

Making Punishments Fit the Needs of Society

Speech delivered to the Prison Service Conference in February 2002

Lord Woolf, *Lord Chief Justice of England and Wales.*

I am delighted to be attending my first Prison Service annual conference. It provides me with an opportunity of expressing on behalf of the judiciary, the judiciary's recognition of the difficulties which the Prison Service faces in caring for those whom the courts send into their custody and our appreciation of what you achieve bearing in mind these difficulties.

When I look back over my career as a judge I regard the fact that I was asked to conduct the Strangeways inquiry as one of the most rewarding assignments I have had as a judge. While conducting that inquiry I was immensely impressed by the help I received both from governors and prison officers. I was convinced then and still am that the great majority of members of the Prison Service want to be part of an effective Prison Service and will embrace change as long as they are convinced that the change will bring about improvements. Furthermore you cannot have been involved with the Butler Trust as long as I have without knowing that members of the Prison Service are often responsible for excellent initiatives within the Service. Based on my experience, I feel confident that the members of the Prison Service will welcome the opportunity to endorse the theme of this conference: 'Delivering Decency'.

The title of my talk is meant to make a point. The title is based on Gilbert and Sullivan's *Mikado's* delightful song in which the Mikado sings that the punishment must fit the crime. It is suggested that this would be 'an object all sublime'. With this I agree, but it is only part of the court's objective when it imposes imprisonment on someone who has been found guilty of a crime. The punishment is not intended to be confined to retribution and deterrence. It is intended to be more. It is intended to meet all the conflicting expectations of punishment. What are these expectations, other than that those who commit crimes should be justly punished? They are that the punishment should protect the public by reducing crime and in particular violent crime. That it should rehabilitate the offender by making it less likely that the offender will offend again. In this way it is hoped that punishment will restore, maintain and enhance the

public's confidence in the criminal justice system.

In the case of imprisonment that includes making the statement that 'prison is an expensive way of making people worse' obsolete. There was a time when I thought that this was more likely to be the just result than not of a prison sentence. Prison remains expensive, very expensive. But I now believe that it can be an expensive way of making people better. This does not mean that I want to see more people going to prison or spending longer in prison than they do now. On the contrary, I think it is essential that we should send less people to prison and should in general send them to prison for shorter periods. Prison should be and should remain the last resort. Whenever a person is sentenced to imprisonment the sentence should be for the shortest period that is possible in all the circumstances. This would enable the Prison Service, as it should, to focus on the long-term prisoners in their custody since, as John Halliday has pointed out, very little can be achieved during short sentences.

Prison Service's dilemma

The conflicting expectations as to what can be achieved by punishment creates a real dilemma for the Prison Service. The fact that prison is meant to be a punishment makes it more difficult for the Prison Service to tackle prisoners' offending behaviour. The courts do not send prisoners to prison for punishment but as a punishment. Imprisonment is a punishment because the prisoner loses the control over his activities which the ordinary member of the public enjoys. But tackling offending behaviour involves recognising that you have a choice and of making the right choice but unfortunately unless a sentence is for a fairly substantial period a prisoner never begins to tackle his offending behaviour.

While I accept that positive things can and are done in prison, they can be done more effectively and more economically in the community. That is why if there is an option of imposing a community sentence or a prison sentence, a community sentence should always be imposed. Today too few community sentences are imposed and too many and too long

prison sentences are imposed. The consequences are doubly destructive of the needs of Society. It means that the best opportunity of tackling an offender's offending behaviour is lost. Why should there be too few community sentences? There are a number of reasons but at the forefront is the regrettable fact that neither the public nor sentencers have sufficient confidence in the community alternative. This lack of confidence is usually unjustified and is the product of a lack of information which can and should be tackled. The reality as to what prison can and cannot achieve needs repeating again and again and again. We need to show by independent research what can be achieved in the community and what cannot.

Research into sentencing

I hope a contribution to achieving this will result from an imaginative initiative of the Prison Reform Trust (PRT), funded by the Esmée Fairbairn Foundation, which is about to be launched. PRT are going to discuss with sentencers at the different levels from recorder to High Court judge actual cases on the borderline for a custodial sentence and find out why they felt compelled to choose the prison option. In this way is hoped to identify what was required to enable them to choose the non-custodial option. Pragmatic research of this nature may enable us to improve the acceptability of punishment in the community. In addition we need to establish more imaginative community punishments. Without committing myself to the detail, and the devil is always in the detail, this is why I warmly welcome the Home Secretary's third way. If we can find the third way then the Prison Service will be able to tackle in a wholly different manner the offending behaviour of the serious criminals, who are the criminals with whom only the Prison Service can deal.

The Prison Service's admirable Statement of Purpose points the way forward, you all know it, but it bears repeating;

Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead the law-abiding and useful lives in custody and after release.

It begins by making the obvious point that the Prison Service has a responsibility for 'keeping' those whom the courts send to prison. I have repeatedly made the point that the biggest challenge facing the Prison Service is overcrowding. Since I became Lord Chief Justice, two years ago, I have naturally been conscious of my responsibilities to provide leadership as to the correct approach to sentencing. A sense of responsibility which Mr Narey underlined by providing me with compelling statistics of how even a reduction

in all sentences of a few months would make a real but modest contribution to reducing overcrowding.

Sentences for violent offences

However I have become acutely conscious that within our existing structures there is little the judiciary can themselves achieve. Guideline judgments can help to achieve greater consistency. The Sentencing Advisory Panel does provide the most valuable information for achieving better sentencing. But greater changes are necessary which will not be provided by attacking the present sentencing policy. To reduce sentences for violent crime at the present time would be to undermine further the public's confidence in the criminal justice system. For offences of dishonesty which do not involve violence, I do believe that the courts do not now usually impose prison sentences unless they believe there is no alternative.

I am of course aware that my judgement last week has been largely regarded as increasing sentences for mobile telephone muggers. I do not regret the extensive publicity that the judgement received. The publicity means both the public and muggers will be under no illusion as to the stand which the courts are taking as to this class of offence. However at the beginning of the judgement of the court I made it clear that I was not setting out new guidelines increasing sentences, rather I was restating the effect of the existing sentencing policy which the courts have been adopting for some time.

Rightly in my judgement, the courts have been imposing deterrent sentences to tackle prevalent offences. The great majority of the public felt they were in need of protection against these offences, the victims of which were all too often vulnerable members of the community. The courts have a responsibility to make their contribution to tackling the serious problem that these offences are creating. The courts have been meeting that responsibility and I hope that my judgement had the effect of making those who are tempted to commit these offences aware of what the price will be if they are brought to justice. It is no use imposing deterrent sentences if those who should be deterred are unaware of how the courts are responding to these offences. I have no doubt that the courts have a responsibility to assist in resolving this problem.

Sentencing precedent

As it happens, on the very same day as my judgement in relation to telephone mugging was published, a report appeared in *The Times* law reports which sent out a different message. It was a case which concerned a woman who had two children and had not been before the courts before. The offences were two in number and involved filling in forms dishonestly in order to obtain credit. The amount of credit eventually obtained was substantial. However the woman had

been in real need and had done her best to repay her indebtedness.

We said that to send her to prison for eight months was wrong in principle. We emphasised that sending her to prison would result in harm to children of whom she was the sole carer. **We emphasised, and in this respect the case may have broken new ground, that it was good sentencing practice to take into account the explosion which there has been in the female prison population.** We set out the statistics and gave an equally clear steer about the need to avoid sending a person to prison in those circumstances. We added that if it had been necessary to send her to prison a sentence of one month's imprisonment would serve exactly the same purpose as the sentence of eight months.

The distinction between the two situations is that to impose a custodial sentence in the case of the offence of dishonesty would not undermine the public's confidence in the criminal justice system. While it is for the judiciary to impose the sentences which they consider are just and the public cannot dictate what sentence is appropriate in particular case, it is a responsibility of the judiciary to take into account in establishing the guidelines the needs of Society as a whole and the victims of a crime in particular in determining what punishment suits the crime.

Prison Service's rehabilitative purpose

Turning to the second part of the Statement of Purpose, dealing with the manner in which the Prison Service should look after those whom the courts commit to the custody of the Prison Service. I would lay particular stress on the need of the Prison Service to 'help them lead law abiding and useful lives in custody and after release'. Since I became Lord Chief Justice I have had an insight into the work which the members of the Prison Service perform in preparing reports to assist those who have responsibility for determining whether lifers who have completed the tariff part of the sentence, are ready to be released on licence. The same is true in relation to the reviews which I am required to make as an interim measure in the case of young offenders detained during Her Majesty's Pleasure. I find the reports of prison staff are prepared with immense care and that they are a great help. The reports also make clear the quality of work which is taking place to prepare for the return of these young offenders to the community. Of course it is inevitable that on occasions mistakes will be made, but fortunately, thanks in part to the work done by the members of the Prison Service the mistakes are rare.

What has particularly impressed me is the work which the Prison Service admirably performs with those young offenders who have committed the most serious offences and so constitute the gravest risks for the future. As you read the successive reports, often by prison officers, a picture emerges of a young offender

who is not only maturing but his attitude, values and behaviour is being transformed. It is this which enables me to reduce their tariff.

Judicial involvement after sentence

The judiciary make a significant contribution to the work of the Parole Board. However, apart from the work with lifers and their contribution to the Parole Board, the judiciary's involvement with those whom they have sentenced ceases with the conclusion of the court proceedings. A change which I hope we will see in the future is a continued involvement between the sentencer and the sentenced. The introduction of IT should enable the judiciary at least to receive feedback as to the progress a prisoner makes during a sentence. But more is needed: I would like to see the judiciary having a continued responsibility for a prisoner until he is returned to the community. **If and when the necessary resources including IT become available, I would like the sentencing judge to retain responsibility for monitoring a prisoner's progress and, if that progress justifies this, authorising the prisoner's release on licence.** This could provide a real incentive to the prisoner to strive to improve himself while in prison. It could reduce the likelihood of his reoffending and again becoming a number in the prison population.

Returning to the Home Secretary's speech [*made the day before Lord Woolf's speech*], I hope you found it as encouraging as I did. While it is always necessary to be careful to ensure that initiatives do not have unintended consequences more flexibility as to the manner in which a sentence is served must be desirable. In my report after *Strangeways* I commended the community prison as a way of reducing those consequences. But the rise in the prison population made this a pipe dream. If what the Home Secretary discussed were to become a reality this would be a significant step forward. I read with equal interest Stephen Pryor's paper on *The Responsible Prisoner*. He is undoubtedly right when he says that imprisonment inevitably results in some loss of responsibility on the part of a prisoner and that the Prison Service should seek to ensure that that loss is kept to a minimum. More importantly, he is right to emphasise the need for the Prison Service to ensure that at the end of his sentence 'the prisoner can once again take up the responsibilities of free citizenship', and if it fails in doing this it not only fails the prisoner but it also fails the public it is paid to protect.

Work with other Agencies

I do not believe that the Prison Service can achieve this last responsibility by itself. It needs the help of the other agencies. They can ensure that the ex-prisoner receives the help he needs after he is released from prison to ensure that he can properly take

responsibility for himself. The truly depressing figures as to reoffending and reconviction rates of those released from prison underline the need for this. The Prison Service cannot control the behaviour of an offender once the offender has left prison. The Prison Service can and must do what is within its power to ensure the necessary support is in place in the community when the prisoner is released. There needs to be more effective links between the Prison Service and the Probation Service and the other agencies who have to take the primary responsibility as to what happens to released prisoners than they are at present. Again, this important role of the Prison Service would be facilitated by the closer links which a community prison could foster with the community to which the prisoner is to return.

Society needs punishments which will reduce offending. Most objective onlookers recognise the limits of what can be achieved by deterrence and retribution alone. We have to focus more than we have in the past on rehabilitation. Punishment has not only to fit the crime but also must meet the needs of Society. Given the right resources, the voluntary sector could achieve wonders by the provision of education and training. This is what is likely to increase responsibility and with increased responsibility will come a reduction in

reoffending. Human rights is all about human dignity. Prisoners are entitled to retain their dignity. To do so they must be treated with decency and the courts and the other agencies involved in the criminal justice system must help the Prison Service in its efforts to ensure that the Prison Service meets its own Statement of Purpose.

Thank you for listening to me so courteously. I have a suspicion which I hope proves justified that I may have been indeed fortunate in being invited to attend the Prison Service conference which will mark a turning point in the Prison Service's history. If the Home Secretary is able to change the prison situation in the way he outlined yesterday that this could mark a new beginning. The cancer from which the Prison Service has been increasingly suffering, overcrowding, could be conquered. If this were to happen with the advantages of modern technology the contribution of the Prison Service to the community could be that which I am sure all its members would like to see. The Prison Service could be a constructive force within society playing its full part in a just and effective criminal justice system supporting and supported by the courts and the Probation Service. This is a truly 'sublime' prospect of which the Mikado would be proud.

Prison and the Magistrates' Court

A Case for the Defence

Dr Eric Cullen, JP and Consultant Forensic Psychologist.

I have been invited to record my experiences as a freshly minted magistrate given that I had worked in UK prisons, public and private, for 28 years. My brief is how the latter informs the former. A topical starting point is the current vexatious issue of whether magistrates' use of custody is contributing to the current record prison population.

Prison overcrowding should never be a reason for changing the policies of the courts, never influence judges toward greater leniency. If the opposite obtained and there were significant drops in prison population, should we be more punitive? All Courts, Crown and Magistrates, should be able to adjudicate free of political, or transient penal, pressures. We are trained, and provided with Structured Guidelines for considering cases and sentencing, in order to best use our judgement independent of bias or wider circumstance. Yet for at least the past century,

overcrowding has often exerted undue pressures, from the 1907 Probation of Offenders Act to the Criminal Justice Act of 1997. 'Alternatives to imprisonment' continues to run parallel as the preferred option when an inexorably growing prison population exerts pressures: the Great British Public on the one hand exhorting courts to ever-increasing prison sentences while on the other, the current demands from certain quarters of the police and the 'decarceration alliance' to remove custody from magistrates' options altogether! In between lie variations on the rise and role of alternatives to custody.

Magistrates' views of prison

Magistrates, at least those in my court, seem to have a generally consistent view of prison and it is almost unreservedly bad. They see prison as the last,