABOUT THE AUTHOR

Nick Clegg MP is the Liberal Democrat Shadow Home Secretary.

Our nation's future:

The criminal justice system

Speech given by Tony Blair at the University of Bristol, 23 June 2006.

For me in many ways, this is the culmination of a personal journey. I was brought up in a legal household, studied law, became a barrister with the traditional lawyer's views of issues to do with civil liberties and crime.

I then became an MP and at the same time was living in London, in the inner city. I saw first hand in London and in Sedgefield, through my constituents, the changing nature of our society and of law and order. The first article I wrote on antisocial behaviour (ASB) was in the Times in 1988. I volunteered to be Shadow Home Secretary after the 1992 election. I always remember John Smith saying to me when I told him the portfolio I wanted: 'are you sure?' with that John Smith look that translated as: 'are you out of your mind?'

The reason I wanted it, was not just because I thought it would be politically interesting, as indeed it turned out to be; nor even because I wanted to change radically, the Labour Party's stance on it, though I certainly did; but because I had become, through personal experience in London, in my constituency - the inner city and rural England - convinced that we were witnessing profound social and cultural change and that the

legal establishment I had been brought up in and the political establishment I had joined, were completely out of touch with this, didn't understand it and certainly weren't dealing with it.

Nine years on as Prime Minister and many pieces of legislation later, I find myself in a curious and not entirely comfortable position: attacked both for failing to be tough enough; and for being authoritarian; and sometimes by the same people on both grounds simultaneously.

The situation is complicated still further by the fact that, in government, it is true that crime has fallen. Indeed we are the first post-war British government that has seen crime fall during its term of office. In addition, the asylum system that was in virtual chaos when we arrived in 1997, is on any objective basis, substantially better run now than then. But unsurprisingly, given the publicity, no-one would believe it. The truth is there have been improvements, there has been progress, but the gap between what the public expects and what the public sees, is still there.

And the political and legal establishment is still in denial. I know what large numbers of such people believe. They believe we are on a populist bandwagon, the media whips everyone up into a frenzy and if only everyone calmed down and behaved properly the issue would go away. It may well be true that politicians can be overly populist; it may be true that, as I know more than most, the media can distort; but actually neither reason is the reason why the public are is anxious. The public are is anxious for a perfectly good reason: they think they play fair and play by the rules and they see too many people who don't, getting away with it. By the public I don't mean the 'hang 'em and flog 'em' brigade. I mean ordinary, decent law-abiding folk, who believe in rehabilitation as well as punishment, understand there are deep-rooted causes of crime and know that no government can eliminate it. But they think the political and legal establishment are out of touch on the issue and they are right.

So, when we introduced ASB legislation, it was ridiculed and in part watered down. Each piece of asylum and criminal justice legislation has been diluted, sometimes fundamentally, in the Houses of

Parliament. Each law on terrorism has been attacked, in one case as posing more threat to the country's safety than the terrorism itself. Sometimes the very parts of the political system most vociferous in their demand that we act on the issues have been the most determined in their resistance to the measures taken.

So, here we are today with the Home Office, understandably, under siege. And, of course, I don't say for a moment, that mistakes haven't been made, that competence or lack of it has not been a serious complaint. But I do say that it is a complete delusion to think that simply by changing Ministers, civil servants or practices, the gap I referred to earlier is going to be bridged. It isn't. I have learnt many things in nine years of government and that is one of them.

I have also learnt something else. I have come to the conclusion that part of the problem in this whole area has been the absence of a properly considered, intellectual and political debate about the nature of liberty in the modern world. In other words, crime, immigration, security - because of the emotions inevitably stirred, the headlines that naturally scream, the multiplicity of the problems raised - desperately, urgently need a rational debate, from first principles and preferably unrelated to the immediate convulsion of the moment.

What's more, I believe we can get to a sensible, serious and effective answer to these issues and build a consensus in favour of them. But we can't do it unless the argument is won at a far more fundamental level than hitherto.

I want to trace the combination of factors that brings us to where we find ourselves today - to a criminal justice system that needs to re-establish the public consent on which it will, ultimately, depend. In the latest BCS, 80 per cent of the British people thought the system respected the rights of the accused. Only 35 per cent said they were confident that the system meets the needs of victims.

Why are people so much more worried about crime? The answer to that is easy. As the twentieth-century opened, the number of crimes recorded by the police in England and Wales per head

of population was at its lowest since the first statistics were published in 1857.

By 1997 the number of crimes recorded by the police was 57 times greater than in 1900. Even allowing for population growth, it was 29 times higher. Theft had risen from two offences per 1,000 people in 1901 to 55.7 in 1992. Over the past 50 years, the detection rate almost halved. 47 per cent of all crimes were detected in 1951 but only 26 per cent in 2004/5. Conviction rates fell too, to 74 per cent in 2004/5 from 96 per cent in 1951.

This growth, in the second half of the 20th century, was historically unprecedented. The reasons are very complex. They are social, intellectual and systemic. The communities of the Britain before the Second World War are relics to us now. The men worked in settled industrial occupations. Women were usually at home. Social classes were fixed and defining of identity. People grew up, went to school and moved into work in their immediate environs.

Geographical and social mobility has loosened the ties of home. The family structure has changed. The divorce rate increased rapidly. Single person households are now common. The demography changed: the high-crime category of young men between 15 and 24 expanded. The disciplines of informal control - imposed in the family and in schools - are less tight than they were.

The moral underpinning of this society has not, of course, disappeared entirely. That is why our anti-social behaviour legislation, for example, has proved so popular - because it is manifestly on the side of the decencies of the majority. It deliberately echoes some of the moral categories - shame, for example - that were once enforced informally.

There was, at the same time, something both comforting and suffocating about these communities. But they were very effective at reproducing informal codes of conduct and order. They contained a sense of fairness and honour, what Orwell habitually referred to as 'decency'.

Now, this fixed order of community has gone. Patterns of employment are different - women are more likely to work, nobody can expect to stay in a single job for life. Deference has declined. A more prosperous nation is a more demanding nation. Prosperity increases the opportunity for crime and makes it more lucrative.

But in a sense, we still live in the shadow of the Victorians. Criminal justice reform was, along with public health, the great progressive cause of the times. The capricious savagery of sentencing policy made routine victims of the poor. There was, in practice, no observed precept of equality before the law. The conditions in prison were a living hell.

The problem with the reform movement was not that it failed. On the contrary, it succeeded and, out of the great achievements of nineteenth-century penal and legal reform, flowed an unintended consequence: the ideal of being a liberal in this field became associated, subtly and insidiously, with ensuring the fair treatment of suspects and criminals, detached from an equivalent concern with victims.

This was abetted by the intellectual convulsions on the academic and political left about the causes and consequences of crime. We got into the untenable position of arguing that recidivism was an entirely structural affair. The millions of people who suffered the deprivation of the 1930s depression without resorting to crime give the lie to the thesis. It had the effect of deleting individual responsibility: you might be a criminal but it was never truly your fault.

The political right believed the mirror-image fallacy. Criminality, for them, was entirely a matter of individual wickedness.

Of course, both positions can be true, sometimes at the same time. In retrospect, the argument looks sterile, silly even. New Labour finally arrived at what has now become the conventional position, summed up in the phrase: 'tough on crime, tough on the causes of crime'.

In reality, what is happening is simply another facet of globalisation and a changing world. Fixed communities go.

The nuclear family changes. Mass migration is on the march. Prosperity means most people have something worth stealing. Drugs means more people are prepared to steal. Organised crime which trafficks in drugs and people, make money. Violence, often of a qualitatively as well as quantitatively different sort than anything before, accompanies it. Then there is the advent of this new phenomenon of global terrorism based on a perversion of Islam.

As a result of the scale and nature of this seismic change, the challenges faced by the criminal justice and immigration systems have grown exponentially, not in a small way but in a way that, frankly, mocks a system built not for another decade, but another age. So we end up fighting twenty-first century problems with nineteenth-century solutions.

In case anyone believes this is a uniquely British problem, I can tell you that, at last Thursday's European Council meeting, the main topic of debate was precisely this. Every country from Malta and Spain in the south to the northern point of Europe faced the same issue with the same intensity and the same anxiety as to what to do.

And the reason that it raises such profoundly disturbing questions about liberty in the modern world, is this: because we care, rightly, about people's civil liberties, we have, traditionally, set our face against summary powers; against changing the burden of proof in fighting crime; against curbing any of the procedures and rights used by defence lawyers; against sending people back to potentially dangerous countries; against any abrogation of the normal, full legal process.

But here's the rub. Without summary powers to attack ASB – antisocial behaviour orders, fixed penalty notices, dispersal and closure orders on crack houses, seizing drug dealers' assets - it won't be beaten. That's reality and the proof is that until we started to introduce this legislation, it wasn't beaten and even now it can be a struggle. The scale of what we face is such that, whatever the theory, in practice, in real every day street life, it can't be tackled without such powers.

Without the ability to force suspected organised criminals to open up their bank accounts, disclose transactions, prove they came by their assets lawfully, you can forget hitting organised crime hard. It won't happen.

There is no point in saying to an overworked immigration officer: deport this foreign criminal to country X, if country X is dangerous, because at present the courts won't allow it and the officer is met with an army of lawyers and a system stacked against him. In theory, he might, just might be able to win it eventually. In practice he'll look to remove other people. Take an even harder case: failed asylum seekers. We were being hammered for not removing enough failed asylum seekers, even though we remove roughly three times the number of the previous government. Then came the Zimbabwe case. The court held that, even failed claimants, if they claimed to be from Zimbabwe, couldn't be returned. And we got hammered for even contemplating such a thing by the very politicians who previously had been complaining about removals. But what happened? In the month after that case, asylum claims from Zimbabwe rose 50 per cent. In other words, because of the way modern mass migration works, the moment the system received a signal, it reacted and numbers immediately went up.

Or you can say - many did - the right to trial by jury is inalienable and even the most serious and complex fraud cases, taking months, sometimes years to try, must be done that way. Fine: but the reality is, a large proportion of such cases collapse or are never brought.

Here is the point. Each time someone is the victim of ASB, of drug related crime; each time an illegal immigrant enters the country or a perpetrator of organised fraud or crime walks free, someone else's liberties are contravened, often directly, sometimes as part of wider society. It's no use saying that in theory there should be no conflict between the traditional protections for the suspect and the rights of the law-abiding majority because, as a result of the changing nature of crime and society, there is, in practice, such a conflict; and every day we don't resolve it, by rebalancing the system, the consequence is not abstract, it is out there, very real on our streets.

Let me give an even more pointed example. At present, we can't deport people from Britain even if we suspect them of plotting terrorism, unless we are sure that, if deported, they won't suffer abuse on their return home. In fact, even if we put them through a form of judicial process overseen by a High Court judge or even convict them, we cannot do it. As a result of what I announced last year, we are now seeking to deport people from various countries; but I say seeking, because the test cases in court are only now being decided. I agree the human rights of these individuals, if considered absolute, would militate against their deportation. But surely if they aren't deported and conduct acts of terrorism, their victims' rights have been violated by the failure to deport and even if they don't commit such an act or they don't succeed in doing so, the time, energy, effort and resource in monitoring them puts a myriad of other essential tasks at risk and therefore the rights of the wider society.

This is not an argument about whether we respect civil liberties or not; but whose take priority. It is not about choosing hard line policies over an individual's human rights. It's about which human rights prevail. In making that decision, there is a balance to be struck. I am saying it is time to rebalance the decision in favour of the decent, law-abiding majority who play by the rules and think others should too.

Of course the danger is that we end up with rough justice, a danger even now when we use summary powers to close crack houses or seize the assets of suspects. It is exactly to guard against such danger that the rebalancing has to be done with the utmost care and scrutiny. But the brute reality is that just as with rights, rough justice works both ways too. There is not rough justice but rough injustice when neighbourhoods are terrorised by gangs and the system is not capable of protecting them.

These questions are fundamental, difficult and immensely controversial. Unsurprisingly, there is a strong desire to escape their fundamental nature by taking refuge in simple explanations and remedies. One is repeal of the Human Rights Act. There are issues to do with the way the Act is interpreted and its case law, which we are examining. But let me be very

clear. These problems existed long before the Human Rights Act. Every modern democracy has human rights legislation: and in any event the British Human Rights Act is merely the incorporation into British law of the provisions of the ECHR, to which we have been bound for over half a century. Besides, in the ECHR, there are countervailing provisions to do with public safety and national security which would permit precisely the more balanced approach I advocate. In addition, of course, Parliament has the right expressly to override the Human Rights Act and it's not the existence of the Human Rights Act or the ECHR that has made Parliament behave in the way it has.

Another false solution is to focus all the attention on sentencing. Again, there are issues to do with sentencing guidelines, like the automatic reductions for guilty pleas and aspects of early release, which again we are looking at. But, the introduction of the Sentencing Guidelines Council has brought greater consistency. The Criminal Justice Act 2003 does allow indeterminate sentences for violent and sexual offences, ie life can mean life and Courts are using them. Prison sentences are longer - I mean actual time in prison. More people are in prison. Prison places have expanded by 19,000 since 1997 and are due to expand still further. Also, once more, let me be clear. Judicial independence is a foundation stone of the British Constitution and our Judges are rightly respected and admired for their quality the world over.

I am afraid the issue is far more profound: it is the culture of political and legal decision-making that has to change, to take account of the way the world has changed. It is not this or that judicial decision; this or that law. It is a complete change of mindset, an avowed, articulated determination to make protection of the law-abiding public the priority and to measure that, not by the theory of the textbook but by the reality of the street and community in which real people live real lives.

So, what would need to happen to bring about such a revolution in thinking? I would identify four strands of work.

The first is to put in place laws that properly reflect the reality. There is a myth that we have legislated 50 times, the problem

still exists, ergo we don't need more laws. I disagree. These laws have made a difference. The residents I spoke to on Southmead Estate here in Bristol yesterday, complained bitterly about aspects of the Court system, to which I shall return in a moment.

However, it was only by dint of the ASB laws that they were able to take action at all and though it took too long, in the end the offending families had indeed been removed. Likewise, there is no way we would have cut asylum claims, from over 80,000 a few years back to just over 20,000 now and be removing more unfounded claims than we receive, without the laws passed, again in the teeth of fierce opposition, in 2002. And tell me how many senior police and those working for the SOCA would want to be without the Proceeds of Crime Act.

Laws have made a real difference but they have not been clear or tough enough. We need to do an audit of where the gaps are, in the laws that are necessary. Just in the past few months, from talking to people and police, I can think of examples where such gaps exist. For example, the powers to arrest and bring immediately to court, those who break their undertakings to have treatment for drug addiction. We need swifter, summary powers to deal with ASB. The limits on the seizure of assets of suspects need to be changed. We need to use the law to send strong signals that those who break bail or drug treatment orders or community sentences will get quickly and appropriately punished and we will need to reflect carefully on the outcome of the pending cases on deportation and if necessary, act.

The second strand is that along with the right laws, we need systems capable of administering them. The court system has improved over the years. But let me be honest: it is not what the public expects or wants. Again, rather than blaming this or that court official, we need a more profound look at why they don't operate as they should. The CJS treats all cases in a similar way. But they aren't similar. There is a strong case for handling different types of crime in different ways. We are developing now, the concept of community courts, like the ones in Liverpool and Salford and specialist ASB, drugs and domestic violence courts - but these are the exception not the rule. But what is

necessary is, piece by piece, to analyse where the shortcomings are and put in place the systems to remove them. Time and again I hear from angry victims and witnesses of how cases are dragged out, constant adjournments, ineffective trials through the non-attendance of the defendant; and for people facing violence or ASB in their street, every day, every week, every month, they are having to live with the people who are making their lives hell.

There are already change programmes taking place in the SOCA to handle organised crime, in IND and in the new prison and probation service and of course in the IT programmes to join the system up. But, as John Reid has rightly indicated, we need to use the current furore about the Home Office to go back over each and every part of them to make sure they will be fit for purpose.

This brings me to the third strand: focus on the offender, not just the offence. If an offender has a drug problem, or a mental health problem, and most do, then sentencing him for the offence will only do temporary good if the offending behaviour is not dealt with. Now, again, work has begun on this. Those arrested are now tested for drugs. Drug treatment is being rapidly expanded, in some places doubled or tripled. But the truth is, each suspect and then offender should be tracked throughout the system, given not just a sentence but an appropriate process for sorting their life out; and if they don't, be followed up, brought back to court. Local authorities need to have the powers to take account of such behaviour when assessing service entitlements. The system needs to share the information. The role of the NOMS will be utterly crucial. In other words, there is wholesale system reform that has to take place.

And here is where the fourth strand of work is relevant. Whenever I talk of public service reform, then, not unnaturally, people think of the NHS and education. But many of the same principles apply to the CJS. It is a public service, or at least should be. Its role is to protect the public by dispensing justice. Yet of all the public services, it is the one which, the more the public is in contact with it, the less satisfied they are by their experience. Capturing and disseminating best practice; using

different and new providers, for example from the voluntary sector, in the management of offenders; giving the victim a right to be heard in relation to sentencing, at least for the most violent crimes; breaking down the monopoly, 'one size fits all' court provision: all of these things should have a place in a modern CJS fighting the modern reality of crime.

It is on the detail of all this that [Home Secretary] John [Reid] will focus at the end of July, but one other point remains vital. In none of this have I forgotten the causes of crime. I believe passionately that a person with a stake in society, something to look forward to, an opportunity to reach out for, is far more likely to be a responsible member of society than someone without such a life chance. We have introduced Sure Start; the New Deal; increased Child Benefit; we are spending a lot of money on innercity regeneration and all to good effect. It's not wasted, it's making a real difference to real lives. I also know that what happens in prison matters deeply and that the pressure on the prison population is a real problem. Moreover, the blunt reality is that, at least in the short and medium term, the measures proposed will mean an increase in prison places. How prison works is an essential component.

All of these things - from help to poorer families to rehabilitation in prison - are crucial to fighting crime and in dwelling on the issues to do with the CJS, I don't mean to imply otherwise.

But even in tackling the causes of crime, we come back to some unpalatable choices about liberty and security. The 'hardest to reach' families are often the ones we need to reach most. People know what it's like to live on the same estate as the family from hell. Imagine what it's like to be brought up in one. We need far earlier intervention with some of these families, who are often socially excluded and socially dysfunctional. That may mean before they offend; and certainly before they want such intervention. But in truth, we can identify such families virtually as their children are born. The power to intervene is another very tricky area; but again, on the basis of my experience, the normal processes and the programmes of help we have rightly introduced, won't do it.

So we come back to the central conundrum. Most people would accept there is a gap between what the public expects in terms of society, the behaviour of others, and the CJS regulating or dealing with such behaviour; and what the public gets. Our lives have changed in so many ways for the better. But in one part of modern life, people feel we have regressed and that is in the respect we show for each other. Largely, at any rate, we have left behind deference and many forms of discrimination and prejudice. But respect on the basis of equality is something at the root of any civic society. It is what makes a community tick. It is what gives life order and allows us to pursue our aspirations and ambitions with peace of mind.

We won't achieve this by nostalgia, by hankering after the past. It's gone. We will do it by recognising the reality of the modern world and the modern forces attacking such order and peace of mind. Such is the changing nature of that world and the ferocity of those forces. We need to adjust, to reclaim the system and thereby the street for the law-abiding majority. That means not disrespecting civil liberties but re-assessing what respect for them means today and placing a far higher priority, in what is a conflict of rights, on the rights of those who keep the law rather than break it. This is not the argument of the lynch mob or of people who are indifferent to convicting the innocent, it is simply a reasonable and rational response to a problem that is as much one of modernity as of liberty. But such a solution will not happen without a radical change in political and legal culture and that is the case I make today.

Does criminal justice work? The 'Right for the wrong reasons' debate

The government never tires of telling us that crime has fallen dramatically in recent years. So why do ministers claim that the criminal justice system is failing and needs radical reform? According to *Right for the wrong reasons* the criminal justice system is failing, but not for the reasons the government give. The real challenge involves giving up on the hopeless attempts to drive up criminal justice performance and seek a much broader array of solutions to crime than the criminal justice system can ever deliver.

Following the publication of *Right for the wrong reasons* in July 2006, the Crime and Society Foundation requested responses to the arguments in the essay. *Does criminal justice work? The 'Right for the wrong reasons' debate* contains the original essay plus responses from a number of key thinkers on criminal justice policy.

The Crime and Society Foundation is a social policy and criminal justice think tank based at the Centre for Crime and Justice Studies at King's College London. The Foundation stimulates debate about the role and limits of criminal justice and enhances understanding of the foundations and characteristics of a safer society.

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