

# An End To Prisoners

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It is not often we have a consensus on defeat in penal policy. Put another way, it is not often that a Home Secretary opens up the whole issue of imprisonment to fundamental reappraisal (for reasons that may not be unconnected with the record level of the prison population?) When we do, it is a good time to ask questions. This paper questions whether we need imprisonment at all.

Over the past 12 years or so we have seen some of the widest variations of approach to imprisonment, with a similar wide range of custodial rates and practice, and of claims as to the effectiveness of imprisonment. The Strangeways riot dragged the prison system and prisoners through the mud. The reforms of the 1991 Criminal Justice Act were set at naught by increasing crime rates, and it needed only the match of James Bulger to set fire to a train of anger with our young which resulted in a seemingly inexorable rise in that population. Along with them we hit out at that other most vulnerable group — women — whose numbers have risen similarly. It seems almost as though we do this whenever we cannot explain our frustration in any logical way. The 90's were a decade of uncertainty: if in doubt as to the causes of crime or their solution, hit out. Now we are trying to make sense of imprisonment by advocating its greater and longer use when the crime rate is falling.

The evidence that 'prison works' is based only on a small number of costly programmes which many believe are bleeding resources from the wider regime provision. Try as we may we seem only to have options of more expense, higher numbers and the precipitous argument that only by locking up more people can we reduce the already falling crime rate. The Inspectorate condemns as many prisons as ever, with no let-up following the change of Chief Inspector. The work on Restorative Justice shows how difficult any attempt at repairing the damage of crime is if you have to start from the position of the perpetrator in prison, particularly if there is any connection between penance and release. The exploration of the extent to which people in prison could and should be treated as responsible people<sup>1</sup> showed how limited the scope for amends can be.

This note therefore sketches some of the main reasons we lock people up and asks whether by doing so we might actually be making people worse and exposing the public to more risk rather than protecting them. 'An end to prisoners' does not mean an end to feelings and fears, only an end to some of the more

expensive and futile ways of assuaging them.

That imprisonment might contravene prisoners' human rights, or that the failure to use it might do the same for victims, is not the issue. That imprisonment may or may not be the irrational response of irrational people to irrational acts is not the issue. That the effectiveness of sentences is limited by the ability of the agencies concerned to work together is not the issue. This paper is not concerned with the ethical or moral implications of imprisonment. It considers how the world might look if custody was not an option. 'An end to prisoners' reflects on some common justifications for, and views about, custody. It does not mean that we stop trying to assuage our feelings and fears, only that we re-examine the use of one of the more expensive and futile ways of doing so. These feelings and fears are set out in the following paragraphs.

## 1. 'We lock up too many. Only a small hard core, who are a real threat to society, need to be locked away'

Who are the hard core? What defines them? Is there a consensus on the definition? Is it for the courts to decide who is a hard core offender? If so, is it on the basis of a guilty finding on a criminal charge? Or might it be on the basis of risk to the public whether or not a crime has been committed? (As we are considering for those with a 'severe and dangerous personality disorder', especially if they happen to be paedophiles, or 'untreatable' psychopaths — people who are not exactly mentally ill, but certainly bad, or at least bad enough and mad enough to be put away.)

The root problem with the 'hard core' idea is the definition; there is not one. There are lots of views as to what it might be: the intractable, or persistent; the most stomach-churning; the most callous; the most expensive; the most desperate or those who will not apologise. If it is true our judiciary are currently reluctant to use custody when another option will 'do' presumably we have got the hard core in prison now.

Preventive sentencing already exists. It is a constituent of longer sentences, including life. There are two main difficulties with it: firstly, determinate sentenced prisoners are eventually let out when the sentence ends, whether or not the offender still presents a risk; and secondly, despite the extension of the life sentence to other offences than murder, we know that detention for life is not really necessary for the great majority of those convicted of qualifying offences.

1. *The Responsible Prisoner — an exploration of the extent to which imprisonment removes responsibility unnecessarily.* (Pryor, S, Home Office, 2001).

**2. 'Prisons can treat offenders, given time and resources'**

This is a pretty notion. If prison works, as has been claimed, not just by incapacitating prisoners while they are locked up we should lock up everyone who looks likely to offend and for whom it might 'work'. The fact that Grendon 'works' might be an argument for more programmes for that sort of prisoner; but it is not an argument for locking up the Grendon prisoners in the first place. Does Grendon work as a result of duress — the surrounding wall and the bars? If imprisonment were not an option would people accept a therapeutic community sentence? Do Enhanced Thinking Skills programmes work only because they take place behind bars? Do Sex Offender Treatment Programmes work better in prison than outside?

Halliday says only long sentences work in terms of altering offending rates. This argument assumes the custody option. Or it might imply that we should lock people up for long enough for the treatment to work. If the latter is so, why bother with fixed term sentencing at all? Why not give everyone an open-ended indeterminate sentence — or do we not want to face that that would mean Life?

Most of the cost of imprisonment is due to general staffing, not to the additional costs of delivering these accredited programmes. The lower security prisons are also low-control; it is control which costs money. Given that everyone inside is likely to be released long before anyone can be certain they are unlikely to reoffend, we should be knocking down most of the higher security places and testing all prisoners on an assumption of HDC as the natural road back to freedom.

**3. 'Prisons deter. They make an example of prisoners and show the road to ruin'**

There is not a lot of evidence for this.

It seems to be universally accepted that getting caught is what matters in deterring offenders, not imprisonment *per se*. It is less widely accepted that prison is evidence of ruin, and more easily understood that it may be the cause of it. Most prisoners seem to come to prison fairly late in their careers, after the Courts have tried several other options. For those who come early it is often asked if they needed to come at all, and they tend to be considered for early release ahead of those with a record — for obvious reasons. And the majority of lifers never offend again.

Imprisonment unquestionably makes an example of prisoners, but it is not quite the equivalent of the stocks or public execution. For those who bother about these things it would seem that prisons are not harsh enough or close enough to the communities they are supposed to deter. Several Home Secretaries have felt it necessary to point out the austerity of prison life to reassure these doubters. Prisons are not surrounded by oases of fearful, law-abiding communities who live with

the daily reminder of the wages of sin.

**4. 'Prison satisfies the need for retribution and revenge'**

This is difficult. It presumes a need for retribution and revenge, when there is evidence that some victims of crime want to put the past behind them, to leave it to others to ensure — if it is possible that lessons are learned to prevent recurrence. It assumes people believe imprisonment will hurt the offender. It assumes that the hurt will satisfy the victim. Of course this is sometimes true, and victims are often reported as saying if they feel satisfied by a sentence; usually to show that they are not.

The problem with prison as a means of retribution and revenge is that it is expensive, often seems to let the offender off the hook, and distorts the normal human responses to hurt of flight, fight and forgiveness. It may also continue the distortion of the initial adversarial judicial process which has painted one party as wholly the innocent victim and the other as wholly the guilty perpetrator: that is seldom the whole or most truthful picture of what happened. Prison seldom solves, salves or satisfies anyone.

**5. 'Prison puts prisoners away'**

It does that, and more than that. It puts them out of mind as well as out of sight. And it comes as a bit of a shock when they come back. We thought we could forget about them for quite a while. In terms of healing time, measured against the time it takes to get used to the prisoner being gone and to start one's life afresh, prison sentences are really quite short. A sentence of two years might seem a long time. It actually means the prisoner will be out in one year, less if they were remanded in custody before sentence. A year is not likely to have a major effect in changing any spots that escaped the trauma of the trial.

It cannot be said too often that prisoners are not held in custody until it is safe to let them out. Even lifers represent some risk on release. Prison is about lots of things, but protecting the public is one of the least defensible reasons for using it. Prison weakens people who are usually already socially deficient (as shown by their previous convictions), and weakens the ties that keep them straight. There are two facts which get in the way of much penal philosophy. Most young offenders keep offending until they are older, when they stop for good. Second, there are few pensioner prisoners, and those few are a nuisance not a menace. Neither phenomenon seems to be a result of skilled human intervention, other than a process of socialisation. If prison does work, it works for very few; the rest reform despite it.

Do we really think that the short relief afforded by putting people away is a means of reducing offending? Or does it meet a more deep-seated need?

## **6. 'Prison incapacitates'**

We have already touched on this, and (with some provisos) accepted it as true that while the prisoner is behind bars there are limits to what she or he can get up to outside. In the case of some prisoners, we are thankful for whatever protection we can get from them (see section 1 above). But common sense says we cannot lock up everyone who should be incapacitated; and experience says the bad person will sometimes go on being bad in prison, whether as a bully, a drug trader, a sexual predator or as a criminal in other respects. Some criminals flourish more inside than out; and some continue to cause offences to be committed outside while they are inside.

The point to hang onto while facing the cost of custody is just how little crime is prevented by locking up criminals. Even statisticians would not notice if we stopped doing so. The amount of crime prevented by incapacitating offenders through sentencing is statistically insignificant; but the cost is not. If the public does draw comfort from the belief that full prisons protect them, they should perhaps ask why there seem to be as many as ever who are not incapacitated. If the community does draw comfort from seeing full prisons, it is deceived. Which it may wish to be, given the alternatives.

## **7. 'Prison reforms'**

Here we mean the reform resulting from active intervention. We now know with greater certainty 'what works', and have a greater understanding of the processes which result in that 'are-formation'. This is not the place to explore or challenge that, other than by asking if prison is the best or only setting where the process can happen. If it is the only setting, that alone is not a reason for imprisonment: it is a small bonus if imprisonment can also bring a possibility of reform.

The idea that the Prison Service might accept directions from the courts to carry out a specific programme is very new, and the community has not demonstrated any real confidence that it might actually be able to hold the Service accountable for doing so, other perhaps than with the remarkable efforts of the Youth Justice Board and Youth Offending Teams with the young. Though we have moved toward this, we still believe fundamentally that the offender is responsible for offending, and for choosing to reform: if not, there is not a lot others can do about it. Whether in custody or not we believe that the chances of reform, as with reparation, are much improved outside the custodial setting, particularly an overcrowded one.

## **8. 'Prison provides opportunity for reflection and restoration'**

This is true, but does not of itself justify imprisonment.

## **9. 'A bit of imprisonment does more good than no imprisonment at all'**

The judiciary is instructed not to remand unconvicted people in custody so as to give them a taste of it. There is a chicken and egg argument as to the value of a first taste of custody. Was the person who did not offend after their first taste of custody put off by it, or was it something to do with the fact that few first offenders reoffend anyway? You can only have a first taste once. Most would perhaps agree that a little imprisonment usually fails to satisfy: the victim seldom says that it is better than nothing. Halliday and others recognise that short sentences are pretty meaningless when it comes to doing something useful with custody, unless they take the form of some sort of phased release, or merge with HDC as a type of custodial curfew.

So there are two main problems with this statement. How long is 'a bit of imprisonment'? And how can we use 'no imprisonment at all' most effectively, especially with the people — like women and children — who we feel should belong in the community whatever the risk they appear to present.

## **10. 'Prison works, and more prison works better'**

This is not quite the obverse of 'a bit of imprisonment does more good than no imprisonment at all'. This argument is much more persuasive and insidious, and can be put forward by perfectly respectable social engineers. But it ignores the motives underlying imprisonment, or at any rate puts them in an artificially enhanced light, especially the motives we least like to recognise. Whenever we argue for sentences long enough to 'do' something with the time', or for treating longer-term prisoners (especially lifers) with more consideration, we have already seduced ourselves into a love of custody. No one is more susceptible to this argument than prison people. Lifers and long-termers are most attractive prisoners. They depend on safe and predictable prisons, which have become their homes. They and prison staff share common aims in this. A good bunch of lifers are the most stabilising influence in a prison. A jail full of vulnerable prisoners, who help to run the prison as long as they are not constantly reminded of their criminality, is hardly a prison at all. All prison staff depend to a large extent on the good will of prisoners, which they seek actively to promote. But the fact that a prison is running with such help does not hide the fact that it is still a prison, with all the removal of freedom and choice and institutionalisation — and expense — which that entails.

The trouble with long sentences is not that they cost a fortune, provide a rather chancy opportunity to address offending, or create the paradox of the most biddable as well as the most dangerous prisoners. The

trouble is the system needs them more than they need the system. The facts that the system has become so good at managing them, and has persuaded them of the rightness of their condition, are a source of immense relief and pride to a service which specialises in locking citizens away. Since Strangeways there has hardly been a squeak out of them, certainly not out of the most dangerous or the longest term. They jump through the hoops of parole, lifer management and accredited programmes nimbly and without challenge. They accept the rightness of their exclusion and the decent intent of their jailers. More prison works better — for prisons.

The current argument that short sentences simply disrupt grows from this belief: a good long sentence gives us a chance to reform people. It denies the motive of banishment, and the spur to banish for as little time as is needed to make a point. We are doing people good by locking them up for longer. They should appreciate the cost we are paying for their privilege. The truth is more likely to be that the longer the custody the harder the road back to responsibility — for family, for work, for contributing, for coping. No matter how well prison works, that does not justify imprisonment. It may help to excuse it.

#### 11. 'Prison destroys'

It might be disingenuous not to put the other side of the Prison Works argument. Prison is designed to destroy, to treat prisoners with less humanity than free citizens. Humanity is about freedom and choices and responsibility. Prison intends to reduce these, in theory no more than is necessary to lock people up, but in practice ensuring all are treated as equally potentially dangerous and prone to offending. At least to begin with. Which is why we still put all remands in high security prisons. If we did not need to destroy this element of freedom then we would not, at least we should not, lock them up.

It might stand to reason that prison weakens. Indeed no one seriously doubted a distinguished Home Secretary<sup>2</sup> when he said that it is an expensive way of making bad people worse. But since it was only a few weeks later that he said that it 'works', we perhaps should take note of the main damage it causes:

- It damages family ties
- It brings people into close touch with criminals
- It tends to treat people at the lower range of abilities
- It humiliates people
- It denies people breadwinning
- It denies the right to a family
- It denies the opportunity to vote
- It shows society as willing to exclude
- It exposes people to highly dangerous and anti-

social behaviour

- It institutionalises people, training them to cope in a highly structured community
- It denies many people the opportunity to reach their full potential
- It encourages idleness
- It affords access to offending behaviour programmes to a very small proportion of prisoners.

It is perhaps worth remembering that imprisonment and its consequent damage is the state of anyone in prison, whether convicted or not

Some may feel that this outweighs the advantages of 'what works', and that we should question the value we get for £27,000 per prisoner per year. Not question the Prison Service, but question ourselves. You do not need to be better informed to make this assessment; you need to be better aware of your own views.

#### 12. 'Prisons punish'

If it is correct that we are now able to face things with a more open mind than for some years past, we can acknowledge that, dress it up how we may, imprisonment is by any definition punishing. People go to prison as a punishment, not for punishment. Sure. But prison is punishing. It hurts. It costs. It serves as an example. It restricts freedom. Ask any remand. The fact that around half of all remands do not end up inside and yet do not wish to get their own back on the system astonishes many visitors to prisons. Only where there is evidence of maladministration as the cause might that apply. Everyone accepts that prison punishes: the fact that it does so indiscriminately seems to be accepted as fair. And the fact that there are no performance standards or Inspectorate 'Expectations' to legitimise the punishing role of prisons (as against punishment of indiscipline by prisoners) may indicate how unwilling we are to confront this.

Recognising that prison punishes is one of the starting points in any debate on its validity as a disposal available uniquely as a sentencing option to the courts. Failure to recognise that prison punishes leads to dangerous self-deception. Whether we are talking about 'camps' (boot, 'X', POW, North Sea) or 'Detention facilities', 'Holding Centres', Young Offender Institutions or Special Units of various kinds, or prisons which are so open that we do not even recognise that we are in one, if we are holding people by order of a court against their will we are imprisoning them, and that is punishment.

#### 13. 'Prisons make us feel better'

A symbol of our disapproval of bad behaviour is important. Much of punishment is symbolic. No one

2. Douglas Hurd.

thinks a two-month sentence is more or less effective than a three-month or one-month sentence as judged by its capacity for promoting reflection or reform. The difference is symbolic. The fact that prisons and prisoners can get up and bite you is not an argument for doing away with them. But the fact that they make us feel better might be something very powerful and unexplored. If you removed prisons, you might just have to acknowledge that their very existence may not be tenable in a civilised society. So we have to ask ourselves what life would be like if we foreswore their use.

Prisons are rather like hospitals or church buildings, or the House of Lords. They show balance, and test our tolerance of misfits. They allow debate. They show a width of our humanity, and that we are prepared to pay for that evidence. They provide an option short of the death penalty (though some would protest that this analogy does not run to the House of Lords). And, if we can run them properly, prisons show some skill in social engineering. They are useful in Politics and politics. But they are very expensive, and that in itself is symbolic of the importance we attach to them.

It is when the symbol no longer serves its purpose, no longer makes us feel better, or is quite obviously doing a lot of harm, that we need to consider if other symbols would reassure us better. Restorative Justice offers one way of combining the symbol of retribution with the reality of restoration and repair.

#### **14. 'Prisons protect the public'**

Patently they do not, because they cannot. They can only expose the public to more or less risk. They cannot hold all the risk, nor can they hold any risk for ever (barring Life tariffs, many of whom do not present a significant risk anyway). Nor do the courts expect them to for any longer than the sentence (and their duty is only to hold those whom the courts send to them).

What is more important is that they may actually increase the risk to the public. If crime is a young man's game, might locking up the young contribute more than it prevents? Might the high reconviction rate be a result of custody? Might the convenience and ever-open door of the jailhouse prevent any serious attempt at addressing offending or community collapse? Might our capacity for self-delusion encourage us to believe that prison works absolutely rather than relatively? Might we be ready to see that prison is not so much a moral or social policy issue as a practical one which underpins the sense of security with which we go to bed at night — which may itself be a delusion?

If we foreswear imprisonment as an option for preventing or punishing crime, are we making for a less safe society, given the inadequacy of imprisonment in achieving that now?

#### **Summary**

Imprisonment is a solution to many things, most of which call for a high level of self-deception, and for which we are prepared to pay a seemingly unlimited amount as long as it is possible to present it as being delivered 'with humanity'. There are alternative ways of satisfying almost all of these requirements, and we need to check why we have not considered them or, if we have done so, that the alternative is not simply imprisonment by another name.

#### **Conclusion**

When considering doing without it, imprisonment is best understood as banishment, putting away, exclusion, de-humanising. And it is best tackled by accepting that there is nothing wrong with that as a natural human response to crime. We need some machinery for saying certain behaviour is not acceptable. We need some machinery to give us a chance to collect our thoughts. We need some machinery which allows, indeed insists on, reparation and restoration where that is possible. And we need some machinery which ensures the inclusion of the excluded, the reinstatement of the barred. Without the last we face barbarity, the limitless exclusion to the unknown. That may be what we want, but it is not what we can afford. Not if we call ourselves human.

These actions are not necessarily sequential; we do not have to wait for reparation before reinstatement. Nor are they absolutes. Indeed the more absolutely we exclude from society, the more work we give ourselves when it comes to reinstatement. If we will only receive back those who have fully repented, there is going to be a big queue of penitents waiting for the lie detector — and meantime we are paying £27,000 a year each for the principle.

We should not think of 'humanity' as 'love'. Humanity is about human society, human achievement, human frailty — and neighbourliness as far as that is necessary to live together. Love is about giving and forgiving, until seventy times seven, without question or judgement as to humanity. If we are to forego imprisonment we may need to recognise that forgiveness is a very practical weapon in the penal armoury, a desire to understand is a shortcut to handling offending not a *cul de sac*, and that humanity is a contract, an exchange between peers, not a gift from those who have to those who lack it.

If we are to face our humanity it would be easier and cheaper to forego exclusion, recognising it for what it is rather than pretending it is a solution. If prison symbolises an attitude of mind which denies humanity, we need to deny it as an option in dealing with those whose behaviour we abhor — but who are part of us. If it is possible to execute a sentence without executing the offender, then we must do so.

### Apologia

Some of those who have been kind enough to comment on this in draft have asked why there are not more suggestions as to alternatives. There are also murmurs that the author seeks to make amends for his previous career as a prison Governor, and that more credit should be given for the good work done in prisons. The purpose of the paper is to ask if we should

replace imprisonment, not to suggest how we do it. It does not follow that you go on doing something bad because it is too awkward to face the alternatives. And the only thing worse than imprisonment of the prisoner is the imprisonment of the jailer. It seems to me that if I can make amends for my work as a jailer, this is not a bad way of doing so — unless I seek to excuse. A good prison is still a prison.

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# Prisoners as Citizens

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Arguments that prisoners should be treated as citizens can be pursued from different directions and different perspectives — as matters of human rights and responsibilities, the management of institutions, and the reform and resettlement of prisoners. The arguments do however point to similar conclusions about the nature and purpose of imprisonment, the organisation and culture of the Prison Service, and the character of the relationships within prisons and between prisons and the outside world. They also reflect some common values — that people may be in different positions of power, status and authority and have different relationships with one another, but they are all entitled to equal dignity and respect as human beings; and that the state has both to protect its citizens but at the same time to limit so far as possible the extent to which it interferes with their personal lives.

### Rights and Responsibilities

The idea that prisoners might have rights and responsibilities is quite recent. There is virtually no mention of either in prison legislation. The Secretary of State and governors have various duties to provide facilities which might be seen as rights — correspondence, visits, confidential legal advice, medical attention, opportunities for complaint — but the Prison Service has a lot of discretion of the way in which they are provided. There is no formal procedure, apart from the vigilance of the board of visitors, the Inspectorate and the Ombudsman, for ensuring that prisoners have access to them. The resulting entitlements, or privileges as some of them are significantly described, are limited and conditional. Responsibilities, apart from the enforced responsibility to comply with prison discipline, are not recognised at all.

The situation has to some extent changed over the last 30 years. The change came about partly as a result

of changing attitudes in the Prison Service itself, and partly through a series of judgements — conveniently listed in the Prisons Handbook — in the domestic courts and the European Court of Justice. The process of change is likely to continue, although perhaps not at a rapid pace, as a result of the Human Rights Act 1998 and the incorporation of the European Convention on Human Rights into domestic law. Some of the rights in the Convention and its protocols are absolute and inalienable, for example the rights to life, freedom from torture and degrading treatment and freedom from slavery and forced labour. Although the Convention does not actually say so, the right to equal consideration, dignity and respect, regardless of race, ethnic origin or culture, must be similarly regarded as absolute.

Other rights are qualified by references to what is necessary for public protection in a democratic society. Examples are the rights to respect for private and family life and to freedom of thought and expression. But they all apply to people as human beings, and therefore to prisoners just as they do to anyone else. They are not automatically abrogated or forfeited by the fact that a person has been sentenced to imprisonment. Any restriction on those rights must be justified, proportionate and legitimate. The Act's influence on prisons may come about as a result of specific challenges in the courts, but more probably and more effectively if it helps to generate a stronger sense of respect for individuals, and to reinforce changes in approaches and attitudes which may already be taking place.

A citizen is however, more than a bearer of rights. He or she also has duties and responsibilities — obviously to obey the law but also to play a part in society, to support themselves and their dependants, to show consideration for others, to be a good neighbour, to have some concern for those who are vulnerable or disadvantaged, to support the institutions and legitimate authority of the state but also to hold them to account. These are responsibilities from which