

## COMMENT

# *Prisons and the Law*

**I**n his speech to this year's Prison Service conference the Home Secretary, David Blunkett, urged us to think anew: "Don't let the 1952 Prison Act get in the way of anything we want to do. It is 50 years old and is completely irrelevant to what we need to do in the 21st Century. So I will amend the 1952 Act in any way that allows you to do your job better and more effectively so that probation and prison can actively be integrated." What opportunities might this provide?

At the outset it is greatly to be hoped that the clear alignment of the Home Secretary and the Lord Chief Justice against the inexorable rise in the prisoner population, is influential. But as the 1990s and the first months of this year have shown, the prison population can increase, and increase dramatically, without any change in the law.

Lord Woolf, the Lord Chief Justice, who also spoke at the conference and whose address is included in this edition, regretted that his comments on the punishment of mobile phone muggers (which had been inaccurately reported) had overshadowed what may come to be regarded as a truly radical judgement. In an appeal by a single mother against her sentence of eight months imprisonment for her first ever conviction (one of fraud), Lord Woolf ruled that where, as in this case, imprisonment was not absolutely required, judges should take account of the size of the prisoner population before sentencing someone to custody.

But what of the Home Secretary's remark that the Prison Act should not get in the way? Refreshing news for those who have urged for some time that we need a new Prison Act. While it will be profitable to re-establish our statutory foundation, we must not forget that a number of our problems have stemmed from misinterpreting or in forgetting the Act rather than in the Act's antiquity. There appear, broadly speaking, to be two options for a new Act: either one which provides an enabling framework — much as the 1952 Act provided — which leaves to secondary legislation (Prison Rules) and to the internal prescriptions

of the Prison Service (Standards, Instructions etc) the determination of the detail. To some extent Prison Rules and Standards will provide the detail but the current type of prison Act is too vague in important areas and if a similar model were to be produced it would lack rigour and life. The alternative is an Act which, perhaps starting from has been learned from the introduction of the Human Rights Act, prescribes the principles which determine which rights prisoners forfeit and which they retain; and the principles which underpin the punitive, the retributive and the rehabilitative purposes of imprisonment.

However, ultimately what will matter more than the text of any statute is the means by which the Prison Service gives it life. The writers of policy and drafters of Standards tend now to prescribe less *how* operational requirements are achieved and concentration more on *what* they should ensure. Interestingly the National Probation Service's recently revised Standards also signal a shift away from a detailed prescription of the 'means' and a sharper concentration on the 'ends'. Perhaps the Criminal Justice and Court Services Act (2000), which established the National Probation Service, might serve as a template for the creation of a new Prison Act — defining as it does the basis of the new Service's authority and its principal aims.

The cynic will mock and refer to the increasingly litigious nature of society as a reason not to bother changing the statute because case law will change it incessantly. But served, as we currently are, by an antiquated Prison Act, we are actually more vulnerable to legal challenge. The driver of change must not be that principle of craven, unimaginative and mean-spirited administration, the need to 'cover our backs'. Instead, the motive for change must come from the need to establish good practice on good principle; both of which are grounded neither in the intricacies of legal jargon and convoluted argument nor in recriminatory and accusative accountability but in humanity, commonsense and trust.