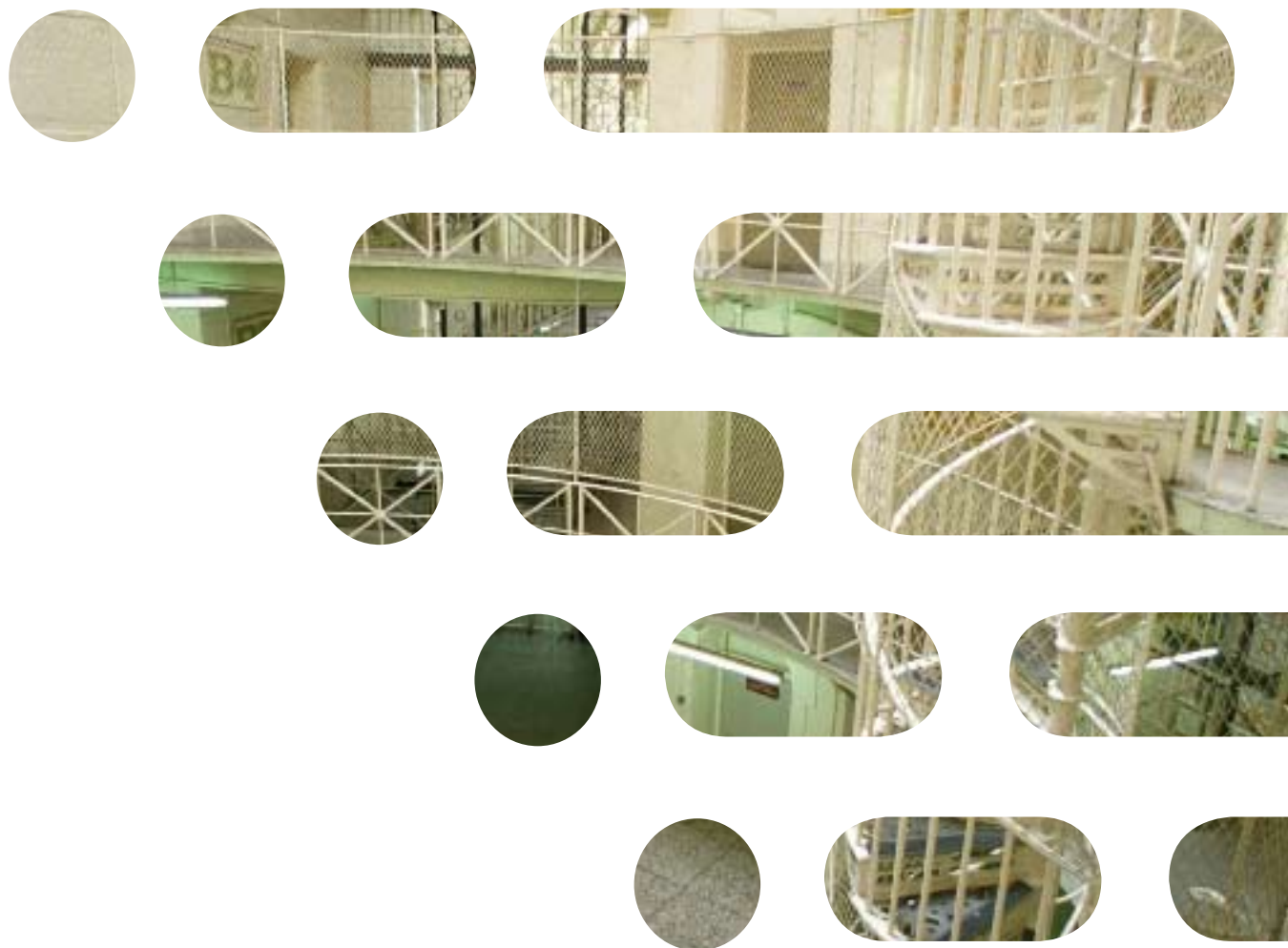
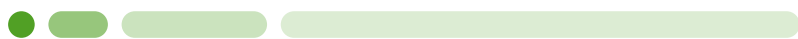


COMMISSION ON ENGLISH PRISONS TODAY



Do Better Do Less

The report of the Commission on
English Prisons Today

Do Better Do Less:

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A message from Cherie Booth QC



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I was delighted when asked by the Howard League for Penal Reform to be President of the Commission on English Prisons Today, an independent review of the penal system by some of the leading thinkers and practitioners in the country.

The Commission has undertaken a comprehensive consultation process, held seminars and made visits to investigate good practice and new ideas in Europe and the United States of America over the past two years.

The original Commission on English Prisons Today, which reported in 1922, was hugely influential, not just among the political classes but on popular attitudes to crime and punishment. To match its achievements is a tall order, but the opportunity to stimulate debate on the principles and purpose of our penal system has never been timelier.

Foreword

In 2007, the Howard League for Penal Reform set up the Commission on English Prisons Today in order to address the mounting crisis in our prisons. The Commission was asked to think radically about the purpose and limits of a penal system and how it should sit alongside other social policy strategies. Named in commemoration of a landmark inquiry from the previous century, the Commission was invited to create a vision for a different future.

Over the last two years, the Commission has concentrated its focus on those who constitute the vast majority of prisoners, that is to say adult men. We came to feel that children in the penal system deserve an entirely separate inquiry. As regards women in the penal system, the Commission wholeheartedly endorses the findings of the landmark report delivered by one of our members, Baroness Corston, in 2007. Clearly, however, there are lessons and principles that can be applied from our findings to the penal system in its entirety.

This final report of the Commission should be a road-map for long term and fundamental reform. The crisis of excess that has engulfed our penal system must be challenged with new ways of thinking that are fit for the 21st century.

The Commission proposes that justice is more local and engages more closely with communities. A reduction in the use of prison will allow for reinvestment of resources into local communities and the use of solutions outside of criminal justice tramlines. Both justice reinvestment and restorative justice offer new models for reducing conflict and crime.

I would like to take this opportunity to thank all the Commissioners for their work over the last two years. I would also like to thank Professor Penny Green of King's College, London, and Andrew Neilson, of the Howard League for Penal Reform, for helping to produce this report.

Professor David Wilson, Chair of the Commission on English Prisons Today

List of Commissioners

Cherie Booth QC (President)	Barrister; Crown Court Recorder
Oscar Campbell	Graphic designer at the Howard League for Penal Reform, former prisoner
Baroness Jean Corston	Labour Peer and former MP; author of report on vulnerable women in the penal system
Professor Andrew Coyle CMG	Professor of Prison Studies, King's College London; former prison governor; founding Director of the International Centre for Prison Studies
Frances Crook	Director, the Howard League for Penal Reform
Dr Carolyn Hoyle	Reader in Criminology, Centre for Criminology; Fellow, Green College, University of Oxford
Professor Ian Loader	Professor of Criminology; Director of the Centre for Criminology, University of Oxford; Fellow, All Souls, University of Oxford
Kevin McGrath	Managing Director, F & C Reit Asset Management
Paul Myners (until October 2008)	Former Chair, Guardian Media Group, Land Securities Low Pay Commission and Board of Trustees of Tate; former Chair, Marks & Spencer (retired from the Commission when he was elevated to the House of Lords to become a government minister)
Stephen Nathan	Journalist and researcher, specialising in privatisation
Eddie Nestor	BBC Radio London

Professor Sir Duncan Nichol CBE	Former Chief Executive of the NHS; former Chair of (until June 2008) the Parole Board (retired from the Commission when he took up the post of Chair of the Court Services Board)
Dame Helen Reeves	Consultant on victim and witness issues: former Chief Executive, Victim Support
Professor Andrew Rutherford	Emeritus Professor of Law and Criminal Policy, Southampton University; member of the Parole Board; former prison governor
Clare Tickell	Chief Executive, Action for Children
Sue Wade	Chair, the Howard League for Penal Reform; consultant to criminal justice agencies; former deputy chief probation officer, Hampshire
Professor Martin Wasik	Professor of Law, Keele University; Crown Court Recorder; former Chair, Sentencing Advisory Panel
Dick Whitfield	Trustee, the Howard League for Penal Reform; former chief probation officer, Kent; former independent member of the Parole Board
Professor David Wilson (Chair)	Professor of Criminology, Birmingham City University; Vice-Chair, the Howard League for Penal Reform; former prison governor
Ruth Wyner	Psychotherapist, Group Analyst, former prisoner

The Administrative Secretary to the Commission is Barbara Norris, the Howard League for Penal Reform. Academic consultants to the Commission were Professor Penny Green, King's College London, and Dr Mary Bosworth, University of Oxford.

Executive summary

England and Wales has become a jurisdiction which punishes excessively, harshly and with little attention paid to the relationship between legislation and impact on prison numbers. Prison has become the defining tool of the punishment process and we now imprison more of our population than almost any other country in western Europe.

Do Better Do Less: The report of the Commission on English Prisons Today advocates a new approach of penal moderation and a number of fundamental reforms, including:

- **A significant reduction in the prison population and the closure of establishments**
- **The replacement of short prison sentences with community-based responses**
- **The dismantling of the National Offender Management Service (NOMS), including the break up of the centrally managed prison service**
- **With local authorities as lead partners, we suggest local strategic partnerships should be formed that bring together representatives from the criminal justice, health and education sectors, with local prison and probation budgets fully devolved and made available for justice reinvestment initiatives**

A penal crisis and the case for change

Crisis now defines the core of the English and Welsh penal system. Despite a 42% decline in the amount of crime reported to the British Crime Survey since 1995 the prison population has soared to an all time high of almost 84,000 in 2008 (83,810 on 1 August 2008 - more than doubling since 1992) and overcrowding has reached record levels.

Penal policy and the criminal justice system as a whole have been primarily responsible for driving up numbers. We have experienced over 15 years of intense criminal justice hyperactivity. This intense and punitive political activity has had the effect of encouraging a more fearful and insecure population. It has raised unrealistic expectations about the role prison can play in securing a safer society.

Prisons have become the stand-in for a health and welfare system which is also failing. Prisons have become vast warehouses for the dumping of people with problems society has failed to deal with - those with mental health needs, with histories of neglect and abuse, with drug and alcohol addictions.

The penal system is a huge drain on the public purse. Between 1997 and 2005 there was a five per cent average annual real terms increase in spending on public order and safety. In 2008 the criminal justice system as a whole in England and Wales received £22.7 billion, over a third more than it received ten years ago.

In order to counter this crisis of penal excess, the Commission advocates radical and transformational change: a significant reduction in the prison population and the closure of establishments; the replacement of short prison sentences with

community-based responses; and a clear acknowledgement that criminal justice is a blunt tool which cannot in itself provide lasting solutions to the problem of crime.

Lessons from abroad

The post war history of a number of liberal democracies, including our own, demonstrates that penal moderation is not only possible but can be successfully sustained in periods of increasing, as well as decreasing, crime rates.

New York City illustrates that it is possible at city level - in the midst of national mass incarceration - to reduce the prison population, to reduce crime and to create safer communities. This remarkable achievement appears to be the product of a concerted investment in mental health and drug treatments and housing and social support; specialist drug and community courts organised around problem solving and diversion from prison and the intellectual direction offered by two powerful research institutes.

In England and Wales a large, complex, obtuse system riddled with linguistic confusions creates barriers to public understanding and thereby excludes the wider public. By contrast, in Scandinavia there are clear, simple systems with few alternatives and the level of understanding and the clarity with which prison is perceived is correspondingly greater. It is acknowledged in policy and practice that the problems which bring most people to Norwegian and Finnish prisons cannot be resolved in the prison setting. Increased community safety is emphasised by ensuring that prisoners and those subject to community penalties have full access to the community's social and health resources.

Scotland has made explicit the connections between penal policy, the prison population and national well being. It is thus able to step outside the confines of criminal justice and to examine prison holistically in the context of other forms of civic and social investment.

Penal moderation - the intellectual foundation

Lessons from around the democratic world reveal that if we want to make our system of punishment more effective, more humane and more meaningful, we must develop a public philosophy which is grounded in first principles and which places the humanity of victims and prisoners at centre stage.

Restraint needs to be clearly enunciated as an ideal in penal discourse and incorporated at every level of our thinking on punishment if we are seriously to halt the current expansionist trajectory.

Penal moderation invites us to think of the benefits of a minimum necessary penal system and of prison as an institution of last resort. To sentence an offender to imprisonment should be a difficult action and one which requires the most rigorous of justifications when all other options of social control have been exhausted. Its use must even then be administered only in strict proportion to the harm done and with the aim of reducing the likelihood of exacerbating that harm.

The approach for policymakers should be three-fold. Firstly, the public fears about crime and disorder must be challenged with evidence and narratives from the real world of prisons and prisoners. Secondly, a public philosophy of punishment must be developed that substitutes moderation for excess. Finally, this public philosophy must be made real through a framework for delivering change.

A framework for change - making justice local

Localism confronts public alienation from the criminal justice system and offers communities the real democratic possibility of contributing to debate and policy on issues which sometimes define those communities.

Devolution of spending and an opening up of policy choices should lead to less money spent on process and more money spent on actions which produce beneficial outcomes for the whole community.

The Commission's proposals to enhance community safety are predicated upon the ability of local areas to shift resources from the funding of prison places to the funding of community needs.

Properly 'local', community-facing prisons should have access to mainstream health and social services rather than running their own specialised, yet largely ineffective, 'offender programmes'.

Localism will only succeed alongside the fundamental review of the use of custody that penal moderation requires.

Delivering change through justice reinvestment

Justice reinvestment seeks to re-balance the criminal justice spend by deploying funding that would otherwise be spent on custody into community based initiatives which tackle the underlying causes of much crime. Justice reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it.

Policy decisions in criminal justice tend to be driven by direct financial costs and short term savings. The wider social and economic costs are rarely taken into account. In the meantime, criminal justice costs have increased dramatically and without tangible success.

Prisons must be closed in order to reinvest capital and revenue funding into the communities which suffer most from deprivation and victimisation. Such moves would readily encourage public support and cooperation particularly if achieved and delivered through local democratic mechanisms.

In England and Wales it is time to revisit the ethical and operation concerns about private prisons and an exit strategy from current PFI contracts should be explored as a matter of urgency.

The current National Offender Management Service (NOMS) model is unwieldy, over-complex and ineffective. A truly local approach would require the breaking up not just of NOMS but the traditionally centralised management of the prison service.

The Commission would suggest that the example of the Scottish Community Justice Authorities (CJAs) provides the most promising basis of delivery. With local authorities as lead partners, we suggest local strategic partnerships similar to the CJAs should be formed that bring together representatives from the criminal justice, health and education sectors, with local prison and probation budgets fully devolved and made available for justice reinvestment initiatives.

The Ministry of Justice would retain the lead on policy issues and would set minimum standards. A criminal justice equivalent of the National Institute for

Clinical Excellence (NICE) would ideally provide an assessment of social outcomes for sentencing disposals in order to better inform sentencers and local strategy partnerships in their decision-making. The high security estate would also remain managed on a national basis.

Delivering change through restorative justice

While restorative justice has been mostly used to deal with conflicts in schools, community and neighbourhoods, and with anti-social behaviour to some considerable effect, the Commission agrees that there is still considerable potential for development in dealing with crime.

The Commission is supportive of restorative justice for more serious offences and offenders in the context of a pared down criminal justice system, in which restorative justice is used in conjunction with a reduced custodial sentence.

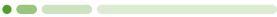
Low victim involvement in UK restorative justice schemes is attributed to organisational failings. Unless resources are shifted towards improved contact, training and support in relation to victims, restorative justice will remain a tool for the rehabilitation of offenders rather than a process that also brings a greater sense of justice to victims.

Restorative justice has an important function to play, but only if restorative processes are protected by legal and ethical safeguards which ensure that the very real risks of secondary victimisation for victims and disproportionate sentencing and net-widening for offenders are controlled.

Choosing the future

The Commission on English Prisons Today has spent two years reviewing the current penal crisis, and during this time we have seen tumultuous events on the world stage. In particular, the sense we are at a crossroads as a society, and that decisions taken now would be truly momentous in all fields of public life, was felt strongly.

In choosing the future, we must seek to do less and by doing less we can do better. Far from this being a counsel of despair, this is a call for hope. There is now an opportunity to refashion our penal system so that it reflects, and gives effect to, the society we wish to become. We must not let this opportunity slip away.



Do Better Do Less:

The report of the Commission on English Prisons Today

Introduction

England and Wales has become a jurisdiction which punishes excessively, harshly and with little attention paid to the relationship between legislation and the impact on prison numbers. Prison has become the defining tool of the punishment process and we now imprison more of our population than almost any other country in western Europe. Our community punishments are extensive, complicated and like our prisons are 'overcrowded' and driven by the logic of excess. Those we punish are largely the poor and disadvantaged, those with mental health needs and drug or alcohol addictions. We demonstrate little concern over our widespread use of prison and punishment for children.

We face a crisis of punishment – a crisis, however, which presents us with the opportunity to challenge the very foundations of the way we respond to crime. At a time of economic crisis and straitened public finances, we must rise to this challenge. Shame and a national sense of disquiet must now characterise responses to our criminal justice process and act to drive a new public debate about punishment. The debate must have as its core a demand for a much smaller, less punitive, more tolerant and ultimately more successful penal system – a system based on a philosophy of penal moderation. Local approaches should take precedence over centralised bureaucracy. A reduction in the use of prison and the prison estate will allow for reinvestment of resources into local communities and the use of solutions outside of criminal justice tramlines. Restorative justice offers new models for reducing conflict and crime.

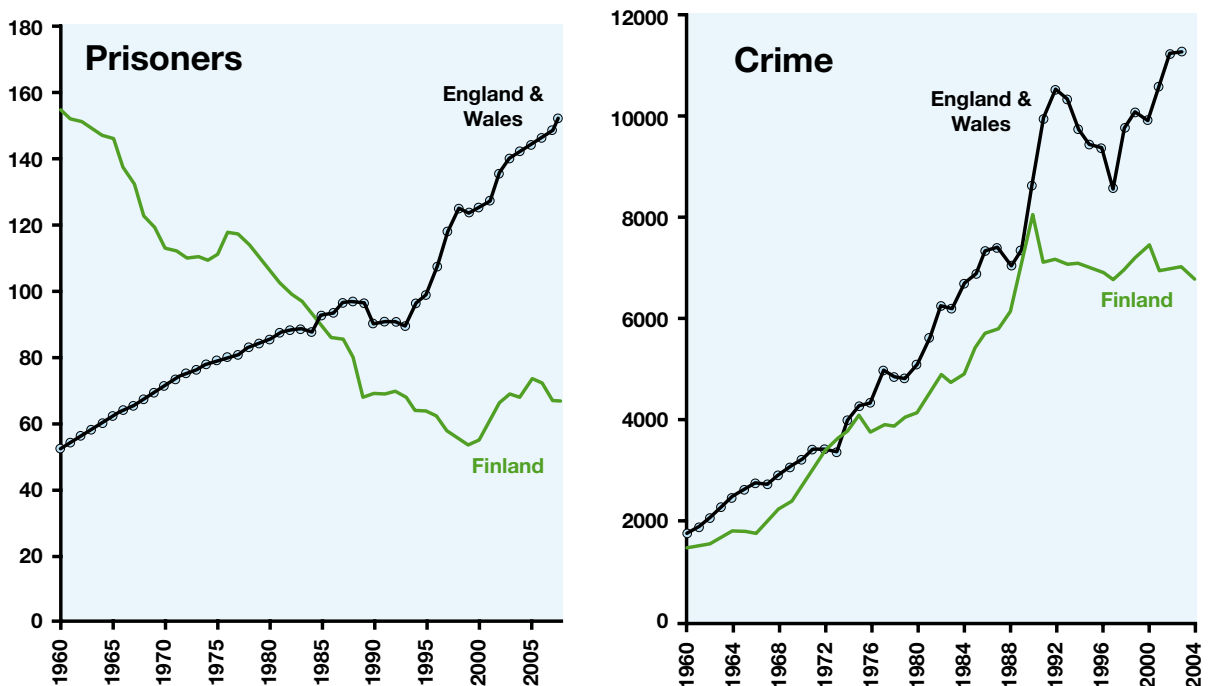
This report aims to set out a road-map, rather than an instruction manual, on how these changes in penal policy might be delivered. In pointing the way, the Commission on English Prisons Today hopes to highlight the unique opportunity we have to choose our future and the kind of society we wish to become.

Part One

A penal crisis and the case for change

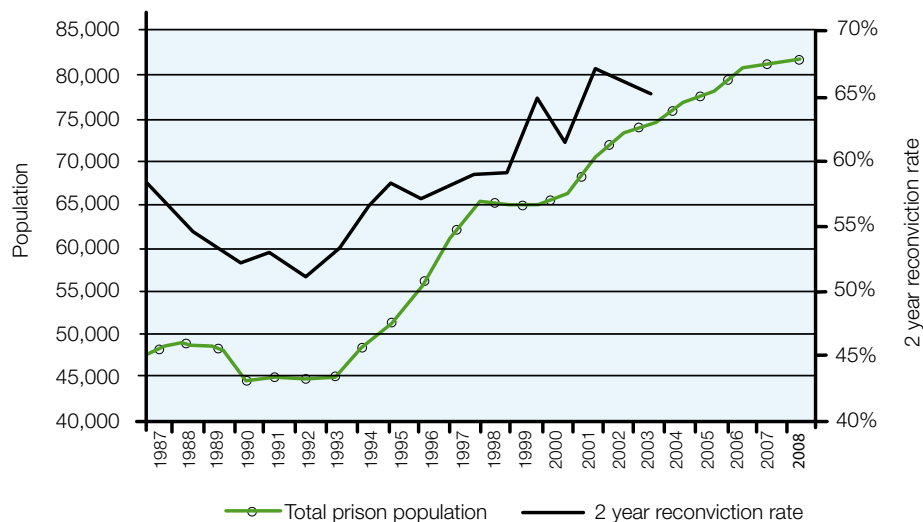
- 1.1 Prison is a perennially failing institution – not least because the dynamics which lead people to transgress and thus to enter prison – are beyond its control and capabilities. The international evidence is now incontrovertible – prison fails to reform, fails to deter, fails to assuage public concern and fails to make communities safe (Mathiesen 2006, Coyle 2006). Prisons can do great harm to individuals, to communities and to society.
- 1.2 Crisis now defines the core of the English and Welsh penal system. Over two years the Commission spoke to a host of leading figures from the criminal justice sector, and the overwhelming majority spoke of a penal system in crisis. Despite a 42% decline in the amount of crime reported to the British Crime Survey (Home Office 2008) since 1995 the prison population has soared to an all time high of almost 84,000 in 2008 (83,810 on 1 August 2008 – more than doubling since 1992) and overcrowding has reached record levels. Yet the growth in prison numbers has little or nothing to do with any decline in the amount of crime. Figure 1 demonstrates the disparity by comparing long term prison and crime rates in Finland with England and Wales. The graphs record the efforts taken in Finland to reduce its prison population against a rise in recorded crime between 1960 and 2006. As can be seen, during the same period England and Wales saw a steeper rise again in recorded crime, despite a steady growth in prison numbers. The tenuous link between crime and prison rates could not be starker.

Figure 1: Prison rates and crime rates Finland and England & Wales 1960-2006 (Source: Lappi-Seppälä 2009)



- 1.3 Neither does prison have any record of success in reducing reoffending. Two thirds of all prisoners are reconvicted within two years of their release while the parallel figure for children under 18 leaving prison is over 75 percent (Ministry of Justice 2008a). As Figure 2 below demonstrates, 'raw' reconviction rates before statistical modelling have continued to rise as the prison population has grown.

Figure 2: The prison population and two year prison 'raw' reconviction rates (Source: Hedderman 2008)



- 1.4 Despite all the criminological evidence which demonstrates the multiple failure of prison as an institution, the government has proceeded with the most extensive prison expansion programme in UK history. During the work of this Commission the spectre of 'Titan' prisons loomed large. The government was intent on building 20,000 new prison places by 2014 and as part of that commitment moved ahead with Lord Carter's *Securing the Future* recommendations for the building of three 'Titan' Prisons – gigantic carceral establishments which were each to provide for the accommodation of 2,500 prisoners (House of Lords Written Answers, 19 June 2007; col. 97; Carter 2007). In April 2009 the government abandoned plans for the Titan jails favouring instead the building of five very large prisons each with a capacity to hold 1,500 prisoners. As the Liberal Democrat justice spokesman, David Howarth, commented, 'How is building five very big, dare I say Promethean prisons instead of three Titan prisons any sort of change of direction?' (BBC 27 April 2009). The futility and hopelessness of this endeavour is lost on a government determined to build its way out of crisis – a crisis largely unrelated to numbers of offenders or patterns of offending; a crisis which will only be exacerbated by yet more expansion of imprisonment.

Figure 3: New prison places provided since 1997

(Source: Parliamentary Answer, 1 June 2009, *Hansard*, col. 80W)

Financial year	New prison places provided (1)
1997-98	4,900
1998-99	1,200
1999-2000	1,600
2000-01	600
2001-02	900
2002-03	1,800
2003-04	1,300
2004-05	2,600
2005-06	1,100
2006-07	300
2007-08	2,300
2008-09	2,100

(1) To nearest 100

In addition to the new places provided in this table, approximately 4,000 places have been provided by other means such as cell reclaims or doubling up

1.5 Penal policy and the criminal justice system have been primarily responsible for driving up prison numbers. We have experienced over 15 years of criminal justice hyperactivity. Since 1997 the government has created over 3,000 new criminal offences – almost half of which can attract a prison sentence - introduced over 50 bills and enacted 23 criminal justice acts. This represents a disturbing moment of exceptionalism in English penal history and one which demands immediate and critical reflection. In the 60 year period between 1925 and 1985, for example, successive governments passed only six criminal justice acts – just one per decade. Figure 4 illustrates the recent acceleration in legislation by listing law and order legislation since 1980.

Figure 4: List of 'law and order' legislation 1980-2009**1980-1989**

1. Magistrates' Courts Act 1980
2. Indecent Displays (Control) Act 1981
3. Criminal Justice Act 1982
4. Policing and Criminal Evidence Act 1984
5. Prosecution of Offenders Act 1985
6. Public Order Act 1986
7. Criminal Justice Act 1988

1990-1999

8. Criminal Justice Act 1991
9. War Crimes Act 1991
10. Criminal Justice Act 1993
11. Criminal Justice and Public Order Act 1994
12. Criminal Appeal Act 1995
13. Criminal Procedure and Investigations Act 1996
14. Police Act 1996
15. Prisoners' Earning Act 1996
16. Crime (Sentences) Act 1997
17. Crime and Disorder Act 1998
18. Youth Justice and Criminal Evidence Act 1999

2000-2009

19. Powers of the Criminal Courts (Sentencing) Act 2000
20. Crown Prosecution Service Inspectorate Act 2000
21. Regulation of Investigatory Powers Act 2000
22. Criminal Justice and Court Services Act 2000
23. Sexual Offences (Amendment) Act 2000
24. Anti-terrorism, Crime and Security Act 2001

25. International Criminal Court Act 2001
26. Proceeds of Crime Act 2002
27. Anti-Social Behaviour Act 2003
28. Courts Act 2003
29. Crime (International Co-operation Act) 2003
30. Criminal Justice Act 2003
31. Extradition Act 2003
32. Sexual Offences Act 2003
33. Asylum and Immigration Act 2004
34. Domestic Violence, Crime and Victims Act 2004
35. Commissioners for Revenue and Customs Act 2005
36. Prevention of Terrorism Act 2005
37. Serious Organised Crime and Police Act 2005
38. Fraud Act 2006
39. Immigration, Asylum and Nationality Act 2006
40. Police and Justice Act 2006
41. Terrorism Act 2006
42. Violent Crime Reduction Act 2006
43. Corporate Manslaughter and Corporate Homicide Act 2007
44. Serious Crime Act 2007
45. Criminal Evidence (Witness Anonymity) Act 2008
46. Criminal Justice and Immigration Act 2008
47. Regulatory Enforcement and Sanctions Act 2008
48. Coroners and Justice Bill 2009
49. Policing and Crime Bill 2009

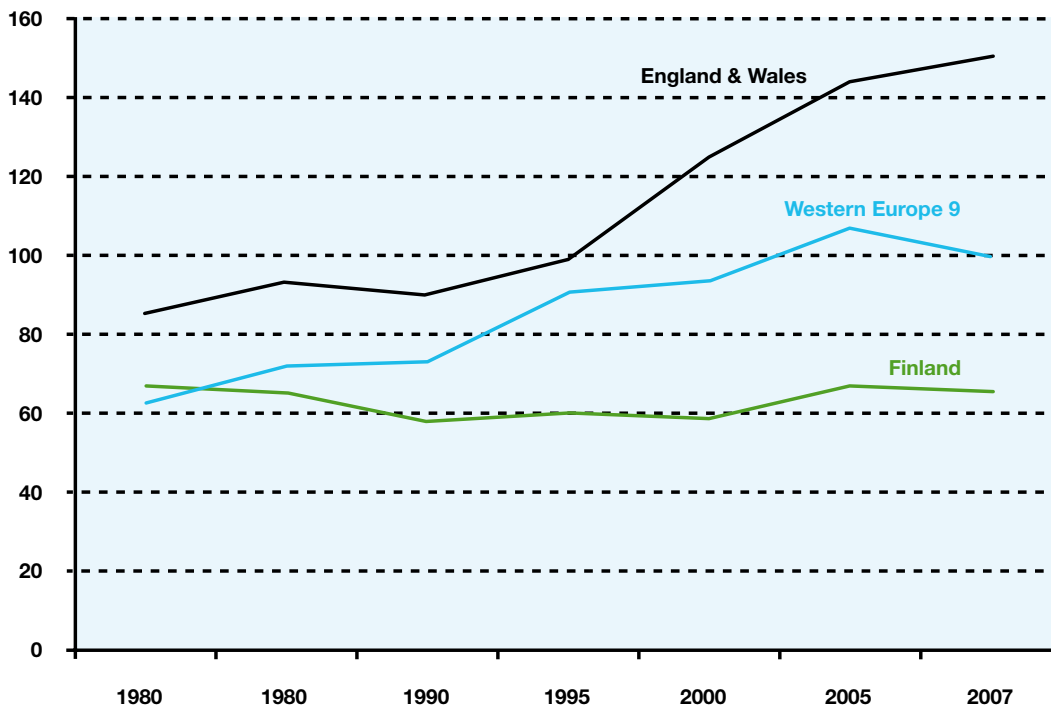
1.6 With a prison population rate of 153 per 100,000, England and Wales lock up more prisoners per head of population than other countries in western Europe apart from Spain (160) and Luxembourg (155). This is some 60 per cent more than countries such as Belgium, France, Germany, Ireland and Italy (World Prison Population List, 2009). Director of the King's College International Centre for Prison Studies, Rob Allen, commented on publication that:

'Given the high financial, social and ethical costs of imprisonment, the data should prompt policy makers in every country to consider what they can do to limit the size of their prison population. Excessive use of imprisonment does nothing to improve public safety.'

(Allen 2009)

Figure 5: Trends in prisoner rates in Western Europe 1980-2007

(Source: Lappi-Seppälä 2009)



1.7 According to the British Crime Survey (BCS) between 1997 and 2007 all crime fell by 32 per cent, burglary fell by 55 per cent, violent crime by 34 per cent and vehicle thefts by 52 per cent. The BCS claimed that the risk of becoming a victim of any form of crime in 2008 was 24 per cent, the lowest rate since the creation of the BCS in 1981. The government's prison building programme is thus not a response to an increasing crime rate. Rather it represents a wholly misleading but powerful declaration that the protection of the public and the prevention of crime are best addressed by greater punishment and more imprisonment.

- 1.8 One of the Commission's conclusions - from all the evidence gathered during the two years of its investigation - is that crime rates in England and Wales have not impacted on the rate of imprisonment. Despite an increase in crime during the years of the depression in 1930's Britain, for example, the prison population remained stable. Since that period, irrespective of whether crime rates have risen, fallen or remained stable, there has been an almost inexorable rise in the rate of imprisonment. Precisely the same observation was made in respect of Scottish rates of imprisonment by the Scottish Prisons Commission (2008:16).
- 1.9 Our obsession with crime and punishment is a relatively new phenomenon. It is only in the last 30 years that crime and justice have assumed the political force which now drives so much of English electoral politics. Elected to office on promises of reducing crime and instigating tougher punishments for offenders, governments since the late 1970s have cultivated then appealed to punitive misunderstandings of crime, fear, risk and punishment. We have grown used to a mantra that 'prison works' and that severe forms of punishment are the only solutions to problems of crime and disorder.
- 1.10 England has, however, much to learn from its own little publicised but sometime laudable penal history. Between 1908 and 1939, England and Wales experienced the world's longest period of decarceration. In this 31 year period there was a steady yet dramatic reduction in the use of the prison sanction. The prison population at the end of this period had been reduced by a staggering 50 percent (from 22,029 prisoners to just over 11,000) and 20 prisons were closed. All the more extraordinary was the fact that this reduction was the result of a conscious desire on the part of politicians and civil servants to restrict the numbers of those imprisoned. Winston Churchill as Home Secretary between 1910 -1911 actively set about reducing the number of people being sent to jail by instigating an amnesty in the form of executive release. Churchill's first principle of prison reform was "to prevent as many people as possible getting there at all" (Bailey 1985, p.10). Churchill understood the test that prison poses for society:

'The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any country. A calm, dispassionate recognition of the rights of the accused and even of the convicted criminal, ... [and] the treatment of crime and the criminal mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue within it.' (1910, House of Commons 25 July)

We also have a more recent example of executive penal moderation. Between 1979 and 1992, the UK government again adopted a more restrained and controlled approach to penal policy. Under the stewardship of successive home secretaries the Conservative government actively reduced the prison population through administrative fiat by increasing remission from one third to a half. As David Faulkner reported to the Commission at one seminar, the specific political conditions pertaining to that period are no longer as conducive to penal moderation (i.e. a committed home secretary, a prime minister prepared not to interfere, a broadly sympathetic opposition and a less virulent mass media). Nonetheless, this recent history should demonstrate that the current crisis of penal excess might more usefully be understood as an aberration from which we should distance ourselves.

Wales

The Commission on English Prisons Today is directly named after the landmark book *English Prisons Today* written by Stephen Hobhouse and Fenner Brockway and published in 1922 (see Annex A). During the Commission's work it became clear that much of our thinking, particularly on penal moderation, would revolve around national character and lessons drawn from Scandinavia and from devolved Scotland. This has led to a focus on England and Englishness but with references to England and Wales in the strict sense of a criminal justice jurisdiction, particularly in relation to citing available statistics. While beyond the scope of this report, the Commission's findings on national character and on localism may well suggest that criminal justice policy in Wales, as in Scotland, should be devolved.

- 1.11 There is little public confidence in existing systems of punishment yet public understanding of prisons, prisoners and the limitations of punishment is not helped by the fact that good information is rarely provided. Until our communities are better informed about the nature and impact of punishment, debate is likely to be driven by the ideological argument that 'prison works' despite all evidence to the contrary. A variety of figures and other evidence in this report demonstrate that the links between the reported incidence of crime related problems, level of concern about crime and support for punitive anti-crime measures are tenuous.
- 1.12 What is much clearer, however, is that public concern about crime is strongly associated with prior political initiatives on crime and punishment issues (Beckett 1997:10). The intense and punitive political activity in the criminal justice field of the past 15 years has had the effect of encouraging a more fearful and insecure population. It has raised unrealistic expectations about the role prison can play in securing a safer society.
- 1.13 Prisons, moreover, have become the stand-in for a health and welfare system which is also failing the most vulnerable. Prisons have become vast warehouses for the dumping of people with problems society has failed to deal with – those with mental health needs, with histories of neglect and abuse, with drug and alcohol addictions. Worse, prison actually exacerbates and fosters many of these physical and emotional miseries. Prison does little to control drug abuse - one in five prisoners report opiate use in prison (Singleton et al 2005) - it exposes vulnerable people to sexual assault; it increases the risk of suicide and self harm. And as the reconviction rates quoted earlier make clear, prison also schools young offenders into more entrenched patterns of criminal behaviour.
- 1.14 More and more children and young people are being punished through the criminal justice process and we have witnessed a continuous rise in the number of children and young people sentenced to custody over the past ten years. According to the children's charity Barnardo's custody for children aged between 10 and 14 has increased by 550 percent since 1996 (Barnardo's 2008).
- 1.15 Over one third of men serving prison sentences had a significant mental health problem, nearly one in ten had experienced psychosis and on in four had attempted suicide in prison. Over 75% of men on remand and nearly two thirds of male prisoners met the diagnosis of having a personality disorder (Mind 2007). Moreover, men in prison have a high rate of severe mental health problems such as schizophrenia or delusional disorders - nearly 10% compared with less than 1% of the general population.

- 1.16 The 1998 Office of National Statistics Survey of Psychiatric Morbidity among prisoners in England and Wales found that 13 percent of women suffered from delusional or schizophrenic disorders – 20 times higher than the rate evidenced in the general population. Fifty percent of women in the study were diagnosed with personality disorders. Research by the Howard League for Penal Reform has shown that around 54% of all self injury incidents in prison are committed by women, despite the fact that only 5% of the prison population is female. Overall, self injury rates for all men, women and children in prison increased by 37% between 2003 and 2007 – four times the increase in the prison population during that period (Howard League for Penal Reform 2008).
- 1.17 Prison is demonstrably a highly selective tool for social control. It disproportionately targets black and ethnic minorities, the poor, the young, the troubled and the troubling. Prison, for example, is rarely deployed as a punishment for those responsible for state and corporate crimes.

VICTIMS AND OFFENDERS

'Apart from compensation orders and some other aspects of restorative justice, the criminal justice process cannot provide the services which victims need. Steps should always be taken to avoid causing secondary victimisation during the process but services need to be provided elsewhere.' – Helen Reeves, at a Commission meeting

Government statements in recent years have claimed that policy has been guided by the notion of rebalancing the system in favour of the victim and not the offender. Aside from the rather simplistic division this suggests - many offenders are themselves victims, particularly among young people - the changes this has wrought have been largely cosmetic. Victim Personal Statements in court and the appointment of a Victims Champion have failed to address more fundamental issues. For example, despite the vast increases in criminal justice expenditure since 1997, criminal injuries compensation has had no increase at all. In 2004-5, criminal injuries compensation received £200m - the same amount it received in 1998-9. In real terms, then, the commitment to victims extends to a decrease in compensation funding of 13 percent (Solomon et al, 2007).

Offenders are often victims of crime themselves. At this point, they are likely to be denied the status of victim. Criminal injuries compensation can be refused or reduced as a result of previous and unrelated offences. At a Commission seminar on victims, the importance of this failure to address victimhood was made powerfully:

'It seems to me that we are 'missing a trick' in relation to these issues. The whole point of victim compensation and, to some extent, services is to demonstrate solidarity with the victim, on behalf of the community, and to acknowledge that criminal behaviour is unjustified and unacceptable. Services, in addition, aim to support the victim in achieving a constructive resolution to the event and restoring a sense of autonomy and self worth. Feelings of fear, anger and revenge are normal and entirely justifiable following a crime but are less likely to be acted upon when respect and support is given. The incident of victimisation could prove to be an ideal point at which to intervene in the spiral of repeated criminal behaviour... By contrast, current practice appears to reinforce offending attitudes and behaviour by providing recognition and services in the event of criminal behaviour and by denying these in the event of victimisation.' (Reeves 2008)

1.18 The penal system is a huge drain on the public purse. Between 1997 and 2005 there was a five per cent average annual real terms increase in spending on public order and safety. In 2007-8 the criminal justice system in England and Wales received £22.7 billion, over a third more than it received ten years ago. As was pointed out to the Commission at a seminar on the economics of penal policy by Richard Garside, Director of the Centre for Crime and Justice Studies, a consequence of this exponential rise is that the UK is now spending a greater proportion of its gross domestic product on law and order than any other country in the Organisation for Economic Co-operation and Development (OECD), including the United States and major European countries such as France, Germany and Spain (Solomon et al, 2007). This is not a fact of which to be proud; it is a mark of immense public policy failure.

1.19 The increase in the prison population of England and Wales is driven by five direct factors:

- **an increased use of immediate and longer custodial sentences**
- **the high number of prisoners serving short custodial sentences of six months or less**
- **the increased use of imprisonment for women**
- **an increase in breaches of parole licence and community sentences, and**
- **legislative changes such as the indeterminate sentence for public protection (IPP).**

In the period 1995 to 2006, immediate custodial receptions have increased by 21% and community penalties increased by 47%, while the use of financial penalties in the Crown Court has declined by 46%. The average length of Crown Court sentences (excluding indeterminate and life sentences) has increased by 20% between 1995 and 2006, with magistrate courts remaining level with an average sentence length of three months over the same period (Carter 2007). Of the 90,261 individuals who were received into prisons under sentence of immediate imprisonment in 2007, over 55% were serving sentences of six months or less. Overall sentenced receptions rose by 12 per cent between 1997 and 2007, but the rise was proportionally far greater for females (up 66 per cent) than for males (up 8 per cent). For both men and women these increases were due in large part to very significant rises in breaches (Ministry of Justice 2008b; Corston 2007). Finally, poorly devised legislation such as the indeterminate sentence for public protection (IPP) introduced in the Criminal Justice Act 2003 has caused the penal system a great deal of well-documented difficulty, with the government struggling to manage the numbers of IPP prisoners going into prison (Howard League for Penal Reform 2007). In March 2009, there were 5,059 IPP prisoners in the system, with only 47 having been released since 2005 (Howard League for Penal Reform 2009).

'Short sentences are not a solution to the problem of persistent offending; they are the cause of it' (Scottish Prison Commission 2008:39)

- 1.20 The Commission is primarily concerned to develop an evidence base which will provide the tools for an informed public debate about the relationship between prisons and public safety. Evidence drawn by the Commission from the United States of America, Finland, Norway and the UK suggests that increased use of imprisonment does not deliver a safer society.
- 1.21 We find very clear parallels between the current UK financial crisis and the crisis now facing its penal policy and practice. The most significant of those parallels relates to excess. Just as the banking sector has squandered and gambled with the finances of ordinary investors in pursuit of short term gain so too has penal policy been driven by a sense of unregulated affluence and expansion. Tax payers' money has been thrown into the building of what we know are institutions destined to fail. Both sectors now need radical reform. The widespread acknowledgement that an unregulated free market leads to collapse (both financial and moral) must now be extended to the way in which we approach punishment and prisons. It is time to take stock. Expansionism was driven in a period of economic affluence. Recession presents us with an opportunity for serious and parallel reflection – the old economic order is giving way to demands for increased and regulated responsibility in the financial sector. Now is the time to extend these demands to the punishment sector.
- 1.22 In order to counter this crisis of penal excess, we would advocate radical and transformational change: a significant reduction in the prison population and the closure of establishments; the replacement of short prison sentences with community-based responses; and a clear acknowledgement that criminal justice is a blunt tool which cannot in itself provide lasting solutions to the problem of crime. These proposals represent an evidence-based response which is much more likely to build community security and confidence.

KEY LESSONS

- Crisis now defines the core of the English and Welsh penal system. Despite a 42% decline in the amount of crime reported to the British Crime Survey since 1995 the prison population soared to an all time high of almost 84,000 in 2008 (83,810 on 1 August 2008 – more than doubling since 1992) and overcrowding reached record levels
- Penal policy and the criminal justice system have been primarily responsible for driving up prison numbers. We have experienced over 15 years of criminal justice hyperactivity. This intense and punitive political activity has had the effect of encouraging a more fearful and insecure population. It has raised unrealistic expectations about the role prison can play in securing a safer society
- Prisons have become the stand-in for a health and welfare system which is also failing the most vulnerable. Prisons have become vast warehouses for the dumping of people with problems society has failed to deal with – those with mental health needs, with histories of neglect and abuse, with drug and alcohol addictions
- The penal system is a huge drain on the public purse. Between 1997 and 2005 there was a five per cent average annual real terms increase in spending on public order and safety. In 2008 the criminal justice system as a whole in England and Wales received £22.7 billion, over a third more than it received ten years ago
- In order to counter this crisis of penal excess, the Commission advocates radical and transformational change: a significant reduction in the prison population and the closure of establishments; the replacement of short prison sentences with community-based responses; and a clear acknowledgement that criminal justice is a blunt tool which cannot in itself provide lasting solutions to the problem of crime

Part Two

Lessons from abroad

- 2.1 The post war history of a number of liberal democracies, including our own, demonstrates that penal moderation is not only possible but can be successfully sustained in periods of increasing, as well as decreasing, crime rates. Finland consciously and dramatically reduced its very high post-war prison population. Germany and Norway have both for many decades sustained a relatively minimal use of the prison sanction and Canada has managed to reduce prison numbers by 11% since 1997. Closer to home, the minority nationalist government in Scotland is seeking to develop an identity which is not defined by an excessively punitive character. As Kenny MacAskill, the Scottish Cabinet Secretary for Justice, told us:

'the Government refuses to believe that the Scottish people are inherently bad or that there is any genetic reason why we should be locking up twice as many offenders as Ireland or Norway.'

The Commission drew a great deal of evidence from its visits to America, Norway, Finland and Scotland and that evidence informs much of this report.

Lessons from America

- 2.2 The United States of America must act as a stark warning to British penal policy makers. If we continue with our current rate of imprisonment and the penal policies which have driven it; and if we lack the confidence and political will to intervene and impose limits on the penal juggernaut, then America will be our future too.
- 2.3 We have much to learn from the disastrous impact that uncontrolled mass imprisonment has had on American society. With over 2.4 million Americans currently in penal custody the United States now has the highest documented prison population and the highest rate of imprisonment in the world. The US incarcerates one in every hundred of its population (Pew Charitable Trusts 2008) and the extent of prison purview in everyday terms means that one in every 31 adults (or 7.3 million Americans) is either in prison, on parole or under some form of correctional supervision. America resorts to the punishment of imprisonment 5-10 times more frequently than its European counterparts. It is America's poor and minority communities who are most affected with some 70% of American prisoners either Black or Hispanic. The consequences for the families and communities most affected and for US society in general are manifold: the disenfranchisement of over five million current and former prisoners, the often permanent fracturing of family life; widespread increases in physical and mental illnesses and drug abuse; the creation of an underclass with little or no investment in law abiding society. These consequences can cause more grievous harms than many of the offences which initially lead to imprisonment. Mass imprisonment is both a fundamentally alienating and corrosive force within society.

- 2.4 As in the UK the expansion dates back some four decades. Since 1980 the American prison population has quadrupled despite a real decline in violent and property crime since the early 1990s. Between 1965 and 1993 crime control expenditures increased from \$4.6 billion to \$100 billion (and from 0.6% of GDP to 1.57% of the GDP) (Beckett 1997). This expansion has been driven in large part by the mandatory sentences invoked for drugs offences as part of successive administrations continuing war on drugs.
- 2.5 We must step outside the momentum of prison expansionism and ask ourselves – what kind of a society has no natural stopping point? What kind of society has no organic or manufactured inhibitions against the consequences of untrammelled and excessive punishment?
- 2.6 While a popular hunger for punitive disposals is still prevalent within the American public, research demonstrates that:
- ‘When given a choice most Americans still believe that spending money on educational and job training programs is a more effective crime fighting measure than building prisons’ (Beckett 1997:4)*

There is however, some recent evidence to suggest that the enthusiasm for American mass imprisonment may be waning. Many states are struggling to find the resources to fund the crippling costs associated with mass imprisonment (Jacobson 2005). There are also growing concerns over the extent of violence in US jails (Gibbons and Katzenbach 2005); the long term impact of disproportionate imprisonment on minority communities (Loury 2007) and the over-representation of parole violators, many of whom are returned to custody for minor administrative breaches (Clear 2007; Petersilia 2007). These concerns have stimulated public inquiries, commissions and new legislative and criminal justice initiatives. There are, as a result, pockets of hope and inspiration to be drawn from some recent developments inside America. In October 2007, for example, a strategic Federal committee – the Joint Economic Committee - held a series of hearings in Washington DC into ‘The social, political and economic costs of mass incarceration in the US’. Of particular importance were discussions into the racial dynamics of prison and the impact these dynamics had on African American communities. There appears to be a new mood receptive to change in states as politically distinct as New York and Alabama. Most encouraging and potentially far-reaching has been the removal of the federal mandatory sentencing guidelines which many saw as a major contributor to the prison population.

- 2.7 New York City illustrates that it is possible at city level – in the midst of national mass incarceration - to reduce the prison population, to reduce crime and to create safer communities. This remarkable achievement appears to be the product of a concerted investment in mental health and drug treatments and housing and social support; specialist drug and community courts organised around problem solving and diversion from prison and the intellectual direction offered by two powerful research institutes – the Vera Institute of Justice and the Center for Court Innovation. These two bodies have pioneered a wide spectrum of justice strategies designed to rebuild communities and divert offenders from custody.

Lessons from Scandinavia

- 2.8 While differences in scale undoubtedly impact upon any comparison England, like Scotland, can draw fruitfully from the experience of Scandinavian penal policy and practice. The Commission visited prisons, attended seminars and held high level discussions with politicians, prison officials, academics and policy makers in Helsinki and Oslo.
- 2.9 Underpinning post war Scandinavian penal policy is an understanding that prison should be used very sparingly and that the social problems which lead to most forms of crime can only be addressed outside the punishment framework offered by prison. Commenting on the expansive penal programmes adopted by America and the UK which invoke slogans asserting the inevitability and unassailability of prison, Tapio Lappi-Seppälä, the Director of the Finnish Research Institute of Legal Policy writes 'a common feature of these programmes also is that the solution to social problems is sought in places where it cannot be found, in the penal system' (Lappi-Seppälä 2002).
- 2.10 Moderation, simplicity, political distance and long term stability characterise the Scandinavian approach to punishment and imprisonment. It is clear from the evidence taken by the Commission that an approach based on principled rationale, rather than political populism or emotion, has played a key role in both countries in determining the parameters of acceptable imprisonment. Importantly crime and punishment have not become populist tools in the currency of political or public discourse. Prison is designed to punish and as such the traditional rationales used to justify prison such as deterrence and rehabilitation are largely absent from policy rhetoric and practice. It is acknowledged in policy and practice that the problems which bring most people to Norwegian and Finnish prisons cannot be resolved in the prison setting.
- 2.11 An important structural consequence of this approach is that prisons in general are small and are strongly linked to their local communities and to the resources which exist in these communities. Increased community safety is emphasised by ensuring that prisoners and those subject to community penalties have full access to the community's social and health resources. This is contrasted to the English model of having a raft of parallel 'offender services', giving rise to terms such as 'offender health' and 'offender learning'. In Norway their approach is described as the 'import model'; that is, existing community services are imported into prisons.

- 2.12 Finland is particularly interesting because of its transformation from having one of the highest rates of imprisonment in Western Europe to having one of the very lowest. In the 1950s the Finnish rate of imprisonment was 187 per 100,000, four times higher than its Scandinavian neighbours. By 2000 the rate was 55 per 100,000 and 68 per 100,000 in 2008. This remarkable and sustained decline was the result of a conscious political and intellectual consensus post-war to align with the 'Scandinavian welfare family'. A central pillar in that alignment was a wholesale reform of penal policy. 'Harm reduction' and 'fair distribution' became the guiding aims of the new penal policy – aims which ensured the rhetorical marginalization of criminal justice from social problems and the emergence of a new ethical framework in which prevention was linked to social and situational issues rather than to traditional criminal justice activity – fairness replaced severity; harm reduction replaced simple deterrence.
- 2.13 More recently, Finland's first national crime prevention programme has concentrated on situational and local crime prevention. Crucially these reforms are underpinned by the idea that prison cannot solve the problem of crime. Tapio Lappi-Seppälä contrasts the Finnish approach with that adopted in England and Wales and the United States:
- 'Finnish criminal policy may well be characterized as both rational and humane. Elsewhere in the world, most notably in the U.S. and U.K., criminal policy has become more and more a tool of general politics, a way to transmit "symbolic messages", a way to "take a stand", a way to "make strategic choices", and so on.'* (Lappi-Seppälä 2002)
- 2.14 In both Finland and Norway crime events and criminal justice responses are of little interest to either politicians or the media. Public attitudes towards crime and punishment were quoted in both countries as being very different to the UK, with politicians and the press able to explore options on a more rational and restrained basis. A largely subscription based daily press in Finland - one not reliant on selling papers by headline appeal - was offered as one explanation. Crime here does not claim predominance as the social problem as it does in the tabloid populism of UK politics but rather is merely one of many social problems. 'Finns' it was argued by one official the Commission met, 'are not very interested in punishment'.
- 2.15 At the same time, and seemingly in contradiction to this supposed lack of interest, a general and informed understanding of the system shapes public attitudes in Finland. This relates directly to the issue of 'simplicity'. In England and Wales a large, complex, obtuse system riddled with linguistic confusions creates barriers to public understanding and thereby excludes the wider public – with jargon such as 'end to end offender management', 'the seven pathways to reducing reoffending' and, to quote the NOMS framework document, 'more innovation to find new ways of working to integrate service delivery with constructive challenge to historic patterns of delivery, whilst continuing to deliver proven correctional services well and harnessing the skills and creativity of people and organisations across the criminal justice sector' (Ministry of Justice 2008c). By contrast, in Scandinavia there are clear, simple systems with few alternatives and the level of understanding and the clarity with which prison is perceived is correspondingly greater. Success in penal policy produces simple systems that the public can understand; it is failure that breeds opaque complexity.

'The ongoing total reform of the Finnish Penal Code has been carried out with respect for the principles of due process and legal safeguards. The reform of the penal system has concentrated on the expansion of community-based measures. Also the first national crime prevention programme, approved by the government in 1999, puts its focus on situational and local crime prevention. For the time being, it still is hard to imagine that the claim that "prison works" will find its way into Finnish political campaigns.' **Dr Tapio Lappi-Seppälä, Director of the Finnish National Research Institute of Legal Policy**

- 2.16 It is apparent that experts, including senior academics and public officials play a key role in influencing Scandinavian criminal justice systems. These groups play a driving role in promoting a strong ethos of 'penal moderation'. Discussions and debates around criminal justice policy and practice have tended to take place outside the domain of politics and the central participants have been criminal justice and penal experts not party politicians.
- 2.17 Ultimately, there appears to be a virtuous circle in Scandinavian criminal justice systems. That criminal justice is dealt with humanely, efficiently and simply ensures that there is little reason for the public to become exercised over crime and punishment issues.

The criminal justice system and the media

The Commission recognises the crucial role of the mass media in framing perceptions, discussions and debate around prisons.

We know that in the UK and in many other western democracies the mass media forms most people's primary source of knowledge about crime, punishment, prisons and the criminal justice process (Cavendar 2004). The media not only define and limit the scope of our understanding about the nature of crime and punishment but they also determine perceptions of the scale of the problem crime presents and the parameters of what can be done by way of 'solution'. In England and Wales perceptions of crime and punishment have a major influence on public opinion and have encouraged the growth in what is commonly described as 'punitive populism'. Surette (1998) captures this populism well when he describes a certain species of crime reporting as the 'law of opposites' – crime is presented as increasing when it is in reality falling; prisons are presented as holiday camps rather than the overcrowded and despairing institutions they are and that courts are soft on offenders when in fact sentences have become increasingly more severe.

Despite a national rate of violent crime of 6% one study found that in the course of one month 65% of newspaper stories in Britain dealt with personal violent crime stories (Williams and Dickinson 1993). This degree of inflation contributes to a very serious distortion in the public's understanding of crime and punishment. The resultant pressure on politicians has meant that 'governing by headline' is more rampant in the field of criminal justice than any other public policy arena.

Commissioners in their visits to Norway and Finland were struck by the lack of media involvement, or indeed much interest, in defining the public debate about crime and punishment. The Scandinavian criminal justice model encourages this and Scandinavian society tolerates a system governed in part by experts which might otherwise be seen as undemocratic. Arguably, a lapse of faith in

similar arrangements has occurred in England and Wales over recent decades (Loader 2006) and the media are only reflecting a profound public disengagement with the criminal justice system. Penal populism in England and Wales has failed, however, to increase public faith in the criminal justice system, and it is time to find a new way to engage the public and offer the media a more positive message to promote on law and order.

Commissioners found something of this new approach in New York City. Like the UK, New York City has witnessed a crime drop of similar magnitude over the past few years. Unlike England, however, New York both celebrates and broadcasts its newly acquired status as one of the safest cities in America. The new and optimistic mood created in New York as a result of lower imprisonment and lower crime is much more fertile ground for penal moderation initiatives. A drop in the rate of criminal violence is an opportunity to be seized – an opportunity to recast penal policy and public attitudes.

At a seminar on the role of the media held by the Commission, one paper argued that:

'There is a middle ground which involves out-reach, education and consultation...In England and Wales, the public still sees judges as unrepresentative and out of touch with the community. Criminal justice professionals should make greater efforts to explain specific decisions, wherever there are no legal constraints upon such explanations.' (Roberts 2008, p.2)

Commissioners were struck by the professional pride and high morale evinced by police officers and other criminal justice professionals in New York City. By contrast, the Commission was told that in England and Wales, 'research by MORI has found that most criminal justice professionals - particular the police - convey a negative message about the justice system' (Roberts 2008:2-3).

It should also be recognised that the landscape of the mass media is rapidly changing. Online news sources and free daily papers have become more accessible and popular, with the newspaper industry in particular under threat. There is some evidence to suggest that the reporting and reading of crime and punishment stories is changing through the newer medium of the internet and the free daily. Newer forms of news media, relying on agency copy to generate much of their regular content, are more neutral in tone and clearly delineate between opinion and reporting. News appears to be valued for its own sake and there is no discernible editorial line affecting the coverage given to particular stories.

At the same time, the 'unmediated' - if moderated - comments on news sites and forums would appear to suggest that penal populism will remain alive and well in any new media landscape. Certainly, at the Commission's seminar on the role of the media, Mary Riddell of The Daily Telegraph emphasised that if newspapers in particular were to perish then this was far from any guarantee of a more positive public discourse flourishing. If the direction these developments will take is as yet unclear, we should nonetheless be cognisant of the fact that the media's role in shaping public perceptions is by no means an unchanging constant.

Lessons from Scotland

- 2.18 Much closer to home, Scotland has taken a courageous lead in the UK by taking serious steps to address its prison crisis not only pragmatically but most significantly, at the level of penal philosophy. Like post-war Finland, Scotland's desire is to emulate the Scandinavian model of social democracy and all that implies for penal policy.
- 2.19 In convening the Scottish Prisons Commission the Scottish government sought radical and innovative ways in which to improve public safety. The Scottish Commission envisaged a future in which Scotland would be a beacon of change – of lower prison populations, safer communities, effective programmes and successful community-based sentences evidenced by low re-conviction rates, all of which would encourage hope and pride in the local communities.
- 2.20 The Commission's report, *Scotland's Choice*, set the Scottish Government a goal of reducing the prison population by almost 40 per cent - from 8,000 to 5,000. More importantly it made explicit the connections between penal policy, the prison population and national well being (Scottish Prisons Commission 2008). The Scottish Commission was driven by the government objective 'to consider how imprisonment is used in Scotland and how that use fits with the Scottish government's wider strategic objectives' to make the nation wealthier and fairer, safer and stronger, smarter, healthier and greener' (Armstrong and McNeill 2009:2). It was thus able to step outside the confines of criminal justice and to examine prison holistically in the context of other forms of civic and social investment.
- 2.21 Despite these lofty goals the Scottish rate of imprisonment continues to rise. The Scottish government thus faces considerable obstacles as it attempts to shift its approach to punishment. Nonetheless, rather than simply applauding the ideals embodied in *Scotland's Choice* and waiting to observe the lessons as attempts at reform are played out, we in England and Wales must seize the initiative in developing our own radically new public philosophy of punishment and a much more restrained and tempered practice. A strong and radically articulated penal philosophy emanating from south of the border will only strengthen Scotland's efforts in pursuing its own brand of penal moderation.

KEY LESSONS

- The post war history of a number of liberal democracies, including our own, demonstrates that penal moderation is not only possible but can be successfully sustained in periods of increasing as well as decreasing crime rates
- New York City illustrates that it is possible at city level – in the midst of national mass incarceration - to reduce the prison population, to reduce crime and to create safer communities. This remarkable achievement appears to be the product of a concerted investment in mental health and drug treatments and housing and social support; specialist drug and community courts organised around problem solving and diversion from prison and the intellectual direction offered by two powerful research institutes
- In England and Wales a large, complex, obtuse system riddled with linguistic confusions creates barriers to public understanding and thereby excludes the wider public. By contrast, in Scandinavia there are clear, simple systems with few alternatives and the level of understanding and the clarity with which prison is perceived is correspondingly greater. It is acknowledged in policy and practice that the problems which bring most people to Norwegian and Finnish prisons cannot be resolved in the prison setting. Increased community safety is emphasised by ensuring that prisoners and those subject to community penalties have full access to the community's social and health resources
- Scotland has made explicit the connections between penal policy, the prison population and national well being. It is thus able to step outside the confines of criminal justice and to examine prison holistically in the context of other forms of civic and social investment

Part Three

Penal moderation - the intellectual foundation

- 3.1 The absence of a clear and ethical public philosophy of punishment in English politics has, we would argue, contributed to the free-wheeling penal nightmare which has resulted in the largest number of incarcerated citizens in our history.
- 3.2 Lessons from around the democratic world reveal that if we want to make our system of punishment more effective, more humane and more meaningful we must develop a public philosophy which is grounded in first principles and which places the humanity of victims and prisoners at centre stage. For the Commission those principles must be founded on the concept of moderation, and such characteristics as restraint, parsimony and dignity.
- 3.3 Given the manifest failings of English prisons, their costs and the stain they cast on our democracy, the Commission's declared intention to open the space for a serious debate on change will resonate with many. It seems essential therefore to open this debate with the articulation of a rigorous public rationale for a smaller less punitive penal system. The same rationale must also serve for a radical reduction in the scale and severity of imprisonment.
- 3.4 Professor Ian Loader characterizes how the framework for such a public rationale might look when he argues for a 'story about why and whom, and how and how much we punish that connects with, and can re-articulate, sentiments and values that have some purchase in English society...' (2008b). That story must address the experience of victims as much as it addresses the experience of offenders. It must also address the experience of all citizens. Each and every member of society has a stake in the form and manner in which punishment is delivered.
- 3.5 It is important to understand that punishment – as a way of dealing with social problems - is a political choice. States choose to punish and they choose whom to punish. Criminal justice is predicated on a very particular and limited conception of harm determined primarily by the criminal law. Law neither assesses the nature of harm nor calibrates in any real sense the nature of perpetrators. Our criminal justice system, for example, has historically focused the majority of its attentions on the misadventures and wrong doings of the poor, those with mental health needs or drug and alcohol addictions – rather than focus on white collar or serious organised crime.
- 3.6 While apparently entrenched it has not always been so and need not remain so as the lessons from Finland and our own past demonstrate. Penal moderation, as noted above, has a long and distinguished tradition in England. Thirty one years of decarceration in the early part of the 20th century (including an amnesty reducing sentence lengths) was followed some decades later by a shorter but important period of penal reductionism in the 1980s under a Conservative government. Penal moderation is thus not a radical or new departure for English prisons, it is in fact, as leading criminologist David Downes declared at a Commission seminar, 'very British'. Our own experience of penal moderation must form part of the counter narrative to the 'prison works' dogma which has (despite its demonstrated failings) had greater purchase on the public consciousness.

- 3.7 If penal moderation is to provide a new public philosophy of punishment, the three ideas it rests upon – restraint, parsimony and dignity - must not only be clearly articulated but must also accord with core national sensibilities.

Restraint

- 3.8 Restraint is a sensibility which resonates with self characterizations of English-ness. There is a publicly acknowledged national temperament which presents England and the English as reserved, moderate, prudent, considered, pragmatic, tolerant, temperate and forgiving. Restraint may be used to build on the moral ambivalence which punishment induces in these features of the national temperament. While punishment may incite anger, vengeance, and a desire to see pain inflicted on wrong-doers, many citizens also feel shame, regret and a sense of forgiveness or at least understanding when confronted with the realities of prison punishment and the make-up of the prison population. Restraint needs to be clearly enunciated as an ideal in penal discourse and incorporated at every level of our thinking on punishment if we are seriously to halt the current expansionist trajectory.
- 3.9 Evidence provided to the Commission at a seminar on penal moderation captures the underlying ethos of restraint:

'Punishment – for a penal moderate - is an occasion for, and source of sorrow and regret: it does and should make us feel uncomfortable. Punishment, they remind us, is the organized infliction of pain by the state upon an individual in response to that individual's wrong-doing. It is an act whose exercise should therefore be restrained – in a double sense. As a matter of law and practice, we must subject penal practices to clear limits and controls, and robust forms of accountability. As a dimension of public culture, its exercise calls for the cultivation of an attitude of care and caution with respect to why and whom, and how and how much we punish' (Loader 2008b:3)

Parsimony

- 3.10 Despite the enormous and increasing financial resources which have been pumped into criminal justice public confidence in the penal system remains very low. Simply throwing money in an unrestrained and uncritical fashion at crime and anti-social behaviour has proven no solution. New calls for economic restraint, tightening of belts, regulation and responsibility apply equally as well to penal as they do to fiscal policy. The economic crisis is the result of years of unrestrained excess and short term thinking; the penal crisis is the product of decades of excessive, ill considered and unrestrained punishment delivery and a budget to service that excess. The government has produced a legislative framework which has resulted an increasing number of people being sent to prison without regard for institutional and societal consequences. It has invested in prison as an unthinking, default punishment rather than as an institution of last resort. Punishment has not been approached with prudence.

- 3.11 Parsimony makes sense for government. Prisons are an expensive and inefficient way of deploying public resources. Prisons do not deal at all well with the problem of crime and do little to foster social cohesion. It is a criminological truism that there is no penal solution to problems of crime and disorder. Any solution to be found lies outside the prison.
- 3.12 Prisons are institutions of exclusion, pain and alienation. They compound the inequalities and weaknesses which lead people to prison in the first instance. The poor become poorer, those with mental health needs and drug or alcohol addictions become more unhealthy and more addicted, the young learn new patterns of offending and the experience of prison institutionalizes marginalization at every level. In order to create secure and safe societies we need to invest in social structures which have at their core ideologies of economic and social inclusion, resource redistribution, social regulation and alternative mechanisms of dispute resolution. Prisons cannot be those structures of reformation.
- 3.13 Penal moderation invites us to think of the benefits of a minimum necessary penal system and of prison as an institution of last resort. To sentence an offender to imprisonment should be a difficult action and one which requires the most rigorous of justifications when all other options of social control have been exhausted. Its use must even then be administered only in strict proportion to the harm done and with the aim of reducing the likelihood of exacerbating that harm.

Human Dignity

'If offenders are to be reformed and take responsibility for themselves and their families, they should not be regarded as different from, and inferior to, other people. They should be seen as citizens, still having responsibilities and rights which the state should respect.' (David Faulkner 2008)

- 3.14 At the heart of penal moderation lies a respect for the human worth of all those who are held in penal institutions. Prisoners remain citizens despite their wrong-doing and despite their incarceration. The loss of liberty is the punishment not the loss of citizenship.
- 3.15 Penal moderation supports and reinforces the adherence of prison institutions to a human rights agenda – not simply a mechanical adherence to the legal requirements set out in the 1998 Human Rights Act but a deeper commitment to notions of harm reduction. The promotion of human rights for prisoners acts to place inhibitions and restraints on the exercise of punishment and counsels for moderation in the working cultures of the prison.

3.16 Moderation in penal policy is an idea whose time has arrived. As Britain struggles with the impact of economic recession thinking about moderation has a more general political and public resonance. Excess – moderation’s enemy – has resulted not only in widespread misery and public cynicism about the ‘light touch’ regulation of financial sector growth but its cultural reach is potentially profound. English society has over the past three decades grown used to unacceptably high levels of incarceration. It has grown used to the engagement of prison as a means of dealing with social welfare failings; grown used to the idea of punishing poorly educated youth, mental illness, drug addiction and poverty with the most punitive sanction available. It is true to say that once the punitive genie is out of the bottle, it is not easily put back. This is not a counsel of despair, however, simply an acknowledgement that change requires a degree of bravery and a great deal of political will and commitment. In every case where societies have successfully halted or reversed prison expansion it has been driven forward by governments prepared to take risks. We need politicians and policy makers to express at every opportunity the sentiments of penal moderation and to ensure strategies for embedding those sentiments in a growing public consciousness which demands limits on the extent and nature we, as a society, are prepared to punish.

3.17 English society has produced cultural conditions at some distance from those which have fostered a moderate approach to penal policy elsewhere in the world. Penal systems underpinned by moderation, as observed by the Commission, are characterised by:

- **a strong commitment to equality and robust systems of welfare**
- **a tradition of experts rather than politicians at the helm**
- **multi-party rather than ‘winner takes all’ electoral systems**
- **a mass media relatively uninterested in crime and punishment, and**
- **a sense of national shame and embarrassment linked to the practice of punishment.**

‘Finland reduced its prison population in part because it wanted to be, and be seen as Scandinavian and thus had to punish accordingly; Germany sustains a mild penal climate in the shadow of its dark past; Canada takes pride in being distinct from the US in criminal justice matters; and post-devolution Scotland is staking out a new penal identity by imagining and realigning itself with (mild) Sweden rather than (punitive) England.’ (Loader 2008b)

It is surely possible, in the context of an informed debate, to tap the sensibility of shame which visits many people in considerations of punishment, prisons and criminal justice.

3.18 We have reached a moment where taking stock and challenging the state of our prison policy has become imperative. Penal moderation offers government a framework for harnessing the tolerance, forgiveness and parsimonious qualities embedded in English society to steer a new criminal justice course, one which operates from a basis of knowledge and understanding and one far less reliant on the myth that punitive penal sanctions can assuage public fears around safety and disorder. Penal moderation celebrates the fact that the English are no more crime-prone than the French, the Germans, the Italians, or our other European neighbours – all of whom have smaller prison populations and who have managed to resist (or reverse) mass incarceration (Wilson 2008).

- 3.19 While the public appeared to embrace the ethos of financial excess exemplified in rising house prices and unlimited borrowing, many people did so based upon a lack of knowledge about the nature and consequences of that excess. Similarly there is global evidence to suggest that while people whose immediate response to crimes they know little about is of a punitive character, those responses become much more moderate when based on knowledge and understanding about the individual punished (Roberts and Hough 2005). The British Crime Survey (Home Office 2008) also shows quite clearly that most people have little direct experience of crime and punishment and when they are encouraged to think about these issues they display a certain ambivalence as to how harshly offenders should be punished. We must address the public ambivalence toward punishment not only through education and information but through decisive policy leadership. A public debate suggests itself as a suitable means by which to confront the crisis facing English punishment.
- 3.20 The approach for policymakers should be three-fold. Firstly, public fears about crime and disorder must be challenged with evidence and narratives from the real world of prisons and prisoners. Secondly, a public philosophy of punishment must be developed that substitutes moderation for excess. Finally, this public philosophy must be made real through a framework for delivering change. In this report, the suggested framework we shall now explore is localism.

KEY LESSONS

- Lessons from around the democratic world reveal that if we want to make our system of punishment more effective, more humane and more meaningful, we must develop a public philosophy which is grounded in first principles and which places the humanity of victims and prisoners at centre stage
- Restraint needs to be clearly enunciated as an ideal in penal discourse and incorporated at every level of our thinking on punishment if we are seriously to halt the current expansionist trajectory
- Penal moderation invites us to think of the benefits of a minimum necessary penal system and of prison as an institution of last resort. To sentence an offender to imprisonment should be a difficult action and one which requires the most rigorous of justifications when all other options of social control have been exhausted. Its use must even then be administered only in strict proportion to the harm done and with the aim of reducing the likelihood of exacerbating that harm.
- The approach for policymakers should be three-fold. Firstly, public fears about crime and disorder must be challenged with evidence and narratives from the real world of prisons and prisoners. Secondly, a public philosophy of punishment must be developed that substitutes moderation for excess. Finally, this public philosophy must be made real through a framework for delivering change

Part Four

A framework for change - making justice local

- 4.1 The Commission has considered a number of frameworks and mechanisms through which change in penal policy might be delivered. In order to effectively promote the radical measures required the framework of that delivery should first and foremost be local and within that structure the strongest and most promising contenders for delivery are justice reinvestment and restorative justice.
- 4.2 One of the recurring findings in the Commission's work has been the value of communities in the justice process. We know that the greatest volume of crime that comes to public attention is local and that its negative effects are felt locally. It seems reasonable to assert therefore, particularly in the context of national failure, that solutions too should be sought locally.

'There were never any serious theoretical, empirical or popular arguments in favour of centralisation. But we can now say with certainty that a generation of centralisation has not improved the relative standing of Britain's public services. Cross-national comparisons suggest that overcentralisation tends to be associated with poorer performance, and decentralisation with better performance' (Mulgan and Bury 2006:9)

- 4.3 Localism speaks to moderation. It offers more possibilities of countering excess simply because of the scale of governance and the directly felt impact of initiatives. We have entered a period of increased pressure on public spending. Precarious global economic conditions combined with the crisis our penal system faces make demands for a smaller, more effective and cheaper system of punishment all the more imperative.

'Public involvement in the design and monitoring of services will result in services that are better attuned to local needs resulting in less wastage, and therefore more cost effective' (Local Government Information Unit 2008a:7).

- 4.5 Research funded by the Joseph Rowntree Charitable Trust identified a democratic deficit in the UK exemplified by an expressed public dissatisfaction with government, a perceived erosion of democratic processes and an identified lack of power at the level of community. A decline in community was identified by those surveyed as one of society's major failings (2006).

- 4.6 The idea of delivering criminal justice on a smaller and more intimate basis has an appeal not only because it offers empowerment to communities (currently disempowered by centralisation) but also because it offers communities the possibility of knowing, understanding and acting on the problems it experiences directly. Localism confronts public alienation from the criminal justice processes which impacts heavily on certain communities. It offers the citizens of those communities - through neighbourhood and local authority mechanisms - the real democratic possibility of contributing to debate and policy on issues which sometimes define those communities.

'Local government has been stripped of most of its powers and the results of this are lower levels of service and a lower quality of life' (Stern and Allen 2007:43)]

- 4.7 The Commission has been impressed by examples of 'local' approaches to the issues and concerns of criminal justice and prisons. Observations of isolated criminal justice initiatives underpinned by 'localism' - in New York, Scotland and Liverpool - suggest nascent possibilities for a more extensive and inclusive framework.

Community courts: less crime, safer communities and fewer people in prison

Community courts can play a valuable role in reinforcing public safety and expressing disapproval of actions harmful to the community. Commissioners visited two community justice courts – Red Hook in Brooklyn, New York City and the North Liverpool community justice centre. Both are nascent examples of alternative criminal justice strategies at a local level and while constrained by political and resource pressures and limitations of scope, they nonetheless operate to encourage support for a broader philosophy and practice of penal moderation delivered through communities.

Both Red Hook and the North Liverpool community justice centre aim to improve the quality of life in their respective communities by reducing crime, increasing compliance and building public confidence. Both rely heavily on the charismatic brilliance of individual judges – Alex Calabrese in Brooklyn and David Fletcher in Liverpool.

The North Liverpool community justice centre is a unique problem-solving centre – the first of its kind in England and Wales. It provides support for offenders and at the same time offers free and confidential advice and support to residents, victims and witnesses (on a range of issues including housing, welfare benefits, domestic violence and drug and alcohol abuse). By these means, it seeks 'to bring justice into the heart of the community by tackling crimes and anti-social behaviour'.

The community courts tend to deal with non-violent offences (domestic burglaries, crimes affecting quality of life, domestic disputes, minor drug crimes and offences relating to education and welfare) but as senior probation officer at the North Liverpool community justice centre, John McIlveen, reported, 'if we deal with the issues at this level we can prevent things getting worse' (personal communication October 23rd 2008).

We were impressed by the combined North Liverpool courtroom/support centre. It delivered a humane and respectful approach to the myriad problems represented by the offenders before it. The Court has the powers of the youth, crown and district courts but its ethos is focused around 'problem-solving' in the community not punishment. Only 7-10% of offenders appearing before the court are sentenced to prison. The centre has on site a range of community and criminal justice services (police, Crown Prosecution Service, citizens advice bureau, drug support agencies, Victim Support and the witness service, community reparation, housing support, restorative justice schemes etc) which can respond immediately to the needs of offenders as identified by the court.

There are risks inherent in the community justice centre model, which were particularly apparent on the Commission's visit to Red Hook in Brooklyn. There is a risk of individuals who have committed minor offences being needlessly dragged up the tariff as part of the problem-solving process, while there is a danger that the judge ends up micro-managing the lives of those coming before the courts. Community problem solving courts illustrate both the extent and limitations of what can be done within the existing system of punishment – they operate as little oases in a punitive desert but they are ultimately constrained by their location within a criminal justice system.

- 4.8 The Commission has found that, in contrast to the increasing detachment of centralised criminal justice processes, localised decision making is often better understood by local people and is more likely to secure their involvement, active participation and approval. There is an increasing volume of research which demonstrates that people have more confidence in a justice system that employs local and visible probation officers, that explains community sentences and that runs rehabilitation projects that produce results (Coyle 2006; Farrow and Prior 2006). Similarly the Audit Commission (2003) found that public trust was much more readily secured in services with a strong and visible local presence. Figures 6 and 7, based on findings in the European Social Survey, demonstrate how low prison populations are associated with those countries which display higher levels of social and institutional trust.

Figure 6: High social trust associates with lower prisoner rates
 (Source: Lappi-Seppälä 2009)

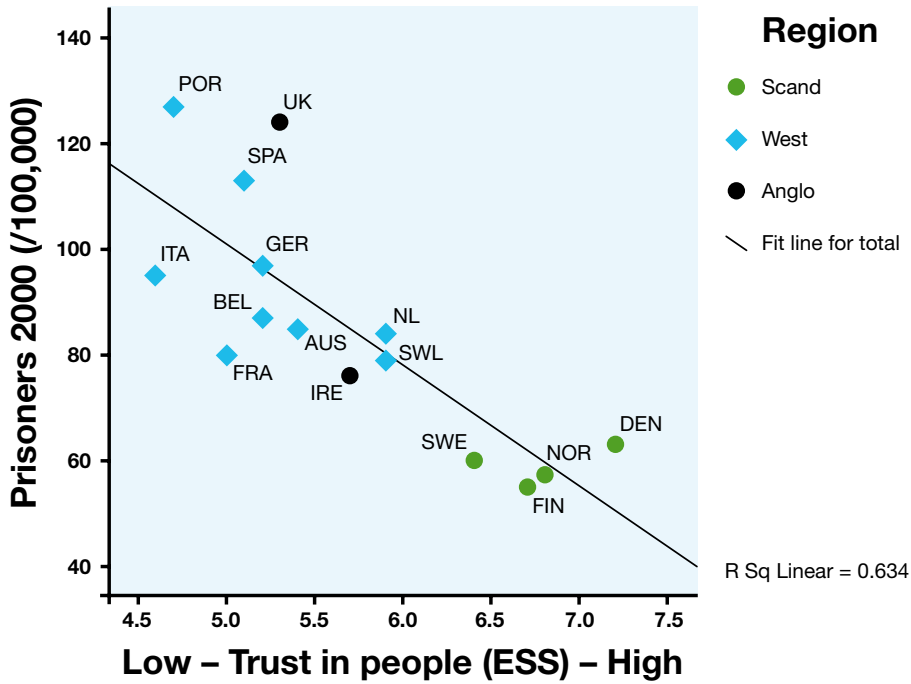
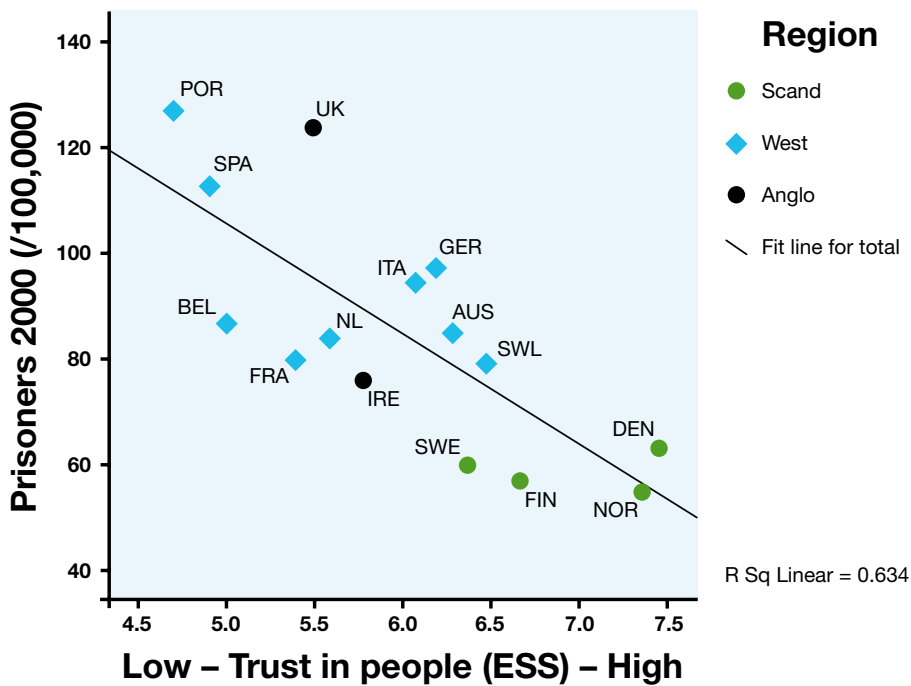


Figure 7: High institutional trust associates with lower prisoner rates
 (Source: Lappi-Seppälä 2009)



- 4.9 Reinvigorating the 'local' in public life and empowering local government now has considerable cross party support. Localism as a movement has driven a new and increasingly popular public health agenda and presents exciting possibilities of increasing community cohesiveness and public safety. Redirecting power and resources from the over-centralised and bureaucratic national model of governance to local governance has significant potential for the delivery of criminal justice.
- 4.10 Localism, however, is much more than simply an approach which advocates the transference of authority, responsibility and resources from the national to the local. Localism, because of the centrality it places on communities presents a real opportunity to engage citizens in debates and decisions about crime, safety and punishment. The overarching emphasis on the anonymised individual in criminal justice thinking and policy – reflected in government imposed targets such as reducing individual offending (which in reality is only measuring reconvictions not reoffending) – has failed to address both the individual and community (Stern and Allen 2007). The National Offender Management Service (NOMS) has as its primary concern the management of the individual offender. It has little concern for the communities producing offenders or experiencing crime. At the same time magistrates' courts have increasingly been relocated from city centres to locations on the periphery, often the equivalent of industrial estates. This process combined with the increasing use of imprisonment has further alienated communities from the workings of criminal justice.

'Government should allow and encourage all public authorities and services, and also local communities and citizens, to accept a stronger sense of responsibility for tackling crime and disorder' (David Faulkner 2008)

- 4.11 In comparison, a more local approach could lead to more effective ways of spending the considerable amounts of money currently expended by criminal justice agencies. Devolution of spending and an opening up of policy choices should lead to less money spent on process and more money on actions which would produce beneficial outcomes for the whole community, while 'local priorities would focus more on individuals as part of their neighbourhood, see their behaviour as part of a pattern and seek solutions that brought some improvement to both individuals and the community' (Coyle 2008:4).
- 4.12 Research conducted by Girling, Loader and Sparks (1999) on perceptions of crime and punishment in a middle England town reveals a public much more engaged and tempered by the local than by the national. In response to general questions about crime and disorder those interviewed were much more likely to advocate punitive solutions. By contrast when discussions moved to local problems and local young people in trouble respondents offered more nuanced and complex analyses of what might be done and entertained the possibility of alternatives to penal outcomes. The power of the local to better inform the public and to deliver a focus on outcomes rather than processes, is captured eloquently by Scotland's Cabinet Secretary for Justice.

'I've always been convinced that communities in Scotland can differentiate who they want locked up. You can go around every community in Scotland and say what about that group of kids there? And they will say 'Nah he just needs a foot up the backside and a job', 'She's just a sad case and needs a cuddle and 'him, he's evil, lock him up' Every community can do that. Some folk need some TLC, some need a bit of shouting at, others need to be detained. It's what a football manager would do. We need to get those ones that need a foot up the backside out of doing some hard work, those that need some stability and someone to take an interest in them, someone to pick up the phone to when they are down. It's about dealing with the individual. We need to work out which individuals need to be in prison and which can be dealt with elsewhere.' (Kenny MacAskill 2009:59)

- 4.13 Even before the minority administration was elected in Scotland, a more localised approach was being pioneered north of the border. The Commission visited Edinburgh in February 2008 to examine the devolved approach to criminal justice.

Community Justice Authorities in Scotland

In 2003 the Scottish Executive published a consultation paper 'for a single agency to deliver custodial and non-custodial sentences in Scotland with the aim of reducing re-offending rates'. This proposal broadly mirrored plans in England and Wales to set up the centralised NOMS framework. The Scottish consultation produced near unanimous opposition to the proposal and identified widespread support for an alternative model.

The outcome was the Management of Offenders etc. (Scotland) Act 2005. Among other things, this established eight Community Justice Authorities (CJAs). Their remit is:

- To work with local authorities, the Scottish prison service and other partners to prepare local joint area plans focused on tackling reoffending, which will require to be submitted to the minister for approval.
- To monitor and report on the effectiveness of joint working between all the local partners, including police forces, NHS Boards, relevant voluntary organisations, the Scottish courts service and the Crown Office.
- To support better information sharing and the sharing of good practice.
- To distribute funding for criminal justice social work services in local areas and ensure that this is being used effectively to improve the management of offenders, and tackle Scotland's unacceptably high reoffending rates.

The CJAs were set up in shadow form in April 2006 and went live in April 2007. At the same time a National Advisory Body on Offender Management was established. Its remit is:

- To provide advice on the shape and direction of offender management by developing and keeping under review the national strategy for managing offenders.
- To advise on how best to achieve the reforms needed for better practice on offender management.

- To support the work of the CJAs, to monitor and report on the effectiveness of joint working between local authorities, the Scottish prison service and other partners to tackle reoffending.

The National Advisory Board is chaired by the Cabinet Secretary for Justice. Its membership includes the Convention of Scottish Local Authorities, the Association of Directors of Social Work, ACPO (Scotland), The Crown Agent (equivalent to Director of Public Prosecutions), the chair of the parole board, the chief executive of the Scottish prison service, a sheriff (equivalent to crown court judge), the Scottish Federation of Housing Associations, the Risk Management Authority, the Health Service, various voluntary organisations, a number of academics and two public appointments.

Money is allocated through the CJAs, with Scottish prison service managers working with each CJA. Although there has been an expectation that ‘resource transfer’ from the Scottish prison service budget would take place, there is no prospect of this as long as prison numbers continue to rise in Scotland. Small changes for the better have been realised - the number of serving prisoners in prisons genuinely local to their home communities has increased by 25% in 8 months – but change will inevitably be limited while the Prison Service continues to maintain a separate budgetary position.

- 4.14 Localism in criminal justice means giving local government a key role. According to Amelia Cookson, head of service transformation at the Local Government Information Unit (LGiU), “The strength of local government is in bringing stakeholders to the table, injecting democracy into decision making and developing the individual distinctiveness of local areas’ (LGiU 2008b). This does not suggest a prison managerial role for local government. Cookson argues that in fact imposing a prison managerial responsibility on local councils would diminish rather than enhance the strengths of local government.
- 4.15 What does this mean in the context of arguing for a smaller, more moderate, less punitive penal process? The lesson from Scandinavia is that penal moderation is predicated upon a strong and resilient welfare system. As demonstrated earlier in this report we also know that the criminal justice process cannot be the mechanism for delivering community safety, providing services to victims or reducing crime and that a robust social welfare infrastructure is far more effective in tackling these concerns.
- 4.16 Localism does mean disparity. Deprivation is distributed unevenly across England and Wales and the redistribution of national resources to local government must reflect those disparities. If criminal justice budgets were to be allocated on the basis of modelling social exclusion data, then local authorities would be in a position to decide whether or not to spend their allocation on criminal justice interventions. They might rather be persuaded that investment in the underlying social causes of crime and disorder would be a more productive option.

- 4.17 Localism as a mechanism for delivering penal moderation means that criminal justice should not necessarily be ring-fenced as a budgetary priority. Money invested into improving community life will have the greatest impact on victims, individuals who commit crimes and community safety. Welfare, employment and education must be afforded greatest priority and those involved in penal policy making must recognise the importance of this redirection for the delivery of their own ambitions.
- 4.18 Several questions arise as to the nature of localism in the context of penal moderation:

Why Localism?

Redirecting more power to local governance, particularly in the fields of health and education, has become a model for more democratic forms of policy making and delivery. Localism offers an opportunity in the face of centralised failure for genuinely new ways of thinking about, communicating and providing community safety. For example, rather than driving the system using targets based on reducing reoffending (which in reality are measured using reconvictions) there is an opportunity to focus on outcomes, directly asking local people in their communities whether they feel safer.

How do we envisage the relationship between national and local?

Both budgetary and policy-making authority with respect to justice issues will need to be devolved to local strategic partnerships. Central government will retain oversight but the big ideas and the delivery of those big ideas will rest with local strategic partnerships, with local authorities playing a lead role. Relationships between county councils and district councils are often strained and politically challenging. The LGiU, for example, have found the development of proposals which will work effectively in a two tier structure difficult, and this would need to be addressed.

Do we want prisons to be embedded in communities with local authorities at the management helm?

While there is no appetite for councils directly managing prisons in their areas, there is a strong argument for local authorities to work much more closely with those prisons. Councils are 'place-shapers' and as such should take the lead on every aspect of organisational life as it affects communities within their boundaries. Councils should therefore be encouraged to take a strong leadership role in respect of prisons and offenders within their remit. In this way communities become directly identified with the modes of punishment and crime prevention that affect them.

What degrees of responsibility to afford local authorities?

Local strategic partnerships such as Local Area Agreements (LAAs) are not currently constituted to hold budgets but they are critical to the processes of negotiation, decision making and the delivery of those decisions. The responsibility of central government should be to provide the framework for legislation, resourcing and priorities. It should not be tasked with providing all the solutions. Most conventional crime is local and solutions should be determined locally.

What is the nature of budgetary provision?

Genuine reform of the kind advocated in this report relies on devolving finance to the local level. The most effective way to empower local areas in the delivery of enhanced services is through the devolution of budgets to councils. In this way councils are then in a position to contract flexible services through the support of the local strategic partnership. In the context of criminal justice this might mean councils re-investing funds formally/nominally ring-fenced for criminal justice into nursery places, local education and employment initiatives, housing and public spaces. Localism thus provides councils with an opportunity for less investment in criminal justice and more investment into social justice. Such investment, as evidence in the next section makes clear, is far more likely to promote well being and community safety.

- 4.19 The Commission's proposals to enhance community safety are predicated upon the ability of local areas to shift resources from the funding of prison places to the funding of community needs. Local authorities are well placed to shift these resources, but as the LGiU has outlined, they will strongly oppose supporting initiatives which might ultimately be inadequately funded by government:

'Local authorities receive 75% of their funding from central government grants and 25% from council tax. Thus a 1% increase in budget necessitates a 4% increase in council tax. Safeguards would need to be built into the system to ensure that local areas would be able to make the investment that would drive down prison places without the government using the shift in resources to disguise the fact that they were failing to fund a growing prison population.'

(LGIU 2008b)

- 4.20 In looking at Scandinavia, it was noted that Norwegian prisons use the 'import model'; that is, existing community services are imported into prisons. This has much to recommend it. Properly 'local', community-facing prisons should have access to mainstream health and social services rather than running their own specialised, yet largely ineffective, 'offender programmes'. In adopting a model of localism, the process of transferring resources from prisons and probation to communities could begin by moving the current budgets for offender programmes to reinforce local provision of essential health and social services which are more likely to assist in the reintegration of offenders. There would have to be provision for ensuring that those currently in prison or on probation can access these services. In England and Wales, there is evidence for the success of the import model in prison health care, which in 2003 saw budgets transferred from the prison service to local Primary Care Trusts. This excellent concept has unfortunately been undermined by the fact that prisoners are transferred all over the country and as a result, local health services do not identify them as local customers. A reduced, geographically stable prison population is an important element in any vision for localism.

4.21 The Commission is clear that the failing national/centralised paradigm currently driving prison excess cannot continue in its current form. Localism presents an exciting and viable alternative framework for delivering penal moderation. Localism, however, cannot be seen as a magic bullet, capable alone of remedying England's penal crisis. Its success is predicated on two fundamental principles:

- **It requires a clearly established underpinning philosophy of punishment which has at its core a notion of harm minimisation (i.e. minimising harm to victims, harm to communities and harm to offenders). Localism will only succeed alongside the fundamental review of the use of custody that penal moderation requires.**
- **It also requires an approach which recognises the absolute limits of criminal justice as a means of addressing social problems.**

With these requirements in place localism has the possibility of confronting in a realistic and humane fashion the problems which currently coalesce to form the working business of criminal justice.

4.22 The Commission is aware that localism has certain pitfalls:

- **It is well documented that the local can be a site for populism, bigotry and vigilantism, a vehicle for some of the nastiest forms of punitive populism. These tendencies to some extent, however, have been fostered by centralised policies and practices in relation to sentencing and punishment and can, we believe, be counteracted by the lived reality of local engagement in the very processes which inspired them. For example, it is true that some local authorities have proved to be very enthusiastic users of the anti-social behaviour order (ASBO) in recent years. What is often forgotten, however, is the extent to which government in Whitehall drove the ASBO as a policy from the centre, in the teeth of opposition from other local authorities and many police forces. If central government clearly sets out a foundation of penal moderation, then localities will work within the sphere of activity defined for them.**
- **In practice the success of localism depends upon:**
 - **The devolution of responsibility for change**
 - **The devolution of the authority to shift resources**
 - **Inter-agency cooperation.**

Central government, because of the organisation of ministerial responsibility, encourages a uni-dimensional, single-issue approach to complex and multi-faceted problems such as crime and exclusion. Budgeting by agency ensures that the delivery of multifaceted problem-solving initiatives is both difficult and wholly insufficient. Two possible means of overcoming this include the re-allocation of resources to either the problem or the area. Central government has been very reluctant to relinquish and devolve authority for issues

relating to criminal justice but crisis presents opportunity and the Commission urges government to follow Scotland's lead.

The criminal justice system has been described as one of the least collaborative parts of the public sector at local level so there will be considerable work ahead if localism is to succeed in the delivery of a holistic approach to community safety.

- One of the more powerful lessons the Commission took from the Scandinavian experience is that simplicity is critical to success. The LGiU has argued for a much more integrated system of working between councils and the criminal justice system. The danger is that the move to localism might result, as it has in Scotland, in a complex proliferation of pilot schemes, criminal justice partnerships, programme initiatives and public organisations delivered and shaped by an unruly combination of 'new and old suppliers'. In Scotland it is this convoluted network which is driving demand in criminal justice and youth justice rather than any real changes in the lived experience of local communities (Armstrong and McNeil 2009).

In order to delve deeper into how localism might be applied to criminal justice, we now turn to mechanisms and vehicles for delivering change.

KEY LESSONS

- Localism confronts public alienation from the criminal justice system and offers communities the real democratic possibility of contributing to debate and policy on issues which sometimes define those communities
- Devolution of spending and an opening up of policy choices should lead to less money spent on process and more money on actions which produce beneficial outcomes for the whole community
- The Commission's proposals to enhance community safety are predicated upon the ability of local areas to shift resources from the funding of prison places to the funding of community needs
- Properly 'local', community-facing prisons should have access to mainstream health and social services rather than running their own specialised, yet largely ineffective, 'offender programmes'
- Localism will only succeed alongside the fundamental review of the use of custody that penal moderation requires

Part Five

Delivering change through justice reinvestment

'The first real principle which should guide anyone trying to establish a good system of prisons would be to prevent as many people as possible getting there at all'
(Winston Churchill, cited in Hattersley 2004)

- 5.1 The concept of 'justice reinvestment' offers a radical new way of delivering a modified and ultimately 'moderate' form of criminal justice and its strengths and successes in practice have been developed locally. Justice reinvestment poses a fundamental question to government – given the enormous sums invested into criminal justice could this investment not be re-directed into initiatives which would genuinely impact on community safety, lowering crime and tempering punishment?
- 5.2 Justice reinvestment seeks to re-balance the criminal justice spend by deploying funding that would otherwise be spent on custody into community based initiatives which tackle the underlying causes of much crime. At the other extreme the National Offender Management Service's current focus on offenders and reoffending is driving criminal justice policy while issues which could make a far greater contribution to community safety, such as general problems of drug abuse and debt are not tackled.

Justice reinvestment is not about alternatives *within* the criminal justice process, it is about alternatives *outside* of it

- 5.3 Justice reinvestment is a devolved approach that focuses on communities or localities. It is thus an ideal mechanism through which local authorities can impact dramatically on the criminal justice landscape of their own domain and effect change in radical and innovative ways.

The fiscal argument for justice reinvestment

In a groundbreaking study the New Economics Foundation (nef) explored the costs and long term benefits associated with the work of two centres in Glasgow and Worcester providing an alternative to custody for women. The 'social return on investment' study found that for every pound invested into support-focused community penalties a further £14 of social value was generated to benefit the women, their children, victims and the community over a ten year period. According to nef while the long-term value of these benefits is in excess of £100 million over a ten year period the cost of imprisoning mothers for non violent offences carries a cost to the children and to the state of £17 million (nef 2008).

- 5.4 Studies such as the nef research detailed above and recent work done by the Matrix Knowledge Group (2008) demonstrate that criminal justice policy which focuses on short-term cost efficiencies and narrow bureaucratic outcomes such as re-offending targets is not only extraordinarily expensive but is a wasteful failure. The question we must ask is ‘Do we really want to continue to spend vast amounts of money on a system which is failing - do we really want to spend this money NOT to rehabilitate people?’
- 5.5 Policy decisions in criminal justice tend to be driven by direct financial costs and short term savings. The wider social and economic costs are rarely taken into account. The work of nef strongly reinforces the Commission’s position that financial investment must be redirected away from offender focused activity and invested into communities in order to tackle the underlying causes of social misery, crime and victimisation.
- 5.6 Criminal justice costs have increased dramatically and without tangible success. The Commission is clear that these costs are no longer sustainable and must be reined in. The current financial crisis will undoubtedly give this argument greater purchase. One immediate approach must be a narrowing of the functions of the criminal justice system. Justice reinvestment provides a powerful vehicle for that reining in requiring, as it does, the closure of institutions in order to tackle the longer term problems afflicting the communities which suffer most from crime and victimisation.
- 5.7 From a Treasury perspective a holistic approach is required if it wishes to reduce the criminal justice bill. Justice reinvestment, the consequent shrinkage of the criminal justice system and the inevitable value that will flow back to the Treasury as a result demands that departmental boundaries are transcended. Justice reinvestment offers the possibility of solutions which create value across a range of different government departments – for example, on the basis of social return on investment (SROI) analyses the Treasury would be in a position to allocate cost and outcomes to different departments.
- 5.8 In the United States the harsh fiscal realities of mass imprisonment are giving greater purchase to local initiatives and justice re-investment:
‘A critical component of reinvestment thinking is stopping the debilitating pattern of cyclical imprisonment: 98% of these persons will return to the community – 630,000 annually - and two thirds will end up back in prison. One-third of those released return to prison not because of new crimes but because of violations of their parole – missed office appointments, positive drug tests, or breaches of curfew. In California 65 percent of new admissions are for parole violations, which cost the state \$1 billion annually.’ (Tucker and Cadora 2003:3)
- 5.9 In the US areas of high risk have been identified and resources targeted to those areas to improve community cohesion and reduce crime. These areas were first identified in Brooklyn as ‘million dollar blocks’ because of the disproportionate number of their residents incarcerated - and the cost of that incarceration - but now have far wider purchase.

5.10 Justice reinvestment is attracting increasing interest in England and Wales with the House of Commons Justice Committee conducting its own inquiry into it. The Ministry of Justice has taken the concept of Brooklyn's 'million dollar blocks' and has commissioned the piloting of so called 'diamond districts' in a number of local authorities. It is clear however, that the Ministry of Justice's understanding of justice reinvestment is a reversal of the ideas outlined here. Rather than re-direct criminal justice funds into re-invigorating 'diamond district' communities these resources are destined to the management of individual offenders. In describing the pilot project the London Criminal Justice Board outlines:

'...the project will target and co-ordinate criminal justice and resettlement resources in neighbourhoods (probably wards) where the largest numbers of offenders return on their release from prison...The main focus will be on offenders who have been in custody, including youths and those who have served custodial sentences of less than 12 months and so are not subject to statutory supervision on release.' (London Criminal Justice Board 2008:3).

- 5.11 The Ministry of Justice has no evident intention to invest in non criminal justice initiatives, nor is there any evidence that the budgets allocated for the 'diamond district' pilots will be diverted from the centralised prison budget and placed in the hands of local authorities. Rather the 'Diamond Districts' project is simply a reinvention of after-care schemes for short term prisoners and an extension (or even dilution) of Multi-Agency Public Protection (MAPP) arrangements, without any understanding that the real aim should be for the benefit of the community. Again we see a focus on the individual as offender without any broader attention to the multitudinous social factors which impact so heavily on crime and community safety. If justice reinvestment is to be successful, there must be tangible benefits for the wider community.
- 5.12 Justice reinvestment offers enormous possibilities for the radical reform of a dangerously out of control and failing penal system. Its natural travelling companion of penal moderation has the potential to create the financial and ideological resources required for its delivery.
- 5.13 Confidence and bravery are required. Prisons must be closed in order to achieve the kind of reinvestment required for community regeneration and in order to achieve the moderation which would give punishment in England a new character. A shrinkage of the prison estate along the lines of post-war Finland would create an enormous budget for the invigoration of troubled communities. One prison closure releases at least £15 million per year - £15 million spent on individual offenders with negligible positive effect. That money - largely diverted from individuals within the system - could then be reinvested into the communities which suffer most from deprivation and victimization. Such moves should readily encourage public support and cooperation particularly if achieved and delivered through local democratic mechanisms.

- 5.14 Ensuring a direct connection between a prison closure and community improvements will be an essential prerequisite of community support. The closure of even one small prison – the manner of which would be decided by the local authority with community input - could have an immediate and very visible impact. From a value for money perspective it is difficult to argue against the reallocation of resources from incarcerating minor offenders to the provision of nursery places, youth centres, improved housing, heating and lighting for residents of deprived communities. Coupled with the locally managed redeployment of offenders - now marshalled for community service rather than prison idleness - justice reinvestment has strong appeal.

PRIVATE PRISONS AND THEIR CONTRACTS

The privatisation of prisons, exported as a concept from the United States of America, continues to gain ground in England and Wales. The Ministry of Justice has recently signalled that the 10% share of the current secure estate which is privately managed will be increased, both through new privately run prisons and the ‘market testing’ of existing publicly run institutions (Ministry of Justice 2009).

Successive governments have ignored concerns that it is inappropriate for criminal justice to be left to ‘the market’. Private sector involvement in criminal justice leads to industry influencing public policy in its interests. Another consequence is that the industry naturally expects to ‘open up new markets and expand business in order to fulfil its duty to generate profits and dividends for shareholders. This requires more people in the criminal justice system for longer and is squarely at odds with the public good’ (Nathan, 2008:26). Certainly, the experience of penal expansionism and mass incarceration in the United States has coincided with the increasing role of private prisons, a fact which has generated a level of academic debate, media scrutiny and public resistance that has been largely absent in England and Wales.

Ministers in successive governments have failed to provide hard and fast evidence to substantiate the claimed benefits of privatisation. The National Audit Office’s report on operational performance stated that private prisons were ‘neither a guarantee of success nor the cause of inevitable failure’ (National Audit Office 2003:9). Recent inspectorate reports of private institutions tend to bear this verdict out, with the chief inspector of prisons remarking in one annual report that ‘it is of some concern that the four private adult prisons reported on had more negative than positive assessments, and only one out of four was assessed as performing satisfactorily on safety. This has been a recurring concern, in our inspection reports and in the National Audit Office’s report, as has the nature of the activity available, with contracts that tend to focus on quantity rather than quality’ (HM Inspectorate of Prisons, 2007:16).

In 2009, the chief inspector also noted: ‘The only clear differential between

publicly and privately managed prisons was in relation to safety, where privately managed prisons performed less well' (HM Chief Inspectorate of Prisons, 2009).

Even by the Ministry of Justice's own measurements, private prisons have consistently failed to achieve excellence – level 4 in the performance league tables. This is the benchmark that the sector is supposed to achieve in order to drive up public sector standards through competition.

The Commission is also concerned that the private finance initiative (PFI) model used since the 1990s hinders operational transparency and disguises the full cost of private prisons, by focussing on revenue rather than capital costs. The 25 year contracts awarded to private prison providers through PFI effectively tie policymakers' hands and are a real barrier to reform, including justice reinvestment initiatives. For example, in Scotland, legal complexities and prohibitive financial costs prevented the current government from extricating itself from two PFI prison contracts let by the previous administration.

In England and Wales it is time to revisit the ethical and operational concerns about private prisons and an exit strategy from current PFI contracts should be explored as a matter of urgency.

- 5.15 Nef have demonstrated the value of an expanded and more accurate assessment of the costs and benefits involved in the delivery of criminal justice policy. 'Policy making is currently disproportionately concerned with the direct costs of prisons and other penal facilities, neglecting consideration of the wider, economic, social and environmental costs of government interventions' (nef 2008:5). Nef advocate an expanded version of the National Institute for Health and Clinical Excellence (NICE) as a model for valuing social outcomes. While NICE assesses only value to the state of health care interventions, the criminal justice equivalent should calculate value to both state and wider society. At a seminar on localism held by the Commission, Professor Carol Hedderman of the University of Leicester suggested that a criminal justice equivalent of the 'quality adjusted life year' (QALY) model used by NICE to assess new health interventions could be applied to sentencing disposals to determine value for money and effectiveness in securing public safety (Hedderman 2008). Sentencing authorities, in particular, need to appreciate the longer term and broader fiscal and social impacts of the decisions they take. A generic cost-benefit analysis of the range of sentences available (possibly based on a Social Return on Investment analysis) should be available to all sentencers. In this way those directly responsible for rates of imprisonment would have access to the implications of their actions and be able to moderate their practices accordingly. Equally sentencers would thus be subject a high degree of accountability in terms of value for money.
- 5.16 Justice reinvestment forces policy makers to operate outside the 'criminal justice tramlines'; it addresses the core problems which lead to conventional crime and victimization; it is by nature 'local' and visibly redistributive in character.

A model for change

- 5.17 If this report is intended to be more of a road-map than an instruction manual, as the introduction states, it does not preclude the Commission from making some suggestions on how localism and justice reinvestment might be delivered through a restructured criminal justice system.
- 5.18 The Commission is clear that the current NOMS model is unwieldy, over-complex and ineffective. The bringing together of prisons and probation, while superficially sensible in attempting to deliver 'end-to-end offender management', will only work if services are structured locally and with agencies outside of the criminal justice sector. While the government has begun developing the regional tier of the NOMS structure, with the appointment of ten directors of offender management (DOMs), the Commission believes that the regions each DOM must oversee are too large to be meaningfully local. Despite their regional concerns, Whitehall targets and not local accountability ultimately drive each DOM. The DOMs are not beholden to work with local authorities or other outside agencies, for example, although it is possible the best individual DOMs will do so. Even if this was to be the case, however, there is no prospect of a DOM diverting a portion of their budget into non-criminal justice solutions as justice reinvestment envisages.
- 5.19 A more fruitful model might be taken from the health sector, and the creation of NHS trusts. Just as each NHS trust must balance the budget between inpatient and outpatient care, so local trusts bringing together prison and probation budgets might more sensibly balance resources and bring local accountability into play. This would require the breaking up not just of NOMS but the traditionally centralised management of the prison service. Groups of local prisons would come under the aegis of the new trusts, as would the area's probation budget. Each trust would then have a role on other local strategic partnerships, working with local authorities and other agencies. A version of this model has been recently proposed in the form of 'community prison and rehabilitation trusts' by the Centre for Social Justice (Centre for Social Justice 2009).
- 5.20 While a health sector-style model is attractive, the Commission proposes that the example of the Scottish community justice authorities provides the most promising basis for delivering genuine justice reinvestment. This is because the CJAs are local strategic partnerships which involve all the key players from both within and without the criminal justice sector. The CJAs also hold budgets, although the Scottish model is not currently functioning as well as it might due to the fact that the Scottish prison service has reserved a separate position and has protected its central budget from being broken up through the CJAs. Only the criminal justice social work (probation) budget is deployed by the CJA, rendering only partial reform and limited potential for justice reinvestment. The Commission suggests that this provides England and Wales with an opportunity to go one further than our northern neighbours, and deliver a fully reformed system which is truly local and equipped to deliver justice reinvestment into our communities.

- 5.21 With local authorities as the lead partners, a revised CJA-style model should see prison budgets fully devolved and made available for justice reinvestment initiatives. The Ministry of Justice would retain the lead on policy issues and would set minimum standards. A criminal justice equivalent of NICE would provide an assessment of social outcomes for sentencing disposals in order to inform sentencers and local strategic partnerships in their decision-making. The high security system should also remain managed on a national basis, given the special role of the dispersal prisons and the need for robust central management of a high risk population drawn from across the country. Beyond this, however, all other prisons would be grouped locally into the CJA-style strategic partnerships that would manage their budgets.
- 5.22 With a model such as this in place, the potential for justice reinvestment and for a more locally responsive criminal justice system would be clear.

KEY LESSONS

- Justice reinvestment seeks to re-balance the criminal justice spend by deploying funding that would otherwise be spent on custody into community based initiatives which tackle the underlying causes of much crime. Justice reinvestment is not about alternatives within the criminal justice process, it is about alternatives outside of it
- Policy decisions in criminal justice tend to be driven by direct financial costs and short term savings. The wider social and economic costs are rarely taken into account. In the meantime, criminal justice costs have increased dramatically and without tangible success
- Prisons must be closed in order to reinvest funding into the communities which suffer most from deprivation and victimization. Such moves would readily encourage public support and cooperation particularly if achieved and delivered through local democratic mechanisms
- In England and Wales it is time to revisit the ethical and operational concerns about private prisons and an exit strategy from current PFI contracts should be explored as a matter of urgency
- The current NOMS model is unwieldy, over-complex and ineffective. A truly local approach would require the breaking up not just of NOMS but the traditionally centralised management of the prison service
- The Commission would suggest that the example of the Scottish Community Justice Authorities provides the most promising basis for delivery. With local authorities as the lead partners, we suggest local strategic partnerships similar to the CJAs should be formed that bring together representatives from the criminal justice, health and education sectors, with local prison and probation budgets fully devolved and made available for justice reinvestment initiatives
- The Ministry of Justice would retain the lead on policy issues and would set minimum standards. A criminal justice equivalent of NICE would ideally provide an assessment of social outcomes for sentencing disposals in order to better inform sentencers and local strategic partnerships in their decision-making. The high security estate would also remain managed on a national basis

Part Six

Delivering change through restorative justice

'Restorative justice is a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. ... Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all.' (Center for Restorative Justice , Suffolk University)

- 6.1 Restorative Justice is about reintegrating those who commit crimes into their communities through a range of restorative practices.
- 6.2 While restorative justice has mostly been used to deal with conflicts in schools, community and neighbourhoods, and with anti-social behaviour to some considerable effect the Commission agrees that there is still considerable potential for development in dealing with crime, including more serious offenders. Bottoms et al (2004), for example, found that there was a significant role for restorative justice conferencing for pre-release adult prisoners.
- 6.3 Restorative justice is a natural complement to justice reinvestment. There is increasing empirical evidence to suggest that victim-offender mediation is effective in reducing the frequency of reconviction for violent crimes. In a study comparing reconviction rates between prisoners and adult offenders who had experience of restorative justice and those who had not, Joanna Shapland and colleagues found that involvement in a restorative justice process reduced reconviction for robbery by 8%; for burglary by 16% and prison violence was reduced by 33%. Most impressively reconvictions for those offenders under community supervision were down by 55% (Sherman and Strang 2007). This work also makes clear that restorative justice can work at several stages of the justice process as part of a package of post disposal measures providing a service to victims and offenders.

- 6.4 Evidence from other jurisdictions has also demonstrated the potential for restorative justice as a diversion from prosecution – even in serious cases. In New Zealand, following the introduction of the Children, Young Persons and their Families Act 1989, some 25% of the most serious cases (excluding murder and manslaughter) and all repeat young offenders have been offered the opportunity of restorative justice in the form of family conferencing. The majority of other cases are dealt with through warnings or diversionary schemes including restorative justice (Maxwell and Hayes 2007). It should be noted, however, that embracing restorative justice has not prevented New Zealand experiencing dramatic rises in both rates of imprisonment and the use of community sentencing.
- 6.5 The Commission is supportive of restorative justice for more serious offences and offenders in the context of a pared down criminal justice system, in which restorative justice is used in conjunction with a reduced custodial sentence. Potential inequities arising from the disproportionate sentencing which might ensue (offenders whose victims are prepared to engage with the restorative justice process being sentenced more lightly than those whose victims are not) must be acknowledged and alternative procedures put in place to counter any evident bias.
- 6.6 Restorative justice has also been found to be effective in providing a majority of those victims who choose to take part with a more satisfactory experience of the justice process. According to research conducted by Sherman and Strang (2009) victims who were involved in restorative justice experienced fewer or reduced post-traumatic stress symptoms, a reduction in fear, anxiety and anger and reduced desire for violent revenge when compared with victims in a non restorative justice control group.
- 6.7 The Commission is conscious of a number of obstacles surrounding the implementation of restorative justice in England and Wales. While restorative justice has been paid a great deal of legislative and academic attention, practice has been thwarted by structural and organisational pressures to meet government targets (which don't include restorative justice) and by limited resources.
- 6.8 Low victim involvement in UK restorative justice schemes is attributed to organisational failings – chiefly a lack of resources invested into victim contact by the police and youth offending teams. Unless resources are shifted towards improved contact, training and support in relation to victims, restorative justice will remain a tool for the rehabilitation of offenders rather than a process that also brings a greater sense of justice to victims.
- 6.9 Restorative justice has an important function to play (aside from its inherent value), in the delivery and practice of penal moderation, community safety and confidence, and offender reintegration. This, however, can only be accomplished if restorative processes are protected by legal and ethical safeguards which ensure that the very real risks of secondary victimisation for victims and disproportionate sentencing and net-widening for offenders are controlled.

KEY LESSONS

- While restorative justice has mostly been used to deal with conflicts in schools, community and neighbourhoods, and with anti-social behaviour to some considerable effect the Commission agrees that there is still considerable potential for development in dealing with crime
- The Commission is supportive of restorative justice for more serious offences and offenders in the context of a pared down criminal justice system, in which restorative justice is used in conjunction with a reduced custodial sentence
- Low victim involvement in UK restorative justice schemes is attributed to organisational failings. Unless resources are shifted towards improved contact, training and support in relation to victims, restorative justice will remain a tool for the rehabilitation of offenders rather than a process that also brings a greater sense of justice to victims
- Restorative justice has an important function to play but only if restorative processes are protected by legal and ethical safeguards which ensure that the very real risks of secondary victimisation for victims and disproportionate sentencing and net-widening for offenders are controlled

Conclusion - Choosing the future

The Commission on English Prisons Today has spent two years reviewing the current penal crisis, and during this time we have seen tumultuous events on the world stage. The Commission's early discussions on such notions as moderation set against excess, or the importance of a local and holistic approach as opposed to centralised and managerialist bureaucracy, seemed all too relevant as the global financial crisis unfurled.

In particular, the sense we are at a crossroads as a society, and that decisions taken now would be truly momentous in all fields of public life, was felt strongly. The notion of 'Scotland's Choice' in the Scottish Prison Commission's report is as relevant to England and Wales. To speak to the individual reader for a moment: what kind of a society do you wish to live in? If it is a tolerant, pragmatic, forgiving society - one with a criminal justice system that embodies these qualities of moderation and which is truly engaged with individuals and communities, then the choices to be made are described in this report. The alternative is more of the unrestrained and irresponsible penal excess that is storing up an avalanche of future problems for society while spending ever-increasing sums of public money for the privilege of doing so.

And in one sense, perhaps the choice has already been made. As we now face a decade or more of drastically straitened public finances, it is more important than ever before to argue for the principles and values outlined in this report. Our penal system has become bloated and dysfunctional over a prolonged period of economic growth. Put simply, we could afford it.

It is highly questionable that the system can carry on in this restless expansion, and that even attempting to maintain the prison population at current levels using technocratic fixes, such as early release schemes, will swiftly prove as unaffordable as it appears unacceptable to the general public. Building privately financed prisons on inflexible 'buy now pay later' contracts lasting 25 years, or creating legislation as ill-thought out and impractical as the indeterminate sentence for public protection, was only possible at a time when prosperity allowed it. In the future, we will need to take more care with our choices.

In choosing the future, we must seek to do less and by doing less we can do better. Far from this being a counsel of despair, this is a call for hope. There is now an opportunity to refashion our penal system so that it reflects, and gives effect to, the society we wish to become. We must not let this opportunity slip away.

Annexes

List of annexes

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Annex A: Terms of reference and background

Terms of Reference

1. To investigate the purpose and proper extent of the use of prison in the 21st century.
2. To consider how best to make use of the range of community sentences that currently exist, the principles that should guide them and to explore new ideas.
3. To consider the role of the media – both broadcast and print – in helping to re-shape the debate about the reform and proper use of imprisonment
4. To investigate those issues which drive up the prison population in an age of globalisation.
5. To place any recommendations within the broader workings of the criminal justice system of England and Wales, giving due consideration to international development.

The Commission will look at the driving forces influencing change and practice including legislation, politics and the media.

The Commission will think radically about the purpose and limits of a penal system and how it should sit alongside other social policy strategies. We should not be constrained by 'starting from here' but create a vision for a different future.

Background and History

The prison population is now at an all-time high but it has not always been so. The Commission commemorates a period of significant decarceration.

Between 1908 and 1939 the prison population of England and Wales halved, from 22,029 prisoners to just over 11,000. As a result some 20 prisons had to close – despite the fact that the crime rate actually increased during this period. This

is the longest period of decarceration in world history, but it has rarely featured in any discussion about the use of prison in our public policy.

How are we to explain this phenomenal drop in numbers? Naturally we could point to the impact of the First World War, but there is more going on here than the sad simple reality of conscription and the high numbers of young men who died in the trenches. Instead we could point to:

- **a general scepticism about the use of prison that was widely shared, for example, by politicians such as Winston Churchill (who had been a prisoner-of-war during the Boer War), who set about reducing the numbers of people being sent to jail whilst he was Home Secretary between 1910 and 1911;**
- **the scepticism of conscientious objectors and suffragettes who had been imprisoned and who campaigned for change on their release;**
- **the existence of a credible alternative to prison in the shape of probation;**
- **the support given to penal reform from leading civil servants such as Alexander Paterson, who were prepared to advocate for change from within government; and**
- **the creation of the Howard League for Penal Reform which campaigned for changes to the prison estate, and provided a focus for activities of the various reformers.**

Two conscientious objectors, Stephen Hobhouse and Fenner Brockway, who had both been imprisoned, established an independent commission on the state of the penal estate, and published their book *English Prisons Today* in 1922. It had an immediate impact on popular and political thinking about what to do with offenders and the limited role that existed for prison in dealing with those who broke the law. Its impact lasted until the outbreak of the Second World War.

The Howard Association was founded in response to the first Royal Commission on Capital Punishment which brought to an end the practice of public executions.

The last Royal Commission (1993 under Lord Runciman) looked at the criminal justice system and concentrated on criminal justice processes, policing and the courts.

Annex B: Visits made by the Commission

Visit to Scotland (26-27 February 2008)

Visits were made to:

- **Edinburgh prison**
- **Sacro**
- **Children's Hearing system**

Meetings were held with:

- **Kenny MacAskill MSP, Cabinet Secretary for Justice**
- **Adam Ingram MSP, Minister for Children and Early Years**
- **The Scottish Prison Commission (The Rt Hon Henry McLeish; Geraldine Gammell, Director of The Prince's Trust in Scotland; Chief Constable David Strang, Lothian and Borders Police; Richard Jeffrey, President of Edinburgh Chamber of Commerce; Scottish Prisons Commission Secretariat: Annette Sharp, Iain Harron, Joe Church)**
- **The Howard League for Penal Reform in Scotland (John Scott, Chairman; Angus Skinner, Secretary; Cliver Fairweather, member; Laura Irvine, Treasurer)**

The Commission also met with a number of key stakeholders including:

- **David McKenna, Chief Executive, Victim Support Scotland;**
- **Kathleen Marshall, Commissioner for Children and Young People;**
- **Derek McGill, Governor, HMYOI Polmont;**
- **Dr Andrew McLellan, Chief Inspector of Prisons**
- **Mike Duffy, Director of Prisons, Scottish Prison Service Board**
- **Lesley Riddoch, journalist and broadcaster**

Visit to New York City (8-11 July 2008)

Visits were made to:

- **Rikers Island jails (met with Frank Squillante, Assistant Chief, City of New York Correction Department and Mark Cranston, Deputy Chief of Staff, City of New York Correction Department)**
- **Red Hook Community Justice Centre including meetings with Judge Alex Calabrese and Greg Berman, Director of the Centre for Court Innovation**
- **Drug Court including meetings with: Hon Joseph Gubbay, Hon Betty Williams and Judge Juanita Bing Newton**

Meetings were held with:

- **Elizabeth Alexander, ACLU National Prison Project**
- **Kris Watson, Training and Technical Assistance Project Director, Family Justice with presentation of the work of La Bodega de la Familia project**
- **Eric Cadora, Director, Justice Mapping Center**
- **Prof Todd Clear, John Jay College**
- **Michael J. Farrell, Deputy Police Commissioner, NYPD**
- **Michael Jacobson and Joel Miller, Vera Institute**

The Commission also met with a number of key stakeholders including:

- **Jamie Fellner, Human Rights Watch;**
- **Hon. Judy Harris Kluger, Deputy Chief Administrative Judge for Court Operations and Planning**
- **Bruna DiBiase, Chief of Staff, Office of Deputy Chief Administrative Judge**
- **Robert Gangi, Executive Director, Correctional Association of New York,**
- **Russ Immarigeon, Editor, CRI Publications**
- **Prof Jeremy Travis, president of John Jay College of Criminal Justice**

Visit to Norway (6-8 October 2008)

Visits were made to:

- **Bastøy prison**

Meeting were held with:

- **Kristin Bolgen-Bronebakk, Director General**
- **Harald Føsker, Director, Krus, The Norwegian Correctional Service**

A seminar was held at the Institute of Criminology, University of Oslo with:

- **Professor Kristian Andenæs, Head of the Institute**
- **Professor Nils Christie**
- **Professor Thomas Mathiesen**
- **Associate Professor Katja Franko Aas**

- **Halvard D. Pettersen, board member, KROM, The Norwegian Association for Penal Reform**

Visit to Finland (8-10 October 2008)

Visits were made to:

- **Helsinki prison**

Meetings at the Criminal Sanctions Agency:

- **Mr Ari Juuti, Senior Inspector**
- **Eila Lempiäinen, Senior Probation Officer**
- **Marianne Mäki, Senior Specialist**
- **Maija Kukkonen, Chief Director, Probation Service**

Meeting at the National Research Institute of Legal Policy:

- **Mr Tapio Lappi-Seppälä, Director**

Meetings at the Department of Criminal Policy:

- **Jarmo Littunen, Head of Department**
- **Mr Pekka Koponen, State Prosecutor**

Prison visits made by the Commission:

- **Holloway**
- **Grendon and Springhill**
- **Whitemoor**
- **Pentonville**
- **Feltham**
- **Coldingley**

Other visits:

- **Adelaide House Approved Premises for Women**
- **Community Justice Centre, North Liverpool, including a meeting with His Hon Judge David Fletcher**

Annex C: List of oral evidence

- **Cindy Barnett, Chair of Magistrates' Association**
- **Dr Marcus Roberts, Head of Policy at Mind**
- **Fiona Jones, member of national panel at Mind**
- **Detective Superintendent Matthew Sarti, Metropolitan Police**
- **Alex Marshall, Deputy Chief Constable, Thames Valley, representing Association of Chief Police Officers**
- **Edward Garnier MP, Shadow Minister for Justice**
- **Baroness Stern, Joint Committee on Human Rights**
- **Jon Collins, Senior Policy Officer, Women and Justice, Fawcett Society**
- **Paul Tidball, President of the Prison Governors' Association**
- **Anne Owers, HM Chief Inspector of Prisons**
- **Sir Ken Macdonald QC, Director of Public Prosecutions**
- **David Heath MP, Liberal Democrat Shadow Justice Minister**
- **Colin Moses, Chair of the Prison Officers' Association**
- **Karen Biggs, Chief Executive, Phoenix Futures**
- **Bob Reitemeier, CEO of the Children's Society**
- **Angela Greatley, CEO of the Sainsbury Centre for Mental Health and Sean Duggan, director responsible for prisons and criminal justice programme, Sainsbury Centre for Mental Health**
- **Brendan Finegan, Director of Strategy, Youth Justice Board**
- **Baroness Scotland, Attorney General**
- **Katy Emck, Executive Director, Fine Cell Work**
- **Bob Satchwell, Executive Director, Society of Editors**
- **Deborah Coles, Co-Director, Inquest**
- **Jacqui McCluskey, Associate Director, 11 Million**
- **Juliet Lyon, Director, Prison Reform Trust**
- **Rt Hon David Hanson MP, Minister of State**
- **Helen Edwards, Director General, Criminal Justice, Ministry of Justice**
- **Lord Ramsbotham, former Chief Inspector of Prisons**
- **Lord Phillips, Lord Chief Justice**
- **Rachel Griffin, Strategic Development Manager, Victim Support**
- **Roger Howard, Chief Executive, and Nicola Singleton, Director of Policy and Research, UK Drug Policy Commission**
- **Stephen Shaw, Prisons and Probation Ombudsman**

Participants in Commission seminars

- Angus Skinner, Secretary of the Howard League for Penal Reform in Scotland
- Professor Julian Roberts, University of Oxford
- Malcolm Dean, The Guardian
- Mary Riddell, Assistant Editor, The Daily Telegraph
- Baroness Vivien Stern, Joint Committee on Human Rights
- Kevin Marsh, Head of Economics, The Matrix Knowledge Group
- Tom Moran, Principal Policy Adviser, CBI Public Services Directorate
- Richard Garside, Director, Centre for Crime and Justice Studies
- Rob Allen, Director, International Centre for Prison Studies
- Barbara Wilding, Chief Constable, South Wales Police
- Professor Carol Hedderman, University of Leicester
- Amelia Cookson, Head of Service Transformation, Local Government Information Unit
- Professor Joanna Shapland, University of Sheffield
- Dr Heather Strang, University of Cambridge
- David Faulkner, University of Oxford
- Professor David Downes, London School of Economics
- Professor René van Swaanigen, Erasmus University Rotterdam
- Eilís Lawlor, New Economics Foundation

Annex D: List of written evidence

Written evidence

- ‘Further information from the Attorney General’- provided by the Crown Prosecution Service
- Ministry of Justice – two letters from the Rt Hon David Hanson MP
- Nacro
- Prisoners’ Education Trust
- Stephen Jakobi on behalf of ‘children aren’t criminals’ campaign sponsored by the ‘Just Umbrella’
- Children’s Rights Alliance for England (CRAE)]
- IMB, Guys Marsh
- Lord Ramsbotham, report ‘Better Government. HM Prison Service is failing. A new approach is urgently needed’
- A number of submissions from individual members of the public, including Howard League members, criminal justice practitioners, mental health practitioners and serving prisoners

Submitted documents

- Fawcett Society (2004) ‘Women and the Criminal Justice System’ - A report of the Fawcett Society’s Commission on Women and the Criminal Justice System
- Fawcett Society (2005) ‘One Year On’. Fawcett Society’s Commission on Women and the Criminal Justice System
- Fawcett Society (2006) ‘Justice and Equality’. Second Annual Review of the Fawcett Society’s Commission on Women and the Criminal Justice System
- Fawcett Society (2007) ‘Women and Justice’. Third Annual Review of the Fawcett Society’s Commission on Women and the Criminal Justice System
- Fawcett Society (2007) ‘Provisions for Women Offenders in the Community’ - Executive Summary
- Smart Justice (2006) ‘Crime Victims Say Jail Doesn’t Work’.
- Smart Justice (2007) ‘ Public Say: Stop locking up so any women’
- Prison Reform Trust (2008) ‘Bromley Briefings. Prison Factfile’
- Prison Reform Trust (2008) ‘Prison report: Unlocking community solutions to crime’ The magazine of the Prison Reform Trust Issue No 72 Winter 2008vb
- Prison Reform Trust (2003) The Decision to Imprison: Sentencing and the Prison Population
- Prison Reform Trust (2002) Barred Citizens: Volunteering and Active Citizenship by Prisoners
- Prison Reform Trust (2005) Troubled Inside: Responding to the Mental Health Needs of Men in Prison (2004) ‘ A Lost Generation: the experiences of young people in prison’

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Annex F

The Commission would like to record its gratitude to the following foundations and individuals who contributed sums greater than £1,000 but also to thank the many other people who made donations and contributions that enabled the work to be carried out.

29th May 1961 Trust

Michael Butler

Law Society Charity

David Martin

Persula Foundation

Eva Reckitt Trust

Rowan Charitable Trust

Saint Sarkis Charitable Trust

Timpany Charitable Trust

The Howard League for Penal Reform works for a safe society where fewer people are victims of crime

The Howard League for Penal Reform believes that offenders must make amends for what they have done and change their lives

The Howard League for Penal Reform believes that community sentences make a person take responsibility and live a law-abiding life in the community

the Howard League for Penal Reform

1 Ardleigh Road
London
N1 4HS

t 020 7249 7373
f 020 7249 7788
e info@howardleague.org
w www.howardleague.org

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ISBN 978-1-905994-16-8



ISBN 978-1-905994-16-8
Price £15.00

2009