Handbook on Prisons

Edited by

Yvonne Jewkes

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List of abbreviations

ACM	Australian Correctional Management
ACR	automatic conditional release
APF	Action for Prisoners' Families
ART	Aggression Replacement Training
ASBO	anti-social behaviour order
ASRO	Addressing Substance-related Offending
BAFO	best and final offer
BME	black and minority ethnic
BOOT	build–own–operate–transfer
BOV	board of visitors
CALM	Controlling Anger and Learning to Manage it
CARAT	Counselling, Assessment, Referral, Advice and Throughcare
CCA	Corrections Corporation of America
CCG	Contracts and Competition Group
CCP	core correctional practice
CDATE	Correctional Drug Abuse Treatment Effectiveness (database)
CJSRU	Criminal Justice System Race Unit
CNA	certified normal accommodation
CO	conscientious objector
CPA	Care Programme Approach
CPT	(European) Committee for the Prevention of Torture
C & R	control and restraint
CRC	(UN) Convention on the Rights of the Child; Control Review Committee
CRE	Commission for Racial Equality
CRP	Crime Reduction Programme
CSAP	Correctional Services Accreditation Panel

CSC	Correctional Service of Canada; close supervision centre
CSCI	Commission for Social Care Inspectorate
CSDD	Cambridge Study in Delinquent Development
DCMF	design, construct, manage and finance
DCR	discretionary release
DIMIA	Department of Immigration and Indigenous Affairs
DIP	Drug Interventions Programme
DRR	drug rehabilitation requirement
DSPD	dangerous and severe personality disorder
DTO	detention training order
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ETA	Euzkadi ta Azkatasuna (Basque Separatist Movement)
ETE	Education, training and employment
ETS	Enhanced Thinking Skills
FBI	Federal Bureau of Investigation
FCDO	family contact development officer
GHQ	General Health Questionnaire
HMCIP	Her Majesty's Chief Inspector of Prisons
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICT	information and communication technology
IDS	immigration detention standard
IEP	Incentives and Earned Privileges
IHL	international humanitarian law
IMB	independent monitoring board
IPP	indefinite (sentence for) public protection
IQR	implementation quality rating
IRA	Irish Republican Army
JSAC	job-simulation assessment centre
KPI	key performance indicator
KPT	key performance target
LASH/LASCH	Local Authority Secure (Children's) home
MAPPA	multi-agency public protection arrangement
MBU	mother and baby unit
MDT	mandatory drug testing
MQPL	measure (of the) quality of prison life

NGO	non-governmental organization
NHS	National Health Service
NIJ	National Institute of Justice
NOMM	National Offender Management Model
NOMS	National Offender Management Service
NPM	new public management
OASyS	offender assessment system
ONS	Office for National Statistics
OSG	operational support grade
PCC	'First Command of the Capital' (Brazil)
PCO	prisoner custody officer
PDBS	Prison Design Briefing System
PFI	Private Finance Initiative
PMS	Prison Medical Service
POA	Prison Officers' Association
POELT	Prison Officer Entry Level Training
POPS	Partners of Prisoners and Family Support Groups
POST	Prison Officer Selection Test
POW	prisoner of war
PPP	public–private partnership
PROP	National Prisoners' Movement
RAG	Research and Advisory Group
RAP	Radical Alternatives to Prison
RCT	randomized control trial
RIRF	racist incident reporting form
ROM	regional offender manager
R & R	Reasoning and Rehabilitation
SEU	Social Exclusion Unit
SGC	Sentencing Guidelines Council
SMS	Scientific Methods Scale
SOTP	Sex Offender Treatment Programme
STC	secure training centre
STO	secure training order
STOP	Straight Thinking on Probation
TUPE	(European) Transfer Undertaking Protection of Employment
UNMOVIC	UN Monitoring, Verification and Inspection Commission for Iraq
VAC	voluntary after-care
ViSOR	Violent and Sex Offender Register

WMD	weapons of mass destruction
YJB	Youth Justice Board
YOI	young offender institution
YOT	youth offending team

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Understanding the prison

Yvonne Jewkes

Image and reality

One of the most significant political trends of the last decade has been the creation of new penal policy and criminal justice legislation at a rate previously unknown and unimaginable. Since coming to power in 1997, the New Labour government has introduced over 3,000 new criminal offences at a rate of almost one a day. Such a frenzied approach gives lie to any belief that law and policy-making is underpinned by measured reflection and rigorous research. Indeed, it appears to suggest that much criminal 'justice' is influenced by a media-fuelled desire for quick-fix proposals and knee-jerk responses.

Political and media institutions invariably lend themselves to a single analysis and, on matters of crime and punishment, they function together, with dominant media representations mirroring the rhetoric of 'official' leaders and being communicated to audiences in such a way as to satisfy a perceived public appetite for retribution. Supporting a political commitment to deterrence and detainment, the media's concentration on serious, random, atypical offences legitimates the drive to incarcerate more prisoners and establish a tougher criminal justice system. Not surprisingly, a greater scope for criminalization inevitably creates a greater need for regulation and punishment and brings further pressure to bear on a prison system that is already stretched to the point of crisis. The prison population of England and Wales has grown from just under 10,000 prisoners in 1940 to approximately 80,000 prisoners at the end of 2006 and has doubled in size since 1993 (Home Office 2006a). Current estimates forecast a prison population of up to 94,020 by the end of this decade (Home Office 2006b), although official predictions have been as high as 109,600 prisoners by 2010.

The dramatic rise in the numbers of offenders being sent to prison has resulted in chronic levels of overcrowding being an abiding feature of the prison system. This, in turn, has led to further problems. Overcrowding has been linked to lack of safety for those who live and work in prisons, as well

as bullying, suicide, self-harm and mental health problems among inmates. It results in fewer opportunities for education, training and rehabilitative work due to a lack of supervision, and inmates may be confined to their cells for longer (23 hours a day in some prisons), causing greater tensions both among prisoners and between prisoners and staff. It is further estimated that 22 per cent of the prison population 'doubles up' in a cell designed for one person (www.howardleague.org). The worst prisons for overcrowding are frequently local prisons, which hold high numbers of remand prisoners, and dedicated remand centres. So bad is the situation that many remand prisoners have, in recent years, been confined in police cells where conditions are even more inadequate than in prisons (Cavadino and Dignan 2007). In short, some of the poorest conditions are to be found in custodial environments holding high numbers of people who have not actually been convicted; in fact, almost one in five of people held on remand are acquitted or not proceeded against (Home Office 2005).

Furthermore, imprisonment is simply one stage of a journey which offenders committed to custody have to make. Prison has been described as a 'sophisticated sausage machine' (Caird 1974: 9), and it is not surprising that the more people who are stuffed in at one end, the more problems and pressures are created at the other. Graphic illustration of this predicament was provided in 2005 and 2006 when a number of high-profile, salaciously reported murder cases by individuals released on licence from prison propelled the Probation Service – a profession previously described as 'stubbornly lacking in news value' (Aldridge 1999) – into an unwelcome media spotlight. Meanwhile, the day-to-day difficulties facing many thousands of individuals in prison and on release from custody (not to mention their families) tend not to be the stuff of headlines or election campaigns.

Of course, prisons have a function beyond that of containing society's miscreants: they are heavily symbolic institutions. Given this, it is unsurprising that one of the most prevalent messages in popular discourse is that people commit crimes because 'they' are not like 'us'. While evidence shows that most of the people processed through the criminal justice system are excluded from the full range of goods and services associated with citizenship (SEU 2002), their experiences of marginalization and deprivation are underplayed by politicians and the media who continue to discuss individual moral responsibility as if it exists in a vacuum, somehow detached from the circumstances in which people find themselves (Drakeford and Vanstone 1996). This tendency to separate behaviour from its social, cultural and economic contexts is echoed in the discourse of 'managing offending behaviour' that permeates the current penal policy climate. Insidiously disconnecting individuals from societal norms, such rhetoric ignores the social and personal contexts which make offending intelligible and stresses stigmatization and marginalization rather than inclusion and integration (Smith and Stewart 1998).

The relationship between media representations of prisons and public understandings of imprisonment is complex precisely because 'the prison' carries multifarious symbolic meanings which vary between different mediums and genres. Although not as prevalent as programmes about crime and crime detecting, the world of prisons and prisoners has now permeated

most television genres, including sit-com (*Porridge*), 'serious' drama (*Buried*, *Oz*), light entertainment drama (*Prison Break, Within These Walls*, *Bad Girls*, *The Governor*, *Prisoner*), documentary (*Strangeways*, *Lifer: Living with Murder*, *Jailbirds*, *Prison Weekly*, *Feltham Sings, Kids Behind Bars*) and reality TV (*The Experiment*, *The Real Bad Girls*), to name but a few. Meanwhile in cinematic portrayals, the prison is often used as a backdrop for a tale about individual perseverance and the indomitable human spirit. In many such cinematic representations, the viewer is encouraged to empathize with the convicted offender and share in the highs and lows of his or her journey of self-discovery. The central protagonist may have been wrongfully convicted, but even when this is not the case, 'fictional' prisoners are often portrayed as old-style romantic heroes struggling to beat – or at least survive – the system. Perhaps the archetypal cinematic prison drama – certainly the one that most people would immediately think of if asked to name a prison film – is *The Shawshank Redemption*, which contains all the conventional cinematic devices used to signify the American penitentiary: attempted rape by predatory inmates, a morally corrupt warden, a lasting bond formed between a young (and innocent) prisoner and an old lag who teaches him the tricks of survival and, ultimately, an ingenious and daring escape.

Such representations may not have much to tell us about the 'reality' of imprisonment although they cannot be separated from the ideas and opinions about prisons that circulate in society. The sheer number of dramatic media portrayals of incarceration suggests a public fascination with the inner world of the prison, yet it is a world that, for the most part, remains shrouded in mystery and misunderstanding. It is difficult to gauge exactly what the public thinks of prisons and prisoners and, in the absence of empirical research, it is all too easy to make generalizations based on press reports portraying prisons as holiday camps which hold no fear for career offenders. In recent months the press have used the emergence of a number of prison 'problems' that can be portrayed as a threat to 'respectable', 'decent' people in outside society as a stick with which to beat Home Secretary John Reid (who arguably made himself easy prey after coming to office with the statement that the Home Office was 'not fit for purpose'). Sustained and damaging media coverage about 'dangerous' offenders disappearing on release from prison, committing further offences and breaching control orders, added to the impression of an ineffective and inept government department and was almost certainly a factor in the decision to split the Home Office into two parts in May 2007, one responsible for national security, the other for justice. Meanwhile, the Prison Service also faced criticism when it was revealed in January 2007 that approximately 700 prisoners had absconded from open prisons in the 12 months to April 2006, and that approximately 400 of them remained at large, although an accurate figure could not be provided because there was no database to record recaptured prisoners. However, despite these representations, research indicates that public faith in the prison as the most effective method of meeting the aims of sentencing remains relatively intact (Roberts and Hough 2002). Paradoxically, then, the public appear tolerant of – even infatuated with – images of incarceration while, at the same time, being misinformed about the conditions under which most prisoners are detained,

unaware of the vulnerability of many prisoners and ignorant of the harmful effects of incarceration on individuals held captive and on their families (cf. Simon 2000).

The volume

The purpose of commissioning the chapters that make up this volume was to attempt to convey the reality – or some of the realities – of imprisonment, and to 'map' comprehensively the terrain of prisons and imprisonment at the beginning of the twenty-first century. In universities and other educational institutions 'prison' modules are growing in number and popularity. Yet it is arguable that students keen to further their knowledge of imprisonment are not as well served as those studying other areas of criminology and criminal justice (e.g. policing) when it comes to textbooks on prisons (although see recent contributions by Coyle 2005; Jewkes and Johnston 2006; Jewkes and Bennett 2007 for useful introductions). While empirical research in prisons remains relatively buoyant and has spawned a rich and diverse literature to spark the imagination of scholars dedicated to furthering their understanding about specific issues (which most recently include books on young men in custody; prisoners with mental health problems; the political imprisonment of women in Northern Ireland; prisons and the market economy; and therapeutic community prisons; see Harvey 2006; Seddon 2006; Corcoran 2006; Stern 2006; Parker 2006, respectively), there hasn't hitherto been a single book that covers all the major aspects of prisons and imprisonment.

The aims of the *Handbook on Prisons*, then, are to offer a broad introduction to prisons and imprisonment and to be the most wide-ranging and ambitious book on the subject to date. Gathering together not only many of the leading academics in the field but also several senior practitioners, the Handbook is intended to reflect the main issues and debates surrounding prisons and prisoners while providing new ways of thinking about familiar penal problems and enhancing our theoretical understanding of imprisonment. The volume reveals the range and depth of prison scholarship, combining contributions from many of those who have established and developed prison research over the last half-century and who continue to shape it in its current phase, with more recent entrants to prison studies who are building on this tradition and breaking new ground. Many of the authors have practical experience as well as theoretical knowledge, and the volume contains contributions by prison governors and ex-governors, prison inspectors and people who have worked with prisoners in a wide range of professional capacities. It is hoped that by inviting experts in their fields to contribute original, substantive chapters on subjects that are hugely diverse and yet imperative to our understanding of prisons, this volume will provide an invaluable resource for students at all levels who are studying courses in prisons, penology, criminal justice, criminology and related subjects.

As with any book that attempts to provide the core reading for degree courses, claims of comprehensiveness must be tempered by realism. Limitations of size meant that decisions had to be made about where the

focus should lie, where boundaries should be set and what could be omitted. The chapters are therefore primarily concerned with issues facing the prison system in England and Wales in the current epoch. However, as one of our contributors observes, it is commonly agreed in the social sciences that thinking comparatively about problems is a good thing (Chapter 4, this volume), and many authors throughout the collection pay due attention to prison systems, research, practice and policy in other parts of the UK and internationally, and through history as well as contemporaneously. It must also be noted that the new Ministry of Justice came into being after all the chapters had been written. While every effort has been made to amend and replace all references to the Home Office, some of the developments are still in transition. Readers need to be aware that the Prison Service and NOMS are now the responsibility of the Ministry of Justice and to bear in mind especially where there is a reference to the role of the Home Office.

The Handbook is divided into five parts, each of which is distinctive in its focus, yet inter-related in many of the themes and issues raised. The first part considers the prison in its comparative and historical context. It looks at the birth of the modern prison and considers changing aims and rationales for imprisonment over the last three centuries. The chapters individually and collectively address many important questions concerning the purpose, aims and understandings of imprisonment. How important are historical contexts and continuities for our understanding of the current penal landscape? How have philosophies of punishment changed, and what can they tell us about what prisons are for? To what extent does the architecture and design of prisons indicate what goes on within their walls? What impact does space and place have on the lives of a prison's occupants? What drives prison populations? How have academic studies informed our knowledge and understanding of imprisonment? What have they failed to shed light on? Why do some countries have very high prison populations while others maintain low rates of incarceration? The first part of the volume also explores the role of the state and the political context within which imprisonment is located. What is the relationship between crime rates and the numbers of people sent to prison? Why has the West developed such a deep cultural attachment to the prison despite the incontrovertible evidence that it does not work? How can we best understand the relationship between political economy, the state and the prison?

The second part of the Handbook looks at some of the prisoners who make up the prison population. Who is in prison and why? In what kinds of prison environments are they detained? What special problems do they face? In what ways does prison policy impact upon their lives? Might there be alternative forms of punishment that could be implemented which would be less damaging to vulnerable groups and more effective in reducing offending? If imprisonment is an expressive, performative mode of punishment, what do prison demographics tell us about broader social relationships of power?

The third part reflects on some of the themes and debates that have dominated penal discussions over the last two decades, although many date back a considerable length of time. By their very nature controversial, prisons are suffused with contentious policies and practices, and this section of the

Handbook looks at some of them. How can prisons achieve a balance between custody and care, decency and austerity? How has the introduction of private investment altered the prison estate? Is privatization ethical or desirable? Why do prisons house so many people who have mental health problems? What standard of healthcare can prisoners expect to receive? How do drugs impact on prison societies? What can be done to reduce self-inflicted deaths in custody? What accounts for public apathy towards the problems that afflict prisoners and prisons? Where do the public get their information and ideas about prisons from? Why do the popular media persist in presenting an image of prisons and prisoners that is, in most respects, wide of the mark, given the reality of the problems that are described in this part and throughout the *Handbook on Prisons*?

The fourth part of the volume examines issues surrounding staffing, management and accountability. The focus here is on the operation of prisons and the various initiatives that exist to try to ensure they run smoothly and are staffed and managed appropriately. What kinds of people enter the Prison Service? What do uniformed prison staff actually do? What makes a 'good' prison officer (and, by implication, what makes a 'bad' prison officer)? What is the role and nature of prison governing, and how has the job changed since a culture of managerialism took hold of the Prison Service? Why does prison 'performance' have to be measured and how is it achieved? Is a culture of auditing and performance measurement compatible with having responsibility for large numbers of people, many of whom are vulnerable, dangerous or have problems that are magnified in confinement? Why is independent inspection important? What role does human rights legislation play and is it effective in ensuring that those who staff and manage prisons are accountable?

The final part of the *Handbook on Prisons* looks at some of the issues surrounding prisoners in custody and beyond the prison gate. What are the characteristics of late modern penality? Why have the concepts of risk and dangerousness become synonymous with prison populations? Why has the issue of 'public protection' overtaken debates about prisoner welfare? Why is psychology such a dominant force in sentence management? What works? What is done to ease the transition from prison to community? Under what conditions are offenders most likely to desist from crime? Why do many prisoners' families feel they have been condemned to serve a 'second sentence'? Have prison reform groups succeeded in improving prison conditions and bringing unpopular penal issues to wider attention? Do we need prisons at all?

It is these questions and topics that shape the parameters within which the authors who have contributed to the *Handbook on Prisons* offer their expertise. But first, Her Majesty's Chief Inspector of Prisons for England and Wales provides a personal view of the state of our prisons and the conflicting pressures that are likely to continue to shape sentencing practices and imprisonment in the future. Not only does this introductory chapter offer a fascinating perspective based on Anne Owers' professional experience of inspecting prisons over several years but it also introduces us to the prison population, reminds us of its diversity and provides us with an overview of many of the issues that will be discussed in greater detail in later chapters:

among them, black and minority ethnic prisoners, women in custody, young offenders, the health problems often faced by prisoners, substance misuse, self-harm and suicide, debates about the management of prisons, and the resettlement of prisoners in the community. Owers also locates prisons in the wider political context by charting important recent developments, such as the establishment of the National Offender Management Service (NOMS); the devolvement of offender management services to regionally based bodies within and outside the criminal justice system; the government's commitment to auditing, 'contestability' and security while ensuring that those who live and work in prisons are treated with 'decency'; the introduction of new human rights legislation; and the remit and responsibilities of Her Majesty's Inspectorate at a time when independent inspection is facing significant threats and interference from politicians, private investors and other stakeholders. As such, Chapter 1 of the *Handbook on Prisons* provides unique insight into prisons in the twenty-first century and is a timely prologue to the chapters that follow.

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Chapter 1

Imprisonment in the twenty-first century: a view from the inspectorate

Anne Owers, CBE, HM Chief Inspector of Prisons for England and Wales

Introduction

In the Introduction to my annual report published in January 2005, I said:

> Our prisons are still 24 per cent overcrowded and operating perilously close to full capacity. The key message of this report is that ours is a prison system that has progressed in many areas, and which is capable of making even more progress. But it is trying to sustain those improvements against an undertow of continuing, unremitting pressure, and an increasingly needy and demanding population (HM Chief Inspector of Prisons 2005a).

Today, that is, if anything, even more true. The prison population has continued to peak, reaching its highest ever level – 77,800 – in November 2005.

This introductory chapter is a very practical contribution to the *Handbook on Prisons*, based on my experience in five years of inspecting prisons in England, Wales and Northern Ireland. It seeks to describe the outcomes for prisoners, and for wider society, of the policies and practices that have underpinned a steeply rising prison population over the last few years and the key pointers for the future. It also considers the role of independent inspection.

The state of our prisons: conflicting aims

There are two sets of conflicting pressures and principles that define the present state of our prisons and their likely future. The first is sentencing practice: driven not only by legislation but also by sentencers' response to what they perceive the public want and what realistic alternatives are available to them. As many researchers have pointed out, the use of, and length of, imprisonment has increased significantly over the last 15 years, at

a time when recorded crime has been falling. Sometimes this is the result of legislation: mandatory minimum sentences, new offences or restrictions on bail, for example. But sentencing also reflects the political and public climates. It has been pointed out, for example, that, when the sentencing policy set out in the ill-fated Criminal Justice Act 1991 was under attack in the media and by politicians, judges began lengthening sentences even before the Act was actually amended (Hough *et al*. 2003). Similarly, each time the prison population reaches crisis point (most recently in November 2005), it appears to slacken off somewhat when sentencers use their discretion in relation, for example, to bail decisions. However, the use of that discretion is seriously reduced, in many cases, by the absence of any viable alternative to custody – for example, for the mentally disordered (for whom prison has largely replaced the much criticized, and now closed, large mental institutions) or for those living a chaotic life as a consequence of chronic substance abuse problems or lack of societal links (see Chapter 16, this volume).

Politicians, too, send mixed messages. On the one hand, and stimulated by recent reports from governmental and non-governmental bodies, ministers have made clear their preference for using community sentences wherever possible, rather than short prison terms. They have also supported moves to reduce the imprisonment of women and of children, in particular. On the other hand, legislation is passed which inevitably ratchets up the prison population. Secondary imprisonment – a consequence of breaches of parole, licence or anti-social behaviour orders – has risen by 250 per cent in the last five years (HMCIP 2006b), and more offenders will come within its reach under the proposed Custody Plus arrangements for short-sentenced prisoners. The new indefinite sentence for public protection (IPP), available only for offences committed since April 2005, had already resulted in over 400 prison sentences by the end of that year (www.noms.homeoffice.gov.uk), many with extremely short minimum terms (as little as two months) within which prisoners have no chance at all of being able to show that they have addressed the perceived risks they pose and are therefore fit for release. It is the length of imprisonment, as well as its use, which has been a driver for the sustained rise in the prison population over recent years. The proportion of the prison population sentenced to over four years' imprisonment has now reached 58 per cent (www.hmprisonservice.gov.uk).

The second set of conflicting aims relates to the purpose of imprisonment. Ten years ago, following both some high-profile escapes and the view that prison, of itself, 'worked' as a response to crime, the message for the Prison Service was clear. Its role was to provide 'security, security, security'; and it was resourced, particularly at the high security end, in order to do that. And that has been remarkably successful: there have been no escapes from category-A accommodation since October 1995, and only 22 escapes from closed prisons over the last two years. In addition, even in the face of considerable population pressure, prisons are by and large safer places: disturbances are contained and vulnerable prisoners and staff better protected (see Chapter 14, this volume).

Since then, though, other aims have been introduced. The 'decency agenda' espoused by Martin Narey while Director-General – following some high-

profile examples of *in*decency, such as the murder of a young Asian man by his racist cellmate at Feltham Young Offender Institution – has been continued under his successor and strongly endorsed by ministers. Rising rates of suicide and self-harm have led to a greater focus on safer custody and support for prisoners at risk. The 'war against drugs' is waged in prisons as well as in the community, with specified resources for treatment and rehabilitation, as well as detoxification. A government committed to 'education, education, education' has prioritized that within prisons too, beginning with ring-fenced funding for education and skills training, and now entrusting its delivery and management to local learning and skills councils, responsible to the Department for Education and Skills, not the Home Office. (A similar move towards professionalism and equivalence has led to prison healthcare being funded and managed by the Department of Health and local primary care trusts; see Chapter 16, this volume).

Finally, following a Social Exclusion Unit report (2002), resettlement has become part of prisons' core business, and this has meant not only the criminogenically focused offending behaviour programmes (which, it is now recognized, may not be the main route to rehabilitation) but also a whole raft of practical measures designed to help prisoners obtain work, accommodation and other support, and necessitating strong links with the outside organizations that can provide this. The end-state of this is the National Offender Management Service (NOMS), envisaged as a joined-up, individually planned approach that can significantly reduce reoffending.

Prisons are, therefore, expected to do more, with more outside agencies, than ever before. Prison managers are responsible for areas over which they have no direct financial control, delivered by staff who are not directly accountable to them; and they are doing this in the face of an ever-rising population, with multiple needs and vulnerabilities. The Prison Service is likely to be slammed by a parliamentary education committee for failing to deliver adequate education, and by a human rights committee for the level of self-inflicted deaths. But the headlines – for the press and for ministers – will still be largely around those areas where prison is perceived as insufficiently punitive, or where prisoners are released, or abscond, to commit further crimes. Perversely, too, the absence of riots and high-profile escapes means that the real and day-to-day problems that prisons face have not posed great political problems for ministers – yet an increased and increasingly demanding inmate population poses huge practical difficulties for those seeking to run prisons. In the section that follows, I will look at all these in more detail.

Who is in prison?

First, the prison population. In my first five years as Chief Inspector, the number of people in prison in England and Wales rose from 66,000 to over 77,000: a rise of nearly 17 per cent (as this book went to press in June 2007, the prison population stood at 80,614). And the 66,000 prisoners in 2001 themselves represented a steep rise in the use of imprisonment. Imprisonment of adult

men had risen by 50 per cent during the previous decade; imprisonment of women had risen even more steeply, by 143 per cent. The composition of the expanding population has varied somewhat since 2001. The women's prison population, rising faster than any other group, levelled out and indeed fell slightly during 2004–5, though it now appears to be on the rise again (see Chapter 11, this volume). The population of juveniles in prison declined, following the establishment of the Youth Justice Board with its focus on alternatives to custody and preventive action – though that population too was rising during 2005 (see Chapter 9, this volume). It is the adult male prison population that has recently been rising most steeply, fuelled by remanded, recalled and longer-sentenced prisoners. This also means that the prison population is ageing: the number of men over 60 in prisons more than trebled between 1992 and 2002 (HMCIP 2004; see Chapter 10, this volume). Black and minority ethnic prisoners also continue to be over-represented in the prison population (see Chapter 12, this volume). But the mix within that population is changing, with more Muslim prisoners, and more Eastern Europeans, often from Roma communities. Foreign national prisoners also constitute a much larger proportion of the prison population, particularly the women's prison population, as a consequence of lengthy sentences for drug importation (see Chapter 11, this volume).

So, prisons are dealing with an increased, and increasingly diverse, population. They are also dealing with one with extremely high levels of psychiatric morbidity and of substance abuse, the two often fuelling each other. Some estimates have put the incidence of mental illness within prisons as high as 90 per cent – though this includes anxiety and depression that are sometimes the consequence of imprisonment. The Social Exclusion Unit report (2002) found that 72 per cent of men and 70 per cent of women suffered from two or more mental health disorders: 14 and 35 times the rate in the general population; and among those 7 per cent of men and 14 per cent of women had a psychotic disorder (14 and 23 times the rate in the general population). Some 20 per cent of men and 15 per cent of women had previously been admitted to a psychiatric hospital. Among young prisoners, rates were even higher, with 95 per cent suffering from some kind of disorder and 80 per cent from at least two. Women prisoners suffer from particularly poor physical and mental health. A Department of Health report (Brooker *et al*. 2003) on women's mental health needs states that women are twice as likely as men to have received help for a mental/emotional problem in the 12 months prior to custody, have symptoms associated with post-traumatic stress disorder and are more likely to have a serious mental illness (see Chapter 16, this volume).

There has also been a significant increase in the amount, and complexity, of substance misuse among those arriving in prison. In 2002, the Social Exclusion Unit estimated that around two thirds of prisoners had taken illegal drugs in the year before imprisonment, and experience from inspections, particularly in women's prisons, suggests that this has increased. At Holloway in 2004 we reported that 60 per cent of the women admitted had required medical detoxification for opiates, alcohol and benzodiazepines – that amounted to 940 women in a seven-month period (HMCIP 2003). Substance misuse and mental

health are, of course, connected. The one leads to the other but, importantly, detoxification in prisons can increase mental instability and vulnerability by exposing those issues that substance use has masked. The extent of self-harm among women in prison is a strong indicator of that vulnerability. In 2005, women represented only about 5 per cent of the prison population, but were responsible for 56 per cent of incidents of self-harm. This often involved repeated incidents by particular women. One women's prison alone had nearly 2,000 incidents during the year: an average of nearly six a day.

It is clear that interaction between and with prisoners can reduce self-harm; it is also clear that, in busy prisons, this sometimes fails to happen. For example, at both Holloway and Feltham Young Offenders' Institutions,[1] inspectors criticized healthcare centres where those who self-harmed repeatedly were simply watched, by agency nurses, 24 hours a day. Suicide in prisons is, of course, the most acute manifestation of vulnerability. The number of self-inflicted deaths in prisons has been on the rise for a number of years – close to a hundred (nearly two a week) throughout 2002, 2003 and 2004, though there was a welcome decrease in 2005 to 78. For women, the suicide rate has very much mirrored rises in the female prison population. When at its height, women in prison were around two-and-a-half times more likely to kill themselves than male prisoners: a particularly significant statistic, given that in the community men are three times more likely to commit suicide than women (see Chapters 11 and 18, this volume).

It is clear that the early days in custody, particularly for mentally ill or detoxifying prisoners, are times of heightened risk. In 2003, 40 per cent of self-inflicted deaths occurred during the first month of custody. Prisons have therefore paid much greater attention to good procedures during those early days. Many local prisons now have dedicated first-night centres, where new prisoners can be supported at the most vulnerable time. However, their quality varies. Some are extremely good, identifying and supporting prisoners in distress; others are simply a collection of cells (often not very clean) with a notice above them announcing that they are the first-night centre.

But the efforts of even the best prisons can be undermined by late arrivals of prisoners from court. This is particularly problematic for women and young prisoners, who have the longest journeys, as there are fewer establishments. But at all prisons, particularly during times of acute population pressure, prisoners can arrive in numbers after 7 p.m., when main shift staff are preparing to go off duty and when they have to assess the needs and vulnerabilities of a large number of people about whom they have virtually no independent or accurate information. Inspectors found that, on one day at Leeds prison, reception staff were settling in 77 prisoners. At Norwich, in six months, 256 prisoners had arrived after 7.30 p.m., including 26 young adults who had arrived after 10 p.m. Juveniles and young adults at Stoke Heath were arriving around 9 or 10 p.m. and sometimes after midnight.[2]

Courts have, in the past, been much more concerned about prisoners' late arrival in court than their delayed return to prison, though that is now changing, with new escort arrangements and more attention from the senior judiciary. The condition of court cells has also caused us grave concern: they are the first places where someone will experience custody and, unlike prison

cells, there is no system for certifying them as safe to hold a specific number of prisoners. Conditions in court cells and on escort are improving, and are now subject to inspection: the two are not unconnected.

Proper detoxification is also an essential part of safer custody in the early days. The women's prison estate led the way in the provision of safe clinical management of substance users, beginning at Holloway. Some women's prisons, though, were unacceptably late in providing this. At Styal, during our 2002 inspection, we found detoxifying women fitting and vomiting in their cells and called for a proper detoxification regime to be put in place urgently. Eighteen months later it was; but, in the interim, six women had died, all within the early days of custody and all withdrawing from drugs. Men's local prisons have been slower to develop proper mechanisms, though this is now improving. Again, variations in practice are marked. The Safer Custody Group within the Prison Service has been active in developing better supportive arrangements for those at risk of suicide: ranging from 'safer cells' (without ligature points) to the development of a listener scheme, where Samaritan-trained prisoners support their peers. Procedures for identifying and caring for prisoners at risk have also improved, and a recently introduced system aims to promote interaction with prisoners, rather than simply observation of them. But that aim can be hard to reach in an overcrowded local prison with a high population turnover.

There is a danger that prisons, faced with mentally ill and serially self-harming prisoners, resort to extreme measures to prevent suicides, which can impinge on human dignity. It is possible physically to prevent someone from committing suicide – as some North American jurisdictions do – by putting him or her in a straitjacket. Prisons in England and Wales rarely resort to that, but staff at some institutions do put people, even children, in stark, sometimes dungeon-like, unfurnished cells, stripped of their normal clothing, watched (but not engaged with) in every movement they make. This is to some extent understandable in establishments that know they are likely to be blamed for any failures – but it is not 'care', it is 'containment'. It does not solve the underlying causes of distress but merely postpones their emergence.

The Parliamentary Joint Committee on Human Rights, in its recent report into suicides in prison (2004), rightly pointed out that suicide prevention is not essentially a matter of procedure but of a supportive environment as a whole:

> At the level of the day-to-day operation of prisons and other places of detention, the culture of a prison, the extent to which people are treated with dignity, the quality of relationships between prisoners and staff, are all critically important. This is reflected in the standard against which the Chief Inspector of Prisons inspects, of a 'healthy prison', which meets standards of decency, safety and respect. This culture is fundamental to prisoner safety and therefore to the protection of rights under Article 2 [of the European Convention on Human Rights: the preservation of life].

The committee refers to the tests that we, as an inspectorate, have developed

for assessing the 'health' of a custodial environment. They are, first, that prisoners are held safely; secondly, they are treated with respect for their human dignity; thirdly, they are able to engage in purposeful activity; and, fourthly, they are prepared for resettlement back into the community. We make these assessments using our own detailed and published criteria, called *Expectations*,[3] which cover all aspects of prison life and are referenced against international human rights standards. The remainder of this chapter will consider each of the four remits for which the inspectorate has responsibility.

Safety, respect, purposeful activity and resettlement

The preservation of life is clearly a fundamental of safety. The way that prisoners are treated and housed is fundamental to respect. There have, over recent years, been significant changes to the negative, and sometimes abusive, culture that infused some prisons, particularly large local prisons, such as Wormwood Scrubs, Wandsworth and Birmingham, as well as to the racism that was evident at Feltham, for example. Inspection reports exposed some of the unacceptable outcomes for prisoners – such as the 'cage' in the Dartmoor segregation unit and the 'Wandsworth Way', the negative culture that led to unacceptable treatment of prisoners.[4] The Prison Service itself took on 'decency' as a core aim. Recent inspections have tracked real progress at Wormwood Scrubs and Birmingham, but ingrained cultures are hard to shift, and tackling them requires consistent and robust management: it is never 'job done'. Affecting fundamental changes to a prison's culture and ethos is more difficult at times of population pressure and crisis management; even more so when governors are moved swiftly from one prison to another.

   Conditions in prisons are also better than they were 15 years ago when a previous Chief Inspector of Prisons, Sir Stephen Tumim, launched a campaign against 'slopping out', a practice that was finally ended in 1992 following the publication of the Woolf Report (see Chapter 3, this volume). But standards are not yet good enough. In too many male local prisons, two men share a cell meant for one, with an unscreened toilet, and eat all their meals there. In others, including one women's prison, ineffective night sanitation systems still mean that prisoners slop out – or, alternatively, throw 'poo parcels' out of the window.[5] In an overcrowded system, too, it is difficult, sometimes impossible, to close down old and decrepit wings in order to refurbish them. We have described prisoners shivering in temperatures of only 5 degrees centigrade, inhabiting cells next to leaking soil stacks and using filthy, rusty and paint-peeling showers. Such things are unacceptable in a civilized society such as ours.

   Another key aspect of respect is race relations and diversity. The Commission for Racial Equality's (CRE) investigation revealed institutional racism within the Prison Service, even though its previous and current Director-General were committed to tackling this. Inspections find that the procedures that seek to ensure race equality are, largely, in place; but the confidential prisoner surveys that we carry out consistently reveal that black and minority ethnic prisoners report poorer outcomes, across the whole range of prison life, than

white prisoners (HMCIP 2006a). The inspectorate has recently published a thematic report on race in prisons, *Parallel Worlds* (2005b), so-called because our research revealed that the perceptions and experiences within and between white and black prisoners, staff and governors were completely different. Underneath the headline findings of the prisoner surveys, the report found that the key issue for Asian prisoners, particularly young prisoners, was that they did not feel safe and were much more likely to claim that they had experienced racist bullying. By contrast, the consistent message from black prisoners, particularly young prisoners, was that they were not treated with respect (see Chapter 12, this volume).

Prisoners in groups reported 'undercover' racism, expressed in the way officers addressed them and the way staff used their discretion in relation to access to the regime. Conversely, governors and race relations officers believed that the regime was broadly fair. The perceptions of black and minority ethnic staff, however, were much closer to those of black prisoners than to those of their white colleagues. They, too, said that they had sometimes experienced subtle racism, and they were less likely to believe that black and minority ethnic prisoners' needs were met and more likely to accept the CRE's analysis. While most respondents acknowledged that some progress had been made, much remains to be done. Recent inspection reports have underlined this and have raised concerns about the treatment, and understanding, of Muslim prisoners in particular.[6] There are similar concerns in relation to other diversity issues. The proportion of foreign national prisoners has grown exponentially, without any adequate provision for their special needs: language, culture and family contact and resettlement needs. So has the population of older prisoners, dealt with in our thematic report *No Problem: Old and Quiet* (2004), the title of which accurately describes the attitude of many prison staff to prisoners whose increasing physical disabilities were significant disadvantages in a prison system designed round the needs of young men.

The inspectorate's third test is that there should be sufficient purposeful activity for all prisoners. Such activity fulfils a number of essential needs. By getting prisoners out of their cells and actively engaged, depression and anxiety are reduced. By providing prisoners with an active and predictable regime, structure is brought into what are often disordered and chaotic lives. Most importantly, by providing education and real work skills, prisoners are better equipped to gain work after release; and employment is the single factor most likely to aid resettlement and reduce reoffending. The majority of prisoners enter prison with significant educational deficits, usually as a result of exclusion or truanting from school; sometimes as a consequence of learning disabilities. In inspectorate surveys of juveniles (under 18) in prison, over two thirds said they had been excluded from school, and this rose to 86 per cent for boys (Eves 2005). Estimates for the male prison population are that half were excluded and a third truanted. Literacy and numeracy levels reflect this: it is estimated that half of all prisoners are below the level expected of an 11-year-old in reading, two thirds in numeracy and four fifths in writing (SEU 2002).

There have been considerable strides in the provision of prison education over the last six or seven years. Funding has increased from £47 million

to £122 million.[7] It is now provided, and ring-fenced, by the Department for Education and Skills, so that it cannot be raided by a prison governor for other purposes. Just as importantly, education is delivered by further education colleges, contracted in for the purpose, managed by heads of learning and skills, inspected by specialist education inspectorates and now to be commissioned by local learning and skills councils. These moves are important in bringing the outside in: ensuring that prison education is delivered to a standard that would be expected in the community. Inspections, too, look for equivalence: we inspect prisons together with colleagues in the education inspectorates – Ofsted and the Adult Learning Inspectorate – who will look to find exactly the same standards and quality as they would in an outside school or college.

However, there are also some downsides to education provision in prisons. First, the concentration almost exclusively on basic skills is too narrow. It excludes prisoners who can get, and need, education to a higher level (e.g. GCSEs, 'A' levels and degrees). It can also be problematic for prisoners who have been avoiding, or been avoided by, formal education for most of their lives. In particular, many young adults, the most prolific reoffenders, are resistant to sitting down in a classroom. They are much more likely to learn if education is presented by a side-wind, as a prerequisite to doing something which appears more conducive, such as learning a trade, PE or even arts and drama. Secondly, it is not yet clear whether the local learning and skills councils will give sufficient priority to, or properly understand the difficult and specialist area of prison education; or whether devolution on this scale will remove consistency for prisoners who are likely to serve their sentences in a number of different localities. Most importantly, though, there is still simply not enough education and skills training for the number of prisoners now held. For example, even though the Youth Justice Board has succeeded in doubling the spend per young prisoner since 1997, the cost per place in a prison is still only a quarter of that which would apply in a secure training centre or local authority secure home – and that difference precisely measures the support and resources available for each child.

In the adult prison system, pressurized and overcrowded local prisons effectively become transit camps (Fitzgerald and Sim 1979). They are the prisons that receive prisoners directly from court. Neither staff nor prisoners know how long those prisoners will spend there before the next intake from court requires an equal and opposite out-take. Many governors make valiant attempts to hold on to prisoners who are in mid-training course or mid-education programme, but at the height of overcrowding it may not be possible even to receive back prisoners returning from court. Realistically, local prisons do well if they manage to detoxify, keep safe and assess correctly the prisoners in their charge for sentence planning, education and drug treatment; and better if they manage to identify and deal with immediate practical resettlement needs at induction and follow them up before release. Some are creative about what they offer (for example, modular courses or short drug-treatment programmes). But most struggle with inadequate accommodation and increased populations. At Brixton, for example, two thirds of prisoners had no education or work at all,[8] and four out of the ten local prisons

we inspected last year provided no opportunities for prisoners to acquire marketable skills (HMCIP 2005a).

We should, though, expect more – by definition – of training prisons. They are the prisons to which longer-term prisoners will be sent, once they have passed through a local prison, so that they can participate in the programmes or training that will be needed for successful progression through the system and eventual resettlement into the community. Many training prisons have significantly increased in size over the last year or two. They have moved from relatively small to quite large establishments of 800 to 1,000 prisoners. Typically, a quick-build unit is put up (sometimes on what used to be a sports field). Some additional money is provided for regime activities – but it always arrives after the prisoners do (sometimes many months afterwards), and there is an even longer lead-in time to recruit (sometimes scarce) instructors and teachers. Moreover, there is no additional capital funding to invest in further workshops and classrooms. In some cases, local prisons, like Canterbury, have been re-roled to training prisons, but without providing the additional accommodation and facilities that the title deserves.[9] Time after time, therefore, inspections record training prisons where a third to a half of prisoners have no access to activities; or where the activities they *can* access lead to no qualifications or employable skills. Only 5 of the 18 training prisons inspected in 2004–5 had sufficient work and education for their populations (HMCIP 2005a).

Population pressure is a reality, and a damaging reality, in prisons. But it is easy for that to become the excuse, rather than the reason, for deficits in education and training. Prisons, certainly if they are entitled training prisons, need to see themselves, and to be seen by regional and national managers, as places where education and training is central, not peripheral – where the regime is focused around genuinely purposeful activity, and not the other way round. In one prison inspected recently, the governor complained bitterly that his allocation for education was significantly less per prisoner than other neighbouring prisons. Yet fewer than two thirds of his available activity spaces were being taken up: prisoners were either not taken there at all or arrived up to three quarters of an hour late. This is not only a waste of resources; more critically, it is a waste of opportunity.

These deficits are often disguised by some creative accounting in relation to prisoners' time out of cell or access to activity. In half the local prisons inspected in 2005, and in a third of training prisons, the time recorded for prisoners' purposeful activity bore little relation to what was actually happening. One prison recorded cell cleaning as 'purposeful activity' even when they provided no materials to do so. Another used preprinted sheets which they reproduced weekly, whatever the actual position. Another routinely recorded 13 hours out of cell, when the reality was half that (HMCIP 2006b), while yet another recorded only 76 prisoners as unemployed at any time, despite the fact that inspectors counted up to 200 prisoners on the wings during the working day. This eagerness to hit acceptable targets is not helpful. It serves to disguise, rather than tackle, the real problems our prisons are facing.

Prisons should also provide their occupants with real, transferable skills, not simply repetitive tasks, such as tea-bag packing. Though opportunities

to acquire qualifications are increasing, Adult Learning Inspectorate reports continually repeat the words 'lost opportunities', as they see prisons failing to provide prisoners with the chance to gain or accredit employable skills. And there are still far too many prisons which effectively discourage education and training by paying much lower wages to prisoners who choose education than to those in repetitive contract workshops, which gain revenue for the prison, rather than skills for the prisoner. Private sector prisons have also suffered from contractual obligations that can provide perverse incentives. They have been contracted to provide a certain number of hours out of cell each day, and are fined if they do not. This undoubtedly means that inmates in those prisons do not spend 23 hours a day behind their doors, as sometimes happens in the public sector. But it can also skew performance towards simply getting prisoners out of their cells, rather than doing anything creative with them. Managers and prisoners at one private prison we inspected were clear that inmates wanted less quantity of time out of cell, which they often experience as aimless or pointless, resorting to playing draughts in workshops without sufficient work, or putting handles on to plastic buckets. What they desired most was more quality of training and education.

Resettlement, the fourth of the inspectorate's tests, is another area where the expectations on the prison system have greatly increased in recent years. Before 2001, the greatest investment in preventing reoffending was in offending behaviour programmes, based upon those developed in Canada, which aimed to deal with prisoners' criminogenic factors. Initial evaluations of such programmes were positive. More recent research has shown, however, that programmes alone will not produce behavioural change once prisoners return to the communities they left. This coincided with two reports – one from the Social Exclusion Unit (2002) and one a joint thematic report from the Inspectorates of Prison and Probation (2001) – which stressed the importance of practical reintegrative measures to support prisoners with housing, employment, debt and other issues. The Social Exclusion Unit's report emphasizes the importance of employment, but notes that two thirds of prisoners arrived in prison from unemployment and three quarters left prison with no job to go to. Similarly, over a third of prisoners lose their housing during imprisonment. Ex-prisoners are also likely to experience immediate financial problems, with delays in accessing benefits, and sometimes problems arising from debts accumulated while in prison. The inspectorates' joint thematic report underlines some of these findings and points to the need for individual case management of prisoners to assist with resettlement. It identified a particular gap in provision for short-term prisoners – i.e. the majority of those discharged from prison and the most likely to reoffend. They were not supervised on release and did not have to have sentence plans while in custody.

Since 2001, there has been considerable movement in the right direction. The Prison Service has issued a Prison Service order on resettlement and set prisons targets for employment, and for housing, of released prisoners. Jobcentre Plus staff in prisons assist with benefits and employment searches; most prisons also have housing advisers, often contracted-in non-governmental organizations. Good prisons have instituted a system of custody planning for

short-term prisoners, identifying immediate problems such as homelessness and, in theory at least, putting in place plans for custody and release.

It is important that prisons are having to focus on the outside, and that agencies on the outside are having to focus on those in prison, rather than shutting them out of mind while they are out of sight. This has led to the involvement of jobcentres, housing agencies (often non-governmental organizations), work on debt and benefits, and drug intervention partnerships. In some prisons, partnership with the community has gone further and led to individual mentoring schemes, links with local authorities or local employers, and involvement with voluntary and charity organizations such as the Prince's Trust. But in some ways this simply emphasizes the scale of the task. Most short-term prisoners are not people who have ever been settled or habilitated in the first place – and they will emerge from prison, perhaps with increased hopes and expectations, but also with increased problems. Excellent housing support work at Holloway does not compensate for the paucity of housing provision in London for women with a history of, and convictions for, substance abuse. Emerging from prison clutching a set of certificates and turning up for a job-centre interview (which is all that is needed for a prison to hit its 'employment' target) will not necessarily result in any employment, let alone secure employment. Indeed, the perversity of inflexible targets was emphasized in one prison, which tries to find real and sustainable jobs by contacting employers and arranging interviews at sensible and suitable times. Because these interviews do not happen within the short window determined by the Prison Service order, it is failing to meet the targets that it would achieve if it simply sent them to the job centre unsupported.

What happens at the end of sentence, though, is crucially dependent on what happens during it. This work needs to start at reception, not a few weeks before release (which may of course be the same thing for some short-sentenced prisoners). Sentence planning, under offender assessment systems (OASys), is progressing, though it is undeniably hampered by poor information technology exchange between prisons and probation and between one prison and another; and, crucially, none at all between public and private sector prisons. But that – along with probation support post-release – only affects those sentenced to over a year in prison. The bulk of the prison population – remanded and short sentenced – is outside these arrangements. An increasing number of local prisons now attempt some form of custody planning for those prisoners (though some do not) but, in practice, under pressure, it is often little more than recording details, and sometimes dealing with pressing problems like housing, at reception, and picking up the file again just before release. The assertive or knowledgeable prisoner can often approach the agencies and groups responsible for resettlement (sometimes being able to get help from many of them); but those prisoners likely to be most in need of help are neither, and they may barely be touched by all this activity.

The role of NOMS, private investment and 'contestability'

The work outlined in the previous section will now be carried out under the umbrella of NOMS, the National Offender Management Service. The blueprint for this was set out in Lord Carter's report *Managing Offenders, Reducing Crime* (2004). That report had three key recommendations. First, custody should be reserved for 'serious, dangerous and highly persistent offenders'. Secondly, rather than focusing on managing two separate services – prisons and probation – the focus should be on the individual, end-to-end case management of offenders. Thirdly, effectiveness and value for money would be enhanced by greater competition and challenge – defined as 'contestability'. This, in Carter's view, required the restructuring of the prison and probation services into NOMS, with the headline aims of punishing offenders and reducing reoffending. NOMS would be headed by a Chief Executive, with a National Offender Manager responsible for reducing reoffending. He or she would be supported by regional offender managers (ROMs) who would supervise offenders and commission prison places, community interventions and fines. The Home Secretary accepted the report immediately, without any further discussion or consultation on its implementation, and, crucially, without any new resources to jump-start either the restructuring of two major national services or the development of community-based interventions or halfway houses which could provide effective alternatives to custody.

In the three years that have followed, NOMS has stuttered into existence, in a process that has often been as fragmented as the services it was designed to replace and which has not yet been secured in legislation. It is clear that the practical and detailed consequences of Carter's radical vision were not sufficiently considered before the new service was announced and launched. Instead of focusing first on developing and piloting an effective system, supported by information technology for managing offenders, NOMS was from the beginning embroiled in major service restructuring, based upon the necessity that everything should be 'contestable'. During this process, the Carter vision has been somewhat modified. The nine ROMs (for the English regions) and the Welsh Director of Offender Management are not in fact offender managers or supervisors. Their role has become purely a commissioning one, but one where it is envisaged that they will work in partnership with the providers of service in the public, private and voluntary sectors. There is, as yet, no clarity or consistency in the way they are approaching that task; and until April 2006, NOMS lacked a permanent Chief Executive.

The consequences for the National Probation Service, if NOMS is implemented as currently intended, are fundamental. The service itself, and the local probation boards that legally oversee probation services in each criminal justice area, will be disbanded and replaced by locally managed trusts, which will compete with private and voluntary sector providers for the separate tasks of managing offenders and providing community interventions. This has caused immense uncertainty and demoralization in a probation service that was radically restructured only four years ago. But the consequences for prisons could also be serious and significant. The Prison Service is used to competition, both through the involvement of the private

sector in building and managing new prisons, and in the threat of market or performance testing that hangs over poorly performing existing public sector prisons. But it is also a nationally managed service, which has over time developed an extensive array of management tools. They include detailed and regularly audited standards, governing security and service delivery; national key performance targets agreed with ministers; and Prison Service orders (instructions to governors about the way in which aspects of prison life and prisoner care should be delivered).

Many would argue that the service had become over- and micro-managed from the centre, with a focus on output-led quantitative targets, rather than qualitative outcomes. Recently, this appears to have been recognized with the introduction of a qualitative measure of prisoners' views about a prison being introduced into regular standards audits, and a greater acknowledgement of the importance of the inspectorate's qualitative tests, and of inspectorate reports, in the assessment and management of prisons. But two important lessons had been learnt from the upheavals and errors of the 1980s. One was that it was dangerous to separate operational and policy responsibilities in a service that operates under so many daily operational risks. The second was that prisons were no longer personal fiefdoms, run by 'governor's whim', where a prisoner's access to basic decency or positive interventions was unpredictable and inconsistent.

It is those lessons that may need to be relearnt in the new NOMS landscape. Policy development and implementation have moved from the Prison Service to the Home Office-based NOMS. Areas such as population management, the management of life-sentenced prisoners and safer custody do not now have the direct links with the operation of public sector prisons that they did. This has consequences for the speed and flexibility with which policy can respond to operational need, and for the operational levers that policy implementation requires. The slow response to the rapid increase in prisoners sentenced to indeterminate public protection sentences is one example of this. Another is the increased difficulty governors are finding in managing and moving around niche populations, such as lifers and women. Whereas in the past their movements were determined by a national unit or a functional manager, they now rely too heavily on individual governor-to-governor agreements and can founder on the reluctance of one governor to take another's 'difficult' prisoner. In a number of prisons, lifers are languishing without the ability to make the transfers they need to progress, and governors of women's prisons report that it is impossible to move women who have been difficult or disruptive and who need to start afresh. These may be transitional rubbing points that can be remedied; or they may be harbingers of a system that can develop dangerous gaps between reality and policy.

Of even greater concern is the possible Balkanization of the prison system. Each ROM (more properly now a regional commissioner) will commission the services that he or she believes to be appropriate to the reduction of reoffending in that region. That will be expressed in service-level agreements with each individual provider, setting out how custodial and community services will be provided. There are advantages in a more devolved, regionally based approach – not least because the effective resettlement of prisoners

requires buy-in from regional bodies outside criminal justice, whether they are local authorities, employers, housing agencies, healthcare trusts or other community-based service providers. Successful area resettlement strategies, under current arrangements, rely on such local partnerships with statutory, voluntary and private organizations.

However, there are also dangers in this approach in relation to the management of prisons and prisoners. First, there will be no national standards or targets, set either by ministers or the Prison Service, to provide a bedrock of safe, consistent and decent practice. Secondly, prisoners do not serve their sentences in a single region. That is particularly true of the smaller populations, such as women and young offenders; but it is also true of the male adult population in an overcrowded and under-resourced system where population moves too often follow necessity, not planning. There is as yet no indication of how the individually tailored management plan, which it is envisaged each offender manager will construct for each prisoner, will fit into a variegated system of service-level agreements set and commissioned regionally. Thirdly, the ROMs will be responsible, above all, for assisting NOMS to meet a very challenging reduction of reoffending target – by 5 per cent by 2007–8. There are aspects of prisoner care, and types of prisoner, who may be seen as peripheral to that task. Decency and safety could take second place to sentence planning. Efforts may focus on those prisoners who are likely to offer a good return at the expense, for example, of those who are mentally disordered or chaotic drug users. This has been the pattern in other resettlement initiatives with a requirement to show 'success' over a limited period, such as Prison Service Plus. Work with other groups of prisoners – foreign nationals, those on remand or those serving lengthy indeterminate sentences – will not assist a ROM in reducing reoffending within the set timescale. Finally, and importantly, there are questions about a structure based upon 'contestability' and service-level agreements. The role of the private sector in prisons in the UK is itself contested. It is certainly the case that the existence of the private-sector-provided prison managers serves as a powerful tool to lever up performance and improve negative cultures in the public sector Prison Service. Moreover, the early private sector prisons were run by governors who had gained their experience in the public sector and who found themselves able to manage, in the private sector, the kind of prisons they were unable to do in the less flexible, negative cultures within the public sector, where regimes often operated for the benefit of staff, not prisoners. The introduction of privatization undoubtedly played a role in increasing both efficiency and innovation within the prison system as a whole.

However, as private prisons have settled into the prison system, the messages are more mixed. First, as the National Audit Office's report (2003) pointed out, while they tend to offer a more respectful environment – for example, in relation to the way prisoners are spoken to and dealt with – there have been serious concerns about safety. The two are not unconnected. Private sector prisons take on relatively inexperienced basic-grade staff, who are not affected by old-style, 'can't do' prison cultures. They are skilled at innovation. But equally they do not have old-style 'jailcraft': the collective memory of where boundaries should be set and how to recognize the danger

signs. Two factors exacerbate this. First, private sector staff are paid less and have significantly lower pension entitlements than their public sector counterparts. Secondly, as competition became fiercer, the later contracts that were negotiated (both private sector contracts and public sector service-level agreements) were extremely tight in relation to staffing levels. The result has been that, in a number of contracted-out prisons, a vicious circle has been created. Inexperienced staff lack the skills or the numbers to deal with experienced prisoners. They leave and are replaced by more inexperienced staff: staff turnover in some private sector prisons is over 25 per cent. The consequences are stark as prison inspections of Rye Hill and Forest Bank recently showed.[10] For example, Rye Hill was described as 'an unsafe and unstable environment'.

In addition, reliance on contracts or service level agreements can lead to gaps on provision, or to a lack of flexibility in responding to new demands, or to prisons becoming isolated from good practice elsewhere. It is hard, for example, to specify 'decency'. Inspections have found that most private sector prisons have fallen well behind the public sector in relation to race relations. The first inspection of Ashfield, a privately contracted young offenders' institution, described an establishment that was 'failing, by some margin, to provide a safe and decent environment for children'. A principal reason was that it had become 'an island, isolated from developments and expectations in the rest of the juvenile custodial system. And it was an island whose contours appeared to be the precise terms of the contract, rather than any wider understanding of the needs of children'.[11] It is to the credit of Ashfield's managers and contractors that, within a short time, under an experienced public sector director, it was turned into one of the better children's prisons; but the fundamental problems of recruitment and retention remain. These examples are a warning shot across the bows of those who believe that privatization and contract compliance, of themselves, will always drive up performance. Contestability alone cannot guarantee that prisons are decent and well-run places; indeed, the more providers who come into play without significant custodial experience, the greater the danger that the prison they run may be deficient in these respects (see Chapter 22, this volume).

Prison inspection: concluding thoughts

Within this uncertain, changing and fragmented landscape, the role of independent and robust prisons inspection becomes even more necessary (see Chapter 23, this volume). Independent oversight of prisons is mandated under international human rights law, most recently in the protocol to the UN Convention on the Prevention of Torture and Inhuman and Degrading Treatment, of which the UK was one of the first signatories. Prisons are, by definition, hidden from public gaze. Charged with looking after people that society has given up on or does not want to deal with, they face some difficult human rights dilemmas (see Chapter 24, this volume).

But they are also places that can and do easily become self-referential, lacking the external checks and balances that make institutions ask difficult

questions, rather than revert to a default setting of institutional convenience. At their very worst, they can degrade those they hold. The pictures from Abu Ghraib are a potent reminder of what unchecked custodial power can do within a closed environment, and there have been equally disturbing abuses in our own prisons, within recent years. Prisons can go bad very quickly: the balance of power is always with the custodian, not the detainee.

Even within the present system inspections almost always reveal something within a prison that those running it did not know or had ignored. There is the 'virtual prison' – the one that exists in the governor's office, at headquarters or in the minister's red boxes – as compared with the 'actual prison' being operated on the ground. The Prisons Inspectorate picks up that 'inspection gap' between what ought to be and what is. Some of these gaps may seem insignificant, but they are all important to the human dignity of those held in custody. They can range from serious concerns about safety or abuse to the failure to provide regular changes of underwear or showers. They illuminate systemic failures – such as two prisoners sharing cells meant for one where they eat all meals – as well as particular mistreatment, like the prison which routinely squat searched all new arrivals over a mirror, in contravention of a governor's order.

The importance of inspection can also be gauged when it is extended to places of custody which have not so far been subject to that kind of scrutiny. Recent inspections of immigration removal centres, court custody suites and the military corrective and training centre have brought into the light practices that were not recognized or monitored, many of which have now been changed – though others, like the extent of, and procedures for, the detention of children, remain of serious concern. Genuinely independent inspection lifts the lid on closed institutions on behalf of the public, pulls out common practices and exposes them to the light of what is normal, and what is right. It is a very important protective and preventive measure. It is also an important driver for change, pointing out good practice as well as bad, and giving ammunition to those running prisons, and supporting prisoners, to press for resources, support and reform.

The Prisons Inspectorate has developed an independent methodology and criteria specific to the task of inspecting closed institutions. The word 'inspection' can be used to describe a variety of different functions: regulation, performance management, independent evaluation of whether public bodies are meeting standards and providing value for money. But prisons inspecting is different. It does not focus on the criminal justice system or the efficiency of the Prison Service. It reports on the conditions in prisons and the treatment of prisoners. It examines the treatment of the prisoner as a whole person, not just an offender; and the whole environment of the prison – healthcare, relationships, safety and education. And it does so in detail, establishment by establishment. There is a critical difference between inspection activity that examines the efficiency of the system as a whole and that which provides a detailed and holistic account of each individual custodial environment. Its work also ranges beyond criminal justice to encompass other custodial settings, and reaches into those agencies and services that provide health, education, employment and housing for those in and after custody.

Four principles underpin this kind of inspection. First, it relies on detailed examination of individual places of custody. The relationship of prisons to the rest of criminal justice, and, indeed, to the non-criminal justice agencies that can and should provide alternatives to prison and that should support prisoners on release, is essential. But that needs to be in addition to, not instead of, continued attention to what goes on behind a prison's walls. Secondly, it is important that the Chief Inspector has the ability, flexibility and resources, on his or her sole authority, to go into any prison at any time without warning. It is a critical human rights safeguard – indeed a kind of virtual inspection – that every governor in the country knows that at any time an inspection team can knock on the gate, demand entry, draw keys and have unfettered access to all prisoners, staff and documents. Thirdly, reporting needs to be directly to ministers and the public, not mediated through officials, or indeed through any other structure. It is entirely understandable that services, departments and governments want to co-opt inspectors, to help them in the task of improving performance, effectiveness and efficiency. All inspection is about making things better, and this requires dialogue and co-operation with those running services, and those responsible for them. But a human-rights-based inspectorate, in the end, always needs to be able, if necessary, to stand outside government: to speak truth to power. Fourthly, and consequentially, the final cornerstone of independent prisons inspection is that it has its own methodology and criteria for inspecting custodial environments, which are independent of the standards and targets of those services. Those criteria are grounded in ethical principles, as set out in international human rights standards. They define a 'healthy prison' by reference to the four tests of safety, respect, purposeful activity and resettlement discussed previously. Detailed inspection criteria, *Expectations*, are based not upon minimum auditable standards but upon best practice. They do not examine whether targets are met – targets often measure what is measurable, not what is important. They test quality, not compliance. They may point to a systemic failure that stretches across, and even beyond, the Prison Service. They do not, as such, look at value for money – what price a suicide? – though they may well reveal that resources are wasted, or staff or managers insufficiently active.

Those criteria and that methodology have been adapted to apply to, and be accepted in, other custodial settings, such as immigration removal centres and the military corrective centre. Moreover, *Expectations* has now been exported to other countries and is being used by the inspectorate to inspect two women's prisons in Canada, at the invitation of the Canadian correctional services. This move has been welcomed by the Foreign Office's Human Rights Department and has been shared with the many delegations (including Russia and China, two of the countries who – with the USA – lead the world prisoner population tables; see Chapter 5, this volume) who come to the UK to ask about best practice in safeguarding conditions and treatment in prisons.

We therefore have a tried and tested toolkit, and an experienced and credible body, to examine whatever prisons become in the future. But prisons inspecting, as well as prison management, is facing significant change and restructuring. It is proposed that prisons inspection will be subsumed into

a 300-strong Inspectorate for Justice, Community Safety and Custody, whose principal duty will be to inspect the processes of criminal justice, courts administration and immigration enforcement. That inspectorate, and its Chief Inspector, will have a specific duty to inspect places of custody – prisons, immigration removal centres, police and court cells – but there will no longer be a discrete Prisons Inspectorate whose Chief Inspector focuses solely on places of detention and reports on them directly to ministers, Parliament and the public.

There is a real danger that, in placing prisons inspection within a much larger and differently focused organization, the specific approach and methodology will be diffused or lost. Nor does the incoming legislation guarantee that the new body will be able to set its own criteria or inspect without warning. On the contrary, the normal modus operandi will be to agree an inspection programme in advance with stakeholders, and to inspect by the performance and other standards set by government for the inspected services. Just as importantly, the ethos and experience that have produced three very independent chief inspectors from three totally different backgrounds may be diluted.

There is a concern that, over time and perhaps inadvertently, the sharp focus and robustly independent voice of the prisons inspectorate may be lost at a time when an expanding population and an increasingly fragmented service make it all the more important. Inspection has been critical in reforming and improving prisons over the last 24 years: both directly, through reports that stimulate change, and indirectly, by influencing public and political debate. The question of where prison inspection is going is therefore a crucial part of answering the question of where prisons will go. As I said on a previous occasion:[12]

> The bottom line is that, in reaching for new and innovative ways of solving old and so far intractable problems, we must not lose what we have got. That is a prisons inspectorate whose robust independence is a model for other countries; whose inspections and inspection methods are increasingly valued and adopted here; which is reporting on an alarmingly overcrowded and pressurised closed system; and which has responded to the challenge of expanding its custodial remit. This is an essential part of the protection of the human rights of those held in detention. It is too valuable to lose or diminish.

Selected further reading

This chapter has provided an introduction to some of the main issues pertaining to imprisonment in the current era, as seen from the viewpoint of Her Majesty's Chief Inspector of Prisons. The academic literature on prisons is disparate and diverse, but useful introductions to the field can be found in Cavadino, M. and Dignan, J. (2007) *The Penal System: An Introduction* (4th edn). London: Sage; and in Rod Morgan's chapter (2002) on 'Imprisonment: a brief history, the contemporary scene, and likely prospects', in M. Maguire *et al.* (eds) (2007) *The Oxford Handbook of Criminology* (4th edn). Oxford: Oxford University Press.

Jewkes, Y. and Johnston, H. (eds) (2006) *Prison Readings: A Critical Introduction to Prisons and Imprisonment*. Cullompton: Willan Publishing, is a collection of some of the most important writings on prisons, with commentaries by the editors. For more detailed discussions of many of the issues raised in this chapter by some of the leading prison scholars in the world, see Liebling, A. and Maruna, S. (eds) (2005) *The Effects of Imprisonment*. Cullompton: Willan Publishing.

For general information on every prison and young offender institution in England and Wales, and an introduction to the Prisons Inspectorate (including summaries of HMCIP's reports), an invaluable resource is Leech, M. (2005) *The Prisons Handbook*. London: Pluto Press. All the reports cited in this chapter can be accessed in full via the inspectorate's website (http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/).

Finally, readers are urged to consult regularly the websites of the Prison Service (www.hmprisonservice.gov.uk) the Ministry of Justice (www.justice.gov.uk) and the Home Office (www.homeoffice.gov.uk – especially the Research Development and Statistics pages). The International Centre for Prison Studies at King's College London contains much relevant information and useful links (www.kcl.ac.uk/depsta/rel/icps/home.html). In addition, the *Guardian* newspaper's website contains a special section on prisons (www.guardian.co.uk/prisons).

Notes

1 Inspection reports, Holloway (2003) and Feltham (2005).
2 Inspection reports, Leeds (2006), Norwich (2005) and Stoke Heath (2005).
3 HM Chief Inspector of Prisons (2004) *Expectations*; (2005) *Juvenile Expectations*; (2005) *IRC Expectations*.
4 Inspection reports, Wandsworth (1999) and Dartmoor (2002).
5 Inspection reports, Bullwood Hall (2003), Portland (2004) and Long Lartin (2006).
6 Inspection report, Belmarsh (2006).
7 See evidence presented to Education and Skills Committee (2005) in its inquiry into 'Prisoner education', Seventh Report of Session 2004–5.
8 Inspection report, Brixton (2004).
9 Inspection report, Canterbury (2005).
10 Inspection reports, Rye Hill (2005) and Forest Bank (2005).
11 Inspection report, Ashfield (2002).
12 'Prison inspection and the protection of human rights', BIHR lecture 22 October 2003 (www.bihr.org/owers.doc).

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Part I

Prisons in Perspective

Yvonne Jewkes

Prison studies is one of the few criminology subdisciplines (for want of a better word) that recognizes the importance of historical analysis for an informed understanding of the issues and dilemmas facing prisoners, prison staff, reform groups and penal policy-makers today. All too often in other areas of criminology, the past seems a foreign country, but there are relatively few academic texts on imprisonment that do not at least give a nod to how the history of prisons and punishment continues to shape contemporary practices. This recognition of the importance of the past may be, in part, due to the dominance of Foucault, whose influence on criminology is immeasurable and whose thesis on the birth of the prison remains a touchstone in sociologically informed studies of confinement and control. Keith Soothill (Chapter 2) acknowledges this debt, noting that Foucault is the foremost writer among the prison 'revisionists' who challenged the notion that prisons represent progress, replacing the barbaric punishments of torture and execution with humane and regulated institutions. Arguing that imprisonment is intrinsically concerned with power relations, economic motives, the interests of the governing class, and the operation of state power to regulate and control society, a Foucauldian approach to history implies that imprisonment has no moral justification and that – to quote another of the contributors to this part of the Handbook – 'a prison is a prison is a prison' (King, Chapter 5). Soothill argues that, while the experience of being imprisoned has similar resonances whatever the era, we should not neglect the importance of the political, economic, social and cultural contexts that prevail at any given time. He organizes his chapter around 'milestones' in prison history and examines the effects of what was going on outside prison walls to the environment that was shaped within them at each of these key moments. The chapter spans three centuries, taking in the end of transportation, the influence of the great prison reformers and philanthropists throughout the eighteenth, nineteenth and twentieth centuries, Bentham's (1791) blueprint for a panoptic penitentiary that proved so influential in the work of later scholars (such as Foucault and Ignatieff), the establishment in 1901 of a separate juvenile

justice system for young offenders, the introduction of 'open prisons' in the 1930s and the commissioning of the Mountbatten Report following a series of high-profile escapes from prisons in the 1960s. Soothill also discusses the various legislation that has been passed over the last 300 years that has both informed and reflected public and political unease about the state of prisons and the role of confinement.

David Scott (Chapter 3) takes up the story where Soothill leaves it and considers the scope and aims of imprisonment in the modern period. Via an analysis that is pinned on the main committees and their reports assessing prison conditions, security, aims and purpose (frequently following a major incident or crisis), Scott provides a detailed analysis of the 'penal merry-go-round' of the last century, highlighting the principle of 'less eligibility', which arguably continues to inform public and political attitudes to conditions inside prisons; the crisis of containment in the 1960s that led to Lord Mountbatten's recommendations for a security classification system that still shapes the prison estate today; the brutality of the 1970s when several prisons witnessed violent protests, and the ideology of 'humane containment' underpinned by a liberal consensus in the 1980s that gave way to the emergence of a managerialist approach which found its spiritual leader in the figure of Michael Howard (Home Secretary, 1993–7) and which greatly influenced the interpretation of Lord Justice Woolf's recommendations in the 1990s. Finally, Scott considers the developments of the last decade and argues that the prison system has, to an extent, come full circle in the last 40 years with a renewed commitment to rehabilitating offenders, albeit within a context that demands both protection for the public and value for money. For Scott, this lurching carnival ride through countless and sometimes conflicting penal ideologies underlines the failure to find a coherent, sustainable and legitimate set of principles to guide what prisons are actually for.

Richard Sparks (Chapter 4) develops many of the points raised in the previous chapter, arguing that all the issues discussed throughout the *Handbook on Prisons* should be seen through a political lens; they are all, in part, the result of a 'new politics of imprisonment'. Sparks provides a fascinating critique of the politics of imprisonment, focusing on the influence of the 'New Right' on successive UK governments since the election of Margaret Thatcher in 1979. In a detailed analysis of the political, economic and social developments that have shaped both levels of, and justifications for, punishment over the last three decades, he accounts for why imprisonment is so prominent in current penal philosophy. Yet while acknowledging the persistence of the prison – and the persistence of questions surrounding its legitimacy – Sparks makes the point that prisons are not always and inevitably controversial. The Western world's deep cultural attachment to imprisonment is precisely because prisons are inherently optimistic as well as oppressive institutions: they combine the governmental with the passionate. Prisons may be sequestered and professionalized to a degree that allows most of us to remain unconcerned about what goes on within them for most of the time, but when penal controversies and crises do come to public attention, they do so with real intensity. Many of the issues raised throughout this volume illustrate this point and, for Sparks, demonstrate the chronic tension at the

heart of the prison system: the need to make prisons aversive according to the principle of less eligibility, while at the same time not being so brutal as to shame the society to which they belong.

Sparks underlines the fact that prison populations are not unproblematically linked to crime rates and trends and that, around the world, governments decide not only how they want to punish but also how *much* they want to punish. This point is taken up by Roy King (Chapter 5), who further demonstrates that globalization does not necessarily produce homogeneity and that penal cultures remain, to some degree, distinctive. King's discussion of international uses of custody embraces both countries that have pursued a path of greater imprisonment (the highest users being the USA, Russia and China) and those that have resisted the upward trend or at least remain moderate users of imprisonment relative to their near neighbours. Following an analysis of world population trends based on statistical data, King turns his attention to the experience of imprisonment around the globe. While acknowledging that incarceration will be experienced differently depending on the prisoner's individual biography and circumstances, the type of prison he or she is accommodated in, and the culture and history of the country in which that prison is situated, King nevertheless identifies one factor as being crucial to the lived experience of imprisonment, yet neglected by the majority of studies of confinement. For him, the architecture of the prison – and, in particular, the extent to which cellular confinement is adopted – is paramount in determining the inmate culture and subcultures, and the management and operation of prison institutions. Moving from the macro, global sphere of penal politics to the micro politics of everyday life, King describes imprisonment in some of the countries where inmates are housed in communal spaces such as dormitories, rather than in individual cells. He offers a fascinating glimpse of life in Brazilian prisons where communal living creates modes of behaviour and flows of power that would be entirely unfamiliar to observers in countries such as the UK and USA where prisoners (and guards) are subject to the panoptic gaze.

King's chapter anticipates many of the arguments developed in the remaining chapters of Part 1. In the next contribution, Ben Crewe (Chapter 6) provides us with a detailed discussion of the inner world of the prison based on the writings of some of the most important prison scholars of the last 50 years. He takes as his starting point the work of Gresham Sykes, whose 1958 book, *The Society of Captives*, is usually regarded as the most influential study in the sociology of imprisonment. Through an analysis of this work and that of other prison scholars from Goffman to Garland, Crewe analyses what makes prisons unique social and moral environments, as well as the factors that link them to external society. In a wide-ranging analysis, Crewe captures the key themes, issues and debates that have preoccupied those interested in prison sociology in the postwar era, including coping and adaptation strategies, forms of socialization, prisoner hierarchies and subcultures, prison economies, masculinities and sexual relations. The chapter ends with some reflections on the process of 'doing' prison ethnography of the kind pioneered by Clemmer, Sykes, Jacobs and others. Crewe concedes that prison research is in many ways more difficult, less visible and of diminished importance

to policy-makers in 2007 compared with its standing in Sykes's day, but he notes a renewed interest in research among prison scholars in the UK, and is optimistic that academic endeavour will continue to shed light not only on the functions, aims and consequences of prisons but also on the broader aspects of humanity which studies of imprisonment illuminate.

Doing prison research is the subject of the next contribution by Laura Piacentini (Chapter 7). Based on her experience of researching prisons in Russia over the last decade, Piacentini offers a personal, reflexive account of the role of the prison researcher who – wherever he or she is based – is likely to face numerous problems, complexities and ethical dilemmas in the course of his or her research. However, she pulls no punches in pointing to some of the deficiencies and ethnocentrisms of research in the UK and the USA and reiterates the point made elsewhere in this part of the Handbook that cultural and temporal contexts are key to understanding the unique aspects of the inner life of a prison. In emphasizing the points where the cultural and the carceral collide, Piacentini offers a new way of approaching prison ethnography. At the same time, like King in Chapter 5, she paints a vivid picture of imprisonment in places that are unfamiliar to most of us, and she presents a graphic illustration of the joys and pitfalls of deep immersion in the culture of a prison.

Finally in this part, Yvonne Jewkes and Helen Johnston (Chapter 8) explore the extent to which the visible meaning of the prison has subtly changed over time. Taking up King's theme that the organization of prison space has a profound impact on penal establishments, and on the lives of the inmates and staff who occupy them, Jewkes and Johnston examine the extent to which the architecture of incarceration has reflected changing penal philosophies over the last three centuries. The chapter starts with a description of an award-winning British design for a twenty-first-century 'learning prison', before reflecting back on penal architecture and its intrinsic symbolic meanings since the mid-eighteenth century. Throughout the chapter Jewkes and Johnston reiterate the point made previously by Scott, Sparks and King that, alongside the discourses of decency and humane treatment that are built into penal aesthetics, there has been a massive reorientation towards increased security over the last decade which finds its physical manifestation not only in the much vaunted notion of populist punitiveness but also in prison architecture and design. It is clear from Part 1 of the Handbook that prisons have reached a critical point in their history. The contributions so far have considered the key questions of what prisons are for, what drives prison populations and what impact political, social, cultural and economic forces have had on prisons over the last 300 years. Against this backdrop, the next part of the Handbook considers the implications of these developments for specific groups of prisoners today.

Chapter 2

Prison histories and competing audiences, 1776–1966

Keith Soothill

Prisons were devised only 200 years ago as a substitute for harsher punishments. True, dungeons existed for at least 1,000 years to incarcerate persons whom ruling monarchies perceived as troublesome. However, dungeons were not prisons, and jails aren't prisons either. Accused people were detained in jails to ensure their presence at trials, as were debtors to make them pay up. But the idea of deprivation of freedom as punishment for violators of serious rules did not attract support until Benjamin Franklin's time (Toby 1986 cited in Gottfredson and Goldkamp 1990: 128).

Introduction: two bookends, 1776 and 1966

The polymath Benjamin Franklin – statesman, diplomat, printer, publisher, inventor and scientist – returned from England in 1775 to North America where he helped draft the Declaration of Independence in 1776 that asserted the independence of the colonies and that renounced all political connection with Great Britain. This resulted in the end of transportation to America and forced Britain to look elsewhere for a place to send its felons to complete their sentence. Three years later, the government was empowered to send prisoners sentenced to transportation 'to any parts beyond the seas' (Radzinowicz and Hood 1986: 466) and transportation was revived. In 1787 the first fleet carrying 550 men and 191 women set out on its journey to Botany Bay in Australia. Nevertheless, this period of confusion following the American War of Independence had the effect of alternatives to transportation being considered. Other measures eventually included the notion of prison, much as we understand the term today. The effect of the end of transportation to America would be to change the meaning of imprisonment in the UK. Imprisonment would change from a short-stay institution or a holding institution for eventual transportation to an institution that would soon become the central core of sentencing policy. It would retain this position throughout

the two centuries that engage this chapter. The end point – focusing on the Mountbatten Report on prison escapes and security, published in December 1966 – has been identified as a crucial turning point in recent penal history (Fitzgerald and Sim 1982: 21). Fitzgerald and Sim (1982: 21) confidently claim that 'since the Mountbatten Report, "security and control" has become the standard response to explain every feature of prison life'. What this chapter attempts to examine are the continuities and changes over the two centuries bounded by the dates 1776 and 1966.

An overview

Interpretations of the development of the prison have been the focus of historical controversy. The cauldron or melting-pot happened in the mid to late 1970s with three important texts by, respectively, Michel Foucault, Dario Melossi and Massimo Pavarini, and Michael Ignatieff. Michel Foucault's *Discipline and Punish* (1975/1991), which focused, according to its subtitle, on the birth of the prison, was in reality concerned much more with changes in the techniques of punishment and the control of the body. Like Foucault, Melossi and Pavarini's text, *The Prison and the Factory: Origins of the Modern Penitentiary System* (1977/1981), displays a wide canvas that tries to analyse the connection between the creation of penal institutions and regimes in Europe and the USA and the problems generated by the emergence of capitalist social relations. Finally, Ignatieff's text, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750–1850* (1978), is more circumscribed in focusing on the development of the penitentiary in England, asking 'how and why it came to be considered just, reasonable and humane to isolate prisoners in solitary cells … and 'improve' their minds with equal dosages of scripture and hard labour' (back cover). In pointing to 'the rise, in industrialising England of the late eighteenth and early nineteenth century, of a new conception of class relations, and with it a new philosophy of punishment, one directed not at the body but at the mind', Ignatieff, in effect, summarizes the similar preoccupations of the three texts.

While these three books have made a curiously patchy impact upon the interpretation of prison history, they were an important part of an overall challenge to traditional views of penal development. What has been termed the 'Whig approach to history' whereby an 'account of the past … appeared to be selected and arranged so as to lead up and confer legitimacy on the present' (Collini 2005: 24) had many adherents – with Leon Radzinowicz, the first Professor of Criminology at Cambridge University, being among the most powerful and prestigious. Radzinowicz's five-volume *A History of English Criminal Law and its Administration from 1750* is a monumental work. The fifth volume (with Roger Hood as co-author), published in 1986, covers the years from the 1830s to the outbreak of the First World War. Their challenge is to writers – whom they identify as 'socialist writers' – whose thesis is that the evolution of incarceration in the nineteenth century was solely aimed to ensure the discipline and subordination of the masses. Placing Foucault as the foremost among them, they claim that 'his interpretations are original

and exciting but highly speculative and generalised' (Radzinowicz and Hood 1986: 39). Essentially their concern is with 'the denial that punishment [has] any moral justification or social utility' (1986: 38).

In a later article, Ignatieff (1985) suggests that historical reality is more complex than the revisionists (himself included) assumed. A fall-out from this realignment is that 'reformers were more humanitarian than revisionists have made them out to be' (1985: 77). William Forsythe's (1990) study, which focuses on Victorian approaches to the moral reformation of prisoners, provides some essential reappraisal when he emphasizes the ways in which the human value and social inclusion of prisoners were pursued. This is in contrast to the writings of the 1970s where the emphasis was on the coercive and excluding aspects of prisons.

Certainly one needs to see the history of prison within a much wider framework than simply what happens within those prison walls. So, for example, the decision to site most prisons and, indeed, other institutions for deviants, such as lunatic asylums and hospitals for the feeble-minded, in the Victorian era, way beyond the main city centres was symbolic of the general mindset of the time – 'out of sight, out of mind' (see Chapter 8, this volume). Hence, not only does one need to understand the prison community but also how the wider community perceived the prison. In short, there are many different audiences. However, while only rarely does the prison impinge itself on public consciousness, it is often at these points that change may take place. Scandals, riots, deaths may produce the equivalent of today's tabloid headlines, but it would be unwise to believe that such events provide the only motor of change. Governments have budgets to balance, financial crises to overcome and new managerial concepts to introduce. Reformers with various motives may be shocked at what they read, see and hear about prisons and may become the moral entrepreneurs who court both publicity and governments in their attempts to effect change. There are many players in the history of prisons.

Continuity or change?

One of the puzzles underpinning this chapter and, indeed, in understanding prison history is how much change has there been and how much continuity. The Introduction to the authoritative *Oxford History of the Prison* (Morris and Rothman 1995: vii) proclaims that 'the English prison of 1790 … had little in common with the prisons of 1900 or 1990, regardless of whether the yardstick is the daily routine, the amount of time served, the methods of release, or … the public's understanding of the purposes of confinement'. In contrast, Foucault points to some fundamental principles of the prison which 'for the past 150 years … have constituted the seven universal maxims of the good "penitential condition"' (1991: 269) (Figure 2.1). Foucault insists that 'word for word, from one century to the other, the same fundamental propositions are repeated. They reappear in each new, hard-won, finally accepted formulation of a reform that has hitherto always been lacking' (1991: 270).

1 Penal detention must have as its essential function the transformation of the individual's behaviour.

2 Convicts must be isolated or at least distributed according to the penal gravity of the act, but above all according to age, mental attitude, the technique of correction to be used, the stages of their transformation.

3 It must be possible to alter the penalties according to the individuality of the convicts, the results that have been obtained, progress or relapses.

4 Work must be one of the essential elements in the transformation and progressive socialization of convicts.

5 The education of the prisoner is for the authorities both an indispensable precaution in the interests of society and an obligation to the prisoner.

6 The prison regime must, at least in part, be supervised and administered by a specialized staff possessing the moral qualities and technical abilities required of educators.

7 Imprisonment must be followed by measures of supervision and assistance until the rehabilitation of the former prisoner is complete.

Figure 2.1 The fundamental principles of the prison that 'for the past 150 years … have constituted the seven universal maxims of the good "penitential condition"' *Source:* Foucault (1991: 269–71)

Furthermore, one suspects that the *experience* of being imprisoned has similar resonances whatever the era. The despair felt by those imprisoned in the medieval Lancaster castle – enacted nowadays by tour guides shutting the heavy dungeon doors on tourists for a couple of minutes – may have been more complete than those locked up for short periods in contemporary periods. Nevertheless, the experience of being shut off from the rest of the community is shared. While the philosophies underpinning the purposes of confinement may change, the fundamental experience – that is, the deprivation of liberty – remains and is the main source of continuity. However, the framework within which prison is experienced has changed over the two centuries and this change must be the main focus of this chapter.

Table 2.2 includes the milestones that are highlighted in most writings on prison history. These will emerge as the story unfolds. First, however, we consider the shift of focus to imprisonment as a punishment in the eighteenth century.

Shifting the focus to imprisonment

In offering arguments against sentencing offenders to transportation for petty offences, Henry Fielding, the Middlesex magistrate, also offered a solution. Fielding proposed a new house of correction where prisoners would be

confined, one to a cell, in order that 'correction of the mind' would take place as well as 'correction of the body': 'There can be no more effectual means of bringing the most Abandoned Profligates to Reason and Order than those of Solitude and Fasting: which latter is often as useful to a diseased mind as to a distempered body' (Henry Fielding 1753 cited in Ignatieff 1978: 46).

However, some dangers of imprisonment were also being identified from the outset – William Eden's extremely influential treatise, *Principles of Penal Law*, published in 1771, endorsed the doubts about the deterrent value of transportation and called for new intermediate penalties. Interestingly, Eden 'rejected an increased resort to imprisonment on the grounds that confinement invariably made an offender worse' (Ignatieff 1978: 47). The new enthusiasts for prison were, indeed, matched by those who showed some concern about such developments.

1776–1842

While transportation to America was at an end and certainly precipitated a crisis, the eventual shift was not altogether clear. McGowen notes how 'judges were returning with renewed interest to confinement as a better way to punish offenders' (1995: 85). But confinement can be effected in various ways. In 1776 the government focused on the use of old vessels, later known as hulks, as places of confinement. The infamous hulks were, in fact, worn-out battleships moored off naval dockyards in the south of England (Rawlings 1999: 56). Although only considered a temporary measure as a response to the sudden growth of crime, the hulks continued for use in various forms until 1843 (Radzinowicz and Hood 1986: 144). However, while all this solved the immediate crisis, the search for a more satisfactory form of confinement was a challenge that still needed to be confronted. Certainly the current stock of local prisons – largely used for holding persons before trial – had serious limitations and was totally unsuitable for taking the major role in punishment after sentencing. John Howard's (1777) remarkable survey of prisons in England and Wales produced the evidence. In fact, there were only 653 prisoners, of whom almost 60 per cent were debtors, 16 per cent were undergoing punishment for petty crimes and the rest were awaiting trial, execution or transportation (Rawlings 1999: 55–6).

Although the publication of Howard's book provoked some enthusiasm among reformers to identify the prison as a means of both punishing and reforming offenders, Rawlings (1999: 56–8) usefully points out that this apparently new focus was not so much of a revolution as many have believed. He points to the development of workhouses for the poor and the houses of correction for vagrants, petty criminals and runaway apprentices as institutions where ideas that incarceration presented opportunities to alter the inmate's character had already begun to flourish from the late seventeenth century onwards. Hence, the separation of deviants into various categories and the focus on the deviant's mind rather than his body started much earlier than Howard and his followers. However, it was the insights revealed by Howard's visits to prisons on the continent that really started to undermine

Table 2.2 Some milestones in prison history

Date	Milestone
1718	The Transportation Act identified transportation as the principal method of disposing of felons – that is, the majority – who were not hanged
1753	Henry Fielding, the Middlesex magistrate, proposed a new house of correction so that 'correction of the mind' could take place
1771	William Eden's treatise, *Principles of Penal Law*, which reiterated doubts about the deterrent value of transportation
1773	John Howard found a 'spiritual vocation' after visiting Bedford Jail
1776	American Declaration of Independence. End of transportation to America
1776	Use of the hulks as places of confinement
1777	John Howard's book, *The State of the Prisons in England and Wales*, published
1779	Penitentiary Act. The first English Act authorizing state prisons
1785	Lapse of plans for the proposed new penitentiaries
1787	Resumption of transportation – first fleet to sail for Australia
1791	Jeremy Bentham published his panopticon sketch
1810	Final rejection of the panopticon proposals by House of Commons' committee
1812	Construction begun on Millbank, a national penitentiary
1817	Millbank opened – the biggest prison in Europe
1817	The Prison Discipline Society formed and became the major lobbyist for prison and criminal law reform
1818	Introduction of treadmill as a punishment – invented by the builder, Samuel Cubitt
1823	Gaol Act
1835	Prisons Act. Appointment of prison inspectors
1838	Parkhurst Act established a government penitentiary for young offenders
1842	Opening of the 'model prison', Pentonville
1844	Act authorizing the appointment of a Surveyor-General of Prisons. Joshua Jebb became the first Surveyor-General
1850	Joshua Jebb became the first Chairman of the Directors of Convict Prisons
1850	Select Committee on Prison Discipline under Sir George Grey
1853	The suspension of transportation to Australia
1857	End of transportation to Australia
1863	House of Lords' Select Committee on Prison Discipline led by Lord Carnarvon
1865	Prison Act – set out, by means of codified rules and regulations, a severely deterrent regime based on hard labour, hard board, and hard fare
1869	Colonel Edmund Frederick Du Cane appointed as Chairman of the Board of Directors of Convict Prisons
1877	Prisons Act – local prisons were nationalized.
1877	Du Cane became Chairman of the new Prison Commission
1894	Announcement of the Departmental Committee under the Chairmanship of Herbert Gladstone to report on the condition of the penal system
1895	Report of the Gladstone Committee
1895	Retirement of Du Cane
1898	Prison Act
1901	First institution set up for reforming and training young offenders – known as Borstal after the town of that name

Table 2.1 continued

Date	Milestone
1921	The unofficial report of 'The Prison System Inquiry Committee' and published as *English Prisons Today*
1921	Howard League for Penal Reform established by Margery Fry
1921	Maurice Waller became Chairman of the Prison Commission
1922	Alexander Paterson became a prison commissioner
1930	W.W. Llewellin, a governor at Feltham Borstal, Middlesex, led a group of staff on a staged walk to Lowdham Grange in Nottinghamshire, where they set about constructing what became England's first open establishment
1932	Report on the Dartmoor mutiny conducted by Herbert Du Parq, and assisted by Alexander Paterson
1936	Adult prisoners slept for the first time in open conditions
1945	Lionel Fox became Chairman of the Prison Commission
1947	Death of Alexander Paterson
1948	Criminal Justice Act introduced new demands on the prison system
1953	Commencement of the hostel scheme, begun at Bristol.
1958	First Offenders Act
1961	Criminal Justice Act – enacted that, by Order in Council, the functions of the Prison Department could be transferred to the Secretary of State
1963	Abolition of the Prison Commission. The management of the prisons became the direct responsibility of the Prison Department of the Home Office
1966	Escape of George Blake, the Soviet spy, from Wormwood Scrubs Prison
1966	Appointment of the Mountbatten Inquiry

the English complacency. In brief, English prisons were significantly inferior to much of what he was seeing elsewhere, particularly in Holland.

Penitentiary Act 1779

The new conception of using imprisonment as the pivot of punishment was embodied in the Penitentiary Act 1779. Drafted by Howard, Eden and Blackstone, their original ideas were expansive, calling for the creation of a network of 'hard labour houses' either by converting existing facilities or by building new ones at national expense. In the event this plan was enormously scaled down and the Act provided for the construction of two penitentiaries in the London area, one for 600 males and the other for 300 females (Ignatieff 1978: 93). Once the Penitentiary Act became law, a commission of three was appointed to choose a site for the two prisons, approve an architect and begin construction. However, by 1785, plans for the penitentiaries had lapsed, brought down by personal conflicts and by constitutional objections of the central state entering into the field of prison administration in this way; in short, prisons were still to be thought of as a county and borough matter which should be left to local justices. However, the Act had set down a marker for change. In the nineteenth century parliament gradually overcame its reluctance to impose central direction on local control until, eventually, in 1877 the local prisons were nationalized.

Jeremy Bentham's panopticon

The publication in 1791 of Bentham's plan for a penitentiary called the panopticon or inspection house was the precursor to a 20-year campaign for its adoption. As Ignatieff stresses (1978: 110), the panopticon project can be seen as an attempt to revive the abandoned idea of a national penitentiary. Bentham's design for the prison was modelled on a factory that his brother Samuel had constructed in Russia for Catherine the Great. The design of a circular, tiered set of cells ranged around a central inspection tower has become familiar although it was never actually built. This tower, into which prisoners could not see but from which the gaolers had a clear view of each cell, had a symbolic as well as a physical impact in that it told the prisoners about the continuous gaze of authority. Perhaps what is not so readily remembered is that, in the plan, prisoners were to be employed as much as 16 hours in their cells with profits going to a private contractor – Bentham himself – who would supervise the house (Ignatieff 1978: 110). Ignatieff points to the historical precedents of running a prison as a capitalist enterprise. Hence, in this respect, Bentham's ideas were not innovative. The final rejection of Bentham's proposals came in 1810 when a Commons' committee listened to the objections of George Onesiphorus Paul who suggested that Bentham was placing too much emphasis on the exploitation of convict labour. Paul powerfully insisted that penitentiaries were not factories but places of religious reformation.

Ignatieff (1978: 112) sees the rejection of the panopticon as a major event in the history of imprisonment. In rejecting the idea of running prisons like factories, there was also the rejection of the idea of modelling the authority relation between state and prisoner on the relation between employer and worker. So, instead of a Benthamite conception of authority regulated by market incentives, reformers began to look to inspection and rules as the means to protect inmates from cruelty. Punishment was being totally removed from the sphere of the market and control was seen to be the role of the state.

A national penitentiary: Millbank

Two years after the final rejection of Bentham's proposals, work was started on a national penitentiary at Millbank in 1812. Why such an apparent change of heart? Certainly the building of Millbank is of the greatest significance since it brought central government into the mainstream of English prison administration (Thomas 1972: 13). However, it is impossible to divorce the renewed focus on a proposed development of prisons – or a national penitentiary in particular – from the debate concerning the use of the death penalty as a punishment. Samuel Romilly pointed out that unjust executions against the poor only served to increase their resentment against the richer classes, which inevitably led to more crime. He therefore developed his proposals to abolish the death penalty for minor and property offences and, as an alternative, suggested that the old idea of a national penitentiary be revived. There were other considerations too, for 'the judiciary was becoming increasingly dubious about the deterrent value of the hulks, which were a public scandal. Even transportation seemed to lose its terrors as stories got

back to England of the new start that could be made in Australia' (Ignatieff 1978: 170). Romilly suggested that this was the ideal opportunity for the government to invest in long-term imprisonment. This really began the process of imprisonment being regarded as a punishment in its own right.

The Millbank penitentiary was somewhat of an embarrassment both in terms of its cost and its running. Due to unforeseen circumstances the building costs ended up way over budget at £450,000, while the running proved problematic. Although it was the biggest prison in Europe and capable of holding up to 1,200 prisoners, Millbank was not the impressive standard bearer of a new era, with the first two governors being sacked for incompetence (Ignatieff 1978: 171). The new regime of solitude, hard labour and a meagre diet was not acceptable to prisoners who had been accustomed to the more lackadaisical routines of the hulks and county jails. The continuing revolt of the prisoners against the conditions was matched by a harsher and harsher reaction on the part of the authorities. The optimistic belief that corporal punishment could be dispensed with was replaced by the use of the lash and eventually the cat-o'-nine-tails upon the ring-leaders to quell the disturbances.

The tightening up of the regime and the reduction of dietary standards had a deleterious effect. In the winter of 1823, typhus, dysentery and scurvy began to spread through the prison. Some 31 inmates died and 400 others were incapacitated. Millbank was temporarily closed down with the remaining prisoners being pardoned or sent to the hulks (Ignatieff 1978: 176). Following a House of Commons' committee of inquiry, there were changes when Millbank reopened in 1824, with the solitary regime being relaxed somewhat and improvements made to the diet. Eventually, Millbank was closed in 1890. However, its failure was heralded as the effect of the discipline not being strict enough. More broadly, there was widespread evidence of the tightening up of prison discipline after 1820.

There were various features of this tightening up of discipline. First, the treadwheel – invented by the builder, Samuel Cubitt – was publicized in a Prison Discipline Society report of 1818. The huge revolving cylinder with steps on it like a paddle steamer – which prisoners had to mount – could have been used to grind corn or raise water, but soon it was 'grinding the air'; that is, totally useless activity that captured the enthusiasm of the local magistrates.

Secondly, bread-and-water diets were introduced by most county and borough magistrates in their gaols – while also banning the supply of outside food – as an attempt to stem any popular belief that prisons were comfortable places. Thirdly, the rules of strict silence began to be introduced much more stringently. Silence was increasingly regarded as an essential precondition for sorrowful introspection in the cell and after about 1830 – strongly influenced by developments in the American penitentiary at Auburn – silence became a key element of discipline. Ignatieff reports that one of the first English prisons to convert to strict rules of silence was the Coldbath Fields House of Correction in London where, in 1834, all speech and gesture among inmates were banned (1978: 78).

The focus on discipline matched the spirit of the age and there was, thus, something of a consensus emerging. Certainly the Prison Discipline Society

was generally supportive. However, as Ignatieff reminds, some of the older generation of reformers began to show less enthusiasm about the contemporary mood. For example, Elizabeth Fry – who had become a national celebrity when, in December 1816, she led an apprehensive committee of wives of Quaker businessmen and bankers into the women's wards at Newgate – was two decades later (in 1835) much less enamoured by the changes that had been taking place. She warned the Lords' committee on prisons against excessive use of the treadwheel, bread-and-water diets and undiluted solitary confinement, saying 'In some respects, I think there is more cruelty in our Gaols than I have ever before seen' (cited in Ignatieff 1978: 179).

Philanthropic organizations

The impact of philanthropic organizations in the late eighteenth and early nineteenth centuries – especially the Evangelicals and the Quakers – needs to be recognized. The Evangelicals had been highly influential in the crusade against the slave trade, with the campaign securing the passage of the Slave Trade Abolition Bill in 1807 – a campaign that became the model for philanthropic organizations in the early nineteenth century (Ignatieff 1978: 146). The Prison Discipline Society, formed in 1817, became the major lobbyist for prison and criminal law reform in this period. In particular, it became concerned about establishing national standards for prison discipline. These concerns were raised at a time when there was a dramatic increase in crime rates at the end of the Napoleonic Wars and an overcrowding crisis in the prisons. So, for example, the Prison Discipline Society estimated in 1818 that one hundred institutions, built to hold 8,545 prisoners, were actually accommodating 13,057 (Ignatieff 1978: 155). In fact, the overcrowding forced the abandonment of solitary confinement in the penitentiary houses built in the 1790s. However, this simply masked a remarkable variation in discipline in institutions across the country. The focus of the Prison Discipline Society was to argue that such discrepancies could only be corrected by national legislation enforced by a salaried inspectorate.

Gaol Act 1823

The Gaol Act 1823 was, like most legislation, a compromise. Because of the local resistance of the magistracy to central control the Act fell far short of what the Prison Discipline Society desired. No inspectorate was established and the standards of diet, hours of labour, exercise and visiting privileges set out in the Act were left for the magistrates to interpret and enforce as they wished. However, there was one important move towards the standardization of discipline. Magistrates were required to submit annual reports on their prisons to the Home Secretary and also to complete a questionnaire on the population, staff and discipline of their institutions (Ignatieff 1978: 168). This was a major breakthrough as it laid down some sort of guidelines as to what a 'prison' should be run like.

Establishment of the prison inspectorate, 1835

The Prison Discipline Society argued for a national prison inspectorate. There were precedents with the Irish prison inspectorate being established in the 1820s and the factory inspectorate in 1833. However, as Ignatieff (1978: 188) stresses, the powers of the inspectorate – when it was actually established in 1835 – were limited. The inspectors were only given authority to publicize abuses, not to close prisons or order changes. Generally, their reports helped to undermine support in Parliament for the tradition of local administration. Ignatieff notes that the establishment of the inspectorate institutionalized the reform movement. The Prison Discipline Society lost its influence and, until the founding of the Howard Society in the 1880s, 'the most influential voices of reform were to come from within the prison system itself – from the inspectors, prison chaplains, and governors' (Ignatieff 1978: 189).

Pentonville: a new model prison

The opening of Pentonville as a model prison in 1842 came at a critical moment in the history of prisons. Symbolically – after the disaster of Millbank – there was a need to demonstrate some success with the disciplinary approach. Whitworth Russell, formerly the chaplain at Millbank and now an influential prison inspector, maintained that part of the problem at Millbank had been that discipline had not been strict enough, but also that the whole design of the prison had been at fault. In his opinion it had failed to put Bentham's panopticon inspection principle properly into practice (Ignatieff 1978: 194). Russell and his colleague, William Crawford, found their inspiration in America.

   The architecture of Pentonville was heavily based on the design for the Philadelphia penitentiary where the cell blocks radiated from a central inspection point, offering clear lines of observation throughout the building. However, there was also the consideration of the two models of discipline that were competing in America – the solitary confinement regime at Philadelphia and the silent associated system at Auburn. In 1834 the Home Secretary sent William Crawford to consider both systems and to report back on their merits. His verdict echoed Howard and Paul's concerns about the Auburn system which, he considered, concentrated on the exploitation of the prisoner's labour at the expense of his moral reformation. In contrast, he was convinced by the emphasis of the Philadelphia system on sorrowful and solitary repentance. Returning to England, Crawford renewed his alliance with Russell and together they pushed for the adoption of a version of the Philadelphia model.

   Pentonville and its discipline system were at the outset – when it opened in 1842 – adjudged a complete success, both in terms of influencing the development of county institutions in England and the prison systems of Europe. Indeed, it is said that 'in the six years after the building of Pentonville, no fewer than "fifty-four new prisons were built … affording 11,000 separate cells"' (Thomas 1972: 16). The control mechanisms in the new regime were pervasive and it is evident that the appeal was as much for the severity as for its reformative potential. In fact, severity became the Achilles' heel of

the scheme. The crucial question was whether the discipline went too far producing 'distress of mind'. Ignatieff (1978: 199) lists a series of examples where the painful effects of solitude were becoming manifest. However, the commissioners would only publicly admit to 15 cases of madness in the first eight years of the prison's operation, but this figure masked cases of temporary insanity or depression. Gradually many of the features of the solitary regime were modified and hopes of reformation by this method began to evaporate. A new cycle was beginning, with the prison population being regarded as incapable of reformation but certainly capable of defiance.

A period of transition: 1850–94

The 1850s were a difficult time. The Pentonville experiment had fallen into some disrepute and transportation was suspended in 1853 (in fact, transportation to Australia finally ended in 1857), which meant that imprisonment was transformed into the main punishment for all major crimes. Hence, administering long-term sentences became a key issue. In 1863, the Lord Chief Justice clearly stated the position that was to underpin the running of the prison system for the rest of the century:

> The reformation of the offender is in the highest degree speculative and uncertain, and its permanency in the face of renewed temptation exceedingly precarious. On the other hand, the impression produced by suffering inflicted as the punishment of crime, and the fear of its repetition are far more likely to be lasting (cited in Ignatieff 1978: 204).

Joshua Jebb and Edmund Du Cane

Certainly from 1850 onwards notions of reform took a back seat, and what has been characterized as a 'cold barbarity' comes to the fore. However, this is also an era where important administrative reforms took place reflecting the increasing focus of central government in the management of prisons. There were now two convict prisons – Millbank and Pentonville – while the Parkhurst Act of 1838 established a government penitentiary on the Isle of Wight for young offenders sentenced to transportation or imprisonment. In 1844 an Act authorized the appointment of a Surveyor General of Prisons, whereby all proposed building plans and alterations to existing plans had to be referred to him. Joshua Jebb became the first Surveyor General and, in 1850, he became the first Chairman of the Directors of Convict Prisons. In 1850 there was also a Select Committee on Prison Discipline under Sir George Grey. This committee was especially crucial as it examined the question of the relative merits of the 'silent' and 'separate' systems. The committee expressed itself in favour of separation (Thomas 1972: 17).

There was an increasing fear in the populace of the supposed dangers from criminals who could no longer be transported. In fact, there was a lack of stock in the convict prisons and many local prisons were in an unsatisfactory state. This all led to the deliberations of the Select Committee of the House of Lords on Prison Discipline 1863. The committee was chaired by Lord

Carnarvon and made recommendations which were to have significant effects on English prisons. In fact, they targeted reform as part of the problem and favoured a policy of deterrence. However, the committee's proposals can also be seen as continuing the journey of much greater uniformity of penal practice, thus demanding more rigid observance of procedures and more centralization. Again the separation system was endorsed – not because of any potential reformatory impact but because it disrupted communication and was feared by convicts. Their recommendations – including an insistence that punishment should be hard and unpleasant, that prison diets should be reduced, that each prisoner should sleep on planks during part of his term – were all designed to ensure that everyone recognized that the purpose of the prison was deterrence (McGowen 1995: 104).

In 1865 a Prisons Act was passed which the Webbs have described as 'constitut[ing] the turning point of English prison administration in the second half of the nineteenth century' (cited in Thomas 1972: 19). The provisions of the Act were based on the recommendations of the 1863 committee and the Act intruded even further into the administrative independence of the local authorities in relation to prisons. However, the final end of local administration came with the Prisons Act 1877, which essentially came about because the 1865 Act had not been effective in bringing about the uniformity of management which seemed desirable to effect an appropriate prison system. The crux of the 1877 Act was the transfer of every aspect of prison administration to the Secretary of State. A new body, the Prison Commission, was appointed to operate the new department. There were to be a maximum of five commissioners, one of whom could be appointed chairman. The inspectorate was to remain to assist, and its members were to be appointed by the Home Secretary (Thomas 1972: 23). As many commentators have noted, with this Act, about 800 years of local control over prisons had come to an end.

In this new era of prison administration it was no surprise that Lieutenant-Colonel Edmund Frederick Du Cane became the Chairman of the new Prison Commission in 1877. In 1863 he had been made a director of convict prisons and, in 1869, he was appointed as Chairman of the Board of Directors of Convict Prisons, quickly establishing himself with an international reputation as an expert in penal administration (Thomas 1972: 27). Du Cane is usually regarded unfavourably as the symbol of all that was harsh in the Victorian prison system, but Thomas (1972: 28) proclaims a different version:

> Actually he is the greatest figure in the history of the English prison system. His phenomenal capacity for hard work and attention to detail, his certainty of action when action was necessary, his many skills, and his scrupulous integrity made him a personification of all the Victorian virtues. He created the English prison service with all its strengths and weaknesses, and a proper evaluation of his achievements is long overdue.

Two justifications for the enormity of power vested in Du Cane and his colleagues were based on 'economy' and 'uniformity', with Du Cane constantly emphasizing the priority of 'economy' (Thomas 1972: 29). The impact of Du

Cane until his retirement in 1895 is difficult to overstate. One of his legacies is that traditions of prison secrecy were born in this period, so there was little scope to counter his unchecked authority. As McConville vividly points out: 'he outwitted politicians, terrified his subordinates, and sowed dragon's teeth among the ranks of the increasingly formidable higher civil service' (1995b: 154).

Eventually Du Cane's era ended with the best known investigation of the English prison system – the Gladstone Committee. Thomas claims that 'the reasons for Asquith's decision to initiate an inquiry are obscure' (1972: 107). However, Radzinowicz and Hood note that in 1893 a storm of criticism erupted in the national press marking (in their words) 'the first occasion on which a newspaper played a major part in destroying public confidence in the prison system of the country' (1986: 573). Much of the newspaper fodder was a direct attack on Du Cane's autocratic, militaristic and inflexible style of leadership. However, there is a paradox. As Radzinowicz and Hood note: 'in contrast to the final years of Jebb's administration, those of Du Cane produced no great scandals or riots' (1986: 575). Furthermore, it was also a period where Du Cane could point to a remarkable fall in the populations of both convict and local prisons, in parallel with a declining incidence of crime in general. What most commentators seem to recognize is that Du Cane was simply out of step with a new political climate that spawned new approaches to social problems. There was quite simply a desire for change and the fact that the prison system had resisted scrutiny since Du Cane's appointment further raised suspicion that all was not well. On 28 May 1894, prisons came into focus again in the public arena when Asquith announced the appointment of a departmental committee under the chairmanship of Herbert Gladstone (son of the famous prime minister, William Ewart Gladstone) to report on the conditions of the penal system.

1895–1922

The committee's recommendations were indeed a milestone in British penal history. In particular, the suggested experiment of a penal reformatory for offenders above the age of 16 and under the age of 23 was to develop into the Borstal system; the suggestion that consideration might be given to a new form of sentence by which habitual criminals would be segregated under special conditions for long periods foreshadowed preventive detention; and the proposal of an intermediate or pre-release prison was only fully realized many years later. In fact, the report also outlined the principle behind imprisonment, which should be deterrence and reform (Cross 1971). Also for the first time recidivism was attacked as a main issue within the report:

> In proportion to the spread of education, the increase of wealth, and the extension of social advantages, the retention of a compact mass of habitual criminals in our midst, is a growing stain on our civilisation. In any thorough enquiry into prison treatment, the closest regard must be paid to its physical and moral effect on prisoners generally. But the

number of habitual prisoners in and out of prison must form one of the standards by which the system must be tested and judged. Recidivism is the most important of all prison questions, and it is the most complicated and difficult (from the Gladstone Report cited in Cross 1971: 6).

Although the report condoned the deterrent value of the penal system, it did not advocate the use of such devices as the treadwheel and called for its immediate removal from all prisons. The prison staff were also under scrutiny within the report, which suggested that a special training school be set up for prison employees. It further recognized the individuality of prisoners:

We think that the system should be made more elastic, more capable of being adopted [*sic*] to the special cases of individual prisoners; that prison discipline should be more effectually designed to maintain, stimulate, or awaken the higher susceptibilities of prisoners, to develop their moral instincts, to train them in orderly and industrial habits, and whenever possible to turn them out of prison better men and women, both physically and morally, than when they came in (from the Gladstone Report, cited in Radzinowicz and Hood 1986: 577–8).

Due to the findings of the committee and the recommendations they made, Sir Edmund Du Cane retired three days after the report was published and Evelyn Ruggles-Brise was appointed to replace him. Ruggles-Brise had a set of aristocratic and political contacts that helped to build up sympathy for the prison system, especially useful for the changes that were being introduced in dealing with juvenile offenders.

When he was appointed Chairman, Ruggles-Brise was instructed by the Home Secretary that 'the views of the Committee should, as far as is practicable, be carried into execution' (Thomas 1972: 127). In terms of prison changes, these were made within the context of other crucial developments in the administration of criminal justice. So, for example, legislation authorized probation as a statutory method of dealing with offenders, established juvenile courts, removed some offenders under 21 and recidivists from the normal prison system, gave the courts power to certify instead of committing to prison, and compelled magistrates to allow time for the payment of fines. However, the major piece of legislation affecting the prison system more directly was the Prison Act 1898 which, in effect, drew the convict and local services together. It gave the courts authority to classify prisoners into three divisions, and awarded the Home Secretary power to make Prison Rules for administration. However, the most important feature was the end of the separate system.

The Gladstone Committee had recommended three changes relating to the separate system. These were that talking should be allowed, that the period of separate confinement should be reconsidered and that there should be work in association (Thomas 1972: 128). The commissioners resisted the introduction of the first two but were more sympathetic towards the third proposal. As it seemed that prisoners worked harder in association, both reactionaries and reformers were unusually in agreement. In contrast, changes to the silence rule

were strongly resisted by both commissioners and governors but eventually in 1899 – largely as a result of parliamentary pressure – the rule was changed. However, the shift was grudging and limited – the privilege applied solely to long-term prisoners and was given, only at the discretion of the governors, for short periods.

Nevertheless, despite a reluctance to end separation and silence, from 1903 to 1911 there were other changes, such as attempts to establish after-care facilities, to improve educational provision, to change diet and, 'on the lighter side, concerts and lectures were introduced into both convict and local prisons' (Thomas 1972: 141). However, Thomas notes how the uniformed staff were becoming increasingly disenchanted as it was evident that 'no reformative zeal was being directed at improving their situation' (1972: 142). This increasing focus on the needs of the prisoners, while relatively neglecting the prison staff, produced an antipathy towards reform on the part of the bulk of staff that lasted throughout most of the twentieth century.

The end of the Ruggles-Brise regime finished with an inquiry. The report of 'The Prison System Inquiry Committee', published famously as *English Prisons Today*, was unofficial. The committee was originally set up by the Executive of the Labour Research Department, but in 1921 it became independent. The main protagonists, Stephen Hobhouse and A. Fenner Brockway, had both served sentences of imprisonment as conscientious objectors and, in their description of the system, they were highly critical. In fact, the commissioners refused to co-operate with the inquiry or to allow staff to give information. Nevertheless, the report made a strong impact when it was published in 1922 and there is little doubt that a substantial programme of reforms was initiated to stem further criticism. Several features come together in the early 1920s. In 1921 the Howard League for Penal Reform was established by Margery Fry, who combined the Howard Association and the Penal Reform League. In the same year, Maurice Waller took over the chairmanship of the Prison Commission and, in 1922, Alexander Paterson became a commissioner. The friendship between Fry and these two reform-minded prison chiefs helped to achieve many improvements (McConville 1995b).

The Paterson era – 'the golden age of prison reform': 1922–47

The Paterson era was seen by many as 'the golden age of prison reform' (Thomas 1972: 152) and, indeed, when Paterson died in 1947, he was said to have died 'in harness, at the age of sixty-three, having worn himself out in the service of his fellow man' (Scott 1959 cited in Thomas 1972: 178). Alexander Paterson was a charismatic figure and was responsible for many changes throughout the whole of the prison system. Many believed Paterson to be a great man because of his 'rare ability to translate penal theory into practice on a grand scale' (Thomas 1972: 153) but, amid such changes, it seems unlikely that the prison staff were so enamoured.

The Gladstone Report had encouraged the idea that young offenders needed special treatment in order to retrieve them from the jaws of a criminal career. In other words, they were seen as young and therefore capable of being

influenced. Paterson wanted to mould the fledgling Borstal system towards this end. As a model for Borstal (the name Borstal comes from the town of that name in Kent where the first institution for reforming and training young offenders was set up in 1901), Paterson chose the experience of the public school and the basic structure of the 'house system'. There was to be a housemaster with a matron and officers in support. The aim was to choose staff for these positions who had a genuine interest and belief in the notion that society had let down these young people and that it was the duty of the staff to steer them back on to the right course.

When it was introduced the Borstal system of teaching and training young offenders was greeted with public enthusiasm, particularly among those interested in reform who saw the low reoffending rates of ex-Borstal 'inmates' as a sure sign that the system worked. By 1930 the Borstal system was well established and highly regarded. During that year a symbolic event of trust took place. In May 1930, W.W. Llewellin, a governor at Feltham Borstal in Middlesex, led a group of staff and boys on a staged walk to Lowdham Grange in Nottinghamshire. There they set about constructing what was to become England's first open penal establishment. The faith in the reclamation of the young was at its height. Nevertheless, as Thomas reminds, 'Borstal was, by definition, not prison' (1972: 154).

Among the growing number of changes within the prison system there was the introduction of an earnings scheme where prisoners would be paid for the work they carried out, the institution of a prison newspaper and the allowance of pictures and wireless into the prisoners' cells. In 1936 adult prisoners for the first time slept in open conditions. However, there were criticisms in the press, not that the reformative measures had gone too far but that they should go much further. The general empathy that existed for prisoners and the backing behind the prison reform movement were probably the reason why the movement survived the events at Dartmoor in 1932, which was described by Thomas as 'the greatest crisis which the Commissioners, staff, and reformers had ever faced' (1972: 157). During the usual gathering of the prisoners within the exercise yard at Dartmoor on Sunday 24 January, the prisoners, in a very organized manner, took over control of the prison. This is the first time on record that this had ever taken place within a British prison. No prisoner escaped and the situation was under control within a matter of hours. This was due largely to a resourceful gate officer who called in the assistance of the police as the governor was cut off inside the prison. But the whole situation demanded questions to be answered about the recent reforms and the overall policies adopted by the government for control within prisons, not least because this was by no means an isolated incident in the surrounding months. In the subsequent report on the Dartmoor mutiny, conducted by Herbert Du Parcq and assisted by Alexander Paterson, no explanation was offered for its occurrence, but Thomas presents the following:

Dartmoor prison in 1932 was a very different place from what it had been thirty years before. The reforms which had been introduced had created an inmate community, able to communicate, and thus able to organise. The origins of the mutiny lay in the social dynamics which

association initiates … The fact that association creates as much stress and dissatisfaction as it removes, is confirmed by prisoners' accounts of their experiences. The prisoner who is propelled into an inmate society which can only be loosely supervised by staff, is likely to find himself from time to time in a situation which may be intolerable, and from which he must find relief. At the same time, with the greater freedom which association brings he is probably going to reflect on the increased feasibility of escape. And, finally, much to the dismay of liberal administrators, as more restrictions are removed, those which remain become more intolerable (1972: 159).

So rather than reducing the pressures of imprisonment, association appeared actually to increase them.

As part of the acceptance of association came a commensurate anticipation of an increase in escapes, a viewpoint that had little appeal to staff for whom escaping is a measure of failure. In fact, prison officers had grievances with the reform campaign in general. They saw that any sympathy which was aimed at the prison system by the public was now being addressed purely at the prisoner. Before the vast changes in regime it was quite usual for one officer to be in total control of a vast number of prisoners because most of the time they were in solitary confinement. The prison staff felt that the greater control problems associated with change, and the added burdens they placed on officers, had not been fully recognized.

The problem grew significantly worse during the Second World War years. The standards of regime and the success of many of the institutions were swept away as staff and most of the Borstal senior boys joined the forces. The spirit and tradition which had been built up over many years were lost for ever. Not only were prison officers, who were now greatly understaffed, expected to cope with the usual crises of war, such as heavy bombing, but they were also expected to deal with political prisoners (aliens), detainees under defence regulations and also a rapidly growing problem, the London recidivist (Thomas 1972: 178).

The postwar era

Lionel Fox had become the Chairman of the Prison Commission in 1942. Fox was a career civil servant who was less charismatic than Paterson (who never actually became Chairman of the Prison Commission), but who oversaw a more difficult time for the prison system. From 1945 the prison estate saw a growth in population. This new problem of overcrowding was first tackled by a vast prison-building programme: between 1945 and 1952, 17 new institutions were built in the shape of open and medium-security prisons and Borstals. However, another mechanism to try to combat the need for more accommodation was the introduction of 'threeing up' whereby three men slept in the same cell originally constructed, usually in the Victorian era, as a cell for one person. As Thomas (1972) notes, this political decision led to much controversy and a great deal of misery for many prisoners. The problems of overcrowding and

control only worsened in 1948 with the introduction of the Criminal Justice Act. Not only were new institutions (namely detention centres and remand centres) to be built which were to be run by the commissioners, but due to new legislation governing the imprisonment of males under 21, there was also to be an increase in the number of committals to Borstal.

Despite these setbacks the reform movement of the Paterson era was still gaining momentum and developments continued, including the opening of more open institutions and better training of staff (Thomas 1972: 182). In fact, the immediate postwar period was also an occasion for experimentation. Two new regimes which were to spread their way throughout the system were introduced. These were the Norwich system (named so because of the prison where it was first introduced) and the hostel system. The Norwich system contained three main features. First, all the prisoners were congregated together for meal times; secondly, the weekly working hours were increased without any additional staff from 26 hours to 35; and, thirdly, groups of prisoners were allocated to specific officers in an attempt to improve the relationships between the two groups. Meanwhile, the hostel system, which was begun in Bristol in 1953, worked by allowing certain prisoners to work outside the prison within normal employment without any supervision from the prison staff. Amazingly this scheme managed to survive some extraordinary publicity, notably in 1963 when a hostel resident murdered in the course of a robbery (Thomas 1972: 183). These changes were all the more significant because, at the time, the crime rate was witnessing a sharp increase and there were public demands for more punitive measures of custody. As our period comes to an end, we enter a new transition period with the ready sympathy for the prisoner coming to an end.

The lack of control was also coming back to the attention of the public. The escape rate during the postwar period had soared, as had inmate assaults on prison staff and other prisoners, culminating in ten inmates being sentenced to corporal punishment in 1961. Increasing incidences of homosexual acts (which were still illegal) were also taking place which again highlighted the lack of control that staff had over the behaviour of the inmates. As one prison officer said at the Prison Officers Association conference in 1959: 'How can we as prison officers do anything about it when there is not sufficient staff even to keep security, let alone supervision over the moral conduct of these men' (cited in Thomas 1972: 191).

The abolition of the Prison Commission

The Prison Commission had been established following the Prisons Act 1877, which had transferred every aspect of prison administration to the Secretary of State. Despite considerable opposition to the proposal, on 1 April 1963 the commission was dissolved. This change came at a time when the morale of the prison service was at a particularly low ebb. Increasingly the Head Office of the Prison Service began to appear to governors and officers as remote, grossly over-centralized and inefficient (Thomas 1972). Furthermore the escape of George Blake, the Soviet spy serving a prison sentence of 42 years, from Wormwood Scrubs in October 1966, was acutely embarrassing. It was evident

that something had to be done. This was the reason for the appointment of the Mountbatten Inquiry which ushered in a new era reasserting the custodial priority (see Chapters 3 and 14, this volume).

Conclusion: lessons to be learnt?

It is both hazardous and seductive to try to draw some lessons from history. The legacies are more straightforward in so far as most of the major developments and 'reforms' were not helpful in developing a modern prison system. The modern criminal justice system is still organized around the concept and practice of the deprivation of liberty. During the two centuries that are the focus of this chapter, the administration of the system moved from local to central control in an attempt to ensure a standardization of discipline and other elements of the prison regime. To effect the punishment of imprisonment, much of the current prison estate has the legacy of Victorian prison building, with thousands of inmates still housed in unsuitable accommodation within grim and austere surroundings. The legacy of the period regarding prison officers is also not a happy one. The uniformed staff, while trying on occasions to maintain outdated practices, have felt increasingly disenchanted and neglected.

   The lessons are less clear. The chapter has highlighted that the underlying philosophy of imprisonment has changed over the years. However, the rhetoric and the reality have not always been comfortable bed-fellows, and philosophy has not always coincided with practice. So, for instance, in the 1960s (said to be the highpoint of rehabilitative zeal) there was not much evidence of this from the standpoint of those working in prisons and those serving as prisoners. Nevertheless, despite the ever-present tension between theory and practice, there are perhaps lessons to be learnt. Appropriate change can develop from initiatives stemming from either outside or inside the prison system. Imprisonment as a punishment in itself essentially came about as a result of the direct actions of reformers to alleviate suffering and bring about more humane punishments than whippings, brandings and dismemberments. A further major change that had been activated by the reform movement was the inspection of prisons in order to bring them to a general standard. The demise of the reform movement working outside the prison system from the late 1830s spells out some of the dangers of the outside world not knowing, or being uninterested in, what is happening in custodial institutions. A public service always works best and most justly when it is aware of its public audience. In 1894 the influential Gladstone Committee was formed to look into the prison system since there was growing public dissatisfaction with the whole system and a general feeling that it was inefficient. Many of the recommendations put forward by the committee laid the foundations for present penal policy. But most of all it stated that the main principle behind imprisonment was deterrence *and* reform. Again, the lesson is that both revision and reappraisal are crucial, so that there can be a genuine attempt to match philosophy, policy and practice. The first half of the twentieth century – 'the golden age of penal reform' – was dominated by the spirit of the

charismatic Paterson, but the golden age also had its underside. In particular, the top-down agenda overlooked the growing dissatisfaction of some of the staff, leading to continuing problems for most of the twentieth century. A model for running a prison system that successfully engaged all the various competing audiences was never accomplished during the two centuries that are the focus of this chapter. The legacies of this period still characterize much of the prison system, and still need to be confronted.

Selected further reading

There are several excellent introductions to prison history in all, or part, of the period covered by this chapter. For an analysis of the early period, the most thorough text is arguably Ignatieff, M. (1978) *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750–1850*. London: Macmillan. Also useful, by the same author, is Ignatieff, M. (1985) 'State, civil society and total institutions: a critique of recent social histories of punishment', in S. Cohen and A. Scull (eds) *Social Control and the State*. Oxford: Blackwell.

For an overview of the prison in the later period, the reader is enthusiastically directed to Forsythe, W.J. (1990) *Penal Discipline, Reformatory Projects and the English Prison Commission, 1895–1939*. Exeter: University of Exeter Press. In addition, an excellent introduction to prison history can be found in Morris, N. and Rothman, D.J. (eds) (1995) *The Oxford History of the Prison: The Practice of Punishment in Western Society*. New York, NY: Oxford University Press. Two chapters in this seminal work are particularly worth consulting: McConville, S. 'The Victorian prison: England, 1865–1965' and McGowen, R. 'The well-ordered prison: England, 1780–1865'.

Finally, for a history of the frequently overlooked but vitally important role of prison staff, see Thomas, J.E. (1972) *The English Prison Officer since 1850: A Study in Conflict.* London: Routledge & Kegan Paul.

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Chapter 3

The changing face of the English prison: a critical review of the aims of imprisonment

David Scott

The overarching aim of the prison is to fulfil its punishment role: the deliberate infliction of suffering and hardships upon those contained within its walls. Defenders of the prison have argued, with varying levels of plausibility, that imprisonment can be justified through its purported ability to positively change, reform or rehabilitate those it contains; through its provision of a means of social defence and public protection for future crimes by its deterrent or incapacitative effect; and/or through the fact that a prison sentence is a justly deserved and proportionate response to a person's wrongdoing. These broader philosophical legitimations of punishment are recontextualized within the aims of imprisonment to provide the orientating framework for the purposes and objectives of the Prison Service.

The claims of penal authorities to legitimacy are predicated upon the current distribution and application of punishment successfully attaining political validity and a sense of moral rightfulness in a given society. Failure to attain moral or political validity can be assessed in two ways: either as a legitimacy deficit or as a crisis of penal legitimacy (Fitzgerald and Sim 1982; Beetham 1991). The Prison Service in England and Wales would be considered to be suffering from an inherent legitimacy deficit if an absence of legitimacy were believed to derive from weak justifications for its current aims, or if it inadequately fulfilled such desired goals or stated intentions. A legitimacy deficit is therefore a shortfall that can be addressed through meeting current aims or supplanting them with alternative, but not necessarily new, ones. By contrast, the application of the power to punish is considered to be confronted with a crisis of penal legitimacy when dehumanization and brutalization are felt to be endemic to Prison Service operational practice. In this sense the very sanction of imprisonment is considered to be entirely misapplied, or it inappropriately punishes certain categories of harm or wrongdoers. If prisons are confronted with a crisis of penal legitimacy, the most appropriate solution must be the delegitimation of the penal system as it is currently constituted, as the definition and fulfilment of the aims of imprisonment are unable to readjust current failings or to justify the existing application of penal power.

This chapter outlines and critically evaluates the different aims of the Prison Service in England and Wales in the last 40 years and the success of these changing aims in meeting the requirements for penal legitimacy. The chapter opens with an account of the role of less eligibility in depressing the possible scope and goals of imprisonment and of the rise of the humanitarian treatment and training ideology in the early to mid-twentieth century. The unravelling of the treatment and training ideology provides the backcloth to the rest of the review, which begins with a discussion of the privileging of prison security in the Mountbatten Report (Home Office 1966) and in its later revisions in the Radzinowicz Report (1968).

The chapter then considers the recommendations of the ill-fated May Committee (Home Office 1979) and their promotion of positive custody. This is contrasted with the emerging liberal penological consensus of the 1980s. Specific focus is placed on the idea of normalization (King and Morgan 1980) and the contributions of the Prison Board (1983 cited in Stern 1987), the Control Review Committee (Home Office 1984), the writings of Ian Dunbar (1985) on dynamic security and the Prison Service *Statement of Purpose* published in 1988 (HM Prison Service 2004). The chapter then moves on to consider the most influential contribution of this liberal penological consensus: the Woolf Report (1991). The discussion highlights how, even though Woolf was embraced by the government in *Custody, Care and Justice* (Home Office 1991) and heralded as setting the penal agenda for the following 25 years, a regressive political context promoting the revival of deterrence and incapacitation left his liberal managerialist reforms in tatters by the mid-1990s. In a period characterized by the re-ascendancy of security and the mantra that 'prison works', emphasis shifted away from talk of justice towards escape-proof prisons and the tightening of controls (Woodcock 1994; Learmont 1995).

Finally, the chapter moves on to chart how the change of government in 1997 witnessed a subtle shift from the mantra 'prison works' to that of 'making prison work'. Here we see how the aims of imprisonment have come full circle, with a return to prominence of rehabilitation. In its current reincarnation, imprisonment is closely tied to the priorities of managerialism and moves towards joined-up correctional services (Halliday 2001; Carter 2004). The chapter concludes with a summary and discussion of the implications of the spasmodic changes in the aims of imprisonment for claims to moral and political penal legitimacy.

Less eligibility and the treatment and training ideology

The two most pervasive ideologies influencing imprisonment in England and Wales in the twentieth century were less eligibility and treatment and training. The principle of less eligibility was enshrined in the 1832 Royal Commission on the Poor Law, and it has become the 'leitmotiv of all prison administration down to the present time' (Rusche and Kirchheimer 2003: 94). The logic behind this generic sense of severity is firmly rooted in the utilitarian calculus that to deter the rational offender requires the pain of punishment to outweigh the pleasures derived from the crime. Pointing to the balancing of the scales of

pain and pleasure, it is assumed that, if prison is painful, if it really hurts, the cognitive response of the offender will be to restrain from such pleasurable activity. In this way the doctrine of less eligibility is intimately tied to the philosophical justifications of individual and general deterrence.

The application of the doctrine of less eligibility ensures that the upper margins of prison conditions are guaranteed not to rise above the worst material conditions in society as a whole and that, in times of social hardship, the rigours of penal discipline will become more severe to prevent the weakening of its deterrent effect. In practice this has not prevented prisoners from having access to welfare provision and support (such as education, employment and healthcare), but it has dictated that these are delivered at an inferior standard to those services on the outside. The doctrine of less eligibility was highly influential in the punitive penal times of the late nineteenth century when hard labour, solitary confinement and the separate system characterized penal institutions in England and Wales (see Chapters 2 and 8, this volume). Growing dissent, scandal and exposures of prison brutality, however, weakened its hold, heralding a new era in penal reform. Though never fully operationalized, a new treatment and training ideology, rooted in rehabilitative principles, dominated the penal landscape from the Gladstone Committee of 1895 until widespread disillusion set in during the 1970s. Gladstone did not so much break with the past and the philosophical underpinnings of less eligibility as introduce a new 'manifest' task of prison treatment. Importantly, prison treatment was to have 'as its primary and concurrent objects deterrence, and reformation' (Gladstone 1895 cited in Thomas 1972: 117). For Gladstone (1895 cited in Radzinowicz and Hood 1986: 577–8), prison treatments should be: 'effectually designed to maintain, stimulate, or awaken the higher susceptibilities of prisoners, to develop their moral instincts to train them in orderly and industrial habits, and whenever possible to turn them out of prison better men and women, both physically and morally, than when they came in.'

The exact moment when the treatment and training ideology gained ascendancy is contested, but it is clear that it was firmly embedded by the 1920s (Garland 1985). The mission of the Prison Service from this period was to rehabilitate, treat or train prisoners. Given a clear rationale in the White Paper *Penal Practice in a Changing Society* (Home Office 1959: para. 44), 'the constructive function' of the prison was to 'prevent the largest numbers of those committed to their care from offending'. Canonized in Prison Rule 1 (1964 cited in King and Morgan 1980: 14), the 'purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life'.

The rehabilitative approach entailed the provision of work, education and physical training 'coupled with a loose exhortation to staff to adopt a quasi case work relationship with their charges' (King and Morgan 1980: 15). Yet, as Morgan and Maguire (1995: 399) put it, the treatment and training ideology created a prison system that was 'inequitable, paternalistic and unjust'. It was inequitable because the division between local and training prisons resulted in a large number of prisoners being deprived of treatment. It was paternalistic because prisoners had privileges, not rights, and were denied

due process. It was unjust because the quality of the regimes and physical conditions provided were appalling. Whatever the apparent commitment to humanitarian principles in the official aims of imprisonment, the reality was somewhat different (Ryan 2003).

The crisis of containment

In the 1960s prisons in England and Wales were confronted with a politically embarrassing crisis of containment deriving from three high-profile escapes (Fitzgerald and Sim 1982). In August 1964, Charles Wilson, one of the 'great train robbers', escaped from Birmingham Prison after serving only four months of his 30-year sentence. Less than a year later, in July 1965, Ronnie Biggs, also a member of the gang, escaped from Wandsworth Prison. Finally, and perhaps of greatest political significance at the time, the spy George Blake escaped from Wormwood Scrubs in October 1966. Prior to the 1960s political disquiet concerning the limitations of prison security was considered relatively unimportant, and when breaches of prison security had been highlighted, the reaction of the government had predominantly been to attempt to ride out the storm and carry on as normal (Home Office 1966). The reaction in the mid-1960s was qualitatively different, leading to the establishment of a committee to investigate prison security under the chairmanship of Lord Mountbatten.

The Mountbatten Report (Home Office 1966) proposed a significant upgrading of physical security in the prison estate. Most significantly, Mountbatten proposed that all male prisoners should be classified into four categories: A, B, C or D. At the top end of the scale were the Category A prisoners. These people should be subjected to the highest form of security as it was considered that their escape would present a serious threat to public safety. It was recommended that these top-security prisoners should be housed together in a new, purpose-built, 'escape-proof' prison called Vectis on the Isle of Wight. Category B prisoners did not require such rigorous security but 'escape must be made very difficult'. While Category C prisoners remained untrustworthy, they were not considered to have the ability or resources to make a concerted escape attempt. Category B and C prisoners would continue to be housed in local and training prisons with some limited security enhancements. At the bottom end of the spectrum were Category D prisoners. These people could be trusted and should be allowed to serve their sentences in an open prison.

Mountbatten's advocacy of such a concentration policy would have placed high-risk prisoners together and allowed much lower security across the rest of the penal estate. However, this idea met with stern opposition. The Advisory Council on the Penal System, a subcommittee chaired by Cambridge University Professor Leon Radzinowicz (1968), accepted Mountbatten's categorization of prisoners but completely rejected the idea of concentration. The advisory council was concerned that it would be impossible to provide either tolerable or constructive regimes in the new fortress prison or maintain order in an institution known to prisoners as a last chance saloon. Favouring instead what has become known as a dispersal policy, the Radzinowicz Report

proposed that Category A prisoners should be dispersed with Category B prisoners in specially designed, high-security training prisons. The adoption of the dispersal policy led to a heightened focus on security across the penal system. This had implications for both the fortifications and the regimes internally – security was privileged at the expense of humanitarian goals such as education, training, association and living conditions. Prison life from this time on became increasingly characterized by a profound intensification and vigorous enforcement of the priorities of discipline, surveillance and control (Sim 1991; see Chapter 14, this volume).

The end of an era

As the 1970s unfolded, the penal crisis entered a new phase. Both violent and peaceful prisoner protests were directed at the physical and psychological deprivations of confinement, highlighting the harsh realities of a decrepit penal estate. Prison officers retaliated with brutality and physically violent reprisals against those prisoners involved in protests (Fitzgerald 1977). Officers also showed increasing discontent with management, as the scale and intensity of industrial unrest in the 1970s escalated. By 1978 over 60 branches of the Prison Officers Association were involved in disputes with the Prison Service regarding issues such as staffing levels, pay, conditions and overtime (Ryan 1983). It is significant that, during this crisis of authority, faith in the rehabilitative ideal appeared to be in terminal decline (Fitzgerald and Sim 1982). In the 1970s and for most of the two decades that followed, it was increasingly difficult to hold that prisons could be special places that could improve or positively change offenders. In was in this tumultuous context that the much maligned May Committee (Home Office 1979), chaired by the judge Mr Justice May, reported in October 1979.

Asked to inquire into the state of the prisons in the UK regarding the pay and conditions of prison staff,[1] the size of the prison population, and the capacity for control, security and treatment in a time of 'concerted indiscipline' by prisoners, the report was fundamentally flawed from its inception. Comprising a mayoress, a personnel director, a senior trade unionist, a company managing director, a member of a prison board of visitors, a former director of NACRO, an Irish mayor, a Scottish sheriff and a retired chief constable, this committee of amateurs further compounded its inadequacies by deciding to breach the terms of its reference and to attempt to provide a new orientating rationale and aim for the Prison Service.

The May Committee (Home Office 1979: para. 4.26) advocated the now quietly forgotten notion of 'positive custody'. May (para. 4.27) acknowledged that treatment and training 'had had its day and should be replaced'. To avoid 'the brutalisation' (para. 4.28) of prisoners and staff through the absence of any real objectives, the committee (para. 4.26) advocated rewriting Rule 1:

> The purpose of the detention of convicted prisoners shall be to keep them in custody which is both secure and yet positive, and to that end

the behaviour of all the responsible authorities and staff towards them shall be such as to:

a) create an environment which can assist them to respond and contribute to society as positively as possible;

b) preserve and promote their self respect;

c) minimise, to the degree of security necessary in each particular case, the harmful effects of their removal from normal life;

d) prepare them for and assist them on discharge.

The notion of positive custody was met with official silence and faced devastating criticism from influential penological commentators (King and Morgan 1980; Fitzgerald and Sim 1980, 1982).[2] For Fitzgerald and Sim (1980: 82), positive custody entailed simply a move from warehousing to zookeeping, where once again there was only limited consideration given to the well-being of prisoners. Positive custody was considered to be vague, meaningless, unrealistic and an insidious means of providing greater penal legitimacy. There was little new in positive custody, and it was clear from its rather convoluted definition that it looked purely to change the penal rhetoric, and not the disturbing reality of prison life. For King and Morgan (1980), the problem of positive custody was that it tried to retain the rehabilitative ideal. What was required for them was the abandonment of such a commitment and a more realistic assessment of what prisons could achieve.

The liberal penological consensus

In the early 1980s a new liberal penological consensus developed in opposition to less eligibility, treatment and training, and positive custody. It was initially underscored by an acceptance of due process and the just deserts model of punishment, but this consensus later also embraced the priorities of managerialism. It was argued that, if 'taken seriously' (King and Morgan 1980: 27), the idea of 'humane containment' could act as a realistic replacement ideology for the now discredited rehabilitative ideal.

The term 'humane containment' entered the official penal lexicon for the first time in the 1969 White Paper, *People in Prison* (Home Office 1969: para. 18). Though Prison Rule 1 and the treatment and training ideology continued to be the official aims of imprisonment, the white paper privileged above them the more modest aim to hold those in custody committed by the courts in 'conditions for their detention which are currently acceptable to society'. Prisons were to be considered as first and foremost custodial institutions whose main priority was to contain prisoners in 'safe custody' (King and Morgan 1980: 336). It was maintained that humane containment had a practical and prosaic quality that, if fully adopted, would promote universally agreed standards and undermine the inhuman aspects of imprisonment. King and Morgan (1979) had championed humane containment in the evidence they submitted to the May Committee in 1979, but found their suggestions

unceremoniously rejected. They made a sharp response: 'Prisons have always been human warehouses and in some sense always must be. What the May Committee appears not to recognise is that prisons have sometimes been *inhuman* warehouses. For our part we think that the difference between inhuman warehouses and human warehouses is important' (King and Morgan 1980: 25).

King and Morgan (1980: 34–9) maintained that the use of the prison as a human warehouse should be grounded in three principles: minimum use of custody, minimum use of security and normalization. The first two principles are relatively clear. Prisons should be used as little and with the lowest degree of security as possible. Normalization, a 'rather inelegant phrase' (1980: 37), is a little more complex. This promoted greater links between the community and the prison, breaking down the prison enclave and reducing its isolation from wider society. Normalization has nine prime elements: improved community ties and locality of custody; provision of the same health, welfare and educational facilities as those in the community; living standards equivalent to those on benefits; prisoners to be gainfully employed; restrictions of the official secrets legislation to be lifted; reasonable access to means of communication; adjudication of disciplinary offences by due process; and all decisions which affect the prisoner's date of release be subject to independent or judicial review (King and Morgan 1980: 38–9, 107). It was this agenda that laid the platform for a new liberal penological consensus on the aims of imprisonment.

By the mid-1980s it seemed a given that prisons had a deformative impact on the minds and outlook of those they contained. Rooted in a minimalistic and pragmatic appraisal of what prison *can* actually do, the Prison Board (1983 cited in Stern 1987: 50) made it clear that prisons should aim to fulfil, with maximum efficiency, the following four key functions: To:

1 keep untried and unsentenced prisoners in custody until it is time to bring them to court and then get them to the right court on time;
2 keep sentenced prisoners in custody for as long as they are meant to be in custody;
3 provide 'as full a life as is consistent with the facts of custody', particularly concentrating on basics such as medical care, food, baths and clean clothes, work, education and exercise; and
4 help prisoners keep in touch with the community and prepare them for their return to it (if possible).

That the Prison Service at this time had consistently failed to meet such basic goals as ensuring that the legally right people were in prison for the correct length of time; that prisoners were kept in clean, healthy and safe environments; that they had something constructive to do with their time while in prison; or that they were allowed their full legal entitlements such as visits and correspondence, could only further highlight the depth of the prison crisis (Fitzgerald and Sim 1982; Stern 1987).

In a similar vein, the Control Review Committee (Home Office 1984) also made proposals that reflected the liberal penological consensus. They

maintained that the 'basic function' of prisons should be to fulfil their mandates under the law by keeping in custody sentenced and unsentenced prisoners as directed by the courts. They proposed six key principles (Home Office 1984: para. 108):

i   to ensure that prisoners' lawful rights are respected;
ii   to provide, subject to the demands of security, safety and the running of the establishment with necessary order, that the life of prison should be as close to possible to normal life;
iii to ensure that the conditions of detention of prisoners are those appropriate, in terms of security, to the nature of the individual prisoner and his offence;
iv   to exercise a duty of care for those in custody, in particular by providing the physical necessities of life (including exercise, and access to open air), adequate care for physical and mental health, and opportunities for the exercise of religion, mental and other facilities;
v   to give prisoners the opportunity to participate in a programme of constructive activities to occupy at least the working day; such programmes to consist of activities such as: education, vocational or other training, work, counselling, physical education and recreation;
vi   to enable prisoners to retain links with the community and to assist them in their preparation for return to it.

Importantly, the Control Review Committee placed emphasis on the issue of prisoner legal rights, due process and normalization. In this way it expanded upon the aims of the Prison Board while retaining and reinforcing the prevailing pragmatic and realistic focus.

This penal realism may unfortunately accurately sum up about all that is achievable through imprisonment, but such an agenda could hardly provide inspiration for those administering or facilitating such functions. In this context Ian Dunbar, ex-governor of Wormwood Scrubs, published a report in 1985 entitled *A Sense of Direction*. Stressing the need to go beyond penal realism, Dunbar provided a vision of the operation of the prison rooted in the privileging of security, but with some commitment to make prisons a constructive experience for prisoners. For Dunbar (1985), prisoner and staff 'talk' and other interactions should be rooted in the principles of 'dynamic security'. Here conversations with prisoners could be justified as a means of surveillance for the maintenance of order. The overall intention was to encourage officers actively to engage with prisoners so that they could be aware of, and in control of, prisoner activity. If officers could direct and provide active supervision, rather than simply observe prisoners through a passive form of surveillance, such activity may decrease subversion and possibly also help the prisoner deal with offending behaviour.

This form of security could only work if officers were prepared to mix and talk with prisoners and to encourage them to undertake purposeful activity. The minimalistic approach to constructive penal regimes was, however,

undermined by the hierarchy of power relations in the prison and the inherent conflict between the keepers and the kept. Further, such limited interventions could hardly be expected to mitigate the profound dehumanization of the everyday prison experience. Combined with the wider duty of officers to pass any information given to them by prisoners on to their superiors, in such circumstances there could only ever arise limited 'confidentiality and trust' (Fitzgerald and Sim 1982: 135).

At the end of 1988 the Prison Service consolidated its commitment to the liberal penological consensus by providing a statement of purpose that detailed the official role and aims of the Prison Service: 'Her Majesty's Prison Service serves the public by keeping in custody those committed to the courts. Our duty is to look after them with humanity and to help them to lead law-abiding and useful lives in custody and on release' (HM Prison Service 2004). Bottoms (1990: 15) succinctly defines this mission statement as 'humane containment plus'. However, like less eligibility, treatment and training, and positive custody, the liberal penological consensus was not without its critics. The promotion of normalization by King and Morgan (1980) is confronted with a major paradox: prisons are deeply *abnormal* environments and cannot be otherwise (Rutherford 1985; Stern 1987). Imprisonment is a profoundly unnatural state of affairs. To talk of normality in prisons is a contradiction in terms. Further, the 'starkness' of humane containment, and its rejection of a possible utility of imprisonment through rehabilitation, has led one influential liberal commentator to consider this aim to be 'ontologically insufficient' (Bottoms 1990: 9; see Chapter 14, this volume). That is, it cannot justify prison alone as there is no clear objective apart from keeping the prisoner alive and successfully contained within the prison. Further, the liberal penological consensus was rooted in the philosophical justification of just deserts. This position encounters problems as it fails to provide a moral rationale that can justify *why* the prison should exist in the first place, and faces political objections by focusing upon proportionate punishments in an unjust society (Hudson 1987).

One additional lasting legacy of the 1980s was the emergence of managerialism, which can be traced back in the Prison Service to as early as 1984. Circular Instruction 55/84 promoted for the first time the development of a performance culture and the first steps towards the now all-pervasive managerialism (Dunbar 1985). New public managerialism was conceived as a means of modernizing welfare provision and reformulating the role of the capitalist state as a purchaser rather than provider of public services. This neoliberal logic was most obviously translated into the prison in terms of the principles of opportunity and responsibility for prisoners, and the later focus on private finance for new prison building and the creation of an internal market (see Chapter 15, this volume).

The managerial calculus promotes autonomy, entrepreneurship and innovation. In practice it entails prioritizing cost effectiveness and value for money, while at the same time guaranteeing quality services and products. Managerialism speaks in the name of empowering the consumer, placing emphasis on strategies, mission statements, visions and goals. Its attractiveness lies in its claims to provide flexible, adaptable and quality performances

that meet consumer needs (Clarke and Newman 1997). The adoption of the managerialist ethos added the final element to the liberal penological consensus, reaching its high tide with the Woolf Report, published on 25 February 1991.

The Woolf agenda

The monumental Woolf Report (1991) is widely regarded as the most progressive penal reform programme of the twentieth century in England and Wales (Tumin 2001). In stark contrast to the May Committee, the publication of the Woolf Report was remarkably well received, with only a few marginalized dissenting voices (Sim 1994). Lord Justice Woolf[3] was commissioned to investigate the disturbances at HMP Manchester[4] from 1 April to 25 April 1990 and at five further institutions: Glen Parva, Dartmoor, Cardiff, Bristol and Pucklechurch. Woolf's main aims were to restore the authority and stability of the prison, restricting his analysis to administrative questions and offering only minor adjustments and revisions to the aims, policies and procedures of the Prison Service. Woolf's proposals were 'policy signposts' (para. 1.8) that were not specific in terms of their application. His recommendations were open to broad interpretation and often justified on a consequentionalist basis that, in the long run, they would reduce reoffending.

In his report, Woolf (para. 10.19) insisted that offenders should not leave prison embittered or disaffected as the result of an *unjust* experience. Woolf pointed to the obligations on the Prison Service to contain prisoners humanely and to meet the requirements stipulated in the statement of purpose. Woolf made 12 central recommendations and a further 204 supporting recommendations. According to Morgan (1992: 234), two were 'pivotal': community prisons and prison 'compacts' or 'contracts'.[5] Community prisons, emphasizing 'locality', 'permeable walls' and 'community ties', were perceived as the most appropriate institutional setting for guaranteeing the balancing of the report's key themes – 'security, control and justice' (1991: para. 1.148).

The meanings of the terms 'security' and 'control' are fairly straightforward. Security referred to measures that were required to prevent prisoners from escaping; control to those measures required to create orderly, disturbance-free prisons. The meanings that Woolf gave to 'justice' were much more sophisticated, ultimately using the term as an umbrella concept. Woolf promoted an understanding of 'justice' that encapsulated an obligation on the Prison Service to treat prisoners with 'humanity and fairness' (para. 1.149), and to act in conjunction with other agencies in the criminal justice system. The 'overloaded' (Morgan 1997: 63) term of 'justice' had too much 'packed' into it: 'fairness *and* due process; looking after prisoners with humanity *and* minimising the "negative effects" of imprisonment which makes offending more likely; preparing the prisoner with skills he or she will be able to use on release *and* what has elsewhere been referred to as the "normalisation" of prison standards.'

For Woolf, a 'just' prison could not be a place that makes offenders worse, but, rather, one that encourages self-respect and a sense of personal

responsibility. This was to be achieved through facilitating greater opportunities for prisoners to make meaningful choices. The emphasis on choice by the 'responsible prisoner' was founded upon the construction of the offender as a (flawed) consumer expected to learn how to demonstrate responsible judgement.[6] Such responsible choices could only be made if the worst aspects of prison life were dramatically reduced or eradicated. To make decisions meaningful, prisoners must know that there are consequences, both positive and negative, to their choices. Conditions, standards and a sense of justice were to follow from this, with enhanced regimes and earned privileges for those prisoners who made responsible decisions. Commitments to improving prison conditions, developing penal standards and facilitating just prisons were inextricably linked to prisoner 'compacts' or 'contracts', setting out prisoner 'expectations' and responsibilities alongside those expected by the prison in return. As Woolf (1991: para. 14.5, emphasis added) made clear, through the social contract:

> we are not seeking to achieve more comfortable surroundings, greater luxuries or increased privileges *for prisoners for their own sakes. To think that would be to fundamentally misconceive the argument.* We are seeking to ensure that a prisoner serves his sentence in a way which is consistent with the purpose behind the court's decision to take away his liberty and his freedom of movement, while ensuring he is treated with humanity and justice.

It was the 'duty of the prison service to assist the prisoner in the future to be a responsible member of society'[7] (para. 10.11). In contrast to what had come before, the fulfilment of responsibilities, then, became the perquisite for just, humane containment.

The long-term ascendancy of Woolf's recommendations appeared secure in 1991 when Home Secretary Kenneth Baker claimed that the Woolf Report would provide the blueprint for penal policies for the next 25 years (Player and Jenkins 1994). The initial response of the government was to increase telephone access and visiting allowances and accelerate the timetable to end slopping out to 1994.[8] The vast majority of Woolf's recommendations were accepted as official government policy in the Home Office White Paper *Custody, Care and Justice*, published in September 1991.

Though building on the liberal penological consensus, the Woolf Report was specifically written as a response to riot, and his recommendations were introduced to prevent further riots. As Sparks (1994: 17) comments, the report was written in a period when the 'legitimate basis of the system' was facing 'a near terminal crisis of order and moral credibility'. Woolf (1991) worked within certain axioms of 'penal truth' (Sim 1994), with his frames of reference predetermined by the legitimated knowledge base of official discourse. Woolf did not open up the agenda to questions regarding the actual legitimacy of imprisonment itself, or consider alternative conceptualizations of (social) justice. His conclusions were already couched within a particular interpretative analysis rooted in concepts of humane containment, penal realism and 'normalization'.

Sim (1994: 33) highlights how these attempts to secure hegemony ignore the unequal power relations and social injustice that permeate wider society. He argues that a 'myopic vision' is created, hiding the wider processes of regulation, control and discipline by the capitalist state. For Sim (1994), the Woolf agenda denies the legitimacy of interpreting penal developments within broader determining structural contexts and the construction of social or popular authoritarianism (Hall 1988, 1998), and fails to address disturbing questions regarding the justifications of the adoption of repressive responses, when strategies designed to foster consent are replaced by coercion. In such a way, Woolf's call for just prisons provided a new veil of legitimacy over the prison system's hideously ugly reality. In short, prisons are regarded as merely providing services, like any other provider of consumer goods, and it is the quality of these commodities that is evaluated, not the wider concerns around their legitimacy or justification. Sim (1994: 41) sums up the problems well: 'The metamorphosis of the prisoner into a customer … [transforms] the discourse of discipline and punishment which underpin penality into politically neutral and individually safe questions of satisfaction or dissatisfaction with the community or service on offer within an individual establishment.'

While there have been developments around prisoner compacts, prison service standards, incentives and earned privileges schemes, and opportunities for prisoners, these have not necessarily improved the qualitative experience of those confined. By predicating humane containment and justice upon prisoner responsibilities rather than their inalienable rights of citizenship, Woolf inadvertently opened the door for the greater pervasiveness of managerialism in the 1990s (Hudson and Scott 2001). Indeed, many of the reforms Woolf initiated, and the broader notions of individual choice, responsibility and opportunity, have proved successful because of their ties to managerialist measurements rather than the lasting influence of the 1980s liberal penological consensus (Scott 2001).

Back from the future

Following the recommendations of Lygo (1991), the Prison Service became an 'executive agency' of the Home Office on 1 April 1993. Agency status further embedded the managerial ethos in the Prison Service and was intended to give the service greater political independence. The new organizational structure involved the development of mission statements, prison standards, visions, corporate plans, strategic goals and business plans. It also saw the appointment of a new director general: Derek Lewis. The *Framework Document* and *Corporate Plan* (both published in 1993) detailed the new organizational structure and priorities of the service. The *Corporate Plan* (HM Prison Service 1993b) talked the language of Woolf, stating that the service's main aims should be to find the 'right balance between security and control and justice and humanity'. More boldly, it also contained a remarkably unequivocal commitment to 'safeguarding and promoting prisoners' rights and ensuring the due process of law' (1993b: 4). In addition there was a commitment to provide regimes with 'decent conditions' that met 'prisoners' needs' (1993b:

17). Once again, though, such commitments were predicated on increased prisoner choices and responsibilities as a means of addressing offending behaviour.

The *Corporate Plan* outlined the new prison standards (3rd edn 2002) and they were incorporated into the aims, objectives and operational priorities of the service. Prisoners (though unwilling consumers) could come to expect the Prison Service to meet this criterion given they fulfilled their responsibilities. Yet the beginnings of a shift away from the liberal foundations of the Woolf agenda were also clear. The *Corporate Plan* provided details of the Prison Service's new managerial vision, goals and values (1993b: i):

Vision
Our vision is to provide a service, through both directly managed and contracted prisons, of which the public can be proud and which will be regarded as a standard of excellence around the world.

Goals
Our principal goals are to:

- keep prisoners in custody
- maintain order, control, discipline and a safe environment
- provide decent conditions for prisoners and meet their needs, including health care
- provide positive regimes which help prisoners address their offending behaviour and allow them as full and responsible life as possible
- help prisoners prepare for their return to the community
- deliver prison services using the resources provided by Parliament with maximum efficiency

In meeting these goals, we will co-operate closely with other criminal justice agencies and contribute to the effectiveness and development of the criminal justice system as a whole.

Values
In seeking to realise our vision and meet our goals, we will adhere to the following values:

- *Integrity* is fundamental to everything we do. We will meet our legal obligations, act with honesty and openness, and exercise effective stewardship of public money and assets.
- *Commitment* by our staff and to our staff. Staff are the most important asset of the Prison Service. They will be empowered to develop and use their skills and abilities to the full, while being held accountable for their performance. Teamwork will be encouraged. They will be treated with fairness, respect and openness. Their safety and well-being will be a prime concern.
- *Care* for prisoners. Prisoners will be treated with fairness, justice and respect as individuals. Their punishment is deprivation of liberty and

they are entitled to certain recognised standards while in prison. They
will be given reasons for decisions and where possible, involved in
discussions about matters affecting them. In working with prisoners,
we will involve their families and others in the community as fully
as possible.

- *Equality of opportunity.* We are committed to equality of opportunity
  and the elimination of discrimination on improper grounds.
- *Innovation and improvement* are essential to the success of the Service,
  requiring the acceptance of change and the delivery of continuing
  improvements in quality and efficiency.

Alongside this, the *Corporate Plan* also identified eight key performance
indicators. These focused on prison escapes; the number of assaults on staff
and prisoners; the proportion of prisoners held in units of accommodation for
fewer numbers (overcrowding); the number of prisoners with access to 24-
hour sanitation; the number of hours prisoners spend in purposeful activity;
the proportion of prisoners unlocked at weekends for at least 12 hours; the
proportion of prisoners who can exceed minimum visiting entitlements; and
the average cost per prisoner place. Remarkably, then, in the space of just a
few years the Prison Service had shifted from a period of realism where any
progressive aims of imprisonment seemed beyond its reach, to a plethora of
indicators, purposes, visions, goals and values that appeared to have little in
common with the aims promoted in the previous decade.

Yet worse was to come. Woolf and the liberal penological agenda were
to be blown out of the water with the appointment of a new radical and
interventionist Home Secretary, Michael Howard. Capturing the slogan
'prison works' in his speech to the Conservative Party conference in October
1993, Howard signalled a return to the Thatcherite law-and-order agenda of
the 1980s. Rejecting the liberal aspects of managerialism for its more punitive
face, Howard oversaw a resurgence of the doctrine of less eligibility. Claiming
imprisonment could be justified through deterrence and incapacitation alone,
Howard seduced the punitive constituency and neoliberal lobby with calls
for existing prison 'holiday camps' to be replaced with tough and 'decent but
austere' penal regimes.

The dovetailing of managerialism and responsibilisation strategies with the
'prison works' vision was clearly illustrated with the introduction in 1994 of the
Operating Standards (HM Prison Service 1994).[9] Much awaited by humanitarian
and liberal penal reformers after the promise of Woolf, this document explained
that the Prison Service's aim was to 'balance the needs of security, control,
and discipline within prisons, with decent but austere conditions, active and
demanding regimes, and a fair and just system for dealing with prisoners'
problems and grievances' (1994: ii). Howard's punitive form of managerialism
was given further impetus in September 1994 when six prisoners escaped
from Whitemoor Special Security Unit. The escapees had rope, bullets, two
guns, over £400 and a torch. One officer was shot during the escape. The
majority of the equipment had been manufactured on site, and, later, when
searching the unit, semtex and fuses were found. The resulting report by
Sir John Woodcock (1994) claimed that the escapes had occurred because

both prison officers and security had been fatally undermined. The extent of prisoner privileges, through shopping trips, private cash, personal property and private telephone calls, had created a crisis of authority among staff and their subsequent demoralization: 'The enquiry team have been saddened to see normally hard working dedicated prison officers, at all levels, bewildered and crestfallen by their own failures' (Woodcock 1994: para. 9.11). The Woodcock Report made 64 recommendations in total, focusing on increased security through cell searches, better surveillance in the unit and changes in prisoner privileges. Recommendation 62 summed up the underlying theme of the report: 'The prison service at all levels must continue to emphasise the central importance of security in all aspects of activity. Wherever changes are proposed in policy or practice they should be tested against whether they add to or detract from security standards.'

As a result of the Woodcock Report, a new inquiry was commissioned to conduct a wider review of security procedures. Its terms of reference, though, were altered by a further politically embarrassing escape, this time from Parkhurst Prison, Isle of Wight, by three prisoners on 3 January 1995. Here the escapees had tools, a ladder, a toy gun that fired blanks and a key. Headed by General Sir John Learmont, the inquiry made 127 recommendations, including calls for reductions in prisoner possessions, more emphasis on opportunities and incentives, and more clear leadership for the service. On this latter point, Learmont (1995: para. 6.6) was scathing of the existing fiasco of prison aims. 'Any organisation which boasts one statement of purpose, one vision, five values, six goals, seven strategic priorities and eight KPI's, without any clear correlation between them, is producing a recipe for total confusion.'

Woolf's security, control and justice was to be replaced in the penal lexicon with 'custody, care and control' which, like Woodcock, prioritized security above all else. Securing prisoners' custody now became the core business of the Prison Service and the bedrock of penal regimes. Learmont (1995: para. 3.39) proposed a new mission statement which he believed might be more useful to the service:

CUSTODY:

- on behalf of the courts by keeping in custody those committed to them
- on behalf of the public protecting them from those committed by the courts and also deterring potential criminals

CARE:

- on behalf of prisoners, by offering opportunities to learn from their mistakes, make amends for the harm done, maintain links with families and acquire skills and knowledge to plan for the future

CONTROL:

- of the prisoners, by inducing improvements in behaviour and attitude, through a mix of incentives and sanctions and

- by equipping staff with the skills and knowledge needed to accomplish difficult and demanding tasks

For Learmont, then, prisons should protect the public and deter potential offenders by keeping those sent to them by the courts in 'custody'; 'care' for the prisoner by providing opportunities for them to learn from their mistakes, developing family ties and making redress; and to 'control' prisoners through inducements based on both incentives and sanctions, and the better training of prison officers.

The government response to the Woodcock and Learmont recommendations was swift and decisive. Millions were invested to improve security, operational practices were subordinated to the demands of security, and wide-ranging restrictive and punitive policies, such as the removal of phone cards, restrictions of temporary release and the development of the incentives and earned privileges scheme, were legitimated. The highly objectionable visions of Learmont, Woodcock and Howard now shaped the contours of imprisonment with the Prison Service cautiously committed to achieving the 'right balance between security, control and positive regimes for prisoners' (Tilt 1996: 3). The new austere regimes were interpreted by staff as really meaning 'give prisoners nothing' (Quinn 1999: 7), slipping back to the old certainties before Woolf.

Despite government support, the renewed emphasis on security was heavily critiqued by liberal commentators. Rejecting the balance proposed by Woolf and official and independent research findings on the relationship between security and order, Learmont's proposals amounted to the creation of new, highly repressive and profoundly dehumanizing iron coffins: 'We can probably create prisons that are almost guaranteed escape proof. But they would not be fit places in which to live or work. They would provide for a living death as objectionable as the ultimate penalty which historically imprisonment has replaced' (Morgan 1997: 69–70).

Coming full circle

On 1 May 1997, 'New' Labour won the general election. With hindsight it is clear that New Labour genuinely embraced at least some aspects of the previous administration's thinking, with many striking continuities in public and penal policy (Hall 1998). New Labour governance brought home the revolution in the management of offenders and the organization of correctional services that had begun in the 1980s. Without entirely denying the claims of their Tory predecessors, Home Secretaries Straw, Blunkett, Clarke and Reid have invested enormous confidence once again in the belief that, if used in conjunction with community penalties, the prison could become a special place to rehabilitate and responsibilise offenders.

The swing in fortunes for rehabilitation was set in motion when Jack Straw (1997) announced to the Prison Reform Trust that through 'constructive regimes … we believe prisons can be made to work as one element in a radical and coherent strategy to protect the public by reducing crime'. Unlike

its previous manifestations, though, rehabilitation and the 'what works' agenda were intimately tied to the language of managerialism. In this time of renewed penal optimism, the Prison Service strategic framework (1998) provided us with yet further elaboration of the aims of the Prison Service, this time detailed through aims, objectives and principles:[10]

AIM

- Effective execution of the sentences of the courts so as to reduce re-offending and protect the public

OBJECTIVES

- protect the public by holding those committed by the courts in a safe, decent and healthy environment
- reduce crime by providing constructive regimes which address offending behaviour, improve educational and work skills and promote law-abiding behaviour in custody and after release

PRINCIPLES

- Deal fairly, correctly and openly with staff, prisoners and all who come into contact with us
- Work effectively with other bodies
- Help prisoners to take responsibility for their behaviour, to respect the rights of others, to maintain links with their families and the wider community
- Value the contribution of staff, ensuring that they are effectively prepared and supported in the work they do
- Obtain best value from resources provided

Selectively building upon and updating the previous aims of imprisonment, the face of the prison in England has changed once again. Indeed the aims have come full circle: the new mantra is that we can best protect the public by 'making prisons work' to reduce reoffending. The most influential assertions of this can be found in the Halliday Report (2001), *Making Punishment Work*. Halliday (2001: ii) argued that the best prospect for achieving the dual aims of public protection and reducing reoffending was through providing rehabilitation within an 'appropriate punitive envelope'. Correctional sentences should be based upon perceived risks of future dangerousness or persistency, with those scoring high on such actuarial calculations requiring 'more intensive efforts to reform and rehabilitate which become possible within a more intrusive and punitive sentence' (2001: 13). The intention is to divert low and medium-risk offenders away from prison into the community, and to use the prison as a space where concentrated efforts can be made to categorize and challenge high-risk offenders. In short:

the framework can, and should do more to support recent and foreseeable developments in work with convicted offenders to reduce their re-offending through 'what works' … In addition, persistent criminality

justifies the more intensive efforts to reform and rehabilitate which become possible within a more intrusive and punitive sentence … In most cases the sentence would be viewed as an appropriate punitive envelope with which the goals of crime reduction and reparation would be pursued (Halliday 2001: 10, 13, 20).

Recommending the virtual abolishment of short-term prison sentences; longer and more intrusive prison sentences for high-risk recidivists to be followed by community supervision; greater focus on utilizing 'what works' initiatives in prison to reduce reoffending; greater co-operation and integration between the prison and probation services; the augmenting of proportionality and just deserts with the persistency principle in sentencing rationale; and a transformation in the application of community punishments, Halliday's proposals were accepted by the government in the White Paper, *Justice for All* (Home Office 2002), and the resulting Criminal Justice Act 2003.

The expressed desires of the 'making prisons work' agenda appeared to indicate that a major overhaul of the organization of correctional services was required. On 6 January 2004, the Carter Review, *Managing Offenders, Reducing Crime: A New Approach*, was published, leading to the creation of the National Offender Management Service (NOMS) on 1 June 2004. The Prison Service remains an executive agency of the Home Office,[11] with NOMS providing an umbrella organization for private prisons, public sector prisons and the probation service (see Chapter 27, this volume). Carter (2004) also introduced the concept of 'contestability', intended to encourage the privatization of rehabilitative services in both the community and the prison. In future if a prison should fail to 'work' in reducing reoffending or protecting the public, the problems will not be identified as the broader structural contexts shaping the prisoner's agency and choices, but the combination of a problematic prisoner with failings on the part of the delivery of rehabilitative programmes.

Comparative measurements, already existing through Prison Service key performance targets, indicators and internal audits, take on even greater significance under NOMS.[12] While the capitalist state retains legitimacy as purchaser of services it can now place responsibility for failure in the hands of those who deliver them. In this way contestability and performance monitoring creates the final building block of the managerial revolution in the Prison Service. By identifying and testing failing prisons in a competitive market, governments can avoid damaging critique by simply replacing the failed providers of correctional services with others deemed more efficient, effective or economic in the management of the responsibilization of offenders (see Chapter 22, this volume). Despite the renewed confidence in rehabilitation, the proposals of Halliday (2001) and Carter (2004) are unlikely to bring either more justice or protect the public. A bifurcated strategy rooted in the persistency principle will undoubtedly create greater discriminatory outcomes, lead to net widening, probably to just catching petty and minor offenders and to expanding the penal gaze further on to those from impoverished or minority ethnic communities. All the evidence indicates that convicted persistent offenders are rarely the most dangerous people in a society, but they are often its poorest (Fitzgerald and Sim 1982; Cohen 1985; Justice 2001).

Summary and conclusions: riding on the penal merry-go-round

The above discussion has offered a brief overview of the changing face of the English prison in the last 40 years. The rise of the rehabilitative ideal through the treatment and training ideology provided a backcloth to the current turmoil and instability concerning the aims of imprisonment. Its decline was identified with, first, a crisis of containment in the 1960s which led to the massive escalation in prison security across the penal estate through the Mountbatten (1966) and Radzinowicz (1968) Reports. A crisis of authority, manifested through increasing unrest from both prisoners and prison officers in the 1970s, led the May Committee (Home Office 1979) to formulate the now- infamous notion of positive custody as a way of responding to the moral vacuum created by the demise of rehabilitation. From the ashes of the treatment and training ideology and the May Committee recommendations emerged a new liberal penological consensus in the 1980s. Rooted in the principles of humane containment, normalization and just deserts, this approach rejected rehabilitation in place of safe, legal and humane custody. Promoted by liberal penologists King and Morgan (1979, 1980), this position was influential on the aims promoted by the Prison Board (1983 cited in Stern 1987), the Control Review Committee (Home Office 1984), the principle of dynamic security (Dunbar 1985) and the Prison Service *Statement of Purpose* (1988 cited in HM Prison Service 2004).

From 1984 onwards new public managerialism has underscored the operation of the Prison Service, gradually looking to transform it from purchaser to provider of its punishment duties. Its most liberal application came in the guise of the Woolf Report (1991). Woolf spoke of security, control and *justice* and provided a powerful synthesis between the liberal humanitarian agenda of King and Morgan (1980) with talk of consumer choices, opportunities and individual responsibility. Placing prisoner responsibilities and just and humane regimes at the heart of the aims of imprisonment, Woolf guided the service through one of its most important periods of change from 1991 to 1993. However, the rather confusing lists of visions, goals, performance indicators, values and mission statements produced in this period did little to clarify the aims of the prison. Shed of their humanitarian skin, it is now clear that the apparently progressive reforms that arose in the mid-1990s, such as the development of operating standards and moves towards a more performance-orientated culture, merely reflected the priorities and logic of managerialism.

The call for austere regimes by Home Secretary, Michael Howard, in 1993 put the final nail in the coffin of Woolf and the liberal penological consensus, and indicated that the doctrine of less eligibility had lost none of its appeal. A further crisis of containment in the mid-1990s saw the return of secure custody as the primary goal of imprisonment. The election of New Labour in May 1997 saw, remarkably, the debate go full circle in a period of less than 30 years, with the aims of the Prison Service in the last ten years reflecting a renewed emphasis on rehabilitation. Fulfilling the managerial revolution, the focus on reducing offending and protecting the public has led to major organizational restructuring and the location of the Prison Service within a new National Offender Management Service.

What the discussion of the aims of imprisonment above highlights more than anything else is the clear inability to find a coherent and sustainable set of principles to guide what prisons are for. The numerous, often contradictory, aims of imprisonment seem to be constantly reinvented when previous aims have exhausted plausibility. On both moral and philosophical grounds the various aims of imprisonment have failed to provide a convincing case that the intentional infliction of suffering imparted through imprisonment can be successfully defended (Mathiesen 2006). Those running the Prison Service have drifted between claims that prisons effectively deter, rehabilitate, protect, proportionately respond to human wrongs or humanely contain. Yet while this penal merry-go-round may provide some mystification of the prisons' endemic failures, such a fiasco of aims cannot address the Prison Service's fundamental crisis of moral legitimacy. The conclusion that must be reached from this merry-go-round is that *prison does not work*, at least not on the grounds that have been promoted by the Prison Service to defend its legitimacy (see Fitzgerald and Sim 1982; Hudson 1996; Rusche and Kirchheimer 2003; Mathiesen 2006).

Neither can the spasmodic changing of the aims of imprisonment address the political crisis of penal legitimacy: the inequitable constitution of the prison population and the role and functions of imprisonment in a capitalist, neo-colonial and patriarchal society. Prisons in England and Wales disproportionately hold young people, property offenders, the mentally ill, those who are unemployed or on benefits, those who are homeless or have been in care, and/or people disproportionately from black and minority ethic communities (Social Exclusion Unit 2002). The almost exclusive focus by law enforcement agencies on the criminality and subsequent punishment of the 'sub-proletariat' and non-productive labour (Hall *et al*. 1978) highlights the political illegitimacy of the current exercise of penal power and uses of imprisonment (see Chapter 30, this volume). These crises of moral and political legitimacy imply that, rather than simply reformulating and regurgitating the aims of imprisonment, it may be more productive to engage in thinking about alternative ways of responding to wrongdoing and calling for the greater promotion of human rights, democratic accountability and social justice in society as a whole.

Selected further reading

Reading the main official documents and reports that have been detailed above will provide the most informed account of the aims of imprisonment. The annual report and accounts, business plans and corporate plans of the Prison Service and National Offender Management Service give the most up-to-date details of the aims, visions and key performance indicators. In addition, the following six commentaries provide an excellent means to contextualize these data and some provide alternative formulations of the aims of imprisonment. First, King, R.D. and Morgan, R. (1980) *The Future of the Prison System*. Farnborough: Gower, offers one of the most significant contributions to the debate on the aims of imprisonment. It provides the definitive theoretical context to the promotion of humane containment and continues to be one of the most influential liberal humanitarian texts on imprisonment.

Fitzgerald, M. and Sim, J. (1982) *British Prisons* (2nd edn). Oxford: Blackwell, is an important abolitionist analysis of the penal system. As an analysis of the interconnected penal crises confronting prisons and the current application of the criminal law in capitalist societies, this book continues to retain analytical purchase and provides a very useful framework for thinking about imprisonment and possible alternatives. The most detailed commentary on the Woolf Report can be found in Player, E. and Jenkins, M. (eds) (1994) *Prisons after Woolf: Reform through Riot*. London: Routledge. Particularly useful for the discussion on Woolf's contribution to the aims of imprisonment are the Introduction by the editors and the contributions by Sim, King, Richardson, Morgan and Bottomley.

The most theoretically sophisticated account of the rise of new public managerialism and its implications for the public sector is arguably Clarke, J. and Newman, J. (1997) *The Managerial State*. London: Sage. Though not focused on the penal system, this book provides an excellent framework for understanding the shift towards the role of the capitalist state from provider to purchaser of services. The book should be essential reading for all those interested in understanding the introduction of the National Offender Management Service and/or those who have been seduced by the apparently progressive rhetoric of managerialism.

The leading introductory textbook for undergraduate students on the penal system in England and Wales is undoubtedly Cavadino, M. and Dignan, J. (2007) *The Penal System* (4th edn). London: Sage. This 'radical pluralist' review of prisons provides an update of the prison crises as formulated by Fitzgerald and Sim (1982). It also contains a useful introduction to the philosophical justifications of punishment and details the impact of penal privatization. Chapter 6 is most helpful for consideration of the aims of imprisonment.

Finally, Ryan, M. (2003) *Penal Policy and Political Culture*. Winchester: Waterside Press, is a highly readable account of the development of penal policy in England and Wales, and provides a useful context to the changing aims of imprisonment in the twentieth century. The four essays that comprise the book consider the role of elites in the policy-making process; the 'view from below' and the role of the radical penal lobby in shaping the penal debate; the impact of managerialism; and the role and impact of populist penal rhetoric on public opinion.

Notes

1 The specific issue under consideration was the dispute arising regarding 'continuous duty credits'.

2 Reflecting a lack of expertise, the report merely reproduced official knowledge. The May recommendations ultimately called for increased resources and massive prison building and refurbishment. The ultimate government response was to inaugurate in 1982 the biggest prison-building programme of the century, leading to 25 new prisons costing over £1,300 million.

3 He was assisted by Judge Tumin and three assessors, one of whom was the penologist, Rod Morgan.

4 The prison was overcrowded, holding 1,647 prisoners on 1 April 1990, 677 above its certified normal accommodation.

5 Other recommendations included: closer integration between the prison and the criminal justice system; accredited standards; changes in the adjudication of discipline and grievance procedures; and the appointment of a prison ombudsman.

6 It is worth noting that Woolf did not focus upon women prisoners (Sim 1994).

7 Woolf (para. 14.9) does not expect the Prison Service to be held responsible, at least not on the grounds of its broader aims. Woolf states that 'the Prison Service cannot, of course, ensure that prisoners are processed into law abiding citizens'.

8 The most significant outright rejection of Woolf's recommendations regarded the introduction of a new prison rule to prevent overcrowding.

9 In 1994 the Prison Service Audit Unit was also established. Though the first audit in 1995 looked exclusively at security procedures, in 1996 operational standards audits began (renamed performance standards in 1999).

10 These continue to be the official aims, objectives and principles of the Prison Service at time of writing.

11 HM prison service will be part of the new Ministry for Justice from May 2007.

12 See the *Quarterly Performance Ratings* published quarterly each year: May, August, November and February.

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Chapter 4

The politics of imprisonment

Richard Sparks

Introduction

This chapter attempts to clarify certain recurrent ways in which imprisonment features in the political cultures of contemporary Western societies (especially but not only the UK and USA). Prisons are not always and everywhere equally politically controversial, although they have provoked periodic moral and ideological argument since their inception in something like recognizably modern form in the eighteenth century. Sometimes – though writing in the UK in the fevered first few years of the twenty-first century it is hard to recall this – they slip well below the radar of political contention for long periods. Indeed it has historically been a frequent lament of prison reformers and penal practitioners that politicians, journalists and the general public are characteristically not very interested in prisons unless and until things go sharply and visibly wrong. The adage 'there are no votes in prisons' expresses the frustrations implicit in this view, alongside a sense that there is little natural sympathy for prisoners – and perhaps not for their custodians either – in most quarters.

As we shall see, that expression has become, in some senses, rather misleading. Over the last quarter of a century or so a series of questions about who goes to prison (or should go there), for how long, under which conditions, and when or whether and under what circumstances they should be released have become persistent topics in media commentary and political competition. Perhaps, then, there *are* votes in prisons after all, but not in quite the sense the old saying intended. This politicization of imprisonment has had sharp consequences for the scale of the prison enterprise and for the conditions under which prisoners and prison staff live or work.

In this respect the effects of the new politics of imprisonment are felt across the whole range of issues addressed in this Handbook. They influence the numbers of people sent to prison, including the representation there of specific groups such as the very young, the very old, women and members of ethnic, political or religious minorities. Questions of security and control

have often been behind-the-scenes issues – the very thing we delegate to professionals to sort out quietly behind prison walls. Indeed, as Garland points out (1990: 183–5), this tendency to sequester and professionalize penal problems has been part-and-parcel of what is (or just possibly was) *modern* about 'penological modernism'. But sometimes, episodically, these problems instead find a place in the foreground of politics and when this happens they generate anxieties, calls for accountability and the placing of blame. Similarly, how we treat prisoners while incarcerated is a question that slips in and out of the focus of public attention. Throughout the modern history of imprisonment how prisoners are to be fed (Godderis 2006), what work they should be expected to do and for what pay, how many baths, letters or visits they should receive, what educational opportunities should be made available to them (Page 2004), how they should access medical services (Sim 2002), whether they should be permitted to vote in elections (Uggen and Manza 2002) are all questions that (along with many others) have persistently exercised the minds of prison administrators, prison reformers and lobby groups but only more occasionally breached the threshold of visibility as questions of public controversy. Yet when these issues do enter public discourse they are often debated with real intensity. Finally, for now, the question of when prisoners should be released, following what preparation, on whose authority, under what level of supervision, following what form of assessment of the risks they may present to the public, is nowadays perhaps the most contentious question of all.

Many such issues arise elsewhere in this volume and are dealt with in specific detail by other authors. Rather than duplicate any of those discussions my purpose in this chapter is to offer some sense of context and to suggest some common threads in what might otherwise appear to be an inventory of discrete and isolated issues. I will attempt to draw out some of what is at stake in debates over the scale, character and purposes of imprisonment and to suggest some reasons why, in some Western countries though not all or not equally, the arguments over those issues appear to have intensified recently.

Prisons seem to be among the most paradoxical as well as contentious of institutions. At times they have been seen as sites of optimism and experiment, as prototypes for new ways of organizing and disciplining societies and treating or spiritually improving people. Some early prison advocates spoke of them in terms that we find scarcely credible now. Consider here the aspirations of the inspectors of the Eastern State Penitentiary in Philadelphia (a key institution in the development of modern imprisonment) who regarded the prison as 'The beautiful gate of the Temple', through which the inmate might pass 'by a peaceful end to Heaven' (cited in Sykes 1958: 132). Yet there has also been a longstanding anxiety concerning the oppressive and brutalizing potentialities of incarceration, and about the limitations on the prison's real capacity to effect positive change. Hence the celebrated remark of Sir Godfrey Lushington in evidence to the Gladstone Committee in 1895: 'I regard as unfavourable to reformation the status of a prisoner throughout his whole career … the unfavourable features … are inseparable from prison life' (cited in Stern 1987: 48). One could multiply examples on both sides almost indefinitely.

We should therefore not find contemporary evidence of ambivalence, uncertainty and dispute about prisons and their proper role or scale unduly surprising, since these debates have long antecedents. Commentators as diverse as Fyodor Dostoyevsky and Winston Churchill have at different times come quite separately to the conclusion that the condition of a society's penal institutions provides a measure of its magnanimity or meanness, its self-assurance or anxiety – its 'mood and temper', as Churchill put it. At least since the political and intellectual revolutions of the later eighteenth century, and with them the idea of subjecting human institutions to disciplined study for the purposes of their improvement, the urge to examine and to compare penal systems and institutions has been evident (Scharff Smith 2004). This was at the basis of John Howard's arduous journeys through the prisons of Britain and Europe in the 1770s. It animated the writings-home from the USA of French intellectuals like La Rochefoucauld-Liancourt in the 1790s and Beaumont and de Tocqueville in the 1830s. In the fervent excitement of revolutionary France, Mirabeau articulated the dream of 'a special kind of prison, for which humanity need not blush'. Suffice to note that reactionaries, revolutionists and reformers have all at some point sensed a connection between the ways in which their societies punished and the moral or political character and constitution of the times.

In England and Wales in the 1980s and 1990s, for example, the mantra became that prisons should be 'decent but austere'. It may be doubted whether the authors of such expressions had much idea how often that thought had been framed before. Throughout the modern history of imprisonment the need to make prisons aversive has jostled against the imperative not to allow them to become so dreadful as to shame the society to which they belong. The requirement that prisons punish sufficiently has stood in chronic tension with the aspiration that they reform, educate or rehabilitate. Committees of learned and conscientious people have repeatedly convened in order to seek to reconcile these disparate demands, to declare minimum standards, restate missions and so on. Current controversies, debates and scandals demand contemporary explanation and understanding. At the same time we need to grasp the ways in which these recall or indeed reproduce enduring perplexities. For example, in an earlier paper (Sparks 1996) I tried to show how the language of 'austerity' (in the United States the favoured terminology has been 'no-frills prisons', perhaps by analogy with 'no frills' budget airlines) reiterated themes known to eighteenth and nineteenth-century observers as the 'doctrine of less eligibility'. This principle asserted that the conditions of life in prisons must be set lower than those of the labouring poor, or risk both sacrificing the prison's deterrent effect on the lower orders and insulting the honest worker (see, further, Radzinowicz and Hood 1986; Weiner 1990). Consider the following recent example:

CONS TV ENOUGH TO MAKE YOU SICK
It's cheaper than hospital
Fury erupted last night as it emerged prisoners can watch TV in their cells for £1 A WEEK – but NHS patients have to pay £3.50 A DAY.
Some jails, such as Saughton in Edinburgh, even offer satellite TV packages, including live football …

> MSP Michael Matheson stormed: 'It is simply outrageous that patients
> pay so much more than cons'
> (*Scottish Sun*, 20 March 2006: 1).

Prison, for the inhabitants of modern societies, is a paradigmatic punishment.
It is the most severe, the one that is always called for in cases of serious
crime when public sentiment – at least as filtered and articulated by the
popular press – finds other penalties inadequate and unsatisfying. It is the
one in which political capital is invested, the one that is supposed *ipso facto*
to 'work'. Yet it is also the one that, however much public support there
appears to be for greater stringency and severity, can on occasion become
brutalizing and dangerous to a point that no one expressly supports. Thus
prisons commonly become the subject of scandal for being too lax, too
undisciplined and too comfortable; for 'coddling' prisoners and providing
them with levels of material comfort that are not universally available to
more deserving people outside, as in the example above. Conversely they
can also become scandalous – albeit perhaps less frequently – for failing to
protect or care properly for their inmates (especially those who are young or
otherwise vulnerable), or for imposing invasive or oppressive searching or
other procedures, especially on prisoners whose condition elicits some degree
of sympathy. In Britain in the mid-1990s, for example, the widely reported
practice of requiring female prisoners to give birth while handcuffed to their
hospital beds was roundly condemned, including in such predominantly
conservative quarters as the *Daily Mail*, and aroused a widespread sense of
unease and distaste. The agencies involved received new guidance, more
consistent with prevailing human rights concerns. Thus:

> Practices such as keeping women prisoners in handcuffs during
> childbirth and general restraint techniques used on patients in order to
> administer treatment would constitute mistreatment. Additionally access
> to proper medical facilities for ill prisoners, the dignity of the conditions
> in which people are maintained and the impact of those conditions on
> their health, could all raise challenges on the grounds that they are
> degrading treatment (NHS Equality Unit 2005: para. 7).

The issue was an indicative one to the extent that, although it occurred
during one of the most heated periods in recent penal politics – one in
which the virtues of more stringent prison regimes (and of sending more
people to prison) were widely touted in some quarters – it exposed the outer
boundary of acceptability in general public sensibilities. Similar dynamics can
be identified in respect of a range of issues, including access to adequate
sanitation, protection in the face of bullying and deaths in custody. In the UK
the death in Feltham Young Offender Institution in 2000 of Zahid Mubarek at
the hands of a profoundly disturbed and openly racist cellmate was perhaps
the single most shocking and widely reported failure of care in recent years
(see, in particular, House of Commons 2006).

These sightings are important in a number of respects. They provide
contemporary extensions and developments of arguments and ambivalences

about the nature of prisons as institutions that echo throughout their modern history. Prisons are places of humane aspiration (Wiener 1990) *and* sites of struggle, abuse and neglect. They are places of secrecy and discretionary power *and* they are proving grounds for social experimentation and administrative improvement. Latterly, much social analysis emphasizes the pressure in political discourse and moral enterprise towards retrenchment, the reinvention of austerity (Sparks 1996; Simon 2000; Wacquant 2001) and populism (Pratt 2006). Yet this can be to overlook the gradual and uneven encroachment of law into prison administration (Feeley and Rubin 1998) and perhaps more especially the extension of human rights standards and concerns with convention compliance into a range of aspects of prison life (e.g. Morgan and Evans 1998).

Prisons are, literally and metaphorically, concrete. Many other penalties, such as fines or orders for community supervision of one sort or another, are difficult for most of us to visualize. Prisons, on the other hand, are physical places. Many of their names – Dartmoor, Spandau, San Quentin, Alcatraz, Abu Ghraib – have an emotive and even, to use a somewhat overworked term, iconic resonance. Prisons have a place in our literary and cinematic traditions that other penalties do not have. The figures or types that we associate with them – the hard man, the wronged innocent, the stool pigeon, the crazed killer, the fugitive, the reforming warden, the officious guard – occupy a distinct position in our cultural imagination. It is perhaps small wonder, then, that many public discussions about punishment, however misleadingly, reduce to or circle back to questions of imprisonment. The prison is in this sense a longstanding cultural resource. It can be brought back into focus periodically and issued with a fresh mandate and fresh set of objectives.

Yet, because it is to this extent a culturally important idea, and one heavy with history, it is also complex and ambiguous. Prisons seem capable of offering the answer to every penal question, and yet always open to being seen as failing. For these reason prisons are 'political' in broad as well as narrow senses. How many people should go to prison and what prisons should be like are questions that excite us and divide us politically. The uses we make of them and the conditions we consider acceptable within them are issues that provide clues to our social organization and values in ways that go beyond the obvious, the immediate and the conscious.

For these reasons the politics of imprisonment is inherently more than a matter of numbers, crucial as these are (see below). Given the powerful expansionary pressures on some prison systems in recent years it is all too easy to become preoccupied with large numbers, and the strain these place on all involved, to the exclusion of other matters. However, the question of the politics of imprisonment leads us in other directions as well. It directs attention also to the issues of the form, character and level of prison regimes. It asks, for example, why in some countries at some times prisoners have been entitled to vote and in others not; why in some places prisoners are encouraged to pursue higher education and in others forbidden from doing so; why in some systems prisoners are enabled to have intimate contact with their families, while in others the merest touch is strictly prohibited; and so on. These sorts of questions allow us to ask not just how much imprisonment

but also of what kind? And to what purpose? It seems very important, in the light of the number of people in prison, the extreme dependency of prisoners on prison authorities and the all-encompassing nature of the penalty, to focus on the politics of imprisonment in their institutional aspect closely and in detail (see, further, Liebling 2004). Whether imprisonment is or can be a legitimate penalty, executed in a legitimate manner, seems a persistent question and one that arises in new forms in each successive period. Yet it is also clear that the politics of imprisonment are also a special case of the wider societal politics of security and order, and it is to this larger dimension that we now turn.

What do we want prisons to do?

Imprisonment is by no means the most usual or characteristic penalty for most contemporary criminal justice systems. In general the everyday business of the courts more commonly concludes in some form of financial penalty or non-custodial supervision. To pluck a not quite random example, the custody rate (i.e. the proportion of all those found guilty who receive a custodial sentence) in Scottish courts in 2002 was 13 per cent (Tombs 2004). This seemingly modest number was itself a distinct increase over the level prevailing a few years previously. Similar levels, and similar trends, might be cited for other jurisdictions (see, further, Hough *et al*. 2003). Of course, the custody rate rises sharply for more serious offences. Moreover, much controversy centres on the boundary cases, especially offences which sometimes do receive a prison sentence and sometimes do not. Many participants and onlookers have strong feelings about whether those convicted of particular offences should go to prison, and for how long. The point here is just that, while marginal differences in custody rates and sentence lengths matter greatly to those involved and have a powerful impact on the workload of the prison system, those numbers almost always relate to a minority of convictions and a very small minority of all crimes. Yet such cautionary notes tend to be overlooked in the heat of political rhetoric, once the scale and character of imprisonment have become contentious. Whether to imprison and when or whether to release have latterly tended to dominate public discussion of criminal justice, often to the exclusion of other issues and other possibilities. Why should this be so? Why has it been so, admittedly with some variations in intensity and salience, for a quite extended period? Why has the heat of that discussion nevertheless increased in recent years?

In almost all economically advanced countries imprisonment represents the apex of the criminal justice system. The obvious, though partial, exception is the USA where – in some states – capital punishment persists. Yet even there imprisonment is a gigantic enterprise by comparison with the actual level of capital sentencing, let alone of executions, however symbolically potent and emotive the latter may be.

We call upon prisons both to be of practical utility and to furnish punishments that we find meaningful and emotionally satisfying. David Garland has argued that we are today living out the consequences of a 'crisis of penal modernism' (1990: 4). Whereas some intellectuals and *fonctionnaires* have

thought it possible to subject punishment entirely to the demands of rational administration, it has in part escaped such domestication. What results is a chronic tension. For Garland: 'There are two contrasting visions at work in contemporary criminal justice – the passionate, morally-toned desire to punish and the administrative, rationalistic, normalizing concern to manage. These visions clash in many important respects, but both are deeply embedded within the [modern] social practice of punishing' (1990: 180).

This seems a good starting point. It acknowledges what some critical perspectives too readily deny – namely, that punishment really is practically involved, however failingly, in attempts to control crime and govern social existence. But at the same time Garland gives full recognition to the tendency of punishment to exceed the bounds of the practical and to become enmeshed in the flux of culture and politics, including sometimes in the most exorbitantly emotive forms of demagogic posturing. Such a position suggests the possibility at least of unpicking some important puzzles. Principal among these is that, while in broad terms all advanced capitalist countries (including that outlier of penal severity the USA) have developed recognizably similar arrays of penal measures and techniques, they differ markedly in terms of penal range (a term which I explore further below) and in the centrality of questions of punishment to their electoral politics and cultural conflicts. If we begin to examine such questions empirically we may thereby start to clarify a central paradox – namely, that whereas some features of the penal realm seem both rather durable and quite widely diffused across national boundaries, others are currently highly unstable and prone to sudden and often quite jagged changes of direction. Garland again anticipates this issue pointedly when he distinguishes between the 'relatively fixed infrastructure of penal techniques and apparatuses', on the one hand, and on the other those 'mobile strategies that determine aims and priorities' (Garland 1995).

Elsewhere (Sparks 2001) I have tried to capture some of these shifts of strategy in the following terms.

Changes in the 'mode of calculation'

Here we encounter debates about risk and prediction, and the uses of cost-benefit arithmetic to argue the utility of particular penal strategies. One important possibility is that the current prominence of *incapacitation* as a rationale for imprisonment in the advanced liberal societies (and for more intensive forms of non-custodial supervision) stems rather directly from the invention of new techniques for calculating the frequency and prevalence of offending. The implication is that the penal system is entirely a regulatory instrument – a kind of social sluice gate whose optimal rate of flow can in principle be rationally determined. This perspective has certainly had its influential intellectual proponents in recent years. A related question concerns how the state itself has shifted its posture in respect of punishment. Is it the case that the state has, on the one hand, divested itself of some of its former obligations towards its offending citizens (specifically the expectation that it will 'treat', 'rehabilitate' or 'resettle') and, on the other, undertaken an enhanced role in the management of the risks presented by that fraction of its

subjects regarded as inherently and incorrigibly troublesome? If so, in what sense do these shifts flow from larger changes in the dominant economic and political principles of those societies?

Changes in the 'mode of representation'

How and why, in some countries much more than in others, is punishment invoked in response to allegations of social crisis or emergency? Under what conditions does it take a central position in political rhetoric, and what kinds of rhetorics are these? Are there special moments (when certain kinds of anxiety or resentment are felt especially acutely, or the tolerance of the public especially strained) when the time is ripe for politicians and demagogues to turn the penal question to their own advantage?

Although these two sets of issues look very distinct they are rarely encountered separately in empirical reality. Rather, they are two aspects of a complex formation – a duality rather than a dualism. Thus, for example, even if a certain set of bloodless and dispassionate calculations in some sense underpins the increasing frequency and length of prison sentences for drugs offences in several Western countries in recent years, it is also true that in its public aspect that strategy comes vested in all the ancient, drastic and dramatic language of warfare – the 'war on drugs'. If we wish to understand precisely why the attempt to intervene in illegal drug markets so often terminates in imprisonment *rather than in other varieties of risk management or 'harm reduction'*, then it would seem important to grasp what it means to be at war – wars are special times and they call for special measures.

In other words, even if risk calculations become predominant within the procedures and decisions of the agents of the penal apparatus, there is no morally neutral or politically anodyne position from which to begin. Today cultural contests about the proper scale and purposes of punishing take place increasingly on the terrain of *risk*. In looking more closely at the ambiguities implied in that term we edge closer again to the central perplexities of the contemporary penal realm. First, however, we need some sense of the *scale* of that domain and of the historical and international dimensions on which it has varied. Only then can we begin to reach towards explanation (what features of the contemporary scene seem to produce penal populations and regimes of these kinds?) or intervention (are we fated to go on in this way or can we plausibly imagine and create other futures for punishment?).

Why are so many people in prison, or so few?

It is commonly agreed in the social sciences that thinking comparatively about problems is a good thing. There is rather less agreement about how to go about it or indeed about precisely what comparison is for. (There are even fewer examples of really worthwhile comparative work actually being done.) It can indeed be argued that *all* serious and imaginative social inquiry is in a broad sense comparative – whether the terms of comparison involve

placing our present local circumstances in a longer *historical* perspective (how differently did our own predecessors think about this?) or whether they involve a similar displacement in terms of *contemporary* differences of place and culture.

There may be pressing reasons why we should wish to subject our experience of penality to this kind of intellectual discipline. The penal practices characteristic of our own current contexts confront us as obdurate and embedded realities. Yet these are also dynamic systems, subject at times to rapid and seemingly uncontrolled growth and change and to the push and pull of successive fashions and projects. Our politicians and newspaper headlines often urgently insist that there is no morally or practically viable alternative to this or that course of action with regard to the sentencing, supervision or release of offenders. Even if we have vague misgivings about this, without a more cosmopolitan perspective we have little prospect of rationally appraising these assertions, let alone of contesting their claims or arguing for other possibilities.

Punishment is among the defining activities of the nation-state. It is a core feature of the state's sovereign power and stands close to the heart of its claim to exercise legitimate authority; and the political and cultural dynamics of punishment remain sharply different in distinct national contexts. In advanced capitalism, however, we can no longer presume that nation-states are sharply bounded and separate entities which we can simply line up and compare one with another. Contemporary states are intrinsically permeable to the movement of capital and technology. Both the problems of economic management and those of social regulation and ordering that confront them with their most acute political difficulties increasingly exceed their capacity to control. In particular, the very crime problems that demand visible and authoritative action from national governments either literally transgress their borders (as is the case with drugs markets or the illegal movement of people, money, arms and other commodities) or else seem so deeply woven into the opportunity structures, the routine activities and transactions and the ceaseless consumption and flows of popular culture of their citizens as to escape them from below. In this sense the nation-state is doubly in jeopardy – 'hollowed out' from without by economic globalization and from within by the barely controllable complexity of the social formations over which they preside in their increasingly impotent magnificence.

All this has profound and complicated consequences for the politics of punishment in the advanced capitalist countries. In the first place globalization does not produce homogeneity. The penal cultures of the different nation-states remain in some degree distinctive, structured by their diverse legal and political traditions and the exigencies of their domestic crime problems and priorities. Furthermore, the clamour from anxious and uneasy citizens for reassurance and protection by the state arises with differing degrees of insistence; and this seems more prone to being translated into a demand for reassurance *through state punishment* in some national contexts than in others. It remains essential to grasp these differences and to think through their implications.

Yet nowhere is immune. At the level of the individual, it may be argued, concerns about crime take their place among what Anthony Giddens (1991) terms the 'anxieties that press in on everyone' in late modernity. For Giddens, 'The risk climate of modernity is unsettling for everyone; no-one escapes', and one response to the disruptions and uncertainties of the modern world is the growth of moral fundamentalisms – of which the demand for traditional and stringent forms of punishment may be one form. At the level of the nation-state the picture is also complex.

Contemporary states are subject to penal trends and influences of diverse kinds. First, they are signatories to international treaties and agreements on human rights, migration, extradition and other matters. Some of these, for example the European Convention on Human Rights and (although its legal force is less clear) the Council of Europe's European Prison Rules, expressly seek to regulate and in some degree harmonize penal practice. The performance of national governments in these matters is also monitored by non-governmental organizations of various kinds, some of which (such as Amnesty International and Human Rights Watch) are themselves transnational in scope.

Secondly, there is routine exchange of information and expertise through governmental, commercial and intellectual networks. One key sphere in which this applies is the growth of an international market in private correctional services, whose major players increasingly have global reach and interests. Yet something similar also applies to the transfer of criminological and penological *knowledge* as such. Ideas, techniques, slogans and catch-words (such as 'risk assessment', 'selective incapacitation', 'truth in sentencing' and 'zero tolerance') scurry around the world with accelerating rapidity. This has some curious and as yet uncertain consequences. An appealing idea adapted from Maori traditional practices (the family group conference pioneered in New Zealand, the central totem of the 'restorative justice' movement) is abruptly wrenched away from its original context and experimentally applied in Oxfordshire or Manitoba. Global mass media ensure that instantaneous exchange of news and imagery infiltrates popular culture and everyday life as well. The grainy image of tiny James Bulger being led to his death from a shopping mall at the impoverished edge of an English conurbation sends an icy shard of terror through the hearts of parents in New Jersey and New South Wales. Unsuccessful eleventh-hour pleas for a stay of execution in the southern USA arouse more outrage and sorrow in Italy than in the communities clustering around the prison walls. The effect of these borrowings and influences is by no means uniform, as this ad hoc list suggests. They compound the feeling that punishment is a major political question, but that its forms may be varied if not outrightly contradictory.

Thirdly, therefore, the receptiveness of both policy-makers and publics to some of these globally available themes and images varies widely but probably not in accidental ways. One dimension of this variation in recent decades may be the degree of exposure of the political cultures and policy networks of different states to the influence of 'New Right' political thought. Until very recently the primary laboratories for this political experiment have been the UK and the USA, and here penal politics since the late 1970s have been especially volatile and expansive in nature.

Most international and historical comparisons of prison systems have remained concerned with fluctuations in certain 'headline' figures, notably the absolute size of prison populations or their size expressed as a rate per 100,000 inhabitants of a given country. These numbers remain of compelling interest, of course, and they are now more readily available for more countries in more detail than ever before (Walmsley 2005). Yet, even quite cursory examination of the numbers reveals their striking diversity and the faintness of any relationship between their variations and the crime trends of their respective nation-states. Various authorities have challenged the assumption of a neat or simple relationship between crime and incarceration. Tonry provides a lucid summary:

> Put crisply, at a societal level crime does not cause punishment. Imprisonment rates and severity of punishment move independently from changes in crime rates, patterns and trends. Governments decide how much punishment they want, and these decisions are in no simple way related to crime rates, patterns and trends. This can be seen by comparing crime and punishment trends in Finland, Germany and the United States between 1960 and 1990. The trends are close to identical … yet the U.S. imprisonment rate quadrupled in that period. The Finnish rate fell by 60 percent and the German rate was broadly stable (2004: 14).

Overall crime rates and imprisonment rates show no simple correspondence. This is true over extended timescales – for example, for the USA in the 1960s (crime rose, imprisonment fell) and for Australia in the 1970s (ditto). As Zimring and Hawkins report for California (a state whose incarcerated population tripled during the 1980s):

> Most of the increased imprisonment in California was not directly related to either increases in crime or changes in population. Most crime levels in 1990 were close to their 1980 rates. And the kinds of crime associated with the largest share in California's prison expansion – drug offences, housebreaking and theft – are precisely the offences that flood the criminal justice systems of every major Western democracy. We think that the sorts of policy shifts observed in California could double the prison population of any country in Western Europe experiencing no change in the volume or character of crime (1994: 92).

The 'policy shifts' that Zimring and Hawkins have in mind here are changes in discretionary law enforcement and sentencing rather than being centrally directed or statutorily required. They are, as Zimring and Hawkins put it, 'more a matter of sentiment than legislation'. The shifts in question include a disproportionate increase in the numbers imprisoned for lesser property offences (they report a 565 per cent increase in the number of persons imprisoned for the various categories of theft). Meanwhile, although there is some evidence from survey data of a *decline* in illicit drug use in the USA throughout the 1980s, the numbers of persons arrested for drugs offences increased sharply and so did

the proportion of those imprisoned following conviction. In fact the numbers of males in Californian prisons for drugs offences increased by *15 times* during the 1980s. This followed the national shift in the mid-1980s towards a widely publicized, symbolically powerful and punitively oriented 'War on Drugs' as a primary way in which the USA was to address its problems of addiction. Such accelerations in imprisonment do not now have, and have never had, equal impacts throughout the population. In the USA (and elsewhere) the 'war' has primarily been directed at street-level drug markets and it has drawn its combatants from among particular people and places. For this reason among others the prison population, like the 'ghetto underclass' that supplies so many of its personnel, consists increasingly and disproportionately of black and Hispanic people.

This recognition of an explanatory gap between crime and imprisonment is, however, the beginning of a political analysis rather than its conclusion. It raises an open question of what other cultural, economic and political pressures influence the scale of imprisonment, and of which ideological principles or moral assumptions predispose us to believe that imprisonment is a primary way of addressing our crime problems.

As Zimring and Hawkins comment, it would appear that given sufficiently great changes in the 'penal climate' or political culture of a society its prison population may have an 'open-ended capacity for change'. That is, marked changes in penal practice can occur without corresponding changes in crime rates, nor even radical changes in the statutory basis of sentencing. They seem to result rather from external pressures in the crime control culture more broadly conceived and the priorities that emerge there for the stringent suppression of certain kinds of activity in particular, in this case especially drugs offences. Thus while it is true that recent American penal developments have no precedent *in peace time*, perhaps the USA is strictly speaking not 'at peace' but rather has 'declared war': the 'war on crime'. To the extent that the motives and occasions for such shifts of penal gear lie not just in crime rates as such but rather in the rhetoric, culture and practice of crime control, and in so far as these movements have been most marked in the USA (and latterly, especially since 1993, in the UK), there is a significant puzzle for political sociology here. At this point, though it is far from the only issue involved, we rejoin the question of the influence of New Right social philosophy.

Punishment and the 'New Right'

The term 'New Right' is an umbrella that encompasses a broad and internally differentiated social movement. Under that umbrella have marched libertarians, liberals, conservatives and outright reactionaries of many stripes. What unites these diverse strands of opinion is a vigorous critique of the outcomes of the economic interventionism and welfare provision that characterized the post-Second World War 'settlements' of many Western countries. For some, whom we may see as being primarily *neoliberals*, the key result has been economic inefficiency. The suppression of market freedoms for political purposes diminishes competitiveness, multiplies tax burdens and discourages

entrepreneurship – all perverse outcomes of good intentions. For others, primarily *neo-conservative* in orientation, the greatest detriment has been moral. The interventionism of the 'nanny state' promotes dependency rather than personal responsibility, and engages in a wrongful transfer of authority from families and local communities to the state. The result is again perverse – a moral climate of permissiveness, agnosticism, mushy pluralism and hedonism. Where these streams of thinking primarily flow together, therefore, is in the critique of the over-ambition of the state and the resulting inflation of the public sector.

Space entirely precludes an adequate summary of these positions which have generated a massive literature of both advocacy and criticism. These are after all, initially in the USA and UK and latterly in varying degrees across the developed and developing worlds, the most influential political and economic intellectual movements of our times. Here we can deal only with their strictly *penological* consequences. These are themselves complex and can be rendered here only in summary, and doubtless contentious, form.

The New Right and the restoration of state authority

Governments influenced by the New Right have characteristically assumed power partly on the strength of an allegation of social and economic 'crisis' of the 'welfare state'. In the UK in 1979 Margaret Thatcher successfully seized the initiative by representing the accumulation of problems of the Keynesian welfare state as a twin crisis of 'ungovernability' and uncompetitiveness. 'Law and order' was a key token of ungovernability, and her project promised nothing less than the 'restoration of freedom under law'. The state was to withdraw from those tasks that it performed badly (micro-managing economic and social activity while profligately wasting public monies) in order to focus on its essential and legitimate tasks – sound money, free trade, defence and the maintenance of 'law and order'. Countries in which governments have adopted similar positions have in this sense experienced a hiatus – a self-conscious discontinuity from a discredited past – in their recent history. The politics of law and order, and the associated naming of enemies, have been part and parcel of representing that moment as a quasi-revolutionary one. Among Western countries the USA and the UK have perhaps experienced this revivalism of state authority (what Mrs Thatcher memorably called the 'smack of firm government') in combination with a neoliberal emphasis on the free play of market forces most forcefully, especially during the 1980s and early 1990s. Elsewhere in the world, perhaps especially in the countries of the former Soviet bloc – most obviously Russia itself – other and more drastic social and political transformations have also had far-reaching penological effects. The picture is complex. Suffice to note that the advent of liberal free-market economic reforms has by no means automatically heralded a new liberalism in the penal realm, especially in those countries where the state itself seems menaced by the very disorders and upheavals that the political transitions have unleashed. These have in some cases included alarm about newly virulent forms of criminality (the rise of the Russian 'mafia', the extraordinary murder rates of parts of South Africa); and such alarm frequently finds its

political expression in nationalist and fundamentalist political movements and in nostalgia for the ordered world of the *anciens régimes*. In many of these very different circumstances an association can be seen between an allegation of political or social crisis and the demand for 'law and order', crystallized in the intensification of state punishment.

The 'grain of human nature'

Among the mistakes of social democracy, for thinkers of the New Right, was its tendency to assume the malleability and even perfectibility of human nature. Neoliberalism, by contrast, is a 'politics of imperfection'. People's behaviour can be guided (by the early inculcation of a proper respect for authority and a love of family and country) and they have a legitimate and socially necessary desire to enrich themselves. But they cannot fundamentally be changed. They are whatever their upbringing and personal dispositions make them. It follows that it makes little sense (other than with the partial exception of the very young) to counsel, treat, coddle or blandish those who misbehave. In order that people learn to govern their own conduct they must be treated as personally responsible for it (hence eligible for retributive punishment). At the same time, in so far as their motivations (and certainly those of the less respectable) are fundamentally economic and self-interested, the law must ensure that the incentives to compliant behaviour outweigh the attractions of offending. Since only the latter is directly under its control its proper business focuses on setting the level of sanctions sufficiently high (hence a principle of rational deterrence). Those who demonstrate a persistent failure to comply must be incapacitated or effectively supervised. There is thus a preference not only for robustness in determining *levels* of penalties but also for those *justifications* for punishing that favour a certain implied account of human motivation.

The tolerance of inequality and the emergence of the 'underclass'

'Good governance' is a key theme of neoliberalism. But the best government, according to the worldview of the New Right, is limited in its scale and objectives. We do not live in state-governed societies. The over-reach of government during the era of welfarism encroached upon personal freedom and inhibited responsibility, impeded competitiveness and perversely undermined the authority of the state. The attempt to use taxation and state institutions for redistributive purposes – and thereby to impose artificial egalitarian restraints on natural hierarchies of talent and application – is the single most foolish, and ultimately immoral, of these errors. Redistributive social policy illegitimately transfers wealth from its creators to the unproductive, non-contributing members of society. Not only is this wrongful in itself but it may also constrain the performance of the economy as a whole and, moreover, let those at the bottom off the hook of attempting to better their own lot; and anyway, the intensifying demands of international competition in a globalizing economy make the strategy unsustainable. International capital will simply flee those countries in which tax burdens are aversive; entrepreneurs will not take risks without the possibility of sufficient dividends; and the prize

of prosperity flows towards those economies whose social costs are kept in check.

For all these reasons neoliberal economic and political strategy is more tolerant of inequality than were its predecessor *state regimes* (Hay 1996). Ultimately, it is asserted, the bloat and inefficiency of welfarism have their most detrimental consequences on those at the bottom of the heap. In softening the impact of inequality it tends to maintain the poor in their poverty: it provides a 'hand-out' where it should at most offer a 'hand up'. In so doing it transfers responsibility away from individuals and families and on to state agencies. The perverse result is an undermining of the personal virtues of thrift and prudence and the preparedness to accept the burden and challenge of responsibility for shaping one's own destiny. In place of these we get 'dependency', apathy, fecklessness and the assumption that the world 'owes us a living', which in turn sap the very forms of individual self-government and familial solidarity that provide the basis for social order and the restraint of crime. In certain locations, it is asserted, this decadence has taken hold. Young women see no moral or practical inhibition against lone motherhood. Young men lose sight of the notion of the dignity of labour or the pride of supporting their family. Instead they become feral, wayward, hedonistic and impulsive. They serially father children and then abandon them. They mistreat their women; but they are in any case unmarriageable. Their lives are a mixture of swagger and drift. They do little well, not even crime. They do and deal drugs, joy-ride, burgle and rob with the same intermittent abandon that they do everything else. They are not in the classic sense 'underprivileged', and their lifestyle is a mockery of the term 'working class'. They have become 'the underclass'.

In New Right political thought the misguided generosity of the welfare state and the moral vapidity of liberal 'permissiveness', with its refusal to countenance the necessity of social discipline, condemnation and punishment, have conspired to produce this disaster. Meanwhile, law-abiding citizens, fearing victimization or hearing disturbing rumours through the mass media about the alien and predatory free-riders in their midst, look upon this spectacle with understandable dismay. The idea of a social, and more especially a redistributive, approach to the problem has become threadbare and politically unsayable – the degrees of sympathy, fellow-feeling or confidence that would make it plausible are ideologically precluded. Conversely, as Michael Tonry has suggested, penal strategies that were formerly unthinkable can become mainstream (2004: ch. 6).

Yet at the same time there is the assurance, both in political rhetoric and from certain serviceable quarters of criminological knowledge, that the threat resides in persons and places that can be identified. Perhaps, then, those who stand beyond the pale of recuperation can at least be *known* and their behaviour predicted. To this extent the political demands upon the state become simpler and clearer and they focus more sharply on its specifically *penal* capacities. The state must use its knowledge to predict effectively. It must manage the risks it discovers (preferably without overburdening tax-payers) in ways that do not reflect badly on its competence. It must be unambiguous in its allocation of

punishments and rewards, or face the damage to its own legitimacy. It must therefore be plausible in its 'vocabulary of motives', speaking over the heads of sceptics, doubters, liberals and permissives directly to the motivations and dispositions of offenders themselves. It may correct where it can, deter whom it cannot otherwise correct and incapacitate all who show themselves impervious. Only under these conditions will it ride the tiger of its crime problems without severe damage to its authority. In these respects the two faces of punishment (the managerial and the punitive) and the two dimensions of risk (the mode of calculation and the mode of representation) remain integral to the position of the state in advanced capitalism, whatever other roles and responsibilities it divests, delegates or denies.

Two faces of risk: calculation and representation

The problem of risk arises wherever institutions and individuals encounter a need to weigh the possibility of harm or loss against desired outcomes and thus to institute practices which will manage or reduce their risks. Put in this way the question of risk sounds like a very rational, calculable and practical matter. Indeed, for many purposes, it is. In many organizations and systems (and in the bodies of knowledge that inform how those organizations work) planning for and predicting risk are core activities. We can easily think of a list of such activities that are integral to contemporary social organization – weather forecasting, insurance, road safety, air-traffic control, immunization, routine health screening for common cancers or circulatory illnesses, water purity, cashless transactions and 'smart cards', sell-by dates on food packaging, the inspection of restaurant premises by environmental health officers, fire-safety regulations and so on. The list could be extended almost indefinitely. In many contemporary intellectual disciplines (in economics and in some branches of psychology, for example) behaviour under risk has become the very criterion of what it means to act rationally. Risk in this sense refers not simply to an 'amount' of danger to which one is exposed but rather to ways of assessing and deciding about undesirable things. One of the distinctive features of the late twentieth century was that, as well as creating or discovering many risks (from the management of nuclear waste to the carcinogenic properties of sunshine), it invented and institutionalized many ingenious and refined ways of predicting and coping with them (actuarial tables, psychological profiles, manuals of professional good practice and so on). The 'best' systems are for us those which build in the 'smartest' ways of anticipating and rectifying their own possible failures. These combinations of risk generation and risk management lead some social commentators to characterize our contemporary social reality as a 'risk society'.

It would be amazing if the domain of crime and punishment were untouched by such developments, and there are indeed grounds for thinking that this is not the case. But what would be the signs of such influence, and what consequences ought we to expect? One of the more provocative responses to such questions is offered by Malcolm Feeley and Jonathan Simon (1992) who argue that we are witnessing the emergence of a 'new penology', one that is less concerned either

to 'do justice' as traditionally understood or indeed to look to the welfare and correction of the erring citizen but rather which confines itself to managing the degrees of risk which certain *categories* of offender present. Feeley and Simon argue that, although these changes are 'incremental' and 'emergent', they herald a shift in the very aims and purposes of penality. Whereas older penologies were concerned with individual culpability, specific deterrence or clinical dangerousness, 'In contrast the new penology is markedly less concerned with responsibility, fault, moral sensibility, diagnosis, or intervention and treatment of the individual offender. Rather it is concerned with techniques to identify, classify and manage groupings sorted by dangerousness. The task is managerial, not transformative' (Feeley and Simon 1992).

Perhaps it is possible to overstate the newness of some of these sightings. Utilitarian calculation has played a prominent role in penal practice at least since Jeremy Bentham formulated the principles of rational deterrence in the late eighteenth century. Conversely it is hard to argue that the impassioned reactions of anger, resentment, censure and fear have actually departed the field of penal politics. Nor have they; and here our argument starts to draw towards completion. We have spoken above of the Janus-faced nature of punishment, in its governmental and passionate aspects. We have pointed to some influences from contemporary social and political ideology (especially those views associated with the so-called New Right) in accentuating the prominence of the penal in the maintenance of social order. Now we have briefly alluded to the ways in which risk-based reasoning increasingly pervades our institutions including, it is argued, those of the penal system. The outstanding question is: what sorts of hybrids arise when these diverse and ostensibly disparate influences conjoin?

First, we should simply expect to continue to see a certain amount of diversity. In any given period certain sets of ideas may predominate, but other and sometimes incompatible views (survivals from the past, or else intimations of a somewhat different possible future) also circulate. So, for example, in the present penal practices centring on the anticipation of future risk seem ascendant; but they are accompanied by a different emphasis – to some extent a counter-movement – that favours a language of 'shaming', 'reintegration' and 'restoration'.

Secondly, the risk arithmetic is also very much accompanied by the emotionally vivid rhetoric of politicians promising firmness, protectiveness and the old-fashioned satisfactions of justice, as well as by the dramatic and sometimes harrowing stories of newspapers and 'reality television' shows detailing the latest horror to befall somebody's daughter, son, spouse, parent. So far as crime and punishment are concerned the professional practice of the criminal justice process may increasingly tend to prioritize risk management, but we the public continue to inhabit an environment of story and symbol. As Mary Douglas (1992) has argued, risk does not 'unload its ancient moral freight'. Instead this ostensibly very modern diction has 'fallen into antique mode'. It is for this reason that I have argued throughout this chapter that we need to understand punishment both in terms of *calculation* and of *representation*. This may strike some people as unduly abstract. But it is not. It is real in its consequences. It means that how we picture to ourselves those

whose past actions we deplore or whose future ones we fear determines what we feel entitled to do to them.

Here we rejoin the question of how risk calculation and New Right political thinking meet and cross-fertilize. Increasingly, I suggest, we are encouraged to hold two convictions, somewhat in tension with one another but both very current. The first is that we have the ability to predict what people will do. The second is that we each make our own luck. The first conviction gives us permission to hold or supervise people not primarily on grounds of justice or censure but against the expectation that they will incorrigibly reoffend. The second conviction allows us to disclaim interest in the personal or social circumstances that preceded the offence and licenses us to feel that whatever hardships they incur as a result are ones that they have brought on their own heads. In so far as our ways of calculating about and of representing the offender tend to reduce him or her to a cipher, a mere bearer of a certain quotient of risk, it is unsurprising if our characteristic disposition towards him or her comprises some combination of fear, contempt and indifference. As Sean McConville pithily puts it:

> The essence of incapacitation is that the offender lies beyond human intervention and influence, whether measured by susceptibility to deterrence or reform, or expiation through suffering …
>
> Containment means that we can't be bothered to engage the offender: 'It is too much trouble, too unreliable, and might make civic demands which I have neither the time nor the inclination to meet.' The offender becomes a commodity or waste product (1998: 5).

In this respect, and others, the state of the penal realm reflects a rather dismal picture of the way we live now. There is a certain moral flatness, punctuated by bursts of outrage and indignation; an uneasy oscillation between the technocracy of risk management and the archaism of the mass media hue and cry.

Are these the best visions of social order that market society offers? There is no shortage of evidence that urges this gloomy conclusion, but many reasons for wishing to resist its inevitability. In the USA the 'natural experiment' in prison expansion has been running now for some 30 years. With some two million Americans behind bars and several times that number under probation or parole supervision the huge financial and social costs of mass incarceration are becoming ever more apparent, yet the impact of incarceration on crime remains sharply disputed. In California, for example, where, as we have seen, the prison population now runs at several times its 1980 level the costs of imprisonment now directly compete with higher education and all other public services that are not expressly ring-fenced. And some at least of the rationales behind this are the same as in the slogan 'Prison works!' which was so ably canvassed by the Conservative government in Britain during the mid-1990s. There is a similar conjunction of a technocratic assertion of the capacity of imprisonment to deliver increased public safety through incapacitation and deterrence, alongside a profound emotionalism in many media and popular cultural responses to crime – this looks like, as the American criminologist

Barry Krisberg (1984) has put it, a penal policy 'fashioned on an anvil of fear' in which a symbolism of strength covers what is at a deeper level a failure of politics.

Concluding remarks

This chapter began by raising some persistent questions about what prisons are, have been or could be like in terms of shifting social evaluations of appropriate conditions and services. It moved on to rehearse some well-known issues about imprisonment rates, especially where these have shown a marked upward pressure, sometimes to spectacular levels, in recent times. Finally it sketched some features of recent political discourse – with some generic features, but very much more pronounced in some countries than in others – that have favoured the more 'robust' handling of offenders. One aspect of this has been a confluence between approaches emphasizing risk management (often favouring the greater use of imprisonment on grounds of incapacitation) and more populist forces, invoking a heightened emotional language of fear, anger and indignation. Populism – in the sense of a direct appeal to powerful emotions, over the heads of dubious experts and vested interests – has become a much more marked feature of penal politics in many countries in the last couple of decades than it appears to have been in the preceding ones (see, further, Pratt 2006). Moreover there appears to be a trend towards the conflation of what are arguably distinct sources of trouble or anxiety under the name of 'security' (Ericson 2006; Sparks 2006), with the cumulative result of a greater requirement for supervision, detention and incarceration.

What may be less apparent is whether there is any necessary connection between the questions of regimes and conditions, on one hand, and those of punishment numbers or levels on the other. Those who have taken an interest in the vagaries of the doctrine of less eligibility historically (cf. Sparks 1996) would tend to suggest that these issues are in fact quite closely connected. Not only do rising prison populations increase workload and spread resources more thinly but also the pressures within a given political culture that may favour greater levels of incarceration tend to favour a firmer and less indulgent style of handling as well (see Melossi 1993). Where offenders are viewed as more numerous, more threatening, more undeserving, less corrigible and, perhaps, less akin to ourselves, then priorities accordingly tend to refocus on deterrence and secure confinement. Certainly some of the most refined empirical reports we have on the practice and experience of imprisonment today (Liebling 2004: 44) envisage a quite direct relationship between the vagaries of wider societal sensibilities about punishment and the conduct and delivery of penal regimes as such.

We should not leave the argument at this dispiriting point, tempting as this is from the point of view of recent experience. First we should recall, as sketched above, that the gradual entrenchment of human rights standards in prison regimes has proceeded, even in the face of rising populations and the strain on prison space and regimes that they bring in train. Many

professionals are determined to maintain prison regimes that are purposive and morally defensible, a task that the confusions of penal purpose and the over-politicization of the penal realm make ever more difficult. We tend to do a disservice to the seriousness and perseverance of many of those involved – as practitioners as well as external critics – if we overlook these matters. The vocational commitments that Carlen characterizes as 'penal probity' (2001: 460) remain highly significant, and all too easily slighted in generalized commentary.

Neither is it clear that either public anxiety or public commitment to a robust sense of justice necessarily produces an unlimited vindictiveness. There is growing recent evidence that what we commonly term 'public opinion' is considerably more complex, and more open to argument and persuasion than many commentators have tended to allow. A number of researchers have recently suggested that broad-brush generalizations concerning 'populist punitiveness' are not always empirically convincing. There is also a danger that some dismal projections are just insufficiently aware of comparative data showing that some economically advanced countries have succeeded in stabilizing their prison populations, and even in some instances in reducing them. In this respect the exceptional nature of the American case, and latterly the intensification of penal politics in certain other countries such as the UK and New Zealand, has tended to obscure divergent examples from which different lessons might be drawn. That suggests that some aspects of the *politics* involved in 'the politics of imprisonment' are considerably more local and more culturally specific, and in these senses potentially more alterable and less deterministic, than is sometimes acknowledged.

Some of our ways of writing about these issues, some observers now argue, are inflected by what has come to be called a 'criminology of catastrophe' that overlooks counter-examples, and asserts changes in the nature of prevailing sensibilities that do not always stand up to close scrutiny (O'Malley 2000; Hutchinson 2006). We do not have good grounds in extrapolating from the experience of the last couple of decades, and on the basis of the two or three most widely known examples, for presupposing that things must continue to evolve on the same template for ever. It remains more appropriate to see prisons as sites of moral anxiety and ideological dispute (which they have always been) rather than the inevitable outcome of a singular viewpoint that happens to predominate now.

Selected further reading

Nils Christie's (2000) *Crime Control as Industry* (3rd edn). London: Routledge, is an eloquent and impassioned statement and required reading for anyone interested in the global dimensions of this topic. David Garland's (2001) *The Culture of Control*. Oxford: Oxford University Press, offers a compellingly argued reading of recent transformations in crime control and political culture, especially in the USA and the UK. Most contemporary discussion takes this as a reference point in one way or another. Jonathan Simon (2007), in *Governing through Crime*. Oxford: Oxford University Press, dissects the ideological preferences at stake in foregrounding crime control, possibly

at the expense of other political objectives, and the unforeseen consequences that result. Alison Liebling (2004), in *Prisons and their Moral Performance*. Oxford: Oxford University Press, provides a thorough, insightful and richly evidenced account of how contemporary prisons operate and a clear sense of why that matters. John Pratt's (2006) *Penal Populism*. London: Routledge, is an accessible, thoughtful and ultimately quite optimistic survey that gives proper weight to the differing experiences of a range of countries. Richard Ericson's (2006) *Crime in an Insecure World*. Cambridge: Polity Press, though equally accessible, is a prophetic warning about the potentially ruinous effects of the hyper-politicization of crime and insecurity for both liberty *and* security.

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Chapter 5

Imprisonment: some international comparisons and the need to revisit panopticism

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Introduction

Imprisonment, like prostitution, seems always to have been with us, to be found more or less universally and to be a more or less inevitable part of the social fabric. In fact, it hasn't always been so. It is true that English local gaols were used from mediaeval times to hold accused persons pending trial, but imprisonment was rarely used by the courts as a punishment for crime except in the case of minor offences. For those persons convicted of more 'serious' crime – from poaching to murder – for which offenders might be transported to the colonies or executed under the 'Bloody Code', prison was, in those memorable words of Sir Lionel Fox, 'the ante-room to the New World or the next' (1952). The use of imprisonment as part of the repertoire for punishing criminals thus dates essentially from the late eighteenth century, at least as far as Europe and the USA are concerned, and was justified implicitly or explicitly by reference back to the writings of Enlightenment thinkers such as Beccaria (1764) as a more humane, more just and more effective – in a word more enlightened – alternative to corporal and capital punishments or banishment (see Chapters 2 and 8, this volume).

But from those beginnings there seems little doubt that imprisonment has become a near universal phenomenon. John Howard, after his famous inspections revealing the state of the prisons in England (Howard 1777), travelled throughout Europe (Howard 1789), and his remarkably prosaic reportage profoundly disturbed consciences in America, Germany, Russia, and elsewhere, as well as at home, and stimulated much debate about prison reform. He died, ironically of typhus, the very 'gaol fever' he had exposed, at Kherson in Ukraine in 1790. Shortly before Howard's death Jeremy Bentham, also writing from Russia, was trying to persuade the British government to adopt his brother's plans for the panopticon or inspection house which he saw not only as a mill to grind rogues honest but also as a solution to the problem of *quis custodiet ipsos custodes?* (Bentham 1791). In reality the

Benthamite notion of surveillance of both prisoners and staff from the central point of a rotunda was never likely to be a successful prison design, though isolated examples can be found in Holland and Spain and elsewhere. One wonders whether Bentham would have found posthumous satisfaction in the erection of no fewer than five intolerably noisy rotundas which act like giant echo chambers at Stateville in Illinois.

The English architect Blackburn anticipated, and his probable pupil Havilland gave effect to, the spirit of 'panopticism' in his design for the Eastern State Penitentiary in Philadelphia – now derelict but preserved as a museum. This had long galleries of individual cells radiating outwards from the central observation area like the spokes of a wheel. William Crawford's (1834) report on his tour of American prisons included his account of Eastern State Penitentiary which became the inspiration for Colonel Jebb's New Model Prison at Pentonville. This, in turn, was to spawn scores, if not hundreds, of copies not just in Britain and its Empire but as far afield as Russia. Although the competing New York system, which differed essentially only in its provision of smaller individual cells for solitary confinement at night while prisoners were employed in congregate workshops during the day, found little favour with Crawford, it has been widely followed in many countries – in part no doubt because such designs are significantly cheaper to build. The political hegemony of the British, Dutch, French, Spanish, Portuguese and others in the nineteenth and early twentieth centuries, and more lately of Russia and the USA, led to the development of prisons from Canada to Hong Kong, from Australia to South America, and from Southern Africa to the Middle East and the various parts of the former USSR. But in many cases these developments appear to have been superimposed upon indigenous designs less dependent upon the single cell.

It is important to note that Foucault (1977) and others have argued that, whereas the rise of the penitentiary is often portrayed as an attempt to make punishment more humane, it was, perhaps more importantly, an attempt to punish better. Whereas capital and corporal punishments were meted out almost randomly and affected comparatively few miscreants, imprisonment offered the possibility of dealing with many more offenders in routine bureaucratic and systematic ways. Moreover, as we have seen, Bentham's claims for the virtues of panoptic inspection extended to workhouses, madhouses, hospitals, factories and schools. Indeed, the movement to incarcerate the perpetrators of crime formed part of a much wider movement, sometimes referred to as the 'great confinement', which also placed the poor in workhouses, the indigent in houses of correction and the mentally ill in asylums (see, especially, Rothman 1971; Ignatieff 1978). Small wonder, then, that Foucault described this as a disciplinary process which swept up almost all, one way or another, in a carceral society (see also Melossi and Pavarini 1977). Arguably, the massive development of public surveillance by closed circuit television, and the introduction of passports and identity cards using biometric identification techniques, potentially extends the 'disciplinary gaze' beyond the deviant and the juvenile to all citizens. Whether these are arguments that can be fully sustained in a global context is something I shall return to in the final section of this chapter.

Capital punishment, as foreseen by Beccaria, has indeed been on the decline, if much more slowly than he would have expected. Zimring (2005) now even foresees the end of capital punishment in the USA which so discordantly resurrected it after a brief moratorium. However, Zimring sees no indication that the prison is anything other than the American disposal of choice despite a slight recent diminution in its use in the country which for the last 30 years has championed its cause more vocally than any other. Tonry (2004) has noted that Hermann Mannheim (1942) concluded that the days of imprisonment as a method of treating law breakers were largely over, a view repeated some years later by Mannheim's student Norval Morris (1965). As recently as the 1970s, David Rothman (1971) believed that he was witnessing the end of imprisonment, and the US National Council on Crime and Delinquency proposed a moratorium on prison building. But then, astonishingly, the prison population in the USA increased seven-fold between 1972 and 2003, and many politicians in a reversal of the humanitarian movement which had informed postwar developments in the United Nations advocated policies deliberately designed to make the experience of imprisonment more punitive. These policies have resonated in many parts of the world although they have been resisted in some jurisdictions.

My aim in providing this historical overview has been to show the universality of imprisonment and the multifaceted nature of international exchanges of views as to the nature and circumstances of its use. In any attempt at providing a global comparison of imprisonment some parameters have to be set and health warnings given.[1] It is probably inevitable that one starts from the position one knows best – and this author has already demonstrated that he is making this comparative perspective through ethnocentric English eyes. There is a strong sense that the origins of the prison in the West have a great deal to do with Protestant Christian values, particularly as embodied in Quaker views about penitential reflection. While I shall argue that the prison has indeed taken root in societies of virtually all political stripes and religious faiths, I have no direct knowledge of prisons in predominantly Muslim countries other than Turkey, and no knowledge at all of prisons in Africa, India or the Antipodes. Against that, some experience of researching prisons in Britain, some countries of Western Europe and Scandinavia, Russia, the USA and Brazil, together with work for Amnesty International, the Netherlands Helsinki Committee, Penal Reform International, the Council of Europe and the EU in Eastern Europe and other parts of the former USSR as well as North and South America, provides some basis for anchoring this review in an observed reality. At the same time it has to be acknowledged that participation in some of those (non-research) activities contaminates this author with a reluctantly adopted proselytizing role in furtherance of Western values regarding what should or should not be done in prisons, which may be thought to stand in the way of objectivity.

In this chapter I begin by reviewing the situation, in so far as the data allow, concerning the use of imprisonment in the three countries which have the highest prison populations, drawing attention to the need to relate this to both demography and crime patterns. I then review what seems to have happened in recent world imprisonment trends, highlighting some states

which have joined the march towards ever-increasing investment in prisons and others which have not. In the final section I consider some of the evidence about life for staff and prisoners in those prison systems with which I am acquainted and I argue that the panoptic model, though widespread, is far from universal.

The international use of imprisonment: the three highest users

A glance at the latest available (sixth) edition of the *World Prison Population List* (Walmsley 2005) shows there to be more than 9 million people held in penal institutions throughout the world, mostly as either pre-trial detainees or as convicted and sentenced prisoners. Although nearly half of these are to be found in just three countries – the USA (2.09 million), China (1.55 million plus an unknown number of pre-trial detainees and prisoners in administrative detention) and Russia (0.76 million) – Walmsley collated data from some 211 of the 222 independent countries and dependent territories across all five continents. Despite some considerable problems with the collection of these data, they do at least provide an approximate starting point for analysis.[2]

To begin with, as I have remarked elsewhere (King 2007: 121), it is intriguing that three countries at the extreme ends of the spectrum in terms of cold-war politics, with such dramatically different histories, cultures and patterns of crime, should hold, as it were, gold, silver and bronze positions in the world league table of numbers of prisoners. While the relative positions of these countries in terms of total prison populations have remained unchanged over the seven years since the first edition of the list was published (Walmsley 1999), the distances between them have changed rather dramatically and so has the direction of travel. Whereas the prison population in the USA increased by 10 per cent and in China by about 3 per cent (sentenced prisoners only), the prison population in Russia fell by around 22 per cent. Expressed in terms of the imprisonment rate per 100,000 population, the positions of the USA and Russia reversed during this period: in the USA the imprisonment rate rose from 645 to 714 overtaking Russia where the rate fell from 685 to 532. In China the incarceration rate, again for sentenced prisoners only, rose from 115 to 118 – a rate which places it in a very different league, although the inclusion of persons held before trial and in administrative detention, were those numbers known, would raise that ratio, possibly dramatically.

At present no other country approaches the total numbers of prisoners in any of these countries although, among countries with substantial prison populations, Belarus has the same incarceration rate as Russia, and some other former Soviet territories, such as Ukraine (416 per 100,000) and Turkmenistan (489 per 100,000), have incarceration rates which have remained at the same high level or are increasing, while others such as Kyrgystan (390 per 100,000) and Kazakhstan (386 per 100,000) have effected reductions, if somewhat less dramatic than those in Russia. Later in this section I use 300 per 100,000 as the threshold above which imprisonment rates can be characterized as extremely high. It is important to remember, then, that the USA, Russia and

a few other countries are way above this threshold, inhabiting a completely isolated part of the spectrum from the rest of the world.

The USA

Much has been written in an attempt to understand the astonishing growth in the prison population in the USA (see Zimring and Hawkins 1991, 1994; Blumstein and Beck 1999; Blumstein 2004; among many others). In broad outline the 'incarceration rate was strikingly stable and trendless from 1925 to 1975' adhering 'closely to a mean of about 110 [sentenced] prisoners in state and federal prisons per 100,000 total U.S. population' (Blumstein 2004: 63). So striking was this stability, a pattern also found in Norway and other Scandinavian countries, that Blumstein and Cohen (1973) proposed a homeostatic theory of the stability of punishment. They posited that, as crime rates (which were dependent upon many factors not easily amenable to control) went up, so would the threshold at which offences were considered serious enough to warrant incarceration be raised so that excessive burdens on the prison system were avoided. In an age of indeterminate sentencing when sentences of one year to life were common, parole boards had the discretion to release earlier as prison population pressures increased. In situations where crime rates went down, then more trivial behaviours might be more aggressively sanctioned. This was presented as an argument in the spirit of Durkheim (1895), who had famously argued that crime was inevitable and that even in 'a society of saints' the smallest failings would take on the nature of crimes and thus be sanctioned.

How, why and when did this change? Around 1973 a rapid upward movement in the incarceration rate began which accelerated significantly in 1981. Until 1980, argues Blumstein, the increase might just have been accommodated, as part of the trendless, but slightly exaggerated, fluctuation around the mean but only if it had been followed by a downturn. After 1981, however, the theory of homeostatic stability was no longer tenable. Blumstein's work is directed at understanding the sentenced population in state and federal prisons, though he notes that, when the remand and short-term population in jails is added, the USA displaces Russia as the world's leading user of imprisonment.

The insulation of the criminal justice system from the political process whereby judges, parole boards and prison administrations could make unfettered, but essentially rational, decisions came to be replaced by an ever-increasing, and frequently irrational and populist, political control of those decisions. In considering what had fractured the homeostasis of the preceding 50 years Blumstein (2004) adduces several factors. The first sign occurred during the 1964 presidential campaign by Barry Goldwater who effectively raised the spectre of 'crime in the streets' as a political issue. That spectre was reflected in increasing crime rates explicable, argues Blumstein, largely by demographic change arising from the post-Second World War 'baby boom' after years of depressed crime rates reflecting lower wartime birth rates. The 1947 cohort of children reached the age of 15 years, the beginning of the peak ages for delinquency, in 1962, and the age of 19 in 1966. The largest

cohort – those born around 1960 – only began to come out of the peak age of criminality around 1980, after which the crime rate began to fall until the mid-1980s when changes in drug markets caused an upturn once more. However, many of those from the baby boom generation who got caught up in crime went on to pursue criminal careers and, since the age at which career criminals begin to attract long custodial sentences peaks in the 30s, the baby bulge had maximum impact on the prison population a decade or so later than its impact on crime rates. The profound importance of demography for understanding both crime and imprisonment trends points to the importance of the denominator in defining rates. Rates of crime and imprisonment per 100,000 of the general population are likely to be quite misleading when used to compare countries or historical periods without an understanding of demography: wherever possible, age-specific rates are to be preferred.[3]

Secondly, argues Blumstein, the political left – normally opposed to increases in punitiveness – provided openings that the conservative right – who tended to regard punishment as essentially a free good – were able to exploit in ways which ratcheted up the use of imprisonment. The apparent lack of evidence that any particular punishment or treatment worked better than any other, reported by Martinson (1974), anticipating the larger review by Lipton *et al.* (1975), under the rubric of 'What works?' (which erroneously came to be known as 'Nothing works'), led not so much to the non-interventionist approach advocated by Robison and Smith (1971) as to a general discrediting of those very functionaries who had operated the levers which maintained the former homeostasis. At about the same time a liberal concern about disparities in sentencing led to pressure to introduce determinate sentencing and to abolish the parole release decision, if not the whole parole process, which not only removed the discretion available to criminal justice officials but would also allow politicians to ratchet up prescribed sentences through legislative measures. The way was opened up for a reconsideration of sentencing policies in which James Q. Wilson (1975) was able to articulate the seductive argument for incapacitation – that while prisoners were in custody they could not perpetrate crimes against the general public. In so doing Wilson helped create a climate in which politicians vied with one another to see who could be toughest on crime and relinquished rational arguments concerning deterrent effects or a weighting of costs and benefits, for fear of being labelled 'soft on crime'. That climate was further encouraged by changes in the print and broadcast media which focused on errors of commission – where released offenders committed further offences – and ignored errors of omission – whereby prisoners unlikely to recidivate are kept needlessly inside for excessive periods.[4] The media always found it more convenient to use easy, but misleading, sound bites – 'three strikes and you're out' and 'truth in sentencing' with calls for 'mandatory minimum sentences' – rather than much more complicated and time-consuming reflection about the social and financial impact of such 'solutions' to the crime problem (see Chapter 19, this volume).

Thirdly, what fed into this scenario was the extraordinarily misconceived American policy on drugs. The majority of persons in prison for mandatory minimum terms are those sentenced for drug offences, and over the years

the minimum sentence has increased to 10 years. In 1979 drug offenders accounted for about 6 per cent of the sentenced prison population. By 2001 they accounted for 54 per cent of the federal, and 21 per cent of the state, prison populations. This was despite the fact that prison is least appropriate for these offenders whose habits are more likely to be changed by treatment rather than punishments, and has a negligible incapacitative effect on the community drug problem because there is a ready stream of potential street dealers to replace those put in custody. Similarly, the three-strikes laws which have been replicated in many states have relatively minor deterrent and incapacitative effects, since the more serious repeat offenders would have received long custodial sentences anyway and the less serious will be held in custody long after their active criminal careers would have come naturally to an end.

In their earlier study, Blumstein and Beck (1999) had concluded that the growth in incarceration between 1980 and 1996 could not be accounted for by increases in either crime or arrest rates but was attributable to increased punitiveness expressed by a greater rate of prison commitments per arrests and by longer time served through some combination of longer sentences, later, or no, parole, and recalls to prison following parole violations. More recently one of the most important contributors to the growth in American prison populations has been the recommitments to prison of parolees as parole boards, mindful of public opinion, have become progressively risk averse.

Although, as we have seen, Zimring (2005) regards the use of imprisonment as deeply entrenched in the USA as the punishment of choice, he is not alone in seeing some signs of change. Blumstein (2004) argues that there are some indications that, as a result of growing fiscal concerns in the face of huge revenue shortfalls in many states, the budgets of Departments of Correction, which had been allowed to grow unchecked, may be viewed as targets for reductions. Schemes for earlier release and treatment in the community are back on the political agenda, and Blumstein cites the passing of California's Proposition 36, which requires treatment before incarceration for at least some drug offenders, and Michigan's decision to change its mandatory minimum laws relating to drug offences, by way of evidence. In 2001, for the first time in two decades, the incarceration rate in state prisons dropped by 3 per 100,000, driven largely by reductions in some of the larger states, including New York, New Jersey and Texas. However, the prison population in the federal system continued the upward spiral, helping to produce overall a marginal increase in the total incarceration rate of 1 per 100,000. Blumstein (2004) presents some policy suggestions that might help to restore rationality and proportionality in sentencing, and thereby reduce the prison population, but he also acknowledges the likely influence of countervailing pressures from vested interests. Among these he cites the California Correctional Peace Officers Association, which represents prison guards and has been a major contributor to political funds in California gubernatorial elections, and depressed local communities which have abandoned their 'not in my back yard' attitudes in favour of the economic renewal brought about by the prison-building boom. How these factors will play out is hard to predict, but Blumstein does not shrink from the possibility that prison populations

may have reached a new homeostatic level, albeit one which is several times higher than that which prevailed until 30 years ago.

Russia

In stark contrast to the USA, where incarceration rates continue to rise despite falling crime rates, the Russian Federation can claim some success in bringing down the prison population in the face of rising crime rates. Reporting on the situation in 1992, King (1994) noted that Russia started from a very high level of Soviet imprisonment despite having only a moderate, albeit rapidly increasing, crime rate. There was at that time hardly anything in the shops or homes to steal, although there were said to be high levels of sexual and violent offending. He wondered what would happen as the emergence of capitalist enterprises and the social changes that would accompany them brought property crime rates closer to Western levels. What was clear was that the system, following the collapse of communism, could no longer support a gulag which had once been self-funding and a net contributor to the economy but was now run down, with dilapidated heavy machinery, and a disillusioned staff who had to wait months for their wages and who were sometimes paid in kind rather than cash. However, there seemed, at that time, little evidence of the political will necessary to bring about radical change of such a huge system, and thus a more likely prospect was that it would continue to falter along, deteriorating still further.

In fact, or so it would appear from data published since by Rodeheaver and Williams (2005), the biggest increases in the crime rate occurred between 1988 and 1992 when it more than doubled from 1,060 per 100,000 to 2,309. Thereafter, the rate oscillated with smaller increases in 1993, 1995 and 1998 and decreases in 1994, 1996 and 1997, and then in 1999 there was a substantial increase of more than 15 per cent. Unfortunately their data run ends in 1999, but Barclay and Tavares (2003) confirm the oscillations in the total number of recorded crimes between 1992 and 1998. On Barclay and Tavares' data, the volume of recorded crime peaked at just over 3 million in 1999 and then fell back slightly, to just under 3 million in 2000 and 2001. If the step change in the level of crime anticipated by King did not quite happen in the way expected there was, nevertheless, a 37 per cent increase in recorded crime between 1991 and 2001.

It is even more difficult to compare crime rates across jurisdictions than it is to compare imprisonment rates, but it is worth looking at crime rates and imprisonment rates in Russia and the USA because the differences are stark and it is unlikely that they could be accounted for simply by differences in reporting or recording.[5] I include England and Wales in this comparison – if only because it puts the much criticized imprisonment rate in this country into a somewhat different perspective. In 1992, on the basis of data from Barclay and Tavares (2003), the crime rate per 100,000 total population in Russia was about 1,850 (figures rounded to the nearest 50), roughly a third of the 5,250 in the USA and about a sixth of the 10,950 in England and Wales. By 2001 the crime rate per 100,000 in Russia had grown by 10 per cent to 2,050 which was around half of the 4,150 for the USA where the crime rate had fallen by around 20 per cent, and about a fifth of the 10,600 in England and

Wales where the crime rate had also fallen, though only by about 3 per cent.[6]

The Russian prison population rose more or less steadily from about three quarters of a million at the time of King's study in 1992 to a peak of 1,092,000 in June 2000 (Walmsley pers. comm.) – a rise of about 31 per cent, but thereafter began a decline which, according to Walmsley (2005), had by the end of 2004 brought it back virtually to the 1992 level at 763,000. Meanwhile, over the same decade the prison population in England and Wales rose steadily from 46,350 to 67,056 in 2001 – an increase of 44 per cent – and that in the USA from 1,295,150 to 1,964,301 – an increase of 52 per cent.

Thus, using a rather broad brush, we can summarize this by saying that in Russia, the level of crime increased by more than a third over the decade from 1992 to 2001, but its prison population began to decline after reaching a peak in 2000 and the decline has continued bringing the prison population back to what it was in 1992. In the USA, despite a decline in the volume of crime by about 20 per cent the prison population increased by over 50 per cent and has continued to increase since then, albeit more slowly. And in England and Wales, while the volume of crime decreased by about 10 per cent the prison population increased by over 40 per cent, and has continued to increase since then.

What are we to conclude from these comparative data? First that, while the Russian prison population and its incarceration rate are still, by any standards extremely high, the authorities there have succeeded in bucking the trend towards ever more incarceration. Compared with England and Wales, and taking account of the relative crime levels in the two countries, Russia resorted to imprisonment 30 times as often in 1992 but only 25 times as often in 2001 – a trend that has almost certainly continued since then, further narrowing the gap. Compared with the USA, and again taking crime rates into account, Russia resorted to custody three times as often as the USA in 1992 but only twice as often in 2001. Again that trend seems likely to have continued. True, this has been achieved in part by a mechanism that would not be acceptable in most Western systems but which had been used in Russia since the time of the tsars – namely, amnesty. In 2000 an amnesty led to the release of 180,000 prisoners, mostly women and minors, but including lesser adult male offenders. As is the way with amnesties (and, of course, other forms of release), many of those amnestied began to return to prison, but the mechanism provided immediate temporary relief and an opportunity to introduce more permanent measures. According to Kalinin (2002), Deputy Minister of Justice and former Director of the Prison Administration (GUIN), subsequent reductions were achieved by legislative measures which have restricted the use of custody for lesser offenders for whom alternatives to custody have been introduced, and by reform to the pre-trial process which has substantially reduced the numbers in remand prisons.

Secondly, despite the fact that the changes in sentencing policy which have driven up the incarceration rate in England and Wales to the highest in Europe, notwithstanding falling crime rates, have brought understandable and appropriate criticism (see, for example, Hough *et al*. 2003), there is some reason to suppose that given the much higher rates of crime in England and

Wales this level of resort to custody might still be more proportionate than is the case in either Russia or the USA. It is important to remember, however, that both the USA and Russia have had higher rates of violence against the person than is the case in England and Wales. Gavrilova *et al*. (2005) report that completed intentional homicides in Russia more than doubled from 9.33 per 100,000 citizens in 1990 to 19.8 in 2000 whereas in the USA the rate was nearly halved from 9.4 to 5.5 over the same period. Robberies increased from 56.18 to 90.68 per 100,000 in Russia but fell from 257 to 144.9 in the USA. Just as crime rates need to be age specific if we are to understand comparisons over time and place, so incarceration rates need to take account of specific crime rates if we are to make meaningful comparisons about the relative use of imprisonment. But, as King and Piacentini (2005) have noted, the high level of imprisonment in Russia cannot be accounted for simply by reference to serious crime. Far too many people in Russia serve substantial sentences of imprisonment for offences that would either not be prosecuted or else receive much lesser sanctions in other jurisdictions.

China

It is probably obvious that the statistics for China need to be treated with caution. Although they have been provided by the national prison administration they contain no data in relation to pre-trial detention which is the responsibility of public security bureaus, nor on those held under various other forms of administrative detention. Bodies such as Human Rights Watch have long assumed that the official figures 'vastly understate' the true numbers but until a more transparent approach is adopted it is impossible to know by how much. There are signs of a greater openness emerging and I shall report on at least a glimpse into a Chinese prison in the final part of this chapter.

Some countries that have followed the trend towards greater imprisonment, and some that haven't

There is an adage that goes 'when America sneezes the rest of the world catches cold'. In this section I look at some variations in the use of imprisonment and attempt to focus on some illustrative cases where the American trend towards greater punishment has been broadly followed, and some where it has been resisted, using Walmsley's *World Prison Population List* (2005) as the starting point.

Walmsley (2005) notes that prison populations have been growing in 73 per cent of the countries listed in previous editions of the *World Prison Population List* and that the majority of countries have rising populations in each of the major geographic regions – in 64 per cent of African states, 79 per cent in the Americas, 88 per cent in Asia, 69 per cent in Europe and 69 per cent in Oceania. But there are marked variations both within and between these regions in terms of incarceration rates: in western African states, for example, the median rate is 52 per 100,000 whereas for southern African countries it is 324. In South American countries the median is 152 but in Caribbean countries it is 324. In south central Asia (mainly the Indian subcontinent) it

is 55 whereas for the (ex-Soviet) central Asian countries it is 386. Southern European countries have a lower median rate of 80 per 100,000 than their central and eastern European neighbours, where the median is 184. In Oceania (including Australia and New Zealand) the median is 111 per 100,000. As we have noted, there is a need to consider these rates not only against the crime rates for each country but also to modify them by reference to the demographic structure of the population, particularly in the light of what is known about the peak age of criminality.

Such an analysis is beyond the scope of this chapter. So, too, is the device adopted by Blumstein of using the criterion of staying within one standard deviation of the mean over a period of years as evidence of 'homeostasis', with significantly wider deviations constituting evidence of a potential trend. Except in countries with a long history of publishing official statistics or where there has been a tradition of criminological research, the data are simply not available over a long enough period to draw conclusions. As a very crude approximation, however, it is instructive to look at the proportionate change between the publication of the first and the sixth editions of the *World Prison Population List*. It is a crude approximation, not least because, although the first list was published in 1999 and the sixth in 2005 and in both cases the latest available figures were used, the dates to which the rates apply may vary considerably (in at least one extreme case, Tunisia, for example, the same data were used in both lists – a United Nations' survey conducted in 1996 – and the incarceration rate changed only because the total population changed). If, in the *World Prison Population List* it is difficult to see the wood for the trees, what follows should be seen as a ground-clearing exercise preparatory to systematic analysis of some critical cases.

Africa

The first thing one notices comparing the first and sixth editions of the list for Africa is that, as the list became more complete, 13 states or territories which appear on the sixth edition did not appear on the first.

The second thing is that, for 26 states or territories, the source for data is different – most usually the later entry is an official figure from the national prison administration or the Ministry of Justice whereas the earlier is often an estimate made by local experts or various outside bodies from the United Nations to non-governmental organizations (NGOs). Typically these cases purport to show major decreases in the incarceration rate – of 69 per cent, for example in Sudan; 62 per cent in Burkina Faso; 59 per cent in Zambia; 48 per cent in Nigeria; 45 per cent in Lesotho; 33 per cent in Guinea (Conakry); 31 per cent in Côte d'Ivoire; and with smaller reductions of 15 per cent in Mali and 3 per cent in Algeria. Whether these represent real changes or reflect serious overestimates made by NGOs or under-reporting by official agencies is impossible to know. Not all countries where the later source was the national prison administration showed a decrease. The official figures for Cape Verde, for example, showed an increase of 19 per cent compared with the earlier estimate made by a criminal justice expert, and Cameroon and Sao Tome e Principe showed increases of 9 per cent and 5 per cent respectively.

The third thing is that many jurisdictions, whatever the incarceration rate, actually report very small prison populations of fewer than 1,000 prisoners. It is important to remember that many national prison administrations may not actually know how many prisoners they have at any one time. Statistics which provide average daily population as in England and Wales are not the norm. Many states may have a routine census at the end of financial or calendar years; still others may conduct censuses on a periodic but less frequent basis; and some may not collect or publish any data.

For comparisons over time it would seem safest only to use those data where both the earlier and the later figures were provided by the national prison administration, without forgetting that these need to be treated with caution for the reasons cited earlier. The remainder of this and subsequent sections deal primarily with those countries on the *World Prison Population List* which meet this criterion and where the prison population is at least 1,000, but occasional reference will also be made to other jurisdictions where the sources seem reliable, or where there appears to be major change that requires comment. To set things out as clearly as possible, countries have been grouped into categories, first according to their reported incarceration rate on the sixth *World Prison Population List* and then according to the percentage increase or decrease between the first and sixth lists. The results are presented in tabular form. The categories are obviously arbitrary, but since both Walmsley and Blumstein use a rate of 150 as some kind of critical marker I have listed rates below 75 per 100,000 as low, from 76 to 150 as moderate, 151–225 as high, 226–300 as very high and above 301 as extremely high. In terms of percentage change I regard changes of plus or minus 3 per cent as stable, plus or minus 4–10 per cent as more or less sustainable within a homeostatic model and rates of 11 per cent or greater as showing progressively significant trends. Table 5.1 presents the results for Africa.

The nine countries which meet the criteria in Africa seem to fall into three groups. First, Malawi, whose incarceration rate increased by 7 per cent, Tanzania whose rate decreased by 3 per cent, and Réunion (France) where the rate decreased by 9 per cent, all appear to be low or moderate users of imprisonment, and thus the recorded changes might be contained within a homeostatic model. Namibia also registered only a slight increase that could be contained within a homeostatic model but it remained as a very high user of imprisonment. Secondly, Uganda, where there was a reduction of 15 per cent, retained its position as a moderate user, but if the trend were to continue it might soon be regarded as a low user. Mauritius, whose rate decreased by 27 per cent, moved from very high to high. Both seem to have resisted the trend. Thirdly, three countries had rapidly increasing rates: Ghana and Swaziland (both 35 per cent) and South Africa (29 per cent), but whereas Ghana remained a low user, Swaziland moved up from very high to extremely high where it joined the South African rate.

The Americas

As far as North America is concerned both Canada and the USA met the criteria for inclusion here. The USA has been discussed extensively above,

Table 5.1 Percentage change in African imprisonment rates between first and sixth *World Prison Population Lists*

Imprisonment rates (per 100,000)	Percentage increase or decrease								
	>31 (decrease)	21–30 (decrease)	11–20 (decrease)	4–10 (decrease)	±3% (no change)	4–10 (increase)	11–20 (increase)	21–30 (increase)	>31 (increase)
Low (<75)						Malawi			Ghana
Medium (76–150)			Uganda	Réunion	Tanzania				
High (151–225)		Mauritius							
Very high (226–300)					Nambia				Swaziland
Extremely high (>301)								South Africa	

but during this particular period its incarceration rate increased by 10 per cent, leaving it firmly at the head of the league table. Canada, meanwhile, underwent only a small increase of 1 per cent in its moderate incarceration rate and is alone in the Americas as a country effectively exhibiting no change, apart from Puerto Rico for which data were provided by different sources in the two lists. Whereas Canada remained a moderate user, Puerto Rico remained an extremely high user. The data for the whole of the Americas are shown in Table 5.2.

No Central American states were reported on by the same authority in the two editions of the list, though three of the eight territories registered dramatic increases in their incarceration rate. Mexico increased by 65 per cent and El Salvador by 23 per cent, in each case crossing the threshold from moderate to high use of imprisonment. Panama increased by 31 per cent, moving from a very high to an extremely high use of custody. Like Cuba in the Caribbean which (according to data provided by the distinguished observer, Nils Christie, rather than the national prison administration) reported an increase in the incarceration rate of 62 per cent to continue as an extremely high user, and Brazil, Colombia and Argentina in South America, these countries all seemed embarked on a strong upward trend in incarceration rates.

Brazil now houses over 330,000 prisoners, and the increase of 74 per cent in the incarceration rate from to 105 to 183 per 100,000 represents a very rapid ascent and also crosses the threshold from moderate to high imprisonment. The increases in Argentina and Colombia of 23 per cent and 32 per cent respectively were both reported on by different sources. As a result of the increases, Argentina just remained a moderate user with a rate of 148 per 100,000, whereas Colombia had leapt into the ranks of high users with a rate of 152. I shall have more to say about Brazil when I explore the experience of imprisonment in different conditions later in this chapter.

This leaves three territories in the Americas as resisting the upward trend, although of these only Trinidad & Tobago strictly met our criteria of reports from the national prison administration. It registered a substantial decrease of 16 per cent, from 365 to 307, but remained an extremely high user. A post-Pinochet Chile, however, reported a decrease of 56 per cent, crossing two thresholds to move from an extremely high to a high user. Venezuela also registered a substantial 25 per cent decrease in its already moderate use of imprisonment.

Asia

No countries in western Asia were reported on by the national prison administration in both lists. Two countries, Israel and Lebanon, now have data provided by the national prison administration. The former remains a high user, reporting a 10 per cent increase, whereas the latter has moved into the moderate-user category after a 10 per cent decline. In both cases, however, these figures might just be contained within a scenario of relative stability. Data for Saudi Arabia come from the same United Nations' source and show a dramatic increase but the later figure seems to include pre-trial prisoners whereas the earlier figure relates only to sentenced prisoners. The results for Asia are presented in Table 5.3.

Table 5.2 Percentage change in American imprisonment rates between first and sixth *World Prison Population Lists*

Imprisonment rates (per 100,000)	Percentage increase or decrease								
	>31 (decrease)	21–30 (decrease)	11–20 (decrease)	4–10 (decrease)	±3% (no change)	4–10 (increase)	11–20 (increase)	21–30 (increase)	>31 (increase)
Low (<75)									
Medium (76–150)		Venezula			Canada			Argentina	Colombia
High (151–225)	Chile							El Salvador	Mexico Brazil
Very high (226–300)									
Extremely high (>301)			Trinidad & Tobago		Puerto Rico		USA		Panama Cuba

Table 5.3 Percentage change in Asian imprisonment rates between first and sixth *World Prison Population Lists*

Imprisonment rates (per 100,000)	Percentage increase or decrease								
	>31 (decrease)	21–30 (decrease)	11–20 (decrease)	4–10 (decrease)	±3% (no change)	4–10 (increase)	11–20 (increase)	21–30 (increase)	>31 (increase)
Low (<75)								Vietnam	Bangladesh Cambodia Indonesia Japan
Medium (76–150)		Korea		Lebanon	China*				Sri Lanka
High (151–225)					Hong Kong	Israel			Malaysia
Very high (226–300)							Thailand		
Extremely high (>301)			Kyrgystan						

Note:
*China data for sentenced prisoners only.

In central Asia, the reduction of 11 per cent in the incarceration rate for Kyrgystan, largely the result of an increased total population, still leaves it as an extremely high user of imprisonment. In south central Asia, the rate in Bangladesh increased by 43 per cent and in Sri Lanka by 47 per cent and would seem to place these countries on a clear upward trajectory though they remain low or moderate users of imprisonment.

In south-eastern Asia the national prison administration has provided data for both the first and the sixth edition of the list for the majority of countries and, in most cases – Cambodia (33 per cent), Indonesia (90 per cent), Thailand (20 per cent) and Vietnam (29 per cent) – they reveal substantial upward trends, albeit from very different bases. Cambodia, Indonesia and Vietnam all still have low rates of imprisonment, although with large national populations these still result in substantial prison systems. Thailand, on the other hand, was already in the high usage of imprisonment category and has now crossed into the very high category after an increase of 20 per cent over the rate reported earlier. Singapore reports a sharp downward shift, but is excluded here because the later figure excludes an unknown number of persons held in drug rehabilitation centres previously recorded. The national prison administration for Malaysia reported a dramatic increase of 51 per cent, which took it into the high-use category.

In eastern Asia, Japan remained a low-use country despite an increase of some 45 per cent, whereas in China the reported increase was only 3 per cent but, as we have seen, these data relate only to sentenced prisoners. Hong Kong, which between whiles had been returned from the UK to China, remained more or less unchanged as a high-use territory, but Korea reported a substantial decline bringing it within the moderate use category.

Europe

Data from most European countries should be generally more reliable but, even so, of the 54 countries listed in the sixth edition 17 had either not been listed in the first edition or else had prison populations smaller than 1,000 prisoners. Only 18 countries with prison populations greater than 1,000 were reported on by national prison administrations in both the first and sixth editions. A further 21 countries were reported on by other, but probably reliable, official sources, usually a ministry, Council of Europe or United Nations' organization in one or both lists. Table 5.4 presents the data for these 39 countries.

The European picture is intriguing but it is only possible here to highlight the main features of a complex picture. Eight countries (Switzerland, Turkey, France, Bulgaria, Denmark, Belgium, Germany and Scotland) experienced either no change or fairly modest increases or decreases in their incarceration rates and remained either low, as in the case of Denmark, or moderate users of imprisonment. Four other countries, all formerly under Soviet influence, experienced similarly modest changes in their incarceration rates but, whereas Romania was now somewhat closer to Western European levels, Ukraine, Belarus and Estonia all remained extremely high users of imprisonment.

The other Nordic countries (Norway, Finland and Sweden), while still among the lowest users of imprisonment, appeared to have embarked on

Table 5.4 Percentage change in European imprisonment rates between first and sixth *World Prison Population Lists*

Imprisonment rates (per 100,000)	Percentage increase or decrease								
	>31 (decrease)	21–30 (decrease)	11–20 (decrease)	4–10 (decrease)	±3% (no change)	4–10 (increase)	11–20 (increase)	21–30 (increase)	>31 (increase)
Low (<75)			Northern Ireland			Denmark	Norway	Finland Sweden	Slovenia Croatia Bosnia/ Herzegovina
Medium (76–150)	Armenia		Portugal	Switzerland	Turkey France Bulgaria	Belgium Germany Scotland	Italy England & Wales	Greece Austria Spain Ireland	Luxembourg The Netherlands Macedonia Albania
High (151–225)	Azerbaijan		Czech Republic	Romania			Slovakia	Hungary	Poland
Very high (226–300)	Lithuania								
Extremely high (>301)		Russia	Latvia		Ukraine	Belarus Estonia			

major growth in their use of imprisonment and are now on, or close to, the threshold of moderate usage. Slovenia, Croatia and Bosnia Herzegovina are on an even steeper upward curve although as yet they remain lower users of imprisonment than the Scandinavian countries.

Among the moderate users of imprisonment, Italy and England and Wales experienced increases in line with Norway, while Austria, Spain, Greece and Ireland had more substantial increases which, for Greece and Ireland, took them out of the low category and into that of moderate users. But most strikingly the Netherlands, traditionally a model of restraint and only a decade ago among the lowest users of imprisonment, is now to be found among those eight countries experiencing the most rapid increases in rates of imprisonment. Indeed, the Netherlands appears to be fast approaching the rate for England and Wales. Among those with the highest rates of increase, Macedonia and Albania (which increased by 250 per cent) both crossed the threshold from low to moderate use, and Poland, which in the days following the success of Solidarity was on a downward trend, has now reversed that and is back as a high user of imprisonment.

Six of the eight countries which experienced the most substantial decreases in their incarceration rates were former members of the USSR or under its influence. Of these, Lithuania moved from extremely high use to very high and Azerbaijan leapt a category from extremely high to high, while Armenia moved from high to moderate use. The Czech Republic remained a high-use state and both Russia and Latvia remained extremely high users. The remaining two countries on a downward trend were Northern Ireland, which has now become a low-using state, and Portugal, which stays within the moderate-use category. Six of the 19 with the most substantial increases, including Poland, were also former communist states. However, among these, Slovakia and Hungary moved from moderate to high-use states.

Oceania

Most of the 20 countries in Oceania had very small prison populations and low incarceration rates, and there is no need to produce a table for the remainder. Among them Fiji, New Zealand and Papua New Guinea were reported on by the same authority in the two editions and Australia was reported on by different, but probably reliable, sources. Fiji experienced a modest decrease of 9 per cent but remained a moderate user of imprisonment, but Papua New Guinea had one of the largest decreases of 34 per cent and had thus become a low-use country with an incarceration rate of 66 per 100,000. New Zealand increased its rate by 15 per cent to enter the ranks of high users of imprisonment, whereas Australia, despite a larger increase of 23 per cent, remained a moderate user with an incarceration rate of 117 per 100,000.

Where do we go from here?

In the foregoing sections I have identified a number of countries which seem to be following the USA in a marked upward shift in rates of imprisonment as well as a number of states which seem to be defying that trend. Among the former, and where there may be enough data for more detailed analysis,

are Brazil, the Netherlands, Sweden and Australia. Among the latter are Canada, Chile and Venezuela, France, Turkey and Switzerland. There is also an interesting bifurcation between those countries formerly under Soviet domination where imprisonment rates, following Russia, are coming down and those where imprisonment rates are rising once again.

The contrast between Canada and the USA, of course, is potentially most interesting. However, national survey data for 1998 reported in Farrington *et al*. (2004) appear to show some rather confusing findings, with Canada having more than twice the victimization rate of the USA for robbery and vehicle theft but only just over two thirds the US rate for residential burglary. Unfortunately, comparative data on drug offending, which is known to have been instrumental in US prison population growth, are not available. Detailed analysis of arrest and custody rates and time served which would certainly help to explain the relative stability of the prison population in Canada, and perhaps the differences between the two countries, is beyond the scope of this chapter.

The steep increases in the use of imprisonment in the Netherlands and Sweden appear to be partly explained, according to data reported in Farrington *et al*. (2004), by increases in violent offences including robbery, and increases in sentence lengths. But the situation is complex because, in the Netherlands, conviction and custody rates also increased while average time served declined, whereas in Sweden custody rates for robbery actually declined. Genuine comparative analysis remains elusive and must wait upon further detailed understanding of what has happened in each country.

The experience of imprisonment

The question most frequently asked of me when I was doing research in Russian prisons some years ago was: 'Would you rather serve three years in an English prison or sit out three months in a Russian colony for corrective labour?' There *is* a sense in which a prison is a prison is a prison. Prisoners are confined against their will, are separated from their families, lose control over critical decisions affecting their lives and have to put up with the trials and tribulations of living with other prisoners. But the experience of imprisonment can differ widely – from prisoner to prisoner depending upon their background and biography, from prison to prison according to its role and function within a prison system – and – as this question implies – from country to country by virtue of their different cultures and histories. David Downes (1988) was probably the first to examine the experience of imprisonment in different cultures when he characterized the differences between imprisonment in England and Wales and in the Netherlands in terms of what he called the 'depth' of imprisonment. King and McDermott (1995) argued that this notion of the burden that imprisonment imposes on prisoners was better characterized in terms of the increasing 'weight' of imprisonment, becoming 'heavier' as prisoners penetrated 'deeper' into the various levels of security provided. King (1972) and Moos (1968) have attempted to measure objective differences in prison regimes and subjective perceptions of social

climates respectively in different prisons, and most recently Liebling (2004) has developed quality-of-life measures that capture differences in the routine performance of prisons in England and Wales on a variety of dimensions. In this concluding section I draw attention to some important differences between prison systems and their likely implications for the prisoners incarcerated in them.

One of the most important differences between prison systems – and most neglected when it comes to theorizing about imprisonment – is the extent to which cellular confinement is practised. Single cells were the most essential element in Western thinking and practice concerning imprisonment and were central to both the Pennsylvania and the New York systems, but they are by no means universal. Few Russian prisoners, for example, will have experienced cellular confinement even while on remand awaiting trial. I have described the Russian situation elsewhere (King 1994) and there are further accounts in Karklins (1992) and Piacentini (2004). The same is true for Brazilian prisoners, and I shall confine most of my remarks here to Brazil with only occasional references to Russia to make a comparative point. In these countries – but presumably many others – the modal form of imprisonment involves confinement not in separate individual cells but in larger rooms variously referred to as cells, dormitories or wards, each housing anything from 12 to 100 or more prisoners. In Brazil, at least, there may be several such 'cells', grouped on either side of a central courtyard which is open to the elements, and which together comprise a 'pavilion'. Some six or eight pavilions may in turn be grouped on either side of a wide central corridor.

In these countries the notion of panopticism has very little meaning or application. Indeed, it is of their very essence that prisoners are *not* under the regulatory gaze of staff. Nor are members of staff under the gaze of their superiors. In a Sao Paulo remand prison, for example, staff patrol the central corridor but rarely enter the pavilions and then often only with the permission of the *faxinas* who effectively manage the daily life of the prison. The *faxinas* are prisoners who ostensibly fulfil a kind of leadership role within the pavilion, acting both as cleaning and food orderlies and as the main conduit between the majority of prisoners and the staff. Whatever the origins of the role, prison directors (governors or wardens), who themselves scarcely ever enter the pavilions for fear of being taken hostage, could hardly contemplate operating their prisons without them. Moreover, since prison officers work a shift system of 24 hours on and 72 hours off, designed to allow them to supplement their poor pay through second jobs, it is not hard to see how the *faxinas* provide continuity.

In effect the *faxinas* control virtually all aspects of prisoners' lives from the handing out of food parcels, to if and when prisoners may apply to see the doctor, and even the allocation to cells and bed spaces. In practice many of the *faxinas* have been recruited to the PCC (the 'First Command of the Capital', originally a kind of self-help prisoners' organization formed to fight for better prison conditions which has evolved into a powerful criminal fraternity). At any given time the senior member of the PCC in a particular prison is known as the 'pilot', with a 'commander', always a *faxina,* in charge of each pavilion supported by other members, known as 'brothers', and hangers-on known

as 'cousins'. Their activities are organized both from outside and inside the prison through the use of mobile phones, which – in a system which depends upon food, toiletries and other goods being sent in from outside, allows conjugal visits inside the pavilions and operates lax security – are rife.

The *faxinas* – there may be seven or eight in each pavilion – occupy the only cell in the pavilion with hot water, and which is uncrowded. They are noticeably cleaner and fashionably dressed with expensive trainers, compared with the rest of the population in the pavilion, who are dirty, dressed in rags and flip-flops, and live in indescribable conditions of overcrowding. It is clear that the *faxinas* are able to take their pick of items sent in from outside and exact taxes from other prisoners in ways reminiscent of the 'garnish' and 'chummage' which were once rife in eighteenth and early nineteenth-century English gaols. It is equally clear that other prisoners in the pavilions who speak almost reverentially of the services provided by the *faxinas*, are also in fear. It is probably the case that, in a system that provides next to nothing, the *faxinas* do ensure a basic minimum for each prisoner. In that sense they are not unlike the paramilitaries in Northern Ireland who fill the void left by poor social services and distrusted agencies of law and order.

What are the implications for prisoners passing through such a system? Clearly there is little here that bears testimony to a Foucauldian world in which prisoners submit to a correctional, regulatory discipline of order and conformity. Even if such were the intention of the authorities it could not be carried out under these conditions. Were it not for the intervention of the PCC there would be, and sometimes is, a sense in which the spirit of prisoners and their sense of self and community are not directly under attack. A prison system that encourages conjugal visits and family food parcels could be construed as indicative of a society that prizes family values and community support. In Russia, which also relies on food parcels and has, to a very limited extent, some facilities for so-called 'long visits', it was noticeable that the visitor was as often as not a prisoner's mother rather than wife or husband. In any case the visit took place over several days in a small flat in which the prisoner and the visitor could have a sustained contact which included cooking and eating as well as the possibility of sex. In Brazil, according to some reports, when family visits take place in the pavilions prisoners without visitors respectfully leave the cell and a makeshift curtain is drawn around the bed spaces where visits take place. In some other prisons conjugal visits take place in serried ranks of small igloo tents, affording some visual if not auditory privacy, and in one or two others new, clean, not to say antiseptic, facilities have been installed which are so stark and clinical that they seem likely to produce immediate sexual dysfunction. According to other reports, however, when visits take place in pavilions, prisoners are pressured to persuade their partners to bring in mobile phones and drugs in their body cavities (known euphemistically as 'little safes') and to offer their partners for sexual favours either to repay debts or simply because of the exercise of *force majeure.*

It can be an extremely violent world. One prisoner, who had finally found temporary safety in protective custody, told me of how he had been held captive in his pavilion by the PCC for more than three months – officially, at

least, unbeknown to the prison authorities, but possibly with the connivance of some staff. During that time he was beaten, tortured, raped, stripped of all his possessions on the outside world and put in fear of his own life and those of his family. There have been a great many violent deaths in Brazilian prisons – often at the hands of other prisoners, but also by officers, usually the riot squads or 'shock troops' of the police who, in the absence of effective internal control, periodically come in to 'restore order'. In the most infamous case, at the notorious Carandiru Prison in Sao Paulo and now immortalized in the film of that name based on the account by Drauzio Varella (1999), 111 prisoners, the majority still awaiting trial, were massacred in the aftermath of a disturbance.[7]

Single-cell accommodation is not unknown either in Brazil or in Russia, but in both cases it is reserved for punitive purposes or as a control measure. In Russia, cellular prisons are used for only a tiny fraction of the most serious offenders – in 1992 less than 1 per cent of the prison population – the majority of sentenced offenders being sent to corrective labour colonies, although each colony has a small section of cells for prisoners who are subject to disciplinary procedures. Intriguingly, in at least some colonies, I was told that, wherever possible, they tried to put two prisoners undergoing punishment together because it was unnatural for people to be held in isolation. Some prisons, nevertheless, retained dark cells that were so small that it was not possible for one prisoner to lie down in them, and which had neither natural nor artificial light, although opinion was divided as to whether these were ever now used.

In Sao Paulo, under the generally enlightened prison administration of Dr Nagashi Furukawa, individual cellular confinement has been deployed in a number of ultra-high-security establishments apparently modelled after American supermax facilities, in an attempt to break the power of the PCC. But the cultural point remains. Individual cellular confinement may seem appropriate in Western capitalist societies organized more generally around a concept of individualism, but it sits unhappily in cultures where a more collectivist or communitarian ethic prevails. It is instructive, for example, that agencies concerned with prisoners' rights both inside and outside Turkey have opposed new designs for prisons which move away from larger collective cells, even though they may offer dramatic improvements in physical conditions.

It is intriguing that the use of individual cellular confinement may be beginning to penetrate systems as diverse as the Russian, Brazilian and Turkish for the most difficult to manage prisoners when it has never formed part of the justifying rationale for those prison systems as a whole. In the USA, of course, individual cellular confinement has been the norm for two centuries. The development of so-called super-maximum security confinement, a product of the last 20 years or so and in part a response to growing problems of controlling gangs in American prisons, represents an extension of existing policies, taking them to their logical conclusion, rather than a reversal of a cultural pattern. Supermax custody, as developed in the USA, represents the ultimate expression of environmental and organizational control over prisoners. Prisoners are locked down in conditions of separate confinement in an environment virtually devoid of stimulation. When they leave their cells

it is only when handcuffed, leg-ironed, belly chained and, sometimes, spit-masked, and when accompanied by at least two, and sometimes more, officers. In these circumstances, the traditional, largely Anglo-American literature on prison culture has to be rewritten. Crewe (2005a, 2005b) has shown how the traditional patterns of solidarity in accordance with the inmate code have essentially broken down as drug culture has invaded the world previously occupied by thieves and convicts. In supermax, prisoners live essentially inside their own heads as all forms of adaptation or resistance are closed off and the 'real' world is replaced by imagination (King 2005a, 2005b and King and McGunnigall-Smith forthcoming). There is something ironic going on when the Netherlands takes on a supermax-type facility to deal with its hostage-taking would-be escapers at the very moment when it reverses its longstanding commitment to individual celling in favour of double-celling in order to deal with its prison population growth (Resordihardjo 2006).

If supermax involves the ultimate in environmental and organizational repression of an individualist spirit, there are still societies where the concern to conform appears to be, if not constitutionally inborn, then at least culturally prescribed. I am speaking of societies such as Japan where, from my own limited observations, it has been apparent that there is an exaggerated recognition of, and deference to, established authority. The expression of dissent in a Japanese prison looks, on a very brief acquaintance to this outsider, like an oxymoron. So, too, as far as China may be concerned. The lack of transparency in Chinese criminal justice statistics was discussed earlier. But there are signs of a belated thaw in international relations. In April 2005 an international conference on prison reform and alternatives to prison was held in Qingdao, Shandong Province, at which the present author was one of a small number of invited Western speakers. As part of the package I was able to negotiate a visit to Rencheng Prison, one of four new prisons in the area and obviously a show piece, for myself and another delegate. In a brief, ritualized and highly controlled guided tour of the prison, which we were told housed 1,700, we saw fewer than 50 prisoners, 22 of whom were engaged in a football match. A group of about 15 prisoners, immaculately uniformed and scrupulously clean, were perched upright on stools watching television but their eyes never flickered in our direction as we looked in (despite the fact that, wherever else we went, we attracted a great deal of attention from the public who were fascinated by our presence). The remaining prisoners were engaged either in visits with relatives (attended by staff who took notes – 'how else will we know about their problems?') or in therapeutic counselling or receiving legal advice from a visiting judge, in both cases via closed circuit television. I assumed that the remaining 1,650 prisoners had either been shipped out for the visit or else had not yet arrived – because in the immaculate kitchen and refectory which we visited after lunch we were shown small quantities of food ready to be prepared but we saw no sign whatever of the recent cooking or eating that might have been expected from the three sittings that would have been necessary to feed such a large population. My colleague assumed that the prisoners we saw were in reality actors. In answer to our questions about absent prisoners, we were told that they were in their cells. If so they were remarkably silent.

Selected further reading

As I hope this chapter has made clear, international comparisons of the use of imprisonment, like international comparisons of crime, are fraught with difficulty. See Farrington, D.P., Langan, P.A. and Tonry, M. (eds) (2004) *Cross-national Studies in Crime and Justice*. Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, for a brave attempt at overcoming some of the difficulties in comparing crime data in eight countries. Pease, K. (1994) 'Cross-national imprisonment rates: limitations of method and possible conclusions', *British Journal of Criminology* (special issue), 34: 116–30, sets out the dangers in comparing imprisonment rates internationally and the folly of using them as league tables. With that warning in mind, Walmsley, R. (2005) *World Prison Population List* (various dates and now published by the International Centre for Prison Studies, London) provides a starting point for comparisons, as do the statistics published periodically by the Council of Europe. There are a number of books which offer either reviews of prison conditions in various countries or analyses of prison systems. An example of the former is Walmsley, R. (1996) *Prison Systems in Central and Eastern Europe*. Helsinki: HEUNI, and of the latter is Ruggiero, V., Ryan, M. and Sim, J. (eds) (1995) *Western European Penal Systems: A Critical Anatomy*. London: Sage.

Notes

1 For reports on most former Soviet and East European societies, there is useful descriptive material in Walmsley (1996). There are also selected accounts of a number of systems in Ruggiero *et al*. (1995) and Carlie and Minor (1992). The reports of Amnesty International and Human Rights Watch often provide well researched (within the limits of often non-cooperative prison authorities) analyses of the problems encountered by prisoners and staff. For a rare example of academically researched human rights issues in the Baltic Sea region see Dünkel (2005).

2 The *World Prison Population List* suffers, inevitably, from a number of methodological problems. The data come from different official and unofficial sources, relate to different dates and are compromised by different practices in different jurisdictions. In particular there may be undercounting in regard to pre-trial detainees, juveniles and persons held for treatment of alcohol, drugs and psychiatric conditions, especially if these are outside the prison administration. There may well be grounds for doubting the veracity of some of the figures supplied. The list should therefore be used with caution and only as a broad-brush guide to current use.

3 This is likely to be a more serious drawback than other defects in the data when it comes to using the *World Prison Population List* for anything other than a rough-and-ready starting point for analysis. For a more thorough-going analysis of the problems of the denominator, see Pease (1994).

4 The most infamous case, of course, was that of Willie Horton during the Bush presidential campaign against Dukakis, but there have been many others.

5 A recent comparative study by Farrington *et al*. (2004) provides a valuable attempt at comparison across eight countries, using both recorded crime and survey data, but did not include Russia. Barclay and Tavares (2003), therefore, is the more useful source here. It should be noted that different sources give different results.

6 For reasons that are not immediately obvious different sources cite different figures: thus Rodeheaver and Williams (2005) cite a total crime rate of 2,309.1 for 1992, almost 25 per cent higher than the rate calculated using data from Barclay and Tavares (2003).

7 I was privileged to be invited to witness the demolition of Carandiru in 2003.

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Chapter 6

The sociology of imprisonment

Ben Crewe

Introduction

It is hardly surprising that prisons have attracted so much sociological attention. Both as an institution within society, and one with its own social world, the prison illustrates many of the discipline's primary concerns: power, inequality, order, conflict and socialization. Imprisonment is the ultimate sanction of most Western societies, and prisons are a potent symbol of the state's power to punish and its failure to integrate all its citizens into its system of norms. Prisons are generally populated by people whose social profiles are a catalogue of disadvantage and exclusion. They are unique social and moral environments whose characters and practices reflect broader social patterns and have significant consequences for those detained in them, those who work in them and the society that sanctions their terms. It is because of the prison's social role that studies of its interior life always hold more than abstract interest. At the same time, the prison's distinctive qualities – pain, deprivation, inequality of power, social compression – are such that its inner world provides particularly striking illustrations of a range of social phenomena, from resistance and adaptation to exploitation and collective organization. There are few other environments in which the relationship between constraint and agency can be so clearly observed, in which the consequences of power and powerlessness are so vividly manifested, and in which groups with such divergent values and interests are put into such close proximity. Few other social contexts expose so barely the terms of friendship, conflict, loyalty and alienation, make questions of order and stability so germane, or bring into such sharp relief the qualities and capacities of humanity.

Such issues will be returned to throughout this chapter, the aim of which is to review the key sociological literature on prison life. The chapter begins with a detailed exposition of Sykes's (1958) *The Society of Captives*, which will provide the basis for the ensuing discussion of the area's main debates, concepts and concerns. These will include the origins, character and functions

of the prisoner value system or 'inmate code'; the processes and dynamics of prisoner socialization and adaptation; prisoner social relations, including forms of solidarity and conflict, and relations between prisoner subgroups; and the nature of power, order and resistance in prison. The chapter's main focus will be the inner world of the prison rather than its broader social and political functions. However, in elaborating the debate about how prison culture is best explained, the chapter will explore the relationship between the prison and its external environment as well as its interior features.

The 'society of captives'

Although Sykes was by no means the first person to provide an academic account of the prison, *The Society of Captives* (1958) is commonly cited as the field's seminal text (Sparks *et al.* 1996; see Reisig 2001). Sykes regarded the prison as emblematic of systems of domination, such as concentration camps and labour colonies, and saw its study as a means of exploring the nature, consequences and potential limits of totalitarian control. With the US prison system having seen a spate of disturbances in the period preceding the study, including two riots in the maximum-security facility where Sykes undertook his fieldwork, questions about penal order and disorder were particularly salient. He also recognized the intrinsic value of understanding prison life at a time when changes in the aims of incarceration had been introduced with little understanding of how ambitions to control and rehabilitate prisoners might be aided or undermined by the culture of the prisoner community.

The Society of Captives effectively carries two, connected arguments, the first of which relates to power and institutional order. Sykes argued that the possibility of total dominance over prisoners was, on closer inspection, something of a fiction. The number of violations of the prison's daily regulations indicated how regularly institutional dominance was compromised, and illustrated the incessant nature of the struggle to maintain order. Sykes provided a number of reasons why this was the case. Prisoners had no 'internal sense of duty' to comply: even if, at one level, they recognized the legitimacy of their confinement, with regard to attempts to control their daily behaviour they lacked intrinsic – one might say, moral or 'normative' – motivation to conform to the prison's demands. In theory, the prison could simply coerce prisoners into obedience through force. But as Sykes pointed out, this was an inefficient and dangerous way to get things done in an environment where prisoners outnumbered officers, where these prisoners had to be organized into complex tasks and where violence could easily spiral out of control. Rewards and punishments were, likewise, much less effective than might be expected. Given the prison's conditions, the latter could do little to worsen the prisoner's circumstances, while the former were not powerful enough to motivate prisoners positively.

There were also reasons why prison officers struggled to maintain formal boundaries and apply rules to the letter. First, it was difficult to remain aloof from prisoners when one worked with them all day and might identify with or even grudgingly admire them. Secondly, officers were surprisingly

dependent on those they guarded. Prisoners carried out everyday functions and minor chores (delivering mail, checking cells), and if they withheld their services or decided to make trouble, this not only interfered with the smooth running of the wing but was also taken to reflect the competence of those officers who were responsible for them. Officers were also aware that, if riots did occur, their personal safety might depend on how they had used their apparently limitless power.

Sykes considered these defects in the prison's supremacy to be virtually intrinsic to the prison organization and to lead to a number of compromises between the prison officials and prisoners: 'In effect, the guard buys compliance or obedience in certain areas at the cost of tolerating disobedience elsewhere' (1958: 57). They also induced compliance through the provision of unofficial 'rewards' to inmate leaders (e.g. extra food or coffee, warnings about upcoming searches, good jobs or cells), who in turn distributed these privileges within the inmate population. This informal arrangement had three, linked effects, all of which were crucial for the maintenance of order. First, it directly relieved some of the tensions and deficits of imprisonment. Secondly, by sweetening them into compliance, it kept in check those prisoners who might otherwise cause trouble for the institution or make their sentences easier at the expense of other prisoners. Thirdly, it reinforced the power and status of inmate leaders – men who had a stake in institutional calm and were committed to inmate solidarity (see below). For Sykes, disorder was likely to occur if this relationship of negotiation and compromise was broken – if the rules were too strictly enforced or the informal power of dominant prisoners eroded, leading to a disintegration of the normal bonds and hierarchies between prisoners. To summarize at this point then – and we will return shortly – order was *negotiated*, and functioned *through* the inmate hierarchy, via those men at the apex of the prisoner community.

It is through the figure of the inmate leader that Sykes links his theory of order to his other primary argument, on the role and function of the 'inmate code': the set of values, norms and maxims that prisoners publicly espoused as a guide to behaviour. Sykes outlined five chief tenets of this code, crudely summarized as follows: don't interfere with other inmates' interests, or 'never rat [grass] on a con'; 'play it cool and do your own time' (Sykes and Messinger 1960: 8); don't exploit or steal from other prisoners; 'be tough, be a man'; and don't ever side with or show respect for prison officers and representatives. This normative system had been described before (see, particularly, Clemmer 1940/1958). However, Sykes sought to explain both its origins and its broader social functions within the prison institution. Noting that this was a 'strikingly pervasive value system' which could be found among apparently diverse prison populations and regimes (Sykes and Messinger 1960: 5), he reasoned that the roots of the code lay in the fundamental properties of imprisonment.

These properties were identified as the 'pains of imprisonment': those deprivations beyond the loss of liberty that defined the experience of incarceration and had a profound effect on the prisoner's self-image. These included various forms of moral condemnation, and the deprivations of goods and services, heterosexual relations, autonomy and personal security.

Sykes and Messinger argued that the inmate code could be explained as a cultural mechanism for alleviating these pains. If prisoners developed a positive shared identity, if they were loyal and respectful towards each other, if they shared their goods, caused no unnecessary frictions, kept promises, showed courage and fortitude, and remained staunchly oppositional to the prison administration, they could collectively deflect the moral censure of lawful society and mitigate many of the practical and psychological problems of incarceration.

Sykes was explicit in stating that this code was 'an ideal rather than a description of how inmates behaved' (1995: 82). It was a set of norms to which prisoners pledged allegiance but tended not to follow, most choosing 'alienative' rather than co-operative ways of dealing with their predicament. Indeed, Sykes claimed that the various labels ('argot roles') used within the prisoner community were organized around different deviations from the central value system. There were terms for prisoners who profited from others ('merchants') or threatened them with force ('gorillas'), informed on their peers ('rats'), were insufficiently masculine ('punks' and 'fags') or caused unnecessary friction with officers ('ballbusters'). All prisoners had good reason to espouse the code and demand that others conform to it – for there was no benefit in encouraging others to be exploitative or disloyal, even if one was oneself – but only one prisoner type embodied its doctrine. This prisoner – the 'real man' – generated admiration among the inmate body, for he personified its collective ideals.

Real men could act as intermediaries between prisoners and officers because they stood up for the former and derided the latter without needlessly provoking incidents or pushing officers too far. Crucially, too, their commitment to the inmate code meant that they functioned in ways that benefited the prison officials. Although they exemplified a value system which appeared 'anti-institutional', by encouraging other prisoners to curb hostilities against each other and to protest against the prison only if really necessary, they were central in stabilizing the prison. As Clemmer had also noted, the code contained admonitions to 'do one's own time' – to limit social bonds and activity – which were 'the exact counterparts of the official admonitions' (1940/1958: ix). Through both material and cultural means – the distribution of favours and the dissemination of a value system which discouraged in-group antagonism and helped to relieve some of the deprivations of imprisonment – real men prevented the prisoner community from exploding into unrest *and* from disintegrating into a state of mutual exploitation, whereby prisoners sought to alleviate their situation with complete disregard for their peers. In short, then, it had a double-function: as a collective coping mechanism for prisoners and a vital source of institutional order.

Sykes's work has merited this lengthy elaboration because it covers and connects a number of key issues in prison sociology: the relationship between the prison and the outside world; the everyday culture of prison life; the pains of imprisonment, adaptation, hierarchy and social relationships; and questions of power, order and resistance. The sociology of imprisonment is by no means limited to these concerns. However, the discussion that follows can be structured around the issues and arguments that Sykes established.

The prison, inmate culture and the outside world

In theoretical terms, the clearest contribution of *The Society of Captives* was its claim that inmate culture was determined by the inherent deprivations of prison life. Sykes made some comments about the influence of personality factors on inmate adaptation, and some references to the influence of outside society on the prison's inner world, but these were tentative and tokenistic. It is tempting to speculate that Sykes deliberately underplayed the relevance of external factors in order to shore up the theoretical simplicity of his case. It is also important to note that, at the time of his writing, prisons were more socially isolated institutions than they are today, and without the same avenues to the outside world that telephones and televisions now provide (see Jewkes 2002; Chapter 19, this volume). None the less, Sykes clearly conceptualized prison culture as something determined by the inherent deficits of incarceration, as consistent across spatial boundaries (i.e. regardless of a prison's location), and as distinctive to the penal environment. Each of these claims has been challenged and developed in subsequent work.

In his classic (1968) text, *Asylums*, Goffman drew upon Sykes to make the case that the prison was just one among a range of 'total institutions' which shared certain functions and characteristics and generated similar responses and adaptations. Goffman defined a total institution as 'a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life' (1968: 11), a definition which included mental hospitals, monasteries, boarding schools and navy ships. Like Sykes, Goffman presented the prison as a social system that was largely autonomous from the outside world. Indeed, this autonomy was critical to its ambitions to reconstruct and rehabilitate the inmate. Goffman listed practices such as the removal of personal possessions, the assignation of numbers or uniforms, the shaving of hair and the banning of normal contact with the outside world as ways of stripping inmates of their prior identities and affiliations, and creating a ritual break with the past. He argued that total institutions then rebuilt the identities of their inhabitants by limiting their physical and psychological autonomy (regulating normal tasks such as washing and spending money; placing curbs on personal movement; withholding information), at the same time as providing a new set of rules, relationships and rewards around which behaviour and identity could be reconstituted. Things that would have been minor and taken for granted in the outside world – a jar of coffee, the right to smoke – became levers around which fantasy and behaviour were focused.

Just as Sykes highlighted how imprisonment engendered a profound attack on the inmate's self-identity, Goffman's concern was the struggle of the self to maintain its integrity in the face of persistent attack from social labels and institutions. Despite being socially and physically sequestered from the outside world, inmates were rarely overwhelmed by institutional imperatives. Individuals always sought some control over the environment and retained some kind of independent self-concept, resulting in a range of 'secondary adaptations' to the prison's restricted social environment (see below). The resulting culture was one in which institutional and individual objectives

existed in tension, and it was coloured appropriately by a preoccupation with the self. This was manifested in a generalized sadness about the inmate's lowly status or in a narrative about his (or her) social demise; and by a tendency for inmates to immerse themselves in 'removal activities' (education, exercise, card playing, fantasy) that created a space between themselves and the institution.

Although Goffman's focus was individual rather than collective adaptation, like Sykes, he located the resources for adjustment as lying inside the institution. He conceived of the inmate as an individual cut off from wider social ties and stripped of pre-prison characteristics, and gave no meaningful description of how personality factors or cultural orientations influenced prison conduct. It is for this reason that Goffman is generally identified with Sykes as a proponent of the 'deprivation' or 'indigenous' theory, which focuses on prison-specific variables in explaining inmate culture and behaviour. Irwin and Cressey (1962) presented a critique of this perspective, resurrecting Clemmer's earlier observation that the 'penitentiary is not a closed culture' (1940/1958: xv). Although they acknowledged that inmate society was a 'response to problems of imprisonment', they questioned 'the emphasis given to the notion that solutions to these problems are found within the prison' (Irwin and Cressey 1962: 145). Rather, they argued, prisoners 'imported' into the prison characteristics and behaviour patterns from the external community, and adapted in ways that *maintained* and were consistent with these existing identities. The inmate code was by no means distinctive to the prison, but was a version of criminal cultures existing beyond the prison.

More specifically, Irwin and Cressey regarded inmate culture as the outcome of three distinctive subcultures imported into the penal institution. The first was a 'thief culture', carried by professional and serious criminals, emphasizing reliability, loyalty, coolness in the face of provocation and 'moral courage'. Thieves were oriented to criminal life rather than the prison world itself and aimed to do their sentences as smoothly as possible, seeking out occasional luxuries to make life easier. The second was a 'convict subculture', carried by prisoners whom Irwin subsequently labelled 'state-raised youth' (1970). These were men with long records of confinement in juvenile institutions, who were socialized within these more individualistic, exploitative and manipulative cultures. Convicts actively sought status and influence within the prison – this being the world they knew – and were likely to be involved in the prison's illicit activities as a means to these ends. The third, more marginal, subculture was the 'legitimate' value system held by 'straight' prisoners, with anti-criminal attitudes, who generally conformed to institutional goals and acted in accordance with conventional, lawful principles. Prison culture as a whole was 'an adjustment or accommodation of these three systems within the official administrative system of deprivation and control' (Irwin and Cressey 1962: 153).

The importation–deprivation debate has continued to provide the primary framework for discussions of inmate social life and culture, but has advanced in a number of directions. The notion that there was any such thing as 'The Prison', with stable properties and consistent characteristics, was challenged by a number of studies which showed how much variety existed between

different regimes and populations. 'Situationalist' versions of the deprivation model highlighted how specific institutional characteristics, such as a prison's physical design, determined inmate culture (e.g. Grusky 1959; Street *et al*. 1966). As was broadly consistent with Sykes's model, custody-oriented establishments generated more oppositional cultures than treatment-based facilities. Studies of women's prisons (of which more below) found very different inmate social systems from those described in men's establishments, raising further questions about whether prisons could be said to have 'intrinsic' features (Ward and Kassebaum 1965; Giallombardo 1966; Heffernan 1972). Meanwhile, Mathiesen's (1965) account of a Norwegian treatment-oriented establishment described a prisoner community with little cohesive behaviour, little faith in the effectiveness of norms promoting solidarity, a flat inmate hierarchy, no apparent ban on contact with prison staff and no 'honourable' inmate identity, the latter features apparently reflecting Norway's relatively undeveloped criminal culture. Lacking peer solidarity or a positive collective identity, prisoners developed alternative means of coping from those identified by Sykes, primarily oriented around accusations that power-holders were deviating from their own established norms or those rooted in broader notions of justice. Thus, collective loyalty and an oppositional value system did not appear to be the only functional responses to the pains of imprisonment.

The picture of prison life in Jacobs's *Stateville* (1977) bore even less resemblance to Sykes's account, and its analysis represented an advanced challenge to indigenous theories of prison culture. Instead of a single normative code, Jacobs found a prisoner community that was fragmented into mutually antagonistic, ethnically defined gangs, with codes of loyalty that stretched little beyond in-group members. Significantly, these gangs had emerged on the streets of Chicago, from where their values and leadership structures had been transplanted into the prison. Jacobs (1974: 399) explicitly compared Goffman's description of the 'role-stripping' of new prisoners with what he observed as a 'homecoming ceremony', whereby new entrants were greeted and looked after by affiliates from the streets. Here, then, external identities defined and were reinforced by the prison's social structure. Moreover, it was the gang system, rather than informal negotiation with prison officials, that buffered many prisoners from the pains of prison life by providing collective identity and both social and economic support.

Stateville was significant not only in capturing the transformation of the prison's social organization but also in explicitly identifying the macro-mechanisms that rendered it historically mutable. While Irwin and Cressey had illustrated the permeability of the prison to external cultures and dispositions, Jacobs showed how its social life and administration were moulded by wider social, political and legal conditions. Prisoner expectations had been raised by expanded notions of rights and 'citizenship', and these expectations were validated by court interventions that secured a growing range of inmate entitlements. Meanwhile, the radical politicization of ethnic-minority prisoners reflected political culture outside the institution. For Jacobs, such changes represented 'the movement of the prison's place in society from the periphery towards the center' (1977: 6). The prison could no longer insulate

itself from the trends and values of the outside world, and from demands for its inhabitants to be treated as normal citizens.

This description of the prison's rationale and societal location has not been without criticism. Although long-term patterns suggest that prisons have been subject to certain kinds of 'civilizing' processes (Pratt 2002), the coercive turn within prison management (as embodied by the 'supermax' prison in the USA), the contracting out of imprisonment to the private sector and the potency of law-and-order politics in both the USA and Western Europe indicate a more complex trajectory, and a different configuration of the prison–society relationship. First, then, while the prison – and crime control more generally – has become central to political discourse, it has done so in a way that reassures the 'respectable' classes of their difference from the 'criminal class', and that has little compunction about the punitive treatment of offenders (Christie 1981; Chapter 19, this volume). Some scholars have characterized the 'extra-penological' role of the prison as the primary means of managing and neutralizing the American underclass, with money drained from welfare services into penal provision in the interests of neoliberalism (Wacquant 2001). Clearly, the prison has multiple functions beyond its technical ends (Garland 1990, 2001) – indeed, judged by its primary aims, it is an astonishing failure (Morgan 1991). Symbolically, it serves to represent state authority and reinforce moral boundaries and sentiments (Durkheim 1933); at the level of political economy, it acts as an instrument of class domination and a means of maintaining social order (Rusche and Kirchheimer 1939). As feminist scholars have also highlighted (Carlen 1983; Howe 1994), often drawing on the work of Foucault (1977), the prison may be emblematic of a web of social control strategies that regulate and discipline women throughout society: within the family, relationships, by the state and in terms of general definitions of femininity. Here, then, the conceptual distinction between the prison and the outside world begins to crumble.

Secondly, privatization could be seen as a decoupling of the prison from the state, especially in the USA, where regulation practices are less stringent than in the UK. Further, private companies form part of the bloc of interest groups whose political lobbying reinforces the momentum for mass incarceration: thus, the penal body now feeds into political life, as well as vice versa. Thirdly, imprisonment rates in the USA (and, to a more limited extent, in Western Europe) are such that the prison and its culture can no longer be seen as mere reflections of or appendages to a separate, external world. Imprisonment has become a 'shaping institution for whole sectors of the population' (Garland 2001: 2), stripping young men from some communities, disenfranchising them from the political process and creating generational spirals of criminality that would take decades to reverse. In some areas of the USA (and a few in the UK), incarceration is not just a normal social expectation and experience, but a badge of honour, and a requirement for status on the streets. For Wacquant (2000, 2001), the prison and the ghetto are now barely distinguishable. The ghetto has been swamped by criminal justice agencies and interventions, and deserted by non-state, civic agencies. Meanwhile, the 'warehouse' prison has little purpose beyond containment and control. Like the ghetto, it merely quarantines its inhabitants from the

rest of the social body. Both are characterized by racial cleavages, enforced idleness, and by cultures of suspicion, distrust and violence. Street culture is no longer simply imported into the prison, as Jacobs described, but has itself been deeply imprinted by mores and values from the prison that have been re-exported and integrated over years of carceral normalization.[1] In such respects, the separation of these cultural domains may be fatuous, and the importation–deprivation debate appears somewhat obsolete.

It is important to maintain some distinction between theories of prison culture and empirical accounts of its terms and influences. A multitude of quantitative studies have shown that the relationship between pre-prison variables and in-prison behaviour is complex, and that activities such as drug-taking and homosexuality have both imported and indigenous components (Akers *et al.* 1974; Zamble and Porporino 1988). The prison's inner world is best seen as a *distorted* and *adapted* version of social life and culture outside. However, for reasons discussed below, studies which would more sharply illuminate the complex interplay between imported factors and the imperatives generated by the prison remain uncommon. At the structural level, few scholars now seek to explain the role or function of the prison through a single theoretical lens. Rather, it is generally accepted that the values and sensibilities that shape the broad purposes and practices of imprisonment derive from multiple sources, and are realized in practice in complex and messy ways.

Garland (2001) has provided the most recognized account of this kind, arguing that, on both sides of the Atlantic, penal welfarism has been replaced by a 'culture of control', one element of which is the emergence of more coercive and punitive penal sanctions, and the reinvention of the prison. Such broad characterizations tend to be over-schematic. As Liebling (2004) has shown, Garland's narrative cannot explain some of the countervailing tendencies in UK imprisonment, such as the re-emergence of rehabilitative ambitions and the advancement of a 'decency agenda'. Such discourses are promoted and undermined by powerful individuals (e.g. ministers, Prison Service senior managers) and unanticipated events (e.g. riots, escapes, high-profile crimes), significantly altering the general climate of incarceration in ways that have a demonstrable impact on the degree to which prisons feel decent or distressing. Since some prisons are evidently more respectful or safe than others, it is also clear that management styles, staff cultures and institutional histories mediate the ways that penal values and sensibilities are translated into material practices (see also Kruttschnitt and Gartner 2005). Thus, through the messages that prison staff receive and instantiate about the moral status of prisoners and the boundaries of acceptable behaviour, the prison experience is sensitive to both the macro- and micro-politics of imprisonment.

Prison adaptation and socialization

Sykes noted that the roles taken up by prisoners were not static, and that many prisoners moved between roles over the course of their sentence.

However, he provided no account of how or why this might happen and did little to develop the concept of 'prisonization', a term coined by Clemmer which captured the *dynamic* process of prisoner socialization: the 'taking on in greater or lesser degree of the folkways, mores, customs and general culture of the penitentiary' (1940/1958: 299). Clemmer argued that those prisoners who became socialized in this manner had 'no chance of being salvaged' (1940/1958: 313). The implications for rehabilitation were gloomy: it occurred *in spite* of the influence of prison culture, and it happened to those prisoners who were the least oriented to criminal subcultures in the first place. However, such conclusions relied on the assumption that socialization into the norms of imprisonment simply deepened over the course of a sentence. By exploring prisoner attitudes at different sentence stages, Wheeler (1961) showed this supposition to be faulty. Prisonization took the shape of a 'U-curve': it was in the middle stage of a sentence that prisoner values most closely conformed to the inmate code but, as prisoners anticipated release back into the community, these values shifted back to the more 'conventional' norms with which they initially entered the prison community.

To some degree, Wheeler's findings supported Sykes's theorization of the inmate code as a problem-solving mechanism (and Goffman's belief that inmates were able to readjust to non-institutional life relatively quickly). It was when prisoners were furthest from the outside community (i.e. when the pains of imprisonment were most acute) that prisoners were most dependent on the prisoner society and the code was most potent. Subsequent work has confirmed that there are particular stages of a sentence at which prisoners feel most isolated and distressed, albeit generally earlier than Wheeler suggested (Liebling 1999), and that sentence length has a considerable impact on adaptation (Sapsford 1983). Prison behaviour of various kinds can be plotted against time served, and many prisoners do report curbing illicit activities as they approach release and have more to lose from such exploits.

However, as Sykes's work illustrated and as the many descriptions of prisoner 'types' substantiate (see Bowker 1977), there is no single pattern of adjustment to prison life. A comprehensive – though static – typology of adaptations can be provided by combining the frameworks presented by Merton (1938) and Goffman (1968). First, then, some prisoners 'withdraw', 'retreat' or 'regress', focusing on little beyond immediate events around their selves. This might include what would be considered maladaptations, such as self-isolation and repeated self-mutilation (Liebling 1992), but could also incorporate the obsessive body-building that some prisoners take up, or the deep absorption into art or education that allows others some mental escape from institutional life (Cohen and Taylor 1972; Boyle 1984).

Secondly, some prisoners rebel against the prison, attempting escapes (McVicar 1974), engaging in concerted physical resistance (Boyle 1977) or 'campaigning' against prison practices and conditions (Cohen and Taylor 1972). In the UK, such activities tend to be concentrated in higher-security establishments, where long sentences generate profound frustrations, and where prisoners themselves may be more anti-authoritarian or sufficiently resourceful to orchestrate effective campaigns against the system. As some

scholars have suggested, however, resistance is not limited to these prisoners, or to spectacular and confrontational manifestations. Power is not simply held by the powerful, to be directly confronted and seized. It flows throughout the social body, through surveillance, petty rules and assumptions about 'appropriate behaviour' (Foucault 1977). Resistance therefore occurs through everyday, minor acts of subversion (backstage jokes, the use of in-group language; stealing from prison supplies) and through assertions of identity ('as a mother...'; 'as a black woman...') that contest and recast the meanings, directives and restrictions imposed by the institution (Bosworth and Carrabine 2000). Where collective means of adaptation, such as social networks, are impossible to establish, resistance is more likely to rely on the body, as a tool of violence, a site of representation (e.g. through modes of dress or make-up) or an object of desecration and destruction (e.g. dirty protests; self-harm).

A third kind of adaptation is represented by 'conformity' (Merton 1938), 'colonization' or 'conversion' (Goffman 1968): where prisoners appear relatively satisfied with their existence in prison, where they internalize official views of themselves and where they comply with sincerity and enthusiasm to the demands of the system. This category includes the 'centre-men' and 'straights' described in the early ethnographies, men who identified with conventional values prior to imprisonment. It also incorporates those 'gleaners' whom Irwin (1970) described as seeking change and self-improvement through official programmes and structures. Some researchers have implied that certain extreme forms of this adaptation are uncommon or superficial, because it means prisoners discarding anti-social values or accepting their inferior moral status (Morris and Morris 1963; Carrabine 2005). In fact, there are an increasing number of drug addicts entering prison who compare it favourably with life on the streets on drugs, and whose shame and self-loathing lead them to act as model inmates, desperate to prove their moral reformation (Crewe 2005b; 2007).

Fourthly, there are prisoners who fit into the category of 'innovators' that Merton described as accepting official objectives but rejecting the institutional means of their attainment. Mathiesen (1965) identified this 'censoriousness' as the primary response among prisoners in his study of a Norwegian prison: criticism of those in power for not conforming to their own stated rules and standards or for acting in ways that would be considered unjust within a broader moral framework. These strategies – which can be seen as a form of resistance – are significant because, rather than representing a stance of normative opposition (as Sykes described), they accept the norms of the officials. Mathiesen argued that, in this respect, they derive from a position of weakness and social atomization: a lack of other, more collective means of challenging the regime. At the same time, they may be highly effective ways of contesting the terms of one's incarceration, and blurring the moral divide between prisoners and their state custodians.

The majority of prisoners find ways of coping with imprisonment that do not involve either extreme resistance or complete acquiescence, but combine the strategies and adjustments described above. Whether described as 'playing it cool' (Goffman 1968), 'ritualism' (Merton 1938; Morris and Morris 1963) or 'doing time', this involves supporting other prisoners, albeit within limits,

showing little enthusiasm for the regime and seeking to make the prison experience as comfortable as possible, while trying to avoid trouble with other prisoners and the prison officials. Some prisoners – perhaps a sixth category – will also seek to *manipulate* the system (Morris and Morris 1963; King and Elliott 1977; Crewe 2007; in progress), using their prison experience to exploit rules, work 'angles' and perform desired behaviour to prison officials while flouting it elsewhere. Most prisoners want to 'do their time and get out' (Carrabine 2004), but how they choose to do so – whether they get involved in trade or the accumulation of status – depends on peer obligations, criminal and institutional careers (Irwin 1970), family loyalties, economic and psychological needs within prison, and future hopes whose inter-relationships remain under-researched. Certainly, though, prisoners do not just 'undergo' imprisonment as passive agents of prisonization and socialization – as much of the early literature suggests. Rather, as Cohen and Taylor (1972) emphasized, they are often highly conscious of their social predicament and are strategic in the choices they make about how to address it.

It is also clear that imprisonment is considerably more painful for some prisoners than for others (Liebling 1992), and that prisoner *subgroups* experience and adapt to the prison environment in different ways. In part, as the following section illustrates, this relates to aspects of social organization within and outside the prison. But it also indicates the different psychological preoccupations that prisoners import into the environment and the ways that institutions address their populations. Evidence from the USA has suggested that the concerns of black prisoners are focused around issues of freedom, autonomy, disrespect and discrimination, while white prisoners are more likely to fear for their physical safety and experience prison as a loss to self-esteem (Johnson 1976; Toch 1977). In the UK, black prisoners feel lower levels of respect, humanity and fairness than other prisoners (Cheliotis and Liebling 2006; Chapter 12, this volume), while the prison system has been described as 'institutionally thoughtless' about the needs of the old and disabled, for whom it is not primarily oriented (Crawley 2005; Chapter 10, this volume).

Research consistently reports that, for female prisoners, the rupturing of ties to children and intimate others, and the possibility of being in prison during one's fertile years, are particularly painful dimensions of imprisonment (Walker and Worrall 2000; Chapter 11, this volume). Female prisoners also express greater concern than male prisoners about privacy, intimate intrusions, personal health and autonomy, and those dynamics of penal power that can evoke memories of abuse (Carlen 1998; Zaitzow and Thomas 2003). Such concerns reflect, and are exacerbated by, the nature of women's imprisonment. Female prisoners are often incarcerated at great distance from their homes, while the regimes to which they are subjected are generally more petty and infantilizing (as well as domesticated and medicated) than those in men's prisons (Carlen 1998). These higher expectations about the personal behaviour of female prisoners are emblematic of the discourses of 'normal femininity' that are embedded in the practices and philosophies of women's incarceration (Rock 1996; Carlen 1983, 1998; Bosworth 1999), and amplify the gendered dimensions of collective adaptation that are described in the section that follows.

Social relations and everyday culture

Sykes did not claim that the prisoner world was defined by inmate cohesion or actual solidarity. However, by describing a society with a single normative framework, and by providing only passing reference to social and ethnic cleavages within this community, he did portray prisoners as unified by some kind of common purpose. This may have reflected the nature of the 'Big House' prison, in which prisoners were subjected to a stupefying regime, rigid timetabling and highly authoritarian staffing, and yet were allowed to develop a relatively self-contained world of trade networks and social relationships, which they managed with little interference from the authorities (Irwin and Austin 1997; Irwin 2005). In such a context – and given Sykes's interest in systemic order and equilibrium – communal objectives and collective functions may well have appeared more significant than interpersonal relations and social divisions.

Other accounts of the prison, both during the Big House era and in later periods, have explored the nature of social relations *within* the prisoner community, and have emphasized conflict, disorganization and subgroup rivalry as much as collective organization. Clemmer (1940/1958) described a tiered hierarchy of elite, middle-class and lower-status prisoners. The latter – around 40 per cent of prisoners – tended to be solitary, being civil to others but not close or co-operative. Higher-status prisoners were more sociable, mixing within their class either in 'semi-primary' groups, sharing luxuries and information, or in smaller cliques where almost all resources were shared and members thought collectively. Subsequent accounts of prison life have depicted similar patterns of loosely structured, interlocking social groups, with little formal organization or leadership, based upon locality, religion, age, lifestyle and criminal identity (Crewe 2005a; Irwin 2005). Such groups offer forms of material and social support, and physical backing if required, while also providing networks for trade and avenues for the settlement of disputes. As Clemmer noted, though, loyalties are generally limited and groups rarely display genuine cohesion (see also Mathiesen 1965; though see McEvoy 2000). Prisoners differentiate between acquaintances, with whom relationships are transient, instrumental and defensive, based on self-interest and fear of exploitation rather than affection and admiration, and a very small number of trusted friends, often known outside prison or from past sentences (Morris and Morris 1963). For most prisoners, then, the prisoner community is 'an atomized world', characterized more by 'trickery and dishonesty' than by 'sympathy and co-operation' (Clemmer 1940/1958: 297; see also Mathiesen 1965).

Whether race was a significant factor in the Big House era is difficult to know, though Jacobs (1983) suggests that, given the discriminatory values of white prisoners and officials, black prisoners were probably excluded from certain roles and were unlikely to be as committed to the inmate code as whites.[2] In any case, over the two decades that followed, any notion of a single, solidary culture among prisoners was obliterated as racial and ethnic conflict became the dominant feature of American prison life. By the 1950s, black Muslims had begun to preach their racial superiority, rejecting the notion

of inmate equality (Jacobs 1983). In the years that followed, as prisons became more open to the outside world, and as the percentage of non-white inmates began to rise, racial and ethnic differences were amplified. Prisoners started to organize themselves into racially homogeneous cliques, with increasingly discrete informal economies and limited opportunities for racial co-mingling. While there was enthusiasm for a more rehabilitative regime (Irwin 2005), and while the numerical dominance of white prisoners counterbalanced the greater solidarity of black prisoners – solidarity that was based on a shared sense of oppression and injustice (Carroll 1974) – peace and tolerance prevailed. By the 1970s, the changes described in *Stateville* had eroded this social accord. Informal segregation had hardened into factional conflict, both between and within ethnic groups, and violent gangs from the streets began to dominate the prisoner social world. The norms of these gangs stressed intense in-group allegiance while encouraging the exploitation of non-members (Jacobs 1977; Irwin 1980). Unaffiliated prisoners either had to 'prove themselves' worthy of membership, usually through violence, or had to withdraw from the prison's public culture. As gang members and state-raised youth took over the prison social world, random violence, robbery and sexual predation became everyday facts of life, turning the prison into 'an unstable and violent social jungle' (Johnson 1987: 74; Irwin 2005; Chapter 12, this volume).

Recent work suggests that, although race remains the primary axis of social life in American prisons and informal segregation persists, 'the intensity and importance of racial identities and gang affiliations has diminished somewhat' (Irwin 2005: 86). To a large degree, this social 'détente' (Irwin 2005) is explained by the emergence of the supermax prison, which has allowed for the segregation of violent and gang-affiliated prisoners, and which stands as a potent threat to those who want to remain in more humane conditions (see Chapters 5 and 14, this volume). Here, then, prison culture has been moulded by a particular form of administrative control. Most European societies have had neither the gang culture nor the racial cleavages whose importation into prison have led to so many problems in the USA (Morgan 2002). In UK prisons, despite fairly widespread prejudice and frequent verbal skirmishes, race relations have tended to be relatively harmonious (Genders and Player 1989). Prisoners are loosely self-segregating, but such groupings reflect shared cultural backgrounds rather than racial hostility or political assertions of ethnic difference. Prisoners work, trade and socialize across ethnic lines, and show solidarity (albeit of a limited kind) across such divisions in the face of staff authority. Black and – in particular – Muslim prisoners appear to be more cohesive than whites, but their solidarity functions primarily in defensive, self-supporting ways rather than as a means of achieving collective power (see Chapter 12, this volume).

One reason for this comparative racial harmony is that many prisoners are raised in diverse inner-city areas and socialize naturally in ethnically heterogeneous groups both in and outside prison. Indeed, in most UK establishments, locality is more important than ethnicity in defining prisoners' loyalties. Alliances and networks are normally founded on hometown contacts, such that groups from large urban centres tend to be dominant in a prison's informal economy – without normally seeking wider control of the prison's

public spaces. Occasionally such groups come into conflict with each other over trade and collective reputation; more often, disputes stem from relatively minor disagreements between individuals. On the whole, though – as in the USA, prior to racial balkanization (Irwin 2005) – the social world is balanced by a multitude of cliques and social clusters which are relatively fluid and interconnected (see also Sparks *et al*. 1996). In higher-security establishments, where there are more prisoners with ongoing links to organized crime, gang and group hierarchies may be more apparent (Genders and Player 1989).

Indeed, in all penal jurisdictions, certain criminal offences appear to generate status and stigma in themselves (see Winfree *et al*. 2002). Thus, sex offenders are widely reviled by other prisoners (and have their own hierarchy, with those who have committed crimes against children at the bottom), while armed robbers, terrorists, high-level drug dealers and organized, professional criminals are given a certain amount of kudos.[3] As Morgan (2002) notes, though, such labels are problematic: drug addicts committing small-scale post-office robberies to fund their habits have little social standing; spouse-murderers and contract killers are considered within different brackets of criminality and credibility; and while terrorists and 'faces' (prisoners with reputations) are given 'respect', this tends to be based upon fear as much as admiration. Many petty criminals are as morally judgemental about serious, violent offenders and the activities of drug dealers as these more powerful prisoners are socially judgemental about them. Meanwhile, although certain offences almost categorically lead to stigma, few, in themselves, 'carry an automatic bonus of prestige' (Morris and Morris 1963: 226). Status and power are also associated with certain kinds of acts and attributes (see Schrag 1954; Clemmer 1940/1958; King and Elliott 1977). Low status tends to be assigned to prisoners who are unintelligent, provincial, cowardly, mentally unstable, poor copers, criminally naïve, and who inform on others. Prisoners who are unpredictably violent or uncompromisingly hostile are given little credibility, but their aggression allows them to carve out a certain degree of social space and autonomy. Those who are intelligent, charismatic, strong and criminally mature, who are faithful to inmate values and who do not subordinate themselves to officials, tend to generate respect (Clemmer 1940/1958; Sykes 1958; Irwin 2005).

These terms appear to have changed little since the early ethnographies, yet the precise nature of the prisoner hierarchy is related to the prison's institutional properties and to changes in the external world. In the early studies, 'merchants', 'politicians' and 'gamblers' derived their influence from the deficits in goods, information and opportunity that they were able to alleviate (Sykes 1958). Many UK prisoners report a decline in the currency of violence since prisons introduced anti-bullying strategies and challenged cultures of staff brutality. In the current system of England and Wales, it is significant that status and stigma are so closely bound up with hard drugs, in particular heroin. Since its widespread presence in the prison system from the late 1980s, heroin's economic potency, and the desire it generates, has made it a major source of power in the prisoner world, albeit in a form that is somewhat ephemeral and is different from respect (Crewe 2005b). In contrast, heroin users are stigmatized and disrespected. Their consumption indicates

weakness and dependency, and is associated with a range of behaviours – such as stealing and manipulation – that constitute serious breaches of the prisoner value system (see Chapter 17, this volume). The nature of power is also defined by an establishment's security status. In medium-security conditions, where prisoners are in sight of release, few seek to impose their power upon others for fear of what they might lose. Although a distinction between 'lads' and 'idiots' is apparent, on the whole, interpersonal power is granted rather than actively sought out and has implications rather than ends: it means being safe from violence, receiving a certain amount of recognition and having the capacity to intervene in wing issues and disputes, but it is rarely imposed upon others directly or for its own sake (also see Sparks *et al*. 1996: 177–8).

Like the prisoner hierarchy, the inmate code is more complex than basic maxims suggest and, while showing continuity with early formulations, has been responsive to changes in the nature and conditions of prison life. First, then, there is no simple consensus on its terms. Prisoners may agree that informing is generally wrong, but many believe that it is justified in extreme circumstances – for example, if a prisoner is going to be seriously assaulted. Likewise, while some prisoners consider charging others for small favours or demanding interest on loans to be shrewd, others regard it as exploitative. Secondly, there is considerable variance between its form, not only across the prison estate but also within individual establishments. The therapeutic prison, HMP Grendon, exhibits a culture without conventional norms about not informing on or disclosing to others, or distrusting staff (Genders and Player 1989). In young offender institutions, the ritual humiliation of vulnerable prisoners is legitimated by norms that revile weakness, such that violence and victimization are rife (HMCIP 2001; Edgar *et al*. 2003). By contrast, in adult prisons, although weakness is disdained, its exploitation is considered reprehensible (Crewe 2005a).

Thirdly, the code is subject to change, both in its content and its primary functions. Early theorists recognized there was considerable disparity between the solidarity that prisoners verbally demanded and the individualistic behaviour that so many of them actually exhibited. Clemmer suggested that code violations were most likely to occur among prisoners with loyalties to people both within and outside the institution. In Sykes's formulation, verbal allegiance to the code was virtually unanimous, but was based on markedly different motivations. 'True believers' were normatively committed to its values; other prisoners were more pragmatic, supporting it to stop themselves being exploited ('believers without passion'), or asserting it disingenuously to protect their violations from being reported (Sykes and Messinger 1960: 18). Nevertheless, writers agreed that the code was universally acknowledged and that, without it, prisoners would be all the more conflictual and confused. It provided a common source of identity and self-respect, promoted mutual aid and reduced the degree to which less respected prisoners were exploited. By the 1970s, as the prisoner community factionalized and turned upon itself, normative consensus likewise splintered (Jacobs 1977; Irwin 2005). The ideals of toughness and machismo that had formerly served as a collective mechanism for coping with the prison experience became sources of exploitation; the

informal economy functioned less to cushion prisoners against the prison's daily deprivations than as a wellspring of profit and power.

Notwithstanding the variations and complexities sketched above, a number of commentators have remarked that the cultures of men's prisons appear deeply inscribed by discourses of masculinity (e.g. Newton 1994; Sim 1994; Carrabine and Longhurst 1998; Sabo *et al.* 2001; Jewkes 2002). Common features of men's prisons, including the celebration of violence and toughness, the stigmatization of weakness and femininity, and fraternal codes of in-group loyalty, have been seen as gendered consequences of an institution that denies men sources of masculine affirmation such as work, autonomy and heterosexual relations. Sykes's (1958: 98) description of the manner in which, in the absence of female polarity and normal gender relations, male prisoners seek to demonstrate their masculinity through the 'secondary proof of manhood' remains an elegant summary of what has now become a recognised dimension of men's imprisonment. As Newton (1994) likewise argues, the prison breeds hyper-masculinity by taking men who already lack conventional means of establishing power and masculine status, besieging them with further threats to gender validation, and thus encouraging them to shore up their anxieties about weakness and dependency through the hardening up of stereotypically male traits.

Prison rape has been taken as the ultimate symbol of this dynamic (Scacco 1975; Wooden and Parker 1982). Although sexual coercion is relatively uncommon in UK prisons (O'Donnell 2004), in some jurisdictions it appears pervasive, and is saturated with gendered (and racial) meanings, creating a surrogate gender hierarchy and redefining the terms of masculinity in the absence of women. Typically, the man who rapes another man is not considered homosexual. Rather, his actions are taken to indicate dominance and masculine power, while the victim is irrevocably stigmatized and emasculated – often expected to carry out 'female' duties such as housekeeping. Those men who choose to take up a homosexual role within the prison's sexual subculture are less reviled than those who have the passive, 'feminine' role forced upon them. Correspondingly, within the prisoner hierarchy, respect seems to correlate with those offences and actions that entail the imposition of will and self-definition upon others: armed robbery, terrorism and the willingness to 'go all the way', regardless of risk. Discourses of masculinity – mutual interest in sports, shared notions of 'giving your word' – may also serve to lubricate relationships between male prisoners and staff (Carrabine and Longhurst 1998).

However, these mechanisms are complex and, in the UK at least, prisons do not exhibit a homogeneous culture of ruthless and uncompromising machismo. In relating to female officers, male prisoners are just as liable to use discourses of charm, chivalry and the 'good son' as those of sexism to confirm their masculine identities (Crewe 2006). There is a danger that, by focusing on the 'hyper-masculinity' of men's prisons, we portray the prisoner world as a lawless jungle, without moral baselines. Such representations ignore the banal kindness that characterizes prison life (certainly in the UK) and the ethical values that suffuse codes of acceptable behaviour (Crewe 2005a). These everyday details of the prison have tended to be documented within

the margins of other studies. These have also highlighted the importance to prisoners of clothing and body maintenance (Clemmer 1940/1958); the performative nature of public discourse in prison, based around embellished tales of past behaviour and the street, cynical pronouncements about criminal justice and 'the man', and often grandiose plans for the future (Irwin 1985); the private stories of personal demise and shame (Goffman 1968; Crewe 2007, in progress); the surprising punitiveness of many prisoners (Winfree *et al*. 2002); the 'mind games' played out on the landings between prisoners and staff (McDermott and King 1988); the combination of wariness, opportunism and improvization that characterizes the 'rabble mentality' (Irwin 1985); the raw, 'pungent argot of the dispossessed' (Sykes and Messinger 1960: 11); and the wit of prison humour, with its wry appreciation of the surreal (Morris and Morris 1963). Highlighting such dimensions is important in humanizing a world that can otherwise appear alien and inhumane.

Formulations that equate prison culture with masculinity are also troubled by findings that reveal the presence of coercion, violence and sexual exploitation in women's prisons. In general, however, the cultures of women's prisons have differed from men's establishments, being less tense and predatory (Zaitzow and Thomas 2003), harbouring higher rates of distress and self-harm (Pollock 2004; Liebling 1992) and lacking such strong norms of solidarity. Relative to men's prisons, collective adaptations function to provide emotional as much as social and economic support, while sex itself serves intimacy rather than power. To frame this in other terms, the particular pains of imprisonment provide the 'energy' for the adaptations that result. At the same time, it is important not to over-state the uniqueness of women's prison adaptations. In her (1972) study, Heffernan's identification of the 'square' (oriented to conventional norms and values), the 'cool' (more sophisticated criminals, able to control the prison environment) and the 'life' (whose orientations were based on street identities and who built lives within the prison) indicated similar patterns of imported orientations as those observed in men's establishments. 'Homegirl' networks of friendships and acquaintances from outside the prison are similar to the kinds of social lattices that shape the affiliations of male prisoners (Owen 1998). Furthermore, it is clear that characterise the nature of social life in women's prisons is influenced by the degree to which the regime is itself gendered. In their comparison of adaptations in two women's prisons in California, Kruttschnitt and Gartner (2005) found that women in the more restricted, gender-neutral prison were more likely to be distrustful of other prisoners and staff, to self-isolate and to report emotional distress than those in the prison which had retained more traditional assumptions about femininity and women's criminality (where adaptations were more diverse, relating to imported characteristics). In both facilities, there was little evidence of racial tension, and intimate relationships between women were common, indicating some continuities with older studies that emphasized the distinctive social lives of men's and women's prisons. Research of this kind alerts us to the danger of ascribing all aspects of prison culture to the imported gender identities of prisoners without paying sufficient attention to the role of the institution itself in reproducing certain kinds of gendered roles and behaviours.

Power, order and resistance

Some comments have already been offered on individual forms of resistance. But power is also exercised by prisoners at a collective level, most obviously in the form of riots, but also in everyday attempts to push back against the imposition of institutional power. As Sykes (1958) suggested, one basis of collective power is a shared set of values generated by common predicament – what might be referred to as structural solidarity – and the bargaining power that this provides. Collective power might also stem from values imported from networks and organizations located outside the prison (Jacobs 1977). Most notably, political convictions appear to be among the only adhesives that can bind prisoners into organized and purposeful collective action, particularly when reinforced through support in a wider social or ideological community (Buntman 2003). McEvoy (2000) describes how shared commitments to political ends among paramilitary prisoners in Northern Ireland provided both the will and solidarity that enabled prisoners to sustain long-term hunger strikes and dirty protests. Meanwhile, the power of these prisoners was bolstered by the strength of the paramilitary organizations within Northern Irish society, and their ability to intimidate prison staff. Polite but persistent requests over relatively small matters were underwritten by threats to the safety of staff members' families, allowing paramilitary factions to establish control incrementally not only over prisoners' cells but also the prison landings and other public spaces (McEvoy 2000, Chapter 13, this volume). The ability of individual prisoners to instigate legal interventions that apply to prisoners as a group means that another potent source of collective power is located outside the institution; likewise, the general moral norms to which prisoners often revert when lacking collective means of identification and assertion (Mathiesen 1965).

The ways that prisoners assert and resist power are defined to a significant degree by the ways it is imposed upon them. Imprisonment restricts normal means of coping (alcohol, drugs, friendship) and provides alternative means of exercising agency. In Foucault's terms, 'where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power' (1991: 95). Equally, prison institutions deploy power with forms of resistance in mind – primarily, that is, to achieve *order*. Order in prison is an issue of particular interest given the obstacles to its accomplishment that seem inherent in the penal situation. For Sykes, the pragmatic trade-off between rulers and rules was a *necessary* accommodation. Subsequent writers continued to explore how order was achieved through the values and hierarchy of the inmate community, stressing the combination of solidarity ('don't exploit others') and anomie ('but do your own time…') that made the code such an effective source of stability, and the conservatism of prisoner leaders keen to maintain the status quo. However, by the time of *Stateville*, with gangs less inclined towards negotiation and less in need of its benefits, powerful prisoners were undermining rather than contributing to institutional stability.

Of course, order had never been achieved through informal accommodation alone. It is also clear that Sykes's theory rested on a number of flawed

assumptions whose examination provides a useful means of exploring other components of order. One tenet of Sykes's argument was that the rewards and punishments offered by prison officials had little persuasive influence. Yet there is plentiful evidence that the opposite is the case, and that prisoners can be motivated a great deal not only by the prospect of freedom (early release, home leave) but also by 'details' whose significance is amplified in the spartan context of the prison (extra spending money, in-cell televisions). In the UK, the introduction of the incentives and earned privileges (IEP) scheme in 1995 was explicitly guided by the assumption that prisoners were more likely to comply when good behaviour brought material benefits (Liebling *et al*. 1997). Such rational choice models of prisoner behaviour may be flawed: the implementation of differential privilege schemes may be perceived by prisoners as unpredictable or unfair, which may lead to resentment and disorder. None the less, by easing the material deficits of imprisonment through formal channels (rather than leaving them to be filled by informal arrangements between prisoners) prison officials have reduced both the need for peer solidarity and the basis of collective identification. Prisoners do not share the same predicament and thus focus on individual rather than collective concerns.

Secondly, it is not the case that prisoners will inevitably lack any 'inner moral compulsion to obey' (Sykes 1958: 48). Few prisoners dispute the right of the state to imprison them; more importantly, the degree to which they submit to a regime depends partly on *how* their imprisonment is delivered, and whether it conforms to broad principles of justice. Prisoners recognize the difference between treatment that is fair, humane and respectful or brutal, inconsistent and dehumanizing (Sparks *et al*. 1996; Liebling 2004). These differentials are critical, for, even when prisoners dislike the outcomes of institutional decisions and practices, they are more likely to comply with them and accept the prison's authority if they can be justified in terms of values, beliefs and expectations that prisoners themselves hold dear. Here, the interface between officers and prisoners is critical. Prisoners will make normative judgements about an establishment according to its material provisions – decent cells, access to telephones – and whether its systems deliver fair procedures and consistent outcomes. But, as frontline representatives of the prison, it is officers whose everyday behaviour comes to embody the perceived legitimacy of the institution. It is at the level of staff–prisoner relations that the prison's everyday moral climate is determined, and its pains cushioned and crystallized.

Thirdly, although, as Sykes suggested, physical force remains a dangerous and inefficient way of running a prison with complex institutional tasks, it is by no means impossible to generate order through highly coercive and controlled regimes. In the USA, supermax prisons do this by separating prisoners from each other, minimizing contact between prisoners and staff, and employing stringent measures of restraint (e.g. handcuffs, leg irons) whenever dealing with prisoners (King 2005, Chapters 5 and 14, this volume). These organizations are a world away from the Big House, in which prisoners mixed relatively freely and were integrated into the daily maintenance of the establishment. In the UK, although very few prisoners exist in supermax-style conditions, situational control measures introduced since the widespread disturbances

of 1990 – smaller wings, fewer communal areas, more surveillance – have placed greater limits upon movement, association and potential disorder. As Foucault highlighted (1977), the use of timetabling and spatial organization is a key means by which prisons – and other state institutions such as schools and hospitals – regulate and discipline their members.

The achievement of control via architecture and restraint contributes to a fourth source of order: fatalistic resignation or 'dull compulsion' (see Chapter 8, this volume). For many prisoners, the sheer power imbalance within the prison, the stultifying routine and the constant symbolic reminders of powerlessness (security cameras, barbed wire, etc.) lead to a feeling that nothing much can be done about one's current predicament. This distinction between power that is accepted-as-legitimate and power that is taken-for-granted is crucial (Carrabine 2005). Not least, it would be a mistake to interpret an absence of challenges to institutional authority as an indication of normative consent. As recent analysis of the Strangeways riot implies (Carrabine 2004), if, in a context of deprivation and illegitimacy, the only thing preventing insurrection is this kind of acquiescence to the apparent inevitability of the situation, once this impression is shattered, the scope of a disturbance can very rapidly expand.

There is a great deal of variation in the means by and degree to which prisons achieve order. Supermax prisons come close to embodying a control-coercion model of order, while democratic-therapeutic prisons such as Barlinnie Special Unit have achieved high levels of legitimacy, even when dealing with difficult prisoners (see Boyle 1984; Cooke 1989; Sparks *et al*. 1996). On the whole, though, most establishments rely on a combination of techniques to achieve stability and cannot be characterized according to a simple model of coercion or consent. In the UK, in recent years, situational control measures and the IEP scheme have co-existed alongside efforts to boost legitimacy through improved physical conditions, and attempts to recondition staff cultures. Some power strategies themselves combine different elements of manipulation, routinization, normative persuasion and compulsion. In the UK, prisoners are being encouraged increasingly to self-govern and assume responsibility for the terms of their own incarceration, in a way that represents neither direct coercion nor autonomous consent (Garland 1997; Liebling 2004; Crewe 2007). They participate in defining their own sentence plans, but have no option to refuse one; they are motivated to address their offending behaviour, with the knowledge that there are implications in not doing so for their release date; and they are made aware that passively submitting to a regime will be less positively regarded than actively embracing its offerings. Through a discourse of threats and opportunities, prisoners are channelled and stimulated into producing institutionally desirable behaviour. Where successful, this retraining of preferences comes to feel natural and freely chosen. Elsewhere, it may result in performed compliance rather than true commitment (Crewe 2007).

Different ways of accomplishing order have different effects. Sparks *et al*. (1996) have demonstrated how an apparently more 'liberal' and legitimate prison might harbour more backstage violence than one that appears more authoritarian. This kind of everyday violence occurs *within* the normal

framework of the prison's social order (Sparks *et al.* 1996) and differs significantly from the breakdown of order itself, which may be more likely to occur in less legitimate regimes, where prisoners feel a profound 'lack of justice' (Woolf 1991: para. 9.24).[4] Of course, since order is accomplished through a combination of means, its disintegration has complex roots. Recent theories suggest that disturbances tend to occur when widespread prisoner grievances exist alongside administrative confusion and disorganization (Useem and Kimball 1989). However, if these were the only conditions necessary for riots to take place, they would happen far more frequently than they do (Carrabine 2005). To understand why riots happen where and when they do, alongside structural explanations, we need to theorize the pleasures and triggers of disruptive activity, and explore the mechanisms by which disorder spreads from what are often limited beginnings.

Sykes's claim that unrest occurred when the informal power of inmate leaders was undermined was simplistic, but there remains much of value in his analysis of the role of the prisoner community in securing order. First, the prisoner hierarchy is itself influenced by the deficits of prison life, such that, by reducing these deficits and providing official rewards, institutions can mould the adaptations that prisoners are required to make and the consequent currency of violence, trade and manipulation within the prisoner community. Secondly, where overseen judiciously, the capacity of prisoners to self-govern can be harnessed to positive effect. Prisoners themselves can reduce levels of alienation and can benefit from the freedoms that self-regulation allows. In turn, prison officials may not want *too much* solidarity among prisoners, but nor do they want the prisoner community to fragment into clusters of mutually hostile, untrusting individuals. The shape of the inmate body – the nature of leadership, the balance of different prisoner groups, levels of trust and friendship – can contribute positively or negatively to order. Finally, even if negotiation no longer seems the most effective means of securing order, prisons *are* systems of co-operation, where staff and prisoners have many common interests and values, and where these values contribute in significant ways to legitimacy, well-being and order. In the USA, DiIulio (1987) has argued that the informal accommodation approved by Sykes was a disastrous surrender of authority whose resulting lawlessness was inevitable. But a prison that relies on rules and restrictions, at the cost of relationships and consensus, might produce stability at the price of pain and permanent social resentment.

Conclusion

The sociology of prison life covers a vast landscape, but one that has been mapped selectively and sporadically. Meaningful comparisons between American and European prisons are made difficult by the rarity not only of comparative studies but also of the kinds of ethnographic explorations that best reveal the prison's social contours. Furthermore, in both countries, research has been concentrated in high-security facilities which manifest different social arrangements from more standard establishments. In substantive terms, there

remains a large amount of unexplored terrain. This includes the expanding and relatively unchecked influence of psychological knowledge and expertise in the running of modern prisons; the values, motivations and practices of prison governors; and the experiences of foreign nationals, and of a growing contingent of Asian and Muslim prisoners, within the prison system.

One reason why, in the USA, studies of the prison's inner life have become less common is that the relationship between policy-makers and the penological community has changed. In the early days of prison sociology, researchers and practitioners operated in close alliance. Clemmer conducted his fieldwork while employed at Menard Prison, and went on to be the Director of the District of Columbia's prison system and the Head of the American Correctional Association (Simon 2000). Some states employed not only social workers but their own sociologists too (Wacquant 2002). At the time of Sykes's study, social science was regarded as having a key role in forging a more ordered and successful penal system. Both his and Clemmer's research were highly influential within the field of prison management (Simon 2000).

Now, optimism about the state's ability to manage society through informed governance of its social institutions has receded, and there is less interest in prison social life as an object of study and intervention. In the era of the 'warehouse prison' and the supermax, prisoners are to be stored, contained and processed, either as a mass of bodies or as individual units of risk. To many prison managers, their values, adaptations and social relationships are somewhat irrelevant. There are more dangers than gains in allowing researchers to document this world, particularly for private companies with financial interests at stake. At the same time, low levels of government funding, the stringency of university ethics committees, the demands on tenured academics and the combination of low status and high threat that the prison represents have combined to make research into the prison's interior world increasingly scarce (Wacquant 2002). At a time when the prison population is exploding, prison ethnography is 'not merely an endangered species but a virtually extinct one' (Wacquant 2002: 385).

In the UK, prison research seems to be undergoing something of a revival, and links between policy-makers and some academics remain relatively strong. There are dangers here that research findings become simplistically co-opted into managerial agendas, and that attempts to reform the prison serve to legitimate its use as a substitute for welfare provision (mental health, community drug detoxification) and broader social policy. But the dangers of disregarding practitioners' interests in issues such as decency and prison suicide are surely greater (see Chapter 18, this volume). Many of the problems faced by prison managers relate to external issues, such as overcrowding, an increasingly vulnerable and drug-dependent population, and the rising numbers of foreign national prisoners. Where access is possible, it remains vital to illustrate the links between these external factors and the prison's interior life. This is not only to guarantee more comprehensive accounts of prison life but also to ensure that we do not elide larger questions about their social roles, objectives and consequences – what they should and should not be for, and what claims can be made for them. Likewise, prisons are

more than just abstract systems, and their study should continue to illustrate not only the humanity of prisoners but also the more universal aspects of humanity – distress, endurance, adaptation and social organization – that the prison's special conditions make so visible.

Selected further reading

Sykes's (1958) *The Society of Captives*. Princeton, NJ: Princeton University Press, is a remarkably captivating text, and continues to shed considerable light upon the everyday social terms of the prison. Likewise, Clemmer's (1940/1958) *The Prison Community*. New York, NY: Holt, Rinehart & Winston, remains a rich description of prison social life and culture whose concerns merit revision. For a more up-to-date account of American prisons, Irwin's (2005) *The Warehouse Prison*. Los Angeles, CA: Roxburgh, provides a good guide to current developments, as well as a clear sociological history of the US system. Kruttschnitt and Gartner's (2005) *Marking Time in the Golden State*. Cambridge: Cambridge University Press, not only offers a comprehensive review of the literature on women's prisons but also a well researched and thought-provoking analysis of adaptations in two different Californian women's establishments. Sparks, Bottoms and Hay's (1996) *Prisons and the Problem of Order*. Oxford: Clarendon Press, is a sophisticated analysis of prison order, with a good literature review covering many of the major texts on prison sociology. Liebling's (2004) *Prisons and their Moral Performance*. Oxford: Clarendon Press, documents recent changes in the England and Wales prison system and explores prison quality and experience in the context of managerial reform. My forthcoming book, *Wellingborough: Power, Adaptation and the Everyday Social World of an English Prison*, revisits the concerns of the classic ethnographies, such as hierarchy, adaptation, social relations and inmate culture in the context of the institutional power and policies of a medium-security establishment.

Notes

1 Beyond the ghetto, prison culture has penetrated the mainstream through rap music, clothing (e.g. baggy, belt-less trousers), tattoos, slang and a range of body gestures that register the perverse kudos of incarceration among those people least likely to experience it.

2 Sykes (1956) noted that 38 per cent of his sample were black, but said little else about race. Writing some years later (1995), he explained that researchers at the time assumed that the experiences of white and black prisoners were the same, and that being white also made it more difficult to undertake research among black prisoners.

3 In most UK prisons, sex offenders are housed separately from other prisoners, but continue to function in the moral hierarchy of mainstream prisoners as examples of what they distinguish themselves from.

4 There is insufficient space here to explore the causes of interpersonal violence, but see Edgar *et al*. (2003) for a symbolic interactionist analysis, and Gambetta (2005) and Kaminski (2004) for innovative discussions based upon behavioural and game theory.

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Chapter 7

Researching Russian prisons: a consideration of new and established methodologies in prison research

Laura Piacentini

Introduction

> You do what? Prison research? Why do you do prison research? I mean, they are really horrible places. There must be far less difficult types of research, and less depressing too.

This comment was said to me by a person whom I met on a flight to Russia in 2003. I was going to Russia to conduct five weeks of prison research. My first foray into Russian prisons lasted six weeks in 1998, followed by five months' fieldwork in 1999. Five weeks, therefore, did not faze me. That is, until I attempted to answer the question above. While it was obvious to me why I 'do prison research' and 'how I do it', my pleasant co-passenger insisted that doing prison research is 'crazy' because 'the majority of people do not care about prisoners or prison'. Prisons, she said, are best avoided. At that moment, I reflected yet again on why one would venture into what Cohen and Taylor describe as 'the cold and emotional world of the prison' (1981: 70). Yet, it is the above comment that captures perfectly the common reaction: stay away from this 'site of intractable conflict' (Sparks 2002: 556).

Over the last ten years there has been a notable increase in scholarly accounts of doing criminological research. While prison research testimonies provide rich accounts and offer comprehensive guidance as regards the process of acquiring penal knowledge and the often daunting experience of 'being inside', such testimonials are 'fixed' geographically to Western cultures and English-speaking societies. Rather than focusing on how researchers access the professional organization of the prison or how penal policy-making has 'reinvented the wheel' in terms of reducing recidivism (see Carlen 2005: 422 for a discussion), this chapter will instead survey a range of prototypical prison scholarship and explore the problems, the pitfalls, the complexities and the emotional intricacies that can surface. Drawing on my own experience of nearly 10 years of prison research in Russia the chapter offers new insights into doing prison research by focusing attention on the following. First,

the chapter engages with a discussion of some of the issues to think about before prisons are reached. In academic discussions of doing social research in Western societies, the importance of being reflexive is often acknowledged with attention focused on recognizing the social location of the researcher, as well as the ways in which our emotional responses to respondents shape the interpretive account. However, few prison research methods offer concrete ways of doing this. Secondly, the chapter explores some recent experiences of building reflexivity into what researchers do when they are in the thick of prison research. In doing so, the chapter highlights the limitations of Western research and asks whether the competencies, skills and methodological approaches that can be learnt from prison research conducted in Western localities are useful or, indeed, relevant in non-Western societies. I discuss here the process of acquiring penal knowledge based on *a criminology of emotional attentiveness* that fuses reflexivity with cultural anthropology to create a distinctive methodological approach. Finally, the chapter describes the difficulties in this approach and the existential, reflexive and gender-based conundrums that arise when prison research is conducted outside one's familiar cultural, social and personal terrain.

Some key contemporary prison research

Although doing prison research is invariably difficult, prison research is conducted almost everywhere. Over the last 10 years or so the growth in the number of countries where prisons have been accessed is remarkable. From Poland to Pakistan, societies are affected by the presence of law-breaking behaviour in a myriad of ways, yet the presence of the prison remains a static emblem of society's disapproval of crime. One explanation for the growth of prison research is that while there remains an obsessive uncertainty about whether the effects of imprisonment reduce recidivism, societies the world over have become more punitive (Christie 2004). For this reason, the expanding criminal justice systems of the last 30 years have generated huge opportunities to engage in a wide range of different prison research. The micro-aspects of imprisonment are researched in relation to how different social groups and different social relations operate, including research into older and elderly male prisoners (Crawley 2004a, Chapter 10, this volume); lifers (Jewkes 2005); prison officers' work (Crawley 2004b); paramilitaries in Northern Ireland's prisons (McEvoy 2001); governance of women prisoners (Carlen 1998; Hannah-Moffat and Shaw 2000; Hannah-Moffat 2001; Chapter 11, this volume); prisoner values (Crewe 2005, Chapter 6, this volume); prison education (Reuss 1999); suicide in prisons (Liebling 1992, Chapter 18, this volume); medical power in prisons (Sim 1990; Chaper 16, this volume); the use and role of television as a mechanism for coping with confinement (Jewkes 2002, Chapter 19, this volume); and prisoners' work (Simon 1999). There have been comparative studies of prison regimes (King and McDermott 1995; Sparks *et al.* 1996); comparative studies of different UK jurisdictions (Malloch 2000); and fewer still international comparative studies (Downes 1988; van Zyl Smit and Dunkel 1999; Piacentini 2004; King 1991, Chapter 5, this volume).

Penal policy is frequently attacked by prison sociologists who argue that rehabilitation programmes or 'interventions' (as they are officially known) are evaluated and legitimized by reference to their policy effectiveness (Sim 2003; Hillyard *et al*. 2004). The critical perspective, that imprisonment is part of the penal body politic, has been reinforced particularly forcefully in relation to women's imprisonment. Hannah-Moffat argues: 'prisons now speak of empowerment, choice and healing; yet many argue that little about the regime has changed and that few lessons have been learned' (2001: 4). Moreover, it is overwhelmingly the case that the vast majority of monographs on doing prison research are written from the perspective of the researcher and it is important to note that there has been very little 'methods' scholarship on how prisoners experience the process of being engaged in research (although see Bosworth *et al*. 2005 for an excellent article co-authored by four prisoners and a prison-researcher on doing prison research). The business of doing prison research has been explored and conceptualized from a variety of ethical, personal, sociological and psychological positions. Researcher testimonies describe emotional and intellectual dilemmas and what these dilemmas signify, a subject that will be returned to later. Here, I begin by setting the scene and describing the exercise of penetrating the physical barrier of the prison. I do not wish to engage here in a discussion of the politics of doing prison research, except to say that as researchers we may be responding to the demands of the public, the government and the media but, for the most part, we are also concerned deeply about the humanity of prisoners, their experiences, their families and their lives post-incarceration.

Penetrating the penal periphery[1]

Generally doing prison research in the West and particularly in English-speaking countries is mediated by several factors. First, it is crucial that the project as a whole is feasible in the objectives it sets out to achieve (including funding). Secondly, it is important to consider whether the research connects to policy areas – a particularly contentious factor due to the question of government interference and control over academic research. Government funding of research not only complicates access (because they become inseparable) but also complicates how the research is conducted, disseminated and published. The principal question that prison researchers confront, therefore, is whether government-funded research is 'strings-attached' research. That government bodies that fund research operate a 'what is in it for us' attitude is hardly surprising, yet it is important to recognize that such research can shape the institutional dynamic of imprisonment with consequences that order and reorder the material and ideological power with increasing and dramatic effect (see Hannah-Moffat and Shaw 2000; Hannah-Moffat 2001; Carlen 2005). Linked to this is a third factor that can affect entering the penal periphery: the volatility of the prison in relation to local tensions such as a prison disturbance or prison suicide. And fourth is the wider political or national context, which simply cannot be overlooked.

Two further issues need to be borne in mind. First is the more obvious political stability of societies and whether it is actually safe to travel to a

country and engage with the enormous bureaucracies of criminal justice (more on this later). Secondly, and on a more epistemological level, is that the reality of prison research is defined by the super-reality of the penal body politic (Carlen 2005). Commenting on the boom of criminal justice in the UK and USA, Hillyard *et al*. *(*2004) argue that the prison is the persistent material and metaphorical symbol of state power. Prison research has grown to entirely utilitarian proportions with frequently underdeveloped theoretical insights (Cohen cited in Hillyard *et al*. 2004: 383). The impact, therefore, is immeasurable: prison produces 'misery' which creates further opportunities to profit from the misery, including 'academic entrepreneurs' (2004: 370). While I recognize that a greater appreciation of what society does with its incarcerated offenders can be achieved by placing the prison at the centre of modern-day governance, and that the rise of evaluative prison research has led to ethnographic research becoming 'endangered' (Wacquant 2002: 385), premising prison research on the growing crime control industry is problematic when non-Western societies are accessed for research.

Epistemological questions

Being armed with such factors in mind and having support from official channels in place does not guarantee successful prison research. Reiterating Sparks' earlier point, the prison is a peculiar site for social research. It is a well bounded space where enormous bureaucracies and conflict can render officials suspicious of the research and prisoners weary and afraid. Indeed, the mere presence of a researcher can be a limitation to the research. The bulk of the discussion on doing prison research focuses on how penetrating the unique physical barrier of the prison educes burdensome non-physical barriers in terms of gathering information (building social rapport while suspending moral judgements); coping with an intricate ethnography (establishing position and purpose in an unfamiliar 'deep place'); and navigating the complex relationships between captives and custodians (the myriad power relations that operate within this unique environment). As Denzin points out, as social researchers we are integral to the social world we study: 'the Other's presence is directly connected to the writer's self-presence in the text' (1994: 503). Knowledge and understanding of social phenomena, therefore, are historically and contextually grounded. Clearly, then, the researcher, the method and the data analysis are not separate entities but are instead reflexively interdependent.

Of key note here is that the prison is a threatening place, but one that demands a special research stance. Mauthner and Doucet (2003) argue that the common presentation of methods as mechanical, neutral and decontextualized renders researchers invisible along with the social, interpersonal and institutional context. As the above discussion of penetrating the penal periphery shows us, methods of doing research and analysis cannot be neutral and instead carry with them the epistemological, ontological and theoretical assumptions of the researcher who develops them. We cannot separate debates about the nature of the knowledge investigated from more concrete discussions about the research method. In terms of how knowledge is claimed, acquired, organized

and interpreted, the researcher must manage his or her identity and figure out where he or she stands.

Identity management: an ethnographic conundrum

If we recognize that as social researchers, we are integral to the social world we study, then a problem can emerge when our subjectivity – our 'selves' – becomes entangled or bound with the lives of others. Prison researchers have been particularly vocal on this point largely because, when doing prison research, it is extremely difficult to come away ambivalent about the inner workings of the societies under investigation. While contentious areas of penal policy are best avoided (King 2000), nevertheless, events *during* fieldwork can alter dramatically the position of the researcher and the purpose of the research. Cohen and Taylor (1981) found that incubating in the prison during their research fieldwork was the emergence of a penal system committed to security and control. The publication of their findings (based on covert research activity) was considered so controversial that it had a lasting impact on the Home Office's willingness to allow academic researchers access to prisons. In the case of Sparks' (2002) research in Scotland's Barlinnie Prison, the position from which he researched the prison was implicated (unintentionally) in the closure of one of the Scottish Prison Service's most progressive correctional facilities. Sparks puts this down to his position as ethnographer and evaluator, and adds: 'Prisons are even more apt than most other institutions to generate lines of conduct that from afar look bizarre, irrational and self-confounding. The rules of engagement that obtain within them are obdurately impenetrable other than by close and extended involvement at first hand' (2002: 578). Reflexive accounts of managing identity forcefully juxtapose the world of the prison and the world of the researcher; worlds that frequently collide to create unforeseen outcomes, which can in turn lead to troubled interactions that are, none the less grounded in the world under investigation. In an intriguing Postscript to the second edition of *Psychological Survival* (Cohen and Taylor 1981), John McVicar (former prisoner and acclaimed author) describes how the 'jerky nervousness' of Laurie Taylor during the fieldwork gave way to a dynamic and compelling researcher–researched relationship where the research participants were 'brought to life'.

The ethnographic method affords researchers a concrete way of telling the research story. First, though, feelings of affection, trust, allegiance and identification must be established. This is what Ferrell and Hamm (1998) describe as a criminology of emotional attentiveness: the more affective the fieldwork, the less distance there is between researcher and researched, and the more rigorous is the analysis. However, 'devotion to the task' (Liebling 2001) in prison research is problematic. The peculiar dynamic of the prison largely rests on the relationship between prisoner and officer, and this often produces conflicting emotions on the part of the researcher. In terms of identity, researchers have described as feeling odd, being a spy, feeling without position or purpose or being 'green' (see Sparks *et al.* 1996). The prison researcher has to prepare for anything and everything in order to navigate a world where prisoners can be fearful and sometimes hostile, and where

prison staff can be disdainful, bemused or horrified at their endeavours. Such problems of 'managing identity' extend to gender, race and ethnicity, and sex. Some fieldworkers have argued that it is harder for women to engage with the research field. In adopting a feminist methodological approach to prison research, Smith (in Smith and Wincup 2000) found that, to navigate the complex power structures, she adopted different identities, from parental towards the female prisoners she interviewed, to engaging in sexualized banter with staff. While it may be deemed desirable to adopt different identities at will, this is not to say that multiple 'identities' are not emotionally burdensome, even if they do open doors (Smith and Wincup 2000). Similarly, Ferrell and Hamm (1998) argue that the 'up close' nature of the ethnographic method can pave the way for thoughtful theoretical considerations, but only if researchers connect to broader identities and situate themselves inside the emotions of crime and punishment. Consequently, ethnographic attentiveness not only fills the outlines of criminological conclusions but also makes critical engagement with others possible.

Figuring out where you stand and navigating relationships

The dilemma I wish to address in this section focuses on the debate about neutrality in prison research – a debate that is not about whether to take a side, but *whose* side. Can prison researchers avoid taking sides? Moreover, in taking account of the fact that there is a range of influences that shape research at the data collection stage, what are these influences, where do they come from and do they inject bias? These complex and perplexing questions have been recently addressed by Liebling (2001), Sparks (2002) and Wacquant (2002). These authors confront the significance of connection as a paradigm for prison ethnography and the methodological and intellectual conundrums researchers face when they are the observer, the recorder and the 'marginal participant' (Sparks 2002: 557) in penal settings.

Let us first consider that the dilemma of asserting a 'position' as a prison researcher can be traced to the symbolic representation of the prison in contemporary society. Societal attitudes to law-breaking range widely and wildly. From noisy, hard-line and populist stances in newspaper and television headlines demanding swift and severe punishments, to what can be described as rehabilitative optimism on the part of those who administer imprisonment (and captured in the pioneering zeal of 'initiatives', interventionist approaches and allied agency working), generally speaking, there are two sides of imprisonment. On the one side, prisons epitomize the confinement of difficult-to-manage persons against whom society has *won*. All that is demonic about the human spirit is reflected in the prison and society's rightful deprivation of liberty is the justified response. The other side of prison is reflected in the personal background of those whom society incarcerates, 'the vanquished', whose drug and alcohol addictions, economic deprivations, marginality and disconnections from mainstream society challenge the first premise of the prison as the container of the dangerous (see Carlen and Worrall 2004; Jewkes 2005). The prison, it could also be reasonably said, holds persons against whom society has *failed*. On a macro level, this is how prison operates, as an

institution comprising two contradictory and confusing tenets that performs an unambiguous punitive role but which is also a response to social failure. For the prison ethnographer, this is why the research site is so contentious. Sympathy towards staff could give credence to the punitive side and sympathy to prisoners could establish credibility among the captive population.

The second issue affecting the position of the researcher is that, once inside a prison, one is confronted with the prisoner–prison officer dynamic: a relationship that is mediated, controlled and managed in a complex micro-world of human relations and social interaction. While there are clear lines of demarcation and distance between prisoner and officer, there are also complex and inextricable linkages and proximities because order, accommodation and compromise must be negotiated. Prisoners and officers share a common geographical, emotional and social isolation from the outside world that can break down the distinction between prisoner and officer, creating shared solidarities and shared identities that can sustain life until the prisoner is released or until the officer goes home (see Chapter 20, this volume). In addition, the prison, its rules and its flow of physical and social interaction demand compliance from both the officer and the prisoner, while the masculinist, hierarchical and austere environment must be shared by all.[2] Nevertheless, although the prison is a complex world of multiple layers and multiple divisions, for the prison researcher it often comes down to taking one of two sides.

The third issue that influences the position of the researcher is social attitudes to law-breaking, particularly to the sympathies that prison sociologists have documented towards 'deviants' or subordinates. Liebling (2001: 472), discussing an article by Howard Becker ('Whose side are we on?') published in *Social Problems* in 1967, argues that it is technically and morally impossible to remain neutral when doing social research because 'personal and political sympathies contaminate'. Drawing sympathy from one side of the research tableau is a particular moral conundrum for prison researchers deriving from a long-held 'deep sympathy' (Becker 1967: 240 cited in Liebling 2001) towards deviancy – a sympathy that is embedded in the intellectual ascendancy of prison research from the 1960s onwards. Most recently, empathy towards prisoners has been echoed with particular eloquence in Andrew Coyle's Foreword to Liebling and Maruna (2005: xx): 'One of the dangers when studying criminology is that one can come to view the prisoner as an object rather than a subject, engaging in supposedly neutral analysis of whether human beings suffer "pain", or indeed are affected in any way, by the experience of imprisonment.' While an effective way to engage *during* prison research is to appeal affectively to the subordinate status of prisoners and the superior status of prison officers, too much sympathy with either party can create tension between objectivity and participation in prison research.

This issue resonates in all the prison research I have read, studied and engaged with over the years. Time and again the demanding transition from free citizen to prisoner is described in graphic and at times harrowing detail (see Sykes 1958; Sim 1990; Jamieson and Grounds 2005). Stories marked by anxiety about how to survive imprisonment and fear for the future culminate in conclusions that prison is a catastrophe (Crawley and Sparks 2005).

Invariably the prison researcher is faced with the balancing act of giving an intellectual account of 'what is happening' while suspending 'what ought to be' (see Liebling 2001 for debates). Indeed, a good example of the complexities of suspending or not suspending moral beliefs about what ought to be done to improve prisons, as ascertained from doing research, is the powerful international penal reform movement, which time and again reminds us that terrible inhumanities are often committed in places of confinement. As one academic prison sociologist once said to me: 'I believe in penal reform but I am an academic too. Do I let my data speak for itself without making explicit comments on what ought to be done?' However, Liebling (2001) criticizes this as one-way traffic and she asks prison researchers to consider why it is expected that they should have sympathy for prisoners but not for prison staff (see also Chapter 20, this volume). This is a provocative question that cuts to the very heart of prison research. Liebling argues that prison researchers can take more than one side seriously by adopting a third or 'more enlarged perspective' outside, and different from, the participants' (2001: 478). It is a question of style and approach as to how this standpoint is reached, but it can be achieved by researching both superordinates and subordinates; and by having all those who shape the prison environment present, while being intellectually attentive to the complexity of hierarchy and the nature of agency and power (Liebling 2001).

In summary, prison relations and conditions cannot be ignored by researchers. But engaging with officialdom does not necessarily mean being blind to the 'real' picture or taking sides either, as I will illustrate shortly with an account of my own research experiences in Russian prisons. Most prison researchers work in the field with integrity, professionalism and negotiation by establishing their 'own standpoint' position and by looking in more than one place at the social phenomenon of the prison. If the prison is to be understood better, analysing the whole means not only an engagement with the distressing culture of imprisonment (as it has come to be described many times over in research testimonies) but also an attempt to synthesize findings within a political analytical framework that seeks to pursue knowledge on the causes and consequences of the gathering pace of mass incarceration the world over. With careful research methods and a commitment to intellectual autonomy and honesty, and with engagement with the active voice of everyone connected to imprisonment, including officers and managers, the 'I' who is observing can get a better sense of what is happening. The danger of disengagement from authorities, I have found, creates not only a partial account but also simplifies imprisonment by keeping the prison locked within a struggle with itself rather than as a terminus for social and political attitudes.

In addition, while the commitment and non-ambivalence about the researcher's role in the prison are evident in the academic literature, the ways in which the role of researcher is linked to the epistemological and other assumptions underpinning data collection, and the theoretical and methodological tools available to operationalize reflexivity, are under-explored. In the remainder of the chapter, I describe what I have learnt, and continue to learn, as a researcher engaged in non-Western prison ethnography. In what

follows I demonstrate my experience of interconnecting reflexivity with the research method. I assert a position that prison research demands so much more than a clarity of purpose. It entails straddling the complicated position of being an observer, while experiencing nothing less than total cultural immersion.

New directions in 'doing prison research'

Although the prison research mentioned so far reflects a deep engagement with the core of the prison world, prison sociology has faced two problems of late. First, it remains principally constructed from Westernized or Western European foundations. Secondly, accounts of penal development, particularly cultural analyses, have tended to exclude the interplay between creative cultural rituals and doing research. Among the many challenges I faced in accumulating empirical data and developing theoretical knowledge on Russia's penal system was breaking into a hitherto neglected criminology. Broadly stated, my research documents what happened to Russian prisons after the fall of the USSR in 1991. I am interested in mapping out structural changes in imprisonment (such as changes in penal practice and penal philosophy). I also examine how deeply ingrained criminal justice attitudes, values and assumptions which once projected an extraordinary culture have come to be transformed. It quickly became apparent to me through comparison that the problems, pitfalls and experiences I faced were not Russian-*prison* specific but were rather Russian-*culture* specific. This brought me to a crucial question: are the competencies and insights that are recognized as providing a perspective for fieldwork in Western prisons useful or indeed relevant in non-Western cultures? I suggest here that reflexivity cannot be confined to social location (the prison in this case), theoretical perspective or interpersonal and institutional context. Neglected factors, such as the cultural context and temporal shift, can also deeply influence the research process and the ontological and epistemological assumptions and outcomes.

From discourse to experience

The discussion so far has outlined how prison research lends itself to the ethnographic method and that in being 'up close' the researcher situates him or herself socially and emotionally close to respondents (which is also a key element of reflexivity). Researchers must, therefore, establish some sort of connection to their respondents. However, conducting international research where common identities are reduced beyond gender, culture and socio-demographic status exacerbates the dilemmas mentioned earlier in relation to established methodologies. First, in losing contact with familiar cultural environs, we risk becoming lost from our point of origin. While it is possible to go 'native' in any research setting, in conducting research in one's backyard so to speak, it is possible to identify with culture, language, history and contemporary development.

Secondly, international prison research places extra emotional demands on researchers. Loneliness can be minimized when one leaves the field

and comes home to familiar cultural surroundings, stability, familiarity and everyday routines such as watching television, cooking a meal, telephoning a friend or switching on the radio. The emotional response of feeling one is an outsider is a *constant* burden for researchers who operate outside familiar cultural realms and where points of physical and emotional exit from the researched world seem blurred, oscillating and fleeting.

Thirdly is location. While I have acknowledged that political upheaval can shape and define the contours and direction of incarceration, often overlooked is how *culture mediates researcher identity* and the research process. Rarely is it the case that criminologists retell stories of how the social order of societies under investigation is disrupted (destroyed even) by chaos (political scandal, danger, even death).[3] Rarer still do researchers recall how the chaotic bigger picture then necessitates radically altering one's language, lifestyle, dress and diet. The point I wish to make here is that Western research accounts expose a taken-for-grantedness in the 'doing research testimonial' possibly because there is a degree of material, economic and political stability in Western societies. As prison research location has become conventionalized, so too is it the case that methods become mainstream. Such a state of affairs, argue Ferrell and Hamm (1998), creates conventional criminological correlations. On the one hand, unwavering formal order leads to a more systemic and deterministic understanding of social institutions and social behaviour. On the other hand, *not* straying from one's own culture blinds us to the new but as yet unknown dynamic discourses that produce peculiar and often contradictory cultural images alongside each other. As scholars operating in the area of transition in criminal justice argue, the boundaries of engagement have to be tested to the limit by placing oneself 'deeply' within culture and abandoning pre-existing professionalisms (see Ferrell and Hamm 1998; McEvoy and Mika 2002; Marks 2004). Juxtaposing the prison within an ethnography whose primary element is 'connecting' presented me with the challenge of unravelling the symbiosis of the carceral and the cultural.

Russian prisons: limitless boundaries of engagement

Researchers make 'choices' with regard to the ontological and epistemological positioning and methodological and theoretical perspective.[4] Having discussed the institutional context, I will now turn my attention to the interpersonal context and political setting. In my case, the boundaries of engaging with Russian imprisonment stretched way beyond the formal textbook approaches of how to do prison research and extended to mastering the Russian language, immersion in Russia's complex penal history and affective sharing and non-avoidance of Russian culture. In other words, a complete suspension of my previous 'selves'. I discuss these briefly here to set the scene for how the cultural approach to prison research was practised on the ground.

Russia is an enigmatic country. Spread across 12 zones, its culture straddles Europe and Asia but in a unique blend of its own. It is this unique blend that many say is at the heart of its sensibility – the mysterious Russian soul – that is captured eloquently in the many great works of classical literature

and musical masterpieces. Yet Russia also has a legacy of prison camps which operated on an inhuman scale for most of the twentieth century. From historical records and from oral testimony gathered by non-governmental organizations, it is possible to construct a criminological image of the prison system in the USSR: a story that is far different from the story of penal growth in any other country in the world. By subverting and supplanting Marxist criminal justice discourse to create the crime of 'anti-Soviet agitation', the Soviet regime was guaranteed a vast number of offenders whose anti-Soviet crimes could be atoned through forced labour on giant state projects and through political correction. The propaganda surrounding imprisonment was breathtaking – a bold fusion of the cultural with the carceral. By contributing their labour to the centralized net state income, prisoners were presented as perfect proletarians and builders of communism, working in a system constructed around loyalty, honour and glory. Prisoners, therefore, would be returned to communities not as profaned former convicts but as model communists. This was the penal fantasy that prisons, like schools and healthcare, could operate as a microcosm of the Utopian destiny of Marxism/Leninism. In contrast to official versions, prisoner memoirs reveal a prison system with exceptional features (see Solzhenitsyn 1986).

The personal deprivations that the Soviet prison inflicted extended way beyond the common (but no less painful) deprivations reported in other prison research (see Chapter 5, this volume). The brutal nature of criminal justice processing imposed a unique set of deprivations for the Soviet prisoner. The bureaucratic requirements necessitated the aggressive use of arrest, clandestine trials and transfer to the Gulag and added to the already routine anxieties that prisoners face in how they cope with the weight of imprisonment. Prisons in the USSR were everywhere. Inaccessible areas had prison camps built on them – the Kolyma region (covering hundreds of miles of vast taiga) was really a vast prison. The precise number held in Soviet prisons for the entire Stalin period (1926–52) is believed to be 12 million (Bacon 1992, 1994). Although the Gulag was dismantled after Stalin's death in the 1950s, the prison system was not static: it continued its penal economy of forced labour on a major scale. Prisoners dug for coal, hauled timber and built roads in camps thousands of miles from home. There was appalling squalor in Soviet prisons coupled with acute overcrowding and death from freezing temperatures, from disease and from industrial accidents. Soviet economic rationalism created an unusual cultural configuration. First, rather than lead to escalated paradigms of 'otherness' and 'alienation', prisons served instead to create a particular Soviet prison complex, communicating that, regardless of their ideological function, imprisonment was utterly necessary for great modernization. Secondly, since prisons were a microcosm of Soviet life where health, education, housing and surveillance all had their Gulag equivalent, Soviet modes of penality came to be normalized, as did very high prison populations. Propaganda led not to an anti-prison consciousness but to a deeply ingrained psyche and a powerful cultural reality. There was an invisible boundary to imprisonment whereby prisoners once released would continue to reside for varying lengths of time in the localities where they were exiled.

As a prison researcher, embracing Russia's history, language and culture so different from my own was – and remains – burdensome. Twentieth-century Russian prisons were culturally complex. While there was a deep interplay of political culture (prisons produce model citizens) with economy (communities can be established through a prison build), the prison system was also constructed from fear (random late-night arrests, kidnappings and clandestine trials) and falsehood (ideological subversions of criminality and fabricated statistics). Some of the complexities to do with penal culture and what it stood for are also captured in the literary memoirs and poems of the time and it is important to say something about these here as they have served as essential tools in the process of 'doing prison research'.

The cultural anthropological approach to prison research

Through creative expression, writers and poets have provided some impression of the scale and administration of imprisonment, as well as of the sheer horror of the camps. From the works of pre-Soviet writers such as Dostoevsky, we learn of a penal system that evolved initially according to a Western model of incarceration and re-education. The astonishing story of twentieth-century punitive excess is captured in poetic and literary works, which convey a thematic intimacy with incarceration as well as the context of a culture going through enormous change.[5] Armed with these creative impressions and expressions in mind and a theoretical view of Soviet imprisonment as inextricably linked to the modernization of culture and society, it was further necessary to engage in more 'behind the scenes' preparation for fieldwork, such as mastering Russian. The research naturally and intentionally lent itself to an ethnography of connection due to the closed nature of Russian society and the fear and suspicion towards Westerners (whether real or imagined, the effect is the same). There has been significant economic and political turbulence in Russian society that remains today. This is a deeply wounded society which has faced many problems and obstacles in responding to change. It became immediately apparent to me that to enter that environment and operate in close proximity to the events would enable a more empathic, attentive response to my 'being there'.

My research comes close to what Ferrell and Hamm (1998) refer to as criminological edgework. That is, I was committed to travel *wherever* was deemed necessary and do *whatever* was necessary to obtain critical and thoughtful observations. Even today, I spend my fieldwork living either inside regimes in separate staff quarters or very close to the prison establishments in a local hostel or hotel. This is a form of ethnography leaning towards cultural anthropology because deep immersion in Russian culture (language, rituals, social behaviour, law-abiding behaviour, literature, custom and any other capabilities and habits acquired for members of society) is utterly necessary to trace Russia's penal development and beliefs about that development. Reflexivity for me was about *affectively* sharing to create *mutuality*. In as far as it was possible, this provided me with multiple places to stand in the story of Russian prisons and also multiple levels of emotionality, experience and knowledge which I could connect to the experience of those living

and working in the prisons. This new epistemic framework of emotional empathy, constructed and expressed in a new language, allowed me to reach places emotionally (understanding, fear, guilt, confusion and suspicion) and physically (cold sweats, eating rituals, physical collapse, laughter, illness) way beyond the boundaries of objective method. In so far as understanding imprisonment as ingrained in the wider cultural sensibility through total cultural immersion, an appreciation of the concepts and meanings that shape the contours of contemporary (transient) Russian identity was found (see Piacentini 2004).

A criminology of emotional attentiveness

As mentioned earlier in the discussion of Liebling (2001), Sparks (2002) and Wacquant (2002), prison research can be approached by developing empathy for the researched world. Every research trip I make to study Russian prisons involves breaking with a mode of life that is familiar, rejecting distance and objectivity in favour of engaging with the cultural imagination of the society and grappling with social questions of identity and stability. This is akin to weaving into the research story a cultural narrative. In the research I undertake, this is achieved by losing contact with, or minimizing, the realities from home and instead being touched by the wider culture so that, as a researcher, I see the world from the perspective of the participants and develop a sensitivity to any changes. One example is that I participated in many late-night discussions with staff who had a strong desire to discuss contemporary imprisonment in the context of changing relationships and expectations of individuals in the new Russia. Discussions of imprisonment were not separated from discussions on the legitimization of religion, domestic relationships, equal rights, capitalism and free speech. All the data gathered were peppered with commentary on what it means to be a Russian today and administer a 'modern Russian penal system'. It was therefore necessary to explore how prison personnel felt about being 'custodians' and not 'correctional officers'. Unsurprisingly, personnel who had trained under the Soviet system found this an emotionally difficult issue because it touched on the very essence of Russian identity. Bold defences of the 'Slavic soul' were conveyed, paving the way for nostalgia from some towards the Soviet Gulag.[6] As I unlayered the data on imprisonment, thicker descriptions of the cultural direction that Russia is heading revealed themselves. Armed with these descriptions I was able to test for their presence within wider social attitudes through conversations with friends, acquaintances, hotel staff and anyone else with whom I spent time.

By 'giving in to the culture' and not speaking in my native language, I am able to employ various methods that test the boundaries of conventional prison research. Conventional methods include triangulation of the methods wherever possible (semi-structured interviews with personnel, prisoners and officials, and observation). Less conventional is that all my interviews are conducted in Russian and usually tape-recorded. On some occasions, prison guards have been suspicious and I was required once or twice to handwrite my notes in Russian and pass them to the interviewee for inspection. On

no occasion have I ever been asked to alter the responses. The most notable difference is that the setting and structure of the prison interview can vary. Interviews with prisoners tend to correspond to the more formal arrangements common in most prison research whereby I interview prisoners in an allocated room or private area. Sometimes, I have been permitted to interview prisoners alone, but on other occasions a prison officer has been present. The interviews with prison officers rarely take the form of face-to-face interviews. It is more often the case that I spend much of the day hanging around offices and then conducting an interview at the end of the day, usually at late hours. Given the nature of the research and the history of Russia, off-the-record conversations yield more data than recorded interviews.

Also important here as a new approach to prison research is an engagement with cultural rituals. While, on the one hand it is assumed that I can only partially adopt the mindset of 'a real Russian' (in so far as I cannot become fully competent as a native; see Kane 1998), it is also presumed by the majority of participants that in getting inside the more pleasurable experiences of life in Russia, I may be able to learn about penal life. It would be falsehood to say that is not an ambitious expectation of the researcher. I am not aware of other prison researchers (e.g. in the UK) attending social gatherings where it is 'insisted' that they sing national anthems and recite poetry. Luckily, my interest in Russian culture, conversing in Russian and 'hanging around' enables a positive engagement, thus reducing some of the cultural inequalities that can arise when Westerners engage in unfamiliar settings. Despite performing my Russian mindset with empathy and understanding on some occasions, the respondents' expectations of me have created an imbalanced dynamic that – when fused with sexual politics – has made me feel exploited. The pressure to side with Russian political views on the Chechen conflict, for example, was immense in 1999 and 2003 and created relationships that were rule bound, interrogatory and patriarchal.

Suspending the feminist self

The shortage of criminological research in Russian prisons, coupled with my status as a female researcher, has produced a high degree of suspicion. I judge that, while respondents tend to feel safe in the knowledge that I am a woman and therefore 'non-threatening', they are distrustful of my status as a *Western* woman. It is less common for Russian women to conduct empirical research in prisons, which means that I must defer to the masculine world that routinely operates in Russian culture (let alone the penal realm). Rawlinson (2000) describes her research into the Russian *mafiya* as necessitating a degree of 'gender bending'. I would go further and argue that prison research demands suspension of my feminist selves – that is, amplifying femininity and exaggerating aspects of my self to reflect the patriarchal nature of Russian society (see Rawlinson 2000). While I resist colluding with such gender constructions that expect women to look feminine and behave in a subservient and passive manner (for men), in the end I reconcile the feelings of guilt and embrace the expectation to look youthful and attractive. My reasoning is that, while my interest in Russian culture and language might get me into

the prison and past the endless bureaucrats, I will remain for ever on the 'outside' if I do not abandon (albeit temporarily) my previous selves. While this would appear to be supported by prison fieldwork by other women prison researchers, where my work differs is that I cannot retreat back into a world where patterns of living and working are on a more equal footing to male colleagues. This is not to assume that 'male settings' do not exist beyond the prison wall in Western societies. The point I wish to make is that my choices in how to exist and behave outside the fieldwork are restricted. Any obstacles I face regarding my gender are likely to reside so long as I resist the culture. I am compelled, therefore, to accept the incongruity of most male behaviour. This is an ongoing issue in the prison research I do in Russia.

The process of 'giving in' also extends to my relationship with women who can sometimes be distrustful of my position and motives. Ironically, being a woman can be more of a hindrance in the female relationships I attempt to build. There is virtually no common experiential or personal ground between me and the women I meet, a minority of whom in the past have looked at me resentfully because my life has afforded me far greater social, intellectual and financial opportunity to live independently and free of men. Lindlof (1995) makes the interesting point that reduced common boundaries can often become the main focus of inquiry and this has undoubtedly been the case in the past when managing the relationships with women.

Some key summary points arise here. First, my research captures a segment of time. These experiences are not certain epistemological accounts of scholarly truth but, instead, are my readings of uncertain, complex human situations reached first through a process of interaction that is determined by the methodological approach of seeing lives from within. Nevertheless, and secondly, comments such as 'you are one of us now' disrupt the circuits of power in the prison and my personal sense of isolation and loneliness. I would even go as far as to say that the discourse of emotional empathy and deep immersion in cultural mores makes being close to the penal world pleasurable at times, because I have earned the trust and respect from a culture that for many remains impenetrable. Taking into account that some interviews have to be discarded because they are unreliable (interviews with prisoners conducted in the presence of personnel) and other constraints aside, in the course of two periods of prison research in Russia in 1999 and in 2003 I have conducted over 250 interviews (219 with staff and 31 with prisoners). Thirdly, when it is considered how I intellectually, psychologically and emotionally 'travel' to Russia (through the poetic forms, mastering Russian and navigating the dangerous minefields of cultural immersion, communication, negotiation and co-operation), it is unsurprising that my prison research creates not insignificant emotional and psychological responses. Ironically, it is the actual approach that I am keen to adopt – immersion in culture – which, on the occasions I have been in Russia, has led to serious existential anguish in navigating the 'doing research phase' due to over-immersion and changed physical health (fainting spells, tick bites and rapid weight loss, very poor diet).

A criminology of ethnographic collision

The cultural anthropological approach that I adopted on both research trips was informed by particular ontological assumptions. For example, at the core of the method is a concept of imprisonment linked to the notion of selves-in-relation-to the carceral. My respondents were viewed as interdependent 'of' rather than independent 'in' the prison realm. The meanings, language and thoughts framed the self in a particular way by fusing the cultural with the carceral (letting go of the past, nostalgia for Soviet prisons, resentment towards marketization, hostility towards the political establishment and social change in the new turbulent period). Because my work is ethnographic, I too became embedded in a complex web of social relations in terms close to notions of the self in symbolic interactionist theory. For example, building cultural anthropology and reflexivity into the methods created interactive relations with the prison environment that included being perceived as the 'office-hand' (due to accessing staff in their offices relatively freely); being perceived as 'daughter and friend' (from living and socializing with staff); being 'a traditionalist' (by advocating for certain modes of 'traditional' Russian culture such as literature over mass media); and being a 'sick guest' (due to isolation from home). Interestingly, developing ill-health created skewed and unusual interactions with the communities of the prison and intimate relations with healthcare officials due to deteriorating health and diet.

These interactive relationships were experienced amid a shifting social and political context that resulted in detachment from familiar modes of life and my previous self. In effect, by getting inside the setting I was getting inside the emotions of my respondents and, hence, I was now writing myself into the story. But the story was complex, oscillating and turbulent. Consequently, the unusual immersion and up-close insight were volatile and I was jostled into various directions. Kane (1998: 140) characterizes this as 'productive turmoil' where lines between the professional and the personal blur. I would take this further. Utilizing Goffman's theory of the socially constructed self – that is, the distinction between the public identity and the private self – the confusions and my recovery from them were *compulsive* (seeking to avoid the 'Stigmatized Self'), then *chaotic* ('Overreach'), before becoming *restrained* ('Good Adjustment'), and they are illustrated in Figure 7.1 (see Goffman 1963).

In brief, following the first phase of initial entry (where the researcher seeks to uncover everything and anything and interview everyone; not to stop until he or she has got enough), the prison researcher can end up in an emotionally and psychologically rewarding place where everyone wants to 'meet the Westerner'. However, in leaving one's society and becoming consumed with another, the prison researcher can become culturally disoriented – that is, feeling oppressed and loved at the same time. Without being able to relate observations to home, and with an ongoing need not to become stigmatized for being 'different', the prison researcher can become consumed with interpretation and considerations of immediate and proximate cultures. In phase 1, the state of being absorbed in the research culture can lead to feeling less and less in control and to wasting time interviewing respondents

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Phase 1:   compulsion immersion
Researcher driven by desire to be accepted by respondents. Need to abandon previous selves in order to minimize the 'Stigmatized Self' (the researcher seeks to avoid the blemish of being different). Expectation of disengagement from ethnocentric Western view is strong. Stop-watch and formal interview replaced by 'social gathering' and 'poetry recital' as research venues. Researcher as performer.

Phase 2:   chaotic immersion
Researcher anxiously questions relevance of data. Maintenance of social norms is skewed towards sharing a single set (Russian) of social relations. Researcher is unable to avoid 'Overreach': he or she is confused, and the possibility of data deficit emerges; he or she is cut off from relatable testimonies and experiences. Feelings akin to drowning inside the personal struggles of respondents. Strong vigilance, necessary for all research, is abandoned and methodology requires reassessment.

Phase 3:   restrained immersion
Researcher does not impose formal methods and embraces chaos. By 'giving in', the research setting stabilizes itself and researcher is able to make informed decisions about whom to interview and how to conduct interviews. 'Good Adjustment' leads to mutual adjustment of respondents and every positive relationship is then conducted around reducing 'Overreach'.

Figure 7.1   The socially constructed prison sociologist
Source: Based on Goffman (1963)

who are not directly connected to the research. A sense of feeling trapped can follow, making it difficult to redirect questions and interviews.

During phase 2 the isolation of the researcher becomes a problem and there is a danger that the relevance and manageability of the research are regularly questioned. As self-awareness becomes somewhat diluted, so the self-consciousness required to capture perspectives through which respondents view the world is impossible to achieve because degrees of reflexivity are not easily relatable to home (see Mauthner and Doucet 2003 for comparisons). The researcher's emotions, psyche and interior self not only become *overly accessible* to respondents but also inaccessible to the researcher him or herself. This is what I would describe as 'Overreach'. Central to Overreach is anxiety over a data deficit. The researcher can become disoriented. When one is geographically and culturally adrift, the threat of a deficit can lead to a skewed sense of perspective. At phase 2, a prison researcher may want to abandon the ethnographic approach in favour of a more structured and formalized data-gathering process. There is over-immersion in phase 2, which prompts the researcher to face dilemmas about personal, scholarly, theoretical and cultural affiliations. For example, had I abandoned ethnographic empathy in my 2003 study my research would have been dictated by a tradition of objective observation that was outside the cultural milieu under investigation and by strategies of understanding, reflexivity, enforcement of methods and control that disengaged me from the field. The danger here is that the trust of respondents could have been lost through creating distance and objectivity and becoming alienated from the research topic – that is, becoming an outsider or

'one of them' (described to me as auditors and consultants who enter prisons, catalogue terrible events and then leave).

Consequently, in adopting a position of distance in the researcher–researched relationship, a prison researcher is not assured that, in restricting the range and subjects to be interviewed, those respondents are best placed to provide insights and data. A more formal approach could transform research for the sole purpose of imposing a sense of control and order on the phenomena observed. Yet, as much as this might ease feelings of over-immersion, researchers should note that such an approach reflects little of the cultural context surrounding the research. Instead, new knowledges would in effect be Westernized constructions of effective fieldwork practices and Western knowledges of reality (order, stability and discipline). On reflection, to ensure that trust is maintained while improving context, structure and content of interviews, one solution is to reduce the number of interviewees, to change the location so as to avoid interruptions and politely to remind respondents of the academic purpose and value of the research. This will enable the researcher to have more control (phase 3). Of key note is that suspending Western cultural sensibilities in favour of social behaviours that are less familiar should not be viewed as a way of indulging respondents. Rather, restrained immersion allows the researcher to 'give in' to the environment rather than operating against it. I describe this as 'Good Adjustment'.

Conclusion: cross-currents of reflexivity, culture and penality

My aim in writing this chapter has been to draw attention to how prisons are researched, how researchers navigate the minefield of prison relations and flows of power between inmates and guards, how researchers manage the issues in and around taking sides in prison research and, in doing so, how we negotiate some of the moral conundrums in developing an ethnography of attentiveness. The chapter has highlighted some of the limitations of existing prison methodologies and, through the lens of my own research in Russian prisons, the inseparability of culture and the research method. I suggest that, in order for researchers to cope with articulating the ontological, epistemological and theoretical aspirations of their work, an engagement with culture offers a concrete way to be reflexive. In my research, by 'sticking with culture' the methods offer a route into positioning (theoretically) this complex and fractured society within Westernized mandates whereby dominant political actors anchor penal reform to a global anxiety over failed societies (see Piacentini 2004: 169–86). No matter how aware and reflexive I became, however, there were limits to my own engagement and the process of giving in to, and over-immersion in, the field led me to rethink the terms of engagement. As problematic as this was, such an approach allowed for progress in areas other than the straightforward acquisition of data: reciprocating generosity, social involvement, good relations with bureaucrats and living with others.

Deep cultural immersion revealed that the testimonies of prison researchers in Western prison settings could be construed as ethnocentric. In the nine years I have been researching Russian prisons, the cultural anthropological

method enables me to unravel systematic dimensions of fieldwork. This is about how I am able to utilize my own turmoil to speak *to* the turmoil of transition and its presence in, and consequences for, the penal realm. The deficits in gathering new knowledge on Russian prisons do not render my research vulnerable to collapse but, rather, present me with new challenges in overcoming the ravages of prison research in such an extraordinary society.

Selected further reading

Cohen, S. and Taylor, L.'s (1981) *Psychological Survival: The Experience of Long-term Imprisonment* (2nd edn). Harmondsworth: Penguin Books, is a fascinating early account of doing prison sociology and working with prisoners that still resonates today. One of the most comprehensive accounts of the problems, pitfalls and consequences of the ethnographic method in prisons from a range of culturally diverse societies is in the Sage journal *Ethnography,* which, in 2002, published a special issue: *'In and Out of the Belly of the Beast': Dissecting the Prison*, edited by Loic Wacquant. The special issue seeks to address imbalances in the methodological account and is a bold attempt to reinvigorate the field of prison ethnography and challenge ethnocentric assumptions. For researchers interested in pushing the boundary of the research method beyond the conventional approach, Ferrell, J. and Hamm, M.'s (1998) *Ethnography at the Edge: Crime, Deviance and Field Research*. Boston, MA: Northeastern University Press, is worth a look. Carlen, P. and Worrall, A.'s (2004) *Analysing Women's Imprisonment*. Cullompton: Willan Publishing, contains a critique of doing prison research in women's prisons and a timely contribution to the complexities women prison researchers face in the field. My own work provides an account that can be linked with other international or comparative research. Liebling, L. and Maruna, S. (eds)'s (2005) *The Effects of Imprisonment*. Cullompton: Willan Publishing, is a stimulating collection of different prison research, and each chapter contains an introduction to methodologies in a range of diverse custodial settings. Finally, Goffman, E.'s (1963) *Stigma: Notes on the Management of the Spoiled Identity*. Englewood Cliffs, NJ: Prentice Hall, is a particularly useful, and much under-used, sociological account of how sociologists (prison or otherwise) navigate the researched world when normative expectations of respondents are skewed.

Notes

1 I credit this term to my research colleague, Dr Judy Pallot, Lecturer in the Geography of Russia, University of Oxford, who developed it to describe the permeability of penal boundaries to outside cultural, geographical influences.
2 These micro events and relations are evident in the illustrative, but by no means exhaustive, list of prison research mentioned in the introduction to this chapter.
3 See Marks (2004) on dangerous ethnographic research in South Africa.
4 Of course, pragmatic and institutional constraints also shape the choices researchers make.
5 See Piacentini (2004) for a fuller account of how poets and writers captured some of the fears of imprisonment.
6 It was necessary to consider these defences in the context of the changing European and southern Russian landscape (the Kosovo war, wherein Russia sided with Serbia, and the ongoing conflict in Chechnya).

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Chapter 8

The evolution of prison architecture

Yvonne Jewkes and Helen Johnston

Introduction

The purpose of this chapter is to explore the evolution of penal architecture and to discuss the impact that prison spaces have on the establishment and maintenance of the prison regime, and on the lives of the inmates and staff who occupy them. Our discussion aims to illustrate the extent to which the visible meaning of the prison has subtly changed over time. The chapter starts with a description of an award-winning British design for a twenty-first century 'learning prison', before reflecting back on penal architecture, and its intrinsic symbolic meanings, over the last two centuries. In the final section, the chapter explores some of the innovations in prison architecture from the last 20 years (the so-called 'new generation' prisons), and considers the extent to which their structure and design reflect current penal philosophy. First, though, a vision of the future.

The prison of the future

In 2005 the Design Museum's Designer of the Year award was won by Hilary Cottam. A previous winner of this prestigious accolade is iPod designer Jonathan Ive and nominees in 2005 included textile designers and furniture designers. What made the choice of Cottam unusual was that she is not a designer of objects but of spaces and, among her most celebrated designs, is the twenty-first century 'learning prison' (Cottam *et al.* 2002).

Bearing similarities to Channel 4's *Big Brother* house (the 'total institution' probably most familiar to the twenty-first century public), as well as to the 'new generation' of prison architecture that has emerged in the last 20 years (see the section on 'Prisons today' below), the main features of the learning prison and the key points at which it departs from traditional penal designs are as follows. Most importantly, movement within the prison is minimized. This is achieved by creating a series of autonomous physical units, or houses

– simple spaces in which groups of prisoners live, work and learn. Rather than moving prisoners around the prison to collect food, attend workshops and classes, go to the gym, visit the medical centre and so on, the houses are semi-autonomous, and specialists are entrusted to come to teach, treat and perform administrative tasks *in situ*. Houses are further integrated into a compact and efficient circulation system and are linked to enclosed outside space, to which inmates have relatively free access, thus reducing the time and cost associated with allowing inmates supervised time in the open air (Cottam *et al*. 2002). Designed to hold up to 400 inmates, the houses are constructed as if on a chequerboard (i.e. discrete units with exterior communal spaces between each one) and accommodate prisoner categories A–D simultaneously. Despite incorporating stores, a shop, a health centre, sports hall, five-a-side football pitch, indoor swimming pool, multi-faith centre, administration block, visiting area and central library stacks containing up to 20,000 books (which are distributed to the houses in a mobile unit), the entire development has a considerably smaller footprint than the 'typical' Victorian prison, thus keeping costs of land (and, subsequently, staffing in a smaller total space) to a minimum (Cottam *et al*. 2002).

The cells in the learning prison also differ markedly from their predecessors. One of the creators of the new design sums up the problems associated with conventional prison cells:

> Within the cell accommodates a lavatory, basin, bed, desk, chair and cupboard. Its proportions are most like that of the domestic lavatory – not a good association for a person to make with their living space. The result is a room that looks and smells like a lavatory. A cell is also laid out like a badly planned bathroom; the bed runs parallel to the long wall, as the bath might in a bathroom, which leaves no useable floor space. In to this we place the prisoner whom we seek to normalize (Henley 2003: 9).

By contrast, the twenty-first century prison cell is $8m^2$ and is designed with learning and purposeful activity in mind:

> The strength of modern day construction materials has enabled us to locate the bed on the outside wall, at high level, not unlike the top bunk of a bunk bed, visible from the door. The bed is constructed as a monolithic slab, mitigating the risk of hanging. The table, pictured in front of the window, can be moved. Here a networked keyboard and screen provide the necessary tools for study and communication via an intranet/prison cable TV network. The remaining space within the cell is open to use and furnish in a variety of ways. Each cell is paired with a neighbouring one – a buddying cell linked by a pair of sliding doors controlled by the individual prisoners, but overridden by staff in case of an emergency such as an attempted suicide. This mitigates the risk of inmate self-harm…Each cell is provided with an adjoining room (included within the $8m^2$) accommodating a WC, basin and shower to further simplify the building and reduce

pressure on prison staff to manage hygiene and ablutions (Henley 2003: 9).

The team behind the learning prison claim that these innovations enable the redeployment of a significant proportion of their security and staff budget. They further maintain that the architecture of the new model prison fulfils both a social and psychological role, enhancing inmates' quality of life in an environment where the prisoner is judged, not by his or her conformity but by his or her varied activity and achievement (Henley 2003: 13). They are at pains to emphasize that, while the prison appears to be liberal, the arrangement of space is 'strictly controlling', and it is for that reason that activity within clearly defined spaces is free.

The prison thus inverts the logic of Bentham's panopticon with its gatehouse and radial wings. Where traditional prisons such as Pentonville were designed to confine individuals deep within the prison and were conceived to strip them of their autonomy while enforcing a regime based on reflection and purposelessness (see below), the twenty-first century prison is founded on an 'invisible pedagogy' (Henley 2003: 13) underpinned by the philosophy that each prisoner 'is a member of an accountable group, living close to external space, defined and controlled by a chequerboard array of buildings and external courtyard gardens' (Henley 2003: 2). Thus, although described as 'spartan' and a place you would not choose to visit more than once, the new prison environment is no longer mentally and emotionally repressive (Cottam 2002). For staff, too, the new design promises to alter radically their primary duties and purpose. Instead of spending their time shuttling prisoners to and from workshops, education, library, healthcare, sports facilities, visiting areas, association spaces, etc., with all the attendant security measures that accompany such movement, staff would have a more positive role in the education and rehabilitation of prisoners, for which they would be paid higher wages than they currently receive (Cottam *et al*. 2002).

This Utopian vision of penal space certainly seems attractive to those who believe that traditional prison design fails prisoners in its purpose to 'encourage and assist them to lead a good and useful life' (*Prison Rules* 1999). However, with its emphasis on learning, recreation and autonomy, the design team behind the twenty-first century prison may have considerable difficulty in persuading a public hostile to inmates having any privileges to support the initiative, especially if it is funded from public money (see Chapter 19, this volume). In addition, the twenty-first century prison's attempts to harmonize design and purpose have been questioned by prison architect Leslie Fairweather, who implies that the design team were not sufficiently attentive to the demands of prison regimes. Fairweather argues that the design generates many potential management and control problems, and asks if anybody has gone through the day-to-day running of the prison and discovered how it will actually work:

It is difficult to relate the design to the proposed regime. Another worry is the claim…that such a prison can be built on a very restricted site: 396

prisoners on a one hectare site, with 11 three-storey 'pods' containing 12 cells each per floor. This might be useful on a very restricted town site, but it should be a corollary to the basic design, not the inspiration for it. It would be terribly claustrophobic, and could be difficult to supervise and control…the level of violence, homosexual bullying, and the prevailing drug culture in prisons is horrendous, and the various cell blocks would need very careful selection of prisoners (2003: unpaginated).

Cottam might defend her vision of the twenty-first century prison with reference to a school she designed along similar principles which, since she radically transformed the use of space within it, has distinguished itself as one of the 20 most improved schools in the country (*Guardian* 25 May 2005). She has similarly high hopes for the learning prison, arguing that it will facilitate the teaching of valuable employment-based skills to a population that currently faces a lifetime of social exclusion. Citing the statistic that six out of ten inmates are back inside prison within two years of release, a failure that is costing the country £11 billion, Cottam states her ambition as designing 'a new building to support a revolutionary regime at no extra cost and to slash reoffending rates by providing individual learning programmes' (2002: unpaginated). However, Fairweather's concern about violence and bullying is supported by findings from prison research that show that freedom of movement can be abused by prisoners, who use it as an opportunity to trade drugs, 'settle scores' or physically assault fellow inmates in spaces hidden from the gaze of staff (Sparks *et al*. 1996; McConville 2000; Jewkes 2002; Edgar *et al*. 2003). Thus, prisons which have relatively relaxed security arrangements and which seem, on the face of things to offer a better quality of life for their inhabitants, are frequently sites for greater social problems as complex inmate networks develop in the form of gangs and cliques. As a result many inmates express a preference to be locked up for 23 hours a day in traditional, old-fashioned prisons and some prison officers are equally resistant to working in new-generation prisons.

In any case, the learning prison's functionality in practice has yet to be tested despite it receiving strong support from ministers and then National Offender Management Service Chief Executive, Martin Narey (although the latter has also publicly supported the idea of 'superprisons' built on lines similar to the most severe architectural manifestation of retributive punishment, the American supermax; see King 1999, Chapter 14, this volume). Arguably the realization of Cottam's blueprint will depend not on political backing but on the endorsement of private prison providers and, as Fairweather implies, the private sector's mission to make money and satisfy their shareholders may be antithetical to the construction of the new model prison (Fairweather 2003). That said, the government might be persuaded by the argument that investing in the twenty-first century learning prison would enable them to sell off valuable real estate at prisons, a trend that has already seen HM Prison Oxford turned into a hotel.

Prison design in the eighteenth and nineteenth centuries

The extent to which different kinds of prison spaces and structures affect and improve the regime within has been a primary concern for penal architects since the first purpose-built prison institutions were conceived. The architecture of incarceration over the last three centuries has reflected the penal philosophies of the period, which can broadly be characterized as a desire for *reform* at the end of the eighteenth century; a move to more *repressive* practices in the mid-nineteenth century; and a concern for prisoner *rehabilitation* in the twentieth century (Muncie 2001). The discussion that follows will explore how each of these penal moments, and their associated discourses, was symbolically manifested in the design, construction and location of prisons from 1775 to the present day.[1]

Purpose-built prisons were first built in the last quarter of the eighteenth century. Prior to that, since medieval times, convicted offenders had been detained in relatively informal surroundings, which were characterized by noise, smell, disorder and neglect (McGowen 1998). Functional and spatial categories were imprecise: men and women were unsegregated, there was no classification of offenders and there was no separation of the tried and untried (Muncie 2001). People from the wider community would freely come and go, associating with prisoners and trading produce, including alcohol, within the prison walls. Diseases were rife and extortion by prison staff went unchecked (Muncie 2001). But the prison's 'fundamental ordinariness' (Evans 1982: 16) perpetuated the view that, far from being places of punishment, prisons were more akin to lodging houses where the criminal classes could go to be fed and watered (Fiddler 2007). By 1775, the aim was to build prisons that were not the informal hostels of earlier years but expensive and unique types of building designed to punish rather than detain (Evans 1982; cf. Muncie 2001). By the late eighteenth century a desire for reform had emerged, but reform was not seen as contradictory to the desire to inflict harsh punishment and, for the first time, prison architecture was explicitly used to convey meaning; prisons were to suggest 'places of real terror' (Evans 1982: 169). At the same time, the meaning of the prison façade became disassociated from its internal world. Prison exteriors became 'architectural shields' to mask the true purpose of the prison, making what went on behind the façade appear more terrifying (Evans 1982: 256; cf. Fiddler 2007).

In the 20 years up to 1795 there was a rapid expansion of such building in England with at least 45 new gaols and bridewells constructed. Two principal reasons lay behind the surge of prison building in this 20-year period. The first was the outbreak of the American War of Independence in 1776, which meant that convicts could no longer be transported to the American colonies and alternative arrangements had to be quickly made. The second was an unexpected outbreak of 'gaol fever', a more important development in so far as it not only precipitated the building of new prisons but it also necessitated alterations to their structure and left a lasting legacy on penal architecture. The main concern was that gaol fever would escape outside the prison walls and infect others – particularly members of the legal profession. This fear was not without founding – in 1750, attendants at the Old Bailey were struck by

a 'noisome smell' in court, and a week later a number were ill with a highly malignant fever. Over 40 people died during this outbreak, including the Lord Major of London, two judges, an alderman, a lawyer, an under-sheriff and several members of the jury (Evans 1982). Deaths from gaol fever also made a mockery of the punishment system. The eighteenth-century penal aim was that there should be some proportion between the degree of crime and the degree of punishment. Gaol fever meant that the system became a lottery; in Gloucester in 1782, for example, three times as many prisoners died of fever as were executed (Evans 1982: 96).

The outbreak of gaol fever thus led to new thinking in penal design in the mid-eighteenth century, the primary aim of which was to prevent a general epidemic by improving ventilation so that prison buildings were not harbouring putrid air, believed to be the cause of contagion. The most influential prison architect of the early to mid-eighteenth century was Stephen Hales,[2] who pioneered a method to make prisons healthier based on the idea that the building, like an animal, needed to breathe. Among his contributions to penal architecture were a windmill at Newgate which drove bellows to draw the foul air out from the interior of the prison and a wind machine in Winchester County Gaol. In 1749, Hales, over 70 years old, was installing ventilators for the Savoy Prison and later still he installed devices in Northampton Town Gaol, and the county gaols of Shrewsbury, Maidstone, Bedford and Aylesbury. For over 50 years 'salubrity and airiness were to be the major determinants in the shaping and construction of prison buildings, not to mention hospitals, a host of other institutional forms, town plans and eventually, in the nineteenth century, housing' (Evans 1982: 102).

Various gentlemen put forward ideas to promote airiness and health in prisons but it was John Howard (1726–90) who was to become the 'architects' mentor', having 'much to say on the question of salubrity'[3] (Evans 1982: 113). Thomas Telford considered the reformer a 'guardian Angel of the miserable and distressed, travelling over the world merely for the sake of doing good' (Rolt 1958: 20) and his highly regarded reputation led to a number of issues being considered. First there was the question of the location of the prison. In line with Hales' thinking, Howard decreed that prisons should not be cramped among other buildings but should be in open country – perhaps on the rise of a hill to get the full force of the wind, and close to running water. While the explicit reason for the removal of the prison from towns to more isolated rural areas was to prevent disease, it was none the less a radical move that would have been unthinkable before reforms. Previously, alms-collecting, the sale of work, the supply of day-to-day goods, and the comings and goings of friends and relatives were all reliant on the prison being part of the city or the town: 'to take the prison out of this context was to acknowledge that it would no longer relate to the external world in so familiar a way. It was being abstracted from everyday life and made very special' (Evans 1982: 113).

Howard's principles for the construction of an 'ideal county gaol' were realized in the building of Shrewsbury Prison in 1793 (designed by William Blackburn and local architect, John H. Haycock, and constructed by County

Surveyor, Thomas Telford). The choice of location of the new prison reflected Howard's preoccupation with air and water. Shrewsbury was built (and still stands) on Castle Hill near to the River Severn, 'on a cliff of dry gravel, over the river on the south-east side of the town, from which it is entirely separated, and a little detached from the Castle' (Owen 1808: 430). Howard's design for the prison building itself was an assortment of half a dozen irregularly spaced pavilions each for a different class of prisoner. Each pavilion was raised wholly off the ground on arcades to allow the air to circulate and dry walks to be taken in wet weather. It was the arcades that were to become the *leitmotiv* of the first generation of reformed prisons. The model prison that Howard envisaged was 'suspended in the air because if it were to touch the ground it might corrupt itself with dampness and stagnant, vitiated vapour. The purity of the reformed gaol seemed to be threatened by every form of contact' (Evans 1982: 115).

The interior of Shrewsbury consisted of minutely planned, highly organized buildings that reflected the new penal goal of reformation rather than retribution; for example, in the workrooms the prisoners worked for a small wage, and good conduct was rewarded from prison charities (Johnston 2004). A commentator at the time describes Shrewsbury Prison as an octagonal structure of 'neatness and simplicity', which is 'well-adapted to the important purposes to which it is devoted' (Owen 1808: 432). The prison was divided into four main courts, besides other smaller ones. Around the main courts were built cloisters with groined arches, above which were sleeping cells. Connecting the cells on the outside were railed galleries that were supported by wooden pillars. The chapel stood in the centre of the prison so that all the classes of prisoners could see the chaplain, although remain hidden from each other. The cells for the debtors were comfortable, airy and even commanded 'a beautiful view of the country' (Owen 1808: 433). In short, the leading principle that pervaded the fabric and design of Shrewsbury was reform and, as Owen eloquently put it, 'to prevent future more than to revenge past outrages on society' (1808: 434).

In 1779 the Penitentiary Act was passed, underlining the influence of John Howard at that time. This legislation aimed to combine the elements of correction and reformation in the hope that it would be possible to substitute transportation for penitentiary imprisonment. This would enable the government to send only the most 'atrocious and daring' criminals to the hulks, where the high mortality rate – 150 of the 600 convicts sent to the hulks had died during the first 20 months of the operation – had become a severe embarrassment (Evans 1982: 120). The penitentiary was far from a 'soft' alternative, however. Underpinned, as its name suggests, by the philosophy that prisoners must undergo a process of expiation and penance, the emphasis of the penitentiary regime was on hard, though unproductive, labour (exemplified by the treadwheel) believed to reform the offender into a physically and morally healthy specimen (Muncie 2001).

A number of gentlemen submitted designs for the first 'penitentiary'; William Blackburn won first prize of £100 for the best male penitentiary, and £60 went to Thomas Hardwick for the best female penitentiary (Evans 1982: 121). Although little is known of the design by Blackburn, Evans points

out that it was said to resemble a later design at Liverpool Borough Gaol where it was planned that all the exterior parts of the prison were visible from the gaoler's and the turnkeys' apartments in a central hub. The prison building was described as six unconnected blocks, which were held in place by imaginary radii, originating from the gaoler's parlour. The prison was thus under the watchful eye of the gaoler and the fences in the inner and outer boundaries of the airing yards were made of wicket, so as not to obscure the gaoler's view. Blackburn was clearly ahead of his time, with this design foreshadowing the panopticon of the nineteenth century when radial geometry was used to exploit the principles of surveillance and inspection (see below). It was Blackburn who first turned prison design into a kind of technology, translating Howard's doctrine of reform into the practicalities of construction (Evans 1982). However, Blackburn's penitentiary was never actually built, as the discovery of Australia had allowed the government a suitable alternative as a convict colony (Webb and Webb 1963). Nevertheless, the origins of the first national penitentiary, Millbank (see below), can be found during this period as the government still required a suitable place to hold convicts who were awaiting transportation. But by the time Millbank was opened it had been decided that a sentence of imprisonment should 'not be confined to the safe custody of the person, but extended to the reformation and improvement of the mind, and operating by seclusion, employment and religious instruction' (Holford Committee 1811 cited in Webb and Webb 1963: 48).

John Howard's ideas continued to be used to justify radical changes in the penal system throughout a period of prison expansion in the latter part of the eighteenth century. Howard and Blackburn were able to influence the expansion of the prison system at this time, not through central government but through local magistrates' initiatives in prison reform. At Bodmin, Oxford, Winchester, Lancaster, Salford, Dorchester, Chester and Middlesex, it was Howard's name that was linked with the genesis of each prison and his influence on the prison architects of the time is obvious. For example, the plan of Gloucester County Gaol shows the cell block to have been lifted clear off the ground on pier supports, and other prisons built on elevated arcades included Petworth, Littledean, Shrewsbury, Chester Castle and Cold Bath Fields (Evans 1982: 148–51). Other methods introduced to improve the ventilation of prisons included bars instead of glass, circular iron gratings in passage floors, wicket turnstiles instead of solid wood doors and double-leaf cell doors, which had one leaf solid wood and the other iron lattice. In prisons at Gloucester, Stafford, Shrewsbury and Cold Bath Fields, whole slices of the surrounding structure were removed to exposed the interior so that the courtyards were contained but not enclosed (Evans 1982).

While these innovations were a hasty response to the problems of aerial infection (and did indeed dispel gaol fever), by the 1830s other problems were emerging in the prison system. A growing desire to establish proportionality between offences and penalties – influenced by the ideas of the great Classicist Beccaria (1764) as well as Howard's observations concerning ventilation, hygiene, segregation and religious servitude – had resulted in the classification of prisoners, but as the number of classes grew it became difficult to house prisoners in a prison design with a central hub. There were only a limited

number of wings that could be attached to the centre before inspection and surveillance of cells became impossible. There was also a growing scepticism over the credibility of the classification system. In 1837, for example, it was noted that 'it has indeed been imagined that the propagation of crime during imprisonment could be prevented by a judicious system of classification. Experience has however shown the fallacy of all such arrangements' (*Second Report of the Inspectors of Prisons* 1837 cited in Evans 1982: 316).

In the first half of the nineteenth century the internal design of the prison began to alter as a new method of reformatory prison regime was tried. In 1816 the first national penitentiary at Millbank was opened and, with it, solitary confinement was introduced (Muncie 2001). The regime was administered by stages, the first stage strict and severe seclusion, and the second more moderate. In practice the lengths of separation varied, there were numerous opportunities for communication (conversing with a partner during exercise, school or chapel) and the solid cell doors had to be left open to allow instruction (McConville 1981). During the next two decades the penitentiary suffered from various problems: prison labour did not contribute to the upkeep of the prison at the level hoped; the 'generous' diet was reduced, resulting in the abandonment of the prison after a scurvy outbreak; there were problems with staff recruitment and control; and the implementation of incompatible policies (e.g. seclusion and religion, and rewarding labour while at the same time imposing disciplinary sanctions) led to conflict in the internal administration.

By the 1840s the increasingly strict policy of seclusion was noted to have resulted in a growth in the number of insane prisoners and the regime was deemed unsafe. The government turned its attention to a new 'Model Prison' – Pentonville. Since Millbank was built, there had been a growing discussion of two competing approaches in prison discipline: the separate system and the silent system (see Chapter 2, this volume). Both were aimed at reforming the prisoner and architecture was a significant feature of the different regimes. The architecture of the classification system had been based on preventing physical contagion and keeping different classes of prisoners apart. The architecture of the separate and silent systems was constructed around the prevention of moral contagion.

Under the separate system, which prevailed as the dominant regime of the period,[4] prisoners were kept apart at all times, held alone in separate cells where they would work, sleep and take meals. The only time they could leave their cell was to attend chapel, when their faces would be masked, or for exercise during which they might be sent to separate exercise yards. The aim was to avoid any contact with other prisoners, particularly for young or first-time offenders who were thought more prone to 'contamination' from more hardened criminals. Prisoners were urged to repent and 'look to God' in order that they would be religiously and morally transformed on leaving the prison (Jewkes and Johnston 2006; see Chapter 2, this volume). While there was nothing especially novel about the use of solitude in prisons, the difference was that, for the first time, the fabric of the prison became harmonized with the enforcement of the regime. Prison architecture and penal purpose were thus explicitly interlinked as 'seclusion through architecture overcame the

need for communication to be suppressed by naked force and intimidation' (Evans 1982: 323).

While contemporary penal thinking would regard the separate system as harshly punitive, it is clear that its instigators and supporters in the early nineteenth century had worthy intentions: separation not only prevented moral contamination but it also overcame the need for physical punishment as good behaviour was maintained 'with the passive instrument of the building itself' (Nihill cited in Evans 1982: 323). As a result, prison accommodation in the early nineteenth century became increasingly enclosed and cellularized and earlier design principles based on the need for air and ventilation were abandoned. Ironically, as holes were being filled and interior spaces were becoming more enclosed and claustrophobic, the exterior façade of the prison was becoming more expansive and grandiose. Penal policy was taking a more ostentatious, dramatic and communicative turn, and prisons were being built to designs that communicated to the public a clear message about punishment from the 'carefully scripted' construction of their exterior architecture (Pratt 2002: 39–40).

By the mid-1900s, then, the internal life of prison inmates was almost a secondary consideration to the symbolic meaning transmitted by the external façade to society at large (Markus 1994). A late twentieth-century prisoner reflects on the use of space in the nineteenth-century prison, beautifully describing the juxtaposition between the vastness of exterior scale and minuteness of private interior space:

> The whole is an enormous enclosure of space, top-lit from secular clerestories, and, at the far end of the halls, by gargantuan round-headed windows rising atria-like from floor to ceiling…One feels like some rare exotic bird, trapped in an intricate gilded cage; a metaphor not inappropriate as the hammer beamed roofs frequently resound to the flapping of real birds, curious and unfortunate enough to have found their way into these vast basilicas of human discontent. It is once inside the cell that the prisoner really begins to feel the oppressiveness of these city fortresses…more often than not, living space for 23 hours a day, seven days a week, averages 800 cubic feet; that is, $8 \times 13 \times 9$. Roofs are shallow arches, so it is easy to imagine oneself on the Orient or Trans-Siberian Express taking some never ending journey to the edge of the world. These cells look like gutted sections of railway carriages without the panoramic windows. The only window in evidence here is sunken into the back wall, too high to look out of, and usually double-barred. Standing underneath this aperture, one glances up at Oscar Wilde's 'little tent of blue the prisoners call sky' (Wayne 1994: 21).

Pratt identifies three competing prison architectural designs built during the nineteenth century: 'neoclassical', 'gothic revivalism' and 'functional austerity'. The common elements of the first two design styles are their imposing size and impression of extravagance which simultaneously demonstrated the 'different economy of scale that now ordered imprisonment' and that the prison was a site for severe, yet unknowable punishments. Prison buildings

'had to be sufficient to inspire remorse and trepidation about what they contained within, but at the same time…leave unspecified the exact nature of the deprivations occurring inside – the observer could only imagine these' (Pratt 2002: 44). Neoclassical designs were grand and formal, thus departing from the squalor and disorder previously associated with imprisonment. Frequently built on the model of the classical temple, they shared a common design with the classical court-houses of the time, and both were regarded, in their own ways, as 'palaces of justice' (Markus 1994: 19). Similarly imposing in size and scale, Gothic revival designs had turrets, towers, portcullissed gates, battlements and extravagant gargoyles, invoking images of medieval confinement in towers and dungeons – for example, HMP Leeds (built in 1847) and the original HMP Holloway (built in 1852).

However, both architectural styles were relatively short lived. The opening of Pentonville Prison in 1842, despite its reformatory aims, heralded the collapse of the ideal of reformation and the emergence of a new objective: repression. Pentonville had been built as a 'model' prison, the separate system enshrined into its very fabric, yet by the end of the 1840s hostile public opinion (fuelled by high rates of prisoner insanity) resulted in its use as a convict assembly depot (Johnston 2006). By now, the use of the death penalty was on the wane and the prison had evolved as the dominant instrument for changing undesirable behaviour and as the favoured form of punishment (Cohen 1985). Under the influence of Edmund Du Cane (Director of Convict Prisons and later Chairman of the Prison Commission), who declared that a prison sentence should be 'applied on exactly the same system to every person subjected to it' (cited in Muncie 2001: 187), this system was one of deterrence rather than reform. From the 1860s to the end of the nineteenth century prison regimes were characterized by the policies of 'hard labour, hard board, hard fare'. The previous career and character of the prisoner made no difference to the way he or she was treated, so prisoner reformation was no longer an objective. Punishment became a highly regulated and impersonal system designed to 'contain and control' (Muncie 2001: 183); a rationale that was reflected in the 'functional austerity' of prison design and the use of the crank for overtly punitive purposes – specifically to break the spirit and cause bodily suffering (Muncie 2001: 183; cf. Ignatieff 1978).

Designed by Joshua Jebb, Pentonville was intended to communicate a sense of loss and deprivation via its stark and austere design. The only decorative features on the exterior of Pentonville were the gatehouse and clock tower (the latter intended to symbolize the regularity and order inside, and the deprivation of time rather than the infliction of physical punishment; Pratt 2002). Morris and Morris capture the unmistakable message still resonating from the fabric of the building more than a century after it was built:

> To the traveller down the Caledonian Road, and to the inhabitants of Islington who daily look upon the high walls of Pentonville with its grim blackened cell houses, it is a visible sign of the most severe sanctions the law can impose – the deprivation of liberty and the possibility of death itself, for Pentonville is a 'hanging prison'. First and foremost the prison punishes, and there can be little doubt about this, for the

physical apparatus of a maximum security prison is suggestive of little
else beyond the curtailment of freedom. The architectural quality of the
prison is not only functional but dramatic, part of the same body of
symbolism which clothes the Judge of Assize in scarlet (1963: 20).

Inside, the building was designed along the lines of Jeremy Bentham's
'panopticon' (Semple 1993; see Chapter 2, this volume). Consisting of a
central hall, with four radiating wings each containing three floors of separate
cells with networks of iron galleries and catwalks, it was possible for a single
officer standing in the centre to observe every cell. Epitomizing the separate
system, Pentonville was originally built to hold 520 prisoners in individual
cells, 13 feet long, 7 feet wide and 9 feet high. Jebb also designed every
detail of the cell, from the spy-hole on the cell door to the water, heating and
ventilation systems. The latter were based on a series of air ducts, heated
by pipes in the basement through which warm air was drawn. This design
evolved out of the 'silent system' during which prisoners would 'bend the
rules' by tapping out messages to each other on the pipes (Morris and
Morris 1963; see Chapter 2, this volume). The new system of heating and
ventilation is described by Morris and Morris as 'ingenious' and 'surprisingly
effective' (1963: 13). Evans concurs, stating: 'no other prison or penitentiary
had ever been so meticulously contrived' (1982: 360). Although each of the
components used at Pentonville – the radial plan, the galleries, the cellular
compartments, the ventilation and servicing, the observatory and the chapel
– can be traced back to earlier prison building and philosophies of discipline,
the difference with Pentonville was that Jebb had turned the psychological
issue of reformation into an issue of mechanics. It gave early expression to
the Victorian obsession with discipline, certainty and systematic uniformity
and was thus not only the most advanced prison in existence but it was also
one of the most advanced buildings of the time, and it became the blueprint
for the building and renovation of prisons in the latter half of the nineteenth
century (Evans 1982; Muncie 2001).

'Functional austerity' in prison design was to continue throughout the
second half of the nineteenth century. Prisons were 'designed – often by
penal administrators rather than architects – as instrumental devices, built on
"causal" principles rather than as symbolic monuments concerned with external
display' (Garland 1990: 259). Wormwood Scrubs, built under the direction of
Du Cane in 1884, was the last major prison of the nineteenth century and its
architecture was hardly distinguishable from the separate prisons of the 1840s
and 1850s. The philosophy of repression was further reflected in the regime
within, described as an 'unrelenting repetition of futile tasks performed within
the close, bleak perspective of converging walls' (Evans 1982: 400). A more
profound alteration was made on the inside, however; the architects involved
in the design of Wormwood Scrubs relinquished central inspection, a decision
that finally and emphatically signalled the severing of the prison from the
idea of reformation. The fabric of the building was allowed to remain, yet the
'intellectual construction which had given rise to it lay in ruins round about'
(Evans 1982: 400). It was a model that was followed around the country, not
only in new construction, but also in the redesign of existing prisons. For

example, between 1883 and 1890, the architecture of Shrewsbury Prison was dramatically altered, resulting in a building of 'massive, strong and impressive character' (Anon 1894: 14). The internal structure of the building was altered along lines already pioneered at Wormwood Scrubs with two parallel wings containing the cells, one wing holding males and the other females. The male wings were double-sided, with cells on both sides of a central open corridor, and three or four storeys in height; the female wings were shorter, with cells only on one side of the corridor and only two storeys high (Brodie *et al*. 1998). In this design, known as the 'telegraph-pole' prison, the gatehouses no longer contained the governor's house, administration and the chapel were moved to the end of the wings, and the kitchen and laundries were removed to separate buildings. It is interesting that, although the new prison design inevitably reflected changing attitudes to punishment and penal policy, it was once again the fears associated with illness that hastened architectural reform. For example, an outbreak of typhus in 1882–3 at Shrewsbury Prison spurred on the reconstruction of the prison, which was completed in 1888. Here, and at many other prisons, in-cell sanitation was removed to separate annexes, and reception and hospital facilities were relocated together, reflecting growing concern about contagious diseases (Brodie *et al*. 2002).

For some, the 'prison look' of the late nineteenth century was too austere, too threatening and too unpleasant. Pratt notes that, by the turn of the century, the prison authorities were striving to beautify the exterior of prison buildings, not with turrets or gargoyles but with landscape gardening, fountains and flowerbeds, 'attempting to draw a more attractive veil across what they now thought to be the unnecessarily spartan exterior of their own institutions' (2002: 48). However, for older prisons still on their original sites in densely populated urban areas, such as Shrewsbury, Leicester and Gloucester, the opportunity to carry out any landscaping around the exterior of the building was severely limited. During this period a number of prison sites in cities were sold off and prisons were relocated, often to converted army camps, airfields and country houses. However, the decision to relocate some prisons was probably influenced by the kind of neighbourhood it was situated in: the residents of affluent, middle-class areas were able to put pressure on the authorities, but prisons located in working-class areas on the whole remained where they were (Johnston 2004).

These developments represented a change in the visible meaning of the prison and chimed with emerging fears about the 'dangerous classes' in late Victorian society. The symbolic meaning of the late Victorian prison thus served to deter and 'restrain a potentially dangerous, perhaps half-savage race of beings' (Evans 1982: 398). At the same time, penal philosophies were altering and a more therapeutic discourse was emerging which did not sit easily within the grim surroundings of the crumbling Victorian prison. As Pratt notes, the prison ceased to be regarded as a source of civic pride for the late Victorian gentry and instead became viewed as an obstacle to a more progressive penal thinking (2002: 49).

Prisons in the twentieth century

The growing distaste that the Victorian middle classes had for their lower-class brethren, and their sensitivity to being proximate to such ostentatious sites of punishment with all their connotations of impurity and contamination, may explain why the prison increasingly disappeared from public view throughout the nineteenth century. As high walls and gates became a barrier to the outside world, the presence of the prison began to provoke a growing revulsion: another arena of punishment (in addition to execution and forms of public punishment) 'to be pushed behind the scenes of the civilized world' (Pratt 2002: 35). By the early twentieth century there was little public knowledge about the 'hidden' world of the prison. There were, of course, particular types of prisoners who drew attention to the system and its operation, notably suffragettes, conscientious objectors to compulsory military service and other political prisoners (for example, Irish Republican prisoners) who wrote pamphlets and biographies of their prison experiences (Brown 2003). But, on the whole, prisons were becoming increasingly invisible, remote and cut off from the rest of society (Pratt 2002).

The 'disappearance' of the prison continued throughout the twentieth century. During the postwar period many prisons were converted from country houses (HMP Hewell Grange, HMP Foston Hall), disused aircraft hangars, army camps (HMP Ford, HMP Leyhill), military hospitals and the like, which literally served to camouflage them. Interestingly, the physical appearance of these prisons may unconsciously influence the kinds of regimes even within the current age. As Foucault notes, when placing individuals under observation in a disciplinary regime of examination and surveillance in a cellular architectural space, 'is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prison' (1991: 228)? One prisoner describes how the small barracks and Nissen huts in which he was accommodated still lend themselves to an imposition of military discipline:

> Psychologically, the prisoner moves back to his childhood when faced with the pernickety regimes. He soon learns that within his apparent freedom, he must report here, there, and everywhere, at impossibly difficult times, to a succession of different parades, roll calls, dining halls, workshops, welfare offices, wages huts, and even formally laid out kit inspections (Wayne 1994: 22–3).

Although the low-rise, green-grey-painted buildings that characterized old military accommodation served to diminish the visibility of prisons, there was an exception to the general trend. In the 1930s open prisons were established – a concept that 'radically changed the face of the English penal scene and that of other countries' (Dunbar and Fairweather 2000: 17). Many open prisons were converted from military buildings which suited the purpose: there was no need for high perimeter walls, the expansive buildings allowed a relatively unrestricted degree of movement around the prison and the surrounding land could be used for gardens and farms. Thus, not only did the open establishment bring flexibility to a system previously concerned only with

uniformity but it also facilitated links between prisons and the communities in which they were located (Dunbar and Fairweather 2000).

Between the end of the Second World War and the end of the century, the prison estate expanded from 39 prisons to 136. Mostly sporadic and unplanned, this expansion was in large part a response to the problems of overcrowding and the inexorably rising prison population (Dunbar and Fairweather 2000). In the early 1960s, as attitudes to prisoners were moving from detention and retribution towards training and rehabilitation, the Home Office was forced to consider seriously how prison design impacts on the lives of its occupants. Everthorpe, opened in 1958, was the first complete new-build penal establishment since Victorian times (Leech 2005), but unfortunately it was also a close imitation of its nineteenth-century forebears and 'was out of date before it even left the drawing board' (Fairweather 1994: 28). In 1959 the government announced that a 'new wave' of prison building was to take place, resulting in 22 new prisons over the following decade (Fairweather 1994: 28). The first was HMP Blundeston in Suffolk, which opened in 1963. Resembling a school or university campus with four T-shaped cell blocks each housing just 75 inmates (as opposed to the hundreds held in the wings of prisons like Pentonville), Blundeston pre-empted the 'new generation' prisons that followed 20 years later. It proved to be something of a blip in twentieth-century penal architecture, however, and most prisons dating from the 1960s conformed to a traditional spurred design.

In 1966 the Mountbatten Committee's review of the penal system precipitated a plethora of new situational security measures which included more control gates, less prisoner association, the retreat of staff into offices and the zoning of the prison to prevent prisoners enjoying free access (Dunbar and Fairweather 2000). Mountbatten also underlined the need for new prisons to be built for the purpose of decent and humane containment, a philosophy that emerged at the height of modernism. Consequently, like the civic and municipal buildings of this period that blight many towns and cities in the UK, prisons became functional, concrete and bland. Closed prisons Albany, Long Lartin or Gartree could all be described thus: '[P]erennially water-stained walls; crisscrossed with miles of razor-wired fencing; and sheltering under the ultimate anti-escape devices – highly strung threads of orange, red and yellow balloons to stop invasion by helicopter; an archipelago of identical living blocks cluster around the prison's main office and communal facilities' (Wayne 1994: 22).

One of the most difficult obstacles for architects of prisons to overcome in recent decades has thus been the imperative to meet the needs and wishes of the 'client', while still being able to incorporate design features that fulfil the artistic endeavour to create spaces which might improve the lives of all who come into contact with them. American architect, Michael Walden, summarizes the problem:

It is only the agencies responsible for the construction of prisons and jails, one of the costliest building types to construct, that frequently indicate no desire to incorporate *architecture* into their facilities and in some cases actively discourage it. It has been our experience, in several

recent designs, to have clients mandate that certain degrees of bleakness (one could argue ugliness) be incorporated (cited in Spens 1994: 11).

A far cry, then, from the mid-nineteenth century, when Reading Gaol was criticized for its majesty and accused of resembling a ducal palace rather than a place of incarceration (Spens 1994).

During the late 1960s it was announced that HMP Holloway was to be rebuilt. Originally constructed as a prison for men and women in 1852, and modelled on Pentonville, in 1902 it became a prison solely for women. In the 1960s, at the height of the rehabilitative era, it was to be redeveloped as a 'secure hospital' based on medical and psychiatric provision (Rock 1996). The architecture of the new Holloway became one of the fundamental problems emerging from this development. The building's design and construction had a significant impact on the regime and the environment inside: there were difficulties in surveying prisoners, a problem of reduced space and vision for staff and inmates, and a generally oppressive atmosphere. A senior member of the Prison Department said that that new Holloway was 'deranged'. Architecture that was supposed to calm instead 'projected an atmosphere of threat' (cited in Rock 1996: 250; see Chapter 11, this volume).

The redevelopment of Holloway was the only major development of this period. Economic constraints and a (briefly) declining prison population meant that, throughout most of the 1970s, no new prisons were built. Official attitudes to prisoners were marked by stupor and secrecy, and it was widely acknowledged that there was a crisis in British prisons (Fitzgerald and Sim 1979). Media reports that prisons could 'no longer cope' were underlined by disturbances and rooftop protests at several prisons which brought the squalor and neglect of the penal estate to public attention. In 1978, less than a quarter of prison accommodation in England and Wales was twentieth century and purpose built, and 40 per cent of prisoners were sleeping two or three to a cell (McConville 2000). Overcrowding had become the most pressing problem facing the prison authorities, but their tardiness in addressing it betrayed a lack of political will and public concern. As Fitzgerald and Sim (1979) observe, when the prison-building programme restarted, its purpose was not to relieve overcrowding but to cope with more inmates. This trend of building more prisons to cope with more prisoners continued through the 1980s under the direction of a government who espoused the philosophy that 'prison works'. In 1990 riots broke out in several prisons, most (in)famously at Strangeways in Manchester, which hastened alterations to existing prisons and paved the way for changes in prison regimes. In addition to the physical repairs that had to be carried out to these prisons as a consequence of the riots, in-cell integral sanitation was introduced (to put an end to the dehumanizing practice of 'slopping out') and efforts were made to combat the problems of overcrowding (Fairweather 1994).

Through the 1980s and 1990s many new prisons in the UK revealed in their design an increased attention to their location and surrounding landscape although, on the whole, this resulted in prisons that looked rather like private hospitals, no-frills chain hotels or the kind of corporate HQ you might expect to find in a business park. There appeared to be little imagination

in prison architecture, and aesthetic considerations remained submerged by the imperative to disguise penal institutions – they simply blended in with the environs, whether urban or rural. Moreover, the changing appearance of the prison in the twentieth century did not fundamentally alter the regimes within:

> In the name of creating a 'community', the vast institutions have become fragmented into smaller, low units, in which vernacular materials such as bricks and timber, sloping roofs, dormers and picturesque cottage gardens feature. What, often, is not evident is that the spatial structure, functional programme and institutional regime which accompany these forms often bear much greater similarity to their nineteenth century precursors than do their novel forms. In the end, those are likely to influence the quality of life and social relations in a much more powerful, and lasting way, than the formal imagery (Markus 1994: 19).

In the new millennium the brief to prison architects has begun to direct more attention to the relationship between staff and inmates – thought to be fundamental to the smooth operation of a prison. Discourses of therapy and rehabilitation have given way to new ideas concerned with helping inmates to change and improve as a result of their own efforts – backed up by systems of privileges or punishments to be administered for good and bad behaviour (Fairweather 1994). Spatial organization is instrumental in this respect, and the 'new generation' of prison architecture seeks to incorporate features of situational crime prevention into design – for example, discrete housing units similar to those envisaged by Hilary Cottam in the 'learning prison', staffed by officers who operate informally and interact with inmates in the living area while having a clear sight of all cell entrances (Bottoms 1999). This model of direct, informal supervision by officers is aimed not only simply at aiding surveillance and control but also at facilitating communication between staff and inmates, so that the role of officers is no longer to watch and respond to inmate problems but to predict and prevent them (Bottoms 1999). Removing the paraphernalia of security gates and grilles is intended to improve job satisfaction among officers, as it encourages the building of relationships and dispenses with the notion of prison officers as mere 'turn-keys' (Spens 1994). However, this positive experience is not universal and, as Fairweather reminds us, old habits die hard among both inmates and staff, some of whom feel more comfortable in the kind of custodial atmosphere they are accustomed to (1994, 2000).

Feltham Young Offender Institution (opened in 1983) was the first penal institution in the UK to be built according to the American 'new generation' campus model. In the UK the design was formalized in the Home Office's Prison Design Briefing System (PDBS) (1989) and the Woolf Report (1991), both of which advocated the housing of relatively small groups of inmates (50–70) in wings resembling houses (Henley 2003). The plan was also put into practice at Woodhill, Doncaster and Lancaster Farms YOIs (Henley 2003). The success of new-generation prisons and their attempts to combine situational crime prevention strategies with 'direct supervision' has been

mixed, demonstrating that prison architecture may reflect underlying penal philosophies, yet must be viewed alongside a multitude of local factors which characterize an individual prison at any given time. For example, the two YOIs mentioned – Feltham and Lancaster Farms – are perceived rather differently with regard to their success on issues such as bullying, violence, self-harm and suicide, with the latter being acclaimed as a 'shining example of commitment and care' (Leech 2005), while the former still struggles to shake off the appalling reputation it has built over 20 years of damning inspectors' reports and the high-profile murder of one of its prisoners, Zahid Mubarek, by his cellmate in March 2000.

Prisons today

Our aim in discussing the changing styles of prison architecture over the last two centuries has been to demonstrate the synthesis of design and function. The design of a prison impacts upon the lives of its occupants – inmates and staff – in a myriad of obvious and subtle ways. Furthermore, we have sought to demonstrate the extent to which prisons stand as symbolic or allegorical statements of penal philosophy. Political judgements, policy priorities and public sentiments all play a role in the design, construction and location of penal institutions, and the symbolic and ideological forms with which prison buildings are invested have a vital role to play in explaining the internal power relations of the regime (Markus 1994). While it is impossible to provide a comprehensive account of more than 200 years of prison building, it is clear from our selective and partial analysis that the architecture of incarceration has always been underpinned by a belief that prison design has a moral influence – both on inmates and on the community at large. The 'degrees of bleakness' or ugliness that were incorporated into the design and function of twentieth-century prisons extend beyond the physical buildings into almost every aspect of life within: the tasteless food, the drab prison-issue clothing, the functional and featureless cells, and the boring and repetitive work are all elements of the penal aesthetic. McConville (2000) asks whether it is morally acceptable for ugliness, vulgarity or mere indifference to be part of punishment given that one of the core values of our civilization is a belief in the beneficent effects of beauty. His conclusion is that, like supporters of the separate system a century ago, we are spared the need to make decisions about prison aesthetics, but now, in addition to 'the passive instrument of the building', we have a 'routine grinding of politics, administration and public expenditure priorities' overseen by an 'impersonal' and 'dispassionate' system that counteracts the need for petty vindictiveness (2000: 10).

   An additional and important point to remember is that ancient prisons like Shrewsbury, Pentonville, Wormwood Scrubs and Liverpool (built in 1855 and currently the largest prison in Western Europe, closely followed by Wandsworth, built in 1851, which has a similar 'operational' capacity) have not been consigned to the history books; thousands of prison inmates still live, sleep and work in these monoliths of the Victorian penal imagination. Although an extensive programme of renovation and refurbishment of these

buildings has improved their functionality, many of these institutions are still inadequate and overcrowded. Consequently, they are tangible evidence that an 'obsolete penology still exerts a powerful influence on the prison' (Morris and Morris 1963: 12).

The aim to create a more positive environment is evident in recent efforts to build prisons devoid of the dehumanizing features of their Victorian predecessors. Instead, an absence of hard fixtures and furnishings, the use of 'psychologically effective colour palette' and an attention to the maximum exploitation of natural light are apparent in new prison buildings (Spens 1994: 11). Many take their lead from developments in prison architecture in Europe. For example, at the prison in Brest, France, efforts have been made to improve the psychological quality of inmates' life, resulting in 'a spatially stimulating environment that is filled with light and colour wherein the confined inmates can move about with more freedom. Bright colours are applied to surfaces throughout the building…the cell interiors are of a lighter, softer tone that is accentuated by colour features' (Spens 1994: 123).

On a similar theme, Brians Penitentiary in Barcelona, Spain, has adopted a model of 'functional flexibility…[in] a setting that is conducive to personal development and positive change' (Spens 1994: 115). Its architects have achieved this by incorporating elements of unevenness and differing horizons in the belief that 'distances and shadows help to create an environment with less spatial repetition to ward off monotony' (Spens 1994: 115). In prisons in the Netherlands (e.g. De Geerhorst and Breda), imaginative use has been made of glass in roofs and floors which maximizes light and space (while, it must be said, increasing opportunities for surveillance and security), and at Rotterdam's De Schie Penitentiary, the bright interior paintwork is reminiscent of southern climates (Spens 1994). In the UK, the most recently opened prison (at the time of writing) is Peterborough in Cambridgeshire, run by the private security company UK Detention Services. Instead of the usual green-grey paintwork, the prison has a bright colour-coding system to identify the purpose of its different areas – orange workshops, lilac activity areas and a segregation unit painted a deep red (Travis 2005). With its low-rise design, natural lighting, healthy living and alternative therapy centre, and artificial trees placed in the workshops and education block, Peterborough Prison more closely resembles a shopping centre than an archetypal jailhouse. Cells have been designed with as few ligature points as possible to reduce suicide; each cell is fitted with an intercom linked to the wing office, rather than the more usual simple call button; and prisoners can control the lighting in their cells (Jewkes and Johnston 2006).

While the design of new-generation prisons seems a great deal more enlightened than their austere (not to mention leaky and poorly ventilated) forebears, the New Labour government finds itself in the difficult position of committing to the idea of prison as the ultimate punitive sanction, and managing a prison population that has almost doubled over the last 25 years, while not having the money to invest in the prison-building programme that it views as necessary to contain them. At the same time, it has to address the problems associated with housing a large proportion of inmates in ancient prisons that have suffered decades of neglect. For the foreseeable future,

then, the Ministry of Justice will spend the majority of its annual budget on improving conditions in, and building extensions to, the prisons currently in existence. The last prison built under the control of the Prison Department was Buckley Hall, opened in 1994, and it is likely that the only new prisons that will be built in the next few years will be financed by private investors (Fairweather 1994).

Furthermore, it must be emphasized that the new generation of prisons described in this chapter are few in number and that, alongside a discourse of penal aesthetics and building humane treatment into prison architecture, there has been a massive reorientation towards increased security over the last decade (Dunbar and Fairweather 2000). A new populist punitiveness has emerged that appears to demand more austerity in prisons (see Chapter 19, this volume) and politicians are in discussion about the establishment of 'superprisons' that follow the model set by the architects of the 'supermax' in the USA; that is, human warehouses designed to manage 'untouchable toxic waste' (Lynch 2005: 79) with attention to maximum security and minimum respect for human rights and dignity (King 1999, Chapter 14, this volume). It might be argued, then, that we are returning to a Victorian model of punishment where the prison is nothing more than an instrument of a vengeful and retributive penal policy designed to isolate offenders from the rest of society.

Selected further reading

The prison might seem like an odd choice for a 'coffee table' book, but there are two large-format and lavishly illustrated works that beautifully communicate in words and pictures evolving styles of prison architecture and the ways in which prisons stand as symbolic or allegorical statements of the penal philosophy of their cultural context and historical era. The first is Brodie, A., Croom, J. and Davies, J.O. (2002) *English Prisons: An Architectural History*. Swindon: English Heritage, a survey of English prisons and their development over the past 200 years. Equally impressive is Spens, I. (ed.) (1994) *Architecture of Incarceration*. London: Academy Editions, which contains informative essays by, among others, Spens, Markus and Fairweather, as well as a Foreword by Judge Stephen Tumin. However, it is the stunning photography of prison interiors and exteriors (in England in the former, and in the USA, Canada, the UK and elsewhere in Europe in the latter) that makes these books to browse at length.

Another thorough and informative large-format book is the collection edited by Fairweather, L. and McConville, S. (2000) *Prison Architecture: Policy, Design and Experience*. Oxford: Architectural Press, which contains contributions from some of the leading experts in prison design from the worlds of architecture, the Prison Service and Inspectorate, and academia. A central reference point for any study of the early history of prisons and penal architecture is Evans, R. (1982) *The Fabrication of Virtue: English Prison Architecture, 1750–1840*. Cambridge: Cambridge University Press. Finally, those interested in the work of Jeremy Bentham should see the excellent study by Semple, J. (1993) *Bentham's Prison: A Study of the Panopticon Penitentiary*. Oxford: Clarendon Press.

Notes

1 It is important to note, however, that these three penal rationales did not follow each other in neat, chronological order. As Muncie (2001) says, prison history is not linear and all three rationales – reform, repression and rehabilitation – are likely to co-exist in some form at any one time. Moreover, 'while legislative and organizational landmarks can be placed quite accurately, the role and purpose of the prison is the subject of ongoing dispute and controversy' (Muncie 2001: 158).

2 Stephen Hales was a doctor of divinity and a fellow of the Royal Society. He had previously been engaged in a philanthropic scheme to settle discharged debtors from London in the colonies, which may have alerted him to the problem of gaol fever (Evans 1982: 99).

3 Ironically, John Howard was arguably more successful in shaping the design and architecture of penal institutions than he was in legislative reform. By the time of his death in 1790, only two Acts of Parliament had been passed as a result of his work and little improvement in prisons had been made (Muncie 2001).

4 The use of the separate system in all prisons was legislated into the Prison Act 1839. However, the extent to which the system was fully adopted in all local prisons, particularly before mid-century, is unclear (see DeLacy 1986; Johnston 2004).

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Part 2

Prisoners

Yvonne Jewkes

In Part 2 of the Handbook, the contributors provide a critical account of the main issues facing particular sections of the prison population. Home Office figures indicate that the prison population is overwhelmingly drawn from the economically disadvantaged and politically powerless, is disproportionately racialized and is increasingly female. The chapters in this section review current policies directed at, and facilities provided for, some of these groups in custody. Where appropriate they also consider alternative ways in which such offenders might be dealt with and what the implications might be for the prison system if alternatives were adopted. We start with a discussion of children and young persons in custody written by the former Chair of the Youth Justice Board. Rod Morgan (Chapter 9) takes up the narrative from Part 1 of this volume, providing a comparative account of children in custody, first from a historical and political perspective and, secondly, from an international standpoint. His analysis shows that the history of custody for children and young people since the nineteenth century reflects the broader penal philosophies and discourses discussed in Part 1, which have evolved from a desire for reform to more repressive practices in the nineteenth century and a concern for welfare and rehabilitation in the twentieth century. The developments in England and Wales over the last two decades Morgan discusses – which have included the introduction of secure training orders (STOs), detention training orders (DTOs), parenting orders and anti-social behaviour orders (ASBOs), and which have seen an increasing reliance on custody for children and young offenders – demonstrate an upward punitive trend and underline the extent to which a new penal lexicon has been adopted by politicians attuned to public opinion. Morgan describes how the provision of custody for children is organized, managed and made accountable, and who the children and young persons committed to custody are. Like their counterparts in adult prisons, young people in custody tend to have experienced many forms of social exclusion, suffer mental health problems, have a history of substance abuse, experience learning difficulties and are prone to self-harm and suicide. In the final part of the chapter he considers

possibilities for change, but comes to the conclusion that the prospects are not promising given that successive governments over the last 30 years have used children and young people as a key instrument in their mission to appear tough on crime.

At the other end of the age spectrum, there has also been an upturn in the number of older and elderly men and women who are serving prison sentences. Elaine Crawley (Chapter 10) looks at the reasons for this increase in both the UK and USA, and provides a detailed account, based on her own research, of what life is like in prison for elderly people. Many older prisoners find themselves in custody for the first time in later life and experience the trauma of confinement particularly acutely. Crawley discusses their strategies for coping with imprisonment, the consequences of their failure to cope and adapt, and the specific problems faced by elderly people when they are released from custody. Unsurprisingly, one of the biggest difficulties facing elderly people in prison – and one of the greatest sources of anxiety – is receiving adequate treatment for their health needs, and this provides a focus for Crawley's discussion. Given the neglect of this age group in most academic studies, Crawley's research is genuinely path-breaking and brings into sharp relief the fears and stresses that a period of incarceration entails. Like other authors in this volume, she remains pessimistic about the possibility of progress, although she concludes with an example from South America of how it is possible to manage elderly prisoners differently.

Diana Medlicott (Chapter 11) turns our attention to women in prison, noting that the most striking characteristic of this population is the disproportionate increase in its size over the last decade compared with the prison population as a whole. Medlicott considers why this is the case and explores the characteristics and experience of imprisonment for women and girls. Her analysis extends to the role of women in society, and she argues that, when women are given custodial sentences, courts are communicating messages about socially acceptable behaviour for females and using prison as an expressive instrument of punishment for individuals who are unable or unwilling to comply with other (patriarchal) forms of social control. The arguments put forward in the chapter are underpinned by the question of why we imprison women: what is the purpose and justification of this form of punishment? Like other contributors in Part 2, she concludes that the answer lies largely in political posturing. In the case of women, there exists a wealth of misogynist images that occupy the collective consciousness and are perpetuated in various cultural forms, which make us especially hostile to the idea of deviant or offending women. These images have been fed into penal rhetoric and policy which, against a political backdrop of demonizing and criminalizing greater numbers of people in order to demonstrate 'tough on crime' credentials, has resulted in a 'justification' for sending more women to prison.

Kimmett Edgar (Chapter 12) continues our exploration of the experience of particular sections of the prison population, focusing on black and minority ethnic (BME) prisoners. Edgar discusses the over-representation of BME prisoners in the criminal justice system that results in their disproportionately high numbers in custody. The chapter explores five key issues affecting the

experience of BME prisoners: victimization; religious identity and foreign nationality; institutional racism in the Prison Service; racial incidents; and help for those who have experienced racism in prison. While recognizing that considerable improvements have been made by the Prison Service in response to racially motivated incidents in prison, Edgar calls for further qualitative research to be carried out in order to understand better the experience of BME prisoners within a system that purports to strive for security and decency.

While the role of politics and political intervention has framed the discussions of prisoners in all the chapters in Part 2 – to the extent where it might be argued that *all* prisoners are 'political prisoners' – the final chapter focuses on those individuals to whom the label has been explicitly attached. Kieran McEvoy, Kirsten McConnachie and Ruth Jamieson (Chapter 13) explore the notion of political crimes, political prisoners and political imprisonment via a detailed analysis that takes in historical as well as contemporary themes and debates. Building on McEvoy's previous work in the area, they examine the characteristics of political prisoners, their capacity for resistance and the specific challenges that emerge in the management of political detainees, before going on to provide an indepth and up-to-date analysis of those individuals detained under anti-terrorist legislation since the USA and its allies declared a 'War on Terror' following the attacks on the World Trade Center in 2001. The authors find striking parallels between the treatment of War on Terror detainees and those imprisoned in Northern Ireland during the period euphemistically described as 'the Troubles'. They are also at pains to point out that the current War on Terror should not be regarded as an exceptional state of affairs or as some kind of over-reaction on the part of governments to an unprecedented threat. Rather, they suggest, it should be seen as one aspect of a stable, predictable penal philosophy that traverses geographical boundaries and provides historical continuities. Their analysis thus emphatically underlines the over-riding message of Part 2, which is that imprisonment is suffused with political meaning and is the expressive articulation of a hard-line approach to crime and punishment.

Chapter 9

Children and young persons

Rod Morgan

Introduction

In 2000 the Youth Justice Board (YJB), created by the Crime and Disorder Act 1998, became responsible for commissioning and purchasing all custodial places in England and Wales required for children and youths. The board took on provision for what is proportionately the largest population of children in penal custody in Western Europe. This chapter considers five questions: what are the historical and contemporary forces that have shaped this reliance on penal custody for young offenders in England and Wales? How do English provisions relate to international standards and compare with systems elsewhere? How is the provision of custody for children organized, managed and made accountable? Who are the children and young persons that the English and Welsh courts commit to custody? And, finally, what are the prospects for change?

The historical and political context

Only in 1963 was the age of criminal responsibility for children in England and Wales raised from 8 to 10 years. With the exception of Scotland, where the age remains 8 years but where there is a more welfare-oriented approach for young children, this is the lowest age of criminal responsibility in Europe (Tomashevski 1986). Prior to 1933, at common law, children were responsible for their actions from 7 years. Records indicate that children as young as 7, and sometimes younger, suffered the extreme penalty of death for thefts and other capital felonies until around 1800 (Bayne-Powell 1939: 143; Pinchbeck and Hewitt 1973: 351–2).

In the early nineteenth century, various liberal-minded magistrates and other reformers sought to change criminal procedure and penal policy so that young offenders were treated differently from adults. But change came slowly, partly because children were generally regarded as miniature adults, expected to cope with the hardships of life from a tender age, and partly

because the state had not yet developed for itself the role of child protector. Thus, rich or poor, children had to bear the private vicissitudes of family life and parental authority. If well-off they were often sent away to be educated in harsh regimes; if poor, they were expected to labour with their elders (Stone 1979). Children provided cheap labour and were an important source of family income: they were economically exploited by both employers and parents. When treatment within the family was brutal, the state did not interfere. When family relationships fractured, children were forced to survive on the street as best they could. If caught engaging in survival crimes, they were as vulnerable as adults to the draconian penalties the state imposed.

In the nineteenth century there gradually emerged a lobby known as 'child savers', the leading members of which now form part of the hagiography of penal reform. They included Peter Bedford, the 'Spitalfields Philanthropist', who, at the beginning of the century, inquired into the condition of the destitute poor and established a training school for their children (Tallack 1865; Beck 1903); Matthew Davenport Hill, the Recorder for Birmingham, who, by the 1840s, had begun using an early form of probation for young offenders – a device that became known as the 'Warwickshire Plan', whereby they might attend an early, voluntary example of an industrial school (Davenport Hill 1868; Davenport Hill and Davenport Hill 1878); and Mary Carpenter, who, in 1852, founded Kingswood School, Bristol, and whose advocacy of the separate treatment of juvenile delinquents led to passage of the Youthful Offenders Act 1854. This established juvenile reformatories, provided by voluntary societies but subject to government inspection, for offenders aged 7–15 (Manton 1976). Not until 1879, however, was the number of juveniles in prison significantly reduced when the Summary Jurisdiction Act provided for most juveniles to be tried at magistrates' courts.

It would be a mistake, however, to see these 'child savers' simply as liberal reformers battling against authoritarian conservatives, an aspect of the Whig version of history as progress. They were, rather, the middle-class precursors of what, in the twentieth century, became professional social work, heralding what was arguably a new form of paternalistic authoritarianism (see Platt 1969). 'Juvenile delinquency' was socially constructed. The concept suggested new forms of punishment and intervention in order that delinquents be saved from the allegedly corrupting influences of families, peers and neighbourhoods. Delinquents were invariably working class. A whole network of specialized closed institutions was created to instil in them the discipline which their imputed pathology was held to require. This emergent correctional infrastructure involved new miseries and abuses (see Foucault 1977; Garland 1985).

Two types of institutions were developed for juveniles from the 1850s onwards: reformatories for young offenders and industrial schools for 'those who have not yet fallen into actual crime but who are almost certain from their ignorance, destitution, and the circumstances in which they are growing up, to do so if a helping hand be not extended to them' (Carlebach 1970: 80). In fact the reformatories and industrial schools accommodated similar youths and had similar regimes. In 1899, the requirement that delinquents first spend 14 days in prison as a punishment before being 'reformed' was abolished.

Thereafter the distinction between the two types of institutions largely disappeared and, in 1933, they became 'approved schools'. Straightforward imprisonment of juveniles under 16 was abolished by the Children Act 1908, under which separate juvenile courts were also established and special remand homes for children created.

The first decade of the twentieth century also saw the emergence of a fully fledged probation system, to whose supervision a growing proportion of juvenile offenders became subject. The concept of probation was first given legal backing by the Probation of First Offenders Act 1887 which provided magistrates with the discretionary power to release, on their own recognizance, delinquents convicted of minor first offences. However, because no supervision was provided, this power was little used. Not until the Youthful Offenders Act 1901 and the Probation Act 1907 did probation supervision develop as a widely used penalty.

The Children Act 1908 represented marginal rather than radical change. The juvenile courts remained criminal courts and, though the public was excluded, the proceedings remained essentially the same as for adults. Not until the Children and Young Persons Act 1933 was it required that magistrates sitting in the juvenile court be specially selected, that the court act *in loco parentis* and have regard to 'the welfare of the child'. Moreover, though imprisonment for children was abolished, the Crime Prevention Act 1908 had established new youth correctional establishments, the first of which had already been piloted at the prisons at Bedford and Borstal, the latter being the title given to all such institutions thereafter (Hood 1965).

The case for Borstals, partly inspired by the Elmira system in New York state, was grounded on the concept of the 'juvenile adult' or 'young adult' offender. Aged 16–21, young adult offenders were said not to have their characters fully formed – to be malleable, rather than hardened criminals. They were considered suitable for a regime comprising tough penal discipline and hard work – combined with trade training and healthy exercise – in institutions ideally sited in a more rural environment than that provided by the typical prison. Under the inspirational leadership of Alexander Paterson (see Ruck 1951; Chapter 2, this volume), this concept was later developed in 'open' institutions, without perimeter security. Borstal training was a partly indeterminate sentence, initially of one to three years, followed by a period of supervision in the community with privileges and early release being earned through good behaviour. Paterson conceived it as an adaptation of the public school system, the staff being taken out of uniform and led by housemasters capable of realizing the inherently good potential of their typically working-class charges. Yet, from the beginning, some young offenders were labelled 'incorrigible', incapable of benefiting from the Borstal system: they continued to be sentenced, or transferred, to adult prison.

By 1945 an argument had implicitly developed around the concept of 'adolescence' – the physiological and psychological period triggered by the onset of puberty. Two conflicting streams of thought about how to respond to troubled and troublesome youth fuelled what arguably remains the contradictory English attitude to children and young offenders today. During the inter-war period the Borstals were hailed a great success (Hood 1965).

After 1945, however, partly as a consequence of difficulties with juveniles whose lives had been disrupted during the Second World War, a more punitive mood set in. The Criminal Justice Act 1948 introduced short term detention sentences (though the first detention centre was not opened until 1954 – see ACPS 1970: para. 37), in 1950 Portland was designated a punishment Borstal and two years later toughened regimes were recommended throughout the Borstal system (Gelsthorpe and Morris 1994: 954–5).

Meanwhile, the Children Act 1948, which did not directly concern juvenile offenders, created a child-care service designed to merge policy and practice relating to both neglected children and juvenile offenders into a single category: juveniles 'in need of care'. The dichotomy which now existed – a developing welfare framework alongside the more punitive treatment of repeat offenders – gradually came to a head in a series of reviews and reports in the 1950s and 1960s. It culminated in a Labour Party study group report, *Crime: A Challenge to Us All* (1964 and generally known, after its Chairman, as the Longford Report), followed by two white papers and, finally, the Children and Young Persons Act 1969. This provided that children under 14 be no longer, except in the case of homicide, referred to the juvenile court just because they had committed offences. Where it could be established that such offenders were not receiving the care, protection and guidance that good parenting should provide such offenders were instead subject to 'care and protection' proceedings. Further, though criminal proceedings might be brought against 14–16-year-olds, this was only to happen after mandatory consultation between the police and social services. The expectation was that these older juveniles would in future largely be dealt with through care and protection proceedings also.

By these means England and Wales was to move towards a more welfare-oriented approach, and the age of criminal responsibility was effectively to be raised for the overwhelming majority of offenders. Social workers' discretionary powers were to increase and the juvenile court was to become a predominantly welfare court. The role and powers of magistrates to make detailed sentencing decisions were to diminish. And, in particular, the ability of the criminal courts to pass custodial sentences was to be substantially reduced. The power of magistrates to remit cases involving 15–17-year-olds to the Crown Court to impose sentences of Borstal training and imprisonment was to be removed. Detention and attendance centre orders were to be replaced by something called 'intermediate treatment', the detailed content of which was to be determined by social services (for more detailed accounts, see Morris and McIsaac 1978; Bottoms *et al*. 1990; Gelsthorpe and Morris 1994; Newburn 1995).

However, when Labour was returned to power in 1974 they decided, like their Conservative predecessors, not to implement parts of their 1969 Act. And, as Newburn (2002: 551) has commented, 'though only partly implemented, the Act became the major scapegoat for the perceived ills of juvenile crime and criminal justice in the 1970s'. The Act was disparaged as 'soft' (Muncie 1984) and the welfare approach it embodied was abandoned in favour of increased emphasis on justice and punishment. By the end of the decade the use of custody for juveniles had doubled and, in their victorious 1979

Election Manifesto, the Conservatives promised to provide 'short, sharp shock' regimes in detention centres and make more attendance centres available for 'hooligans' (for a general review, see Downes and Morgan 1994).

These 'short, sharp shock regimes' were piloted and found wanting (Home Office 1984), but this did not stop their general adoption, nor more 'tough' government talk. The Criminal Justice Act 1982 replaced Borstal training with a new sentence of youth custody; the minimum duration of a detention centre sentence was reduced; magistrates were empowered to restrict juvenile offenders' activities as part of a supervision order; and it was to become normal practice to fine offenders' parents. Yet there was simultaneously pursued a policy of 'diversion' or 'minimum intervention', by means of police informal warnings and cautions, use of which gathered pace during the 1970s and was extended in the 1980s. The proportions of both children (10–13 years) and young offenders (14–17 years) cautioned by the police instead of prosecuted more or less tripled between 1955 and 1995 (see Gelsthorpe and Morris 1994). Yet diversion did not represent welfarism by the back door. Indeed, as one analyst has subsequently commented, there grew up in the 1970s and 1980s, in accord with the prevailing sentiment (Martinson 1974), the 'conviction that nothing worked' which 'meant that some workers came to believe that it did not matter what they did, as long as they did little of it' (Smith 1999: 153). A policy of 'bifurcation' was pursued (Bottoms 1977): in other words, run-of-the-mill, mundane, minor or occasional offenders were judged to require little or no intervention (and much of what little intervention they did receive was 'tokenistic'; Smith 2003: 26), whereas serious, persistent and allegedly dangerous offenders were subject to more intrusive, punitive and longer-lasting controls (Pickford 2000). Ironically, given the Conservative administration's tough rhetoric, the aggregate consequence was that, whereas the number of young offenders sentenced to custody more than doubled during the 1970s, the number more than halved during the 1980s so that, at the end of the decade, the average daily population in custody was below that in 1970 (Morgan 2002). It was not the proportionate *use* of custody that declined but, rather, the number of older juveniles brought before the courts and found guilty of indictable offences. The number of known juvenile offenders did not change significantly (Gelsthorpe and Morris 1994). Most were now being dealt with pre-court.

The other change in the 1980s was a decline in the use by the juvenile court of care orders in response to offences. This decline was recognized by the Children Act 1989 which reconstituted the juvenile court as the youth court and removed from its powers the capacity to make care orders. Child welfare proceedings were transferred to a family proceedings court. This fundamental change reversed the direction of policy from 1948 until 1969 and now distinguishes the English system from that in Scotland and many other European jurisdictions. In England there is a clear separation between civil and criminal proceedings for dealing with children in need of some official intervention. Though the Children Act 1989 (s. 1) declares that, other than in exceptional circumstances, 'the child's welfare shall be the court's paramount consideration', the Crime and Disorder Act 1998 (s. 37) (now the principal juvenile justice statute) states that the prevention of offending by children

and young persons shall be the principal aim of the juvenile justice system. Further, while the standard-bearer white paper published by New Labour when elected in 1997 proclaimed that there was no conflict between protecting the welfare of a young offender and preventing that young offender from offending again (Home Office 1997: para. 2.2), not everyone agreed that the policies pursued thereafter were best calculated either to reduce reoffending or to promote children's welfare (see, for example, Pitts 2005).

New Labour's 1998 youth justice reforms arguably embedded aspects of the change of mood regarding young offenders which took place under the Conservatives in the early 1990s. The reasons for this shift of emphasis at the beginning of the decade involved a number of factors, including: a continuing upward trend in recorded crime; some well publicized urban disturbances involving young people (Campbell 1993); police and official preoccupation with 'persistent juvenile offenders' (Hagell and Newburn 1994); and the shock waves to the body politic which followed the tragic murder of 2-year-old James Bulger by two 10-year-old boys in Bootle, Liverpool in 1993. The mood has been termed 'popular punitivism' (Bottoms 1995), a concept manifested in Conservative Home Secretary Michael Howard's proposition that 'prison works', a suggestion scarcely disavowed by New Labour in government. Indeed, Labour's manifesto for the 2005 election listed among the government's *achievements* the fact that 'court sentences have got tougher' and 'we have built over 16,000 more prison places than there were in 1997' (Labour Party 2005).

The genesis for Labour's 1998 reforms of youth justice was based upon an analysis undertaken by the Audit Commission (1996) prior to the 1997 general election and reacted to with propositions from Labour while in opposition (Windlesham 2001). The commission's critique was focused largely on what was being done, or rather not being done, in the community. Insufficient resources were said to be devoted to early preventive work and use of repeat cautions meant that much offending was engaged in with impunity. The work of the different agencies was not joined up. Less was being done to address youth offending, the commission argued, than was the case a decade previously, and the members of the commission (the principal among whom was to become the YJB's first Chief Executive) doubted that juvenile crime was falling as the declining numbers being brought before the courts suggested. The tone of Labour's response to these messages is clearly conveyed in the title of the white paper, *No More Excuses – A New Approach to Tackling Youth Crime in England and Wales* (Home Office 1997), published shortly after their election victory.

The Conservatives had, in 1994, introduced a new sentence, the secure training order (STO) of between six months and two years for 12–14-year-olds, to be served in a new type of establishment, a secure training centre (STC), to sit below the principal custodial provision for 15–17-year-olds, which was detention for between two months and two years in a young offender institution (YOI). The STO was controversial for two reasons. First, it lowered from 15 the age at which sentencers could normally consider custody and, secondly, the sentence was to be served in establishments built for the purpose, the management of which was to be contracted out to commercial

providers. When they came to power in 1997, the Labour government retained this extension and relaxed the criteria restricting its use. They combined both sentences by introducing the detention training order (DTO) for 12–17-year-olds and replaced the strict criterion for offenders under 15 relating to 'persistence' with the provision that the sentence was available where the court 'is of the opinion that he is a persistent offender'. The courts, including the Court of Appeal, have interpreted this power rather broadly (see Ball *et al.* 2001: ch. 28). These shorter sentences, available to the magistrates' courts, exist alongside continued provisions whereby serious offences – mandatorily, in the case of murder – are committed to the Crown Court and are liable to 'long-term detention' (to distinguish the sentence from a DTO) for which the maximum period is the same as if the child or young person is an adult. These long-term detention cases are known as section 90 or 91 cases (Powers of the Criminal Courts (Sentencing) Act 2000).

Meanwhile, at the other end of the interventions spectrum, informal warnings and formal police cautions were replaced by police 'reprimands' and 'final warnings', only one of each of which (unless a certain lapse of time has occurred) is allowed to each child and young person coming to the attention of the police and admitting an offence. Thereafter the child must be brought before the youth court, to which the Crime and Disorder Act 1998 made available a whole raft of new sentences and orders designed to make both offenders and their parents more accountable for their offending behaviour. In addition the Act abolished the *doli incapax* rule for children under 14 (the rebuttable presumption that the prosecution not proceed unless the prosection proved that defendants of this age were capable of appreciating the difference between right and wrong) and also introduced parenting orders, thereby making younger children and their parents simultaneously more clearly responsible in criminal law for their behaviour (for a critical commentary, see Commission on Families 2005: 29–37).

The government also introduced measures to tackle anti-social behaviour. The justification for the civil anti-social behaviour order (ASBO) was that repeat minor acts of anti-social behaviour tended individually not to be given high police priority but, cumulatively, undermined residents' quality of life, and perpetrators frequently intimidated the victims into not complaining. Breach of an ASBO is a criminal offence punishable with imprisonment or its juvenile equivalent. These measures, which were controversial because of the relaxed evidential requirements for making an order, were little used during the first few years. But, accompanied by vigorous government advocacy stimulated by evidence that the public at large were concerned about perceived increases in public disorder, and disbelieved that the incidence of crime had generally fallen since the mid-1990s (attested to by both recorded crime statistics and successive sweeps of the British Crime Survey), the use of ASBOs and other anti-social behaviour measures has rapidly gathered pace during the 2000s. Moreover, children and young people have become the target for a high proportion of these anti-social behaviour measures.

The consequence of the events and initiatives in the early 1990s, as Table 9.1 demonstrates, was that the number of children and young people in custody greatly increased. The youth justice reforms of 1998 have so far failed

Table 9.1 Children and young persons in penal custody, 1991–2005

	1991	1993	1995	1997	1999	2001	2003	2005
LASHs	70	70	80	95	90	258	292	238
STCs					55	118	185	248
Prison Service Accommodation	1,345	1,304	1,675	2,479	2,422	2,415	2,267	2,339
Total	*1,415*	*1,374*	*1,755*	*2,574*	*2,567*	*2,791*	*2,744*	*2,825*

to reverse the trend, although overall numbers have since 2002 stabilized somewhat.

The English system in international context

The development of the English system for dealing with child and young person offenders parallels that found in other industrialized, democratic societies. In the nineteenth and early twentieth century, initiatives to safeguard the welfare of young persons were gradually adopted by industrialized states, together with standards and measures for intervening in their lives when they offended. None the less there are striking differences in the arrangements in each jurisdiction. These differences, which make international comparisons difficult, are best summarized under the following headings:

- The age of criminal responsibility and the point at which adult measures are applied;
- The degree to which procedures and interventions, specific to juvenile offenders, are employed;
- The degree to which criminal and welfare procedures for responding to the behaviour and circumstances of juveniles are differentiated.

Ages of criminal responsibility

We have noted that, at 10, England and Wales has one of the lowest ages of criminal responsibility in advanced, democratic societies. However, it also treats offenders up to the age of 18 as non-adults. In other words, youth courts in England and Wales deal with a greater range of child and young offenders aged 10–17 years old than many other jurisdictions. In Denmark and Scandinavia generally, for example, the age of criminal responsibility is 15 (Kyvsgaard 2004). In Germany no child under 14 is criminally responsible. In France the age of responsibility is 13. In Canada and the Netherlands it is 12.

These differences extend to the upper cut-off point. Scotland, for example, has, at 8, a lower age of criminal responsibility than England, and has separate arrangements for dealing with juvenile offenders under 16 years of age: from the age of 16 they are proceeded against as adults. In New Zealand

the equivalent upper age level is under 17 years, although there the age of criminal responsibility is 14. Further, in many countries these cut-off points are not as firm as first appears (Tonry and Doob 2004). In Canada and much of the USA, for example, older adolescents can be transferred for sentence to the adult court if the case is serious and the judge determines that the powers of the youth court are insufficient. Likewise in the Netherlands, 16 and 17-year-olds may in certain circumstances be treated as adults and sentenced to a longer period in custody than is available for juveniles (Junger-Tas 2004). In Germany, conversely, young adults aged 18-20 may be treated as juveniles (Albrecht 2004).

The consequence of these jurisdictional differences is that, without knowing how many young people are effectively detained in welfare, psychiatric *and* penal institutions, and assessments of the nature of those institutions – figures and data that are not generally available – it is impossible to make meaningful comparisons between countries. However, the point is this: the degree to which it is held that children and young people should be treated differently from adults is the subject of continuing debate and in some jurisdictions cases are dealt with on their individual merits. The general treatment of young offenders in England is possibly more prey to punitive trends because older adolescents – who arguably merit an adult response – are included in the system. As we shall see, for example, a substantial proportion of the offenders dealt with in the youth court attain the age of 18 while serving their custodial sentences yet they mostly continue to be held in accommodation reserved for young offenders.

Juvenile-specific procedure and interventions

The English system comprises a youth court presided over, in the majority of cases, by lay justices who are selected and trained specifically for the task (full-time district judges, sitting alone, preside in a growing minority of cases, particularly more serious cases). It is not so in all jurisdictions. In Denmark and Scandinavia generally, for example, there is no separate criminal court for juveniles. Rather, the undifferentiated, adult, criminal court deals with the case differently when a juvenile is involved (Kyvsgaard 2004). Conversely, as we have seen, many countries that have a separate youth court system none the less permit juvenile cases to be transferred to the adult court in given circumstances. The relevant provision in England and Wales as far as custodial sentencing is concerned is that in serious cases juveniles may be, or have to be, committed to the Crown Court. There they are liable to sentences as long as those available for adults. As we have seen, however, the English system also provides the youth court with a range of sentences, both community and custodial, *specific* to juveniles. The latter includes the DTO which, unlike short custodial sentences for adults (prior to implementation of the Criminal Justice Act 2003), involves statutory supervision to the end of the sentence following release at the halfway point. Reliance in England and Wales on penal custody for child and young offenders is the subject of international criticism (see European Commissioner for Human Rights 2005). In the English system, criminal (youth court) and welfare (family court) proceedings concerning

children are quite distinct although, it has repeatedly been observed, the subjects of those proceedings typically share many characteristics. The vision of the Children and Young Persons Act 1969, providing for the abandonment of criminal proceedings for juveniles, has been completely reversed.

The governance, organization and accountability of custodial provision for children

Administration of the provision of custody for children in England and Wales is based on what is termed, in Whitehall jargon, a 'purchaser–provider' split, an arrangement designed to foster competition and maximize value for money. Since April 2000 the YJB has been responsible for commissioning and purchasing the custodial places which the courts, through their individual remand and sentencing decisions, implicitly demand. In 2005–6, the board purchased 3,293 beds in three categories of establishments:

• Some 2,784 beds in YOIs, all but two of which are managed by the Prison Service. Beds in two further institutions are managed by commercial companies. YOI provision is for 15–17-year-olds in the case of boys and 17-year-olds in the case of girls. There are currently 13 institutions or units within institutions for males and four units for girls. Of these institutions all but five are split-site establishments. That is, the young offenders are held in more or less discrete sections of institutions which also house prisoners aged 18 or over. The degree to which there is contact between the young and adult offenders varies according to the nature, layout and facilities in each establishment, though the YJB's aim is to move gradually towards greater separation (YJB 2005). Since separation will best be achieved in institutions exclusively for young offenders we can expect, unless the custodial population rises and makes the strategy impossible, the YJB gradually to withdraw from most split-site arrangements. Until 2005 these split-site sites were shared with young adults (aged 18–20) but, henceforth, as a result of legislative changes, the adult sections will increasingly accommodate prisoners aged 21 or over.

• Some 274 beds in four STCs, all of which are managed by commercial companies. The STCs, which are relatively small compared with most YOIs, are subdivided into small living units of six to eight beds. They generally accommodate adolescents in the middle age range of 14–16 years, although they also accommodate some older young people considered too vulnerable to be housed in the YOIs and some younger children for whom there are no spaces available in LASHs (see below).

• Some 235 beds in 15 secure homes, all of which were until recently managed by local authorities (thus generally known as LASHs), but one of which was sold in 2005 to a commercial operator. The LASHs vary in size, but are mostly very small and, like the STCs, are subdivided into small living units of six to eight beds. Children under the age of 15 are invariably housed in the LASHs but these homes also accommodate

the occasional older adolescent considered too vulnerable to place in a YOI.

All establishments for young offenders are regularly independently inspected – the YOIs by the Prisons Inspectorate, and the STCs and LASHs by the Commission for Social Care Inspectorate (CSCI). Each of the YOIs additionally has attached to it an independent monitoring board of lay persons, and the YJB has provided child advocates and social workers in every institution to assist the young inmates to find their voice and safeguard them from a child protection standpoint. In addition the YJB employs field staff to monitor compliance with the legal contracts they have with the STCs and LASHs and the service-level agreement they have with the Prison Service. These contracts and agreements have been backed by significant investment to raise the standards of education, health and other provision required (see YJB 2003: 30–5, 2004: 24–7). Successive inspectorate reports, while agreeing with the YJB's assessment that 'there is still a long way to go' (YJB 2005: para. 2), testify to the considerable progress that has been made (HMIP 2003, 2004).

Though the purchaser–provider split is intended to achieve market competition and maximize the standards achieved and efficiencies gained, the YJB inherited an infrastructure which cannot easily be changed. Although the LASHs are geared to the intensive care of children, local authorities are not queuing up to open secure accommodation units and those already providing them will do so only if they can more or less guarantee that their beds will be filled and the high costs more than covered. The evidence from recent years suggests that were the YJB to terminate any of the existing LASH contracts, the units would probably close (during the period 2001–5 the YJB did withdraw from five LASH contracts, four of which were subsequently closed). At the other end of the spectrum the Prison Service currently accommodates a total population of approximately 80,000 prisoners. The 4–5 per cent of that population comprising young offenders is a relatively marginal consideration within that broader framework and, as successive Chief Inspectors of Prisons have emphasized, the management of young offenders within the Prison Service is arguably not given the distinct priority which critics consider necessary (see Chapter 1, this volume). Despite the appointment of a Head of Juveniles and Women, the Prison Service lines of management accountability are principally from governors to area managers. Furthermore, prison governors operate within a web of standards and internal audits which are overwhelmingly geared to the adult prison population.

Between these two historical providers are the three commercial companies providing the four STCs, controversially established prior to the establishment of the YJB. The STCs are regarded with suspicion by other providers, particularly the LASHs, whose costs they most closely approximate and whose provision they have to some extent displaced. The principled and empirical proposition that the provision of secure custody for children is unsuitable for profitable enterprise and the argument that, wherever that market is allowed to develop, corners will be cut and lower standards prevail, continue to be widely subscribed to by social work practitioners and some penal pressure groups.[1]

From the discussion above it becomes clear that, within the present framework, all forms of current provision of custody for children and young offenders involve operational shortcomings and dilemmas. The Prison Service is an immobile tanker, which is rather too firmly attached to what critics consider an insufficiently child-centred tender. There is no central, strategic management or funding of the LASHs by central government and thus the aggregate supply of places is uncertain. The local authorities may not seek profits in the way that the commercial companies which run the STCs do, but they do not aim to make a loss either, and their costs vary greatly. Indeed, the costs of all three types of provision vary from establishment to establishment, and the overall differentials are considerable. It costs approximately £195,000 per year per place to accommodate a child in a LASH; £155,000 per year in an STC; and £55,000 per year in a YOI. These aggregate differences reflect the economies of scale involved and the very different staff–inmate ratios provided.

So the question arises: what justifies these very different custodial costs which, cumulatively, (if escort costs are included) account for £264 million or 70 per cent of the YJB's annual budget? There is no straightforward answer to this question. YOIs, STCs and LASHs cannot easily be compared. They accommodate very different populations in terms of age, sex and the characteristics of their charges. It cannot be claimed that, in terms of the subsequent lives and criminal behaviour of their charges, the LASHs have a demonstrably better record than the Prison Service, but they are not comparable. The LASHs tend to accommodate very young and damaged children whose behaviour is precociously serious, chaotic or out of control and for whom child protection issues (e.g. self-harming behaviour, victimization at the hands of family members and other adults, etc.) are often acute. There is a serious debate to be had about the proportion of young children in custody who might be dealt with through family as opposed to criminal proceedings, and the alternatives to custody (e.g. intensive fostering) that might be employed. However, few commentators would doubt that, for those very few young children whose behaviour – which sometimes includes murder, arson and rape – requires their detention in a secure place of custody, specialist and other staff-intensive child-centred provision is a necessity. Whether that provision goes under the label of 'welfare', 'penal' or 'psychiatric', it is always going to be very expensive.

In volume terms the more pertinent questions concern those older adolescents, the overwhelming majority, in custody. Their placement is more obviously geared to a sentencing tariff. It is highly questionable whether so many of these 15, 16 and 17-year-old offenders need be remanded in, or sentenced to, custody. That proposition is best examined following examination of the population in custody.

Children and young persons in custody

At the time of writing, there were 3,169 children and young offenders in custody subject to criminal court orders. Not all of these remained juveniles,

however; 16 per cent, or just over 500, were adults, having attained the age of 18 during the course of their sentence, but the YJB placements team and the Prison Service had agreed that they should not be transferred to an adult establishment prior to the custodial part of their sentence expiring. Such agreements are generally made for offenders serving DTOs on the grounds that to transfer them to adult establishments would generally be counterproductive in terms of humanity and continuity in offender or educational programme participation. Long-term offenders, are, however, normally, though not invariably, transferred on or shortly after attaining the age of 18, depending on how long they have left to serve. It follows that, strictly speaking, there were many fewer juveniles – rather fewer than 2,700 – in custody than the aggregate number for which the YJB makes provision.

Of these young offenders the overwhelming majority – 93 per cent – were male. It should be noted, however, that, as with adults, the rise in the number of girls in custody has greatly exceeded that of males during the last decade and girls comprise a slightly larger proportion of the juveniles in custody than do women of the adults in custody. One of the current difficulties in providing for girls is that their number, though small, tends to fluctuate greatly. Further, girls normally comprise an even higher proportion of the children aged 14 or below in custody. In November 2005 girls comprised 12 per cent of this very young age group.

Table 9.2 shows the age distribution of the children and young people in custody in the juvenile estate, by type of allocation. From this it can be seen that a very small proportion, 6 per cent, are children under 14. The overwhelming majority – 83 per cent – are aged 16 or over. From this table it also becomes clear that the YJB's attempt to place children according not just to their age but also to their individual needs means that the LASHs and the STCs cater for a much more varied group of children and young persons than the YOIs. Although 56 per cent of the LASH population and 29 per cent of the STC population are 14 years or younger, both types of institution also cater for sizeable numbers of older (16, 17 and even the occasional 18-year-old) offender. On the whole, these are young people who are particularly vulnerable and who, for one reason or another, cannot and should not be required to cope with the typically less intimate, less child-centred and less well staff-supported environment within a YOI.

This raises the question as to whether there are more young offenders in YOIs who, because of their vulnerability, should ideally not be housed there. And this is in turn begs the question as to whether, if some young offenders should ideally not be housed in the YOIs as currently constituted, they could with confidence be so accommodated if the juvenile estate currently managed by the Prison Service was reconstituted or managed differently. These are complex and controversial questions which are best approached (in the final section) by first considering the epidemiological data on the custodial population.

It is possible to describe, on the basis of real-time data, the children and young people in custody in terms of their age, sex, legal status and current index offence. This is because the YJB's only operational function is the placement, on the basis of need and risk assessments undertaken by the

Table 9.2 Children and young persons in penal custody by age and category of provision, 1 November 2005

Age	LASHs	STCs	YOIs	Total
10				
11	2			2
12	12	1		13
13	37	12		49
14	91	75		166
15	41	79	275	395
16	55	74	735 *	864
17	3	14	1,446 *	1,463
Total	241	255	2,456	2,952

Note:

*In November 2005 three 16-year-olds and four 17-year-olds were being held in high-security adult accommodation due to the extreme gravity of their charges or offences.

youth offending teams (YOTs), of children and young offenders remanded or sentenced to custody. The YJB placements team also have real-time data on the vacant places available within the closed estate that the YJB has commissioned and purchased. These data do not extend, however, to the more complex characteristics of the custodial population, either in terms of offending careers or welfare characteristics. To gain this broader picture one has to turn to the courts and National Offender Management Service (NOMS) caseload data (although it should be noted that there are no comprehensive data published on children held in custody *outside* the prison system) and the results of commissioned surveys and other research.

The offences for which children and young persons are currently being committed to custody are broadly similar today as in 2002, the last year for which separate published prison statistics were made available (NOMS now publishes caseload data largely undifferentiated by age; www.noms.homeoffice. gov.uk). The younger children held in the LASHs and STCs are – as is to be expected given the reluctance to prosecute and incarcerate young children – more likely than the older adolescents held in the YOIs to be charged with or convicted of very serious offences such as murder, other serious offences of violence against the person, rape and arson. Within YOIs, robbery, burglary and violence against the person offences (16 per cent each) account for the majority of receptions and, because sentences for these offences tend to be longer than average, even higher proportions of the average daily population (25, 21 and 17 per cent respectively; Home Office 2003a: Tables 1.5 and 3.11). Moreover, the contribution these offences make to the custodial population is changing. A decade ago the proportion of young offenders in custody for violence and robbery offences was significantly lower than today and the contribution of burglary was far greater (Home Office 2003a: Table 3.11).

What is striking is that the sentences young offenders are receiving are significantly longer today than a decade ago and that this, as well as the increase in the proportionate use of custody, is what has served to drive up the number of children and young persons in custody. Average sentences for 15–17-year-old boys rose from 9.2 months in 1992 to 12.2 months in 2002, an increase of one third. Average sentences for 15–17-year-old girls rose even more: from 8.1 to 11.4 months, an increase of 41 per cent. These increases in sentence length have been across the board, for every age category, in magistrates' courts and the Crown Court (Home Office 2003a: Table 3.15).

What might explain this apparently increasingly punitive trend? This question has not yet been adequately explored in relation to young offenders, though it has for adults (Hough *et al*. 2003) for whom, overwhelmingly, the evidence indicates that like-for-like offences are today being dealt with more severely than was formerly the case. There has, as we have seen, been some shift in the offence mix of young offenders incarcerated. Robbery and offences against the person now account for a significantly greater proportion of receptions. However, it is difficult to draw conclusions from the data given the wide range of behaviours and levels of seriousness which these offence categories encompass (robbery, for example, includes forms of bullying like 'taxing' fellow school pupils for their pocket money to taking an old lady's handbag at knifepoint). What appears not to have changed significantly over the past decade is the level of pre-convictions which the population in custody has. Eighteen per cent are recorded as having no previous convictions in 1993, compared with 17 per cent in 2001, whereas 20 per cent had seven or more, compared with 21 per cent in 2001 (Home Office 2003a; Table 3.6). Contrary to what is widely believed, a significant proportion of young offenders sent to prison are not prolific offenders: well over one third – 37 per cent – have either no, or only one or two, previous offences, albeit those offences may be and often are serious. What is clear, however, is that pre-convictions are now given greater weight by sentencers than was formerly the case when assessing the gravity of the current offence, and that community sentences are now more rigorously enforced.

The evidence from surveys of the young people in custody demonstrates that they are drawn from the most deprived and socioeconomically marginalized sections of the community and typically exhibit multiple problems. The most recent data (drawn from both young offenders in custody and under supervision in the community) regarding their mental health demonstrate, for example, that:

- Some 31 per cent have identifiable mental health problems – almost one fifth with problems of depression, a tenth having engaged in an act of self-harm in the preceding month, similar proportions suffering from anxiety and post-traumatic stress symptoms, 7 per cent suffering from hyperactivity and 5 per cent suffering from psychotic-like symptoms; and

- almost one quarter have learning difficulties (that is a measured IQ of less than 70) with a further third exhibiting borderline learning difficulties (measured IQ of 70–80) (Harrington and Bailey 2005).

The latter data must be treated with caution. It is difficult to say whether they reflect intrinsic learning difficulties or rather an absence of intellectual stimulation. A recent survey of young offenders receiving DTOs indicates that two thirds have been excluded from education, that four in ten have at some stage in their lives been in the care of a local authority and 17 per cent have been on a child protection register (Hazell *et al*. 2002; see also HMIP 2005). The result is that children in custody typically have a literacy and numeracy age some four to five years below their chronological age.

Their problems are contributed to, or exacerbated by, substance abuse. One study indicates that, of young offenders in custody:

- 45 per cent report having been dependent on a substance at some point in their lives;
- 74 per cent report having drunk alcohol more than once a week with the majority of the drinkers regularly exceeding six units of alcohol on a single drinking occasion;
- 83 per cent are smokers;
- 30 per cent report that they have taken drugs not to get high but just to 'feel normal'; and
- 38 per cent say they have taken a drug to 'forget everything' or 'blot everything out' (Galahad SMS Ltd 2004).

Which is, in effect, to say that they have taken drugs as a form of self-medication.

For all these reasons the YJB, on taking over responsibility for commissioning custodial places for children in 2000, invested heavily in improving both the facilities and programmes it inherited so that the chronic needs of young offenders be better met, particularly in Prison Service-run establishments. As recently as 1997 the Chief Inspector of Prisons, in a coruscating thematic report on the topic, found that Prison Service provision for young offenders was 'chaotic' and did 'not constitute a system at all'; that there was an absence of vision, leadership and responsibility for this category of offenders; that they were essentially 'warehoused' in institutions that were too big and in which bullying was 'endemic'; and that there was little or no organizational recognition of their child status and considerable needs (HMIP 1997: 69–70). In recent years the inspectorate has found the system to be generally improved, though still wanting in many respects (HMIP 2003: 34, 2004: 44, 2005: 56–60). The most recent surveys of young offenders in Prison Service custody, for example, report that 5 per cent of boys feel unsafe most of the time and 37 per cent have felt unsafe at some stage (HMIP/YJB 2005).

Future options

In autumn 2005, the YJB published its strategy for the future of the secure estate for children and young persons. The document is both principled and pragmatic. The YJB describes the improvements it considers have been achieved since 2000, yet acknowledges that there is still a long way to go. It

aims to reduce the custodial population of children and young persons by 10 per cent by 2008 and to separate the facilities provided for them to the greatest extent possible. It concedes that the degree to which it will be able to realize its objectives will depend on two factors, 'the sentencing trend' and the 'availability of resources', neither of which the board has control over or exercises more than limited influence. So to what extent are the board's objectives shared and what are the prospects of their being achieved?

The YJB's strategy was the subject of widespread consultation during the winter of 2004–5, including a substantial survey of incarcerated children and young persons. The board's vision is aspirational. It sets out 'mom and apple pie' principles with which few would likely quarrel. For example, it recommends that all secure institutions for children and young people should:

- have a child and young-person-centred culture;

- be run by staff committed to working with children and young people, who are adequately trained in this area of work and who have completed nationally approved training in effective practice work with child offenders;

- have regimes that are fundamentally geared to the individual educational, training, recreational, cultural and personal developmental needs of children and young people and that are not disrupted by unnecessary transfers;

- employ an approach to behaviour management that emphasizes, to the greatest possible extent, positive encouragement and reward rather than physical restraint or negative sanctions; and

- be located as close to young offenders' community ties as possible both in distance, and in terms of transport links and accessibility (YJB 2005: para. 10).

But the principal arguments do not lie here. Rather they lie in the degree to which children are in the first instance held fully accountable for their behaviour in criminal law and, to the extent that they are held accountable, dealt with by means of custody. What are the prospects for fundamental change in these regards?

The prospects are not promising. There is now so little political support for change in the direction adopted in many other European jurisdictions – raising the age of criminal responsibility and merging once again aspects of criminal and welfare legal proceedings so that fewer children are dealt with by penal means – that most English critics have almost given up expressing their aspirations.[2] It is regarded as politically unfeasible, naïve whistling in the wind. It is left largely to international observers, from the United Nations or the Council of Europe, to express views which are held by many leading members of the groups campaigning for children's interests but seldom now pressed by them. When the Council of Europe Commissioner for Human Rights recently commented adversely on the low age of criminal responsibility in England and Wales and expressed surprise at the abolition of the *doli*

incapax rule for children under 14 – a change he described as an 'excessive leap' – the government did not even think it necessary to comment on his observations or his recommendation that the age of criminal responsibility be raised 'in line with norms prevailing across Europe' (European Commissioner for Human Rights 2005: paras. 105–7).

Disquiet regarding the number, and continuing growth in number, of children and young persons in custody is widespread, however, and the government is sensitive to the issue, not least when the outcome results in tragedies within the system. Fourteen children and young persons have died in custody since 1997, thirteen by suicide and one while being restrained, two in STCs and twelve in YOIs (see Coles and Goldson 2005). Some of these cases have attracted considerable media attention because of what have been held to be the scandalously inappropriate sentencing and placement decisions involved (a key example is the death of Joseph Scholes at Stoke Heath YOI in 2002, a case in which the inquest coroner has called for a public inquiry).

The operational pressures resulting from the rising numbers in custody are unarguable. The YJB aims to have headroom in the number of places provided for children of 8–10 per cent. This is necessary because some places are always out of commission for repair, redecoration or refurbishment and because there is always a degree of misalignment between the type or location of places provided and needed. The YJB aims, for example, to place 70 per cent of young offenders within 50 miles of their homes, but currently just fails to meet this target. The smaller the degree of headroom within the system, the greater the likelihood that children will have to be placed distant from home or in institutions less than ideal for them. To the extent that this happens, there is greater stress on all concerned – the children, their families and the staff who work with them – and the likelihood of self-harm and disorder increases commensurately. Further, the YJB estimates that some 200–300 older boys who 'require more intensive support than can currently be provided in YOIs' are nevertheless being so held (YJB 2005: para. 16). These include the young people whom the YOTs have assessed as 'vulnerable', a term on which the board considers it unsafe to rely because it is used insufficiently precisely. Nevertheless, as we have seen from the mental health problems and other characteristics of the population in custody, there are clearly many young offenders in custody who cannot adequately be cared for and safeguarded in the large YOIs by staff inadequately selected and trained for the purpose. The more the system is overcrowded, the greater the operational risks that things will continue to go badly wrong.

The YJB aims to reduce the courts' resort to custody (see YJB 2005: para. 15), primarily because it considers that in most cases reduced reoffending and public protection will best be achieved in the long term by greater reliance on community-based measures. The board aims to build the courts' confidence in these alternatives. However, it is significant, given the 90 per cent rise in the custodial population since the early 1990s, that the board aims to reduce the population by only 10 per cent by 2008. And the fact that the board feels it necessary to stress that this modest target is 'realistic' reflects the mixed political messages in the government's policies for dealing with youth crime,

and those agencies and decision-makers who, cumulatively, determine the number of children in custody. On the one hand are the noble purposes set out in *Every Child Matters* and the Children Act 2004 (the five outcomes for children of 'being healthy', 'staying safe', 'enjoying and achieving', 'making a positive contribution' and 'achieving economic well-being'; Treasury 2003: para. 1.3). On the other hand are the pressures created by the government's anti-social behaviour agenda, carried through with high-profile support from the Prime Minister by the Home Office Anti-social Behaviour Unit's 'TOGETHER' campaign (see Home Office 2003b, 2003c; Millie *et al*. 2005: 4–5). Fifty-six per cent of ASBOs to date have been imposed on juveniles – with increasing numbers of them being received into custody for breach.

The jury is still out on whether the anti-social behaviour agenda is dragging children into the criminal justice net who would not otherwise get there, or whether – even if they *would* otherwise get there – they are being fast-tracked into custody as a result of the summary, civil procedures involved (see, for example, Home Affairs Committee 2005: Vol. 1, ch. 3 and Vol. 3, Ev. 217). No one can seriously doubt, however, that the anti-social behaviour campaign is being pursued with the utmost vigour despite the fact that it risks driving up the number of young people in custody. The government is determined to pursue a tough policy with regard to what the Prime Minister has described as the 'number one item of concern on many doorsteps' (Blair 2003). It seems unlikely, therefore, that reducing the juvenile population in custody will of itself become a high government priority and it remains to be seen how guidance promulgated by the new Sentencing Guidelines Council (SGC) will impact on the sentencing of juveniles. Whatever the SGC has to say about making the sentencing of juveniles less punitive compared with adults (see, for example, the guidance on robbery issued in November 2005 – SGC 2005: 13–14), it is against the backcloth of a series of government measures setting higher tariffs for grave offences. Thereby, if the principle of proportionality is honoured, the new measures will drag all other sentences upward. Nevertheless the government has signalled that it intends legislating to reform the framework for the sentencing of juveniles (Home Office 2003d) and the bill will likely include measures – for example, making intensive supervision and surveillance a specific sentence or requirement – which may serve to raise the threshold that sentencers have to cross before imposing custodial sentences. The bill may also introduce greater flexibility regarding the placement of children subject to custodial sentences, thereby blurring the boundary between custodial and non-custodial provision.

Selected further reading

The classic text on the development of social policy regarding children in recent times remains Pinchbeck, I. and Hewitt, M.'s (1973), *Children in English Society. Vol II. From the Eighteenth Century to the Children Act 1948*. London: Routledge & Kegan Paul. Carlebach, J.'s (1970) *Caring for Children in Trouble*. London: Routledge & Kegan Paul, and Hood, R.'s (1965) *Borstal Reassessed*. London: Heinemann, are also valuable accounts of the early development (up to the postwar period) of specialized penal institutions for children and young offenders.

The report of the Labour Party working party (chaired by Lord Longford) (1964), *Crime: A Challenge to Us All*. London: Labour Party, and the Audit Commission's (1996) review, *Misspent Youth*. London: Audit Commission, are landmark statements which marked turning points in youth justice policy, the latter being converted into the current policy set out in the current government's principal policy statement *No More Excuses – a New Approach to Tackling Youth Crime in England and Wales* (Home Office 1997).

For current statements of policy and statistics regarding provision and the number of children and young people in penal custody, the National Offender Management Service (www.noms.homeoffice.gov.uk) and Youth Justice Board (http://www.youth-justice-board.gov.uk/YouthJusticeBoard) websites should be consulted. The Youth Justice Board website also provides access to an array of relevant published research reports on the alternatives to custody.

Notes

1 For general reviews of privatization and contracting out, see Logan (1990), Christie (1994), Shichor (1995), Harding (1997), Chapter 15 (this volume). For a recent statement opposing the contracting out of custodial provision for children in particular, see Howard League (2005).
2 A recent exception is the report of the Commission on Families and the Wellbeing of Children (2005), which recommends that the age of criminal responsibility be raised to 12.

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Imprisonment in old age

Elaine Crawley

Introduction

In British criminological texts on imprisonment, the terms 'elderly' and 'prisoner' appear together relatively rarely. This is because, until very recently, prison research focused largely on the experiences of the largest group of prisoners – young active men – and on the challenges of managing this (often volatile and uncooperative) population. It is clear, however, that we must now concern ourselves with those whose needs, characteristics and circumstances are posing very different kinds of challenges to prison managers – the increasing number of men and women serving prison sentences in old age.

The USA has taken the lead in the incarceration of elderly people, just as it has with regard to its incarceration of the young, male and black. In England and Wales, the relatively recent determination to pursue 'historic' (usually sexual) offences appears to have been the most significant contributor to the increasing numbers of men serving a first prison sentence late in life.

Aims of this chapter

The first aim of this chapter is to identify recent developments in the incarceration of elderly prisoners in both the UK and elsewhere. The second is to highlight – using the most up-to-date and relevant literature in the field – the day-to-day problems that inextricably accompany the imprisonment of this prisoner group. The reader will note that this chapter focuses almost entirely on the prison experiences of older *men*. This is largely because the small body of research that *has* been conducted into the experiences of older prisoners has been conducted with men rather than with women. Perhaps the main reason for this is that the numbers of older female prisoners are very small, at least relative to the numbers of incarcerated older men. As Aday (2003: 194) notes, it is difficult to draw firm conclusions about the experiences of older women in prisons because there is so little available literature. From

the limited body of work that has been conducted, however, it is clear that older women in prison suffer many of the negative emotions and experiences identified in their male counterparts (e.g. feelings of humiliation, worthlessness, isolation and depression), albeit for rather different reasons (see Devlin 1998; McQuaide and Ehrenreich 1998; Carlen 2002; Aday 2003; Wahidin 2004).

Defining the 'older' prisoner

First, I want to draw attention to problems of definition. As Barnes (1999: 17–19) rightly observes, in the international literature there is a general lack of agreement on what age is to be used as the starting point for defining the 'older' or 'elderly' offender. In Europe and the USA, the base age used by researchers of older persons and crime has been as low as 25 years (Strauss and Sherwin 1975) and as high as 82 years (Aday and Webster 1979), with a variety of ages in between – e.g. 40 years (Aday 1976). According to Rubenstein (1984), the majority of studies relating to offenders have used 50 years (Silfen *et al*. 1977; Reed and Glamser 1979; Teller and Howell 1981) or 55 years (Atchley 1977; Walsh 1989; Aday 1994) to define the base age for their studies. Barnes eventually made the decision to use 55 years as the base age to define 'older' prisoners, a decision strongly influenced by the claim (made by, e.g. Atchley 1977) that 55 years of age is considered to be the starting point of physical and mental deterioration.

Ageing is, of course, a complex process that varies considerably depending on an individual's genetic makeup, lifestyle and social environment (Aday 2003: 16). As Aday points out, among medical practitioners it is understood that any given population will have wide variations in the onset of ageing effects, and prison populations are really no different. Older inmates display heterogeneity similar to that of the population at large, with some inmates being physically 'old' at the age of 50 and others remaining 'young' in mind and body at the age of 60 and over (Flynn 1992). The inability to agree on what constitutes an elderly offender is one of the most troublesome aspects of comparing research outcomes from various studies. A recent British study of older female prisoners (Wahidin 2004) used a threshold age of 50, possibly in order to gain access to a larger number of older women than would have been the case if the researcher had used a threshold age of 60 and above.[1] Crawley and Sparks (2005a, 2005b, 2006) define as 'older' and 'elderly' only those prisoners aged 65 years and above. Their rationale is that, in the UK at any rate, 65 is the age used for social purposes to determine the point of retirement from employment, and to establish eligibility of older persons for various entitlements. Their definition was also based on their findings that prisoners who are in their fifties do not tend to define *themselves* as 'older', and certainly not as part of an 'elderly' prisoner group.

Elderly prisoners: prevalence, profiles and policies

While this chapter is primarily concerned to disclose various problematic aspects of the (psychological, emotional and physical) predicaments of elderly

men in prison, and the policies, practices and regimes to which they are subjected, it also provides some comparative, contextual and numerical data on this prisoner group.

The USA

In the USA, the so-called 'greying' of the prison population is to some extent an acknowledged 'collateral' consequence of mass incarceration. As Aday (2003: 9) notes: 'the number of geriatric inmates in many state and federal prisons rose steadily after the early 1980s … Their numbers jumped substantially in the 1990s, both in absolute terms and as a proportion of states' prison populations.' Aday goes on to note that, after 1995, the number of prisoners aged 50 years and above grew by about 10,000 per year; as of 1 January 2002, there were approximately 125,000 prisoners aged 50 and over confined to state and federal prisons. This age group comprises 8.2 per cent of the total inmate population, up significantly from the 4 per cent reported in 1990. Approximately one half of this group of inmates is over the age of 55 years (American Correctional Association 2001). Of the 145,416 prisoners housed in the Federal Bureau of Prisons, 11 per cent were 50 years of age or over.

Arguably, no one expressly desires or directly wills the incarceration of the old as a matter of policy. Rather, the growing number of incarcerated elderly is a consequence of judicial and political decisions that mandate that more people go to prison for a certain range of offences and that some of them stay there for substantially longer periods (Crawley and Sparks 2005a). It is then a matter of simple arithmetic that increasing both admissions and prison time served increases aggregate numbers and skews the age distribution of the population.

In the USA, neither demographic projections nor sentencing trends herald any swift reduction in these numbers; as a result, 'increases in the costs of housing and caring for elderly offenders will represent a substantial portion of most corrections departments' budgets in the near future' (Aday 2003: 24). Despite the fact that policy-makers are well aware of the changing inmate population, Aday (2003) argues that 'little systematic planning has been conducted to address the multitude of attendant issues'. He claims that 'while [US Corrections] have in place sporadic facilities and programmes designed especially for aged and infirm inmates, most criminal justice institutions and organisations are still operating without a comprehensive plan to respond adequately to the pending crisis'.

England and Wales

The virtual absence of age-related policies in the prisons of England and Wales, however, makes the American situation look relatively advanced. At the time of writing there are more than 4,000 men aged over 50 in prison in England and Wales (roughly 5 per cent of the total prison population). This number has more than doubled in the last decade; moreover, the rate of growth is even *higher* for those over 60 years of age. In 1992 there were 1,129 men aged between 60 and 69 years under sentence in England and Wales.

This represents a more than three-fold increase since 1994. In 2002 the age group 70–79 years comprised a total of 225 men, while there were 17 men aged 80+ years (Home Office RDS). Despite repeated calls from a variety of reform groups (see, e.g., Prison Reform Trust 2003) and from a former Chief Inspector of Prisons for England and Wales (HMCIP 2001), there is still no national strategy for the proper management of elderly prisoners.

Why the UK growth? Retribution and risk

Since this population increase exceeds the rate of growth for the prison population as a whole, it warrants further examination, although here it is not possible to do more than note some of the key dynamics. One important factor seems to be the very much greater readiness (and technical capacity) of police and prosecutors to pursue and secure convictions against sex offenders, including in cases of 'historic' offences. This shift in societal responses to sex offending has been well discussed elsewhere. In 2000, one third of adults aged 60 or over received into prison under immediate sentence in England and Wales had been convicted of a sexual offence (compared with about 3 per cent for the prison population as a whole). About half of older male prisoners under sentence are sex offenders (Fazel *et al*. 2002), which partly explains the disproportionate number of elderly sex offenders in the studies conducted by Crawley and Sparks (2005a, 2005b, 2006).

The courts have clearly concluded that, although age is 'a factor' to be taken into consideration in making confinement decisions, it is of less consequence than either retributive proportionality or risk (see Lord Justice Kay's remarks in the Court of Appeal, *Independent*, 29 October 2003: 38). Such considerations also bear, of course, on release and resettlement practices; indeed the combination of presumed gravity with risk, together with evident difficulties in finding safe and appropriate resettlement opportunities (Crawley, 2004c; Crawley and Sparks 2006), tends to extend the length of time actually served, especially for life-sentence prisoners. While only a handful of elderly men receive 'natural life' sentences, a substantial minority have entered advanced old age in prison, and some will die before the end of their sentences.

Elderly men convicted of sexual offences are to this extent 'captured' by both the punitive and the risk-management narratives of contemporary penality, a conjunction nicely condensed by Simon (1998) as 'managing the monstrous'. Various other prospects follow; for example, in terms of their offences, many elderly prisoners will be considered sufficiently dangerous to merit being kept in fairly secure or very secure conditions. This will have a material bearing on many aspects of these prisoners' lives, including their experiences of regimes and facilities, programmes, location and visiting, parole eligibility and so on. Furthermore, such offenders have few natural allies within or outside the prison. A significant number have no mutually supportive relationship with families. They also represent a problematic group in terms of adoption by older people's charitable and advocacy organizations.

The heterogeneity of elderly prisoners

Older prisoners are not a homogeneous group; on the contrary, they come from a variety of socioeconomic backgrounds and have distinctly different criminal histories. Indeed, data on the criminal histories of older prisoners indicate that diversity is a hallmark of the long-term prisoner group. However, elderly 'first-timers' serving short and medium-term sentences in later life are likely to have been charged with sexual crimes (see below). As a result, elderly prisoners all have distinctly different expectations of prison life, different experiences to recall and different life 'stories' to tell.

Within the older prisoner population as a whole, however, it is possible to identify a number of prisoner 'subgroups' (Dugger 1988; Barnes 1999; Aday 2003; Crawley and Sparks 2005a, 2005b). Some have grown old in prison as a result of lengthy sentences, while others are repeat offenders with prior prison experience. Many more, however, have received their sentences late in life and have no prior experience of prison. Sentences range from a few months to life imprisonment for a variety of offences, including fraud, manslaughter, murder, war crimes and the sexual abuse of minors. It is notable, as I indicated above, that many of the latter are 'historic' crimes – i.e. offences allegedly carried out two, three or four decades previously (Crawley and Sparks 2005a).

Entering prison in later life: trauma, survival, coping and identity

The social and emotional impacts of imprisonment on men in their later years can be intense. The older prisoner who has never served time before, and who is therefore totally unfamiliar with the cultures and routines of the prison, is likely to feel particularly anxious and depressed (Aday 1994; Santos 1995; Crawley and Sparks 2005a, 2005b). Such prisoners are likely to suffer severe 'relocation stress'[2] on entering such an alien environment; they are often unable to fathom how their lives could have 'come to *this*' (this is especially true for those imprisoned for 'historic' crimes). For these men, the prison sentence represents nothing short of a 'disaster', a 'catastrophe' and, in consequence, they are often in a psychological state of 'trauma' (Crawley 2005a; Crawley and Sparks 2005a, 2006; but see also, e.g., Santos 1995).

An important component in the psychological survival of a traumatic experience is what Raphael (1986: 69) terms the *attempt at mastery.* Attempts at mastery may take many forms. Review of past coping[3] and survival is one form; indeed, for many elderly prisoners, recollections of how they endured the brutalizing environments of military life experienced in their twenties (or, for some, a childhood of institutional 'care') proved to be useful resources on which to draw to survive the deprivations and rigours of prison life and retain a sense of self. Research by Crawley and Sparks (2005a, 2005b, 2006) demonstrates that a life change that is as dramatic as coming into prison can be devastating for men in their later years, and that their imprisonment can have profound effects on family unity and stability. This is especially true for those whose offence arose within the family setting or is felt as shameful by other family members (as in the case of many sex offenders). When an elderly

man arrives in prison he has to come to terms with the fact that he is starting a new life – a prison life – and somehow he must learn to live it. What, then, is the meaning of a long prison sentence to a man who is *already* old? How does the elderly first-time prisoner cope with such a dramatic disruption to his life – to the loss of status and respectability acquired over 50 or 60 years, to the almost total loss of privacy, loss of identity and loss of autonomy?

In the 1940s and 1950s, questions about how prisoners 'coped with', or 'adapted to', imprisonment were important concerns of prison sociology (see especially Clemmer 1958; Sykes 1958). By the mid-1970s, however, academic interest in prisoners' personal experiences of imprisonment – and concern with the experiential, ontological and conceptual challenges of long-term and lifelong confinement – began to wane, but fortunately not before Cohen and Taylor (1972) had written their classic study of long-term prisoners' attempt to survive the psychological challenges of their sentences. Cohen and Taylor's classic work, however, focused on the anxieties and fears of men sentenced well before middle age and, since most of them could expect to be released at some point, on their *anticipations* about life *after* prison.

Until Crawley and Sparks began their research[4] into the issue of elderly imprisonment, British criminologists had little to say about the experiences and survival strategies of men whose lives were likely to *end* in prison, nor about the men who *entered* the prison in later life. Crawley and Sparks seized the opportunity to revisit the problems of 'coping', 'entry shock', 'adaptation' and 'psychological survival' from the vantage point of that prisoner group. They explored the experience of imprisonment for men over the age of 65 and attempted to identify the coping and survival strategies which *they* adopt in coming to terms with the fact of custody and the cultures, routines, rules and practices of the prison. Crawley (2005b) and Crawley and Sparks (2006) also examined the challenges faced by elderly men preparing for release.

Surviving in prison

Many elderly prisoners take a pragmatic or accepting approach to their predicament. These men are generally those who have been in prison a long time but they also include one or two 'first-timers'. Of the latter, these men may find that once they had got over the disorienting and stressful 'entry shock' phase of their imprisonment (the high noise levels, lack of privacy, impoverished facilities, claustrophobic atmosphere, bewildering array of rules and routines and, on occasion, hostility from both younger prisoners and from uniformed staff) they had begun, with the help of some of their 'neighbours',[5] to settle into – or at least learn not to rail against – prison life.

When asked by Crawley and Sparks (2005a, 2005b) how they had managed to cope, elderly prisoners at the entry-shock phase commented that their ability to call upon previous depriving experiences – particularly the experiences they had endured during their (often teenage) induction into army life[6] or a childhood in 'care' – had been central to their emotional and psychological survival in the prison setting. On reception into the prison, memories of national service and army life (including the beasting,[7] the rigidity and pettiness of military rules, the rigid timetable and the enforced company of (often disagreeable) others) had come flooding back, providing

an appropriate 'blueprint' for how to perform in the prison setting and a belief that this episode in their lives could also be endured.

Coping strategies

The ways in which elderly men cope with the prison experience vary significantly (for a discussion of the coping strategies more generally, see Cohen and Taylor 1972). Some prisoners – including those in very advanced years – throw themselves into a variety of coping, time-consuming activities, including campaigning, letter-writing, list-making and religious activities (see Crawley and Sparks 2005a). Others may go to education classes, engage in light employment or simply potter around the wing visiting 'neighbours'. Still others, for reasons of ill (physical and mental) health and poor mobility, will find that they are extremely restricted in what they can do to pass the time and, consequently, find it difficult to find a sense of purpose. Older prisoners tend to have an orientation to work, largely because they have usually worked all their lives. For this generation, work is a strong component of personal identity and, once they are unable to do it, many older people feel bereft. Consequently, even when prisoners no longer *have* to work in prison (i.e. when they reach retirement age), most still choose to do so, even if not in the best of health, and they tend to do so for as long as they can. These men may find light jobs such as sweeping up, packing light goods in one of the prison workshops or collecting litter from around the prison estate.

Segregation or integration?

There is disagreement as to whether older inmates are generally protected or taken advantage of (e.g. bullied by or exploited financially) by their younger counterparts. Consequently, nowhere in England and Wales, Canada or the USA is there any consensus as to whether it is preferable for elderly prisoners to be housed separately from, or integrated with, younger prisoners (Fattah and Sacco 1989; Jamieson *et al*. 2002; Crawley and Sparks 2005a). While there is evidence that many older men prefer to be away from younger prisoners – who may hassle or bully, steal from their cells and make a lot of noise (see Aday 2003) – those in better health and who are also 'young thinking' may prefer to be 'mixed' in and may even have friends in the prison who are much younger than themselves (Jamieson *et al*. 2002). Though there is a possibility of being bullied, harassed or simply irritated by young, immature inmates, many elderly men prefer to take *this* risk – and to deal with such behaviour when or if it comes – rather than risk getting 'out of touch' and deteriorating psychologically exclusively in an older prisoner environment (Fattah and Sacco 1989; Jamieson *et al*. 2002; Crawley and Sparks 2005a).

Adaptation and trepidation

Many of those who have grown old in the prison will have lost all contact with the outside world. They will have become 'institutionalized'[8] in that they will have lost touch with family and friends, doubt their ability to make independent decisions and, in many important respects, view the prison as home (for a discussion of this in the US context, see Aday 2003). Crawley and

Sparks (2005a, 2005b) found that some of these men could barely remember how long they had been in prison; one thought it was 'about 30 years', another thought he had come into prison when he was 'about 40' (at the time of our interview he was 62) and a third, an Alzheimer's sufferer, neither knew where he was, how long he had been there nor what he was there for. Among our long-serving interviewees, the claim that there was 'nothing and no one to go out to' was not uncommon. Perhaps unsurprisingly, these men show little interest in being released.

Thoughts of death and dying

Fear of physical and mental deterioration is significant among older and elderly prisoners, particular those on regular medication for chronic illnesses. When people are chronically ill, they are, of course, forced to confront their own mortality. In the prison setting, where access to immediate medical help (especially at night) can be problematic, fear and anxiety about having a heart-attack, stroke, asthma attack or a fall can be great. Another stressor of long-term confinement in later life is the possibility of a prison death. Indeed, common to each of our older prisoner groups was a dread of dying in prison. All recognized that a prison death was not unlikely given their age and the length of their sentence (several of our interviewees who were in their seventies had a number of years left to serve). Increasingly, older offenders are receiving sentences that will keep them imprisoned for the remainder of their lives.

'Institutional thoughtlessness' and its impacts on day-to-day prison life

Crawley and Sparks (2005a, 2005b) found frequent examples of prisons being poorly adapted to the needs of older prisoners and of staff, consciously or otherwise, failing to mitigate the effects of this when it would be within their power to do so. The examples they give include elderly and infirm prisoners 1) being kept waiting at gates longer than necessary; 2) not being allowed sufficient time to complete activities or to get to and from specific locations; 3) being expected to watch a communal television in the corridor while sitting on hard, un-upholstered chairs (such as those used by school children); 4) being denied additional clothing or bedding in cold weather; 5) having to queue for long periods (sometimes for up to an hour) to obtain their medication; 6) having to climb stairs while carrying food trays; 7) having to shower in slippery, tiled cubicles that were not equipped with grab-rails or anti-slip mats; and 8) feeling abandoned and simply 'dumped' because they had so little access to wing staff (elderly prisoners were often located on the ground floor while the wing office was located on the first or second).

There are, of course, some evident respects in which prisons have never been designed with older people and their needs in mind. Their very fabric (the stairs and steps and walkways, the distances, the gates, the football pitches and gymnasia; the serveries and queues; the communal showers; the incessant background noise) is, in general, constructed in blithe unconsciousness of the needs and sensibilities of the old. To the extent that there have been occasional

calls for the more distinct acknowledgement of older prisoners' requirements, the above are among the issues they have highlighted (HMCIP 2001; Prison Reform Trust 2003).

One effect of such practices is that prisoners are sometimes unable to take advantage of facilities that are *in principle* available but which they feel that de facto they cannot access. Thus an infirm prisoner may refrain from exercise if he has no access to a toilet during the exercise period, is not allowed to wear a warm coat or is not given additional time to get to the exercise yard and back.

Once on the prison roll, the requirement for elderly prisoners to 'slot into' existing routines and practices is (to varying degrees) commonplace in most prisons (Crawley and Sparks 2005a, 2005b). Like all elderly people, elderly prisoners need access to fresh air and exercise to maintain reasonable health. Although the opportunity to walk about in the fresh air (albeit at set times and for limited periods) is not *deliberately* denied to older prisoners, the physical layout of most prisons (e.g. long corridors and stairs) and the inflexibility of their practices, timetables and routines make it extremely difficult for those with restricted mobility and other age-related problems (e.g. a weak bladder) to do so. Many of Crawley and Sparks' elderly interviewees commented on this problem, and on the fact that the less able simply stayed in.

Crawley and Sparks (2005a, 2005b) term such instances of inadvertence or indifference *institutional thoughtlessness*. As sociologists since Sykes (1958) have noted, the institution's requirements of 'self-maintenance' and the smooth operation of the regime have primacy. Thus, delays or interruptions are construed primarily as inconveniences, rather than as expressions or indicators of need or difficulty on the part of any given individual. Such problems in any case are often of low visibility and tend to lack effective advocacy – a generic feature of older people's encounters with service providers more generally. In sum, meeting the needs of old people is not, and never has been, among the chief purposes and directives of imprisonment.

Health and healthcare in prisons

In recent years, there has been some interesting and valuable research conducted into both the physical and mental health of the elderly prisoner population. For example, Fazel *et al*. (2001), O'Donnell *et al*. (2001) and Curtice (2002) have commented not only on the high incidence of ailments such as poor hearing and vision, respiratory and heart disease, diabetes, arthritis, bladder problems, Alzheimer's, Parkinson's and hypertension but also on the psychiatric morbidity of this prisoner group. The study by Fazel *et al*. notes that the prevalence of depressive illness among elderly prisoners is five times greater than that found in other studies of younger adult prisoners and elderly people in the community. They conclude that under-detected, under-treated depressive illness in elderly prisoners is an increasing public health problem.

It has also been reported that older prisoners are disproportionately heavy consumers of healthcare services, putting added pressure on

correction officials (McDonald 1995; Smyer *et al.* 1997), and that inmates serving long sentences will have a major impact on institutional health programming, personnel and budgets throughout their confinement (Marquart *et al.* 1997; see Chapter 16, this volume). On this view, the poor health condition of prisoners incarcerated late in life will only increase the demands for healthcare services over time and with age. However, while Falter (1999) reports frequent healthcare utilization because of hypertension, arteriosclerotic heart disease, diabetes, chronic obstructors pulmonary disease and other chronic health conditions, Aday (1995) found that only 16 per cent of his older prisoner sample went to sick call as frequently as once a week, 25 per cent once or twice a month, 43 per cent once every few months and another 16 per cent hardly ever. With regard to mental health, there is strong evidence that many of the aged more generally suffer from mental or emotional disorders of one kind or another (Fazel *et al.* 2001; Aday 2003: 101). In old age, dementia becomes increasingly prevalent. Koenig *et al.* (1995) found that depression, anxiety and psychiatric disorders were much more common among male prisoners over 50 years of age than men in a similar community sample. Other studies (see Rosner *et al.* 1991) have reported the presence of senile dementia in a substantial number of older inmates who were incarcerated late in life.

As indicated above, life in correctional settings can be profoundly stressful. Older prisoners in particular have more stressors to contend with than younger prisoners who have not experienced ill-health or major changes in strength, vitality and endurance (Booth 1989). The noisy, physically strenuous environment of the prison, where threats from younger inmates may be commonplace, can produce deep anxieties among elderly inmates (Vega and Silverman 1988). Indeed McCarthy (1983) and Bachand (1984) have described the health of elderly prisoners as compounded by excessive mental worry – about their own health or the health of family members, about their safety in the prison or other issues related to incarceration. Other studies (Douglass 1991; Aday 1995) exploring the general mental outlook of older prisoners in Michigan and Mississippi found that this prisoner group exhibited numerous indicators of depression. Seventy-five per cent indicated that they were sometimes or often restless, anxious about the future, helpless, bored with life, lonely, depressed and unhappy. Aday (2003: 103) notes that an important contributor to this low satisfaction with life was poor health. For many elderly prisoners, the prospect of getting sick in prison is 'a big fear' (Jamieson *et al.* 2002; Crawley and Sparks 2005a, 2005b), and inmates may not trust healthcare to provide the care they believe they need. As a result, they often rely on their peers to provide comfort, care and support; indeed, informal arrangements for assisting others (e.g. sharing painkillers and skincare treatments) are often central to elderly prisoners' capacity to cope with the day-to-day demands of the prison routine. Unfortunately, the concern of correctional and healthcare staff about whether inmates are sharing medication with, or 'scamming' medication (especially analgesics) from, others was, according to Canadian prisoners interviewed by Jamieson *et al.* (2002), significantly influencing the quality of healthcare available to older offenders. Arguably this can, in turn, lead to a greater likelihood to self-treat.

Ineffective communication between the elderly inmate and healthcare providers can contribute to inadequate physical and mental healthcare. Geriatric inmates may under-report illness or fail to seek medical help. Older inmates may not be fully educated about their symptoms or may be fearful of diagnostic outcomes (Aday 2003: 106). Booth (1989), on the other hand, argues that the incarcerated elderly may feign illness on a regular basis. While this may be simply an attempt to get attention in a depriving environment, according to Booth these prisoners are then at greater risk of receiving an inadequate medical response because of their reputations as malingerers.

Women's health concerns

According to Caldwell *et al*. (2001), older women typically need more healthcare than men. Consequently, geriatric female prisoners are likely to use medical services more than other inmate categories, yet many correctional systems have been criticized for their constant indifference to the special needs of female offenders (on this see also Wahidin 2004). In addition to the diseases commonplace among incarcerated older men (see above), female older prisoners also suffer from hypertension, menopause, breast and cervical cancer. Additionally, Morton (1992) notes that hysterectomies can cause dramatic physical and psychological problems with which women prisoners must cope (cited in Aday 2003: 174). Similarly, osteoporosis, a degenerative bone disease typically affecting older women, causes them to be three to five times as likely to suffer from hip, back and spine impairments as men are (Sperrof *et al*. cited in Aday 2003: 176).

Care giving and the palliative care of the dying

The growing numbers of elderly, frail prisoners can put medical staff – who are primarily interested in the physical and emotional comfort of their patients and in providing compassionate nursing care – at odds with the often rigid security concerns and procedures of the prison environment. Like their counterparts in the free community, dying patients in prisons also need mental and spiritual preparation to prepare them for the process of dying (Aday 2003: 166), and this is difficult to achieve in traditional prison settings. Nurses attempting to achieve the goals of 'palliative care'[9] within a prison setting may encounter environmental constraints to their work and may be further deterred by their own lack of specialist knowledge (Wilford 2001). If the Prison Service of England and Wales accepts medical evidence that a prisoner has only three months or less to live,[10] prison medical staff can seek community hospice care for that prisoner. Those who do not meet the three-month criterion, but who none the less have serious medical conditions that are clearly exacerbated by the nature of the prison environment (e.g. high noise level, stairs, thin mattresses, slippery flooring, restricted bedding allowance), are generally expected to stay where they are. Palliative care is, however, being successfully provided *within* prisons outside the UK.

Palliative care in Canada

The Correctional Services of Canada (CSC), for example, has a national policy for palliative care in prisons, and this is informed by the principle of the human rights of prisoners. The policy of palliative care was developed in response to the plight of prisoners facing terminal illness during their sentence. Although the policy relates to prisoners of all ages, the need for palliative care is, perhaps unsurprisingly, more common among the elderly.

The stated policy of the CSC is to release terminally ill prisoners and discharge to external facilities in a timely fashion whenever possible. When discharge is not possible, a sophisticated, extended multidisciplinary team for palliative care is formed around the terminally ill prisoner within a federal penitentiary or hospital facility. Existing Canadian Federal Penitentiary Hospital Services that provide in-patient facilities to other penitentiaries in the region are managed by nurses and have a healthcare culture (Jamieson *et al.* 2002). The major threat to implementation of the palliative care policy is the funding and availability of palliative care training.

The CSC's Palliative Care Programme uses the services and skills of fellow prisoners (see Jamieson *et al.* 2002). Selected prisoners (the selection process is rigorous) initially learn how to carry out basic comfort procedures. They then progress to reflexology, aromatherapy, pain management and grief counselling. In between are (certificated) training sessions on, *inter alia*, how to give foot-baths, how to read glucometers and how to give foot and hand massages to provide both comfort and pain relief.

Palliative care in Angola, USA

Angola, Louisiana's infamous maximum-security prison, is perhaps one of the most unlikely places for a palliative care programme to emerge. With a longstanding reputation for violence, Angola is 'home' for over 5,000 inmates, most of whom are expected to grow old and die behind bars. Yet a hospice programme has been underway that has made 'better dying' possible for those in its care, while having a positive effect on the general prison population. In 1998, its first year of operation, the Angola hospice programme cared for 17 patients. Uniformed staff accept the use of generally accepted pain control standards, with some adjustments for the prison environment. In part, clinicians must be wary because the programme operates within a general treatment area where non-hospice patients also receive care. So, for example, oral time-release morphine is administered to those in pain, but morphine patches are not.

Those who organized the prison hospice use only inmate *volunteers* to assist dying prisoners, believing that this approach stood the best chance of winning over the general prison population – many of whom are distrustful of Angola's medical care. The programme has about 35 inmate volunteers, all of whom went through a rigorous screening and training programme. Prisoner applicants must have had no drug violations in the previous two years; as in Canada, they must also undergo investigations into their behaviour and motives, including drug screening and classification and security checks.

Between discipline and care: staff perspectives

The elderly man in prison is, compared with his younger counterparts, relatively compliant, dependent and quiet (Crawley and Sparks 2005a, 2005b). He is also likely to suffer from more chronic and acute illnesses and have more pressing needs for personal care. Consequently, in the eyes of many prison officers, the elderly man in prison is not really a 'proper' prisoner – i.e. a prisoner with characteristics (youth, physical strength, impulsivity) that are seen as requiring (at least on occasion) courage, physical strength and confidence on the part of prison staff. Consequently, officers who choose to work with elderly prisoners are often seen by fellow staff as not doing 'proper' prison work, largely because work with this prisoner group is seen as too safe, too predictable, too quiet. Working with elderly prisoners, then, also blurs the boundaries of what it means to be a 'proper' prison officer. Indeed, working on a unit described by some officers as an 'old folks' home' because of the high proportion of elderly men living there is something to be resisted by many prison officers – not least because they perceive that much of the work to be done there represents a threat to professional status in that it is dishonourable, domestic, 'women's work' (Crawley 2004b).

Such perspectives are not, however, universal. On the contrary, as was indicated above, among prison managers and staff working at close quarters with growing numbers of elderly, frail prisoners, staff in some prisons have already made a number of important, sensitive innovations in the absence of any guidance from headquarters. In the prisons where such innovations are taking place, at least some of the injuries that arise when we imprison the elderly are being recognized and more fully understood (see below).

The UK: national policy *v.* local initiative

In 2005 the Elderly Prison Unit at HMP Kingston (the first unit of its kind and, again, a local initiative) closed down, and its 20-odd prisoners (aged between 52 and 84 years) were transferred to other prisons. Some of these men were sent to a specialist unit in HMP Norwich – a unit that represents the only *national* initiative to date. This unit, set up in late 2004, is a small, 15-bedded unit for elderly and/or infirm men. Elsewhere across the country, prisons without such facilities must simply do the best they can to cope with their elderly prisoners. HMP Wymott, for example (a category C prison in the north west of England), is currently striving hard to develop and enhance the regime – and hence quality of life – for the elderly prisoners on its Elderly and Disabled Unit. Here, the combination of governor support, prison officer enthusiasm and sensitivity, voluntary assistance from outside organizations (particularly the Salvation Army) and a good deal of imagination and goodwill is making a significant difference to the day-to-day lives of its elderly prisoners (Crawley and Sparks 2005a, 2005b).

Uncertain futures: death, release and resettlement

Generally speaking, most prisoners are eventually released, and so they must make preparations for resettlement. In England and Wales, *Prison Service Order* 2300 (para. 1.12) states, *inter alia*, that account must be taken of the diversity of the prisoner population and the consequent differences in resettlement needs, and that specific sections of the prison population (e.g. elderly prisoners) may need to be catered for in different ways. However, Sparks and Crawley found that elderly prisoners due for release often have intense anxieties about, and an inadequate understanding of, the resettlement process. Two issues seem to give elderly prisoners the most concern: first, the lack of clarity from prison and probation staff as to where they are going to live, how they are going to get there (with limited money and poor mobility) and whom they will be living with. Elderly prisoners may also have fears (by no means always fanciful) about their personal safety once in the community (Crawley 2004c).

For elderly men in prison, release and resettlement are not unproblematic. On the contrary, many questions about release and resettlement generate a variety of 'what ifs?' and pessimistic terms such as 'worry', 'anxiety', 'fear', 'confusion', 'pointlessness', 'apprehension' and 'dread'. Among elderly men in prison there is often deep uncertainty about being able to cope with life after imprisonment, given that their social networks on the 'out' may be non-existent, and that everything they had possessed before their imprisonment has 'gone' (see below). We need to consider, therefore, questions such as 'What *sort* of life is left for elderly men who are about to be released?' 'What *sort* of life is left for those who know they *may not have* a "life" after imprisonment?' Given the late age at which a growing number of men are being sentenced, it is possible – even likely – that some will die before their release date. An important question, therefore, and one which Crawley and Sparks (2005a, 2005b, 2006) posed to elderly 'natural' lifers, is: 'What sort of life is left for those who *know* that a life after prison will never come?' Unsurprisingly, those who find themselves in this situation may exhibit a profound sense of hopelessness and distress.

Crawley and Sparks also wanted to know what sort of non-prison life was available to those who had become habituated to the prison regime, and hence 'institutionalized' to a prison life. They found that, among those who have spent a long time in prison, most have few expectations, and none seem to have retained the 'spark' necessary for coping with life after release. For those with chronic illnesses, the fear of not being able to access healthcare is also central (on this see also Prison Reform Trust 2003). In the prison, these inmates are heavily dependent on both formal healthcare and on the informal care provided by other prisoners. With regard to the latter, Crawley and Sparks found that the majority of the elderly infirm receive some degree of care from other prisoners – men who would help the less mobile put on their socks, fasten their buttons, fetch their meals and clean their cells.

In the main, only those who had a supportive wife and/or family are enthusiastic about release. For these men, release means being with family again and regaining the freedom to structure their own days and choose their own activities and company. Importantly, for those with wives who are

infirm, release also provides the opportunity to resume the protector role that they had been forced to leave behind.

An important issue for many older ex-offenders in the community is the significant age gap between themselves and the young probation workers to whom they have to report. It is possible that this may be a problem in many jurisdictions. For example, a recently released Canadian older offender told Jamieson *et al*. (2002) that, although he felt probation workers could helpfully advise on issues such as drug abuse or welfare benefit rules, they – most of whom were relatively young – had insufficient life experience to understand the problems that older ex-prisoners confronted. In other words, because they could not serve as valid *interlocutors* for the older offenders, they could not provide them with appropriate support in resettling. Jamieson *et al*. (2002) noted a range of additional psychological burdens among older prisoners once released. For example, many reported finding it very difficult to deal with other (usually much younger) people in the halfway houses or rooming houses where they lived. This was especially keenly felt by lifers or others who had served long sentences and were used to a high level of self-containment and predictability in prison.

For those convicted of sexual offences, a key preoccupation is the fear of being assaulted once released. Largely as a consequence of the current media obsession with 'the paedophile', such prisoners fear that they will not be *allowed* to resettle, and that they will be hounded from any accommodation they are given. For elderly men whose marital and familial ties are non-existent, concerns about unsettled housing and homelessness are also commonplace. Indeed, for this prisoner group resettlement in later life is likely to be made much more difficult by the many *losses* incurred through the imposition of the sentence itself. In addition to the loss of marital/familial/friendship ties, many of our interviewees – particularly those previously living in council-owned accommodation – had lost all their personal possessions during the first weeks of custody. Several interviewees claimed that the council had repossessed and entered the houses or flats they had lived in and simply thrown everything out, including private papers and photographs (Crawley and Sparks 2005a, 2006). Understandably, this can be deeply distressing, not least because release entails 'starting from scratch'. Since they have 'nothing to go out to' (i.e. no relatives, no friends, no home and, because of their age, no chance of work), many such prisoners claim that they would rather just 'stay put'; they simply have insufficient years left in life (or the energy) to 'start over'. Clearly, of course, prisoners due for release cannot insist that they stay in the prison once that date has past. Nor can the prison legally hold them beyond that date, but this is what *some* prisoners want (see Jamieson *et al*. 2002).

Release and resettlement support: resources and risk

Just as the health and social needs of older prisoners are inadequately provided for and understood, so are their resettlement concerns and needs. In England and Wales, the processes of release and resettlement can be frustrating and

bewildering, partly because, as their release dates draw nearer, they often have little clear idea as to what they are supposed to do, or what (if anything) has been arranged for them when they get out. Prisoners tend to place the blame for this confusion either with the Probation Service or with uniformed staff on the wings, whom they frequently see as either unaware of or deliberately ignoring their concerns (Crawley and Sparks 2005b).

There is clear evidence that resettlement support is 'patchy', largely because resources are so overstretched (Crawley and Sparks 2006). Resources are currently allocated according to perceived degrees of 'risk' to the public. Since the elderly prisoners in this study were not yet defined as a risk (because they were still locked up), they were likely to stay at the bottom of the list (for support and supervision) until they are – i.e. when their release is imminent.

It is important to remember that elderly prisoners are generally less assertive than their younger counterparts – and less likely to press uniformed staff for information when it is not forthcoming – when considering the issue of information provision and communication. In short, elderly prisoners are much less likely to question the legitimacy of prison processes (as well as regimes) than younger prisoners – just as many elderly people are in society at large. Indeed, there is much evidence that elderly people in the free community are often bewildered by forms sent to them by bureaucratic organizations (e.g. requests for income information from Social Security and housing departments and the Department of Pensions), and that they are unsure how to ask for help (see, e.g., Bernard and Phillips 1998). In practice, the relatively compliant nature of the elderly prisoner group may contribute to their specific resettlement needs and concerns being overlooked. In the first steps towards the resettlement of elderly prisoners, it is important that all available information is effectively communicated to them well ahead of release.

Concluding comments

Recognizing – and then addressing – the needs and predicaments of elderly prisoners clearly poses a variety of distinctive challenges for prison staff. Arguably, the fact of imprisonment weighs differentially on the older prisoner; one only has to consider the high incidence of ill-health and psychiatric morbidity, the fear of dying in prison or of being released into insecurity and isolation and the sense of being irrevocably cut off from the past. In light of this, and given the continuing rise in the numbers of elderly prisoners, it does seem somewhat scandalous that no national strategy for managing this prisoner group has yet been published in England and Wales.

We should, perhaps, consider that there *are* alternatives to keeping elderly offenders in prison. Indeed, not all countries imprison those who have reached their later years; Venezuelan legislation, for example, stipulates an age limit to incarceration. Article 48 of the Venezuelan Criminal Code states that 'When a prisoner reaches seventy years of age, all sentences that have lasted for at least four years shall terminate, and those that have lasted for less than four

years shall be converted to arrest … until four years have been completed.' This article has been in the Criminal Code since at least 1915 (Venezuelan Government (2005).

Selected further reading

The work of Aday (especially 2003 – *Aging Prisoners: Crisis in American Corrections*. Westport, CT: Praeger) represents the most comprehensive and useful analysis of the imprisonment of older people in the USA. Aday provides a valuable discussion of populations, policy, practice and the impacts of the prison experience on prisoner health. To understand both the rise and challenges of elderly imprisonment in the UK, however, and its impacts on elderly men in particular, the reader must turn to the work of Crawley and Sparks ((2005) 'Older men in prison: survival, coping and identity', in A. Liebling and S. Maruna (eds) *The Effects of Imprisonment*. Cullompton: Willan Publishing; (2005) 'Hidden injuries? Researching the experiences of older men in English prisons', *Howard Journal of Criminal Justice*, 44: 345–56; (2006) 'Is there life after imprisonment? How elderly men talk about imprisonment and release', *Journal of Criminal Justice* (special issue), 6: 63–82). These authors examine the meaning and effects of imprisonment for men in later life, including, *inter alia*, the effects of imprisonment on personal identity and on physical, psychological and emotional health. Fazel, S. *et al.* ((2001) 'Hidden psychiatric morbidity in elderly prisoners', *British Journal of Psychiatry*, 179: 535–9; (2002) 'Psychiatric, demographic and personality characteristics of elderly sex offenders', *Psychological Medicine*, 32: 219–26; (2004) 'Unmet treatment needs of older prisoners: a primary care survey short report', *Age and Ageing*, May: 396–8) continue to conduct extremely valuable work on psychiatric morbidity and the treatment needs of elderly prisoners, including a discussion of the psychiatric characteristics of the sex offender, the fastest growing older prisoner group. If one is to understand, however, how prisoners view the passage of time, and the ways in which prisoners learn to survive, adjust and adapt to the deprivations of the prison, it is essential to read the classic work of Cohen, S. and Taylor, L. (1972) *Psychological Survival*. Harmondsworth: Penguin Books. Finally, those interested in women's imprisonment might wish to read Wahidin, A. (2004) *Older Women in the Criminal Justice System: Running out of Time*. London: Jessica Kingsley, and McQuaide, S. and Ehrenreich, J.H. (1998) 'Women in prison: approaches to understanding the lives of a forgotten population', *Affilia: Journal of Women and Social Work*, 13: 233–46.

Notes

1 In 2002, the number of female prisoners aged 50–59 years was 137. The number of female prisoners aged 60–69 years, in contrast, was 16 (Home Office Research, Development and Statistics Directorate cited in Wahidin 2004: 206).
2 Sieber *et al.* (1993: 169) use the term 'relocation stress' to describe the feelings that elderly people are likely to experience when they have to move out of their familial home and into institutional care.
3 'Coping' is a mixture of thoughts and actions. Individuals' coping styles and abilities vary over time, and coping can be seen as a mediator of emotion.
4 The opportunity to conduct this research was made possible by generous funding by the Economic and Social Research Council.
5 'Neighbours' were those in adjoining or nearby cells who provided company and support.

6 Most elderly prisoners have done national service and served in the Second World War.

7 In the army, to be 'beasted' during basic training is to be forced by superior officers to endure a great deal of psychological and physical pressure. Beasting involves sleep deprivation, forcing 'squaddies' to run long distances carrying heavy packs (and to repeat the exercise if they are too slow) and verbal humiliation (see Hockey 1986). The aim of beasting is that recruits learn to obey orders (even unreasonable ones) without a second thought.

8 The concept of 'institutionalization' or 'institutional dependency' has been used to describe the psychosocial effects of long-term incarceration. The term is often used by prison staff to describe the prisoner's loss of interest in the outside world, the loss of contact with family and friends and the loss of ability to make independent decisions. The 'institutionalized' prisoner generally views the prison as home and views himself entirely within the institutional context.

9 Sometimes referred to as comfort care or hospice care, palliative care is a comprehensive approach to treating serious illness with a focus on keeping dying patients comfortable through pain control and addressing psychological, social and spiritual concerns, instead of treating the disease or condition.

10 In the prisons of England and Wales, this criterion must be met by all prisoners seeking early release on medical grounds.

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Chapter 11

Women in prison

Diana Medlicott

Introduction

In September 2005, Home Office figures for England and Wales recorded that 4,580 women were in prison, an increase of 60 from the previous year (Home Office 2005a). The women's prison population has more than doubled in a decade and now stands at about 6 per cent of the total prison population in England and Wales. In 1999, the figure was 3,355, and in 1995 the average women's population was 1,998 (Home Office 2004b).

In societies around the world, there have, since the early 1990s, been sharp increases in the women's prison populations. This is in the context of England and Wales showing the highest overall imprisonment rate in Western Europe, coupled with serious overcrowding. Over a decade, 13 new prisons were built and, by the end of May 2003, nine of these were suffering from some form of overcrowding.

The most striking characteristic of the women's prison population currently is the disproportionate increase in its size compared with the prison population as a whole. This is despite the fact that the nature and seriousness of women's offending have not increased. The women's prison population has a far bigger range of problems to do with social exclusion – unemployment, low educational attainment, mental and physical health problems, victimization and addiction. Because of their role as primary carers, the impact of prison produces greater strain on women, on their families and on the rest of society.

The 1996 International Crime Victimization Survey reported that public support for imprisonment was greatest in the USA and the UK, with community punishments more highly favoured in other Western European countries. This does not, however, mean that the general public has a clear picture of imprisonment. The prison is still a hidden institution in society, good for media images when there is a riot or a spectacular escape, and the subject of countless films and other fictional treatments. It is also a useful political artefact: politicians build on the very real fear of crime in society by talking

up the prison and its effectiveness. The media collude in this by propagating misleading stories about levels of crime and the leniency of punishment. The theme of evil women and single mothers has been a particular favourite in the mass media for many years.

Concealed within the hidden institution of the prison is the women's prison population, an even more shadowy phenomenon that has generally been both subsumed, in terms of policy needs, into the male prison population, and singled out for discriminatory treatment. Women prisoners are part of our society: it is worth emphasizing that, though they are few compared with male prisoners, they are drawn from just over half the population. So the women's prison population offers a valuable lens with which to understand the state of our own society and the intractability of ideologies about women. From the early nineteenth century, women in prison have been treated differently from men: they have been considered as more morally depraved, and more needful of close forms of confinement and control (Dobash *et al*. 1986). At the same time, the regimes of confinement for women have so often uncritically imitated the provision for men, no matter how inappropriate. Women in prison are the recipients of contradictory and ideological control, based on familial, societal and masculinist assumptions (see Carlen 1998 for an account of these socio-penal forces).

Women's voices have become more audible in society as a whole in recent decades: in penal matters, several generations of women have researched and campaigned in order to increase public awareness, and to bring about much needed change in government policy. The campaigning group Women In Prison, founded in 1983, has increased public awareness of the state of women in custody (see http://www.womeninprison.org.uk). Successive critical reports from the Prisons Inspectorate have consistently called for change. There has been detailed research within women's prisons by generations of scholars, government departments, HM Prisons Inspectorate, the Prison Service, voluntary sector organizations, pressure groups and practitioners, and the voices of prisoners themselves now figure in some of this research. This chapter will draw on only some of that extensive body of knowledge, campaigning and research, in order to give an evidenced overview of women in prison.

Who is in prison and why?

The majority of women in prison are serving very short sentences, so that the number of women received into prison in any one year is much greater than the average population at any one time. In 2003, 63 per cent of the women's prison population were sentenced to custody for six months or less, and the number of receptions was 13,000 (Home Office 2004b). The age range of women in prison is similar to that of men, with 70 per cent of women under 40 (i.e. of child-bearing age).

Some 66 per cent of women prisoners are mothers and, for 85 per cent of them, prison is the first time they have been separated from their children for a significant length of time. Of mothers in prison, 65 per cent are serving their

first custodial sentence. At least a third of the mothers in prison are single parents with sole care of their child(ren) prior to prison (Social Exclusion Unit 2002).

There has been a serious rise in the numbers of women remanded into custody. In the ten years between 1992 and 2002, the number of receptions into prison on remand increased by 196 per cent, compared with a 52 per cent increase for men on remand. Fewer than 10 per cent of them were charged with violent offences (Prison Reform Trust 2004). Given the numbers of children who are affected by the imprisonment of women, this rise in the remand population is very serious. Many of the remanded women will not be subsequently convicted or, if they are, their sentence will not be a custodial one. Nevertheless, having been remanded into custody, for many women their family lives will have been thrown into chaos and their children taken into care. About one in five of all women in prison are currently on remand (Home Office 2005b).

The pattern of women's offending is quite different from men's. It poses far less of a threat to order and safety in society, and demonstrates a much lower level of violence. Over a third of all adult women in prison have no previous convictions, and this is more than double the figure for men (Home Office 2005b). Over 70 per cent of women in prison have never been in custody before (HM Chief Inspector of Prisons 1997). The most common crimes which lead to women being sentenced to prison are those of theft and handling stolen goods, and drugs offences (Fawcett Society 2004). In 2003, just over 3,000 women were received into custody for theft and handling, and they accounted for more than a third (38 per cent) of all women sentenced to immediate custody in that year (Home Office 2004b).

The number of men and women in prison for drugs offences is high and growing, and this is disproportionately the case for female prisoners. Drug offences accounted for 35 per cent of the sentenced female prison population at the end of February 2005, compared with 17 per cent of male sentenced prisoners. In 1995, the proportions of those sentenced for drugs offences had been 27 per cent for women and 10 per cent for men (Home Office 2004b). The majority of those locked up for drugs offences have been involved in supply or importation and are not necessarily users. Nevertheless, drug use among prisoners is high (Singleton *et al*. 2005), with three quarters of prisoners interviewed in a Home Office study admitting to taking drugs in prison, most commonly heroin (53 per cent) and cannabis (55 per cent) (Edgar and O'Donnell 1998; see Chapter 17, this volume).

Many of those female prisoners with drug problems also have alcohol problems. Nearly two fifths of sentenced female prisoners have engaged in hazardous drinking before coming into prison and, for some of these, this amounts to an addiction. In December 2004, an Alcohol Strategy for Prisoners was written by the Prison Service, but it has not been followed up by the allocation of additional dedicated resources. There are no specific alcohol treatment programmes which are accredited and securely funded in the prisons of England and Wales (Prison Reform Trust 2004). A detoxification strategy in response to the crisis in drug addiction is, however, now under way in women's prisons, and it is intended to provide detoxification from

opiates, benzodiazepines and alcohol. The first detoxification unit was opened in Holloway in 1997, drawing on service and guidelines developed through clinical supervision from the NHS. This has been used as a blueprint for other local women's prisons. The short length of women's sentences, however, militates against success in overcoming addictions, and drug use on release from prison is very high, with treatment and support services in the community very limited (Social Exclusion Unit 2002). Continued addiction means continued offending in order to fund the habit, so the drugs problem for women is one that causes an almost intractable cycle of offending and imprisonment, which would need imaginative solutions and considerable resources to tackle it. The 218 community-based project in Scotland (see below) is one such solution.

Very few women, by any standards, are convicted and imprisoned for violent offences. Compared with men, the lack of violent offending by women is even more striking. In November 2003, for example, there were 556 women in prison who had been convicted of violent offences, and they represented only 16 per cent of all sentenced women in prison. At the same time, there were 18,313 sentenced men in prison for violent or sexual offences, and they represented 32 per cent of the male sentenced population (Home Office 2004b).

In 2002, there were 165 women serving a life sentence, compared with 4,982 men. About 70 per cent of these women lifers are serving a mandatory life sentence for murder, and the second highest category are serving a discretionary life sentence for arson. The tariffs usually range from 5 to 15 years, although a whole-life tariff is possible (Howard League 2005). The reoffending rate for women released from prison is worsening. Some 38 per cent of female ex-prisoners were reconvicted within two years of release ten years ago, but 57 per cent of those released from prison in 2002 were reconvicted within two years (Home Office 2004b).

In 2003, 31 per cent of women in prison were from ethnic minority backgrounds, compared with 24 per cent of men in prison (Howard League 2005). At the end of March 2005, there were 783 foreign nationals comprising 18 per cent of the female prison population. The Home Office does not have a complete and accurate picture of the real number of foreign national prisoners, because their nationality has either been misrecorded or not recorded at all. At the end of January 2004, 1,200 prisoners were recorded as being of 'unknown nationality'. So the following figures may well underestimate the actual prisoner population of foreign nationals. Nevertheless, it is clear that their numbers are increasing overall, with a 152 per cent increase in the last ten years, compared with a 55 per cent increase in British nationals. They are over-represented in women's prisons, with foreign nationals making up about one in five women in prison, although they only make up 12 per cent of the overall prison population (Home Office 2004b). Foreign national prisoners come from 168 countries but, overall, more than half of them come from just six countries – Jamaica, the Irish Republic, Nigeria, Pakistan, Turkey and India. A quarter of all foreign nationals in prison are Jamaicans. In one women's prison, Morton Hall in Lincolnshire, more than half the women are foreign nationals. The majority of foreign national prisoners are convicted

of drugs offences. Eight out of ten sentenced women have committed drugs offences, and in particular drug trafficking. Six out of ten foreign national prisoners are serving sentences of more than four years (Prison Reform Trust 2004).

Most of the rise in the female prison population can be explained by the significant increase of severity in sentencing. This can be demonstrated by looking at examples of the treatment of offences over the last ten years. In 1991, only 8 per cent of women who were convicted of motoring offences in crown courts were given a custodial sentence. By 2001, that amount had increased to 42 per cent. Women convicted of theft or handling stolen goods in crown courts are now twice as likely to go to prison as in 1991. The chances of a woman receiving a custodial sentence in the magistrates' courts are now seven times greater (Carter 2004).

Female offending

Women make up more than half the general population, yet they account for only 6 per cent of the total prison population in England and Wales. They are also under-represented at earlier stages in the criminal justice system, such as arrest and cautioning. As Stern (1998: 138) has pointed out, there is nowhere in the world where women make up more than 10 per cent of the whole prison population for that society, and in many countries the figure is nearer 5 per cent. The rate of imprisonment is, however, increasing in England and Wales, Scotland, Australia, Canada and the USA.

Pollock (1950) famously made the unsubstantiated claim that females commit as many crimes as males but, because of their deceitful natures, deriving deterministically from innate biological factors as well as from patterns of socialization, they are more able than men to conceal them. Nevertheless, actual evidence from criminal justice statistics all over the world shows that, on the whole, women commit less crime than men, their crimes are less serious and their criminal careers are shorter than men's. The solidity of this case should not, however, mask the fact that women, like men, have the capacity to commit the most extreme violent and sexual crimes, and increasingly they do so (Worrall 2002).

Explanations for women's lower propensity to offend range from the biological to the social (Smart 1976, 1995). Their biological make-up may dispose them to be naturally nurturing and protective, and less aggressive and destructive. Females are socialized in particular ways in patriarchal Western societies, with an emphasis on passivity, conformity and femininity. While they are growing up and when they are adults, there are greater informal social controls on females, and the opportunities for them to commit particular types of crime are limited (Smart 1976: 66–70; Heidensohn 1985). Taking a Durkheimian perspective, girls and young women appear to be less anomic than youths: they are less prone to being seduced by destructive subcultural values and are bound in more closely to the core values in society.

Although Cavadino and Dignan (2002) suggest that the most plausible explanations emphasize nurture factors rather than nature, it is surely the

case that neither of the positivistic approaches of biology or socialization can quite capture the complexity of female offending in a patriarchal society. Factors of nature and nurture in all human development are symbiotically intertwined with personal agency. Mechanisms of social control produce a complex range of reactions in different individuals, from passive conformity to outright rebellion. Precisely because social control is more thorough and constraining with regard to girls and women, and precisely because female offending is comparatively rare, it is fascinating to ponder just what females are communicating when they resort to either anti-social behaviour or the wider shores of extreme violence.

The contexts of social control during female adolescence are quite different from that of boys, and may indeed be considerably less benevolent in a society which views girls and women as intrinsically less valuable economically, politically and socially. Their sexual value is ambiguous: girls are viewed as both prone to moral danger and to the risk of pregnancy, thereby justifying greater protection while, at the same time, their body images and sexuality are exploited far more than young males in the mass consumerism of modern society. This sexual exploitation does not stop at the front door, because the informal social control of young females is often linked to physical, sexual and emotional abuse in the home or in institutional care settings (Lees 2002). What females may be communicating when they begin offending, therefore, is distress in response to a multiplicity of disadvantage and damage. The perverted social control experienced in childhood can persist into adulthood, as women graduate from abusive relationships with fathers, stepfathers and brothers to abusive relationships with life partners.

Female deviance, particularly in girls and young women, has historically often been sexualized, and assumed to be linked to prostitution and promiscuity (Heidensohn 1985/1996), whereas in fact it is theft that has always been the dominant offence on the part of both males and females. It is clear then that we cannot entirely explain the lower crime levels of women without considering the part played by the structures of society, and the way in which society recognizes and defines the changing role of women, which is beyond the scope of this chapter. We must also consider if there is a bias operating in the criminal justice system in sentencing.

Sentencing and punishment

The imprisonment of women raises important questions for the theoretical understanding of punishment and control as social institutions in modern societies (Howe 1994). Although we cannot attempt a full understanding of these debates here, we should note that there are instrumental and expressive aspects of the imprisonment of women which oblige us to consider punishment as a gendered phenomenon.

A connection between the value of labour and the severity of punishments is generally accepted in historical analyses of the political economy of punishment (Hudson 1996). The repressive criminal law has been harshest in its punishment of those most disadvantaged and of least value on the

labour market. Women have not usually been highly valued in labour market theory, and their chief value to capitalism has been as the reproducers and socializers of labour and as civilizing ideological influences on men, rather than as actual workers (Howe 1994). In times of recession, their value actually increases because ideology emphasizes the importance of their presence in the home in order to keep the family together and provide stability in society even when unemployment is high.

Michel Foucault's work has been very influential in penology, and his analysis of normalization through disciplinary regulation is particularly pertinent to the case of women offenders, especially in relation to the instrumentality of punishment. But there are expressive aspects to the punishment of women which are significant: sending women to prison is the exercising of an awesome kind of power over many other lives than merely that of the convicted individual because of the role women play in the social and familial structure of modern society. As we have seen, so many dependent children are affected when women are sentenced to prison. In order to understand why courts exercise their power in this way, we need to ask some of those questions about power relations which the writings of Foucault have alerted us to – not least the question of, on whose behalf, and in whose interests, are the courts exercising that power, and what goal do they have in mind (Gordon 1980)?

We cannot merely map the exercise of the court's prerogative on to a will to power because clearly it is not reducible in this way (Garland 1990). When courts sentence women to prison, they are expressing messages about the significance not just of certain forms of proscribed behaviour but about the role of women in modern societies and about the suitability of prison as a means of enforcing control over women who have not complied with other forms of social control. Arguments have raged as to whether women defendants, compared with men, have suffered and continue to suffer patterned discrimination in sentencing decisions. Are the courts more lenient to women because of paternalist and chivalrous attitudes entrenched in a patriarchal system, where 83 per cent of police officers, 90 per cent of crown court judges and 51 per cent of magistrates are male (Home Office 2000)? Or do women receive harsher treatment than men in criminal justice processes because they are perceived as evil women (Nagel and Hagan 1983) who have broken the code of femininity as well as the law?

To polarize the possibility of discrimination by the courts between the chivalry thesis and the evil woman theory (Nagel and Hagan 1983) is to miss the point, largely because such polarization considers the punishment of women in the light of the punishment of men. Rather than asking how women are punished in comparison with men, then, the key question is this: what is the purpose and justification of the punishment of women? What is clear is that discipline and normalization are far more in evidence, in the punishment of women, than the justifications of retribution or deterrence which are traditionally viewed as underpinning the institution of punishment. Because normalization, in the context of a repressive patriarchal society, is the underlying principle, it follows that women will receive sentences designed to produce greater conformity in them as women. This, then, is the nature of

the double jeopardy identified by feminist criminologists (see, for example, Carlen 1983; Carlen *et al*. 1985; Eaton 1986; Worrall 1990).

Such manipulative sentencing will, if compared with those sentences awarded to men, seem sometimes lighter and sometimes harsher. Research has found that women who have childcare responsibilities have consistently been treated with leniency by the courts (Farrington and Morris 1983; Eaton 1986). Women who have neglected these responsibilities, however, are treated with severity. In her research in Scotland, Carlen (1983: 67) quotes sheriffs as admitting that they would avoid custody for a woman if she was a good mother, but that if the children were in care, it was clear she was not a good mother, and so custody was advisable. In the case of women brought before the courts, punishment is often deemed necessary less because of the nature of the offence than because of the demeanour of the accused, or because the accused is perceived as an inadequate or uncaring mother and is failing to achieve 'normal' standards of conventional femininity. Sentencing studies show that it is familial factors that correlate with sentencing patterns, rather than characteristics of offences (Farrington and Morris 1983). Gender stereotypes inevitably pervade the commonsense thinking which magistrates cite as playing a part in their assessment of the demeanour of defendants (Hedderman and Gelsthorpe 1997: 57).

Although these stereotypes may stimulate a chivalrous impulse, this can produce a harsher discrimination. Carlen (1983: 63–7), for instance, found that the Scottish sheriffs in her research had a chivalrous dislike of sending women to prison but, in circumstances where they would have fined men, they sometimes imprisoned women because they saw them as financially dependent on their husbands and unable to pay the fine themselves. Most magistrates have highly traditional and conservative views on family structure, with the same stereotypical views that are prevalent in wider society about what is appropriate behaviour in young women. Aggressive and anti-social behaviour will be viewed as normal in young males, even though it requires checking, whereas in young females it will be viewed as transgressing traditional female gender roles. Same-sex partnerships may not be considered as stable as heterosexual marital partnerships. Family circumstances and background, employment history and opportunity, and stability of residence are all factors that magistrates are briefed to consider in all sentencing decisions. For women, however, Hedderman and Gelsthorpe (1997) found that it was factors to do with dependants, and particularly children, that were most likely to mitigate sentencing decisions.

Hutter and Williams (1981) have drawn attention to the links between the control of female sexuality, the punishment of women and the labelling of them as pathological and in need of psychiatric care and control. Because of the irrationality of their offending behaviour, they are deemed to require penal treatment which will turn them into 'normal' women (Hudson 1996: 130). This may include hair and make-up sessions in prison, needlework and cookery classes, and therapy aimed at 'feminizing' them.

The reward for women who can show that they are struggling to carry out their caring responsibilities is that they are viewed as deserving care rather than punishment. The courts are quick to recognize, in a paternalistic

and chivalrous way, when women are trying hard to be good mothers and wives. Their conformity, both sexual and domestic, will invoke the court's benevolence, and it is this power to dispose, according to standards of normal female subjectivity in a patriarchal society, which characterizes the discipline and punishment of women. It is subjectivity which is the object in the punishment of women, and the goal is normalization. The court is exercising power on behalf of traditional patriarchy, illustrating the applicability of Foucault's maxim that 'power produces; it produces reality; it produces domains of objects and rituals of truth' (1979: 194).

It is true that there has been an increased emphasis in recent years on gender issues in criminal justice, and magistrates are encouraged through training to reflect on cultural and gender-specific stereotypes, considering how these might cause them to adopt particular perceptions, which might then affect sentencing decisions. But such training currently focuses on race issues (Hedderman and Gelsthorpe 1997) and targets new magistrates, and this may allow resistant magistrates to persist in entrenched attitudes in relation to gender.

Characteristics of women in prison

The annual report from the Scottish Prisons Inspectorate (HM Chief Inspector 2005) noted that very many women in the increasing women's prison population are physically and mentally ill, addicted and abused. Just one of these conditions is hard to cope with: when all appear together in one individual, as they so often do with women prisoners, the problems presented are both immensely difficult and immensely sad. An analysis of the characteristics of the women's prison population in Scotland and in England and Wales shows that most women in prison are tragically damaged and have suffered very many kinds of social exclusion, abuse and marginalization, to which the defining stigma of prison is then added.

The educational backgrounds of women prisoners show even more deficits than those of male prisoners. In England and Wales, 74 per cent of women prisoners left school at the age of 16 or younger, and only 39 per cent have any qualifications at all. This compares with 82 per cent of the general population having some kind of educational qualification. Some 41 per cent of women prisoners have not worked in the past five years (Social Exclusion Unit 2002).

There is evidence from England and Wales, Scotland, the USA and Canada of a connection between women's offending and subsequent imprisonment, and their victimization through prior violence (Rumgay 2004). The victimization includes physical, sexual and emotional abuse in childhood (Morris *et al*. 1995; Saradjian 1996; Loucks 1997) and abuse in adulthood from partners (Browne 1987; Morris *et al*. 1995; Mann 1996; Loucks 1997). Over half the women's population are known to have histories of abuse (HM Chief Inspector of Prisons 1997; Social Exclusion Unit 2002), but the real levels may well be higher, because domestic violence is under-reported.

For many girls and women, one symptom of the damage done to them by abuse is to turn to drugs and alcohol, and 66 per cent of the sentenced

women in prison report that they were either dependent on drugs or drinking to excess before they came into custody (Home Office 2004a). At Styal, a local women's prison, as many as eight out of ten new arrivals are thought to have drugs in their system (HM Chief Inspector 2004). Often it is this dependence on drugs or alcohol which has led them into offending. DrugScope (2005) points out that the traditional concern in our society for those who have been the victims of sexual abuse and terrible physical violence in childhood and adolescence seems to stop short of the recognition that it is precisely the damage inflicted on them that prompts the beginning of a hopeless cycle of addiction and offending.

Most prisoners have never received help with their drug problems. In prison, all inmates are subject to random mandatory drug tests, but in a recent Home Office study it was claimed that these tests usually underestimate the level of drug misuse among prisoners (Singleton *et al*. 2005). The level of need in relation to drugs is clearly overwhelming in prison, and the Detoxification Strategy has had to admit far more entrants to their programmes than the targets that were set (Prison Service 2003). Assessments in 2003–4 of prisoners with drug needs, carried out by CARAT teams (Counselling, Assessment, Referral, Advice and Throughcare), for example, numbered 50,000, double the target of 25,000 (Prison Service 2003).

The mental health needs of women entering prison are enormous and increasing all the time. The Social Exclusion Unit (2002) found that 70 per cent of sentenced women prisoners are suffering from at least two mental health disorders. Some 37 per cent of them had previously attempted suicide. Unlike specialized mental health facilities in the community, prisons cannot turn away women on the grounds that there are no beds, or a lack of trained staff or facilities. Prisons must take whomever the courts send them, no matter how mentally ill, damaged, volatile or distressed. These damaged women are then housed on ordinary wings, where untrained staff struggle to cope with their symptoms of distress, which may include swallowing batteries and razor blades, attempted hanging, repeated cutting, fire-setting, howling, crying, and banging on the doors and walls all night. Women in prison have a far greater expressed need for medical care than men, and approximately 20 per cent of women prisoners ask to see a doctor or nurse each day, more than twice the figure for male prisoners. Over 66 per cent of women in prison, as opposed to 20 per cent of women in the community, are assessed as having neurotic disorders such as depression, anxiety and phobias (Howard League 2005; see Chapter 16, this volume).

The experience of imprisonment

When the prison gates slam shut, the inmate experiences both an ending of personal choice and an appropriation of the personal timeframe that has hitherto been a taken-for-granted aspect of life (Medlicott 2001: 23). There is particular anguish for women prisoners in being denied access to children and the chance to participate in the milestones of their development. Women are also victims of the biological clock in ways that men are not. Men can

emerge from prison in early middle age and set about the establishment of their own family, whereas women at the same age are aware that their most fertile years may have been wasted in prison.

Because the women's prison population is so small relative to men's, there are few women's prisons, and the chances of being imprisoned far from home are much greater for women. At the end of September 2004, the average distance from home for female prisoners was 62 miles. Nearly a quarter were held more than 100 miles away (Hansard 2004). Although family ties are important for all prisoners, and are regarded as the most potent force against reoffending, they are even more important for women. This is particularly evident in Scotland, where 96 per cent of the women's prison population are housed in HMP Cornton Vale, the only all-women prison in Scotland. Even though it has meant a poorer level of services, women have in the past opted for smaller units at male prisons in Inverness, Aberdeen and Dumfries, or the hall at HMP Greenock recently brought into use, in order to be closer to their families (HM Chief Inspector 2005).

Whether from distress, prior mental and emotional damage, or because of the rules and the ways in which they are applied, women respond badly to imprisonment from the perspective of good order and discipline. Disciplinary offences in prison fall into several categories – violence, escape, disobeying orders and being disrespectful, damage and unauthorized possession. Women do not tend to engage in collective indiscipline, nor do they riot. Liebling (1994) noted, in the wake of the Woolf Report (Woolf and Tumin 1991) on the long-running disturbances at Strangeways, that this is one reason why they have been so ignored. Nor do they escape. However, on an individual basis, they commit more disciplinary offences, notching up in 2001 2.3 offences on average per head, compared with 1.6 for men (Home Office 2003). Most of these offences will be related to disobeying orders and disrespectful behaviour, and it is often behaviour that would be tolerated in male prisoners (Howard League 2005). Physical restraint, sometimes on medical grounds, is used on women, in the form of loose canvas jackets, protective rooms and special cells. On rare occasions, a body belt is used to restrain a woman (Howard League 2005).

Retaliation and rebellion are, however, just two strategies which lead women into these high levels of indiscipline in prison. For many, the response is excessive compliance or withdrawal, coupled with very low self-esteem (HM Chief Inspector 1997). Prisons are not equipped to deal with the avalanche of human need presented by women in prison. No matter how well intentioned prison officers are, they cannot compensate for the overwhelming shortfall in professional and medical services. Damaged, vulnerable, mentally ill, addicted to drugs, women find themselves in an environment which will exacerbate their distress. Their autonomy has been removed, and they are required to adjust their identities and behaviour in order to comply with every requirement of the institution, no matter how petty. The female prison population is at high risk of self-harm and suicide, because of the situational and environmental facts of imprisonment and because of prevalent characteristics related to previous history, health and familial circumstances.

The *Guardian* newspaper reported on 9 August 2004 that officers in HMP Holloway were cutting down five women a day from nooses, and that it was

only their watchfulness that was averting many potentially lethal incidents. In one 30-month period in the 1990s in Cornton Vale, Scotland's only all-women prison, 7 prisoners out of a total female prison population of about 170 took their own lives. Some 14 women killed themselves in prison in England and Wales during 2003, and 13 during 2004. Despite making up only 6 per cent of the total prison population, women account for 9 per cent of self-inflicted deaths in prison (Home Office 2003). This does not, however, state the true nature of the over-representation: within the wider community, women commit suicide at less than half the rate of men. Damaged and vulnerable women with a high risk of suicide are over-represented in prison: their propensity for suicide is not improved by imprisonment. Additionally, their suicides may be under-recorded because they have attracted 'open' or 'accidental' verdicts, due to a reluctance in coroners' courts to recognize their lethal intent (Liebling 1999: 308). Further, despite making up only 6 per cent of the population, women account for 25 per cent of deliberate self-injury. Prisons that are overcrowded and have the most limited regimes, with a high transient population, record the highest rate of self-harm. Women self-harmers report that it is boredom and the lack of activities that drive them to self-harm, coupled with the lack of autonomy and control over their daily lives (Howard League 2005).

Such responses often illustrate the psychological damage produced by prior victimization, although Rumgay (2004) points out that women prisoners tend to demonstrate shame and remorse rather than seeking to cite their victimization as a justification for their offences. Morris *et al.* (1995), found that all the women in their study who self-injured were also victims of prior abuse, physical and/or sexual. Research in Scotland and in England and Wales shows that women with substance misuse problems also typically have histories of abuse (HM Chief Inspector 1997; Loucks 1997). Interviews with women who have survived incidents of severe self-harm underline the extreme need for specialist help in relation to mental health, and for improved support for women made vulnerable by stressful life events (Borrill *et al.* 2005).

Almost 18,000 children are separated from their mothers by imprisonment each year. Imprisonment of any family member is disruptive but, when it is the mother who is imprisoned, the disruption is greatest. Women prisoners are more likely to be solely responsible for dependants and the home. When men with children go to prison, the majority of children continue to be looked after in the home. This is the case for only 5 per cent of the children whose mothers are sent to prison. In 2004, 114 babies were born to mothers in prison (Hansard 2005). Some of these would be forcibly separated from their mothers immediately following birth, and the vital bonding that takes place in the first few weeks prevented from happening. The separated babies may then be taken into institutional care, or passed around a number of different carers. These babies are less likely to be reunited with their mothers on release and, in turn, they inevitably suffer some of the deficits in care that are often the forerunner to subsequent offending. There are only about 80 places for babies to remain with their mothers in only seven women's prisons and there is no automatic eligibility. Critics have argued that the existence of mother and baby units (MBUs) only encourages the courts to send certain women to prison

when they might otherwise not merit a custodial sentence. The demeanour of defendants, and how they measure up against gender stereotypes, figures in the deliberations of the court (Hedderman and Gelsthorpe 1997). So where the court considers that there is a risk of the defendant being a bad mother, it is highly likely that this will influence their decision to impose a custodial sentence, hoping that the requisite parenting skills can be imparted in a controlled environment. Imprisonment in MBUs, as opposed to separation immediately following birth, offers the chance for babies to bond properly with their mothers and to experience continuity of care. Mothers are spared the anguish of separation. The units also offer the opportunity for inexperienced mothers to learn mothering in a protected environment, where there is advice available and support from peers. However, this protected environment may also be highly charged with discipline and control: it may infantilize mothers and prevent them from maturing as autonomous carers. The lack of stimulation and of access to normal support networks in family and community may result in impoverished early experiences for the child.

Upon release from prison, 38 per cent of women prisoners expect to be homeless (Howard League 2005). Some 31 per cent who had owned or rented property before they came into prison had lost it during their sentence. The majority of prisoners have depended on housing benefit prior to custody, but entitlement to this benefit stops for all sentenced prisoners expected to be in prison for more than 13 weeks. When a home is lost, the possessions are typically thrown away, and women then have a huge mountain to climb if they seek to re-establish a home. Their poverty has been increased by imprisonment and they are more likely to reoffend. Having stable accommodation has been found to reduce reoffending by over 20 per cent (Social Exclusion Unit 2002).

Policy

Two contrary trends have pervaded women's imprisonment since the middle of the nineteenth century, in which the principles of *sameness* and *difference* to men have combined to make women's prisons especially limiting and repressive. On the one hand, prison policy for women has echoed that of men's prisons, often by default because policy-makers have only recognized the larger male prison population as significant. On the other hand, a repressive patriarchy has always chosen to recognize women prisoners as doubly deviant: damned because they are criminals and doubly damned because they have departed from the natural standard of femininity (Carlen and Worrall 2004). The prison regime for women, with its heavy emphasis on ideological representations of femininity and the domestic ideal, its depiction of women as psychologically flawed and physically feeble, restrains and controls women by a tripartite disciplinary apparatus of feminization, domesticization and medicalization (Smith 1962; Carlen 1983; Dobash *et al*. 1986; Carlen and Worrall 2004).

The strand of penal policy towards women that has been most clearly and ideologically aimed at women is that of the psychiatrization of offenders. The central purpose in both Cornton Vale in Scotland and in Holloway

in England has been the application of a mental health model to women prisoners. This purpose is underpinned by the assumption that women are inherently less mentally stable than men, that women offenders tend to be mentally disordered and that women prisoners react to imprisonment in more disordered ways than men (Dobash *et al*. 1986). Assumptions about gender and about the desirability of conforming to gender roles have played a big part in the therapeutic model, and therapy has combined with discipline and punishment to produce an intensely normalizing approach to the apparently disordered personalities and behaviours of imprisoned women. This combination of therapy and discipline produces an ambivalence which is played out through the enforcement of petty rules that extend surveillance to every intimate aspect of daily life (Dobash *et al*. 1986).

Women in prison today still suffer a range of features which have been present in one form or another since the mid-nineteenth century, when the concerns of John Howard (1727–90) and Elizabeth Fry (1780–1845) were implemented in the separation of women prisoners from men. Their day-to-day life unfolds against a constant background of patriarchal relationships, in which patterns of authority mimic the gender divisions found in society (Eaton 1993: 35). They are treated paternalistically by staff, watched more closely than male prisoners, medicalized more intensively and disciplined at a much higher rate than males. They enjoy a narrower range of facilities, are more likely to be much farther from home because of the smaller number of female prisons, they are more isolated from each other and, where there is employment, it tends to be low grade, menial and domestic. There is a scarcity of opportunities for the educational and vocational training that could prevent further offending.

It is hard to design policy for women so obviously damaged, and the principles of care and punishment have inevitably been tangled together in the conceptualization of female offenders. Female imprisonment ought to be a specialist area of policy, and yet the rules and regulations, designed for male prisoners, have fallen as if by afterthought on to the women's prison population, and have tended to reflect those characteristics and concerns which dominate male imprisonment, ideologically polished where necessary to take account of the 'unnatural' nature of criminal women. Progressive policy intentions for women in prison have tended to succumb to whatever is the contemporaneous response to a perceived crisis in male prison policy.

In 1991, for example, in its *Regimes for Women*, the Prison Service recognized that women prisoners tend to be imprisoned for far less serious crimes than men, that many are victims of sexual abuse and that some have psychological problems involving low self-esteem and lack of confidence. It called for appropriate security and discipline measures, sympathy on the part of staff in relation to women's natural worries and childcare needs, and an expansion of temporary release. Little progress was made: the crisis of nine high-security male escapees from Whitemoor and Parkhurst in 1993 and 1994 produced a period of obsessive concern with security, at huge financial cost and at the expense of the humanity and justice which Lord Woolf had called for in 1991 following the riots in the male prison of Strangeways. This policy of excessive security was applied to women, despite the fact that in his report on the

escapes, Learmont (Home Office 1995) expressly recommended that women be held in small self-contained units, such as former hostels or local authority buildings (see Chapters 5 and 14, this volume).

Even though less than a third of the women's prison population poses sufficient risk as to even warrant custody in a closed prison (HM Chief Inspector 1997), it became harder for women prisoners to have temporary release granted, and this affected their chances of maintaining contacts with their children or seeking employment. In 1996, revelations that women prisoners, removed to outside hospitals to give birth, were shackled to their beds up to the point of giving birth, outraged the public, who were sensible enough to see that whatever security risks such situations implied, these could be tackled less callously. In the same year, on 24 November, the *Observer* newspaper reported on an intensified kind of strip-searching in Holloway by a group clad in black PVC leggings, Doc Marten boots and baseball caps, ostensibly to look for drugs but clearly designed to mortify, degrade and humiliate.

Learmont's recommendations (Home Office 1995) for small self-contained units have been frequently repeated, in one form or another in the interests of reducing female rates of reoffending by avoiding the further damage of custodial sentences for women already suffering high levels of social exclusion and psychological damage (Prison Reform Trust 2000; Fawcett Society 2004). Local units providing intensive support and supervision would enable women to remain in the home as primary carers, and prevent the fracture and dislocation caused by removing them to custody, often far from home. Even if such units were residential, the fact that they were local would enable family ties with dependent children to be maintained.

Scotland has embarked on just such a step. Following the suicides at Cornton Vale, Social Work Services and Prisons Inspectorate (1998) recommended community-based diversion and non-custodial sentences which would address the real needs and cirumstances of women offenders. As a result, the 218 project was established in Glasgow and, since January 2004, it has combined a detoxification facility, residential units and some outreach work in the areas of housing and health. It is intended to help women to address the root causes of their offending.

Government policy continues to be contradictory. There have been some encouraging signs that the government is taking notice of the recommendations in the literature on women's prisons which have been in currency for decades. The Home Office have put their recognition of the problems in writing, with an action plan promising strategically joined-up efforts across different sections of government in order to reduce women's offending, and the pursuit of sentences other than prison for women (Home Office 2004a). In the 2004 spending review, there was a commitment for the period of 2005–8 to the piloting of new initiatives that would meet the specific needs of female offenders. In addition, there was a declared intention to address the causes of crime and reoffending by women, with a view to reducing the need for custody. Action quickly followed this commitment, when the Home Secretary announced in March 2005 that £9.15 million was being allocated to the piloting of two community centres for women, specifically as alternatives to custody.

But while these commitments were being made, the women's prison population continued to rise, and two new privately run prisons were opened, the purpose-designed HMP Bronzefield in June 2004 with 450 places, followed by HMP Peterborough in March 2005. These are the very type of large institutions which have been heavily criticized in the literature. They will take women from all across the country and ensure that they are imprisoned far from home, with all the attendant risks of breakdown in relationships with children, partners and other family. In addition, the separate line management structure for women's prisons initiated in 1998, with an Assistant Director in charge of a Women's Policy Group, has been dismantled, and from April 2004, the women's prison estate reverted back to the geographical line management which has served it so ill in the past. Area managers with no specialism in women's imprisonment will once again have one or maybe two women's prisons in their area, and it is unlikely these will be high on their list of priorities.

A brief account of the impact of policy in HMP Holloway, the largest women's prison in England and Wales, is instructive in showing how penal policy in relation to women has suffered from clear failures in moral legitimacy. Even conservative commentators have grave reservations about its impact in a civilized society (Cavadino and Dignan 2002). Additionally, such an account demonstrates the intractable association with mental disorder in the minds of policy-makers when they are designing disposals for women.

HMP Holloway

HMP Holloway was originally built as the New City Prison in 1852. The rebuilding of Holloway Prison as both a local prison and a psychiatric institution, conceived in 1968 and reopened in 1983, was intended to reshape custody for female prisoners, bringing to the fore an ideological strand of discourse that had been present in women's imprisonment since the birth of psychiatry. This discourse viewed criminal women as needing medicalization rather than punishment (Sim 1990). The medicalizing of women's problems was a powerful force in wider society also, from the 1950s onwards, and large numbers of women with social and economic problems became dependent on legally prescribed drugs. The redevelopment of Holloway was centred on the provision of comprehensive psychiatric, medical and general hospital facilities for the women's estate (Home Office 1985: 5).

Within a year of the reopening, Holloway attracted a highly critical inspection and subsequent report from the then Chief Inspector (Home Office 1985). The prison was overcrowded, and there was so little to do that prisoners resorted to smashing sinks and kicking in the toilets, through anger and frustration at being locked up for 23 hours out of 24. In C1, where women prisoners with mental health problems and behavioural difficulties were housed, the report described with sickening accuracy the slit-like windows, the claustrophobia, the rising damp, the rats, the cockroaches, the smell of urine and excrement, the misery and the deafening noise of women banging continuously on their cell doors. One of the psychiatrists who worked there wrote that this sort of confinement was a form of torture that could drive people insane (Home Office 1985). Prisoners were on permanent lock-up in

small cells, receiving their food and medication through a hatch in the door of their cells. Levels of self-mutilation and distress were very high (O'Dwyer *et al*. 1987) and vandalism, barricading of cells, floodings, arson and violence against other prisoners and staff were common.

Despite the Home Secretary and the Home Office's awareness of the situation, and their intention to relocate this unit, there was no relocation of C1 or any fundamental and lasting improvement in conditions (Carlen and Worrall 2004: 164). The appointment of a new governor, Colin Allen, resulted in some major improvements, which included reducing the inhumane practice of locking prisoners in their cells for 23 hours a day. His policy was to keep women on the wings only for sleeping, eating and being in association with each other. At other times they would be engaged in purposeful activity elsewhere. He also opened up Holloway to public scrutiny. However, his attempts at radical improvement were resisted by the Prison Officers Association (POA), the militant union of prison staff which has so often fought the principle of management's right to manage. In the confrontation and strike which followed, the Home Office and Prison Service failed to show public support for a governor who had dared to oppose the industrial strength of the POA (Ramsbotham 2005). When the appalling conditions under which women were imprisoned came to light, either through campaigners such as Women in Prison, in press reports or in research findings, they would generally be confirmed by the authorities (Carlen and Worrall 2004: 164–5). Successive ministers and Prison Service managers and directors were aware of conditions in Holloway, but they colluded with and continued the marginalization of women in penal policy by denying appropriate care in prison. The treatment of women in prison, and in Holloway in particular, continued to be seriously inadequate for the next ten years.

Things came to a dramatic head in December 1995, when the then Chief Inspector walked out of an unannounced inspection of Holloway. There had been persistent disquiet about conditions there and, although the Chair of the then Board of Visitors (now called Independent Monitoring Boards) had taken the desperate and highly unusual step of writing to the Home Secretary about inhumane conditions, no significant action had been taken. The Chief Inspector found that the management team were barely coping with the rise in Holloway's population and its complexity. Staff shortages meant the suspension of most ameliorative regime aspects such as education, exercise and adequate healthcare. He found overcrowding, filth, almost continual lock-up, vermin and uncleared rubbish. There was evidence of racial discrimination, the wide availability of illegal drugs, neglect, high levels of self-harm, and physical and verbal bullying (Ramsbotham 2005).

Following this suspended inspection, a thematic report (Home Office 1997) was published with comprehensive recommendations for improving the treatment of women prisoners and the conditions in female institutions. Four years later, a follow-up to *Women in Prison* was published, by which time Holloway had been officially inspected three more times. The report recognized that the general conditions for, and treatment of, women prisoners in England and Wales had improved significantly over the last four years, except in Holloway, which remains the largest women's prison and the one

housing the most needy and damaged prisoners. Successive independent inspections, concern expressed by experienced commentators, observers and researchers and full awareness on the part of the Prison Service and the relevant ministers had failed to make the necessary improvements. In 2002, another critical report was published by Anne Owers, the Chief Inspector. Among her findings were that children under 18 were still being housed in Holloway, despite Government and Prison Service commitments to abandon this practice.

Conclusion

It would seem that entrenched attitudes on the part of ministers, the senior management of the Prison Service and the POA all combine to prop up a failing model of senior management, which results in a failure to sustain and build on whatever improvements occur in women's prisons, and an absence of real and consolidated improvement. This is in an era when the Prison Service is attracting more able and qualified applicants than ever before, and when increasing amounts of participation by voluntary groups are making outstanding contributions to life in prison.

But overcrowding, combined with resource constraints and managerial inefficiencies, has dominated the field of what is possible in penal policy for many years now, and the rate of increase in the women's prison population has indeed been extreme. Overcrowding is a problem that is outside the control of the Prison Service, and which requires political and judicial leadership, so that custodial sentences are handed down appropriately to those offenders who cannot be effectively dealt with through other disposals. If women are convicted of non-violent offences, and there is no risk to the public from a community-based punishment, they should not be sentenced to prison, because to do so is increasing the burden on governors to run their establishments effectively, and allocate their resources accordingly. However gifted some individual senior officers and governors are in individual establishments, they cannot deal with the volume of prisoners that results from inappropriate custodial sentences. They certainly cannot reduce reoffending in conditions of overcrowding combined with resource constraints. Nor can they transcend the organizational and strategic failures that permeate the Prison Service, as events in Holloway under Colin Allen demonstrated (Ramsbotham 2005). Few would disagree with the then Director General of the Prison Service, Martin Narey, when, at the annual Prison Service conference in Nottingham in 2001, he denounced the litany of failure and the moral neglect in prisons, although he stopped short of publicly criticizing ministerial and Prison Service senior management (Ramsbotham 2005).

The government has acknowledged that the courts have used custody more frequently for women over the last few years, even though the nature and seriousness of female offending have not worsened. In their Women's Offending Reduction Programme Action Plan in March 2004, they identify priority areas for action, which include making community interventions more appropriate for women, meeting mental health needs, treating substance

misuse and providing appropriate training to those involved in criminal justice to women. But the political momentum of talking tough about crime continues, with governments of the day competing with opposition politicians to demonize offenders. This rhetoric taps into the misogynist images which have permeated thinking about female offenders since the nineteenth century. These images have fed into penal policy, providing a critical template that helps us *understand* the treatment of women in prison within a male-dominated and male-focused system. More shockingly, such images stemming from patriarchal discourse have had such a powerful hold in the minds of policy-makers and 'experts' that they have provided a respectable *justification* grounded in 'common knowledge' for the treatment of women in prison. It is not surprising if this undercurrent is translated expressively into sentencing, particularly when the commonest crimes for women relate to drugs and theft. Both these crimes can so easily be torn out of their real contexts of poverty, abuse and deprivation, and relocated in a discourse that condemns women as degenerate, feckless and requiring custody in order to remodel them as properly female.

Despite clear and widespread awareness of the scandalous conditions for women in Holloway, political weakness persistently colluded with failures in Prison Service management, so that inhumane conditions were allowed to continue for a number of years. The failure of successive governments to initiate or support attempts to modernize the industrial practices of the POA is one facet of what is, at best, moral and political inertia. In 2000, the quantifiable financial costs to public bodies of imprisoning women was estimated at £118 million (Prison Reform Trust 2000). The failure to reduce reoffending when prisoners are released, the loss of life and the damage to mental and physical health for imprisoned women, and the overall social and economic costs to prisoners, families and wider society, are impossible to quantify. Most of those who are imprisoned have been the victims of abuse, poverty, neglect and marginalization. It is sensible and just to implement radical reform of the arrangements for dealing with women offenders. Society needs a vision other than a harsh disciplinary one if it is to keep open the conditions of possibility for real personal change and subsequent social, political and economic inclusion (Medlicott 2003).

If we term this vision 'alternative to prison', we are colluding with the perspective that sees prison as inevitably the 'usual' punishment. Worrall (1997) points out that non-custodial punishments occupy a distinct sphere of penality involving self-regulation and normalization. At their best they encourage women to change their lives, take responsibility for what they have done and make amends. Restorative rather than retributive justice is particularly appropriate for women offenders, since it is a mode of justice that emphasizes the importance of talking and listening in human relationships. It takes notice of human feelings and aims at a consensus-style of decision-making (Van Wormer and Bartollas 2000). These qualities are not gender specific but they do map on to the tendencies for women to be highly expressive about the links between their feelings and their behaviour, to be highly involved in support systems of one kind or another and to be highly motivated to make these systems work. Restorative justice also offers the chance for damaged

women to practise self-advocacy and increase their sense of worth and self-esteem, often identified in research as seriously low in women prisoners.

Community interventions should be developed and improved until they can become the 'normal' punishment for women, so that only those women who are convicted of dangerous and/or violent offences, and who represent a danger to the public, will be sent to prison. This will be more effective at preventing further victims: it will also increase the chances of women remaining as the primary carers in their families, and prevent family break-up, which is the best protection both against reoffending and preventing the onset of offending in vulnerable family members.

Selected further reading

For a good introduction, and to place women's imprisonment in the context of overall penal policy in England and Wales, see Cavadino, M. and Dignan, J. (2002) *The Penal System: An Introduction* (3rd edn). London: Sage. Dobash, R.P.

Dobash, R.E. and Gutteridge, S. (1986) *The Imprisonment of Women*. Oxford: Blackwell, is a readable overview of the subject, including the reactions of women to imprisonment.

Reports from HM Inspectorate are invaluable for giving evidence-based accounts of the current state of women's imprisonment. The *Annual Report for 2004–5* from the Scottish Prisons Inspectorate is a prime example: it provides a clear picture of the extent of social exclusion, abuse and marginalization in the women's prison population.

For a first-generation feminist critique of women's place in the criminal justice system, explanations for offending and why women's propensity to offend is lower than men's, see Smart, C. (1976) *Women, Crime and Criminology*: *A Feminist Critique.* London: Routledge & Kegan Paul. Two excellent texts making strong claims about the historical roots underpinning penal policy for women, and about how ideology has produced the disciplinary apparatus that passes for contemporary penal policy, are Carlen, P. and Worrall, A. (2004) *Analysing Women's Imprisonment*. Portland, OR: Willan Publishing and Carlen, P. (1998) *Sledgehammer*. Basingstoke: Macmillan. Two useful texts for considering possible alternatives to prison, and why these might be necessary and advisable, are Eaton, M. (1993) *Women After Prison.* Buckingham: Open University Press and Worrall, A. (1997) *Punishment in the Community*. Harlow: Longman

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Chapter 12

Black and minority ethnic prisoners

Kimmett Edgar

Introduction

This chapter aims to analyse both the experience of black and minority ethnic (BME) prisoners and attempts by prison authorities to address the issue of race in prisons. While mindful of the fact that racial discrimination within prisons cannot be examined solely within the field of criminal justice, but must take into account the broader picture which includes cultural stereotyping, exclusion from job markets and inadequate education, the main focus of the chapter is prisons. The chapter thus explores the following key areas: victimization; prisoners of different faiths and nationalities; institutional racism in the Prison Service; the definition of racial incidents; and possible remedies for prisoners who have experienced racism. First, though, some demographic context.

The number of BME prisoners[1]

> I don't understand racism. I remember when I used to look in the mirror and I was just Sean. Race is a mirror someone else puts on you (BME prisoner).

BME groups are over-represented in prison. Between July 2003 and June 2004, 93,591 people were received into custody under sentence. Over 16,000 (17 per cent) were recorded as black, mixed, Asian or other (Home Office, Section 95 2004: 92). At the end of June 2005, prisoners from BME groups comprised 25 per cent of the total prison population (Home Office 2005: 103), while 9 per cent of the general population came from minority ethnic groups.

This over-representation occurs at every stage of the criminal justice process. The Criminal Justice System Race Unit (CJSRU) reveals that black people are 6.4 times more likely to be subject to stop-and-search procedures than white people; Asian people are almost twice as likely to be stopped and

searched (CJSRU 2005: 9). Black people are over three times more likely than white people to be arrested, while the rate of arrests for Asian people was just slightly higher than for white people (CJSRU 2005: 10). The different rates of stop-and-search procedures are a key to the problem because first contact with the police is usually the first point of contact with the criminal justice system. As such, any imbalance in policing becomes magnified through the system: 'The use and abuse of police "stop and search" powers contributes to the disproportionate flow of people from ethnic minorities into the criminal justice process because it is frequently directed specifically on these groups' (Bowling and Phillips 2003).

FitzGerald and Sibbitt (1997) also found that the police were selective in whom they stopped and searched. They argued that differential treatment emerged in omissions – i.e. in those whom the police might have stopped but did not: 'Some minorities (and black people in particular) are significantly less likely to benefit from this exercise of discretion than others' (1997: 96).[2] Such differential treatment can be further compounded at a later stage due to a 'multiplier effect' in the route through the stages of the criminal justice system. This means that slight imbalances at each stage (which, in themselves, may be difficult to monitor or measure) are reinforced by slight imbalances at subsequent stages, such that the end result – the prison population – presents a substantial disproportion in populations from minority ethnic groups (Bowling and Phillips 2002).

The CJSRU calculate that the prison population of white offenders equals a rate of 1.3 per 1,000 in the general, white population. The rate for 'other' category, which includes Chinese, people of mixed ethnic status and less common ethnic groups, is 6.5 per 1,000. The rate of black offenders in the prison population is 9.3 per 1,000, over seven times higher than their white counterparts (CJSRU 2005: 14). This includes those held without conviction. The Social Exclusion Unit reports that, while 16 per cent of white defendants are remanded into custody, this is the outcome for 28 per cent of African or African-Caribbean defendants (SEU 2002). While these statistics are concerning enough, there is evidence that the problem is getting worse, and that the prison population of BME groups is rising much faster than that of white prisoners. Between 1993 and 2003, the white prison population increased by 48 per cent; Asian prisoners by 73 per cent; and black prisoners by 138 per cent (Home Office, Section 95 2004: 87).

Of course, such disproportionate outcomes do not, in themselves, prove that there is direct racial discrimination in the operations of criminal justice processes. At least some of the discrepancies can be explained by legitimate factors, such as age. Some BME groups are, on average, younger than the white population. Hearnden and Hough make the point that, in 2002–3, one in five white people in England and Wales was under 16, but under-16s comprised over one in three people from Bangladeshi or Pakistani backgrounds (2004: 2). A second demographic factor is the level of social disadvantage for different groups. While links between poverty and criminal behaviour are matters of debate, UK prisons are disproportionately full of people who come from lower socioeconomic groups. Social exclusion restricts access to the kinds of networks that ease progress into well paid and secure jobs (social capital).

Criminogenic effects of social exclusion are well established. As Bowling and Phillips explain, these include:

> homelessness, high unemployment, high housing density, crumbling infrastructure, and poor schools. Given that people from ethnic minority communities are disproportionately likely to be found in such contexts, it can be expected that the extent of crime and deviance would be greater than among communities who are not socially excluded (2003).

Victimization

This section considers the extent to which BME prisoners experience victimization, including verbal abuse, threats and assault, from prisoners or staff.[3] Prisons have high rates of victimization generally. When there is verbal abuse, or theft, or persistent harassment, the behaviour is sometimes labelled as being racially motivated. However, fights and other forms of victimization often take place between people from different ethnic groups without any racist motivation. Statistics on racial incidents among prisoners are bound to be tentative since the best judges of whether racial bias influenced an encounter are the people who were personally involved. The proportions of prisoners who are victimized also vary enormously from prison to prison, and among different types of prison. Any correlation between race and verbal abuse, threats or assaults must therefore be seen in the wider context of victimization in prison, both among prisoners, and between prisoners and staff.

Victimization by other prisoners

In a survey of 501 prisoners in eight prisons, Burnett and Farrell (1994) measured verbal abuse, theft, bullying, assault and harassment in order to determine the extent of victimization and to explore how often victims perceived that these incidents had a racial aspect. The proportions of each ethnic group who stated that they had been victimized in at least one of these ways by another prisoner are shown in Table 12.1.

Table 12.1 The proportions of each ethnic group reporting victimization

Group	%
Black Caribbean	52
Mixed black and white	52
Asian Indian	45
White	45
Black African	44
Asian Pakistani	43

Source: Burnett and Farrell (1994: Annex B, vii).

Black Caribbean, and mixed black and white prisoners were more likely than other groups to say that they had been victimized by another prisoner. Asian prisoners were most likely to perceive a racial aspect to their victimization by prisoners (32 per cent of Asian victims, 26 per cent of black victims, and 22 per cent of other and mixed prisoners saw a racial aspect). Similarly, in a survey by NACRO (2000), 7 per cent of all prisoners surveyed said that they had been victims of 'physical abuse'. Four per cent of white prisoners said that they had been assaulted, as compared with 12 per cent of black and Asian prisoners and 8 per cent of the 'other' group. About one in five prisoners said that they had been subjected to verbal abuse because of their race (rising to 28 per cent of women prisoners). The rate was much higher for Asian prisoners, as 49 per cent said they had suffered racist verbal abuse.

The Prisons Inspectorate have further highlighted the extent to which age and gender intersect with ethnicity in fear of victimization, noting that Asian women and young offenders are more likely than other groups to be assaulted and to feel unsafe in prison:

> Safety was the predominant concern for Asian prisoners. A significant proportion across all types of prison – between a third and a half – said they had felt unsafe, and this was particularly high among women and young adults. They were more likely than any other group to say that they had been bullied on racial grounds by other prisoners (HMCIP 2005: 2).

Asian women were more likely than other female prisoners to say that they felt unsafe. They were three times more likely to report bullying by other prisoners than black or mixed race women (HMCIP 2005: 14).

These studies highlight different experiences between different minority ethnic groups and, within the same group, between males and females, adults and young offenders. They also show that significant numbers of BME prisoners perceive racist motives behind their victimization by other prisoners. The research consistently shows that victimization is pervasive in prisons. The dangers in prison evoke mutual suspicion, sensitivity to disrespect and fear. The atmosphere of distrust aggravates misunderstandings based on different cultural assumptions. Racial and cultural differences can generate conflicts between prisoners. Prisoners often respond to conflicts with accusations and threats, physical intimidation, verbal challenges, hostile gestures, insults, racial abuse and harassment – tactics that make violence more likely.

Victimization by members of staff

In Burnett and Farrell's study, the proportions of each group who felt that they had been victimized by staff were: black 58 per cent; other 39 per cent; Asian 36 per cent; and white 33 per cent (Burnett and Farrell 1994: Annex B, viii). Forty-four per cent of black prisoners perceived a racial aspect in their victimization by staff, as did 33 per cent of Asian prisoners and 23 per cent of mixed and other groups, in contrast to 2 per cent of white prisoners. In some cases, victimization may be cyclical: the consequence of resistance to those in authority. In one study, a black respondent explained: I try to be

sensible about it, but when they start coming up to you with their attitude like they're hounding you – they try to wind you up. You get me? But if you get angry – go nuts – that gets you into all sorts of problems (cited in Wilson 2004: 322).

On a wider scale, the Prisons Inspectorate found that black prisoners were far less likely than others to believe that staff treated them with respect. Black prisoners also felt that they had poorer access to facilities and regimes (though they felt positive about education and skills training) (HMCIP 2005: 11). In a survey which found that over half the BME prisoners believed they had been subjected to racial discrimination in prison within the previous six months, Edgar and Martin note that the most frequently cited problem areas were prison discipline or suspicion of bullying (18 per cent); work, programmes or education (14 per cent); and practice of religion (13 per cent) (2004: 14).

Bias in responding to victimization

Official prison statistics suggest the possibility of racial bias in the ways that staff respond to prisoner-on-prisoner victimization. Data from 2002 shows:

> Black male prisoners had a proven adjudication rate nearly 20 per cent higher than white male prisoners. The difference was particularly marked for violent offences, with 59 per cent more proven offences per 100 population for Black prisoners, whereas Black males had fewer adjudications for wilful damage. The difference in rates between Black and white males has narrowed since 2001 when the proven adjudication rate for Black male prisoners was 30 per cent higher than for white males (Home Office 2002).

Other evidence suggests that, as recently as 2000, prison staff were applying a selective response to assaults. An internal investigation into the murder of Zahid Mubarek in Feltham Young Offender Institution found that black prisoners were twice as likely as others to be subjected to control and restraint by officers. The majority of these incidents were related to fights and assaults (Butt Inquiry cited in CRE 2003b: 121). Black prisoners, during this time, were also more likely to be identified as suspected bullies and to be held in the segregation unit. The Commission for Racial Equality's investigation into race relations in Feltham also commented on the impact of racial bias in responding to prisoner-on-prisoner victimization. Their investigation concluded:

> Staff were looking for a particular kind of individual as being potentially violent to other prisoners and their ideas of what that person would be like were influenced by racial stereotypes. Such stereotypes could impact upon the use of discretion by staff in the treatment of prisoners and so could lead to discriminatory outcomes imposed upon some prisoners (CRE 2003a: 166).

Ethnographic descriptions of prison racial tensions

Fights between members of different ethnic groups are often the result of tensions other than racial conflicts. In these cases, applying the label 'racist incident' might not help to resolve the problem. While there has not been a full ethnographic study of inter-racial violence in prison to date, Edgar and Martin's research, *Conflicts and Violence in Prison* (2000), analysed a number of incidents with a racial dimension. Racial differences influenced conflict between prisoners in diverse ways, as illustrated in these three examples:

1 Two women from Wales jumped the food queue and an Asian woman challenged them. An argument ensued but appeared to be resolved. Later, one of the Welsh women passed two other Asian women, who were speaking in Urdu. As she passed, they laughed. She grabbed one of them and started punching her, shouting: 'Don't talk about me, fucking Paki.' The officer who intervened reported it as a racist incident. The assailant declared that it was racist because she had been picked on for being Welsh. The Welsh woman told the researcher why she thought she was being ridiculed: 'When I walked past, they spoke in their language and burst out laughing. I just knew they was talking about me. Why not speak in English? It was something they didn't want me to hear.' The Asian woman told the researcher that she had been joking with her friend about smoking roll-ups.

2 At night, a black man shouted from his window to ask for a magazine. A white prisoner told him to be quiet. The discussion became abusive. The white prisoner shouted: 'Shut up, you dickhead.' The black prisoner alluded to a disfigurement of the white prisoner. The white prisoner made a threat, 'I'll see you in the morning', which he followed with the 'n' word. The next morning, they met, but the black prisoner said they should wait until evening. The white prisoner believed this was intended as a threat, so he attacked immediately. He explained to the researcher: 'Once he said, "tonight", there was no other outcome. He wanted a fight.' The black prisoner tried to prevent the fight, but his opponent kept punching him. Asked to describe how he felt when he heard the 'n' word, he explained that it was out of order, but 'by the morning I'd forgot about it. If I had been angry, I would have gone straight for him'.

3 Two prisoners (white and Asian) began to argue over a game of pool, each insisting that he won. Then the white offender struck the Asian prisoner several times with the cue. They were taken to segregation. They shouted mutual threats, both using racially abusive language. Two weeks later, the white prisoner was assaulted by three Asian prisoners in retaliation.

In (3) racial abuse emerged after the initial assault and was not an aggravating factor in the dispute over the pool table. However, the revenge attack was motivated by race, as the Asian prisoners explicitly stated their desire to demonstrate solidarity with the victim at the pool table. In (2) the initial cause of the dispute was noise and the disruption of sleep. The introduction of race

into the argument increased the likelihood of a violent outcome. However, the victim of the racist abuse was content to forget the racist language. The immediate spark for the fight was the white prisoner's fear that his opponent was planning to assault him later. Racist abuse aggravated the dispute, but the social environment contributed through the risks of assault generally and tensions about noise. In (1), the trigger for the assault was a misunderstanding. The white prisoner mistakenly believed that she was being ridiculed. However, her inference was based on extreme intolerance of a different culture, as demonstrated by her suspicious interpretation of the use of Urdu. If she had not used verbal racist abuse when punching the Asian woman, it is possible that her racist assumptions would not have been picked up. Although her use of force can be linked to racist motivations, another important factor was the previous argument about jumping the queue.

There may be a temptation to define any inter-racial fight as a racial incident, but Edgar and Martin (2000) argue that there are always other dynamics involved, such as the power balance between the two antagonists, the interests the parties were pursuing and the tactics each used to manage the dispute. Even when a prisoner perceives that an assault is motivated by racism, racial differences are not the only factor leading to violence. When prison staff label a fight a racist incident, there is a risk that other, crucial elements may be neglected. A more useful approach to analysing violent incidents would explore racial differences as one of a range of factors that caused the conflict to escalate. This can best be done when racial tensions in prison are set in the wider context of prisoner-on-prisoner victimization.

Religion and foreign nationalities

It is not possible to give a full account of the diversity of religions or nationalities within the prison population. Instead, this brief discussion will draw on published research and bring to light perspectives of groups that define their identity (at least in part) by religion or nationality. The prison population includes people from a wide range of religious groups, as revealed in a Home Office study from 2000: Christian 39,000; Muslim 4,300; Sikh 394; Buddhist 285; Hindu 246; and Jewish 160. In addition, there were 152 from non-recognized religions, which included the Nation of Islam, Rastafarianism and Scientology (Guessous *et al.* 2001: 4).

The practice of Islam in prisons

There has been very little research on minority religious faiths in prison. This section briefly discusses the practice of Islam in prison although, clearly, their experience cannot be taken as representative of other minority religions. At the end of February 2005, the number of prisoners who identified themselves as Muslim was estimated at 7,085, about 150 of whom were women (Solomon 2006). Spalek (2005) has pointed out that estimates tend to be based on reception interviews and therefore do not include prisoners who convert to Islam in prison. Although there is little hard evidence about these prisoners,

it appears that many who convert to Islam in prison are black Caribbean (Spalek 2005).

The Prison Service has made considerable changes to enable Muslim prisoners to practise their religion, yet there is evidence of continuing problems for this group (Beckford and Gilliat 1998; Spalek 2005). Research by Enver Solomon (2006), draws on views of Muslim prisoners from discussion groups conducted in six prisons. These prisoners identified persistent problems in practising Islam and fulfilling Islamic requirements, as well as in relationships with other prisoners and officers. For example, at a prison where Solomon conducted his interviews, the Imam said that prison officers were being unco-operative in unlocking and then escorting prisoners to Friday prayers: 'One day I went to collect them and there were only two when I should have had seven. The officers … were being difficult and making things awkward when there was no need to do so' (cited in Prison Reform Trust (PRT) 2006). Similarly, the Commission for Racial Equality (CRE) found that, at Feltham Young Offender Institution and Parc Prison, officers claimed that communal prayers conflicted with their meal break. The CRE described this as a clear case of 'indirect racism' (CRE 2003b: 88–9).

Solomon remarks on the consequences for Muslim prisoners of having to work with officers who were poorly informed about Islam:

> The offence caused by prison staff who do not know about Islam may not be intentional. In fact ignorance and indifference do not in themselves constitute discrimination but in an organizational setting such as a prison they can contribute to an environment in which discrimination of all kinds (including 'unwitting' and institutional discrimination) is able to thrive (Solomon 2006).

Prisoners holding foreign nationalities

At the end of February 2003, 12 per cent of male prisoners and 21 per cent of women in prison held foreign nationalities (Home Office, Section 95 2004: 87). At that time, foreign national prisoners made up a third of male black prisoners and only 4 per cent of the white male prison population (Home Office, Section 95 2004: 87). In 2004, almost 2,500 prisoners in England and Wales were from Jamaica. The countries with the next highest representation were the Irish Republic, with 658 prisoners; Nigeria, with 399; and Pakistan, with 367 (Singh Bhui 2004: 50–1).

Singh Bhui (2004) conducted interviews and focus groups with prisoners and staff in six prisons in and around London, and identified several common problems. Prisoners who are unfamiliar with the legal system in the UK are particularly disadvantaged in prisons. Many of these prisoners face deportation at the end of their prison sentences. Foreign national prisoners are not eligible for discharge grants if they are scheduled for deportation. Social isolation is partly a consequence of their distance from home, but they also experience exclusion from other prisoners, compounded by language issues. These prisoners are often not provided with adequate preparation for release. Many prisoners who held foreign nationalities stated that there

was a lack of respect, and sometimes blatant racism, from staff. Language problems complicate all their other difficulties and make it harder for the prisoner to adapt to the regime, benefit from what is provided or develop a good working relationship with officers.

Institutional racism: defining terms

The Macpherson Inquiry (1999) defined institutional racism as:

> the collective failure of an organization to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen and detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people.

The definition of institutional racism used by the Macpherson Inquiry into the racially motivated murder of black teenager, Stephen Lawrence, is clearly limited in its neglect of the influence of power. Power enables the dominant group to make policies and shape social structure in ways that can exclude minority groups, and it is not possible to tackle institutional racism without re-balancing the distribution of power. Denman (2001) distinguishes two strands of the concept. The first is systemic – structures, processes and conventional ways of working; the second is about ethos and comprises attitudes, values and patterns of thought.

Structurally embedded racial bias

Examples of structures and cultural values can illustrate the impact of institutional racism within the Prison Service. Indirect racism refers to processes and structures where apparently equal treatment leads to disadvantages for a particular group, despite neutral criteria. An example is prisoners' distance from home. The Prison Service provides about 26 young offender institutions (YOIs)[4], a structure which entails large catchment areas and means that some young offenders live disproportionately far from their home and family. This degree of distance from all that is familiar may affect Asian young offenders more acutely than other ethnic groups because they are most likely to have been living with both parents prior to prison: 64 per cent of Asian young offenders, compared with 29 per cent of white, 16 per cent of mixed ethnicity and 14 per cent of black young offenders lived with both parents prior to being sentenced to custody (Probation Studies Unit 2003). While this aspect of structure is not itself racially imbalanced, its impact disadvantages Asian young offenders in particular. As the Probation Studies Unit reports: 'Asian offenders had the highest proportion of positive factors in the area of family relationships and living arrangements' (2003: 50).

A second example is anti-bullying programmes. Definitions of bullying are unworkably vague and, because identifying bullies depends on officers'

discretion, there is great potential for injustices. Being labelled a bully can result in the loss of privileges or access to programmes, and even decreased chances of gaining early release. However, allegations of bullying are never tested under principles of natural justice. In a study of bullying, Edgar and Martin (2004) interviewed 48 black male prisoners, 16 Asian and 7 from mixed race or other groups. Over one in three black prisoners had been accused recently of being bullies, as had three of the mixed-race prisoners. But none of the Asian prisoners had been suspected of bullying. It was impossible to compare these rates with white prisoners because none of the prisons performed ethnic monitoring of their anti-bullying programme.

The CRE highlighted problems with the anti-bullying programme at Feltham YOI. Yet, while the joint CRE/HM Prison Service Action Plan requires ethnic monitoring of incentives and earned privileges, release on temporary licence and discipline (among other areas), anti-bullying programmes are not explicitly mentioned. A system which appears to be racist in its application is allowed to operate unchecked, because neither the Prison Service nor the CRE have placed sufficient priority on it to require monitoring.

Ethos

The ethos of an institution – the attitudes and values that permeate within – is closely linked to the unwitting nature of institutional racism. The Macpherson Report states: 'unwitting racism can arise because of lack of understanding, ignorance or mistaken beliefs… Such attitudes can thrive in a tightly knit community so that there can be a failure to detect and outlaw this breed of racism' (1999: para. 6.17). An example of institutional racism was cited by a prison governor in a statement to the Mubarek Inquiry. As this quotation demonstrates, attitudes and processes can overlap as structural and cultural biases reinforced each other:

> My view is that both white staff and white prisoners were frightened of black prisoners at times. A number of prison officers found the 'upfrontedness' of some of the young black prisoners worrying. Their training should have helped them to cope but my recollection is that many officers would deal with such situations by sending young black prisoners to the segregation unit. Placement in the segregation unit would be agreed by the governor dealing with adjudications, the duty governor for good order and discipline, the deputy governor or the third in charge (Zahid Mubarek Inquiry 2005: 657, para. 45).

The intersection of structural and cultural factors is similarly demonstrated in the following quotation from the Prisons Inspectorate, on finding signs of negative attitudes and values in the treatment of women prisoners:

> Some Afro-Caribbean women felt misunderstood by white staff who, they believed, were threatened by the noise they made and disliked their music. They felt that white women had better relationships with staff as they were culturally more similar, and that this went against

them in several ways. In particular, black women said they often only approached staff when something was wrong, and by that stage they were at 'boiling point'. This contributed to a view that they were aggressive, and they felt they were more often placed on 'bully watch' than white women. They claimed that white women were allowed to talk to officers in a way that black prisoners would be put on report for. We were told that you would be treated well 'if your face fits, your hair flicks and you have blue eyes' (HMCIP 2005: 15).

The Inspectorate also provided wider evidence of problems with staff attitudes: 'All visible minorities, in all types of prison, were less likely than white prisoners to say that most staff treated them with respect. This finding was particularly strong for black prisoners across all prison types: men, women and young offenders' (HMCIP 2005: 7).

The Prison Service once held that, to guarantee fair treatment, everyone should be treated the same. In recent years, however, the service has begun to move away from this principle and to recognize that different groups require different responses. Minow raises the question: 'When does treating people differently emphasize their differences and stigmatize or hinder them on that basis? And when does treating people the same become insensitive to their differences and likely to stigmatize them on *that* basis?' (1990: 20). Similarly, the Runnymede Trust advocates a balance of equality and sensitivity to individuality:

Since citizens have differing needs, equal treatment requires full account to be taken of their differences. When equality ignores relevant differences and insists on uniformity of treatment, it leads to injustice and inequality; when differences ignore the demands of equality, they result in discrimination. Equality must be defined in a culturally sensitive way and applied in a discriminating but not discriminatory manner (Parekh 2000: Preface).

In short, a key challenge facing each prison and the Race Equality Action Group is to define the fine balance between fair treatment and special treatment, so that relevant differences are officially recognized and addressed.

Institutional racism and the Prison Service

The Prison Service was investigated by the CRE following the murder of Zahid Mubarek in Feltham YOI in 2000. The CRE reported in two stages: the first on the circumstances that resulted in the murder; the second, on three prisons – Brixton, Parc and Feltham. They identified 20 failings in the running of Feltham YOI:

The cumulative effect of these failures meant that Zahid Mubarek, as an ethnic minority prisoner in Feltham, was not provided with the equivalent protection available to prisoners who were white. Had the

prisoner in cell 38 on Swallow Unit in Feltham been white, he would not have experienced a racially motivated assault by Robert Stewart (CRE 2003a: 13).

Soon after the publication of the Macpherson Report, the Director General of the Prison Service acknowledged that the service was institutionally racist and that there were pockets of blatant racism. However, a problem with the concept of institutional racism is that it is difficult to separate individual acts from an organization's structures and processes. Denman emphasizes this distinction:

> The concept of 'institutional racism' is important precisely because it is to be contrasted with more traditional concepts of racism. The traditional 'rotten apples' analysis identified racism within an organization with a small number of 'prejudiced' individuals. 'Institutional racism', by contrast, is about the effect of practices, conditions and norms which do not reside in particular individuals, but rather are located within the organization itself (2001: 97).

Collective responsibility is very difficult to comprehend in an organization which is based on individual guilt, consequences for decisions taken and a stress on personal responsibility for outcomes. The prison ethos is a blame culture, which dictates that solutions to problems consist in finding someone to hold culpable.

In 2001, the Prison Service announced that membership of organizations which were deemed to be racist (e.g. the British National Party), would constitute gross misconduct. Officers were told that if they were accused of racist discrimination and it were proven, they could face dismissal. However, such a message can be counterproductive as one in five officers subsequently felt that institutional racism meant that they, personally, were being accused of being racist (Edgar and Martin 2004). The Prison Service's stance had four unwitting outcomes. First, it introduced confusion into the definition, as it blurred the lines between the established systems of the organization and values held by individuals; secondly, it heightened resistance to the acceptance that the organization was institutionally racist; thirdly, it introduced enmity between black prisoners and white staff (see the section on complaints, below); and, fourthly, it deflected attention from the flaws in structures, processes and organizational values that reinforced the biases of staff in their practices.

The racial bias of an organization's ethos can only be reversed through being open about prejudices – whereas the threat of dismissal inevitably and predictably had the opposite effect. Best practice in a large organization would be to engage all staff in an anti-racist ethos so that confronting racism would be valued as part of the meaning of professionalism.

Types of racist incident

Racism is a moral problem, with value judgements and perceptions at its heart. Empirical proof cannot be the test of meaning in dealing with attitudes

about racism, perceptions about ethnic groups or a sense of unfair treatment. Hence, the Prison Service states that an incident is racist if it 'is perceived to be racist by the victim or any other person' (HMPS 2005b: explanatory note). The judgement of whether an action is racist thus seems to rest with the subjective view of the victim or any witness. However, perhaps inevitably, the subjective dimension introduces confusion to the concept of racial discrimination. Many officers report feeling that they do not know what is, and is not, acceptable. The ambiguity is unsatisfactory for prisoners, too. The system promises to take their concerns seriously, but then subjects them to investigations demanding proof.

Definitions, then, need to be balanced with real situations to inform policy: what is it about the way an officer treats a prisoner that makes it racially biased? Examples of incidents drawn from Edgar and Martin (2004) show how race influences staff–prisoner relations. Further reflections on this study (post-publication) suggest that most racist incidents that arise between white staff and black and Asian prisoners can be categorized under four basic types of behaviour: from malicious racist abuse, through conduct that exercises discretion unfairly by using race as a criterion, to situations in which the evidence is balanced about whether race influenced the outcome or not. For each type, it is possible to identify defining characteristics (see Table 12.2).

The first type of racist behaviour is the blatant or malicious act or decision. Malicious racism includes language known to be abusive. It can also be physical, or staff can use their discretion to harass the prisoner. A number of studies reveal malicious racist language by officers. For example, one prisoner reports: 'I've been called a "chimp" before. I was also called a "golliwog" by one of these officers' (cited in Wilson and Moore 2003: 4).

This type exercises a powerful influence on the public's understanding of racism. However, Edgar and Martin suggest that blatant racism is rare. Fifty-two per cent of BME prisoners surveyed said that they had been subjected to some form of racial discrimination within the previous six months. In-depth interviews were then conducted with 73, all of whom had already disclosed that they had experienced racism. Of these, only 16 per cent had *ever* been subject to blatant and malicious racism by an officer (Edgar and Martin 2004: 16).

The second type of racist behaviour is a differential outcome that results from racially biased decision-making. This type can apply on a personal level – where an officer makes a dubious decision about a prisoner – or an aggregate level, where the outcomes for a group differ from others. Two examples will illustrate this type. A BME prisoner said that he had been placed on report, while white prisoners had not:

> A white inmate was out on the landing, smoking. [The officer] asked him twice. The inmate was still smoking. Then he said he would give him a warning. He disobeyed an order and was given three chances. I disobeyed once. So it must be a race thing. What's good for one needs to be the same for both (prisoner cited in Edgar and Martin 2004: 22).

Discrimination at the aggregate level is sometimes revealed through ethnic monitoring but, in the absence of such monitoring, it can be very difficult to

Table 12.2 Four types of racist behaviour

Blatant and malicious	Direct racial discrimination	Informal partiality	Different perspectives
Abuse of power	Different outcomes based on race	Person-to-person	Evidence for and against racial bias
Language known to be racist	Misuse of discretion	Routine, normal functions	Missing or inconclusive information
Physical abuse	Personal or aggregate	Perceived favouritism	Opposing, equally valid perspectives
Harassment	Aggregate outcome differences traced to invalid use of race as criterion	Unconscious, different approach to BME prisoners	
Isolation		Unwittingly offensive language	
Deliberate	Biased decision-making	Fleeting interactions	
Cruel; intended to hurt (bullying)	Processes or acts of omission		

detect, let alone prove. A senior officer described a wing where six prisoners were on basic regime, five of whom were black. While such disparities reveal possible problem areas, further evidence is often needed. Edgar and Martin interviewed all five of these basic-regime black prisoners. Each gave reasons why he had been placed on that regime, such as refusing work or making threats. Analysed on an individual level, no racial bias was evident. However, the researchers could not interview white prisoners whose behaviour merited the basic regime, had officers decided to take action. The key question is not 'why were the five men placed on basic regime?' but, rather, 'why were other (white) prisoners, who equally engaged in disruptive behaviour, not also on basic?'

The third type of racist behaviour involves routine conduct by officers which Edgar and Martin term 'informal partiality', and which they found to be by far the most common of the four types. Informal partiality does not involve structures and does not appear in official documentation, so we will consider an example by way of explanation. A prisoner was let out to clean his cell. As he finished, he took his laundry to the orderly. The officer saw him and shouted at him to return to his cell. The prisoner explained: 'I looked around. There's five or six people still out after their cell clean, running about. Forty minutes later, they were still running around. It was like they were invisible. They weren't there, as far as he was concerned (Prisoner cited in Edgar and Martin 2004: 21).

The inspectorate found other examples of the same type of behaviour. Black prisoners described:

> being treated differently in the way they were spoken to, searched or 'put behind their doors'; … where they were seated in the visits room; and the way their visitors were treated. They described being told to come back later or to put in an application when they asked for things that they saw white prisoners receiving straight away (HMCIP 2005: 13).

Wilson also found that officers' demeanour and routine practices were partial. A young prisoner told him:

> Prison officers … can invade your space and your privacy all the time. They can come into your room and say, 'Get off your bed,' and 'Do this, do that.' They do little things to you that irritate you for no reason. It really gets you mad because you can't do anything about it (prisoner cited in Wilson 2004: 325).

Informal partiality arises when officers are working 'on automatic' and do not realize that their actions might appear to be biased. The officer in the cell-cleaning incident was not aware that he was treating a group of white prisoners more favourably. As the prisoner commented: 'It was like they were invisible.' This is categorically different from the blatant and malicious racism described above. While the reasons for the prisoner's anger were clear, the perceived differential treatment could never be proven in an investigation.

Informal partiality thrives in areas which are beyond the reach of management (or where managers do not take the trouble to monitor and manage staff conduct). The CRE comment:

> The general practice created a culture of unaccountability because the explanation 'we do it like that here' on the one hand justified refusing reasonable requests from prisoners for proper consideration, and on the other hand justified staff refusing to follow good practice and proper standards of delivery established centrally … Prisoners from different groups could be treated differently on the basis of stereotypes because the monitoring, management, training and assessment systems did not all direct staff toward consistent treatment of individuals on the basis of their individual circumstances and characteristics (2003b: 100).

The fourth type of racist behaviour refers to situations that give rise to legitimate differences of opinion. Evidence supports both perspectives – that there was, or was not, racial bias. In such circumstances, the particular officer feels that his or her actions were fair and the prisoner cannot be sure the officer was biased. For example, three white prisoners assaulted a black prisoner. One held his waist, one grabbed his legs and a third punched and kicked him. He struggled to escape. An officer who responded recalled:

> We shouted a number of times. Sometimes if you shout, they stop. They didn't, so we pressed the alarm bell. I think by that time some other prisoners came in and broke things up. I walked with [the black prisoner]. He was saying he didn't fight, but he was going like the karate kid (officer cited in Edgar and Martin 2004: 20).

The victim felt hurt when he learnt he had been placed on report. The adjudication established that the attack was a case of mistaken identity – he was not the intended target. However, the officer's evidence was accepted and the black prisoner was found guilty. The prisoner could not understand why he was charged with fighting when he had been attacked. The officer saw the victim swinging punches, and felt constrained by Prison Rules to charge him. The officer also decided not to charge the two prisoners who, he believed, broke up the fight, despite the fact that they had been seen using physical force. The officer believed he had applied the rules fairly but the prisoner was convinced he had been subjected to racial discrimination because he had been punished for having been attacked, while two of his assailants were not charged. Although both perspectives were valid, the disciplinary system could not do justice to the complexity of the situation and, in effect, the process revictimized the black prisoner.

While blatant racism, direct racial discrimination, informal partiality and matters of divided perspective clearly have different levels of intensity and outcome, all are serious for the victim and none should be seen as trivial. Although the Prison Service has taken a strong stance with regard to the first type, it has neglected the whole area of informal partiality. Prisoners experience problems with prison staff that cannot be proven, and they are left

with feelings of frustration and injustice. The Prison Service's emphasis on provable racial discrimination and malicious conduct implies that black and Asian prisoners' perceptions of hidden bias are unimportant. These situations reflect differences of perspective that need to be negotiated in order to promote mutual understanding. A much broader range of responses is required, better suited to the distinction between malicious racism and unwitting, often collective, failures to treat all prisoners with justice.

Remedies

Prisoners have four available means of pursuing a complaint against racism:

- an internal investigation, following Prison Service Order 2800;
- taking the prison to county court under the Race Relations (Amendment) Act;
- asking the police to investigate;
- if an internal investigation has not produced a satisfactory result, prisoners can complain to the Prisons and Probation Ombudsman (Begum-Rob 2005).

The Prison Service requires every racial incident to be recorded, irrespective of whether an investigation bears out the allegation. However, growing and consistent evidence suggests that the Prison Service's methods of handling complaints of racial discrimination fail to meet BME prisoners' needs to have their experience validated. The complaints system also fails to provide the Prison Service with evidence about deeper failings in race relations which it urgently needs to enable the service to develop fairer ways of treating people from minority groups.

Racism depends on context. As the previous section has shown, apart from blatant racism, whether racial differences influenced an encounter between an officer and a prisoner is a matter of differing perspectives. A prisoner can judge that one officer is trying to build rapport by making a joke, while another is using the cover of humour to belittle him or her. Yet, the complaints process makes it impossible for him or her to prove the difference. The complaints procedure defines racism in terms of conduct that can be witnessed, tested against counter-evidence and proven. Motives, emotions, the quality of relationships and – crucially – the broader story, can have little influence upon the investigator's conclusion. The investigator is required to determine whether, according to the balance of probabilities, this happened, or not. If the aim is to catch out racist officers and gather sufficient evidence to dismiss them for unprofessional conduct, then the complaints procedure is weak, because officers will be able to cover for each other, leaving the investigator with nothing more convincing than the word of an angry prisoner.

Equally, it is weak because it does not distinguish sufficiently between different contexts. Unwittingly causing offence by an ill-judged comment could subject an officer to discipline when there are other, more effective ways of responding to inadvertent mistakes. If the aim of the complaints procedure is

to contribute to improving race relations in prison, then the effects of a flawed complaints process are disastrous. Officers who make an unwitting remark will be encouraged by the nature and purpose of the complaints system to cover up their mistake. They may also infer from the definition of a racist incident that BME prisoners are more likely than white prisoners to issue a complaint against them. The adversarial nature of the system encourages staff to believe that their jobs are put at risk by BME prisoners for a slip of the tongue, an ill-judged decision about someone's enhanced status or performing C&R (control and restraint) on a BME prisoner. With the loss of a job hanging over their heads, they will be inhibited from interacting informally with BME prisoners and will come to regard them with suspicion. A flawed complaints procedure will have an equally damaging impact on officers who hold racially biased attitudes. They may believe that the Prison Service is 'out to get them' and might take steps to ensure that their racist practices leave no trace. They may develop techniques that allow them to show BME prisoners they are being targeted because of their race, while rubbing salt in the wound by ensuring that they leave no proof. They will use the complaints procedure to reinforce the powerlessness of the prisoner. Racism will go underground, but will be no less damaging for prisoners when it is covert.

It is possible that the frequency of blatant and malicious racism has decreased in recent years. If so, improvements to the complaints process might be one of the factors that have contributed to this welcome change. However, research evidence convincingly shows that the complaints process is poorly equipped to meet prisoners' needs in the aftermath of an experience of racial discrimination. This research evidence can contribute to a diagnosis of the problem and possible remedies:

- Prisoners do not trust the process, mainly because it is carried out by colleagues of those against whom the complaint is made.

- They also do not trust it because, after they have submitted their case, they have little say in what happens next.

- The procedure places prisoners at risk as they must function as the accuser in an adversarial framework.

- Prisoners who have made a complaint are left unsatisfied that they have been heard or that their complaint was handled fairly.

- There is evidence that supports their scepticism, as very few complaints are upheld.

- The complaints system is designed to handle problems raised by individuals – not groups; and is primarily about the conduct of individuals – not the outcomes of unfair processes. The situations that fit it best are actions of blatant and malicious racist behaviour. Others, such as indirect racial discrimination, informal partiality and matters of different perceptions, are not adequately addressed by the complaints process.

In 2005, the CRE stated:

In terms of the complaints system, the CRE has serious concerns about how this system is operating in practice. During focus groups with ethnic minority prisoners in all the establishments that we have visited, many prisoners have stated that they have no confidence in the complaints system and therefore do not think there is any point in using it (cited in Zahid Mubarek/CRE 2005: 5).

In Edgar and Martin's study, almost two in three of the BME prisoners who had experienced discrimination said that they had not made a complaint. A majority of them either said that they feared reprisals from staff if they complained or that complaining would be futile (Edgar and Martin 2004: 30). NACRO's survey also explored prisoners' reasons for deciding not to lodge complaints: 'The main reasons given for not reporting incidents were: it was pointless, nothing would be done; fear of reprisals; and the desire not to be seen as a grass' (NACRO 2000: 37). The fear of victimization (retaliation against someone who complains or supports a complaint) deters prisoners from reporting discrimination or acting as supporting witnesses (see Begum-Rob 2005). Some prisoners comment that they are likely to be transferred if they complain. Perhaps the worst form of victimization is an abuse of the prison discipline process by officers, sometimes condoned by governors. Some BME prisoners who have alleged that an officer's conduct was racist have found that they themselves were charged with racist behaviour (or with threatening or abusive language). The Prisons and Probation Ombudsman recorded such incidents in the annual reports of 1998/9 and again in 2000/1. Similarly, the Inspectorate examined racist incident reporting forms (RIRFs) in detail and found that the largest proportion (46 per cent) were 'white staff protecting themselves against an accusation of racism by a minority ethnic prisoner' (HMCIP 2005: 26).

The CRE also found that investigations often failed to take into account the full picture. In one prison, they criticized reports they had scrutinized on the grounds that: 'the investigations focused on the specific allegations against the alleged perpetrator(s) to such an extent that they ignored the totality of the incident and the factors which may have contributed to it' (CRE 2003b: 148). Evidence about the outcomes of investigations appears to support the prisoners' lack of faith in the process. For example, the inspectorate documented:

A member of staff was warned in only one of the 72 completed cases in which a member of staff was the alleged perpetrator. The most common outcome against a member of staff was that s/he was spoken to, required to apologize or to undertake further training in diversity (HMCIP 2005: 44–5).

In November 2004, an internal investigation into 90 complaints of racism at Leeds Prison concluded that, in 82 cases, the evidence did not prove the prisoners' allegations. In the remaining eight, although the team found evidence to support the allegations, 'we have found no evidence of direct racial abuse' (HMPS Area Manager, Yorkshire and Humberside 2004: 51).

Edgar and Martin criticized the adversarial nature of the Prison Service's handling of racial complaints:

Such legalistic accountability normally entails proof that the officer acted knowingly and could have predicted the consequences of his or her actions. It would be unfair to punish an officer for consequences that could not have been foreseen. Yet, racism can be obvious from one perspective and hidden from others. The subjective dimension, which requires respect for the individual prisoner's judgement about whether some treatment was racially biased also means that officers cannot always know in advance if their decisions will be perceived to have been racially discriminatory. There is a deeper flaw in combating racism with a legalistic and punitive policy. It fosters enmity between staff and prisoners by driving them into opposite roles…Prisoners who have reason to lodge a complaint are forced into the role of accuser. Logically, since accusations are more likely to come from prisoners who have been discriminated against, the disciplinary response leads officers to distrust minority ethnic prisoners, each of whom might be seen as a potential accuser (2004: 36).

Arguing that the system for monitoring racist incidents should be replaced with one that allows young people's real experiences to be captured and acted upon, Wilson concludes that there is a profound gap between the official means of tackling racism and the black prisoners' experience of prison:

If statistics about race and racial incidents are being kept, meetings about race being held, minutes being taken, monitoring forms being filled in, and Key Performance Targets being 'achieved', but none of these procedures actually captures the type of incident that has been described or has the confidence of this group of interviewees to encourage them to report them, then is not the effectiveness of these systems so compromised that it is time to adopt a new approach altogether? (2004: 328).

The Prison Service has attempted to improve its response to racial incidents. It has redesigned its RIRFs and emphasized the duty to maintain confidentiality. However, the current form retains a narrow interpretation of a racist incident. Respondents are required to state which of four categories describes their experience:

• Racist abuse or abusive behaviour – e.g. verbal or written threats or insults; spitting, taunting or encouraging others to taunt, etc.
• Personal attack – e.g. on a prisoner, member of staff, visitor friend or relative.
• Damage to property – e.g. arson, graffiti, to cell/home/vehicle.
• Circulating racist material – e.g. Internet material, leaflets, notes, etc.

The new form thus consistently maintains the tendency in the Prison Service to target blatant and malicious racism and to ignore or trivialize BME prisoners'

everyday experiences of informal partiality, covert racism, and situations in which there are legitimate opposing perspectives.

A much more promising initiative is the promotion of mediation as a first response. At the time of writing, four prisons are developing pilot schemes where teams of trained mediators (comprising prisoners and prison staff) will provide mediation for prisoners and officers who are willing to try it to resolve the problems arising from racial incidents. The mediation is intended to handle a wide range of racist incidents, including those that occur between prisoners and between a prisoner and a member of staff. Mediation offers various advantages over the investigative response. Voluntary participation in the process and voluntary acceptance of the final agreement can lead to greater personal commitment to improving race relations, while a no-blame style is more likely to encourage both parties to be transparent about their views on the incident. Furthermore, impartiality fosters the trust of both parties, and a non-hierarchical structure – through the involvement of fellow staff members/fellow prisoners – ensures that the power to decide on solutions rests with the parties directly involved. Equally, a non-hierarchical structure also encourages win-win outcomes, because both parties have a full opportunity to set out what they would like to happen next.

The use of mediation has potential, precisely because it is the best way of responding to situations in which opposing and equally valid perspectives can be worked through. It was expected that the pilot schemes would be running in late spring, 2006. Thus, at this stage it is too early to tell if it will be effective in bringing racial incidents to light so that they can be resolved.

Conclusion[5]

This chapter has focused on problem areas for BME prisoners. Much less attention has been given to the considerable achievements by the Prison Service since 2000. Examples include the development of the race relations liaison officer role, the growth of BME prisoner consultation groups in many prisons, increasing numbers of BME staff employed and a much improved system of race impact assessment. In addition, particular prisons have developed innovative means of promoting harmonious race relations. Two singled out for praise by the inspectorate were The Mount, which has established a scheme to resolve prisoner-on-prisoner racial complaints on the wings, and Huntercombe YOI, where mediation is used to respond to racial disputes between juvenile trainees. Other examples of institutions with good practice include Birmingham Prison which has worked directly with minority ethnic groups in the local community to improve relations with the prison, and Glen Parva YOI, where local sports personalities come to the prison to promote anti-racism with the young offenders. Meanwhile, in the voluntary sector, the SEED 4 BME Offenders Project serves as a network co-ordinator for BME offenders' support groups.

As the Prison Service has demonstrated a serious commitment to racial justice, it is clear that the service (as well as BME prisoners) would benefit from further research on race relations. The report of the Mubarek Inquiry

will no doubt indicate particular areas for attention. However, it is clear that there is an urgent need for more qualitative research, based on the perspectives of BME prisoners (see Phillips and Bowling 2003). As the Woolf Inquiry established, justice and legitimacy are fundamentals of healthy prisons. Examining prisons from the BME prisoner's perspective cannot be accomplished solely by an independent Prisons Inspectorate. Nor is it possible to discern whether prisons are operating in ways that maintain racial justice through quantitative methods alone. The Prison Service needs research which explores BME prisoners' views on their prison experiences so it can put into practice its commitment to decency, as prisons in which respect is lacking are likely to disadvantage minority groups in particular.

Selected further reading

A useful starting point in understanding racism and criminal law are two books by Ben Bowling. His (1999) *Violent Racism: Victimization, Policing and Social Context*. Oxford: Oxford University Press, explains the lived experience of being subjected to racism; the second, written with Coretta Phillips, (2002) *Racism, Crime and Justice*. Harlow: Longman, focuses on the influence of race on the functioning of the criminal justice system.

Three studies of practices in the courts provide different perspectives. Roger Hood's (1992) rigorous and detailed study of the role of race in sentencing practices in courts in the West Midlands, *Race and Sentencing*. Oxford: Clarendon Press, demonstrates that the influence of race as a factor in decision-making by courts is complex. Gus John's (2003) *Race for Justice.* London: Crown Prosecution Service, set out to explore the influence of institutional racism in the Crown Prosecution Service but found a lack of robust data. The third, Denman, S. (2002) *The Denman Report*. Sussex Crown Prosecution Service, revealed perceptions of inequitable treatment among prosecution service staff from minority ethnic groups.

Studies on the relationship between ethnic status and factors linked to offending include Calverley, A. *et al*. (2004) *Black and Asian Offenders on Probation*. London: Home Office; Probation Studies Unit (2003) *Evaluation of the Validity and Reliability of the Youth Justice Board's Assessment for Young Offenders: Findings from the First Two Years of the Use of ASSET*. London: Probation Studies Unit; and Sharp, C. and Budd, T. (2005) *Minority Ethnic Groups and Crime*. London: Home Office. A more general and thought-provoking piece in this vein is Pitts, J. (2003) 'New Labour and the racialisation of youth crime', in J. Hagedorn (ed.) *Gangs in the Global City*, Lakeview Press. Spalek, B. and El-Hassan, S. (2007) 'Muslim Converts in Prison', *The Howard Journal*, 46 (2) May 2007: 99–114.

The main sources on race and prisons include the works cited in the chapter: Wilson, D. (2004) '"Keeping quiet" or "going nuts": strategies used by young, black, men in custody', *Howard Journal*, 43: 317–30; Edgar, K. and Martin, C. (2004) *Perceptions of Race and Conflict: Perspectives of Minority Ethnic Prisoners and of Prison Officers*. London: Home Office; HMCIP (2005) *Parallel Worlds: A Thematic Review of Race Relations in Prisons*. London: HMCIP; and NACRO (2000, update published in 2003) *Race and Prisons: A Snapshot Survey in 2000*. London: NACRO. However, potentially the richest source of information is the website of the Zahid Mubarek Inquiry (http://www.zahidmubarekinquiry.org.uk/). In particular, the statements of key witnesses and the closing arguments provide unique insights into thinking within the Prison Service about how to tackle racism.

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Notes

1 Race raises debates about language and the definition of a minority ethnic group. In their study of race equality in prison, the Prisons Inspectorate decided to restrict the term to 'visible minorities', people who could be identified as a member of a minority ethnic group by their appearance alone. However, the second largest foreign national group in prisons in England and Wales is from the Irish Republic, and there is anecdotal evidence that the numbers of people from Eastern European countries in prison are increasing. White minority ethnic groups can also experience exclusion, discrimination and stereotyping. This chapter acknowledges the difficulties in setting the boundaries for the term minority ethnic group (see also Bowling and Phillips 2003). With the exception of the section on prisoners holding foreign nationalities, the term BME is used in this chapter to represent the following groups: *mixed*: white and black Caribbean, white and black African, white and Asian, any other mixed background; *Asian or Asian British*: Indian, Pakistani, Bangladeshi, any other Asian background; *black or black British*: Caribbean, African, any other black background; *Chinese or other ethnic group*: Chinese, any other ethnic group.
2 For a contrasting perspective, see Waddington *et al*. (2004).
3 Victimization in the sense of negative repercussions for someone who makes a complaint against racism is not discussed here but in a later section of this chapter.
4 The number is imprecise because some young males are held in prisons that are primarily intended for adults.
5 It was not possible within the scale of this chapter to cover the total experience of BME prisoners. Key areas that were not discussed include: cultural awareness training for staff, prison education, mental health, family ties and resettlement. Although research in some of these areas is limited, the references and suggested further reading provide some useful sources.

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Chapter 13

Political imprisonment and the 'War on Terror'

Kieran McEvoy, Kirsten McConnachie and Ruth Jamieson

Introduction

The notion of a 'political' crime or a 'political prisoner' speaks directly to fiercely contested political and ideological terrain between those involved in purported 'political' actions and the state which imprisons them. Political prisoners frequently view their imprisonment as an integral part of larger political or social conflicts. Often, states involved in such conflicts are deeply imbued in processes designed explicitly to deny or circumvent the claim to political status of such prisoners. As a result, prisons may become charged sites wherein these larger battles are fought, and the outcomes have direct consequences for society beyond the prison walls (Buntman 2003; Ratner and Ray 2004). Developing analysis first promulgated elsewhere by McEvoy (2001), we argue that struggles concerning political prisoners usually coalesce around three overlapping themes: the ways in which such prisoners are *defined*, the ways in which they are *managed* and the ways in which such prisoners *resist*. Under these three headings the chapter explores a range of historical themes of political imprisonment and examines how these resonate with contemporary debates concerning those incarcerated as a result of the War on Terror. We conclude by suggesting that an acknowledgement of political motivation does not imply sympathy with the actions or cause of political prisoners, that the treatment of such prisoners cannot be benchmarked against the lowest of their actions and that political prisons may at least offer a site for non-violent dialogue, the expansion of which is necessary for broader conflict transformation.

Who are 'political prisoners'?

There is a strong tradition, particularly within critical criminology, which stresses the ideological and political processes involved in determining what is defined as 'criminal' (Quinney 1970). On this analysis, any discussion of

political imprisonment must begin with the power of the state in criminalizing particular behaviour (usually the 'crimes' of the weak and the poor) while condoning or even in some instances encouraging the 'crimes' of the powerful and the rich. Prison, together with law, warfare and policing, is viewed as a key element of the broader process of social ordering designed to sustain hegemonic definitions of right and wrong as well as maintain the existing social order and dominant forms of class and race relations (Rodriguez 2006). Since this entire process is heavily *politicized*, for some critical criminologists almost all those imprisoned as a result of the criminal justice process may be regarded in some sense as *political* prisoners.

While the politicized nature of crime control strategies is indisputable, such a sweeping assessment has been criticized on a number of fronts. Some historical versions of such scholarship appeared to view criminals as 'outlaw heroes' struggling against the capitalist system, and tended to disregard the suffering of the victims of crime who were often themselves the poor, women or other vulnerable groups (Cohen 1996). Similarly in contexts such as Northern Ireland where disputes concerning the political character of inmates were quite literally matters of life and death, while the notion of the state as *the* central actor in defining crime remains absolutely germane, a framework which argued that 'all crime is political crime' was of limited analytical utility (Gormally and McEvoy 1997).

Longstanding difficulties concerning the interplay between legal, political and ideological factors with regard to political prisoner status are perfectly illustrated by the experiences of the American government in its 'War on Terror' response to the terrorist attacks of 11 September 2001. A US Department of Defense press release of 2005 states that, between September 2001 and June 2005, more than 68,000 suspected members or supporters of the Taliban armed forces or al-Qaeda were detained in centres in Afghanistan, Cuba, Iraq and other locations directed and staffed by the Department of Defense. States allied to the USA and UK (Saudia Arabia, Pakistan, Egypt and others) have also imprisoned suspects allegedly related to al-Qaeda and involved in terrorist activities against US and related Western interests (Amnesty International 2006a, 2006b). As discussed below, members of the US and British armed forces have also been imprisoned for desertion or refusal to serve. In each of these cases various designations have been utilized by the different protagonists, highlighting the continued significance of definitional wrangles regarding prisoners' status in the context of a broader political and ideological conflict.

We propose five broad and sometimes overlapping categories of inmates as political prisoners. These are 1) prisoners of war; 2) 'prisoners of conscience'; 3) conscientious objectors; 4) radicalized 'ordinary' prisoners; and 5) politically motivated prisoners. In the sections below we examine each in turn.

Prisoners of war

Informal understandings on the treatment of those combatants captured as a result of conflict are as old as war itself. In line with most of the developments of international humanitarian law (IHL – the 'laws of war'), the rationale for such understandings was the 'reciprocity principle' – a view that restrictions

on the conduct of war and the treatment of combatants were a pragmatic necessity to increase the likelihood of humane treatment for a state's own forces. During the nineteenth century, in a number of European conflicts as well as in the American Civil War, attempts were made to introduce codes for the conduct of warfare including the treatment of civilians and prisoners. In the twentieth century these codes became legally binding elements of IHL under first the Hague Convention of 1907 and then, more importantly, the 1949 Geneva Conventions. The four Geneva Conventions, supplemented by two Additional Protocols in 1977, establish a legal regime for prisoners of war which, in theory at least, 'in many respects goes far beyond that of rules of human rights law relating to the treatment of prisoners in peacetime' (Rodley 1999: 3). However, while the Third Geneva Convention is a dedicated treaty on the treatment of prisoners of war, and offers a definition of a POW, in practice the question as to who does or does not qualify as a POW has remained highly contested.

The Geneva Conventions were primarily informed by the experience of international interstate conflicts wherein the status of combatants was relatively straightforward (Ignatieff 1999). In the past 50 years, however, most conflicts have been internal conflicts in which the state or states involved considers the conflict an insurrection to which they are entitled to respond without regard to IHL. As a result, there is considerably less protection for civilians and combatants in non-international armed conflicts.

Some of the provisions of IHL on the treatment of POWs, such as the proviso that all such prisoners should be released in the immediate aftermath of hostilities, present real difficulties for many states involved in non-international conflicts who regard such measures as key bargaining chips in the process of transition (McEvoy 1998). In addition, many conflicts have seen the development of very sophisticated techniques of outsourcing and 'othering' combatant efforts so that unpicking precisely who is or is not a 'legitimate' combatant and is therefore entitled to such status has become even more problematic (Jamieson and McEvoy 2005). Quite apart from the definitional wrangling and practical legal entitlements of POWs, the symbolic cache of the nomenclature has meant that it is a status which prisoners from each of the categories discussed below have claimed at one time or another.

POW status has emerged as one of the most debated aspects of the War on Terror to date (Franck 2004; Shumate 2005). The US administration in particular has invested considerable energy in denying applicability of the Geneva Conventions and redefining those detained under the War on Terror as something other than POWs. This has involved devising a complex military-legal architecture and promoting a phrase 'enemy combatant' of disputed legal meaning and significance (American Bar Association 2002; Berkowitz 2005). In addition, there have been persistent efforts to shroud as much of the process of political imprisonment as possible in secrecy. International monitors have been denied access to detention centres or have refused access which did not permit private meetings with detainees, as did UN Special Rapporteur on Torture, Manfred Nowak, in 2005. The International Committee of the Red Cross (ICRC) has had access to detainees since August

2003 only in reliance upon its stringent confidentiality: 'the famous quid pro quo that allows the ICRC access to everything in return for publicizing nothing' (Moorehead 2005). As a result, the detail with regard to the nature of detention conditions is incomplete – much of it coming from detainees' counsel or from official documentation released after freedom of information requests. More is currently known about Camp Delta, Guantánamo Bay, than any other detention centre (e.g. Ratner and Ray 2004).

Despite government claims that the Geneva Conventions are 'quaint' and 'obsolete' (cited in Greenberg *et al*. 2005: 119), the US Supreme Court in *Hamdan* v. *Rumsfeld*,[1] held that all War on Terror detainees are entitled to the full protection of the Third Geneva Convention (i.e. to be treated as POWs) until their status has been determined by an independent tribunal.

'Prisoners of conscience'

The phrase 'prisoner of conscience' was first coined by Amnesty International in a newspaper appeal in 1961. While the original definition was 'someone imprisoned solely for the peaceful expression of their beliefs', the organization now employs a more complex formulation, albeit with the emphasis on non-violence remaining paramount. Amnesty soon began to develop and extend its mandate around the protection of such 'prisoners of conscience', broadening their focus to include campaigning for fair and public trials, the abolition of torture, inhuman and degrading treatment and the ending of extra-judicial killings and, ultimately, the death penalty. In unclear or disputed cases, a specifically established 'Borderline Committee' is tasked with making decisions on a case-by-case basis such as whether a prisoner of conscience can be a member of a political organization which is advocating violence, or an army deserter who acted from conscience (Kaufman 1991: 344–5).

Amnesty has thus developed a fairly sophisticated system for balancing the nature and consequences of criminal acts against the nature of the criminalizing state and the opportunities for other lawful forms of protest in determining whether or not someone qualified for the status of prisoner of conscience. Thus, for example, imprisoned anti-nuclear protesters at Greenham Common in the 1980s were not deemed to be prisoners of conscience because many others had found ways to protest which involved neither prosecution nor persecution. Similarly, Amnesty did not campaign for the release of Nelson Mandela since he had been convicted of sabotage. However, in other instances of active resistance (such as the reoccupation of lands by peasant farmers in Latin America or flag waving by Estonian protesters on government property during the Soviet occupation) persons detained were considered legitimate prisoner of conscience when bearing in mind the minimal disruption and the level of repression in these different contexts (Kaufman 1991). Amnesty has designated as prisoners of conscience a number of individuals arrested and imprisoned as part of their respective states' contribution to the War on Terror, including Kurdish prisoners in Syria and human-rights activist, Saidzhakhon Zainabitdinov, in Uzbekistan (Amnesty International 2006c).

Conscientious objectors

A third and sometimes overlapping category of political prisoner is that of conscientious objector (CO). In many countries, the obligation to perform military service for one's country is a pivotal element of the citizen–state relationship. However, the objection to such military service on grounds of conscience is an example par excellence of what Joseph Raz has defined as 'a breach of law for the reason that the agent is morally prohibited to obey it' (1979: 263).

Most national criminal codes have fairly narrowly drawn exceptions which permit alternatives to military service. For example, among the 40 member states of the Council of Europe, the vast majority have now recognized the right to conscientious objection to military service in their constitutions and/ or enacted legislation providing for some form of alternative civilian service (Council of Europe 1987). However, in the absence of religious consensus in many countries in the twentieth century, there have been real difficulties in distinguishing 'genuine' conscientious objections from disagreements with a particular government or conflict (Walzer 1970). As Moorehead (1998) found in her comparative study of COs in the USA, West Germany and Japan, and Keren (1998) discovered with regard to Israel, even relatively sympathetic judges imprisoned infractors who fell outside the narrow permissible parameters of conscientious objection. Amnesty International has also played an important role in the consideration of CO status, although its definition includes both general and selective objectors and is therefore broader than that found in most national codes. For example, in conjunction with local non-governmental organizations (NGOs), Amnesty International has been particularly active in Israel (Keren 1998), where the right to do alternative civilian service is not recognized. It is estimated that over 181 COs were imprisoned in Israel between 2000 and 2003 (War Resisters International 2003).

The categories of 'conscientious objector' and 'prisoner of conscience' closely overlap in the course of the War on Terror to date. Both the US and British militaries have experienced high levels of dissent. According to news reports (e.g. Radelat 2006), more than 40,000 individuals have deserted from the US armed forces (including navy and air) since 2000. As noted above, the primary difficulty for serving troops is that, while CO status can be grounds for discharge from the forces, the military definition is of an individual who objects to war *per se* or the use of violence *in any form*. Troops who refuse to serve because they have a moral or religious objection to a particular war such as the War on Terror are more likely to end up with a court-martial for desertion rather than CO categorization (Davidson 2005). Several high-profile prosecutions have been conducted in these circumstances, resulting in prison sentences. Amnesty International has recognized members of the US military who were jailed for refusing to serve in Iraq as prisoners of conscience (Amnesty International 2005).

Radicalized 'ordinary' prisoners

A fourth category of political prisoners concerns individuals imprisoned for non-political offences but who become radicalized while in prison. The USA and British contexts will suffice for illustration.

In the USA in particular, the transformation of ordinary black prisoners into political militants was fostered by the centrality of imprisonment in the experience of black activists like Malcolm X, Eldridge Cleaver, George Jackson, Angela Davis and others (see, e.g., Cleaver 1968; Jackson 1970; Malcolm X 1973). These activists drew from the writing of commentators like Franz Fanon on colonial consciousness and revolution, and Guevara, Mao, and Taber on guerrilla warfare. George Jackson described his own politicization succinctly: 'I met Marx, Lenin, Trotsky, Engels, and Mao when I entered prison and they redeemed me. For the first four years I studied nothing but economics and military ideas' (1970: 39–40).

Thus those whom W.E.B. Dubois described as an 'army of the wronged' began increasingly to define themselves as political prisoners who were the victims of an 'oppressive politico-economic order' (Davis 1971: 36–7). This understanding underpinned not only the writing but also the praxis of a range of radical groups such as the Black Panthers. Indeed for a time, prisons were viewed as the epicentre of broader social and political revolution (Rodriguez 2006). The call for recognition of their claim to political prisoner status – with explicit reference to IHL – underpinned prisoners' demands in the series of protests that punctuated the 1970s in prisons such as Folsom, Soledad, San Quentin and, later, Attica.

The radicalization of ordinary prisoners in both the UK and the USA was channelled through both identity politics and the prisoner union movement. In the UK context, sometimes in uneasy alliance with Irish Republican inmates in Britain (who were ever keen to assert their status as political prisoners – see, e.g., King and McDermott 1990), such groups were highly active in organized protests and riots against poor prison conditions, particularly for long-term prisoners (Fitzgerald 1977; PROP 1977; King and Elliot 1978).

The 'heyday' of politicized ordinary inmates who linked their imprisonment to the broader social and political conditions of the day is widely regarded as having passed in the 1970s. Certainly the notion of the prison as the epicentre of such struggles and a view of ordinary prisoners as proto-revolutionaries striking out against the capitalist state now seems quaintly anachronistic (Cohen 1996). That said, some variants of this discourse still persist in published works by serving and former prisoners and on numerous websites (e.g. Ross and Richards 2002; Rodriguez 2006).

Islamic radicalization within prisons is currently considered a primary intelligence and security concern. A leaked UK Home Office document identifies prison as one of the key sites of radicalization for young Muslims: 'some are drawn to mosques where they may be targeted by extremist preachers; others are radicalized or converted whilst in prison' (Leapman 2005). The UK has begun to experience the brunt of this dynamic, as both 'shoe-bomber' Richard Reid (sentenced to life in prison for trying to blow up American Airlines Flight 63 from Paris to Miami with a bomb hidden in his shoe) and Muktar Said-Ibrahim (currently awaiting trial for allegedly attempting to blow up a bus in London on 21 July 2005) converted to radical Islam when serving sentences for petty crime as adolescents in British young offender institutions (Travis and Gillan 2005). Measures have since been taken

to reduce the possible influence of religious figures (through vetting of imams before they are permitted to preach in jails, a measure also implemented in the USA) and other mentoring schemes with prisoners (Leapman 2005).

Politically motivated prisoners

The fifth and final category which we propose for analysis as political prisoners is that of 'politically motivated prisoners'. Of course, each of the preceding categories contains prisoners who would assert that their actions and indeed in some cases the actions of the state in imprisoning them were 'politically motivated'. Often such prisoners are referred to as *terrorists* by either the states which incarcerate them or by other actors who oppose their methods or political ideology. However, given the longstanding difficulties in defining the precise meaning of terrorism (Gearty and Tomkins 1996; Martin 2005) and the undoubted ideological baggage which that term implies (Goodwin 2006), individuals who have worked in this field have adopted the more neutral terminology of politically motivated prisoners (e.g. Gormally and McEvoy 1995; McEvoy 2001).[2] Thus, for example, prisoners from Irish Republican Army (IRA) and Loyalist factions in Northern Ireland, armed groups in South Africa, Euzkadi ta Azkatasuna (ETA) in Spain, right and left-wing groups in Italy, Palestinians in Israeli prisons, members of the Baader-Meinhof group in West Germany – these and a range of other prisoners from what are often referred to as 'terrorist' organizations have been variously described as 'politically motivated prisoners' (see, generally, Gormally and McEvoy 1995; McEvoy 1998). As noted above, in many of these cases the categorization of the prisoners as political or otherwise was itself a major source of conflict and struggle. Analysing that struggle usually encompasses an exploration of the legal framework under which the prisoners are detained, the ways in which they are managed by the state in question (and the linkage of such strategies to the conflict on the outside) and, of course, the motivations and actions of the prisoners themselves.

The terminology 'politically motivated prisoner' has yet to penetrate War on Terror discourses. True, it does not have the specific legal significance of terms such as prisoner of war. The term does, however, facilitate a more objective lens through which to view the actions of both state and prisoners. Although the term has not gained much currency at a propaganda level, a definition of terrorism constructed around 'political motivation' has been adopted in the US Code: terrorism is 'premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents'.[3] This is the definition employed by the US Department of State National Counterterrorism Center to monitor and report on acts of global terrorism. As a result, any individual detained in relation to participation in acts of violence in Iraq and Afghanistan is arguably entitled to be considered a 'politically motivated prisoner'. Once that reality is accepted, the parallel experiences of the treatment of other politically motivated prisoners in Northern Ireland, South Africa and elsewhere must inevitably become part of the political and intellectual landscape of the War on Terror.

The management of political prisoners

As evidenced elsewhere in this volume, there is a wealth of literature on the challenges of managing different types of prisoners (see, generally, DiIulio 1987; Sparks *et al*. 1996; Riveland 1999). The management of political prisoners is arguably among the most professionally challenging tasks required of prison managers, staff and their political overlords.

Despite the immense variety of contexts of, and responses to, political violence, broad commonalities in penal policy remain detectable. For discussion purposes, we contend these can be divided into three broad styles of prison management. While these are drawn from the Northern Ireland context, we believe they are of more general applicability as heuristic models for the management of political prisoners elsewhere. We are acutely conscious, however, that the outlines of these models can be little more than very broad generalizations and that individual jurisdictions and contexts will undoubtedly experience contradictory and countervailing tendencies at difference junctures of time and space. Those caveats aside, the three styles of prison management can be identified as: 1) reaction, containment and negotiation; 2) criminalization, repression and the denial of political motivation and; 3) managerialism, bureaucratization and political prisoners as a 'scientific' challenge.

Reaction, containment and negotiation

A reactive containment response perceives prison as an element of counter-insurgency operations, an extension of a broader security policy or, in the case of interstate conflict, a primary means to facilitate the state in 'fighting the war'. This model is characterized by the primacy of the state's need to *react* to the outbreak of political violence, *contain* those perceived to be involved in that violence and *suppress* such actors and their supportive constituencies. It is certainly not a strategy designed to win over the hearts and minds of those who are opposed to the state.

This model describes a militaristic and securitocratic mindset which views due process concerns, the protection of human rights and the broader involvement of lawyers and the legal system as, at best, irritating impediments which undermine the effectiveness of the state in responding to violence. In its least repressive guise, the focus on simply 'getting the enemy off the streets' may lead to diminution of attention on the behaviour of prisoners once imprisoned. Since its primary concern is security, this model may at times encourage a fairly sanguine approach to the political character of the inmates. Thus different degrees of prisoner organization and command structures within the prisons may be tolerated to facilitate the more effective running of the system. Under this model it is perfectly compatible simultaneously to countenance any number of unpleasant strategies and tactics to deal with political prisoners (up to and including extra-judicial killings and torture), negotiate with the prisoners' leadership during their incarceration and, ultimately, if the political conditions on the outside require it, release such prisoners without too much soul-searching on the legal or ideological implications. In effect it allows those tasked with prison management to make

pragmatic judgements on security grounds (for good and ill) while not losing sight of the political character of the conflict (McEvoy 2001: ch. 8).

Elements of this model may be seen in the colonial experiences of the British in places such as Cyprus, Kenya, Malaysia and, in the early 1970s, Northern Ireland (Kitson 1991), the French in Algeria (Maran 1989), the Israeli and Turkish response to Palestinian and Kurdish political violence, respectively (Bornstein 2001) and a range of jurisdictions in Latin America which have faced violent internal insurrections. While there is occasional evidence of an awareness of tried-and-tested methods elsewhere, including common references to the failures of internment in Northern Ireland and Palestine (e.g. Newsinger 2002), the deployment of this model is usually characterized by immediate, localized and largely ahistorical security concerns.

In the initial aftermath of the 9/11 attacks, it is perhaps unsurprising that the driving influence of policy appeared to be 'react and contain'. Emergency legislation was pushed through in both the UK and USA expanding powers of surveillance and permitting detention without trial of non-citizens (e.g. the USA PATRIOT Act, the UK Anti-terrorism Crime and Security Act 2001). Hasty augmentations of the US prison estate in particular began around the same time, and by early 2002 detainees were being flown to Guantánamo Bay. The prison compound at this period – 'Camp X-ray' – housed prisoners in makeshift structures such as portable toilets and wire cages which were entirely open to the elements (Ratner 2005). In May 2006, approximately 500 individuals from almost 40 different countries continued to be detained in Guantánamo Bay (ICRC 2006), with an unknown number held in other parts of the world under US command.

Detainees continue to be regularly interrogated (even after several years in total isolation when it is hard to imagine what value such a process might serve), although fewer than 20 prisoners were deemed eligible for trial before Military Commission. Continued detention is openly justified on the basis of preventing prisoners from taking up arms against the USA in the future. The then Deputy US Assistant Attorney General, John Yoo, asked: 'does it make sense to ever release them if you think they are going to continue to be dangerous, even though you can't convict them of a crime?' (cited in Weinstein: 2002). As the US Supreme Court acknowledged in *Hamdi* v. *Rumsfeld*, in the context of a 'war without end', this argument creates 'a substantial prospect of perpetual detention' for current detainees.[4] In the UK, there has apparently been similar use of custody for preventative reasons with little pretence of such detention serving an intelligence function. For example, one individual detained without trial in maximum-security Belmarsh Prison for 16 months 'said he was not interviewed by police or security services on a single occasion' (Crawshaw 2004).

Criminalization, repression and the denial of political motivation

The second broad model for the management of political prisoners places much greater emphasis upon the role of imprisonment as a crucial element in the broader political and ideological elements of a conflict. Prisons are more than simply places to contain, interrogate and imprison combatants. Rather, they become sites for co-ordinated efforts to 'break' prisoners, to deny their

status as political actors and, by extension, to deny the broader political character of the conflict. The attitude of this model towards law and legality is contingent and partial. Rigid rule enforcement is seen as a further tactic designed to harass prisoners. The law offers only a very limited check on the behaviour of staff towards inmates – the need to 'break' the prisoners has primacy. This model cannot countenance the trappings associated with political rather than ordinary offending and therefore direct and prolonged confrontation between the prisoners and the system is all but inevitable. An uncompromising construction of prisoners as 'terrorists' or 'criminals' places prisons on the front line of a broader ideological battle which frames the conflict exclusively in security terms, holds out the possibility of a military 'victory' and finds it difficult to consider negotiations with prisoners or their comrades on the outside as anything other than capitulation.

As Hood and Radzinowicz (1979) note, the tendency in most European criminal codes to treat political offending as a distinct category has always been strongly resisted by the British state. Following the Gardiner Report of 1975, the policy of internment without trial was abandoned and any prisoner convicted of a 'terrorist' offence was to be treated in exactly the same fashion as an ordinary prisoner – i.e. he or she was forced to wear a prison uniform, to do prison work, attempts were made to integrate such prisoners with ordinary prisoners and prisoners from opposing factions, and the prison system refused to recognize such prisoners' paramilitary command structure (Campbell *et al*. 1994; McKeown 2001). The strategy was characterized by a rigid enforcement of the prison rules and an assertion of the powers of the prison staff, the internalization of what were essentially propagandist positions by staff and managers, a prison culture of brutality, violence and dehumanization, and constant political 'interference' from senior politicians, including the then Prime Minister, in the micro-management of the prisons (see, generally, McEvoy 2001: ch. 9). As Margaret Thatcher summed it up: 'There is no such thing as political murder, political bombing or political violence. There is only criminal murder, criminal bombing and criminal violence. We will not compromise on this. There will be no political status' (*The Times* 6 March 1981).

Spanish government policy towards ETA over the past three decades has been similarly suffused with criminalization rhetoric and practice. After a number of failed efforts at negotiation in the 1980s and a dirty war conducted by the security forces and their proxy agents over the same period (Mees 2003), in 2003 the Spanish government eventually banned Herri Batusuna (the political wing of ETA), in effect criminalizing extreme Basque nationalist politics (Sawyer 2003). Since 1989, the Spanish authorities have pursued a hard-line policy designed to minimize the potential for collective organization by ETA prisoners. They refused to negotiate formally with such inmates and, until recently, were reluctant to countenance a serious linkage between the prisoners and the broader political conflict. The main plank of that hard-line policy has been to disperse ETA prisoners around different Spanish prisons (far from the Basque country), isolating prisoners and causing huge difficulties for their families. That policy has been strongly condemned by human rights groups and has arguably served as the rationale for further ETA violence and

kidnappings designed to pressurize the Spanish government to reverse the policy (Mees 2003; Carlos and Gil-Alana 2006). In an interview with one of the authors in the 1990s, the senior prison official in charge of the dispersal policy was quite frank that the purpose of the policy was 'to break the will of the prisoners' and to ensure that they were sufficiently removed from the Basque country that their 'criminal acts could not be justified by some spurious claim to politics'.[5]

In both instances, prison managers and their political masters were involved in formulating policies which deliberately sought to obfuscate the political character of the prisoners, thus inevitably placing prisons 'on the front line' in the broader political and ideological battles. Although ultimately pragmatism prevailed in the Northern Ireland context, and would appear to be seeping into the Basque context,[6] for a time in both contexts individuals charged with policy formulation appear to have internalized such discourses and actually to have *believed* that the imprisonment of such activists could be divorced from the politics that motivated them in the first place.

War on Terror detainees have experienced increased political involvement in policy formulation in conjunction with a systematic attempt to minimize legal interference with a security-driven process. Tactics have included the exclusion of both human rights monitors and court structures through a combination of territorial isolation outside US boundaries, procedural exclusion of judicial oversight and the relocation of judicial responsibilities to military bodies (Jamieson and McEvoy 2005; Lewis 2005).

Detainees have been subjected to torture, inhuman and degrading treatment. Official Department of Defense policies sanctioned an extensive list of 'counter-resistance strategies' for the interrogation of prisoners, including yelling; the use of stress positions; isolation for up to 30 days (more on approval); deprivation of light and auditory stimuli; 20-hour interrogations; removal of religious items; removal of clothing; 'forced grooming'; using detainees' individual phobias to stimulate stress; the use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family; the use of a wet towel to induce a misperception of suffocation; and 'mild, non-injurious physical contact' (cited in Greenberg *et al.* 2005: 229). The Schmidt Furlow investigation into interrogation practices – although claiming that this did not amount to 'inhuman treatment' – confirmed that authorized counter-resistance tactics have been augmented by techniques including sexual humiliation, exploitation of prisoner phobias through the use of dogs, prolonged solitary confinement and calculated indignities, such as forced nudity and the leashing of detainees (US Department of Defense 2005b). While not apparently on the same scale, detainees in Britain have also faced abuses and maltreatment, as confirmed by the European Committee for the Prevention of Torture (Council of Europe 2005). As one detainee described the situation to the BBC: 'We saw hell at Belmarsh Prison … Inmates were undressed, beaten and abused and kept in solitary confinement for 23 hours. Beating continued day and night. There were abuses of Islam and the Koran' (BBC 16 March 2006).

Much critical analysis of War on Terror policy-making reflects upon the disproportionate influence of a relatively small group of ideologically

committed senior politicians in the USA, including the Vice-President and Defense Secretary. These politicians and their most trusted political aides have reached deep into operational areas, including the management of holding centres and prisons which hold those arrested as a result of War on Terror operations (Hersh 2004). In a striking parallel with what McEvoy (2001) describes as 'hot house' management in the Northern Ireland context during the criminalization era, such senior individuals have increasingly put their personal stamp on prison management issues (Priest and Wright 2005). The treatment of prisoners has become suffused with political meaning and is emblematic of a 'hard line' image which allows little room for manoeuvrability on the ground. Thus, for example, Federal Bureau of Investigation (FBI) complaints that military interrogators were 'ruining' intelligence gathering in Guantánamo by destroying rapport which FBI officials had established with detainees through needless brutality went largely unheeded (ACLU 2006). Once policy becomes synonymous with the political virility of senior politicians, the opportunity for pragmatism or, often, even more thoughtful or subtle ways to achieve the same objective, is often diminished.

Many of the most heated battles concerning the treatment of those detained in the War on Terror have inevitably ended up before the courts (Drumbl 2005). The US Supreme Court has rejected the proposition that detention in Guantánamo Bay could enable a legal vacuum beyond US judicial oversight in a series of cases which asserted detainees' right to bring a habeas corpus suit in a federal court.[7] It also reminded the national executive that 'a state of war is not a blank check for the President'. Attempted relocation of the judicial role demanded by these rulings to military organs was also rejected. Military commissions were established to try detainees which had the power to impose the death penalty but failed to adhere to recognized due process standards (evidence adduced by torture and hearsay was admissible; detainees were not entitled to hear all the evidence against them). These Commissions were deemed unconstitutional by the Supreme Court in June 2006, which found that all detainees were entitled to the protection – at a minimum – of Common Article 3 to the Geneva Conventions, which requires 'a regularly constituted court' operating in accordance with due-process norms.

In the UK, new legislation has been introduced removing traditional checks and balances and abrogating human rights and due-process norms. For example, the recently enacted Terrorism Act 2006 extends permissible pre-charge detention from 14 to 28 days, creates a criminal offence of 'glorifying terrorism' and provides for the proscription of organizations which are extremist but non-violent, such as Hizb-ut-Tahrir. However, as in the USA, the UK House of Lords has also struck down provisions which permitted indefinite detention of foreign nationals without trial and admissibility of evidence gained by torture as in contravention of the Human Rights Act 1998.[8]

Managerialism, bureaucratization and political prisoners as 'scientific' challenge

A third style of the management of political prisoners is what we would broadly term managerialism: a privileging of managerial and bureaucratic discourses

rather than ideological and political rhetoric and practices. It is characterized by a view of prisons not so much as a vehicle for the 'defeat' of political violence but, rather, as places which can at best *manage* the consequences of such violence or, at worst, if *mismanaged,* provoke further violence or social unrest. It tends to regard the management of such potentially highly difficult prisoners as one further 'scientific' or technical challenge which, while it requires a discrete set of skills and techniques of engaging with such prisoners, is of an ilk with other 'specialized' forms of prison management, such as long-term prisoners, women or sex offenders (McEvoy 2001: ch. 10). Drawing in particular from prison and criminal justice management experience which has seen the elevation of such technicist discourses over the last two decades (see, e.g., Feeley and Simon 1992; Newburn 2003), this version of managing political prisoners seeks as much as possible to rationalize the policy-making process, make decisions based on the objective calculation of risk and, where possible, to avoid conflict with prisoners by imbuing the mundane aspects of running a prison with unnecessary political or ideological baggage. It is certainly not a 'politics free' approach to management which simply capitulates to each and every demand of the prisoners. Indeed, one of the guiding principles of managerialism may be to seek to quarantine as much as possible the power and influence of political prisoners. Nor is it necessarily a deliberately benign form of prison management. However, much of the certainty and rationality of the managerialist model requires greater deference to legality, an acceptance that the power of staff is inevitably checked by international human rights standards and an acknowledgement that such safeguards are 'in the final analysis' useful in preventing prison mismanagement. Managerialism in this context is informed by a 'small p' political awareness so that, sometimes, more subtle forms of engagement are required to limit such influence, as well as a 'large P' political awareness that, once conflict is provoked in the prisons, this can have disastrous consequences outside (McEvoy 2001: ch. 10).

The style of managerialism which developed in the Northern Ireland context in the 1980s and 1990s is undoubtedly jurisdiction specific. Certainly, the disastrous consequences of the Republican hunger strikes against criminalization (discussed below), the ensuing reduction in political 'interference', the change in tactics by the prisoners themselves away from overt conflict and the 'slow read-across' of managerialist discourses from Britain all combined to produce a style of managerialism that characterized the prisons for well over a decade. That said, one can see similar traits in other contexts where there is considerable experience in managing political prisons and a similar sense that such prisoners will be a reality for the foreseeable future.

For example, the Israeli prison system has long been criticized by human rights and other groups for its system for managing political prisoners, which includes the widespread use of torture, humiliation and the administrative detention of large numbers of prisoners – more in keeping with a reactive containment model of political imprisonment (see, e.g., http://www.btselem. org). However, even in a prison system rightly characterized as repressive in the extreme (Bornstein 2001), one detects a similar weary pragmatism among Israeli prison management to that which prefigured the dramatic changes

in Northern Ireland. This perspective is apparently informed by a cold-eyed approach to the dangers posed by such prisoners, an acknowledgement of their motivation and the qualities of their leadership, and an understanding of the relationship between prison conditions and the conflict outside (Israeli Prison Service 2004: 1–2). In such a context, perhaps a focus on the 'scientific' challenge of holding prisoners in as secure a fashion as possible and limiting their capacity to influence or co-ordinate violent events outside is as good a result as can be expected.

As described above, the methods for the management of War on Terror prisoners have been primarily drawn from the reactive containment and criminalization models and there is, as yet, little apparent awareness on the part of the US government in particular of the benefits of a less repressive approach to the management of political prisoners. That said, two points are worth highlighting concerning apparent variants of the managerialist discourse. First, with regard to the framing of torture, humiliation, rendition and the other tactics discussed above, comparatively little energy has been deployed by the US authorities in the 'denial' of such tactics (see Cohen 2001). Instead, much of the state rhetoric in this instance has not been to seek to obfuscate the utilization of tactics such as torture but to normalize it, bureaucratize it and claim that it *works*. Methods of interrogation previously portrayed as illegal and redundant in 'civilized' nations have been reconstructed as necessary, procedural, even indispensable (Greenberg *et al*. 2005; Waldron 2006). General Geoffrey Miller (former commander of Guantánamo Bay, currently commander of Abu Ghraib) claimed Guantánamo detainees were a source of 'enormously valuable intelligence' (Rose 2004), a claim also made by a number of Department of Defense and military press releases (Rhem 2005; US DoD 2005a). While in contexts such as Northern Ireland it was broadly progressive measures (such as reducing conflict in the prisons) that were eulogized under a managerial model, in the current context the ground rules have changed. It is now torture and disappearances which have become scientified, bureaucratized and euphemized.

Secondly, it is clear that much of what Feeley and Simon (1992) famously described as the 'new penology' in US criminal justice policy has seeped into the policy-making process in the War on Terror. At a general level, incapacitation of the most dangerous offenders in order to make inroads on crime levels fits precisely with the containment logic of preventative detention against terrorist suspects. Certainly, the careers of President Bush and his political allies have been characterized by a keen awareness of the symbolic power of filled prisons. More particularly, however, as Gordon (2006) has argued, the influence of US 'correctional science' can be seen directly in the tactics deployed in Guantánamo, Abu Ghraib and the like. Many of the men and women who staff these organizations are army and navy reserves who are in their civilian life correctional officers in the USA. They have been deployed, not unnaturally, where their skills are most suited. Gordon argues that many of those involved in the most serious abuses have previous histories of violence against inmates (2006: 47–8) and that they have taken such traditions and occupational cultures with them into environments where violence and abuse have been even more directly encouraged and systematized as being

of strategic utility. The 'science' of US corrections – what some scholars have described as the 'supermax mentality' with its fixation upon security, control, surveillance and isolation of prisoners – is highly prevalent in its penal response to the War on Terror.

Political imprisonment and prisoner resistance

There is a rich sociological and psychological literature that examines the ways in which prisoners 'cope' with the 'pains of imprisonment' (see, e.g., Clemmer 1940; Sykes 1958; Zamble and Porporino 1998; Matthews 1999; Chapter 6, this volume). However, this literature on prison 'coping' is arguably only of limited analytical use in exploring the actions and motives of political prisoners, for political prisoners often wish to do more than simply cope with their imprisonment. They are frequently engaged in processes of active and, indeed, co-ordinated resistance (Buntman 2003). Such a distinction is what Cohen and Taylor (1972: 131) referred to as the difference between 'making out' and 'fighting back'. Given that often the efforts of the prison system are designed to 'break' political prisoners, their resistance to such attempts is often a logical and politicized extension of the struggle in which they have been engaged on the outside and of which they continue to feel a part.

The anthropological use of the term resistance (e.g. Scott 1985, 1990; Sluka 1995) tends to offer definitions which become so broad as to encompass almost any action. Within that framework, resistance is normally understood as being characterized by purpose, either implicit or explicit, manifesting itself in *opposition* (Foucault 1983), or taunting, undermining and attacking the exercise of power (Pile 1997: 14). For political prisoners resistant actions are often deliberate, calculated and, to varying degrees, explicitly politicized. Some of the most thoughtful writings on resistance have focused in particular on power relationships and on notions of resistance as a way of examining the 'weapons of the weak' (Scott 1990). However, one important feature of political prisoners is that, in some instances, they may be in a more powerful position vis-à-vis the institution than, for example, ordinary prisoners (Sparks *et al*. 1996). They may be able to organize collectively within the prison; they may have among their ranks inmates with considerable organizational, military or political skills; outside the prison they may have supportive political constituencies, willing lawyers and, of course, organizations whose support they can call upon in furtherance of their aims and objectives.

Even among political prisoners, resistance is not a monolithic experience. Just because much of the emphasis on resistance for political prisoners is a collective one does not mean that resistance will be universally experienced within and between different groups, different prison systems or even different individual prisons. The nature of the prison regime and the political system in which it is located will inevitably shape the nature of the prisoners' resistance (Mathiesen 1965). Among the prisoners' groupings themselves, variables such as age, gender, political ideology, prevalence of a political history in their culture, calibre of recruits and leadership, and organizational and discipline capacity will also invariably influence styles of prisoner resistance.

Resistance may be expressed in a wide number of ways, ranging from the dramatic (escape, hunger strike or self-harm, legal challenge) to the mundane (smuggled contraband, illicit communications, organizational discipline, political education). However, the essential similarity of prison structures worldwide ensures a number of avenues of resistance are commonly employed. These include the formation of a prison community; escape (resistance as ridicule); law (resistance as legal challenge); hunger strike (resistance as sacrifice); and violence (resistance as infliction). It is these we now focus on.

Community as resistance

Prison sociologists have long understood that a collectively experienced 'prison community' (Clemmer 1940) or 'inmate society' (Sykes 1958) is one of the key bulwarks against domination by the prison system. For political prisoners, most of whom will have belonged to some form of collective organization or cellular structure on the outside, forming such a community is often a key priority. It is precisely because of the capacity of such collectives to alter power relationships within the prison that management and staff often try to disrupt them. Prisoner collectives may vary from an unwritten code of honour, to an intricate subculture, to a full formal military or paramilitary command structure (e.g. McEvoy 2001; Buntman 2003; Kaminski 2004). For political prisoners the organization ideology will unsurprisingly shape the collective. Thus, for example, both the African National Congress and the IRA placed considerable emphasis on the 'communal' nature of their imprisonment, enacting their socialist beliefs by pooling resources (McKeown 2001; Buntman 2003: 239). Voglis (2002) identifies a similar 'prison communism' among Greek political prisoners. Loyalist prisoners in Northern Ireland, on the other hand, while part of larger organizations, tended to have an individualistic approach to imprisonment with less rigid command structures, less emphasis on the collective and a less organized approach to resistance strategies and tactics (McEvoy 2001).

Finally, collective resistance must happen in 'places'. Control over locations within the prison offers opportunities for techniques of resistance such as escapes but also suggests a symbolic critique of one of the defining characteristics of imprisonment, the control of space (Pile 1997: 16). Thus, for example, the ongoing hunger strike by members of the Kurdistan Workers' Party in Turkish prisons was precipitated by the decision to move prisoners from large cells of up to 100 prisoners which were effectively controlled by prisoners themselves to isolation or small cells of two to three prisoners (HRW 2000; Anderson 2004). This move was designed to crush the prison collective which had been formed in the large cells. In order to effect forms of resistance, resistors must establish (however temporarily) spaces and networks which are less subject to control and surveillance (Routledge 1997), where the sense of community can be both properly 'imagined' (Anderson 1991), organized and realized.

One achievement of detention policy in the War on Terror has been the control of space and restriction of prisoners' capacity to mobilize. The majority of cells in Guantánamo are single occupancy and have wire meshing on three

walls to allow the guards – who pass each cell twice per minute – to see in (Ratner 2005). Prisoners are segregated according to their level of compliance with the prison administration. Prisoners deemed particularly co-operative have privileges, including the ability to move freely around their living area, access to comparatively extensive leisure facilities, air conditioning and ice-makers. These prisoners wear a white jumpsuit rather than the orange uniform which has become synonymous with Guantánamo detainees (Rhem 2005).

Less compliant prisoners (including detainees who have threatened other prisoners or guards, thrown bodily fluids at guards or refused to come out of their cell when ordered) are accommodated in a compound with constant camera and sound surveillance and are released from their cells for less than one hour per week to shower and 'exercise', although movement is restricted as shackles are kept on throughout both activities. Solitary confinement is used extensively and, for some detainees, has been almost unbroken for periods of up to 18 months. External contact, even with relatives, is heavily restricted. Detainees facing charges before military commissions have been permitted external counsel, but there is evidence that meetings have been restricted for prisoners who are on protest (Center for Constitutional Rights 2005; Ratner 2005).

Prisoners therefore have very limited opportunities to form a 'community' by which to contest detention or petition for rights observance. Yet despite the apparent removal of all avenues of resistance, and the obvious incentives to co-operate and receive less punishing conditions, the level of protest at Guantánamo Bay has escalated consistently since 2002.

Escape as resistance

The classic expression of resistance for political prisoners is escape. As noted above, different types of political prisoners view themselves as 'prisoners of war'. One of the distinctive features of many such prisoners is what they perceive as a 'duty' to escape, possibly to rejoin the military campaign, to boost the morale of comrades and to strike a symbolic blow against their gaolers. Escapes from imprisonment go to the very heart of the ideological and political struggles between political prisoners and the state. In conflicts such as Northern Ireland, combatant organizations like the IRA were willing to commit disproportionate resources to supporting and securing escapes, well beyond what they would have allocated to ordinary 'military operations' (Bishop and Mallie 1987). They did so because successful escapes were an incredible propaganda coup. A well organized, planned and executed escape may instil a sneaking admiration in the most unlikely of places.[9] For their part, states also view escapes as the ultimate in ideological and political effrontery. Other than actually killing combatants, imprisonment is the ultimate sanction and expression of the state's power over its enemies. Escapes undermine any claim to the state's coercive omnipotence (McEvoy 2001: esp. ch. 3). It represents an actual and symbolic loss of power.

Of course, as with escapes by 'ordinary prisoners' (Johnston *et al*. 1991), political prisoners tend to view the prospect of escapes in a calculating

and rational fashion. The vast majority of escapes take place because of staff weaknesses, inattentiveness or susceptibility to pressure, or because of technical failures in surveillance or security (Cusp 2005). Thus, when political prisoners spend considerable time or energy in planning or executing escapes, this is because such escapes are difficult but technically feasible. If, on the other hand, the quality of the security, the oppressive nature of the regime or, indeed, the physical location of the prison present seemingly insurmountable obstacles (e.g. Robben Island in South Africa surrounded by freezing, shark-infested waters, the Soviet gulags in the most inhospitable climates imaginable or, indeed, one imagines, the military compound of Guantánamo Bay), proportionately less time is expended on such resistance efforts. When escape is not viable, prisoners remain focused on the real and the possible, rather than risk their sanity by dwelling on what will never happen.

Resistance as legal challenge

The notion of using the law as vehicle to explore state ideology and politics during a period of political violence or social conflict is a long-established tradition of both jurisprudence and socio-legal studies (e.g. Fuller 1958; Hart 1983; Dyzenhaus 1991). In such instances the courts may become practical and symbolic sites of resistance. Of course, for some political prisoners, recognition of the symbolic and actual power of law is tempered by personal experience of the legal system as an instrument of repression. Thus some use the opportunity to attempt to make a speech from the dock, to have 'written into the record' their motives and views on the system which tries them (see, e.g., Benson 2001). In others, where, for example, the prisoner refuses to recognize the legitimacy of the court to try him or her, the protest is primarily symbolic, a communicative action aimed primarily at one's own comrades and supporters (see generally McEvoy 2001: ch. 6). Such a denial of the legitimacy of the legal system which imprisons one has obvious symbolic power but it offers little by way of material opportunity for the advancement of a cause.

   Others attempt a more practical utilization of the courts to challenge state authority in application for habeas corpus, judicial review, extradition hearings and applications to international human rights courts and the like. In the Irish context, for example, IRA prisoners transformed the organization's stance from one where members used to refuse to recognize the legitimacy of the courts to one where every case was fought and where judicial review challenges to the disciplinary apparatus in the prisons rendered implementation of the Prison Rules all but impossible (McEvoy 2001). Similarly, on Robben Island, the lives of South African political prisoners were significantly transformed by a legal ruling on disciplinary processes (Buntman 2003: 57). Of course, as with prisoners in general, political prisoners lose more cases than they win. That said, as one IRA prisoner described it to one of the authors, the law has the capacity to be 'a real pain in the arse' for those who run the prison system.[10]

   This sentiment may strike a chord with policy-makers in the War on Terror. As noted above, in both the UK and USA, judicial intervention has been a

prominent check on attempted executive consolidation of power, striking down a number of initiatives and pieces of legislation as unconstitutional. Freedom of information legislation has been a further tool of resistance wielded with sophistication by those campaigning on behalf of prisoners. Attempts to control information have been thwarted by the work of a coalition of human rights organizations, which has obtained and published reams of official documentation relating to imprisonment in the War on Terror. Prisoners, their lawyers, NGOs and others concerned at the conditions of their detention have made the law perhaps *the* key strategy of resistance to the abuses perpetrated in these sites.

Hunger strike and death: resistance as self-sacrifice

The use of hunger strike as a strategy of resistance or protest in political, ethnic and social conflicts is well documented. It has been used by suffragettes (Christensen-Nelson 2004), students, pacifists and human rights activists (Bennett 2003; Zhao 2004) and veterans protesting against war (Nicosia 2004), as well as by doctors protesting over conditions for them or their patients (Kenyon 1999). While 'ordinary' prisoners also utilize hunger strikes to draw attention to conditions or indeed claims of innocence (Williams 2001), organized protests to the death are more associated with politically motivated inmates. In South Africa (Buntman 1996), Israel (Healy 1984; Bornstein 2001), the former USSR (Applebaum 2003), West Germany (Schubert 1986), Turkey (Anderson 2004), Northern Ireland (Beresford 1987) and many other jurisdictions, political prisoners have long resorted to hunger strike as a key strategy for staking their claim (Mulcahy 1995).

Hunger strike is a resistance strategy deployed against a seemingly more powerful foe. Through the symbolically charged process of denial, self-sacrifice and endurance, the body can be transformed into a site of struggle (Feldman 1991). The symbolism is, in part, in the juxtaposition of the state's power, which is challenged by the willed process of decay of a striking prisoner. Hunger strikes often elicit widespread support and sympathy: they speak to the commitment and sense of purpose of political prisoners and they undermine the state's claim to rationality and proportionality. The body may also become a literal site of struggle as, in some cases, the prison authorities may seek to force feed prisoners. In some contexts such as Northern Ireland, all the complexities of a political conflict may, for a time, become narrowed to a prisoner's capacity for endurance as those inside and outside wait for his or her death and the inevitable political and social reactions thereafter (McEvoy 2001). In others, such as Turkey where 107 prisoners died on strike between 2000 and 2003 (Anderson 2004), political conflicts appear to continue without significant change to their innate rhythm despite events in the prison.

Self-sacrifice is, of course, a high-risk strategy for prisoners and one in which they must carefully calculate the likely costs, benefits and outcomes. Most crucially, hunger strikers must accurately assess their durability and resolve, the length of time it may take them to die and the resultant political pressure that can be built in such a period, and the likely state response to such pressures (Beresford 1987; Anderson 2004). Hunger strikers rely on the

fact that their death will provoke a reaction which will in turn pressurize the state towards meeting at least some of their demands. When national or international public opinion is successfully mobilized in favour of hunger strikers, as it eventually was in the Irish hunger strikes of 1980–1, then their actions can be symbolically and strategically powerful. However, while public opinion is usually a state's Achilles heel, prison policy is a particular arena where politicians and officials are generally applauded for a hard-line approach. The Republican hunger strike, as perhaps the best known internationally by political prisoners, was widely viewed at the time (not least by the prisoners themselves) as having failed (Campbell *et al*. 1994; McKeown 2001). The Thatcher government remained largely immovable throughout the strike, a position only modified after the strike had collapsed following sustained interventions by the prisoners' families.

In the contemporary context, reports by human rights organizations and detainee testimony indicate four distinct phases of hunger strike at Guantánamo Bay since 2002 (CCR 2005). Since the first essentially anarchic and opportunist protest in February 2002, hunger strikes have escalated in severity and sophistication. Since the third phase of protest in August 2005, prisoners have focused on demands for legal recognition and to be treated in accordance with IHL (CCR 2005; Human Rights First 2005). Official figures admitted the participation of 130 detainees, although detainees claim up to 200 individuals took part. By February 2006 the official figure of reported hunger strikers was four (BBC News 9 February 2006). During this phase of strike dozens of detainees were hospitalized (Amnesty International 2006b).

Although prisoners' demands have become more coherent, so too has the official response. Guidelines were issued stipulating that a prisoner will be considered to be on hunger strike after refusal of nine consecutive meals, at which point he or she will be force fed (Amnesty International 2006b). Force feeding requires a prisoner to be held down, his or her mouth forced open, a tube inserted into the gullet and held there while liquid food is dispensed. Even when carefully undertaken, force feeding is painful, traumatic and likely to induce choking and vomiting. The practice has been largely abandoned by developed nations, as it is considered to be a painful and coercive invasion of prisoners' bodily autonomy and was prohibited as a matter of physician ethics by the World Medical Association Declaration of Tokyo in 1975. It appears highly likely that the force feeding of hunger strikers is intended to reduce the political influence of the strikers by keeping them alive at all costs. As one lawyer who represents Guantánamo detainees suggests: 'Governments did learn one lesson from Bobby Sands: He is famous because he died' (Stafford Smith 2005).

Failure to achieve their demands does not appear to have crushed prisoner resistance: in May 2006 there were reports of a renewed hunger strike, apparently organized to coincide with the onset of military commission hearings (BBC News 29 May 2006). It appears that several hunger strikers viewed their fast as a suicide attempt rather than a protest intended to effect change in their conditions.

The psychological impact of indefinite detention in such abysmal conditions is brutally evident in the proliferation of acts of self-harm and attempted

suicide among prisoners. In 2003 alone there were more than 350 acts of self-harm by Guantánamo Bay detainees, including individual and mass suicide attempts as well as the prolonged hunger strikes (UN Economic and Social Council 2006: 71). In the first 18 months of detention in Guantánamo Bay 28 suicide attempts were recorded (CCR 2005: 8). It appears that prisoners have begun explicitly to utilize self-harm as a macabre tool of organized resistance. In August 2003 there was an organized suicide pact in which 23 prisoners attempted to hang themselves during one eight-day period. One Guantánamo prisoner is believed to have attempted suicide at least ten times, once in the presence of his counsel. He later told this lawyer that he had wished to kill himself 'in a public way so that the military could not cover it up and his death would not be anonymous' (Amnesty International 2006b). The first detainees to die through self-harm committed suicide by hanging in June 2006, in an organized pact between three prisoners. The official response to the three suicides was that they were 'an act of asymmetric warfare against us' and 'a good PR stunt' (Fresco 2005).

Violence and resistance as infliction

In some ways hunger strikes can be construed as a method of violence, albeit directed against the self. There is a rich literature on violence as means of resistance against others (see, e.g., Arendt 1990; Muller and Weede 1990; Burton 1997). For political prisoners violence may be a result of viewing prison as a site for the continuance of the armed struggle in which they were engaged on the outside. Alternatively, it may be a response to material conditions within the prison, a result of poor (as well as strategic) leadership within the prison or a rational calculation of the efficacy of violence as compared with other strategies of resistance discussed above.

Of course, prisons are places which are quite well known for their apparent capacity to produce violence from both staff and inmates. Studies of prison violence usually entail an analysis of the individual and/or structural reasons why prisoners resort to violence while incarcerated (see, generally, Edgar *et al*. 2003). Apart from individual factors which may motivate particular offenders towards violence, more generic structural factors include the nature of the regime, levels of fear among inmates, cultures of violence or impunity in particular institutions, poor training or educational facilities, poor training of prison staff or a propensity towards violence from staff themselves. The reality is that, in understanding the relationship between political prisoners and violence in prisons, such individual and structural factors must be considered with an overlay of politics pervading violent incidents. Such violence may be directed against staff, against prisoners from rival factions or indeed ordinary prisoners (who may be regarded as a threat to security or the objects of a 'forced integration' strategy where they are being utilized to break up the cohesion of groups of politicals such as occurred in Northern Ireland, Spain and Israel), or against the property of the prison. On occasion prisoners may also be able to enlist the support of their comrades on the outside to carry out armed acts in support of their prison struggle.

In any prison setting there is the possibility for what Carrabine (2005) describes as 'the sensual attractions of disruption for prisoners'. In an otherwise monotonous routine, the opportunity for exciting activity may be sufficiently tempting to over-ride more strategic considerations. However, for political prisoners, the use of violence, like hunger striking, is a high-risk strategy. It can be counterproductive, encouraging an even harsher reaction from the regime and damage to relations with prison management and staff. It can also have adverse consequences for the broader political struggle to which the prisoners belong. One of the key resources for political prisoners is their potential to elicit sympathy in the face of a powerful and often repressive regime. Violence risks jeopardizing that reserve of good will in provoking a possible adverse public reaction. Violence as a strategy of resistance is therefore most effective when it is well calibrated: a constant threat, often unspoken and rarely used, but none the less sufficiently real to maximize the conditioning of staff and progress the demands of prisoners without requiring actual resort to it (McEvoy 2001: ch. 5).

The opportunities for prisoners to resist violently in the controlled environment of Guatánamo or similar institutions are obviously limited. Only in May 2006 were there reports of what appears to have been the first organized act of violent resistance from detainees – a group of prisoners lured guards into a cell with a staged suicide before attacking them with weapons made from ceiling fans (BBC News 19 May 2006). That the prisoners were able to act in concert and had access to fans suggests that they had earned privileges awarded to 'co-operative' inmates. It is impossible to discern what they hoped to achieve with this action. Other news reports have described prisoners attacking guards with what has become known as 'Cocktail No. 4' – a combination of urine, faeces, spit and semen. This protest has many of the same elements as the Irish Republican 'dirty protest': perhaps effective as short-term resistance, but ultimately arming the prison administration with propaganda to confirm prejudices of prisoners as savages testing the patience of a caring system (CNN 12 June 2006).[11]

Conclusion

In framing the discussion of political imprisonment as an intersection between definition, management and resistance we have deliberately sought constantly to reinforce the relationship between the past and the present. Two of the authors have expressed elsewhere our frustration at genres of critical scholarship which analyse the contemporary War on Terror as a move from a rule-governed norm to a 'state of exception' – an extreme reaction or over-reaction to an unprecedented threat (Jamieson and McEvoy 2005). Such an ahistoric perspective fails properly to unpack the similarities, continuities and innovations in state and insurgent actions in the light of other conflicts in favour of an emphasis on the novel and the exceptional. There are direct links between past and contemporary experiences of political imprisonment. As we have sought to demonstrate, these links are not just in the material management strategies of the gaolers or the resistance tactics employed by the

incarcerated. They are also, at the conceptual and the symbolic level, about the ways in which we *think* about political imprisonment and our capacity to recognize what it *represents.*

Political prisoners are typically defined by the states that detain them as 'the worst of the worst'. As we have sought to demonstrate, states often resist strongly in acknowledging the political motivation of inmates, particularly when they have committed acts of violence. Certainly some such prisoners may well have committed the most heinous acts of violence. As with the imprisonment of ordinary murderers, rapists or child molesters, states cannot and should not benchmark how they treat such inmates by the lowest actions of those they imprison. As Wilson argues: 'The conditions at prisons holding terror detainees and political prisoners, from Robben Island in South Africa to the Maze prison in Northern Ireland to Camp Delta in Guantanamo Naval Base, serve as litmus test for a democratic political system' (2005: 22). In addition, we would contend that accepting the political character of an inmate does not imply sympathy with either the tactics or political cause of such an inmate. It merely removes unnecessary ideological brushwood. It recognizes that imprisonment of such an individual cannot be artificially divorced from the surrounding conflict.

What the sometimes overlapping categories of political prisoners enunciated here share in common is that they are imprisoned for their actions, beliefs or affiliations, which emerge in such times of conflict. While they may have very different relationships to the states which imprison them, their commonality lies in their opposition to a state or particular policies of that state. 'Conscientious objectors' and 'prisoners of conscience' obviously express that opposition in non-violent terms. 'Prisoners of war', 'radicalized ordinaries' and 'politically motivated prisoners' may well express their opposition through the use of violence. In all five categories the actions of the prisoners and of those who imprison them become symptomatic of broader political, social or ideological conflicts. The resistance strategies deployed by the prisoners – whether organizing a prison community, escape, hunger strike or legal challenge – speak to the motives, values and indeed opportunities available to such prisoners for what Habermas (1984) has described as 'communicative action'. Similarly with regard to the prison authorities and their political masters, the ways in which such prisoners are managed – whether through reactive containment, criminalization, managerialism or an amalgam of some or all of these models – are more than a technical exercise of detaining prisoners in secure accommodation. It is an expression also of the motives, values, repertoire of moves and opportunities available to the state involved. Particularly in a context where communicative actions have been largely violent as they have been in the current War on Terror, prisons constitute one of the few spaces available for some form of substantive, non-violent dialogue.

The experiences of South Africa and Northern Ireland are instructive. The recent history of both jurisdictions has been marred by violent civil conflict and both responded to the crisis by incarcerating large numbers of their political opponents. In both cases political prisons became highly charged symbolic locations and sites of resistance. They also served as the locus of an ongoing

strategic dialogue within the armed groups about the efficacy of armed struggle and also, ultimately, of a political negotiation about the peaceful settlement of the conflict. Clearly, political violence cannot be solved from the prisons alone. However, the lesson of these jurisdictions and elsewhere is that demeaning, cruel or inhumane treatment of political detainees can certainly prolong such violence and make it worse.

Selected further reading

McEvoy, K. (2001) *Paramilitary Imprisonment in Northern Ireland: Resistance, Management, and Release*. Oxford: Oxford University Press, is a comprehensive exploration of the management and resistance of political prisoners throughout the Northern Ireland conflict, based on extensive first-hand interviews with staff and prisoners. Buntman, F.L. (2003) *Robben Island and Prisoner Resistance to Apartheid*. Cambridge: Cambridge University Press, is an excellent text describing the experience of political prisoners on Robben Island, South Africa. Rodriguez, D. (2006) *Forced Passages: Imprisoned Radical Intellectuals and the US Prison Regime*. Minneapolis, MN: University of Minnesota Press, is a thoughtful and insightful look at the process of politicization among American prisoners. Rodriguez's analysis draws on material from the 1970s right up to the present. Greenberg, K.J., Dratel, J.L. and Lewis, A. (2005) *The Torture Papers: The Road to Abu Ghraib*. Cambridge: Cambridge University Press, is a collection of official documents and memoranda of the US administration in the initial phase of the War on Terror, vividly illustrating the extent to which derogation from human rights standards was an intentional feature of state policy. A very rare example of a gendered focus on political imprisonment can be found in Corcoran, M. (2006) *Out of Order: The Political Imprisonment of Women in Northern Ireland, 1972–1998*. Cullompton: Willan Publishing.

Acknowledgements

Notes

1 126 S. Ct. 2749 (2006).
2 Michael Von Tangen Page (1998) utilizes the even less elegant phrase of 'politically motivated violent offenders' to describe the same category of prisoners. As discussed above, Amnesty International makes the distinction between advocating for the human rights of such 'politically motivated prisoners' who have used or advocated violence and advocating for the *release* and rights of those it regards as 'prisoners of conscience'.
3 Title 22 of the US Code, at s. 2656(f)(d)(2).
4 124 S. Ct. 2633 at 2641.
5 Interview M.A. Gomez, 12 February 1995.

6 'Government considering improving conditions for ETA prisoners' (27 July 2007) (http://www.typicallyspanish.com/news/publish/article_5587.shtml).

7 *Hamdi* v. *Rumsfeld* 124 S. Ct. 2633, holding that a US citizen held as an enemy combatant should be permitted to contest the basis for his detention before a neutral decision-maker; *Rasul* v. *Bush* (03-334) 542 US 466 (2004), holding that a non-US citizen held in Guantánamo Bay is entitled to bring habeas corpus in a US federal court.

8 Ruling on indefinite detention without trial: *A (FC) and others* v. *Secretary of State for the Home Department* [2004] UKHL 56, Judgment 16 December 2004; ruling on torture evidence: *A and others (FC) and others* v. *Secretary of State for the Home Department (Conjoined Appeals)* [2005] UKHL 71, 8 December 2005.

9 In 1983, 38 IRA prisoners escaped from the Maze Prison, then regarded as the most secure in Western Europe. In a subsequent television interview, Sir James Hennessey, who conducted the inquiry into the escape, remarked: 'I would refer to the Maze prison at that time as rather like Colditz during the War, an impregnable fortress … for these prisoners to have got control of their block, the H 7 block from which 38 escaped, in a matter of 20 minutes was absolutely staggering. For anyone to have achieved that, it must be regarded as a matter for congratulation' (interview, *Unlocking the Maze*, Counterpoint, Ulster Television, broadcast 22 September 1993.

10 Interview with former IRA prisoner, 15 September 1997.

11 Transcript of show available online at http://transcripts.cnn.com/TRANSCRIPTS/0606/12/lol.02.html.

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Part 3

Themes and Debates

Yvonne Jewkes

There are a number of specific themes and issues that have dominated penal debate over the last 20 years or so, and Part 3 reflects on the extent to which they have shaped policy and practice. First, Roy King (Chapter 14) examines security, control and the problems of containment. Like several of the contributions to the Handbook, this chapter highlights some of the conflicting aims of the prison estate, notably the difficulty in reconciling the aim of secure containment with the need to provide stimulating environments in which rehabilitative work can take place. It also echoes earlier chapters in underlining the point that problems that arise in prisons (such as disorder and escapes) do so because of some kind of legitimacy deficit. Taking as his starting point the recommendations made by Mountbatten and Radzinowicz in 1966 and 1968, respectively, which resulted in the security categorization system and policy of dispersal still in use, King charts the changing nature of the high-security estate. He describes how Lord Woolf's characterization of the prison system as needing to balance the needs of security, control and justice was modified to an emphasis on custody, care and justice which, in turn, provoked a reaction in favour of decent but austere regimes under Michael Howard. His discussion also embraces the introduction of small secure units to house inmates considered to pose exceptional control problems, which evolved into close supervision centres (CSCs) – institutions within institutions that are underpinned by philosophies similar to those that provide a rationale for the 'supermax' in the USA. Throughout Chapter 14, King provides comparative examples and, in his concluding thoughts, he endorses the observation made by Kieran McEvoy, Kirsten McConnachie and Ruth Jamieson in Chapter 13 that prison history is marked by a striking number of continuities and parallels and that, when one 'exceptional' set of circumstances ends, another will surely follow. In the penal landscape of today, special units originally built to accommodate paramilitary prisoners from Northern Ireland have been spared redundancy by legislation that constructs individuals diagnosed with dangerous and severe personality disorder (DSPD) and those confined under anti-terrorist initiatives as 'exceptional risk' prisoners.

As if the issues already covered in this volume were not controversial enough, one of the most contentious debates of recent years has concerned the privatization of prisons and penal services. James Mehigan and Abigail Rowe (Chapter 15) discuss the many forms of 'contracting out' that characterize the current prison system, focusing on questions of cost, efficiency, quality and legitimacy. Debates about the pros and cons of privatization show no sign of abating, especially in the UK where the government has declared that no new prison building will be funded by the state for the foreseeable future, and that prisons will be subjected to 'contestability' which has not only introduced routine market testing for prisons and created wider opportunities for contracting out ancillary services but has also seen some private prisons being forcibly returned to the public sector. As Mehigan and Rowe point out, there is nothing intrinsically novel about making a profit from imprisonment; in fact, private enterprise can be traced back to the gaols of the Middle Ages. As a consequence, the ethical implications of an industry that requires prisoner numbers to rise in order to be commercially viable have been a concern of many criminologists and penologists whose work is reviewed in this chapter. However, very recent years have seen a massive growth in the size and power of private corrections companies and, in mapping the terrain of global corporate interests in the prison industry, Mehigan and Rowe sound a particular note of caution regarding the possibilities for multinational companies to expand their businesses in the developing world.

The following three chapters offer overviews of three of the most pressing problems facing the prison system: healthcare, drugs, and suicide and self-harm. Jane Senior and Jenny Shaw (Chapter 16) introduce us to the origins and development of prison healthcare, and to recent developments which include partnership between the Prison Service and the NHS. Senior and Shaw highlight some of the physical and mental disorders most commonly suffered by those in prison, noting that the combination of pre-prison lifestyles which are frequently chaotic and characterized by high levels of smoking and narcotic abuse, and custodial sentences in prisons that are not always adequately resourced, results in high levels of ill-health and psychiatric morbidity. Concerns about the suitability of prison for individuals with healthcare needs – particularly those suffering from mental illness – have been raised since the mid-nineteenth century when the first special provisions were made for 'criminal lunatics'. While it unarguably remains the case that prison is no place for someone with mental health problems, some progress has been made in recent years in healthcare delivery. Senior and Shaw chart the major improvements in treating patients in prison, transferring them from prison to hospital when necessary, and providing support for them on release. They also note, however, that there is much progress still to be made in all these areas and that the standards of healthcare experienced by many individuals in prison would be regarded as totally – and sometimes dangerously – unacceptable in the wider community.

Michael Wheatley (Chapter 17) takes up one of the themes of the previous chapter to explore in more detail. The well documented role of drugs in offending behaviour makes it hardly surprising that drugs are prevalent in prison; in fact, they are arguably one of its defining features. Wheatley

provides an overview of the problem, focusing on the kinds of drugs most commonly used in confinement, the causes of and motives for drug misuse, and policy responses to the supply and circulation of drugs in prison. He criticizes the 'one-size-fits-all' approach to drug treatment in prisons and, like Senior and Shaw in the previous chapter, concludes that effective links between prison healthcare and community aftercare are vital components of an effective treatment programme for offenders.

The previous two chapters highlight the extent to which the distress that can accompany a period of imprisonment may aggravate an individual's pre-existing vulnerabilities. As many of the chapters throughout Parts 2 and 3 of this volume have illustrated, feelings of fear and isolation are common among prisoners, many of whom have led pre-prison existences which increase their susceptibility to anxiety and trauma inside. While a variety of coping and adaptation strategies may be adopted in order to ameliorate a sense of vulnerability, many prisoners simply fail to cope and, in extreme cases, resort to suicide. Alison Liebling (Chapter 18) has devoted much of her professional life to researching suicide and self-harm in prisons and here she offers a review of current literature on the subject and discusses the findings of her own most recent study exploring causes and prevention of suicide in local prisons. She discusses the demographic characteristics of those who attempt suicide in prison and emphasizes that the common life events which typify suicide in the wider community are disproportionately experienced by those in prison. Moreover, suicides in prison overwhelmingly occur at the earliest stages of confinement and disproportionately occur among prisoners on remand. Thanks to increased resources and policy directives, underpinned by research like that carried out by Liebling and her colleagues, there has been – for the first time in a decade – a downward turn in prison suicide rates from 95 in 2004 to 78 in 2005. The trend has continued with 67 self-inflicted adult deaths in 2006.

Given the austere and dehumanizing aspects of imprisonment highlighted in Part 3 and throughout this volume, it seems surprising that many people hold on to the idea that prisons are a soft option for offenders. Yvonne Jewkes (Chapter 19) explores the role of the media in informing public ideas and opinions concerning prisons, discussing the impact of what the media choose to report (and how they report it), but also what they omit or ignore. She suggests that public understanding of what imprisonment entails is highly skewed due to simplistic and partial media coverage, and that the issues covered in Parts 2 and 3 of this volume – including security lapses, racism, drug addiction, mental illness, assaults and deaths in custody – are among those that remain relatively neglected by the mainstream media. Meanwhile, stories which appear to illustrate that prisoners enjoy privileges they do not 'deserve' are sensationally reported. Jewkes suggests that the public are distanced from the reality of what is happening in prisons by a process of media construction which homogenizes and demonizes offenders and sanitizes the lived experience of incarceration. Far from offering a form of public accountability, then, the popular media actually serve to legitimate the growth in prison numbers, the appalling conditions in which many prisoners are held and the unacceptable numbers of men, women and children who

continue to take their own lives while in custody. At the same time, they keep alive the nineteenth-century doctrine of 'less eligibility' by reporting in tones of scorn and derision initiatives such as access to televisions and computers which normalize the prison environment. Jewkes considers this debate, charting the controversy that characterized the introduction of television sets for prisoners' personal use in the 1990s, and the similar brouhaha that now accompanies debates about prisoners' access to email and the Internet. She concludes that, until these technologies are routinely available to prisoners, a level of disconnection exists between prison and society that magnifies the physical and material aspects of their social exclusion.

Chapter 14

Security, control and the problems of containment

Roy D. King

Prisons which fail to keep prisoners inside the walls are a contradiction in terms and manifestly fail to protect the public. Likewise, prisons which are out of control may present threats to the lives of staff, although riots often pose a greater threat to prisoners either at the hand of other prisoners (as at Santa Fe), or by the authorities in the process of regaining control (as at Attica or Carandiru). Thankfully, events such as those at Carandiru in São Paulo, where 111 prisoners were shot by the military police in 1992 in the aftermath of a riot, are not likely to happen in the UK.[1] It is not that difficult to run prisons that are virtually escape proof, though it is very expensive. It is not that difficult to run prisons which minimize opportunities for riot and mayhem, though they also tend to reduce opportunities for everything else to a minimum, and they may infringe human rights. It is very difficult indeed to run prisons which are more or less escape proof, orderly and safe, which provide programmes aimed at changing offending behaviour and offering prospects of rehabilitation, and which respect the human rights of staff and prisoners. Such are the problems of containment I have in mind in the title of this chapter. It is a question of reconciling conflicting aims, of holding things in balance.

The chapter falls into three parts. In the first part I trace the history of security and control problems and the policies to deal with them up until the Strangeways riot in 1990. In the second, I deal with the Woolf Report and the developments in security and control since then. In a handbook that attempts to be definitive about prisons – a world not known for long institutional memories – it may be helpful to get as clear a picture as we can of the often repeating themes. In both parts I try to move back and forth between prisons policy and prisons research, albeit – as I was one of several academics close to some of these areas of policy – in an inevitably subjective take on that history. In a third and final section, I attempt to draw some conclusions.

Before Woolf

The immediate background to the Woolf Report (Home Office 1991a) involved a history of disturbance which had largely, though not exclusively, been confined to the so-called maximum-security dispersal prisons. However, dispersal prisons had been developed in the immediate aftermath of public concerns, not about riots, but about escapes. They were established following the recommendation of the Radzinowicz subcommittee of the Advisory Council on the Penal System (ACPS 1968) that high-escape-risk (so-called Category A) prisoners should be dispersed among (para. 62), and occasionally transferred between (para. 154), a number of specially strengthened existing prisons where they would be housed among lower-risk (Category B, C and even D) prisoners and subject to the now rather infamous 'liberal regime within a secure perimeter' (para. 48). For those prisoners – and Radzinowicz saw this very much in terms of 'a few evil and unscrupulous men' (para. 40) – who did not respond to the regime, there was to be the creation of segregation units in each dispersal prison to deal with troublemakers (para. 164).

This approach was preferred to the solution proposed by Lord Mountbatten (Home Office 1966) of a new, purpose-built high-security facility in which the highest-escape-risk prisoners – those whom he had described as Category A in a system of security categorization which the service immediately adopted – would be concentrated. Mountbatten envisaged that the prison would hold no more than 120 prisoners, but if and when the numbers of Category A prisoners justified it, a second such prison should be provided (para. 214). Mountbatten's report had been prompted by the spectacular escapes of 'great train robbers', Ronnie Biggs and Charles Wilson, from Wandsworth and Birmingham respectively, and Frank Mitchell, known to the press as the 'mad axeman' because of his weapon of choice and the fact that he had been housed in special hospitals before being returned to the prison system, from a works party at Dartmoor. But the final trigger was the escape from Wormwood Scrubs of the spy, George Blake, while serving the then longest sentence imposed by a British court of 42 years. Incidentally it is worth noting, given what will be said later about the management of difficult prisoners, that Mountbatten records that Mitchell was flogged in 1954 for attacking two prison officers in Pentonville and birched for slashing another officer with a home-made knife during an abortive escape attempt in 1962. In Dartmoor the governor had been advised by the Chief Director to 'steer a course between excessive hectoring and a general demonstration of the power of authority on the one hand, and servile pampering on the other' when handling Mitchell (para. 129). These escapes provided a wake-up call to the Prison Department whose panicked response had involved the creation of special security wings in Parkhurst, Leicester and Durham, which Mountbatten condemned (para. 212).

However, the concentration solution was rejected by the Radzinowicz subcommittee on a multiplicity of grounds, some of them ill-founded. Much of the Radzinowicz case against concentration was directed at the specific Home Office design for Mountbatten's prison rather than the concept of concentration as such. Significantly, Radzinowicz also argued, in perhaps the

first formal conflation of security and control issues, that the high-security prisoners housed there would regard themselves as being at the end of the road with nothing to lose and would pose such unmanageable control problems that it would be impossible to recruit staff. His solution was predicated upon that questionable diagnosis. In truth, there was not much research evidence about this either way. Donald West had carried out a quick analysis of the 138 Category A prisoners for the Radzinowicz subcommittee, a brief account of which is given in Appendix C to their report (ACPS 1968). He did not separate out escapers from control problems but reported that there was some evidence that among the 'majority of violent thieves and robbers, the more persistent and professional criminals tended to be the most difficult to control from the point of view of escape attempts, disciplinary infractions, and violence against prison officers' (1968: 92). Even in the body of the report it is only suggested that there were 24 of the identified Category A prisoners who were particularly troublesome and who had assaulted staff and, of those, 16 had also been involved in escape attempts. In any event the subcommittee's solution was to dilute the anticipated control problem by dispersing these prisoners. True, this would mean increasing security in a number of prisons, but Radzinowicz argued that the co-efficient of security needed to be raised throughout the prison estate. Once adopted, the policy guaranteed that a substantial number of prisoners would be held in expensive conditions of security higher than they needed, and it introduced ambiguity into the security categorization process by undermining the logical link between the identified security risks of prisoners and the security conditions of the prisons in which they were held. In time this led to the confusion whereby some Category B prisoners were nevertheless said to 'need' dispersal conditions on control grounds.

Although Radzinowicz's solution was greeted as liberal and humane, whereas the Mountbatten proposal had been painted as oppressive, in retrospect it is possible to see that the two reports were not so very different except in regard to the profoundly consequential policy choice of concentration versus dispersal. They certainly did not come from radically different discourses on punishment. Mountbatten also spoke persuasively, if briefly, in favour of liberal regimes within a secure perimeter (Home Office 1966: para. 14) and did not wish to see his recommendations undermining the rehabilitative thrust of prisons policy. He advocated a precise solution to a clearly identified problem, leaving the rest of the system untouched. Radzinowicz, on the other hand, explicitly wished to embed 'the custodial aspect … as an integral part of the service as a whole' (ACPS 1968: para. 37). And it is sometimes forgotten that Radzinowicz recommended observation towers (para. 53) manned by armed guards (para 61), neither of which were adopted, and the last of which Mountbatten had considered and rejected on human rights grounds.

The dispersal system began, effectively, when some of those 138 Category A prisoners were taken from temporary special wings and dispersed to Parkhurst, Wakefield and Wormwood Scrubs. Gartree and Hull were added in 1969 and Albany in 1970. As things turned out, the Prison Service, which had not hitherto had a significant problem of maintaining order and control within

its prisons, quickly found that the dispersal system was beset with control problems. Riots at Parkhurst in 1969, Albany in 1971 and 1972, and Gartree in 1972 led to a major tightening-up of regimes, a reduction in the numbers of Category C and the elimination of Category D prisoners from dispersals. At the request of the Home Secretary, Robert Carr, dispersal policy was reviewed by a working party under then Director General William Cox (Home Office 1973) which acknowledged the gap between the rhetoric of Radzinowicz and the problems of implementation on the ground. It nevertheless advocated both a major extension of the dispersal system, from six to nine prisons by adding Long Lartin, Full Sutton and Frankland to dilute the control problem further by spreading prisoners in the highest-security category more thinly (*Hansard,* Vol. 856, cols. 215–6), and the establishment of the notorious 'control units' at Wakefield and Wormwood Scrubs (Home Office 1974 cited in Fitzgerald and Sim 1979). Far from solving the problem, the control units provoked a storm of protest and some litigation. They were based on a period of 23 hours' lockdown in Stage 1, followed by Stage 2 in which prisoners were allowed limited association. In a system likened to a game of 'snakes and ladders', widely used in the USA and open to the abuse of discretion by staff, prisoners could return to normal location if they behaved well for 180 days, but could be sent back to the beginning of Stage 1 if they failed to co-operate at any time. It subsequently became clear, when the then non-independent Chief Inspector of the Prison Service provided what was generally viewed as a somewhat 'whitewashed' account of the riot at Hull Prison in 1976, that one control unit was never used and the other was soon discontinued (Fowler 1977: app. 15).

Once again there was little research evidence about these matters at that time, although King and Elliott (1977) provided a detailed critique of the dispersal policy based in part on their research in Albany, which was transformed from what the governor described 'as a caravan in a meadow' to what the press called the 'jail of fear' as it changed from a Category C prison to a dispersal prison. Depressingly, most of the mistakes associated with commissioning a new prison which were described in some detail for Albany were repeated decades later in the commissioning of Whitemoor and Full Sutton (Drake 2007). King and Elliott provided evidence that the control problems experienced in Albany arose precisely because of the mixing of prisoners from all security categories within a relaxed regime. Many of the 'top men' in security terms were mainly concerned to 'do their own time', but there were others, not necessarily from the highest-security risks, who were prepared to subvert the regime and still others, often young Category C prisoners, who were happy to act as enforcers. This was not, however, the 'toxic mix' beloved of official report writers. King and Elliott showed that prisoners adapted in different ways to the environment around them, as did staff. Both staff and prisoners had a vested interest in good order. Most staff were interested in doing their jobs, making their careers or were interested in the humanitarian aspects of their job. Many prisoners wanted to do their own time quietly, get an education and so on. However, as the regime tightened up there were fewer opportunities for both staff and prisoners to pursue legitimate and constructive activities, thus provoking some into more confrontational

stances. King and Elliott recommended a return to concentration for security risks and the development of a control classification for prisoners based on what they called their 'subversive-enforcement quotient'. Once so classified the policy implication would simply be to separate the groups without any automatic assumption that they should experience deprivations of regime. None of this had much impact at the time.

Dispersal policy was reviewed again in 1978–9 by the May Committee (Home Office 1979a) which was prompted by an arcane dispute between the Prison Officers Association (POA) and the Home Office. By this time, it was a moot point as to who was most out of control: prisoners, since incidents of collective disorder continued unabated, or the local branches of the POA which orchestrated 114 separate industrial actions in 60 establishments in the year before the inquiry was established (Home Office 1979b; Evidence, Vol. II, Paper IIE2, para. 8). Just as it is important to provide some sociological understanding of prisoner-led disruptions, so should staff industrial relations be put into a wider context (see King 1982). How prison officers actually behave and their potential impact on good order has been a neglected topic but is now receiving more attention (King and Elliott 1977; Liebling and Price 2001). The report of the May Committee (Home Office 1979a) did not resolve the industrial relations problem. Indeed, it was not until several years later, when Fresh Start created a salaried rather than an hourly paid service dependent on overtime, that any inroads were made into what were called the 'Spanish practices' of the POA. But it was the threat of market testing prisons against private competitors which eventually gave managers more control.

As far as the dispersal policy was concerned, the May Committee commissioned a paper by the Home Office (1979b: Evidence, Vol. II, Paper III (9)) to answer the charge that dispersal policy kept far too many prisoners in conditions of security higher than they needed. Although the committee agreed that the Prison Service had not 'struck the right security balance', nor convincingly answered the question of who needs to be in dispersal prisons (Home Office 1979a: para. 6.70), the May Committee concluded 'that in present operational conditions' they did not justify either a partial or total reversal of dispersal policy (para. 6.72) (see Chapter 3, this volume). Those 'present operational conditions' related primarily to concerns about the need to house paramilitary prisoners in a period when 'the troubles' were at their height. Arguably, the Irish troubles exerted the single most powerful influence on the size and shape of the high-security end of the prison system of England and Wales for a quarter of a century.

In the wake of further riots in Albany and Wormwood Scrubs, and changes to the parole rules which adversely affected long-term prisoners, a nervous Prison Department established the Control Review Committee (CRC) to consider the problem of order in prisons. At that time the dispersal system comprised Hull, Parkhurst, Wakefield, Wormwood Scrubs D Hall, Albany, Gartree, Long Lartin and Frankland, plus the special security wing at Leicester. The CRC noted what 'a very expensive business' it was 'to run eight prisons at the highest possible level of security' and, while it acknowledged that dispersal prisons had been successful at preventing escapes, it also pointed

out that riots at five of the prisons had cost millions of pounds in structural damage and far more in terms of the morale and confidence of staff (Home Office 1984: para. 8). Among its recommendations were the need for the more objective categorization and central allocation of prisoners; sentence planning with individual programming; a clearer system of rewards and punishments; and the provision of a number of special small units for the most difficult-to-manage prisoners which would not resemble the infamous control units of a decade earlier. The CRC also looked forward to the 'end of the dispersal system in its present style, which applies such a very high and expensive level of security to so many prisoners and so many prisons' (Home Office 1984: para. 132). What enabled the CRC to envisage its end was the recognition of the possibilities of 'new generation' architecture of the kind it had seen at the Minnesota Correctional Facility Oak Park Heights which opened a year or so earlier and whose design and operational policies it largely embraced (see Chapter 8, this volume):

> On the face of it these designs avoid many of the dangers that led the Radzinowicz and May Committees to advise against a policy of concentration. We think that our requirement for very high-security accommodation is unlikely to be more than 300–400, and it would appear that if 'new generation' prison designs are indeed successful this number could be held in two small prisons of the new kind without incurring the disadvantages that we have noted as being inherent in dispersal policy. We therefore recommend that these possibilities are urgently examined (Home Office 1984: para. 20).

The new-generation design concept was duly examined by another working party which concluded that 'Oak Park Heights … offers a valuable model of the application of new generation concepts to a maximum security establishment' (Home Office 1985: 93).

Although the CRC's hope that the dispersal system would be replaced by a small number of new-generation prisons did not come to fruition, its report marked the end of expansion and the beginning of consolidation into what eventually was to become a more compact high-security estate. This was the more interesting because there were further embarrassing escapes to come. On 10 December 1987, Kendall and Draper escaped by helicopter from Gartree – the first successful escape by Category A prisoners from a dispersal prison.[2] The subsequent internal inquiry was a low-key affair and not published, although it led to the introduction of subclassifications of Category A into *exceptional risk, high risk* and *standard risk*. In July 1991, when McAuley and Quinlivan (who were on remand accused of terrorist offences) escaped from Brixton where they were held in provisional Category A, it was a different matter.[3] They used a handgun smuggled into the prison inside a training shoe, and two inquiries were carried out – one by the Chief Inspector of Prisons into the escape itself (Home Office 1991b) and a more general audit of Category A security by an assessor for the Woolf Report, and the Chief Constable of the West Midlands. Hadfield and Lakes (1991: paras. 59–60) recommended the use of the exceptional risk subcategory in appropriate

cases for remand prisoners even if it meant housing them with convicted prisoners and in a less convenient location. They also made clear that *only* those prisoners now classified as *exceptional risk* met the original Mountbatten criteria and recommended that prisoners placed in Category A as *standard risks solely on the basis of their offence and without reference to escape-related criteria* should henceforth be classified as Category B (paras. 53–8).

The most immediate impact of the CRC was in marking out a new direction for dealing with so-called control problem prisoners through a series of small units. The CRC proposed that, in addition to re-establishing C Wing at Parkhurst (para. 62), which had earned a considerable reputation for dealing with highly mentally disturbed prisoners before it was closed following riots elsewhere in the prison in 1979, and some special high-security cells in Wakefield (para. 63) for prisoners who had killed in prison, there should be a number of small units which would offer a variety of regimes for different types of prisoner who posed control problems of varying kinds. None of these CRC small units was to be punitive in intent nor a place of 'last resort', but they were conceived as places of containment, ideally with a route back into the mainstream that avoided the periodic transfer to segregation units elsewhere for a 28-day 'cooling off' period under *Circular Instruction* 10/74. Moreover, there would be central oversight of the system, including central selection of prisoners, and a programme of research to evaluate the effectiveness of the units. Above all, the CRC publicly recognized that 'difficult behaviour is a function of many things in addition to the prisoner's own character' and that 'a man who presents intractable control problems in one establishment may be little or no trouble in another' (para. 44). For the first time in an official document there was an attempt to break from the idea that prison riots and disturbances were simply down to 'evil men', 'rotten apples' or the 'toxic mix' of prisoners. There was also the beginning of a recognition that there was no necessary connection between escape risks and control problems, and thus that security and control could be analysed separately. Oversight of the research programme and advice on the small unit strategy was entrusted to RAG – the Research and Advisory Group.[4]

Antony Langdon, chair of the CRC, cut through the access problem to permit King and McDermott's ESRC-funded research to go ahead on the relationship between security, control and humane containment. On the advice of RAG, important research was to be carried out in Long Lartin and Albany in an attempt to discover why the former had remained apparently trouble free while the latter had more than its fair share of problems (Sparks *et al*. 1996) and the CRC units themselves were to be evaluated (Bottomley *et al*. 1994; Bottomley 1995). Meanwhile, the Home Office conducted in-house research which attempted to identify control problem prisoners in dispersal prisons (Williams and Longley 1987). It is in the nature of things that research takes time to complete and publish, whereas policy decisions sometimes cannot wait. Even so, sometimes research findings are an unconscionably long time in coming. The comparative study of Albany and Long Lartin by Sparks *et al*. was commissioned in the mid-1980s but not fully published until 1996, although there were a number of interim papers (Bottoms *et al*. 1990; Bottoms 1992). King's work on Oak Park Heights was conducted in 1983–4 but he

waited until real comparative data from his work with McDermott in Gartree were available before full publication in 1991, although interim findings were presented at a Cropwood conference in 1986 and were discussed with Anthony Langdon and Ian Dunbar during the deliberations of the CRC.

At that Cropwood conference, King noted that, in the USA, high-security prisons were driven by issues of control rather than security, because to a considerable degree escapes were factored out by armed perimeter guards. He articulated his emerging conclusion that both the policy of dispersing *security* risks in England and Wales and the concentration of *control* problems in the USA were wrongly conceived.[5] He argued that better policies would concentrate security risks – as Mountbatten advocated, but within a 'new generation' model – and to disperse those few control problem prisoners, in situations where institutions could no longer 'consume their own smoke', to small units as advocated by the CRC. Bottoms and Light (1987: 21–4), in their impressive summary of the discussions, were surprised that this was never debated although they suggested that the question of to what extent the security and control problems overlapped in practice would need to be resolved before too much policy reliance be placed on the distinction between 'security risk' and 'control problem'. But there should be no major problem arising from the points raised by Bottoms and Light because the distinction between security risk and control problem is an *analytical* one. It has always been recognized that some prisoners are security risks only, some are control problems only and some are both a security risk and a control problem. For those who fitted into both categories the question then becomes which 'solution' should take precedence. The answers were probably not clear in 1987, though I think they are now and I will come back to this in my conclusions.

It would be misleading to pretend that the CRC units provided the answer to control problems. The full range of units was never established. Parkhurst C Wing was reopened in 1985 for prisoners with mental health problems but who were not suitable for transfer to special hospitals; Lincoln, opened in 1987, was intended to provide a 'structured' (a euphemism for 'very carefully controlled') regime for those not amenable to more constructive interventions; and Hull, which opened in 1988, provided some psychological counselling and social learning. Woodhill replaced Lincoln in 1993. A planned unit with more specialist psychological interventions never came to fruition, and a much discussed unit that might resemble the famous Barlinnie unit in Scotland but with clearer lines of responsibility never got much beyond the discussion stage. The CRC units for the most part did a reasonably good job with the small numbers of prisoners they dealt with, but they were seen as remote and almost irrelevant by dispersal prison governors who relied heavily on the use of Circular Instruction 10/74 and subsequently its replacement 37/90 to transfer prisoners who were either too difficult for the CRC units to manage or else did not meet the criteria. The system of transfers, which the CRC had hoped to avoid, became more widespread and centrally managed under Circular Instruction 28/93 and was described officially and euphemistically as the Continuous Assessment Scheme. It was, however, known to everyone else as the merry-go-round or 'magic roundabout' since it effectively rotated

the most intractable prisoners from segregation unit to segregation unit as dispersal prison governors took turns to share out what they thought of as the burden of disruptive misery. However, the operation and evaluation of the CRC units did provide a valuable learning experience and one from which, to its great credit, the Prison Service actually learnt a great deal (Bottomley *et al*. 1994; Bottomley 1995).

If the Prison Service was slow to learn painful lessons about security and control and the desirability of throwing good money after bad, some 20 years of attending to problems of security and control had taken its toll elsewhere. In the USA, Martinson (1974) had wondered *What Works?*, but his paper was interpreted as saying that nothing works, rather than nothing seems to work much better than anything else. That conclusion was endorsed in the UK by a Home Office Research Study (Brody 1976). The May Committee had rejected the idea of humane containment as the goal of imprisonment in favour of their notion of positive custody, and academics were divided between those such as King and Morgan (1980) for whom the achievement of the modest goal of humane containment was worth while in itself, and who feared an Attica or Santa Fe in the UK if it were not achieved (p. 210), and those academics (Bottoms 1990), officials (Dunbar 1985) and reformers (Stern 1987) for whom it was ontologically insufficient. It would be dangerous to take too much from American experiences of prison riots, and certainly from methods of putting them down. At Attica in 1970 a riot quickly became organized around a series of complaints that had to do with injustices heightened by an awareness of the civil rights movement among a primarily black prison population guarded by white staff from up-state New York. After protracted and public negotiations involving celebrity lawyers, the state police were called in to end the insurrection and 39 prisoners were killed by gunfire in what was described as the bloodiest one-day encounter between Americans since the Civil War. Four other prisoners also died from other causes (see New York Special Commission on Attica 1972; Wicker 1975). Ten years later, prisoners at the New Mexico Penitentiary, Santa Fe, high on home brew, took staff hostages, gained access to the control centre and equipment including blow torches, and tortured and killed 33 fellow prisoners, many of them from the protective custody unit who were believed to be 'snitches'. Over 200 other prisoners and 7 of the 12 staff hostages received serious injuries. Most prisoners eventually gave themselves up and, after the release of the hostages, the prison was retaken without resistance. Although according to Colvin (1992), whose account is disputed by some prisoners, the riot was not planned nor organized as a protest, among the many 'causes' were complaints about prison conditions, including overcrowding and the removal of educational and other programmes, on the one hand, and inconsistencies in the application of policies as 'accommodation' gave way to stricter enforcement with changes of administration, on the other.

What became alarmingly clear in the late 1980s was that prison regimes in England and Wales had woefully deteriorated over the period 1970–87. The research evidence for this was based on data comparing five representative prisons in the 1980s with a similar group of five prisons 15 years earlier (King and McDermott 1989). Prisoners now spent dramatically less time out

of cells and far fewer hours in work, and in these and other respects the regime in dispersal and Category B training prisons had deteriorated to the level of what had been offered in local prisons in 1970. This was despite huge increases in staffing, which suggested that new investment had been largely absorbed by security and control considerations which had been exploited by the POA, who insisted that every individual task be evaluated in terms of the extra staff needed to carry it out securely. In truth there had been some strong indications of the deterioration of regimes on the ground if only sufficient attention had been paid to them. Between 1986 and 1989 there were riots in many low-security establishments (Home Office 1987) and in Risley Remand Centre which resulted in comparatively low-key internal investigations. Reports on these events referred to inadequate regimes and strained relationships between staff and prisoners as possible contributory factors. King and McDermott (1989) feared that, if a repeat study were conducted in another 15 years, the regime in low-security prisons would also have been reduced to the level of local prisons.

Despite this recent history of disturbances in low-security prisons, young offender establishments and remand centres, until 1990 it had still been possible to think that the most serious prison disturbances and riots took place in the high-security estate and had to do with intractable problems of dealing with escape-risk and control-problem prisoners. When the large urban local prison at Manchester, known to all as Strangeways, erupted on 1 April 1990 into what became a 25-day siege[6] – during which riots spread to five other institutions, none of which was part of the high-security estate – it became clear that the issue was much wider than that and had to do with a far more general malaise about the way in which all prisoners were treated as the coefficient of security had been raised.

The Woolf Report and after

Lord Woolf's inquiry into the prison disturbances at Manchester and elsewhere was unique. It was allowed to interpret its terms of reference widely, it pursued a remarkably open methodology and, unlike the May Committee a decade or so earlier, two of its three assessors possessed unrivalled expert and detailed knowledge of the prison system. Home Office officials were allowed to speak in their personal capacities, and fears that either the POA or the various penal reform groups would take the opportunity for grandstanding proved groundless. There was an abundance of scientific evidence that had accumulated from members of the academic community, including evidence about what happened in the USA, what was currently happening in the dispersal system and in the CRC units, as well as more generally in prisons of different security levels, and on specific issues such as women in prison and race relations (Genders and Player 1987, 1989) and suicides in custody (Liebling 1992), to select just a few. Moreover, the informal exchange of views between academics and senior members of the Prison Service that took place after the May Committee had now become formalized since the CRC opened the system up to external advice. As a result there was a genuinely high degree

of consensus in the evidence submitted, upon which Woolf and his assessors could build their own analysis. Not surprisingly when Woolf published his report it was received, in most quarters, with considerable praise.

At the heart of Woolf's analysis was the recognition that the key requirement for stability and order in the prisons was that security, control and justice should be held in a proper balance. Woolf was fully cognizant that security was necessary to prevent escapes and that it should be proportionate to the risk. He was no less committed to the need to have proper measures in place for the maintenance of control in the hands of the proper authorities. But he was also sure that neither of these legitimate objectives should be pursued to the extent that they impinged upon the rights of prisoners to be treated with humanity and fairness and with proper access to justice. His far-reaching recommendations ranged from closer co-operation across the criminal justice system, through more visible and accountable leadership of the service, increased delegated responsibility to governors and an enhanced role for prison officers, to nationally accredited and legally enforceable standards and a new Prison Rule to prevent establishments from exceeding their certified normal accommodation (CNA) without informing Parliament. Woolf also recommended that there should be 'compacts' or 'contracts' setting out prisoners' legitimate expectations and their responsibilities; a public commitment to provide integral sanitation; a system of community prisons to ensure better links with families; the division of prisons into smaller more manageable units; special arrangements for remand prisoners; and sweeping changes to the system of justice, abolishing the adjudicatory functions of Boards of Visitors, leaving the governor to deal with lesser offences and the criminal courts to deal with the more serious. He also required that prisoners be given reasons for decisions that affected them (see Chapter 3, this volume).

Much of what Woolf had to say about the importance of justice in prisons could be captured by the everyday notion of 'fairness'. This had been central to several of the ongoing or recently completed research studies. In King and McDermott's (1995) prisons, and King's (1991) comparison of Gartree and Oak Park Heights, prisoners liked to 'know where they stood' and prized fairness and consistency in the way in which they were treated by staff. The subject of consistency and discretion in the application of rules and the extent to which prisoners perceived them as fair or otherwise was studied in much greater depth in the conceptually sophisticated study of Albany and Long Lartin by Sparks *et al*. (1996) and found to be central to whether regimes were regarded as legitimate. Following Beetham, they took the concept of legitimacy beyond the traditional Weberian understanding of that concept based simply on *belief* to include the notion that legitimate regimes have to be morally *justifiable.* Intriguingly, their study did not uphold the easy conclusion that the CRC might have expected: that somehow Long Lartin, having been free of riots throughout its history, would have some replicable formula for success and be regarded as 'good' by staff and prisoners, whereas study of Albany, with its history of repeated riots, would reveal some identifiable features to avoid that would be regarded as 'bad' by staff and prisoners. It was simply not like that. Whereas by the time of their research Albany had adopted a fairly rigid 'situational' approach to maintain order, essentially by reducing opportunities

for disorder, Long Lartin adopted a more 'social' approach, developing a more relaxed climate based on interpersonal relationships. Although Long Lartin was popular with prisoners and Albany was unpopular, in fact there were hidden benefits at Albany and problems just below the surface at Long Lartin. Neither regime was fully successful in establishing its legitimacy.

As they indicated in their substantial evidence to Woolf (Sparks *et al*. 1996: app. B), elements of both approaches were probably essential. This dichotomy between situational and social approaches to the maintenance of order is borrowed essentially from the literature on policing but is mirrored in other prison studies. In Scotland, King (1994) referred to what he called the 'Peterhead tendency' and the 'Barlinnie tendency' to describe the extreme positions on these dimensions. And in the USA, King (1991) showed that the success of Oak Park Heights is a product both of its design, which minimizes opportunities for disorder, and administrative policies that stress personal interaction between staff and prisoners (what Dunbar has coined 'dynamic security'; 1985).

Woolf saw his recommendations as general signposts pointing the way ahead, but he also provided a host of additional proposals for consideration. Among them, he noted that the three CRC special units at Hull, Parkhurst and Lincoln had had 'limited relevance' to the running of the dispersal prisons (Home Office 1991a: para. 12.287) but accepted the case for special units, including the 'more structured' regime proposed for a new unit at Woodhill, providing that these, especially the latter, were used sparingly. Woolf also proposed, in the light of some of the findings and recommendations already mentioned, that the Prison Service 'should consider earmarking at least one new generation prison for dispersal prisoners including those who would probably now be housed in Special Units' (paras. 12.297–12.305).

On the day Woolf's report was published, Home Secretary, Kenneth Baker, appeared to trump the recommendations by immediately agreeing to an end to slopping out by 1994 – more than a year earlier than Woolf had asked for. Notwithstanding that, many commentators were surprised when Baker's subsequent white paper, with its formulation of custody, *care* and justice, in some respects improved on Woolf's own formula of security, *control* and justice, although some were concerned that, without a clear timetable and commitment of resources, the white paper would remain aspirational. It is true that the white paper had to take account of recommendations following the Brixton escape, and so it was not surprising that security remained at the forefront – but the white paper nevertheless embraced the essence of Woolf's proposals. And the Criminal Justice Act that year gave effect to what was called principled sentencing which initially helped to reduce the prison population, despite a refusal by the government to adopt Woolf's proposals for capping prisons at their CNA.

However, the consensus did not last. A new Home Secretary, Ken Clarke, quickly reviewed the implementation of the Criminal Justice Act 1991 and by the time he was replaced by Michael Howard, the prison population had begun to rise. Howard, more than any Home Secretary in history, used the Home Office as a stage for a theatrically populist approach to issues on law and order in which developments in the USA became the touchstone

for policy in England and Wales. Howard's infamous speech to the Tory Party conference in 1993, in which he espoused the view that 'prison works', knowing that this reversed his party's policy and went against all the advice of officials and the evidence from research, dramatically changed the climate. But even Howard had to moderate his rhetoric about 'austere' regimes by acknowledging that they should also be 'decent'.

Opinions vary as to just how far and fast the Woolf agenda was being implemented. Cavadino and Dignan (1997: 118) spoke sceptically of a two-track approach, with the Woolf agenda very much in an under-resourced slow lane compared with the additional security measures. What is undeniable is that the general thrust of Woolf was soon overtaken by the attempted escape from Whitemoor in 1994 and the temporarily successful escape from Parkhurst, in 1995. The Home Secretary, memorably described by his Minister of State as having 'something of the night about him', was seen by some to be protecting his own vulnerable position by seeking the scalp of Derek Lewis, the Director General. Lewis had been the first Director General to be appointed from the private sector when the Prison Service became an agency in the wake of Admiral Lygo's Report (1991) which argued for greater distance between ministers who should set policy, on the one hand, and the agency which was responsible for operations, on the other, thus giving the service 'greater independence from day-to-day ministerial oversight'.[7] Ironic, then, that, in the struggle with Derek Lewis, there was what many took to be substantial ministerial interference in operational matters which destroyed, or at any rate changed, the careers of two prison governors and at least one member of the Prisons Board (Lewis 1997; Resodihardjo 2006).[8]

The Home Secretary commissioned two inquiries, one by Woodcock (1994), an inspector of constabulary, into the attempted escape from Whitemoor, the other by Learmont (1995), a retired quartermaster general, into prison security and the escape from Parkhurst. Their reports reveal a sketchy and superficial understanding of the realities of imprisonment and consequently are of dubious validity – see, for example, the interesting discussion in the conclusion of Sparks *et al.* (1996) about Woodcock's simplistic notion of appeasement – but they have nevertheless had the most profound effect upon the prison system. Perhaps the most important thing to remember about the attempted escape from Whitemoor is that it was unsuccessful. In fact, Woodcock recognized in his ultimately confused and illogical analysis that 'a lot of thought had gone into security procedures such that, *had they been implemented,* there would not have been an escape … and scarcely acknowledges that the last of these *planned* procedures, including coordination with the police, actually worked – albeit outside the perimeter' (King 1995: 65). If the implementation of existing procedures would have been sufficient to prevent the escape one is entitled to ask what need there was for an extensive package of 64 recommendations which ranged from the introduction of X-ray equipment with trained staff and strengthened security procedures for the routine searching of staff and visitors, to the volumetric control of prisoners' property and the more extensive use of CCTV – such as Woodcock proposed. Howard immediately embraced them all and, on 19 December 1994, announced to the House of Commons that he would take them further by increasing perimeter security

and equipping staff with personal alarms. He also announced that he had set up the wider review of security under Learmont. The following day, Lewis confirmed that, for the next year, security was the first, second and third priority. In a notable kite-flying exercise, Philippa Drew, the Prison Service Director of Operations – South, was reported as saying that the Woodcock Inquiry had been 'a missed opportunity' and that it might now be possible to rethink high-security custody, perhaps using Oak Park Heights as a model (*Guardian* 21 December 1994).

When the Learmont Report was published Treasury Minister, William Waldegrave, made it plain in a leaked memorandum to Howard that:

> We are both now having to face up to the consequences of quick decisions having been taken on the Woodcock recommendations without adequate costings … In the circumstances … I will expect you to meet the full costs of any explicit or implicit commitments [to implement Learmont's recommendations] from within your existing provision (*Guardian* 20 October 1995).

Learmont recommended the building of an American-style supermax facility to house all the prisoners then categorized as exceptional and high-risk Category A prisoners. This would sit on top of the existing dispersal estate which would house the standard-risk Category A and Category B prisoners currently in dispersals. He also proposed a second supermax facility as a control prison which would contain disruptive prisoners who were mentally disturbed, those who were housed either in the CRC units or on the continuous assessment scheme, and young, volatile offenders serving short sentences who were disruptive of Category C regimes. While the first of these proposals had some merit in that it revisited Mountbatten and tried to link security risk to security provision, it did so while leaving the whole of the still substantial dispersal system in place. The proposal for a control prison, however, was surprising to say the least. Not only had there been no particularly problematic control situation since the Strangeways riot, but also a concentration policy for such prisoners had never been contemplated in the UK, and to have included Category C prisoners in such an establishment would have been seen by all informed persons as unacceptable overkill.

The Prison Service appointed a working party to consider the feasibility of establishing a supermax facility.[9] Learmont did not visit Oak Park Heights but he did visit the federal replacement for Marion, the administrative segregation facility at Florence in Colorado and other supermaxes. The working party visited both Oak Park Heights and Florence. It quickly decided there was no case for a control prison but that it would be feasible to build a supermax for exceptional and high-risk prisoners, so long as this replaced part of the dispersal estate and was not simply additional to it. However, given that there were then only around 200 exceptional or high-risk prisoners it was not considered cost effective to build such an expensive facility and the working party was prepared to consider a 400-bedded prison half of which would house the various CRC and special unit populations which, because of the new-generation design, could be run as separate regimes. In the event the

working party report got caught up in an electoral planning blight in the twilight months of the Conservative government and by the time it was considered by New Labour it was possible for Richard Tilt, now the Director General who replaced Derek Lewis, to say that there was no longer a need for it. In fact the decision was not made directly on cost grounds but, rather, because implementing Woodcock's recommendations had rendered what was now formally referred to as the high-security estate, escape proof. There had certainly been no further Category A escapes.

The jury is still out, of course, on supermax custody. At least 38 state jurisdictions, plus the Federal Bureau of Prisons, have developed supermax facilities (King 1999) which are used more for control purposes than to prevent escapes, although they certainly serve that purpose as well. Prisoners who are deemed to be a threat to staff, other prisoners or just hard to manage, may be taken out of their existing prison of whatever level of security and transferred to supermax either for fixed periods or indefinitely within the parameters of their court sentence. Many of the prisoners in supermax facilities are extremely dangerous, but few jurisdictions impose central oversight by a committee at the Department of Corrections, so that in some states prisoners from very low-security institutions, including juveniles, find themselves transferred to near complete lockdown in supermax for what might seem to be relatively modest infringements. Because of this, and the extremely impoverished and controlled regime they experience, supermax facilities have very low legitimacy among prisoners or human rights organizations. However, in one landmark decision, a federal district court ruled that Pelican Bay in California did not breach Eighth Amendment constitutional protections so long as it did not contain prisoners who were mentally ill.[10] In a supreme irony, staff find working in such environments as virtually stress free (contrary to the fears expressed in the Radzinowicz Report). Although Ward and Carlson (1995) and Ward and Werlich (2003) provide official accounts which claim some success for the operation of Florence (and its predecessors Marion and Alcatraz) and the relief that supermax gave to the rest of the federal system, Briggs *et al*. 2003 found no evidence of a reduction in violence following the establishment of supermaxes in several states. Elsewhere (King 2005) I have likened the use of supermax confinement to deal with control problems, as in the USA, to the gardener who solves the problem of unwanted weeds in his garden by turning it into a concrete courtyard. There is no doubt that violent or troublesome prisoners can be 'managed' by keeping them in extreme conditions of isolation and lockdown for as long as it takes – but only at considerable cost to human rights and rehabilitation. There is an emerging scientific literature on supermax (Lovell *et al*. 2000; Rhodes 2004; Mears and Reisig 2006; Mears and Watson 2006; King forthcoming), but many questions remain to be answered.

At the same time as the UK working party was deliberating on the feasibility of supermax, another project team under the chairmanship of Michael Spurr was considering the future management of the most difficult prisoners who presented 'control problems'. Spurr recommended that, pending any development on the Learmont supermax front, a new system of close supervision centres (CSCs) should be introduced that would be

more structured and robust than the old CRC units (Prison Service 1996). In a move away from the CRC philosophy which many found worrying, the standard of privileges in the CSCs would always remain below what could be achieved in the dispersal system in order to provide an incentive to progress back to normal location. It would offer a staged system where access to the next stage could be earned by co-operative behaviour. There was something of an American-style 'carrot and stick' approach involved here. American supermax facilities are predicated on a belief that 'bad behaviour gets you in – good behaviour gets you out'. Such thinking had already begun to take root since Howard's arrival in the Home Office and was already embedded in the Incentive and Earned Privileges scheme which was just being rolled out. As Liebling (2001: 143) observes, however, there is a sharp distinction to be made 'between approaches which focus on carrots, in the context of a high threshold quality of life (as in the CRC Report, the Woolf Report, and so on) and an approach emphasizing the "sticks", with a very low or austere threshold provision'.

The new system of CSCs came into being in February 1998. At Woodhill, prisoners entered the system at Level 2 in a unit with a 'structured' regime, on basic privileges and limited time out of cells (B Wing). They could either progress to one of a small number of intervention units, all of which operated on standard privileges, or regress to Level 1, a 'restricted' regime unit (A Wing). The intervention units took different forms. At Level 3, C Wing at Woodhill was described as a Programmes Intervention Centre and offered formal compacts with prisoners to engage in some constructive activities as well as one-to-one sessions with psychologists, preparatory to transfer onwards within the CSC system or a return to the mainstream. Durham G Wing took over from Hull, which closed prematurely in March 1999, as a Level 4 activity-based intervention centre offering cognitive behaviour programmes, while Durham I Wing, also a Level 4 unit, had the specialized role of dealing with prisoners with a history of extremely disturbed behaviour through specialist psychological and psychiatric support. D Wing at Woodhill was intended as a segregation unit for the whole CSC system, and from an early stage there was a small number of high-control cells in some dispersal prisons and core local prisons for prisoners who refused to accept the regime. Selection for the units was done at the CSCs Selection Committee which met regularly to review both existing and potential new cases. Partly mindful, no doubt, that the system had echoes of the old control-unit philosophy, and partly because of a genuine continuing sense of openness, the Prison Service invited a group of independent experts from various fields to form what was initially called the CSC Monitoring Group which met under the chairmanship of the Director of High-security Prisons, though the group evolved into an advisory group with an independent member as chair.[11]

The new CSC system had a troubled early history. Prisoners arriving at the structured regime on B Wing at Woodhill found themselves stripped of privileges they had enjoyed in the dispersal prisons and saw the available incentives as derisory. Since some also regarded their selection as unfair or inappropriate, there was a stand-off which degenerated into assaults on staff and a sustained dirty protest. D Wing, instead of becoming the

segregation unit for the system as a whole, took over the role of dealing with the protesters. While recognizing the problems faced by staff, the research evaluation team concluded that the conditions there could not be described as either 'humane or acceptable' (Clare and Bottomley 2001: 100). Moreover, few activities were actually provided on C Wing, and it proved extremely difficult to maintain that the system was not punitive when A Wing was being operated at levels below those to be found in dispersal segregation units. Things were considerably better in Durham, but staff losses meant that the specialist psychological input was lower than it should have been. In a brief, but characteristically perceptive, appendix to the research evaluation of the CSCs, Sparks (2001) points to the needs for comparative research on a number of enduring questions concerning the handling of difficult prisoners.

During August and September 1999, a thematic inspection of the CSCs was carried out by HM Chief Inspector of Prisons (HMCIP 2000). The inspectorate condemned the regime in D Wing at Woodhill, 'which imposes total and continuing isolation in punishment conditions for unlimited periods' as unacceptable, and quoted the United Nations Body of Principles 1988, the provisions of which were contravened (para. 5.2). It was concerned about the need for a more direct line of control over the use of segregation and the use of 'control and restraint' (C&R), and questioned whether Prison Rule 46 which authorized the use of CSCs, actually extended to the use of high-control cells. It was also critical of the Independent Monitoring Group whose powers it thought should be strengthened.

However, most importantly, the inspectorate challenged the belief that the prisoners exposed to a CSC 'have both the *willingness* and the *ability* to cooperate with its demands over a sustained period, in order to achieve, at best, the equivalent to a standard level of regime, with the final outcome being a return to a dispersal prison, which to many, does not represent an incentive' (2000: 4, emphasis added). The first part of that statement, about the ability to co-operate, was linked to the fact that it was now recognized that some 1,400 prisoners were suffering from dangerous and severe personality disorder (DSPD) and some 60 per cent of those in the CSC system had at some time been referred to a special hospital (see Chapter 25, this volume). Sociologists, of course, have always argued that willingness and ability to co-operate will be dependent upon many other factors besides mental health, and the old CRC had just about been persuaded to hold on to that. In the climate that prevailed some 15 years later it was important to have an official refutation of the attempt to reduce problems of order and control merely to the carrot and the stick. The second part of that statement, about the level of incentives, had to do with the fact that the system was, ostensibly, not a punitive one but was nevertheless perceived, and indeed effectively operated, as a punitive system. This was particularly important in light of the fact that it was now recognized that some prisoners would never be able to return to the mainstream. Putting these considerations together, the inspectorate envisioned a system that combined control with clinical care, according to the *individual* needs of prisoners determined after a thorough mental health assessment, rather than *units* running preconceived regimes. The inspectorate recommended that the use of unlimited segregation in punishment should

stop and that, where segregation was necessary for good order and discipline purposes, this should involve loss of association with other prisoners and not isolation from staff and loss of privileges (para. 5.10).[12] According to the inspectorate, prisoners in the CSCs should keep the full range of property, clothing, hobby and study materials available to dispersal prisoners on basic or standard regime (para. 5.11), and all units should provide as full and stimulating regimes as the level of control allows, with progress being marked by decreasing external control and not by increased privileges (para. 5.9). While the inspectorate acknowledged that by the standards of most prison systems the use of extreme measures of control in England and Wales was sparing (para. 1.3), it looked forward to the time when the system acted as a model for those concerned with developing arrangements for those with DSPD (para. 5.12).

Since then, the CSC system has undergone a number of quite rapid changes, some of which stem directly from the inspectorate's thematic review, such as the development of a more thorough diagnostic period at the point of entry to the system, individual management plans within the units (Adams 2006) and the expansion of psychiatric in-reach, including the employment of community psychiatric nurses (see Chapter 26, this volume). However, these and other changes have also to be seen against a background of developments elsewhere in the prison system. Among these have been the development of offending behaviour programmes accredited by the Joint Prison and Probation Accreditation Panel as part of the crime reduction strategy which had begun to infuse a new sense of limited optimism into the Prison Service, to some degree displacing the 'nothing works' mentality This had produced a variety of intervention programmes, but of particular concern to the CSCs was the decision to implement a violence reduction programme, which was piloted in Woodhill, as part of a wider violence reduction strategy. In 2004, Durham Prison underwent a role change, as a result of which prisoners in I and G Wings had to be transferred. Many of them went to a replacement unit at Whitemoor where the old special security unit, no longer needed for terrorist offenders in the wake of the peace process, had lain empty and was reconfigured for use as a CSC. Another development, foreshadowed in the inspectorate report, was the growing recognition of the problem of what to do with offenders identified as suffering from DSPD, many of whom were already in prison and some in the CSCs. A final element against which the operation of the CSCs has to be seen is the acknowledgement that there needs to be a more comprehensive view of the 'control problem', including what happens in the segregation units of dispersal prisons where there have been several suicides, and where technology and the provision of integral sanitation may have reduced staff–prisoner contacts below acceptable levels.

At the time of writing, the future positioning of CSCs, in the context of wider considerations concerning what happens in segregation units and the management of DSPD prisoners, is uncertain and the CSC Advisory Group has decided to stand down, pending a possible wider role in future. A further report from the Inspectorate is awaited, but there seems little doubt that the history of the CSCs in recent years has been broadly successful. The system is parsimonious and has never involved more than 40 or so prisoners at a time,

compared with the numbers in American supermax which would fill entire prison systems in Europe. Several prisoners have been returned successfully to normal location in dispersals and some to the community. Other prisoners probably look forward to long-term confinement within CSCs or something like them, but without the extreme conditions of either American supermax or the infamous control units. But the very parsimony of the system in terms of numbers of prisoners can look like profligacy in terms of expenditure. However, that may still be cheap compared with the costs following riots on the scale of Strangeways.

Concluding remarks

What, then, are we to make of this history of policy-making and research? I shall try to pick out what I take to be the main conclusions to be drawn. First, it seems abundantly clear that disorder on any significant scale in prisons arises because of some kind of legitimacy deficit. The causes of that deficit may vary and in any particular case there are likely to be many contributory factors as we have seen at Attica and Santa Fe. At Strangeways, among other causes, legitimacy had been undermined by the deterioration of regimes as resources were absorbed by security and control functions, and in B and D Wings in the CSC unit at Woodhill, prisoners felt that their transfer to the unit was unwarranted and entailed the removal of privileges which could not be justified. We are indebted to Sparks *et al.* (1996) for their insistence that for regimes to be legitimate they must be justifiable and, surely, Woolf was right to make so much of the concept of legitimate expectations in his report. Even where legitimate expectations are not met it is probably the case that many a wise prison governor has got him or herself out of a tight spot, at least temporarily, by a careful explanation of why an unsatisfactory situation is as it is (see Chapter 21, this volume).

Secondly, although the prison authorities need to be able to convince prisoners that what is on offer is in some sense justifiable, it is important to recognize that prisoners are not the only audience. Prisons, like other total institutions, have two groups of people whom the authorities have to manage. In non-total institutions the question of legitimacy may form part of the problems normally encapsulated under the heading of industrial relations and we saw at the time of the May Committee how effectively industrial disputes could bring about serious disorder in the prison system. Perhaps more importantly, however, staff as well as prisoners have a vested interest in good order, and staff, too, could withhold legitimacy if the authorities are unable to justify matters to them. There may be no 'one best way' of ensuring that staff and prisoners accept the legitimacy of a prison regime. Sparks *et al.* (1996) demonstrated that different kinds of regimes may be justified to some degree. Albany operated in a reasonably orderly fashion, albeit relying heavily on 'situational control'. Long Lartin also operated in an orderly way but relied on 'social control'. Neither approach was deemed to be fully legitimate. When situational control is taken to extremes, as in Peterhead, or many American supermax facilities, or the CSC unit at Woodhill in its early stages, there will

be a substantial loss of legitimacy. When social control is taken to extremes as at Barlinnie, however, there may be a backlash from staff. Elements of both approaches are nearly always required. One prison, at least as recently as the turn of the millennium, which operated utilizing high levels of social control within a high level of situational control, was Oak Park Heights, and this was regarded as legitimate by a high proportion of both prisoners and staff. How far Oak Park Heights will maintain that now that it describes itself as a supermax facility remains to be seen.

Thirdly, although loss of legitimacy is probably a necessary condition for disorder in prisons it may not be a sufficient one. The supermax facility at Pelican Bay in California, and many others, run regimes 'which hover on the edge of what is humanly tolerable for those with normal resilience' according to Federal District Court Judge Henderson,[13] and few prisoners could regard them as legitimate. But once prisoners are isolated in single cells, only let out one at a time, and then when handcuffed, leg-ironed, belly chained, spit-masked and accompanied by at least two officers, it would be hard to see how concerted acts of indiscipline could occur. Such practices test to destruction the traditionally accepted notions that prisons can only be run with the consent of prisoners. In the case of Pelican Bay, and many other supermaxes, the regimes have not generated disorder but they have generated condemnation from international human rights organizations and lawsuits (see Chapter 24, this volume). As a result there have been some minor adjustments to policy, such as the removal of minors from the supermax facility at Boscobel in Wisconsin. However, the fact that Pelican Bay was not ruled as breaching American constitutional protections against 'cruel and unusual punishment' except in relation to those already mentally ill, or at risk of becoming so, raises important questions about what is regarded as the legitimate treatment of prisoners by the wider public audience whose life, liberty and property prisons are supposed to defend. Unlike the USA, the prison system in England and Wales operates under the watchful eyes of independent monitoring boards, an independent inspectorate and an ombudsman, and by international agreement is subject to periodic review by the Committee for the Prevention of Torture. Such protections are essential and vigilance is required to ensure that they are not weakened, for example, by the proposed merging of the various inspectorates in the criminal justice field.

Fourthly, this emphasis on legitimacy and fairness is not to say that there are no 'evil and unscrupulous men', as Radzinowicz would have it, in prison. Of course there are, as well as a number who by reason of their mental or personality disorder are unpredictable and have difficulty in controlling their behaviours. It is surely a matter for some optimism, however, that today Frank Mitchell would not be flogged or birched, nor would the Director General need to write in such despairing terms to the Governor responsible for his custody as did the Chief Director quoted by Mountbatten; even a Woodcock or a Learmont would probably consider him to be a candidate for either a CSC or DSPD placement and engagement in a violence reduction programme. However, the jury has not even begun to sit on the evolving policies in relation to so-called DSPD offenders, although there is clearly much to be

worried about, not least because the burden of what may be indeterminate custody and care seems much more likely to fall upon the Prison Service than the National Health Service.

Fifthly, although there clearly are individual prisoners who, by virtue of their personalities or biographies or for other reasons, are extremely difficult to manage, it beggars belief that there are sufficient numbers of them in the USA to fill the vast number of spaces now to be found in supermax facilities. And it is apparent from the experience in England and Wales that it is possible to manage even some of the most difficult and dangerous persons in ways that do not depend merely upon extreme lockdown. That so few prisoners are housed in the CSC units in the UK bears testimony to the careful way in which selection is done, which is in sharp contrast to what often happens in the USA. One of the crucial research questions in this area is the extent to which candidates for these facilities meet the established entry and exit criteria and whether those criteria are justifiable and proportionate. Even in Oak Park Heights, where the regime consequences were relatively benign, prisoners were concerned that they had been selected merely to fill spaces in a facility that, to many observers, was more secure than could be warranted by the control problems in this traditionally liberal mid-western state.[14]

Sixthly, since I began this chapter by commenting on the need to reconcile conflicting aims and keeping them in balance, it is appropriate to comment on the current state of the Woolf agenda in the light of the constraints imposed by the response to Woodcock and Learmont. Woolf was quoted at the time as having seen the measures as 'knee-jerk' reactions which undermined the delicate balance he had sought. Downes and Morgan (1997), the latter having been one of Woolf's influential assessors, commented as follows: 'The Woolf reformist agenda was effectively dislodged … The Woodcock and Learmont recommendations legitimated, on security grounds, the more punitive and restrictive climate in prisons. And Woolf's emphasis on justice in prisons was no longer mentioned' (1997: 125). However, ten years after the publication of the Woolf Report, Morgan (2001) was somewhat more optimistic, noting that despite the rejection of Woolf's proposal to inhibit overcrowding through requiring the Minister to report to Parliament when prisons exceeded their CNA, overcrowding was 'nothing like as serious and concentrated as it was at the time of Strangeways … and is better managed and more thinly spread than heretofore' (p. 7). In 2001 Morgan was hopeful that the prison population – which had grown from a low of 42,000 shortly after Woolf to around 65,000 – was stabilizing. Just five years later, however, the prison population had increased by another 10,000. Only once in almost half a century (and then only briefly in 1993) have the prison population and prison places been in balance. In truth there is little evidence that overcrowding, as such, is instrumental in bringing about problems of disorder. But it is a powerful indirect influence. What it does is to divert attention away from providing offending behaviour programmes and the resettlement agenda and almost all the other things a prison system should be doing, on to the tactical management of prison places.

Morgan (2001) also took comfort from a greater integration across the criminal justice system that stemmed directly or indirectly from Woolf, but

deplored the continuing poor conditions for remand prisoners, and the inconsistent and unfair implementation of the Incentives and Earned Privileges Scheme that had displaced Woolf's concern with prisoners' rights and legitimate expectations. In 2001 Martin Narey, then Director General, agreed that crowding and remand conditions remained major problems, but found some degree of progress to report on all the other Woolf recommendations, especially in relation to justice in prison. Woolf, meanwhile, thought the picture after ten years was not entirely bleak:

> The physical conditions inside prisons have been transformed. Slopping out has virtually disappeared. Prisons are more just and more secure. There are telephones, television and better facilities for visits. Excellent work is being done with the involvement of prison officers to tackle drug abuse. The need for different parts of the criminal justice system to work together has been recognized … Taking into account the need to cope with overcrowding the Prison Service is entitled to at least one cheer and possibly two. The tragedy is that there was a prospect of doing so much more. We were on the way to creating a system of which the nation did not need to be ashamed and which would have made a positive contribution in the fight against crime. Judged against what should have been achieved it has to be said that the picture is disappointing (2001: 13).

Last, but by no means least, it would have been satisfying to end this chapter with a conclusion that the long-running debate about concentration and dispersal could at last be laid to rest on the grounds that the dispersal system has now shrunk to the size to which the alternative policy of concentration, had it been adopted in 1966, might well have grown 40 years later. That has not quite happened. But the gap has undoubtedly narrowed substantially. In 1969, the first full year of implementing the dispersal policy, the 138 Category A prisoners were dispersed among four prisons which contained on average 1,727 prisoners, the majority of whom were from lower-security categories. In 1984 the dispersal system had grown to eight prisons containing an average of 2,830, of whom 273 were in Category A. Today there are five dispersal prisons. On 11 May 2006 they contained 2,874 prisoners. At that date there were 957 prisoners in Category A, including provisional Category A prisoners on remand. Of these 92 were considered high risk and 865 standard risk. There were no exceptional risk prisoners. The fact that virtually the same number of prisoners are held in a smaller dispersal prison system today than was the case in 1984 is all the more remarkable given the extraordinary increase in the prison population and the huge growth in long-term prisoners. In 1969 the dispersal population accounted for 5.1 per cent of the total prison population of 33,814, of whom about 16 per cent were serving sentences of over three years, and by 1984 this had grown to 6.8 per cent of the population of 41,823 prisoners of whom about 14 per cent were serving over four years. In May 2006, however, only 3.7 per cent of the 77,154 prison population, about 42 per cent of whom were serving four years or more, were to be found in dispersals.[15]

In fact the picture is probably not quite so simple. The dispersal system has always contained some anomalous accommodation. The original special wings, for example, continued alongside the dispersal prisons and, although only D Hall at Wormwood Scrubs was officially part of the system, the remaining halls in that prison were subject to the same perimeter security. Today, since the escape from Brixton by remand prisoners, Belmarsh, Manchester and Woodhill have been added to the high-security estate and provide secure remand accommodation and various special facilities, including some of the CSCs and the units for the detention of suspected terrorists which recently achieved some notoriety. However, the general pattern has been towards greater consolidation, if not outright concentration, and for much more central control via the High-security Directorate than was previously the case under the old Dispersal System Steering Group.

It is of considerable interest that, with the coming of the peace process and the transfer of paramilitaries to Northern Ireland, there are now no exceptional Category A risk prisoners in the system and the former special security units have not been filled by high-risk prisoners but been put to other uses. At last the Irish troubles no longer drive the system although at the time of writing it seems possible that their place may be taken by new, predominantly Islamic, prisoners convicted or suspected of terrorist offences (see Chapter 13, this volume). This leads me to my final point. At the time of the CRC, the question was asked as to the extent to which some prisoners could be defined both as security risks and control problems and, for those prisoners, whether a security or control solution was the most appropriate (Bottoms and Light 1987). The removal of the majority of terrorist prisoners who, by definition, were security risks but may also have had vested interests in undermining the system, has presumably greatly reduced the numbers who meet both criteria. For the rest, the problem has to a considerable extent been resolved by the relocation of much of the CSC accommodation as well as the units for those with DSPD to within the high-security estate. This provides the essential security and separation from other prisoners. What remains crucial is the kind of regime to which such prisoners are exposed. It is a remarkable achievement that, in a prison system so large, the numbers of prisoners held in the CSCs as the most difficult to manage had, in May 2006, fallen to a low of just 24 prisoners with a further 86 in DSPD. By the time this chapter is published we will have the benefit of a further report from the Chief Inspector of Prisons on the regime in the CSCs. Preliminary feedback suggests the inspectorate will find things much improved.

Selected further reading

For an early analysis of riot and disorder as tightening security reduced the opportunities for normal patterns of adaptation and interaction by staff and prisoners, see Chapters 8 and 9 of King, R.D. and Elliott, K.W. (1977) *Albany: Birth of a Prison – End of an Era*. London: Routledge & Kegan Paul. King, R.D. and Morgan, R. (1980) *The Future of the Prison System*. Farnborough: Gower, review the evidence about dispersal policy and the Home Office response at the time of the May Committee. The collection edited

by Bottoms, A.E. and Light, R. (1987) *Problems of Long-term Imprisonment*. Aldershot: Gower, provides many viewpoints about issues relating to security and control at the time of the Control Review Committee. Sparks, R., Bottoms, A.E. and Hay, W. (1996) *Prisons and the Problem of Order*. Oxford: Clarendon Press, provides a most important theoretical analysis. See Bottomley, A.K. (1995) *CRC Special Units: A General Assessment*. London: Home Office Research and Planning Unit, for a general assessment of CRC special units, and Clare, E. and Bottomley, A.K. (2001) *Evaluation of Close Supervision Centres. Home Office Research Study* 219. London: Home Office Research and Statistics Directorate, for an evaluation of close supervision centres which includes a thoughtful appendix by Sparks on research needs.

Notes

1 In Carandiru, 111 prisoners, many of them on remand, were killed by the shock troops of the Military Police after they surrendered. In 2001, Colonel Guimarães, the commander in charge of those troops, was eventually sentenced to 632 years for his role in the massacre, and then immediately released pending appeal. The appeal was heard on 15 February 2006 and the conviction annulled on grounds that the colonel was acting 'strictly in line with his duties'. (Amnesty International, AI Index, AMR 19/006/2006). Colonel Guimarães was killed in his own home, possibly as an act of revenge, in September 2006.
2 Kendall was recaptured on 31 January 1988 and Draper on 24 February 1989.
3 Quinlivan and McAuley were both rearrested in April 1992.
4 Members of the Research and Advisory Group were Tony Bottoms, John Gunn and Roy King.
5 The assertion that concentration of control problems was inappropriate was based on research visits in 1983 and 1984 to the Level 6 federal penitentiary at Marion and all the Level 5 federal penitentiaries whose problems of order were supposed to be solved by transferring their troublesome prisoners to Marion. This research never quite got off the ground because of the murder of two prison officers in the Marion control unit just as the research was starting, and because of lack of an adequate methodology (cf. Bottomley 1995; Briggs *et al.* 2003).
6 At Strangeways, although one prisoner was killed and one member of staff subsequently died from heart failure, most of the sensational accounts of hostage taking, torture killing and maiming that were reported in the press and on television turned out to be untrue. Even so, 47 prisoners and 147 staff were injured during the 25-day siege.
7 House of Commons, Prison Service Review, q, [201] (16.12.91).
8 The escapes from Whitemoor and Parkhurst cost the prison careers of Andy Barclay and John Marriott, as well as those of Director General, Derek Lewis, and one member of the Prisons Board, Philippa Drew – see the inside story provided by Lewis (1997).
9 The present author served as academic adviser to that working party.
10 *Madrid* v. *Gomez* (1995) C90-30944-THE.
11 Keith Bottomley and the present author were members of that group from its inception until its dissolution in 2006.
12 Thus endorsing what King and Elliott had argued as long ago as 1977.
13 *Madrid* v. *Gomez* (1995).
14 Oak Park Heights (OPH) was established after a series of major disorders in the main Minnesotan penitentiary at Stillwater. Ironically, the remarkable first warden of OPH, Frank Wood, had re-established order and control in Stillwater even before

OPH was finally built. Some argued that the prison was therefore unnecessary and in a sense that may well be true. However, in a bleak American penal landscape, OPH has remained an example of a successful marriage between good prison design and good prison management.

15 The reporting of sentence lengths differs in the annual statistical tables for 1969 and 1984. Current figures are for May 2006 supplied by the High-security Directorate. Despite the inconsistent reporting it is clear there has been a massive growth in long-term prisoners.

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Chapter 15

Problematizing prison privatization: an overview of the debate

James Mehigan and Abigail Rowe

Introduction

The private provision of penal services is just one aspect of a wider movement to roll back the state's involvement in the criminal justice system. In the prison system, privatization – or contracting out – is manifested in several ways, including prison escort services, prison work programmes, electronic monitoring of offenders released from prison and the financing of prison construction. The most contentious form of contracting out, however, has proved to be the management and operation of prisons by private investors. This chapter seeks to situate the private management of prisons in modern penal systems in a historical context and to provide an overview of the questions, opportunities and risks that this trend in policy brings about. The debates surrounding privatization are discussed in terms of cost and efficiency, the quality of service provided, the legitimacy of private prisons and the expansion of what has been termed the penal-industrial complex (Garland 2001; Coyle *et al*. 2006).

The history of private involvement in prison systems

> Privatisation is not a new concept. Punishment of criminal offenders was never a monopolised function of the state. The involvement of religious and other non-profit agencies in corrections also has long historical roots. Some call the present drive a mere effort to *re-privatise* punishment (Chan 1994: 39–40, emphasis in original).

Prisons are known to have existed in Britain since Anglo-Saxon times and were not brought wholly into public ownership until 1877. For most of their history, then, profit has been made from prisons. It is therefore worth looking briefly at the different ways in which this has been achieved. In the Middle Ages, prisons were technically owned by the Crown, but were largely

unfunded and usually run by entrepreneurs (Moyle 2000). Although some gaolers were salaried at state expense, in the thirteenth century, the right to keep a gaol was often sold or bestowed by the Crown. Gaol-keepers made a living by levying charges on prisoners. From the fourteenth century onwards, common standards were introduced, but the need for gaols was such that few attempts were made to enforce them. This system continued largely unchanged until the eighteenth century, when gaolers have been described as having 'practically unlimited opportunity for extortion' (Webb and Webb 1963). Examples of corruption in the English system due to the weight of inbuilt vested interests include the fact that the position of gaoler was often handed down from parent to child and, more seriously, that some eighteenth-century gaolers paid judges annuities to ensure that they delivered all their prisoners to their gaols (Rusche and Kirchheimer 1939). Feeley (2002) has suggested that the weakness of the state at this time rendered the presence of small-scale enterprise in the penal system 'inevitable'. As the century moved on, the potential and actual abuses of the system were of mounting concern to reformers.

Private finance and the contracting out of responsibility for convicts pervaded the penal system. Like prisons, transportation was privately funded. English convicts were transported by merchants to America in exchange for the right to sell them on arrival as indentured labour (Becker 1997); transportation to Australia was run largely by means of contracts granted by the government to private entrepreneurs. These were administered along very similar lines to modern arrangements for privately run prisons in England and Wales and Australia, with precise guidelines issued for the treatment of convicts, and government employees overseeing conditions on board. On arrival in the colonies, the majority of convicts were handed over to work for free settlers, who assumed financial responsibility for their maintenance. This system remained in place until 1838 and was effectively the first private open-prison system (James *et al*. 1997).

Prisons were nationalized and centralized at a stroke in 1877. Overnight, all local and county prisons were taken into central control so that the Prison Commission, as it then was, immediately became the most unified and centralized of all social services in Britain (Ryan and Ward 1989). Nevertheless, it would be inaccurate to suggest that private organizations disappeared from the penal system altogether, and penal institutions such as facilities for juveniles remained largely in private hands.

The origins of privatization in the USA

The history of private enterprise in penal practice has been closely bound up with the larger currents of social and economic history. This is perhaps best illustrated by the case of America, where criminal justice and penal practices reflect the overarching narratives of colonization, slavery, civil war and economic depression. It is not possible to outline the long and complex history of private prisons in America in any detail (see Sellers 1993; Shichor 1995 for discussions). However, a brief examination of several salient examples

will serve to illustrate the importance of broader political and social currents.

When incarceration shifted to the centre of the American penal system, private enterprise quickly found opportunities to profit from imprisonment. Two main systems emerged: contracting and leasing. The contracting system allowed prisons to give their workshops over to private manufacturers who would deliver raw materials to the prison and collect their completed product. Crucially, this was not a solely profit-motivated arrangement. While the manufacturer benefited from the steady supply of labour with little responsibility for the management of its workers, the prison was able to place work at the centre of its programme for discipline and reform. The leasing system differed from contracting in that what was contracted out was not just prisoners' labour but also responsibility for their care. Introduced in Kentucky in 1825 during a funding crisis, the leasing system became widespread in America during the nineteenth century and underwent a massive expansion at the end of the Civil War, especially in the south. States were not only confronted with the financial burden of the war and the cost of rebuilding, but the abolition of slavery also meant the sudden depletion of the cheap labour-force on which the plantation system in the south had depended, and which needed to be replaced. Furthermore, after the Civil War, the number of sentenced offenders rose sharply. These were largely former slaves who would previously have been dealt with by plantation owners.

Both leasing and contracting were economically successful; Auburn Penitentiary, where the workshops were run privately under contract, actually made a profit and, although it had originally been introduced for disciplinary reasons, prison manufacture became an important source of government income. The economic benefits of leasing are likewise very clear, allowing states to pass on responsibility and costs while benefiting from cheap labour. Although there were abuses recorded in both systems, economic factors were crucial in bringing them to an end. Private manufacture in prisons survived until around 1940, when it was the scarcity of work during the depression that meant it was no longer viable. Similarly, leasing came under mounting criticism from other businesses, which complained of unfair competition. However, in the case of leasing, other factors such as the very high death rates of convicts and the large numbers of escapes were a source of mounting concern for the public, for reformers and for many politicians. When leasing was discontinued in 1923, it was hailed as a victory for penal reformers, but presented a massive economic problem for the state, which both lost the income of the leases and suddenly incurred all the costs of administering the penal system that had previously been passed on to contractors (Schichor 1995).

Recent history in the USA

It is clear that the recent wave of prison privatization in Western countries has been essentially an American export. Indeed, Baldry (1994) writes about Australian prison privatization as a colonization by American business

interests of foreign penal systems. Recognizing that the movement towards privatization in the USA emerged from a relatively unique set of circumstances is crucial to understanding the phenomenon of the new wave of prison privatization (Chan 1994).

In the 1960s, American prisons were under increasing pressure. Prisoner numbers grew dramatically, bringing overcrowding and deteriorating conditions (Ryan and Ward 1989). In 1968, the Supreme Court ruled that prisoners could sue the government for holding them in unsatisfactory conditions; by 1991, prisons in 40 states had been found 'unconstitutional' due to poor conditions. This placed a duty on prison administrators to improve conditions but did nothing to address the funding shortfall that had led to the overcrowding in the first place. Solutions that avoided making more prison places available, such as community penalties or early release schemes, were unlikely to be politically viable options. At the same time, private firms were actively lobbying to be granted contracts to be allowed to manage correctional facilities despite the fact that none had been advertised. Rising crime and a punitive public mood meant that prison was increasingly being demanded *as* and *for* punishment. If prisons were no longer to be required to rehabilitate or train inmates but simply to incapacitate them, it would be very much easier to hand them over to private sector management (McDonald 1994; James *et al*. 1997).

This chronic problem became acute in the form of a tax revolt – that is, an increasing demand for prison places but a consistent blocking of the funding needed to create them. This situation is a direct consequence of US systems of funding and public administration and could not arise in the UK, with its centralized funding of the penal system. Unlike in England and Wales, prison services in the USA are run and funded at three distinct levels: federal prisons are funded centrally, while state prisons and local jails are funded at state and local levels respectively. While small additional expenditure can be found within existing budgets, large capital projects, such as the construction of a new prison, are generally funded by raising money on the market by 'bond issues', usually requiring voter approval.

New York's prison crisis of the 1970s and 1980s is a case in point. Between 1974 and 1984, prisoner numbers more than doubled, leading to significant unrest in the state's prisons. Between 1973 and 1979, some 5,000 additional prison spaces were created, mostly by converting extra buildings. However, when proposals for the creation of 3,000–5,000 prison places were floated about 1980, the state legislature was required to consult the electorate. When a bond proposal was put to the New York electorate in 1981, it was defeated, leaving the state urgently in need of alternative sources of finance, for which it looked to the private sector (Ryan and Ward 1989). It should be noted that, even as referenda on bond proposals were being defeated, polls showed overwhelming support for yet tougher measures on law and order (Chan 1994: 40).

The particular political culture in the USA arguably meant that, when capital was needed quickly, increasing the levels of private capital in corrections services was relatively straightforward. The deepening penal crisis in the USA had led to a growing conviction that government was ill-equipped to run

corrections services. Concurrently, and not altogether unrelated to the kind of crisis in public services that we have been discussing, there was growing interest in increasing the role of the private sector in the provision of public services and reducing the size of the state more generally. As Sellers (1993) has noted, although there has been historic emphasis on private enterprise and a small state in American political culture, the Reagan and first Bush administrations, like the Thatcher government in the UK, were more vocal on the subject of privatization than any previous administration. This was supported by supply-side economic theorists who stressed the importance of commercial incentives on the efficient provision of service.

The crisis facing the American penal system in the late twentieth century was an acute one and was quite unlike those faced by other industrialized countries, as will become evident in discussion of the UK and other countries later in this chapter. While governments in other countries might also have to contend to a certain extent with a general public that is keen to punish but reluctant to pay, a centrally funded system is extremely unlikely to face a situation where urgently needed funds could not be found.

Private prisons in England and Wales

Voluntary organizations have maintained involvement with juveniles since the establishment of reformatory and industrial schools in the 1850s. Although progressively taken on by the state, the treatment of juvenile offenders was never entirely in public hands. Private sector companies also have a long record of involvement in the construction of prisons and providing other services. Voluntary organizations have been involved in providing bail hostels and housing for offenders and ex-offenders at the shallow end of the penal system, and in the provision of services to those serving community penalties. Immigration centres have been contracted out to the private sector since 1970 and, although they do not receive the same amount of scholarly discussion as privately run prisons, there have been criticisms of the performance of privately managed immigration centres. Nevertheless, the contracting out of a prison to private sector management was a major development in British criminal justice policy. Although Vagg (1994: 294) describes this as a 'change in scale' rather than a new departure for penal policy, contracting out represents a significant moment and a highly contentious policy.

The change in the political climate that ushered in the wave of privatizations that swept across many of the UK's public services in the 1980s and 1990s can partly be explained by the economic problems of the 1970s, which paved the way for the entrance of the New Right and New Public Management (Feeley and Simon 1992; James *et al*. 1997). Importantly for penal policy, the 'rolling back' of the state in this Conservative era was accompanied by an increasingly authoritarian and punitive approach to law and order. The growing emphasis on *victims* of crime, the perceived efficacy of deterrence and the belief that offending behaviour is a simple matter of choice undermined the notion of rehabilitation as an important aspect of imprisonment (James *et al*. 1997). This was coupled with growing political faith in the value of the market. As it

had in America, this created a more favourable climate for the introduction of private sector organizations to the prison system as managers of whole institutions. We have seen how the initial move towards American privatization was specific to US political and policy processes, a relationship underlined by Vagg, who suggests that 'the impetus towards private prisons in England had only one thing in common with America: the increasing prison population… The primary pressure for privatization was not practical but political' (1994: 298). In 1985, the politically influential Adam Smith Institute argued that the prison service 'suffers from three faults inherent in all government: high cost; inadequate supply; and a shortage of capital investment'. Their solution to the problem was the depoliticization of prison management and the introduction of new managerial ideas. They advocated private construction of prison and detention centres, and competitive tendering from firms 'to provide real work for inmates' (Butler *et al*. 1985: 259).

Although the provision for private prisons found its way into policy through the efforts of Conservative backbenchers and the Number 10 Policy Unit, it should be noted that the early debate on prison privatization did not run entirely along predictable political lines. While clearly dominated by the logic of right-wing economics, the notion of privately contracted prison management was supported by some left-wing academics who saw privatization as a useful way of circumventing the influence of the Prison Officers Association, which was viewed as a barrier to the prison reform they thought crucial (Jones and Newburn 2005). 'Contracting out' was introduced in the UK by the Criminal Justice Act 1991, which allowed for private companies to operate remand prisons in England and Wales. The first private prison in Europe, Wolds in East Yorkshire, opened in April 1992 as a privately operated, publicly built prison for remand prisoners only. The Criminal Justice Act 1994 amended the earlier legislation to allow both remand and sentenced prisoners to be held in privately run prisons. Parc, in South Wales, opened in November 1997. It was the first prison to be built under a 'design, construct, manage and finance' (DCMF) contract: in other words, a privately financed, privately managed prison. The Labour Party opposed the measure while in opposition, but their U-turn on entering office in 1997 was swift. Recognizing that re-nationalizing prisons that had been privatized would 'cost tens or more likely hundreds of millions of pounds, without adding a single extra bed to available prison accommodation' (Harding 1997: 15), within a month of the 1997 general election, the private contract at Blakenhurst was renewed and two more announced. The following year, it was announced that *all* new prisons would be privately constructed and run.

There are now 11 privately run prisons in England and Wales. The 'contracted estate' in England and Wales comprises institutions run by four companies: GSL, Group 4 Securicor, Premier Prisons and UK Detention Services. They include both male and female prisons, local prisons, Category B, Category C and young offenders institutions. Three further prisons run by the Prison Service are considered part of the contracted estate because the Prison Service won the right to manage the prisons through competitive tender. Excluding the contracted prisons run by the Prison Service, there are over 9,900 prison beds run by private companies (NOMS 2005). Private prisons

are run under the Private Finance Initiative (PFI) – a form of public–private partnership (PPP) in which the government advertises a project, in this case to design, construct, manage and finance a prison, or simply to manage it and suitable companies bid to fulfil it most efficiently. By allowing a private company to design, build and finance the prison, the state does not have to pay the large sums involved in constructing the prison itself. The company builds the prison, operates it for 25–30 years and charges the government for this service. The state thus pays a small amount each year for the prison rather than producing all the money up front, rather like a mortgage. This, it is argued, benefits the government because the taxpayer pays for the new prison over a longer period of time and the government does not need to borrow to do so. At the same time, the company benefits from the profit made by building and running the prison more cheaply than the amount the government pays (Allen 2001).

The process of awarding contracts is managed by the Contracts and Competition Group (CCG), which is a quasi-autonomous unit within the Prison Service. This unit decides the project specifications and obtains the site and necessary planning permissions. Bidders are invited to submit what are known as indicative bids for the contract. A shortlist of bidders to be issued with an invitation to tender is produced, and contenders submit 'best and final offers' (BAFOs). From this, a final 'preferred bidder' is named. The CCG then works with the preferred bidder to develop the final project plan. While this is not a binding contract in itself, once a firm is nominated as the preferred bidder, it is exceptionally unlikely that they will be refused the contract at the end of the process. The decision to award the contract is technically that of the Home Secretary, who acts on the recommendation of an evaluation panel, which is itself advised by the CCG. It should be noted that the most expensive part of the bidding process occurs after the company has achieved 'preferred bidder' status, at which point the majority of the negotiation and planning takes place and exact plans, costings and timetables are produced (Allen 2001; Genders 2003).

There is considerable controversy over the application of the theory behind PPPs. The general problem of assessing whether privately built and/or operated prisons provide an overall cost saving is discussed below. Here, however, we will explore briefly the problems with the PFI and its use in penal institutions. The two main criticisms are that DCMF prisons do not provide a cheaper way to fund the construction of prisons, and that the PFI process does not lead to significant competition among firms. The first objection rests on the principle that, to finance a prison itself, the government must borrow money to pay for it but, with PFI, the responsibility for raising the capital falls on the company, which will probably either borrow or sell shares. However, the government can borrow money at much cheaper rates than a private business can because banks are happy to lend to governments as they are far less likely to default on the loan than a private enterprise. Thus, if the government is paying the firm to finance the prison, it is effectively paying a company to take out a loan at a more expensive rate than the government would if it were to raise the money itself (Cavadino and Dignan 2007). The reasoning behind this apparently perverse move is to avoid borrowing too much as a

proportion of government income. The second problem is with the process of awarding contracts under the PFI. Because the bulk of the negotiation process takes place after the winning firm has been named 'preferred bidder', there is limited competition between the firms that are doing the bidding. This is because the cost of putting together a detailed bid for a complex project such as a DCMF prison would be enormous. If companies were required at the outset to prepare a bid costing £3 million or more, with a two in three chance of losing the money, the expense and risk of entering the prison market would be likely to deter potential bidders. To keep bidders' risks to an acceptable level, companies are not required to make their BAFO until after they have been shortlisted as a bidder, and not asked for detailed commitments unless they are made preferred bidder. Whatever its strengths might be, the disadvantage of this system of finalizing bids in conjunction with the CCG is that much of this relatively protracted process takes place at public expense, rather than being funded privately, as it would if companies were required to bring a completed bid to the table (Monbiot 2002). These two objections suggest that the cost savings promised by privatization in English and Welsh prisons are due more to accounting practices rather than any increases in efficiency on the part of private contractors.

Comparative experiences of prison privatization

Having first been introduced in the USA, private prisons are now to be found in Australia, South Africa, Israel, the UK and Germany, among others (Price 2006). However, prison privatization has not taken off as enthusiastically in other countries as it has in England and Wales and the USA. McDonald (1994) attributes this to the fact that the largest companies providing private custodial facilities are anglophone organizations and, as such, have difficulties entering markets where English is not the dominant language.

The USA has the largest number of private prisons in the world. However, because the US penal estate is so large, this amounts to 3 per cent of the total number of prison places. This compares with 8 per cent in both England and Wales and Scotland, although in Scotland there is just one private prison, Kilmarnock, which holds 596 prisoners (Cooper and Taylor 2005). In 1985, the Corrections Corporation of America (CCA) offered to take over the entire Tennessee State prison service. Whether they ever intended to, or had any realistic chance of doing so, the move brought the issue to the fore in the USA. The CCA would be one of the companies bidding for future contracts in what quickly became a growth industry (Palumbo 1986; Geis 1987). Since the introduction of the first private prisons in the USA, the private prison industry has grown steadily and is considered to have potential for further growth. One analyst states that 'Corrections Corp of America continued to beat earnings estimates … we expect to see numerous additional expansions over the next year' (First Analysis 2006).

As Jones and Newburn (2005) point out, and as we have already seen, apparently similar policies may be arrived at via very different trajectories. Unlike countries such as the UK, France and the USA, Australia has not had

a long independent history of commercial involvement in its penal system since transportation ended and Australia was granted independence (James *et al.* 1997). Nevertheless, it was the second major penal estate after the USA to show interest in large-scale involvement in the recent wave of prison privatization (Brown 1994). As in the USA, Australia's composite states run separate prison systems. In 1988, the state of Queensland was told by the Federal Treasurer that the state needed to reduce its borrowing drastically. Although the Queensland prison system was also showing the signs of chronic underfunding, overcrowding, poor maintenance of infrastructure, and alleged corruption, it was this funding change that provided the initial impetus for looking at the way that Queensland funded and managed its prison system (Moyle 2000). A Commission of Review into Corrective Services was set up, which concluded that the prison system was in crisis. A decision was taken in 1988 that a planned new prison (Borallon, which opened in 1990) should be managed under contract by a private company (Brown 1994). Moyle (2000) argues that, as in the UK, this decision was taken from a position of general enthusiasm for the promised efficiencies flexibility offered by the market, but without any serious attempt to consider what amid the general economic theory was specific to prisons, or associated legal or policy issues. The model of privatization adopted was one of private contract management, whereby the Queensland Corrective Services Commission (the corporatized government body that replaced the prison service), which built Borallon, retains ownership of it and it is managed by the Corrections Corporation of Australia, which comprises a consortium of Australian companies and the CCA (Shichor 1998). Early contracts, such as that for Borallon, were for the management of the prisons alone, but somewhat different models of privatization apply in other Australian states; the private prisons in Victoria, for example, were constructed using the build–own–operate–transfer model (BOOT), where contracts run for a period of 10 or 20 years. In Western Australia and New South Wales, contracts included private design, financing and construction, like the UK's DCMF model discussed above (Roth 2004).

Although all but two of the Australian states that house their prisoners in-state now have private prisons, a number of Australian states have shown a degree of ambivalence towards prison privatization. Western Australia initially negotiated with its Prison Officers Association and agreed to reform the state-run prison system in order to tackle the entrenched problems that had elsewhere led state governments to introduce privatization. This included substantial renegotiation of staff pay and conditions, in return for an undertaking that there would be no privatization until 1997. Despite great initial satisfaction with this arrangement, in 1998, the government invited expressions of interest from private firms in a new prison, to be designed, funded and built privately (Moyle 2000; Roth 2004).

The models of privatization we have already discussed are all structured along broadly similar lines. However, different models do exist. France has a long history of private involvement in its prison service, providing a number of ancillary services within state-owned and managed institutions. From the mid-1980s, however, interest in further private sector involvement began to grow. In 1986, the French Minister of Justice visited the USA and was

impressed with the idea of private contract management as a means of coping with overcrowding, which had reached serious levels in France (Moyle 2000). In 1991, a project was launched to build 25 new prisons. These were to be built by private firms, who would thereafter be granted a ten-year contract to provide food, work or training for the inmates, and to carry out maintenance at a fixed rate per inmate per day (Moyle 2000). Although privately built, the prisons belong to the state (Harding 1997; James *et al*. 1997). In short, building and ancillary services would be carried out privately, while security and prison management would remain the responsibility of the state. Given the degree of private enterprise in French prisons before 1991, this represented a shift in scale rather than a new departure for penal provision in France (Moyle 2000). The move towards prison privatization in France proved influential on Belgium's prison management, and the model of private enterprise now used in Belgian prisons closely follows the French. The Belgian government visited French prisons in the early 1990s, and in 1993 announced plans for a new, privately financed prison, providing 400 places for long-term prisoners to be operational by the year 2000 (Harding 1997: 151). Moyle (2000) quotes Beyens and Snacken's analysis that the Belgian government's interest in involving the private sector in its prison system was stimulated, as in the cases of other countries, by increasing prisoner numbers, budget problems, and also, interestingly, lobbying by multinational corrections companies (Moyle 2000).

The case for privatization

While finance has often been a catalyst for prison privatization, it is clear that there is a cluster of motivations for the introduction of private enterprise into the Prison Service. The economic arguments in favour of prison privatization that dominate this debate have already been outlined above as being generally propounded by economists and politicians on the political right, usually in abstract terms with little specific reference to the workings of prisons. However, the other drivers towards privatization mentioned above – corruption, poor industrial relations and so on – are more securely embedded in the specific conditions of prison systems. In addition to the motivating factors, the introduction of private prisons is held by many to have had a fairly broad range of benefits. In relation to these questions, debate runs along rather less predictable political lines. Aspects of this are discussed in detail below when we consider how well private prisons have performed in practice, but it is worth giving a brief overview of these arguments now.

To begin at the beginning, one of the great strengths of the private sector is its ability to construct necessary facilities more rapidly than the public sector by bypassing the inherent inefficiencies of the kind of bureaucracy typified by government. In addition to this ability to provide facilities more quickly, the private sector may be able to make savings in running costs, especially staffing and purchasing costs (which are discussed below), although of course the profit imperative of private companies means that, at most, only part of these savings will be passed on to the taxpayer. The greater flexibility of

staffing in the private sector also makes it possible to alter staffing levels and deployment to reflect need more closely (see Chapter 20, this volume).

Other arguments in support of prison privatization relate to the quality of service provided. It is important to emphasize this in a debate where it can often appear that arguments in favour of contracting out are overwhelmingly concerned with cost and efficiency. Genders (2003) suggests that the contracting-out process can act as a mechanism for introducing innovation into the Prison Service, within the general specifications stipulated by the invitations to negotiate and to tender. It is argued that the DCMF system in England and Wales, in particular, facilitates innovation in two ways. First, there are a number of items in the invitations to negotiate and tender that are expressed in output terms, which leaves the bidder to decide how targets can best be met (within the constraints of having to provide best value for money and, more recently, with an eye to evidence-based practice). Second, the information exchange that is fundamental to the system, in the series of meetings between bidders and the CCG designed to support the bidder in the development of a viable proposal, 'leads to the promulgation, exchange and development of ideas' (Genders 2003; cf. Sellers 1993).

In a similar vein, there is also an argument that prison privatization is an opportunity to weaken the entrenched interests of staff unions in countries such as the UK and Australia, which many regard as a barrier to necessary prison reform (Jones and Newburn 2005). A final, generalized benefit of the introduction of private organizations into the provision of penal services has been the introduction of an element of competition into the sector, which many have argued has had a positive impact on state-run penal services. This is in some respects distinct from the free-marketeers' belief in the general efficacy of free markets, because the important factor is simply the existence of a second agency in the sector, regardless of whether or not the non-state institutions are driven by a profit motive (Donahue 1989; James *et al.* 1997). These arguments are all broadly connected with a concern for the *quality* and *effectiveness* of penal systems. These are extremely complex areas to unpack and evaluate, so all that is possible here is a relatively brief survey. We look at how well private prisons perform in relation to their public counterparts across a number of dimensions: legitimacy; accountability; cost; the quality of the regime prisoners experience; and at how the presence of prisons built and managed for profit may contribute to an expansion of the penal-industrial complex.

Are private prisons cheaper?

The initial proponents of private prisons promised huge savings, as much as 15–25 per cent compared with public sector prisons (Cavadino and Dignan 2007). However, few researchers have succeeded in producing a conclusive description of genuine price savings; indeed, management consultants in the USA reviewed the available data and found that there was no general pattern of cost savings in private prisons in the USA (Abt Associates 1998). The issue of cost comparison is complicated for two reasons. First, no two prisons are

the same, which makes direct comparison difficult. Secondly, the public and private sectors use very different accounting methods; for example, private sector enterprises take into account the depreciation of their buildings and other assets whereas public sector organizations do not. In addition, there are hidden costs to the state in private sector prisons; for example, in England and Wales the planning process is paid for by the state once the firm becomes preferred bidder and the monitoring of private prison contracts is a state responsibility that is absent from costings (McDonald 1994). The other significant cost not included in the accounting process is the risk assumed by the state in the event of, for example, a major disturbance erupting in a private prison, or the risks attached to a company failing to meet its debts. An example of the burden of these risks falling on the state can be seen with the refinancing of Fazakerley (now Altcourse) Prison in 1998. The company that built and managed the prison changed its agreement with its financiers, arranging to pay back over a longer period than initially agreed. This meant that it was able to increase its profit significantly by reducing the costs of paying back its debts. The Prison Service became more exposed to the financial risks of the project, while the company was making increased profits (National Audit Office 2000). The financial risks and the costs involved in any PFI project are always ultimately borne by the taxpayer and this is often underestimated or overlooked.

Another factor is that the state may become dependent on the services of a small number of providers so that competition becomes eroded. This leaves the state vulnerable to unfair price increases levied by investors with significant bargaining power (McDonald 1994). With only 8 per cent of the English, Welsh and Scottish and 3 per cent of the US penal populations in private prisons, this may not appear to be an urgent problem in practice. However, it is worth considering that the Scottish Executive's proposal to replace two state prisons with private operations would increase the share of Scottish prisons in private hands to 36 per cent (Cooper and Taylor 2005). Furthermore, while the proportion of American prisons in private hands is very small, the actual number is huge (McDonald 1994). In some small jurisdictions in the USA and Australia, the provision of even one prison in a county may mean that a large proportion of that county's prisoners is handled by one firm, giving them considerable financial leverage.

Profit in private prison management is to be found in the reduction of running costs to a level below the sum charged to the state. A number of claims are made for the private sector's ability to run a prison more cheaply than the public. Essentially, costs can be reduced by private sector managers in two principal areas: purchasing and staffing. Necessary supplies can be purchased more cheaply by the private sector, it is argued, because private managers are able to circumvent the bureaucratic purchasing regulations to which their public sector counterparts must adhere (Camp and Gaes 2001).

As Camp and Gaes (2001) point out, however, cost savings made through efficiencies in purchasing will not make a significant difference because they represent such a small proportion of the cost of running a prison. The overwhelming factor in a prison's profitability in the reduction of staffing costs. Although estimates of what proportion of costs is represented by staffing

vary somewhat – Camp and Gaes (2001) suggest 70 per cent and Genders (2003) 80 per cent – the figures are of a similar order. The impact of private and public prisons' differing staffing policies is explored briefly below, so we will now simply outline the ways in which private prisons are able to reduce staffing costs. Proponents of prison privatization suggest that the savings that can be made by the private sector are fourfold. First, some argue that public sector prison workers are 'overcompensated through a combination of direct pay and fringe benefits', due to the influence of trade unions (see Chapter 20, this volume). Secondly, private sector managers have greater flexibility in the deployment of staff; by using pools of temporary workers, it is possible to reduce overtime costs and to reduce or increase staffing levels to match immediate demand. Thirdly, the private sector is argued by some to use technology more effectively to increase the efficiency of existing labour, although it is not necessarily clear why the public sector should not be able to do this. Finally, it is suggested that private managers are able to produce disciplined, motivated and productive teams, that recruitment procedures are superior and that it is easier in the private sector to give promotion on the basis of merit and reduce irresponsible use of sick leave.

There is also some evidence to suggest that private prisons in the USA have been able to make savings by changing the way in which medical care is delivered to prisoners (Abt Associates 1998). However, it cannot necessarily be taken as read that such savings are the result of privatization *per se*, rather than of specific management practices. Examining the economics of prison management, Brown (1994) suggests there is solid evidence to indicate that private sector enterprises are capable of delivering services more cheaply than the public sector. However, he cites research from both the UK and Australia to suggest that public sector productivity and profitability outstrip that in the private sector when subject to the effects of 'corporatization' and 'commercialization'. For example, Australian government business enterprises grew at an annual rate of 4.1 per cent between 1979–80 and 1990–91 compared with 0.2 per cent in the private sector, and a UK study found that the profitability of privatized businesses grew by 140 per cent between 1979 and 1988, while that of public sector corporations grew by 240 per cent. While this evidence is by no means conclusive, it does give reason to question assumptions made about the superior day-to-day efficiency of the private sector.

Evaluating quality

Evaluating the quality of the service provided by privately managed prison is extremely complex, for several reasons. First, there are inherent difficulties in establishing criteria for evaluation of quality in penal systems. Secondly, there is a lack of conclusive evidence because evaluations of prison privatization have tended to focus on questions of economic efficiency. Thirdly, analysis is often strongly coloured by researchers' preconceived ideas about whether or not private prison management of penal institutions is desirable. This is probably truer of research into prison privatization than of other penological topics.

Camp and Gaes (2001) offer a detailed critique of evaluations of prison privatization in the USA, arguing that the not inconsiderable literature on the subject contains relatively little peer-reviewed work; that many of the American evaluations are state funded; that it is difficult to generalize from the findings of most of these studies; and that recent US studies have not controlled statistically for variables likely to affect prison performance or staff satisfaction. They suggest that the lack of rigorous evaluation is perhaps unsurprising because such studies are complex, time-consuming and expensive, and evaluation has seldom been contractually required. By contrast, Logan (1992) produced a study of three US women's prisons, one private, one public state prison and one public federal prison, which was described five years later as 'the most detailed qualitative study of private and public prisons to date' (James *et al.* 1997). Logan looked at two broad areas of quality in prisons: 'doing justice' and 'confinement', including security, safety, order, care, activity, justice, conditions and management. These were translated into 333 measurable indicators, about which information was gathered from staff, prisoners and institutional records. Logan found that the private prison was favoured by staff, the state prison scored best on measures relating to activity, conditions and care, and that the federal prison exceeded the state on issues surrounding governance (Logan 1992). As James *et al.* (1997) highlight, these findings do not set any of the three apart as clearly representing better quality than the others. Nevertheless, Logan concludes that, although all three prisons were of high quality, 'by privately contracting for the operation of its women's prison, the state of New Mexico improved the overall quality of that prison while lowering its costs' (1992: 602).

As has been indicated, a good deal of research into private prisons is weak, inconclusive and/or contested. This is clear across a range of dimensions of prison functions. For example, it is frequently argued that poor healthcare provision and poor treatment of prisoners are typical of private prisons (von Zielbauer and Planbect 2005; Coyle *et al.* 2006; Price 2006). However, it should be remembered that the poor conditions and 'unconstitutional' treatment of prisoners in American state-run prisons were an important factor in the crisis that precipitated the reintroduction of private prisons in the USA, so it cannot be concluded that poor quality of penal provision is unique to the private sector. Other research with ambiguous findings includes Levinson's (1985) study of two juvenile institutions, one run by the state and the other privately by a charitable foundation. The study found that the two institutions provided programmes of similar quality, but that the state-run prison was the more pleasant workplace. However, the study has been criticized by academics sympathetic to privatization who argue that, because the private prison was run by a charitable organization, normal market incentives do not apply (Sellers 1993).

Staffing is one area where there is a degree of agreement among researchers as to the effects of privatization. This is also an area that illustrates how confounding factors can obscure what is happening. As discussed above, staffing is one of the key areas in which private organizations are able to be more flexible and make financial savings. Typically, the staff at private prisons will be 'more controlled, less unionized and less secure' (James *et*

al. 1997). Brown (1992) likewise finds agreement between various evaluations of Borallon that privatization has been detrimental to staff conditions (see also Harding 1992; Moyle 1992). For some advocates, privatization reduces the strength of prison officers' unions and produces more positive staff cultures (Moyle 1992; Hatry *et al*. 1993; Brown 1994). Nevertheless, James *et al*. (1997) highlight concerns about the grasp of inexperienced staff on routine knowledge and their need for managerial support. Even here, however, they do not find a clear relationship between staffing levels and the quality of regime delivered, although they suggest that the private prison's lower staffing level can become a problem when 'operational contingencies' arise, such as staff absence and hospital watches.

Even where privatized prisons perform well, it is not necessarily clear what the cause is; any new prison may show benefits that are simply the result of its being new. Factors contributing to the success of new prisons include new staff; new managers; new buildings with the benefits of the up-to-date design and technology; freedom from an entrenched ethos and cultures; and opportunities for innovation. Among those studies which argue that the whole of the penal estate may have benefited from the introduction of privately managed prisons are those by James *et al*. (1997) and Camp and Gaes (2001). Comparing contemporaneously established private and public prisons, James *et al*. (1997) describe privatization as 'highly significant', especially in helping to change staff attitudes and working practices, although they offer the caveat that this may be the result of a more managerialist approach in general. Vagg (1994) argues that this effect has been particularly clear in England, where privatization caused the introduction of standards to the operations of public prisons where previously they had been resisted by the upper echelons of management. Camp and Gaes (2001) suggest, however, that there is not as much evidence that similar system-wide changes have occurred in the USA, but that there are hints that competition has improved the cost performance of some prison systems.

Legitimacy and accountability

Society has developed many complex systems and myths to justify the imposition of pain on its citizens (Sparks 1994). In modern society, imprisonment is justified by its expressive function of retribution and also its practical functions of deterrence, rehabilitation and incapacitation. That these functions often overlap and can conflict illustrates the problems of *legitimacy* in the modern penal system. At its most fundamental level, the debate on legitimacy is a question of political philosophy contingent upon what one perceives to be the source of the authority to impose punishment for offences. The poles of the debate are represented by DiIulio (1988: 81), who follows Locke in suggesting that punishment is enacted through 'the force of the community', and that using private bodies to do this 'undermines the moral writ of the community itself', and Logan (1987), for whom the state's authority is itself derived from the consent of the governed. Many sceptics of the legitimacy of

private prisons thus suggest that punishment is inherently a state function that cannot be devolved to private bodies or individuals. Others are content that, if proper separation between the determination and the administration of punishment is maintained, the state can legitimately delegate incarceration to the private sector much like any other administrative function (Shichor 1998). This argument maintains that the state determines, according to law and with all the protections of due process, who should be punished and how. At this point, the private sector company, with its position as the state's agent clearly set out in its contract, can administer that punishment. However, this apparently clear separation is not as simple as it first appears. Prison managers and staff have huge discretion in how they treat prisoners, and the administration of punishment is thus effectively an ongoing process of determinations of *justice*. Indeed, it would be hard to manage a prison safely, or one that satisfies a cultural need for punishment without using powers that are inherently punitive or utilize the threat of punitive measures. Related to this is the inevitable and necessary influence of prison staff on decisions relating to prisoner classification, probation and early release, which both blurs the line between the determination and administration of punishment, and introduces a further potential conflict of interest, as the commercial profits of the company employing those making decisions which affect a prisoner's release are served by keeping sentences long and prisoner numbers high (Brown 1994).

As we have seen, however, the debate about private prisons is dominated by the issues of cost, quality and efficiency. Confined to technical issues, the question is shifted away from the legitimacy of the private prison estate to pragmatic issues. Utilitarian arguments in support of privatization suggest that, if the prisoner receives a higher quality of accommodation and the taxpayer pays less, it would be negligent not to use private prisons. This approach neglects questions of a different order that for some opponents of prison privatization trump all considerations of cost and performance, such as whether punishment is a cultural practice unlike any other, so that it may never be ethically acceptable for private individuals to profit from the pain of others, however sound its legal basis.

Accountability is a major concern of those who are uneasy about privately managed prisons. It hinges on being able to create systems that ensure that the private bodies charged with administering punishment ultimately answer effectively to the state. In practice, this means systems that monitor and measure performance objectively (Shichor 1998). Accountability structures in private prisons are built on the contract agreed between the provider and the government. The provider is contracted to appoint a director who is the equivalent of a governor in the public sector. The director manages the prison and works to comply with all the contractual obligations including those of accountability. The director is not permitted to make decisions on disciplinary issues within the prison, that role being reserved for a civil servant appointed to the prison known as a 'controller'. Again this is the technical separation of determination and administration of punishment, and exactly mirrors the system on convict ships from Britain to Australia (Cavadino and Dignan 2007).

The expansion of the penal-industrial complex

The involvement of large, multinational corporations in the delivery of punishment generates two concerns among opponents of prison privatization: the removal of the financial incentive to controlling spiralling prisoner numbers in Western nations, and the reintroduction of vested interests to the penal system. Privatization removes one of the great restrictions on the growth of the prison estate: the cost of building prisons. It allows governments to fund considerable prison development unhindered by the public's reluctance to pay for such work. In short, privatizing prisons allows a government to expand its penal system beyond its own immediate financial capacity (Coyle *et al*. 2006).

However, as discussed above, this is likely to offer only short-term savings because it may cost states more money in the long term to contract out the management of a prison than to manage it directly. It also ties the state into long agreements (25 or more years in the case of some DCMF prisons), which do not allow for reducing the capacity of the prison estate without terminating contracts at great expense (Cooper and Taylor 2005). Experience shows that prison spaces will invariably be filled once they are built (Schichor 1995; Price 2006). Cohen (1979) argues that providing community alternatives to prisons does not lead to fewer prisons being built, but to an expansion of the means of social control beyond the carceral. By expanding the capacity of the penal system, privatized prisons likewise do not reduce pressure on the prison system but rather allow sentencers to lay down tougher and longer sentences. Building more prisons provides an answer to the problems of capacity by fixing the problem at the warehousing end, instead of trying to deal with the problem of prison space at the source – for example, by genuinely making penal servitude the punishment of last resort, or by working on rehabilitation or methods of reducing crime. It seems likely that only when the prisons are full and policy-makers cannot afford to build more prisons will serious work be done towards reducing the numbers sent to prison (Sparks 1994).

The companies that constitute the prison industry have an interest in ensuring that prisoner numbers continue to rise and are able to mobilize substantial financial and political capital in support of this aim. With greater funds available for lobbying, the private prison industry could have a greater impact on plans for the future size of the prison system than other important, but less well funded interest groups such as prisoners and victims' rights groups as well as prison officers' associations. Adding a powerful entity to an area as politically sensitive and central to the functioning of the state as the prison system could potentially have deleterious effects on democracy. The size of some of the corporate interests in the field is now clear. By 1998, the CCA was one of the ten best performing stocks on the New York Stock Exchange and, by 2001, the CCA and Wackenhut Corrections Corporation controlled 70 per cent of the worldwide corrections market (Shichor 1998).

In order to increase profits, private prison companies must seek to expand. This can be achieved by winning new contracts or by increasing the number of prisoners in existing prisons. While private prisons are more profitable when they are full – or overcrowded – there is only so much growth that can occur

by increasing the number of prisoners in a finite number of prisons. Thus, it is by gaining new contracts that the companies expand most successfully, including internationally (First Analysis 2006). The international expansion of US prison companies can clearly be seen in the creation of privatized prisons in Australia discussed above. Beyond this, for example, Sodexho, the parent company of UK Detention Services, is currently expanding its corrections business with new contracts in Germany and Hungary (Sodexho 2005). This may, in and of itself, be a problem because punishment is so inescapably embedded in the culture in which it arises (Jones and Newburn 2005). Difficulties are known to have arisen in Australia, where prison managers from American parent companies have been parachuted in to Australian companies with disastrous consequences (Shichor 1998).

For multinational companies seeking to expand, the developing world offers obvious opportunities. Many developing countries have been attracted to prison privatization for the same reasons as Western nations, but often face the added problems of very high crime rates and severely limited funding (International Council on Human Rights Policy 2003). In addition, the instability, poor human rights records and inadequate separation of judicial and penal practices of many states in the developing world generate a host of ethical problems not faced in stable democracies (Harding 1997).

Conclusion

The private sector has been involved in penal systems since earliest times and private involvement has been closely bound up with wider socioeconomic trends. Prisons were generally brought under state control due to abuses by poorly regulated private sector operators and, conversely, the drive to re-privatize in the USA began as a response to problems of inadequacy in the public prison system combined with serious funding problems. The US model of privatization was then exported to other countries where interest in privatization was largely driven by political rather than practical factors.

Evaluating the quality of penal institutions is extremely complex, and few researchers have succeeded in designing satisfactory methods for doing so. In consequence, research on whether privatization improves quality or even on the fundamental question of whether privatization reduces costs is inconclusive and frequently contradictory. It seems increasingly probable, however, that neither private nor state prisons are inherently superior to the other. Nevertheless, it is worth bearing in mind that conflicting goals are inherent in private prisons; what is good for society and criminal justice may not be what is good for prison shareholders. The inbuilt drive of private sector organizations to cut costs (most noticeable in staffing) and expand numbers may give cause for concern, especially as private institutions age. However, there is a growing sense among many academics and commentators that the presence of the private sector may have improved the performance of management in all prisons, and promoted a beneficial cross-fertilization of ideas and organizational cultures.

It is clear that this is a field in which opinion remains strongly divided on what often amount to ideological grounds. Some undoubtedly approach the question with a pragmatic willingness to do whatever seems to work best. For many, however, the question of whether privately managed prisons are or are not desirable or acceptable is answered less on the evidence of how well they serve inmates or the taxpayer, but on the more instinctive level of a belief in a small state, or a sense that the singular nature of punishment and its place in society render the legitimate private management of penal institutions impossible.

Selected further reading

There are a number of 'classic' texts on the pros and cons of privatizing prisons, including: James, A.L., Bottomley, A.K., Liebling, A. and Clare, A. (1997) *Privatizing Prisons: Rhetoric and Reality*. London: Sage; Harding, R. (1997) *Private Prisons and Public Accountability*. Buckingham: Open University Press; Logan, C. (1990) *Private Prisons: Pros and Cons*. New York, NY: Oxford University Press; and Ryan, M. and Ward, A. (1989) *Privatization and the Penal System: The American Experience and the Debate in Britain*. Buckingham: Open University Press. Two very recent additions to the literature are well worth a look. Price, B. (2006) *Merchandizing Prisoners: Who Really Pays for Prison Privatization?* Westpoint, CT: Praeger, argues that, in order to be successful business enterprises, prisons need occupants, and examines the consequences of this. Coyle, A., Campbell, A., Neufeld, R. and Rodley, N. (2006) *Capitalist Punishment: Prison Privatization and Human Rights*. London: Zed Books, discusses privatization in its historical and ideological context, and in relation to United Nations standards and rules. It examines the adverse effects of private prisons on physical and sexual abuse, healthcare, education, training and rehabilitation as corporations seek to maximize profits, and it describes the impact of cost-cutting on prison staff, paying special attention to the effect on women, children and minorities.

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Chapter 16

Prison healthcare

Jane Senior and Jenny Shaw

Introduction: a brief history of healthcare services in prisons

This chapter discusses the problems associated with providing adequate healthcare to people in prison. The physical and mental healthcare needs of prisoners have been an important consideration since the early days of the development of the penal system in England. In 1774, the Parliamentary Act for Preserving the Health of Prisoners in Gaol was passed, obliging local justices to appoint a resident medical officer to each gaol (Sim 1990). However, for as long as legislation to protect the health and well-being of prisoners has existed, those standards have also been subject to widespread criticism. One of the earliest critiques of the prison environment and its effect on health was published in 1777 when social reformer, John Howard, highlighted neglect and disinterest by gaolers, and a sense of moral decay and idleness pervading prison institutions in his work, *The State of the Prisons in England and Wales*. Howard blamed an unsuitable population mix within the prisons as contributing to the unhealthy atmosphere whereby the most experienced offenders were housed with children, petty thieves and the mentally disordered, the latter often unintentionally providing a source of amusement for other prisoners.

During the nineteenth century concerns about the appropriateness of prison as a suitable environment for the mentally ill took the form of action when attempts were made to remove some of the most obviously mentally disordered from prison, notably through the opening in 1861 of a separate wing for criminal lunatics at the Bethlam Hospital, London. This was followed two years later by the opening of Broadmoor asylum for criminal lunatics. However, these initiatives did not herald an end to the detention of the mentally disordered in prison as, contemporaneously, special provision was being created within the prison system for those who were not to be transferred to hospital. Thus, in 1864, the population of mentally disordered prisoners housed at Dartmoor Prison were transferred to Millbank Penitentiary in London and, in 1897, Parkhurst Prison was designated to

house prisoners assessed as 'unfit for ordinary penal discipline because of some mental instability other than insanity' (cited in Gunn 1985). In 1895, the Report of the Gladstone Committee recommended that all prison medical officers should have experience in the subject of lunacy, thus acknowledging the likelihood of the mentally disordered remaining a significant presence in prisons. To supplement the medical officer's role, the rank of hospital officer was instigated in 1899, fulfilled by discipline officers who received brief, general healthcare training (Bluglass 1990).

As well as addressing concerns about the mental health of prisoners, early prison healthcare also emphasized the value of preserving the physical health of prisoners, particularly the maintenance of basic standards of hygiene and cleanliness. In 1795 a prison physician, J.M. Good, stated that 'the greater number of all disorders in prisons and workhouses proceeded from inattention to cloathing [sic] and cleanliness', offering the opinion that prison infirmaries should be isolated from the rest of the prison, beds should be kept well spaced and that wards should be well lit and ventilated. With these and other precautions 'the institution will flourish, the concerns of morality and religion will prevail…and the poor will be cheerful and happy' (cited in Sim 1990; see also Chapter 8, this volume).

In line with the earlier parallels drawn between physical and moral cleanliness, throughout the nineteenth century prison regimes developed which focused on the restoration of the moral fortitude of offenders. This took the form of the introduction of vocational instruction to aid prisoners to gain honest employment upon release, and religious instruction to encourage repentance before God, as well as the operation of silent regimes to prevent offenders morally corrupting each other through association. Prison medical officers contributed to these moralistic regimes with a range of crude and curious techniques, including the sanctioning of cold baths, electric shocks, strait-jackets and dietary restrictions as punishments to affect control over refractory prisoners and those suspected of feigning mental illness. Medical interventions became part of the very fabric of prison life, whereby: 'Prison doctors not only were caught up in, but also contributed to the debates about the philosophy and practice of punishment. The disciplinary strategies which lay at the heart of penality were legitimised by the interventions which Medical Officers made' (Sim 1990).

As the twentieth century unfolded, prison medical officers expanded their role and influence beyond the prison itself, most notably through the provision of psychiatric reports to courts, leading to an acceptance of the practice of prisoners being remanded into custody for a period of medical observation. Alongside reports to courts, prison medical officers also published papers in scientific journals about criminality and mental disorder. In the 1920s and 1930s the medical officer of Birmingham Prison, Dr Hamblin-Smith, recommended the establishment of treatment units within prisons and, in 1939, the visiting psychotherapist to Wormwood Scrubs, Dr W.H. Hubert, and Dr Norwood East, a prison medical officer, recommended the establishment of a special penal institution with a psychiatric emphasis to ascertain the value of psychological treatment in the 'prevention and cure' of crime. Delayed until 1962, Hubert and East's recommendations were eventually fulfilled with the opening of

Grendon Underwood therapeutic community prison. Hamblin-Smith later concluded that, because of their punitive ethos, prisons were in fact unsuitable environments for proper therapeutic interventions (Gunn 1985).

In the latter part of the twentieth century, the Prison Medical Service was the subject of much public criticism concerning the numbers of suicides in prisons; alleged inappropriate use of psychotropic medication as a disciplinary aid for refractory prisoners; and overall poor standards of care (e.g. Scraton and Gordon 1984; Ralli 1994). The service was also criticized for being 'invisible' and lacking any external accountability, due to its existence and operation in closed institutions, separate from the mainstream National Health Service (NHS) (Smith 1984).

The British Medical Association, in a brief report of 2001, contributed to the criticism of prison healthcare services, stating that 'the prison medical service has been in an acute crisis for some time'. The paper criticized a shortage of resources; a lack of appropriately qualified staff; interference from prison governors in clinical decision-making; a lack of access to wider professional input (for example, psychiatric nurses and clinical psychologists); professional isolation; and a lack of training opportunities for doctors and healthcare staff. The report recommended increased funding for prison healthcare; ongoing training for medical staff; the undertaking of comprehensive needs analyses; and the recognition of the need for prison doctors to be able to exercise clinical independence and contribute to service planning.

Criticism of healthcare standards in prisons has also been received from Her Majesty's Inspectorate of Prisons, an independent body which reports directly to the Home Office on all aspects of prison life, regimes and conditions across establishments in England and Wales. In two studies distilling findings from inspections of the extent and quality of healthcare across a number of prisons, evidence of an apparent inability on the part of prisons to provide adequate standards of healthcare is detailed (Reed and Lyne 1997; Reed and Lyne 2000). Both studies appraised the quality and scope of care provided, measured against a set of quality standards drawn up by the inspectorate. The 1997 study focused on the overall standards of care provided in 19 prisons. The authors reported a wide variation in the quality of care provided across the numerous sites, but with core problems common to numerous prisons. None of the prisons inspected had conducted the required health needs assessment exercise; in 9 of the 19 establishments, primary care services were being provided by inadequately trained doctors; and none of the prisons provided a full multidisciplinary mental health team.

The authors concluded that prison healthcare was variable in scope and quality, and that services of the highest quality were likely to be those where healthcare had been contracted out to a local NHS general practice. The main recommendation was that the provision of healthcare be disaggregated from the custodial mechanisms of the prison and taken over by the Department of Health.

The study published in 2000 focused specifically on the quality of prison in-patient care for the mentally ill. The data for this study were gathered across 13 prisons of different types (for example, local prisons, high-security establishments and a young offender institution) and, as in the earlier paper,

the authors outlined a set of problems common to many establishments. Most in-patient units were criticized in relation to their unsatisfactory physical environment, with unacceptable levels of cleanliness and poor physical layouts hampering effective observation. With regard to staffing, no unit was overseen by a doctor who had completed specialist psychiatric training and just under a quarter of the nursing staff or healthcare officers were mental health-trained nurses. Medical and nursing staff constituted the whole of the mental health team in the majority of prisons, with little input from allied disciplines (for example, occupational therapists). Impoverished regimes were common, with prisoners unlocked, on average, for only 3.5 hours a day with long, unbroken periods of confinement at night. Time out of cell offered limited therapeutic or diversional activities, with very little in the way of structured, purposeful activity available. Further concerns were expressed about the use of seclusion in prison in-patient areas, high incidences of which appeared to correlate closely to periods of restricted staff availability. For those patients awaiting transfer to NHS facilities, waits for suitable placements were protracted (Reed and Lyne 2000).

Recent developments in the provision of prison healthcare

As described above, historically, HM Prison Service, through the existence of the Prison Medical Service (PMS), latterly renamed the Prison Health Service, was responsible for the provision of the majority of healthcare services for prisoners. When the NHS was established in 1948, the PMS remained a separate entity, located within the Home Office. Almost all healthcare services were provided 'in-house', ranging from primary care for everyday physical complaints through to in-patient care for those with severe mental health problems. The Prison Service directly employed doctors to the post of prison medical officer, supported by part-time medical practitioners who were usually local general practitioners. Other healthcare staff largely consisted of qualified nurses, usually with general or mental health qualifications, and prison healthcare officers, usually non-nurse-qualified personnel who undertook in-service training to assume duties traditionally associated with nursing staff (e.g. medication management and physical and mental health assessments).

   The current debate about standards of healthcare in prisons and the allied policy initiatives can perhaps most usefully be traced back to a discussion paper entitled *Patient or Prisoner?*, prepared by the then Chief Inspector of Prisons, Sir David Ramsbotham, a paper that acted as a catalyst for the current climate of change in prison healthcare (HMIP 1996). The paper is based on the concept of equivalence, acknowledging that:

> It is no longer sensible to maintain a health care service for prisoners separate from the National Health Service…prisoners are entitled to the same level of health care as that provided in society at large. Those who are sick, addicted, mentally ill or disabled should be treated, counselled, and nursed to the same standards demanded within the National Health Service (HMIP 1996).

The over-arching recommendation of the document was that the NHS should assume national responsibility for the delivery of healthcare in prisons through the introduction of a purchaser/provider relationship between the Prison Service and the NHS. The report criticized the current provision of prison healthcare services on a number of points – for example, a lack of suitable training for medical and nursing staff; isolation from new clinical developments shaping the NHS; inadequate care for the mentally disordered; a lack of continuity of care between prison and community; and a lack of consideration of the care needs of specific groups of prisoners (for example, women and young people). Although providing unsatisfactory standards, prison healthcare was noted as being more than twice as expensive, per person, as that provided by the NHS to the wider community.

In the year following the publication of *Patient or Prisoner?*, the Health Advisory Committee for the Prison Service published a report on the specific topic of the provision of mental healthcare in prisons (HAC 1997). This document took up discussion about the concept of equivalence in terms of its implication for the provision of services for mentally disordered prisoners. The committee noted that the prison population is in fact a subset of the whole population and, as such, health policies and priorities set for the wider community should apply equally in prisons. Specific to mental health, this meant that there was an expectation that, in prisons as in the community, the majority of mental healthcare problems could be dealt with at primary care level, and that specialist mental healthcare should be provided by multidisciplinary teams, using the Care Programme Approach (CPA – DH 1999a) as a mechanism through which to plan, deliver and co-ordinate care between prison and community.

The current situation: partnership between HM Prison Service and the NHS

Following highly publicized studies into high rates of psychiatric and physical morbidity in prisons (e.g. Brooke *et al*. 1996; Mason *et al*. 1997; Singleton *et al*. 1998; Bridgwood and Malbon 2003) and the critical appraisals of the healthcare standards provided within prisons discussed earlier, a formal shift in direction was heralded in 1999 with the publication of *The Future Organisation of Prison Health Care* (HMPS/NHS Executive 1999). The document was the report of the organizations' joint working group's deliberations upon the issues raised by *Patient or Prisoner?* (HMIP 1996), specifically addressing the need to develop practical proposals for change to realize the much heralded aim of achieving equivalence of standards across the NHS and the Prison Service.

This document revisited the problems associated with providing healthcare in prison settings, repeatedly identified in earlier studies. Accepting that, historically, healthcare in prisons: 'is often reactive rather than proactive, over-medicalised and only exceptionally based on systematic health needs assessment… [with an] over reliance on healthcare beds within prisons and a medicalised model of care', the document embraced a public health agenda, acknowledging that:

> good health care and health promotion in prisons should help enable individuals to function to their maximum potential on release, which may assist in reducing offending. It should also reduce morbidity in a high risk sector of the general public, with medium and long term reductions in demands on the NHS. (HMPS/NHS Executive 1999)

The document concluded that HM Prison Service and the NHS needed to adopt 'a more collaborative and co-ordinated approach' to providing healthcare in prisons, supported by a formal duty of partnership. The expectation was that healthcare standards should be set jointly by the Prison Service and the NHS and that they shared both the commissioning and delivery of services. This recommendation was accepted by both parties and, in 2002, it was announced that budgetary responsibility for healthcare in public sector prisons would be transferred from the Prison Service to the Department of Health, with full commissioning responsibility for prison-based services to be devolved to primary care trusts in stages, the whole process to be completed by April 2006.

The recommendation of a formal partnership between the NHS and the Prison Service fell short of the recommendations of earlier reports which overwhelmingly supported the adoption of prison healthcare services wholly within the NHS. However, it is argued that, at least in the short to medium term, a partnership arrangement is in fact the more pragmatic approach to managing change, retaining the expertise of both parties in a complex work programme. It is acknowledged that, to ensure the improvement and development of clinical services, the different organizational cultures of the Prison Service and the NHS will need to find a level of workable co-existence rather than instigating immediate, overwhelming change which could potentially derail the wider process as individual staff struggle to cope and different staff organizations behave in a protectionist manner as they seek to safeguard the interests of their members.

Partnership involving both organizations also acts as a protective factor for the healthcare interests of prisoners. In spite of the criticism heaped upon prison healthcare services historically, the separation from the NHS in terms of priority setting and budgetary control has meant that this politically unattractive population has not, up until now, had to compete for ultimately finite healthcare resources with other types of patients who may be judged to be more publicly acceptable. The NHS has perhaps historically under-financed unattractive healthcare specialities (for example, mental health services) and it is reasonable to assume that healthcare services for prisoners may have suffered a similar fate if left to fend for themselves among the competing priorities of the NHS without the support of their 'parent organization', the Prison Service.

As well as recommending partnership as the way forward, the working group also produced a detailed action plan of perceived priorities for the future development of healthcare services in prisons, ranging from improvements to reception screening and discharge planning; improvements to dental, pharmacy and primary care services; and a re-evaluation of the

prison healthcare workforce in terms of roles, training requirements and management structures.

The healthcare needs of prisoners

A longstanding criticism of healthcare services for prisoners is that they have very rarely been developed based on assessments of actual need. While acknowledging that the prison population is, in fact, a subset of the general population, research evidence informs us that the health needs of prisoners differ from those of the populations from which they are drawn, in terms of the types of illness they experience and prevalence rates.

Physical disorder

Evidence from the UK shows that prisoners commonly experience chronic physical health problems, and that the pattern of disease is different from that of the general community. A large-scale study of the physical health of prisoners reported that 46 per cent of the sample of sentenced male adult prisoners had some type of longstanding illness or disability. Ten per cent reported having asthma, bronchitis or other respiratory problems, and 15 per cent of the over-45 group reported heart and circulatory illnesses (Bridgwood and Malbon 1995). Lester *et al*. (2003) found that 84 per cent of male prisoners were smokers, in comparison with a general community rate of approximately 26 per cent of adult men (ONS 2005).

With regard to the influence of chaotic lifestyles on health status, problems associated with drug use are common in prison populations. Weild *et al*. (2000) found rates of antibodies to hepatitis B of 8 per cent and 7 per cent to hepatitis C in a sample of prisoners in England and Wales. However, these figures rose to 20 and 31 per cent, respectively, in intravenous drug users, nearly a third of whom reported continued injecting while in prison. For those who continued to inject while in custody, the use of shared equipment was common.

With reference to sexual health, over a fifth (22 per cent) of prisoners who took part in a self-report health study reported having had a sexually transmitted infection at some time in their life. Additionally, the survey found that prisoners were much more sexually active than the general population, based on numbers of lifetime partners, with correspondingly lower adoption of safer sex practices (Green *et al*. 2003).

Mental disorder

The majority of research to date into the healthcare needs of prisoners has taken the form of studies of psychiatric morbidity, all of which indicated a significant level of need for mental healthcare services for prisoners. The most recent, large-scale study of prisoners' mental health needs was conducted on behalf of the Department of Health to provide accurate prevalence data for male and female prisoners, both remand and convicted, and to inform policy decisions about the types of services required for these groups (Singleton *et al*. 1998).

The study revealed high prevalence rates of mental disorder in all types of prisoners, suggesting that 21 per cent of the female remand population would have a psychotic disorder, as would 10 per cent of the sentenced female population, 9 per cent of male remand and 4 per cent of male sentenced prisoners. Seventy-eight per cent of the male remand population and 50 per cent of the female population were diagnosed as having a personality disorder. The most prevalent was anti-social personality disorder, identified in 63 per cent of male remand prisoners and 31 per cent of female prisoners.

With regard to neuroses, all categories of prisoners returned high rates of symptoms such as sleep problems and worry. Women prisoners were significantly more likely to have a neurotic disorder than men and, similarly, rates were higher in remand prisoners, both men and women, than in the sentenced population. Rates of neurotic disorders for all women prisoners were 66 per cent, compared with a general household population rate in women of 16 per cent (O'Brien *et al*. 2001). Seventeen per cent of male remand prisoners and 21 per cent of female remand prisoners were diagnosed as experiencing a current depressive episode and more than 1 in 10 of all remand prisoners had a current anxiety disorder. Rates of self-harm, both potential and actual, were also assessed, with 12 per cent of male remand and 23 per cent of female remand prisoners reporting having experienced suicidal thoughts in the week before interview.

Overall, 95 per cent of male and 96 per cent of female remand prisoners were diagnosed as experiencing at least one type of mental disorder, personality or substance abuse problem, but care needs to be taken when translating these data in relation to treatment needs and service requirements. Many prisoners were diagnosed only with disorders where motivation for change and a desire for treatment are vital (for example, personality disorder and substance misuse), so not all such prisoners would make demands for treatment. Similarly, disorders such as depressive episodes are not detailed in terms of severity, as in some of the previous smaller-scale studies, so no judgement can be made as to what proportion of sufferers would require intervention at primary or secondary care level within prison settings, or how many would require transfer to NHS facilities.

The problem of increased rates of psychiatric disorder is not unique to prisons in England and Wales. Fazel and Danesh (2002) completed a systematic review of surveys published on the prevalence rates of serious mental disorders in the prison populations of Western countries. The selected studies showed that, overall, about 1 in 7 Western prisoners have psychotic illnesses or major depression, and about half of male prisoners and one fifth of female prisoners have anti-social personality disorders. These rates are greater than those found in the general population, by between 2 and 4 times for psychosis and major depression, and by around 10 times in terms of anti-social personality disorder. The authors concluded that these prevalence rates mean that there is a substantial burden of treatable mental disorder in prisons which, due to current limited resources, is likely to be inadequately addressed.

Substance abuse

The Office for National Statistics (ONS) prisoner psychiatric morbidity study reported earlier also focused on rates of alcohol and drug abuse. With regard to alcohol abuse, 58 per cent of male remand and 63 per cent of male sentenced prisoners reported hazardous drinking in the year before coming into prison; the equivalent figures for women were 36 and 39 per cent respectively.

Fewer than a fifth of men and a third of women prisoners had never used illicit drugs in their lifetime. In the year before custody, 29 per cent of male and 41 per cent of female remand prisoners had used heroin. Similarly, 24 per cent of male and 32 per cent of female remand prisoners had used crack (Singleton *et al*. 1998). These findings are broadly similar to other studies reporting levels of alcohol and drug abuse in UK prisoners (e.g. Brooke *et al*. 1996; Mason *et al*. 1997). As well as prison being the setting for many unsafe drug injecting practices, as noted above in relation to rates of hepatitis, Boys *et al*. (2002) found that it was also commonplace for previous non-drug takers to initiate drug use while in prison, with 25 per cent of heroin users reporting first use in custody. Co-existing mental disorders are common in both hazardous drinkers and drug users, thus likely increasing the complexity of treatment needs.

Suicide and self-harm

While not unique to custodial settings, the issue of self-harm and suicidal behaviour has developed a specific resonance in prison populations. This is due to both the prevalence of such behaviour and the unique management problems created in prisons as a result. The issue of suicide and self-harm is discussed at length elsewhere in this volume (see Chapter 18), and so will be addressed here only in terms of the size of the problem.

The ONS psychiatric morbidity study found that 7 per cent of male and 16 per cent of female sentenced prisoners reported having attempted to commit suicide in the year before interview. These figures rose to 15 and 27 per cent, respectively, in the remand population. Similarly, 7 per cent of male and 10 per cent of female sentenced prisoners reported having committed at least one act of self-harm in their current prison term (Singleton *et al*. 1998). The number of self-inflicted deaths in prison doubled between 1982 and 1998, a rise larger than would be expected from the increase in the prisoner population in the corresponding period alone (HMIP 1999), with nearly a third of self-inflicted deaths occurring within one week of initial reception into custody (Shaw *et al*. 2003).

Women prisoners

As previously noted, women prisoners display higher rates of mental disorder than do their male counterparts, with more females diagnosed with psychotic and neurotic disorders (Singleton *et al*. 1998). Women who showed evidence of a psychiatric disorder were also more likely to receive a punishment for an infraction of disciplinary rules in prison than those who did not (O'Brien *et al*. 2001).

With regard to physical health, there is evidence that a large proportion of women prisoners rate their own health status poorly, with over half reporting some type of physical ailment (Home Office 1997; Smith 1998). In a self-report study, women prisoners were found to have significantly lower scores in a majority of measured health dimensions than women in the social class with the worst health in the UK general population (Plugge and Fitzpatrick 2005).

Women in prison have been found to be more likely to have an abnormal cervical smear result and also to be less likely to have had routine cervical screening than women in the general community. Encouragingly, there is evidence that time in prison is being used as an opportunity for screening to take place as 79 per cent of women who had been in prison for more than three months had been screened, compared with 38 per cent of those who had been in prison for less time (Downey *et al.* 1994; Plugge and Fitzpatrick 2004).

Many female prisoners are carers of young children when they are taken into custody. Some have their baby with them in custody until the child is 18 months old in one of a small number of specialist prison mother-and-baby units. Although this is accepted policy it has not, along with other maternity and midwifery services for prisoners, ever been properly evaluated for efficacy and satisfaction (Black *et al.* 2004; Price 2004).

Suicide and self-harm are of particular concern in women's prisons, as noted above, with 23 per cent of female remand and 8 per cent of female sentenced prisoners reporting suicidal thoughts in the previous week, and lifetime prevalence rates of suicide attempts of 44 and 37 per cent respectively (Singleton *et al.* 1998). The rate of self-inflicted deaths in women prisoners, at 2.09 per thousand, is nearly double that of male prisoners (1.28 per thousand – Home Office 2003). High levels of self-harm among women prisoners are frequently associated with significant histories of sexual and violent abuse (e.g. Butler *et al.* 2001; Milligan and Andrews 2005).

Young prisoners

Children and young people in custody commonly have backgrounds punctuated by abuse, interrupted schooling, problematic familial relationships and periods in local authority care (HMIP 2004a). In their survey of those under the age of 18, HM Inspectorate of Prisons (2004a) found that young men identified a number of particular healthcare problems as important issues to be dealt with upon their arrival in custody, including alcohol use, coming off drugs and feeling depressed.

The likelihood of young prisoners having been 'looked after' in formal care settings increases their chances of having received impoverished dental care, and having missed routine immunization and health checks in comparison with young people from more stable family settings. Additionally, 'looked after' children display higher levels of emotional and behavioural problems and, in spite of high rates of referral to mental health services, rates of actual treatment are low (DH 2002). In a national survey of the physical health of prisoners, 39 per cent of 16–24-year-olds reported a longstanding illness, 15

per cent reported having asthma and 10 per cent musculoskeletal problems (Bridgwood and Malbon 1995).

The mental health needs of young prisoners identified in the ONS survey undertaken in 1997 are reported by Lader *et al*. (2000). The survey reports high levels of minor neurotic symptoms including sleep problems, worry and irritability, young women reporting these symptoms up to twice as frequently as young men. Eighty-four per cent of male remand and 88 per cent of sentenced young offenders were diagnosed as having a personality disorder. Most frequent were anti-social personality disorder detected in around three quarters of the sample and paranoid personality disorder in around a quarter. Similarly, 84 per cent of female sentenced young offenders showed evidence of a probable personality disorder. Rates of probable psychosis were calculated as 6 per cent in remand and 8 per cent in sentenced male young offenders; the comparative figures for female young offenders were 6 and 9 per cent, respectively.

The prevalence of depression was found to be 51 per cent in male remand young offenders and 36 per cent in the sentenced population, compared with 6 per cent of the general male population aged 16–19. The rate of depression for women sentenced young offenders was 51 per cent. Ten per cent of male remand offenders and 8 per cent of female remand prisoners reported having had suicidal thoughts in the week prior to interview. Respondents also had high rates of lifetime histories of having attempted suicide. Twenty per cent of male remand and 16 per cent of male sentenced prisoners reported having attempted suicide at least once in the past, the figures for young women being 13 and 32 per cent, respectively (Lader *et al*. 2000).

Problematic drug and alcohol use was also identified, with two thirds of male young offenders and half of the female sentenced population screening positive for hazardous drinking, and over half of the whole sample reporting drug dependence, in the year before custody. With regard to use of healthcare services, the survey found that, in the year before entering prison, 11 per cent of sentenced and 13 per cent of remanded male young offenders had received help for a mental or emotional problem. This rose to 27 per cent in female young offenders. Nearly 10 per cent of female sentenced young offenders had previously been admitted to a psychiatric hospital. In prison, around 10 per cent of young men and 40 per cent of young women were taking medication acting on the central nervous system. Young men were most likely to be prescribed analgesics, taken by 5 per cent of remand and 4 per cent of sentenced young offenders. Anti-depressants were prescribed to 3 per cent of both remand and sentenced young men. In young women, prescription rates were much higher, with 19 per cent taking analgesics, 12 per cent anti-depressants, 14 per cent anxiolytics and hypnotics, and 8 per cent anti-psychotic medication.

Older prisoners

Two studies published in 2001 specifically addressed the physical and mental health needs of elderly prisoners in England and Wales, a population that has doubled in the last ten years (Fazel *et al*. 2001a, 2001b). The researchers

interviewed 20 per cent of the male prison population over the age of 60, highlighting that 85 per cent had one or more major illness recorded in their medical records, commonly psychiatric (45 per cent), cardiovascular (35 per cent), musculoskeletal (24 per cent) or respiratory (15 per cent) conditions. Twenty-eight per cent of the sample rated their overall health as bad or very bad, and 77 per cent were taking some type of prescribed medication.

Over half the sample (53 per cent) had at least one psychiatric illness or personality disorder diagnosis. Thirty per cent of the sample was diagnosed with a depressive disorder, a rate five times that of either younger prisoners or an age-matched general community sample. Compounding this high rate of depression, only 12 per cent of those who were depressed were being treated with anti-depressants, suggesting significant unmet treatment needs. Rates of dementia in this group and the general community were found to be broadly similar.

Overall, the authors concluded that rates of illness in this group were higher than those in younger prisoners and also of an age-matched general population sample; therefore, healthcare service planning for elderly prisoners cannot be made on needs estimates in those groups, a theme echoed by Her Majesty's Inspectorate of Prisons. The inspectorate's report into the lives and care of older people in prison acknowledges that standards for elderly prisoners should be the same as those required for the elderly general public under the auspices of the National Service Framework for Older People (DH 2001; HMIP 2004b; see also Chapter 10, this volume).

Use of healthcare services

Prisoners are heavy consumers of healthcare services, both before and during custody. In a self-report survey of the use of prescribed medication, 53 per cent of women and 34 per cent of men newly remanded into custody reported currently being prescribed some type of medication. Forty-three per cent of female and 30 per cent of male remand prisoners were received into custody taking benzodiazepines, a problematic medication with regard to dependency and withdrawal issues. In contrast to current prescribing guidelines, much benzodiazepine use in this group was long term, 78 per cent of the men and 87 per cent of the women having used the medication for over six months. Additionally, nearly a fifth (19 per cent) of men and 15 per cent of women remanded into custody were taking anti-depressants (HMIP 2000). Twenty-one per cent of male and 40 per cent of female remand prisoners reported having received some type of psychiatric help in the year prior to entering prison (Singleton *et al*. 1998). These data show that prisoners are commonly received into custody with high levels of prescription medication, but it is also true that rates of prescription for medication for mental health problems actually increase while in prison. Overall, 17 per cent of women received into custody are already on medication acting on the central nervous system; however, O'Brien *et al*. (2001) found that that figure increased to 50 per cent of all women once they were in custody.

Marshall *et al.* (2001) audited the use of healthcare services in prisons in the UK using centrally collated data which detailed numbers of admissions to prison healthcare centre beds; numbers of consultations with primary healthcare workers; the average daily prison population; and the number of new receptions to prison. Two consultation rates were calculated, one which included the obligatory screening which all prisoners undergo on reception into custody without having to request to do so, and a second rate, adjusted to exclude this statutory consultation. These data were then compared with survey data of consultation rates with general practitioners and nurses for the general community and data relating to admission to NHS hospitals, adjusted to reflect a population with the same demographic characteristics of the prison population.

The results showed that both male and female prisoners consult doctors at a rate three times more frequently than a demographically equivalent community population. Prisoners' consultations with other healthcare workers, defined as nursing staff or healthcare officers, were at a rate 70 times greater than that at which the general community consults nurses, described as the nearest community equivalent. Usage patterns of in-patient facilities were similarly different. The authors recorded that, in 1997–8, there were the equivalent of 29 healthcare beds per 1,000 prisoner years, whereas there were approximately 4.5 beds per 1,000 population in the UK as a whole. Prisoner admissions to NHS beds outside prison were lower than the matched community sample. However, admissions to prison in-patient settings were 10 times higher than the community sample for male prisoners, and 17 times higher for female prisoners.

The reasons to explain these discrepancies between the help-seeking behaviours of the general community and the prison population were thought to relate in part to the increased levels of morbidity of many conditions in prisoners, such as mental disorder and substance abuse, but it was also suggested that higher consultation rates were due to other, institutional, factors. As noted earlier in relation to health screening at reception, some consultations have a legalistic, rather than health-oriented, function (for example, the requirement to be seen by a healthcare worker prior to a disciplinary adjudication, or to ascertain fitness for discharge from custody). In addition, prisoners are unable meaningfully to self-care (for example, they will usually have no access to simple over-the-counter remedies, resulting in even the most minor health concern triggering a formal consultation). The apparent excessive use of in-patient facilities also needs to be set within the historical context of prison healthcare. Prison healthcare has traditionally centred on interventions provided within the healthcare centre with very little outreach care practised in the wider prison community. Relatively ample bed availability inevitably leads to the lowering of the clinical criteria needed to prompt an in-patient episode.

The Health Improvement Partnership in action: a case study in mental healthcare

As noted above, the presence of the mentally disordered in prison populations is widely known, in spite of the accepted logic that: 'prisons are not there to provide care for mentally disordered offenders who have fallen through the net of NHS services; their purpose is to punish offenders' (Birmingham 2002). The issue of the mentally disordered in prison is the aspect of prison healthcare that has, historically, attracted most public attention. Media campaigns have highlighted the 'scandal' of inadequate care standards; the apparent use of prisons in the absence of psychiatric hospitals in an era of community care; and a lack of progress in improving the speed and frequency of transfer of the most disordered out of prisons into suitable hospital placements (e.g. Bright 2003; Davies 2004).

A major thrust of the clinical improvement partnership between the NHS and the Prison Service is focused on mental healthcare. *The Future Organisation of Prison Health Care* (HMPS/NHS Executive 1999) acknowledged that models of mental healthcare delivery in prisons were under developed; health screening did not adequately identify those likely to be mentally disordered; and that care planning was unsatisfactory. It also noted that, in the wider community, most mental health problems are treated within primary care services supported, where necessary, by specialist community mental health teams, a development which has been largely missing from prison settings.

The proposed agenda for change for mental healthcare in prisons, outlined in *Changing the Outlook* (DH/HMPS 2001), included the need to develop services in prisons in line with wider NHS policy and the *National Service Framework for Mental Health* (DH 1999b); to develop ways to identify better mental disorder at reception; to develop the use of the Care Programme Approach; to adopt a community-care service model, encouraging mental health outreach work on the residential wings, thus shifting away from heavy reliance on medically orientated in-patient care; and the development of initiatives in terms of improving health promotion in prisons through improved staff training and peer support schemes, with an emphasis on developing 'healthy prisons'.

Changing the Outlook described a model of holistic mental health service provision, from initial reception into custody through to discharge into the community. The importance of improving mental health provision at primary care level where, it was felt, the vast majority of mental health problems could be appropriately treated, was cited as the foundation stone of development. Primary care was envisaged as having a number of roles – for example, in the diagnosis of subclinical mental health issues (such as stress-related problems) that can be addressed by wider agencies within the prison; the treatment of common mental health problems; facilitating referral to specialist mental health services when clinically indicated; and chronic disease management (for example, for those prisoners with psychosis or depression).

Alongside robust primary care services, the development of wing-based services, utilizing a community mental health team model, was promoted in preference to the traditional system of in-patient care in the prison healthcare

centre. This would involve providing additional help to prisoners with more serious mental health problems with the aim of maintaining them safely on normal residential wings. The Care Programme Approach (CPA) was cited as useful in planning and evaluating care, and it was envisaged that this level of service would include 5,000 prisoners at any one time. The development of day-care services was also cited as an alternative to in-patient care, coupled with a need to refocus in-patient care so that it is used only for those with the most serious mental health problems. The need for mentally disordered prisoners to be linked with community mental health services upon release was also noted, and prison mental health in-reach teams were charged with improving through-care and discharge planning to ensure that every prisoner with a serious mental illness had a care plan and a community care co-ordinator on release.

Prison-based mental health in-reach teams were charged with developing as multidisciplinary teams, offering prisoners specialized mental healthcare similar to that provided to the wider population by community mental health teams. Prisoners with severe and enduring mental illness were to be the early focus of intervention from in-reach teams, but it was supposed that their introduction would eventually benefit prisoners with all types and severity of mental health problems. During the early stages of development, the in-reach programme adopted a collaborative approach, whereby local networks were established to share good practice examples and to support areas of change and modernization aimed at improving clinical standards and identifying training needs. Key aims for the collaborative included improvements to care planning and through-care arrangements for mentally disordered prisoners using the mechanism widely operated in mainstream mental health services, the CPA; improvements in transfers between prisons and NHS units for mentally disordered prisoners; and the identification and fulfilment of training needs (DH/HMPS 2002).

The first three years of the in-reach programme were supported by targeted funding from the Department of Health, judged sufficient to fund 300 extra mental health professionals to work in prisons. This number has been achieved (Duggan pers. comm.). The Department of Health has funded an evaluation of the prison mental health in-reach initiative which will consider the impact of in-reach teams in terms of any discernible improvements to the mental healthcare services provided to prisoners. The research team are due to publish their findings in 2007.

In 2005, these clinical and policy imperatives were further augmented with best practice guidelines published as the *Offender Mental Health Care Pathway* (DH/NIMHE 2005). These guidelines provided recommended interventions and key objectives at each stage of an offender's contact with the criminal justice system, based on reviews of the available literature and innovative clinical practice. The stated aim was to provide 'end to end management of offenders' mental health needs', in line with the objectives of the National Offender Management Service which has integrated the prison and probation systems (Home Office 2004).

The other pressing issue in relation to mentally disordered prisoners is the need to effect timely and appropriate transfer from prison to hospital

for those whose degree of disorder is of such severity to require specialist treatment in a non-custodial environment. Legislation exists under the current Mental Health Act 1983 for prisoners to be transferred to hospital for a period of assessment or treatment, following which they may either be returned to prison to complete their sentence, or be discharged directly into the community, with a statutory requirement that they receive after-care. Restrictions upon discharge from hospital can be put in place to ensure that prisoners are returned to prison if they recover so that they are not set at liberty substantially earlier than if they stayed in prison. Restriction orders can also ensure that the Home Secretary, through the Home Office Mental Health Unit, remains involved in the management of discharged prisoner-patients, allowing their recall to hospital if they become unwell or if they fail to abide by conditions placed upon their discharge (for example, compliance with follow-up care).

The number of transfers from prison has risen over recent decades. In 2003, there were a total of 721 restricted patients admitted to hospital from prison (Ly and Howard 2004), although studies of prisoners' mental health treatment needs suggest that a large number of prisoners remain in prison when transfer to hospital is clinically indicated. Gunn *et al*. (1991) estimated that 3 per cent of all male adults and young offenders required transfer to hospital. In a study of male remand prisoners, this figure rose to 9 per cent (Brooke *et al*. 1996). In real terms, Birmingham (2003) estimated that around 2,000 of the male prison population required transfer to a psychiatric hospital. With regard to women prisoners, Rutherford and Taylor (2004) showed that, overall, fewer than 2 per cent of newly received prisoners in a large women's prison were transferred over a 12-month period; however, the number actually requiring transfer may have been between 4 per cent of the sentenced population and 13 per cent of those on remand.

Clinical research has documented difficulties in facilitating transfer to hospital. The main issue surrounding transfers concerns delays in the process, which have been found in a series of studies (e.g. Blaauw *et al*. 2000). Mackay and Machin (2000) showed that a decision on transfer took 50 or more days in a fifth of cases. Robertson *et al*. (1994) found an average delay between being accepted for an NHS bed and admission of five to six weeks – a length of time that the authors note would never occur if a patient were admitted from the community. This is supported by the *Changing the Outlook* document (DH/HMPS 2001), which stated that, in some cases, prisoners had less priority than those in the community regarding admission to mental health units.

A number of factors for these delays have been suggested, most frequently a shortage of suitable psychiatric beds, a common and longstanding difficulty (Home Office and the Department of Health and Social Security 1975; Birmingham 1999). Among the non-completed transfers reported by Mackay and Machin (2000), over 44 per cent were due to lack of suitable bed availability. Other factors include disagreements over the required level of security (Mackay and Machin 2000); disputes over the catchment area of local hospitals (Robertson *et al*. 1994); reluctance of hospitals to admit prisoner-patients (Blaauw *et al*. 2000); and disagreements over severity of illness (Dell

et al. 1993). Studies of individual differences revealed longer waiting times for prisoners requiring high-security placements (Isherwood and Parrott 2002) and those diagnosed with personality disorder (Rutherford and Taylor 2004). Adverse effects of delays in transfer have been documented, including suicide and self-harm among waiting prisoners (e.g. Rutherford and Taylor 2004); and location in 'strip cell conditions' (Coid *et al*. 2003).

The latest draft of a new Mental Health Bill 2004 has not altered the procedures for transferring prisoners to psychiatric hospitals. However, a power has been added enabling the transfer to hospital of a prisoner for 'a report on his mental condition' (col. 133), a change welcomed by the joint committee (House of Lords and House of Commons 2005). The Department of Health Expert Committee (Department of Health 1999c) recommended that a new Mental Health Act should not allow for compulsory treatment in prison due to poor conditions in prison healthcare, and the possibility that the urgency of transfers would be reduced.

The Department of Health undertook a two-year programme of work, ending April 2007, aimed at reducing the delays encountered in transferring prisoners under the Mental Health Act. The programme was supported by procedural guidelines published by the Department of Health, and a Prison Service Instruction, published by the Prison Service (DH 2005; HMPS 2006). The best practice guidelines give help on a number of potential problems throughout the transfer process. Emphasis is given to the need for the early identification of prisoners who may need treatment in hospital, with the premise that no delays in accessing suitable treatment should be caused by virtue of being in prison. Clear guidelines are given to allow prison staff to determine the appropriate responsible primary care trust which needs to provide local facilities or fund an out-of-area placement. Possible problems at each stage of the process are identified, and advice regarding the resolution of these problems is highlighted. Consideration is given to actions required where a prisoner's condition is of especial concern (for example, in cases of the refusal of food and drink). Further work on the development of risk and urgency guidelines is underway between the Department of Health and the Royal College of Psychiatrists and is due to be piloted and evaluated in a small number of prisons with the highest numbers of transfers (Fowler pers. comm.). The implementation of the guidelines will be independently evaluated in order to identify 'what works' and what continues to be problematic.

Conclusion

Since their inception, prison healthcare services have been criticized for a lack of quality, suitability, scope and accountability. Prisoners present with a variety of health-related problems, which they commonly experience at greater rates of prevalence than the general public. When not in custody, prisoners often live chaotic lives characterized by offending, drug misuse, lack of engagement with normal societal structures and impermanence in terms of accommodation and family relationships. These elements are then imported into prisons when people are in custody.

In recent years, governmental policy has embraced a policy supporting a partnership for clinical improvement between HM Prison Service and the NHS, based on the concept that, overwhelmingly, prisoners spend only short times in custody and should, therefore, be regarded as a subset of the general population which requires healthcare services of equivalent scope and quality as those available to the wider community. Prisons and partner primary care trusts have been charged with undertaking meaningful health needs assessments and developing a range of services to match the identified needs.

It is acknowledged that this involves a massive programme of work as underdeveloped services strive to match community provision. The specific example of mental healthcare has been discussed to illustrate the size of the work programme required to meet the needs of a population which has marked mental health pathology. Alongside the clinical improvement agenda, there will need to be substantial research energies directed towards prison-based healthcare services with a need to evaluate the success of the adaptation of imported healthcare interventions for delivery in prison settings and also the development of new interventions designed specifically for prisons.

Selected further reading

Arguably the most comprehensive history of prison healthcare services, and their influence upon the development of the wider prison system, is Sim, J. (1990) *Medical Power in Prisons*. Buckingham: Open University Press. Leech, M. (ed.) (2005) *The Prisons Handbook*. Manchester: MLA Press, is the definitive 800-page annual guide to the penal system of England and Wales. This book provides an invaluable overview of the England and Wales prison system, with detailed information about each establishment and additional information about Prison Service policies and procedures and prisoners' rights. It is useful for academic researchers, clinicians and commissioners alike.

Among the reports worth consulting are HM Prison Service/NHS Executive (1999) *The Future Organisation of Prison Health Care*. London: Department of Health, which is the policy document that outlines the details of the current HMPS/NHS improvement partnership; and Singleton, N., Meltzer, H., Gatward, R., Coid, J. and Deasy, D. (1998) *Survey of Psychiatric Morbidity among Prisoners in England and Wales*. London: Department of Health, the most comprehensive study of mental health prevalence of prisoners, outlining the background to the headline figures and providing a clear understanding of all the types of mental health problems and personality disorders in the prison population.

Finally, we recommend Liebling, A. (1992) *Suicides in Prisons*. London: Routledge. Prison suicides arouse public concern and media attention, and this study places the problem in the wider concept of the experience of being in prison, arguing that suicide is not just a psychiatric problem, and therefore prisons need to adopt a system-wide approach to prevention.

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Chapter 17

Drugs in prison

Michael Wheatley

Introduction

The World Health Organization Expert Committee on Drug Dependence defines a drug as 'any substance that when taken into the living organism, may modify one or more of its functions' (1969). When individuals use drugs on a regular basis and/or experience social, psychological, physical and legal problems related to intoxication and consumption these behaviours are described as drug misuse (DrugScope 2001).

The primary concern of this chapter is illicit drug use in prison. Illegal drugs are designated as such by various domestic laws, such as the Medicines Act 1968 and the Misuse of Drugs Act 1971, which regulate and control non-medicalized drug use, international agreements and treaties (McAllister 2000). In prison, illicit drug use is prohibited. The Prison Rules state that any prisoner found to be under the influence of, or in possession of, an illicit drug (or alcohol) will be in violation of the prison code of discipline. Specifically, prisoners are guilty of an offence against prison discipline if they administer a controlled drug to themselves or fail to prevent the administration of a controlled drug upon themselves by another person (Rule 51:9) or have in their possession any unauthorized article (Rule 51:12). Drug misuse in prison, therefore, constitutes any action that contravenes these rules and creates social, psychological or physical problems.

This chapter summarizes studies, largely from England and Wales, describing how many prisoners take drugs, why they take them and the Prison Service's strategies for reducing both the demand and supply of drugs in prison. The needs of some special populations are considered before drawing conclusions. Alcohol, the most popular legal drug in society at large, is not explicitly considered as this drug warrants separate consideration that is beyond the scope of this chapter.

The prevalence of drug misuse among prisoners

Studies have found that approximately 60–70 per cent of prisoners had misused drugs in the 12 months prior to imprisonment (Singleton *et al*. 1998; Swann and James 1998; Burrows *et al*. 2001; Weekes 2002; Metribian *et al*. 2004). From the drug-misusing population seeking help in prison, May (2005) reported 93 per cent had used drugs in the 30 days before imprisonment, and the drugs most frequently used (excluding alcohol) were heroin, crack cocaine and cannabis. Ramsey (2003) reported 55 per cent committing offences linked to their drug taking (the need for money to buy drugs was commonly cited), and 53 per cent regarded themselves as problematic drug misusers. Approximately 10 per cent of males (remand and sentenced) had a moderate dependency and between 32 (sentenced) and 40 per cent (remand) had severe dependency. Females reported a 7 per cent moderate dependency (remand and sentenced) and between 34 (sentenced) and 47 per cent (remand) had severe dependency (as measured by the presence of three or more dependency symptoms). Drug misuse in prison is prevalent but hardly surprising given a 201 per cent increase in males imprisoned after conviction for drug offences in the 20 years from 1982 (Councell 2003). This is also understandable given the targeted efforts of the government and criminal justice organizations to seek and break the links between drug misuse and criminal conduct.

Knowing that there is a high prevalence of problematic drug misusers in prison is one thing; ascertaining the actual level of drug misuse in prison is both difficult and complex because it is ever changing and is influenced by many factors (Boys *et al*. 2002). However, Ramsey, in 2000, as part of the British Crime Survey, estimated that within the male remand population 38 per cent had used drugs during their current prison term, as had 48 per cent of sentenced prisoners. This compared with 25 per cent (remand) and 34 per cent (sentenced) female prisoners (Ramsey 2003). Singleton *et al*. (2005) found drug use, as measured by random mandatory drug testing (MDT), to correlate with prisoners' self-reported drug use. The relationship was stronger for cannabis than opiates, and 25 per cent of prisoners reported using drugs while in custody. The survey also showed a marked drop in the proportion of prisoners reporting using drugs in prison compared with the immediate pre-prison period. Fewer than half of those using drugs in the month prior to imprisonment said they used drugs in prison in the month before interview. This reduction was slightly less for opiates than for cannabis. The most common reason for the reduction in use was that prisoners did not need drugs. Of those prisoners who did use drugs, needing and wanting 'the effect' was given as one reason (65 per cent); the fact that drugs were easily available, as another (57 per cent). Opiate users prior to imprisonment were more likely to report being prepared to use both cannabis and heroin in prison. Cannabis users, on the other hand, are more deterred by MDT, which can detect the drug in urine for up to 30 days (Department of Health 1999: 25). Of all prisoners in the survey, only 1 per cent were identified as saying they had changed from cannabis to heroin to avoid detection. Only 0.7 per cent of prisoners said they had used no drugs in the year prior to imprisonment but had started or significantly resumed heroin use while in

custody (Singleton *et al*. 2005). This suggests that prisons are not creating additional drug misusers.

It has been estimated that approximately 136,000 offenders are imprisoned each year (Home Office 2005a). Using an estimate of problematic drug use (55 per cent) determined by the Ramsey study (2003), this means that 75,000 problematic drug misusers pass through the prison system annually – approximately 42,000 being present at any one time. This establishes the Prison Service as having, at any one time, more problematic drug misusers than the healthcare system or the wider criminal justice system (Home Office 2005a).

Causes of, and motives for, drug misuse

Drug use occurs in every society and it plays an important part in the lives of everyone: statistically, it is the person who does not take a drug of any kind who is abnormal (Gossop 2000). However, the use of certain drugs has very different meanings in different cultures and countries (Westermeyer 1995).

The term 'drug taker' is often used in a condemnatory way to depict people who are involved in a strange and deviant range of behaviours. Drug taking has often been regarded as a 'maladaptive' coping response (behaviours associated with poor adaptation to a function, situation or purpose). However, the concept of drug taking as being 'maladaptive' is subject to question. As drug use becomes normative (Seivewright 2000), should it be regarded as an 'adaptive' coping response, where use is made of drugs for good reasons, despite it not being in keeping with cultural or legal norms? The view adopted is determined by the evaluator's perspective.

Gossop (2000) provides a framework to help understand and explain why people take drugs. He describes three separate, but intrinsically linked, rationales for drug taking: the specific pharmacological properties of the drug (the chemical reactions within the body); the psychology of the user (the intrinsic belief systems held); and the social setting (the extrinsic environment and the relationships experienced) in which drug taking occurs. As drug users are a diverse group of people, each person's rationale for taking a drug will be different, depending on individual circumstances. Each factor should be considered in order to understand the causes and motives of drug taking as an adaptive response. First, the pharmacological properties of a drug can be broadly divided into four categories: depressants of the central nervous system; pain reducers; stimulants of the central nervous system; and hallucinogens that alter perceptual function (DrugScope 2004). Drugs that depress the nervous system (e.g. tranquillizers, solvents or gases) help relieve tension and anxiety, promote relaxation and sedation, impair the efficiency of mental and physical functioning, and often decrease self-control or reduce inhibitions. Opiates, opioids or narcotic analgesics (e.g. heroin, methadone or dihydrocodeine) help decrease sensitivity to, and emotional reaction to, pain, discomfort and anxiety. Drugs that stimulate the nervous system (e.g. amphetamines, cocaine, caffeine or tobacco) increase alertness, diminish fatigue, delay sleep and promote vigilance and an ability to perform physical

tasks over a long period. Finally, drugs that alter perceptual function (such as LSD, magic mushrooms and cannabis) can heighten appreciation of sensory experiences and can provoke perceptual or visual distortions and feelings of dissociation and insight. Cannabis can promote relaxation, drowsiness, eating and talkativeness. The individual's needs initially determine the choice of drug used. For example, if confidence is needed, a stimulant may be sought; conversely, if pain is to be eliminated, depressants or pain reducers would be used.

Secondly, psychological factors (the effects of which are often underestimated) can affect how an individual reacts to a particular drug: 'taking a drug is not a psychologically neutral event' (Gossop 2000). Early experimenters with drugs may often be so alarmed by their physical and psychological experiences that they fear for their well-being. More regular users, however, may define the same experiences as extremely pleasurable. Drugs such as heroin and cannabis do require the novice to learn how to interpret and enjoy the effects: most find the first experience of heroin unpleasant (Gossop 2000). Individuals must therefore learn how to experience the effects of a drug – their beliefs and expectations are shaped by positive outcome expectancies, such as enhanced feelings of pleasure and euphoria, warmth and contentment, relaxation, mood elevation, pain relief and enhanced sexual pleasure. As these outcomes develop and are reinforced, this leads to habituation.[1] The perceived power of the positive outcome expectancy often far outweighs the negative outcome expectations (such as abscesses, blood-borne virus contamination, vomiting, disorientation or imprisonment), even when in reality this is not the case. The positive outcome expectations are examples of intrinsic beliefs, informed by thoughts and attitudes, which contribute towards the complex psychological effects of drugs. These effects are generated by the users themselves, by what they have been told by others and by the immediate social circumstances in which the drug is taken. These influences are strong enough to alter a user's response to the pharmacological effects of the drug itself. Studies have shown this psychological process to be so powerful that it can enable users to react as if they were intoxicated, even when no drugs have been taken at all (the 'placebo effect'). In summary, drug users can construct psychologically powerful positive outcome expectations around drugs that can alter the experience and thereby reinforce drug taking.

Gossop (2000) describes how the pharmacological effects and psychological expectations of drug use can be shaped by social factors. This appears to be in two ways. First, social relationships with others and the world in general:

> The way we think about drugs reflects our understanding of the social world around us, and as a result the social context influences three central aspects of drug taking. It influences what is defined as a drug and what is not; it influences the way a person behaves after taking a drug; and it influences their subjective experience of the drug effects. We cannot hope to understand the complexities of drug taking by studying either the drugs or those who take them in isolation from the social context (Gossop 2000).

Concentrations of drug misuse often occur in environments with high levels of school truancy, gang activities and various types of crime, where such social factors as family breakdown, the weakening of the effect of authority systems and the social disintegration of communities prevail (Paris 1996). Drugs can be used to suppress the pains of social exclusion, to change self-image, to gain status and recognition, to fill time and relieve boredom, to rebel and to mask personal problems, albeit temporarily. This contributes to the motivation for drug use and has to be considered when exploring drug-taking behaviours.

The causes and motives for drug use are many and varied. Experience of drugs is dependent on the drugs being used, the beliefs and expectations held and the social context within which consumption takes place. Drugs are a short-term solution that does not resolve or remove difficulties but helps manipulate the drug user's perception of his or her immediate circumstances with the aim of providing relief.

Drug misuse in prison

Evidence suggests that prisoners with established drug habits and existing dependencies are predisposed to, and influence, drug misuse in prison. Liebling (1992, 1999) argues that drug and alcohol misuse prior to custody is evidence of poorer coping, increased vulnerability to suicide, social isolation from the wider outside community and poor interaction with other inmates. These imported vulnerabilities (Maruna and Liebling 2005), when combined with a low trust and, often, a violent alien environment (Edgar *et al*. 2002; Liebling 2004), can promote drug misuse in prison. However, by contrast, desistance in drug-taking behaviour, associated with changed perceptions of psychological state during intoxication, has been observed following incarceration (Plourde and Brochu 2002). The prison environment therefore can also influence attitudes towards drug misuse and can discourage drug taking. It is thus crucial to understand the relationship between prisons and drug misuse (Swann and James 1998) if opportunities to promote positive change in prisoners and to address problems associated with drug misuse are to be exploited. These aspects are explored below.

Promotional aspects of drug misuse in prison

Many researchers have offered explanations for drug misuse in prisons, and five explanatory models are described below. These should be seen as potentially complementary rather than mutually exclusive explanations; in other words, drug misuse can serve a variety of purposes for any individual.

Self-medication model

The design and operation of a prison entail the loss of privacy; high spatial and social density; isolation from family networks; over-control of individual

behaviour through institutional routines; confinement to an environment that serves as a work, residential and recreational setting all in one; and low levels of stimulation that lead to boredom (Bell *et al*. 1978). The pains of deprivation and the boredom of daily life can help promote drug misuse in prison (Irwin 1980; Sykes 1996). Drug misuse, as an individualistic response, can therefore provide temporary sanctuary and relief from the pains of imprisonment. Keene (1997) found that self-medication as a form of coping was emphasized, by many inmates, with some prisoners reporting the calming, soothing, effect of drugs in the prison environment: 'I think that all prisoners should have a little medication to help with the trauma of prison life' and 'it gets rid of your worries and certain drugs help you to sleep at night' (1997: 32). Sleep is difficult to obtain in prison because of the noise from inmates' music and conversation, a lack of exertion, depression and the stress of prison confinement. Sleep deprivation, headaches, personality disorders and depression or anxiety are problems frequently managed by self-medication, using a variety of illicit drugs. Research on drug-related choices in prison has found that cannabis and opiates (such as heroin) are often selected to aid relaxation, to help users stop worrying about problems and to relieve boredom (Boys *et al*. 1999, 2000, 2001; Cope 2003). Hough (1996) describes a coping or self-medication model as an explanation of how 'drug taking is seen as a palliative to the poor quality of economic and social life'. His explanations can be equally applied to drug misuse in prison.

Time-management model

Drug misuse in prison can also help pass the time (Larner and Tefferteller 1964; Dorn and South 1987; Cope 2003). Cohen and Taylor (1976: 26) refer to this as 'mindscaping' whereby prisoners, unable to change their physical surroundings and structural inequalities, seek to 'slip away' from reality. Time and imprisonment are inextricably linked because 'time is the basic structuring dimension of prison life for both prisoners and the staff' (Sparks *et al*. 1996). In prison, time is predominately externally controlled by judges, governors and other prison staff who exert and maintain control by exercising time discipline (Adams 1990). In order to cope with this situation, prisoners often manipulate how they experience time (as they have little opportunity in reality to change their sentence). A common way to do this is 'symbolically' to suspend time through sleeping (Meisenhelder 1985). Suspending time means that, while hours pass from day to day, prisoners do not construct their sentences as impacting negatively on their physical development, ageing and maturation, thereby limiting the deteriorating effects of long-term imprisonment (see Cohen and Taylor 1976). Drugs, particularly cannabis and opiates, are frequently used to promote sleep, for relaxation and to make time pass seemingly effortlessly. In other words, sleeping becomes more than resting: it offers inmates a way to control, repress and suspend time (Cope 2003). Therefore, prisoners' attraction to cannabis and opiates must be understood in the context of their chemical and psychological effects, of how these relate to the conditions of imprisonment and of the contribution they make to the symbolic management of time.

Social network model

The relationships and networks that are forged to enable drug misuse in prison can often reduce the inmates' sense of isolation and can give the impression of being connected to a wider social group. The social networks that develop can contribute towards the rationale for drug misuse. However, a note of caution should be applied to this particular model as many prisoners regard the contacts within these social networks as 'associates' rather than friends (Crewe 2005), and these relationships may therefore be fragile and unstable.

Status model

Preble and Casey (1969) claim that drug takers and dealers can obtain status and satisfaction from the daily hustle of drug acquisition and supply, where control, wealth and knowledge can be publicly exhibited. Drug misuse in prison can therefore confer status on an individual. The status model develops opportunity theory – an approach to explaining criminal behaviour that sees crime as a function of the characteristics of situations that offer the opportunity to benefit from an illegal act (McLaughlin and Muncie 2001), thus identifying the positive social and economic payoffs from drug misuse in subcultures that respect anti-authoritarian, macho, risk-taking and entrepreneurial activities (Hough 1996). These subcultures are often observed in prisons.

Economic model

A further issue associated with drug misuse in prison concerns the drug economy that dealing or supplying facilitates. This economy is different from drug use. Drug users are often stigmatized as weak 'junkies', 'druggies' or 'addicts' and for breaching inmate norms (see Sykes 1956, 1958; Chapter 6, this volume). Hard drug use is associated with passivity, dependence and retreatism (Cloward and Ohlin 1960), and the pursuit of drugs can contravene criminal, prisoner and masculine codes of behaviour (Crewe 2005). However, drug dealers often occupy an elevated position in the prisoner hierarchy. This does not usually equate to admiration, but recognition is given and kudos awarded for the ability to organize the importation of drugs into prison. It is a form of status rooted in the drugs themselves and in the financial power drug transactions engender. The ability to import drugs symbolizes 'nerve', resistance to the system, ambition and connections to organized drug networks outside prison. This is often referred to as 'powder power' (Crewe 2005). In interviews with drug dealers in prison, Crewe (2006) found that many regarded themselves as having a good life outside prison, so in prison the drugs economy was the best way to maintain a lifestyle of relative comfort and status. It was a 'job' and a way of making money. The comforts of drug dealing were all the more pleasurable because they were in breach of official rules and often involved the compromise of prison staff, whose willingness to bring drugs into the prison for inmates reinforced the power and authority beliefs held by the dealers.

These models are neither mutually exclusive nor exhaustive. In reality, drug misuse in prison can probably be attributed to an integration of all five models. What is clear is that, in terms of getting by, suspending time, gaining power and status, building social relations and exploiting economic opportunities, drug misuse in prison has multiple purposes (Crewe 2005). Prison has been shown to contribute to drug taking (Bell *et al*. 1978) and may indirectly encourage drug misuse (Swann and James 1998).

Discouraging aspects of drug misuse in prison

Drug misuse does not always have an appeal, and being in prison can discourage drug taking (ACMD 1996). Researchers have found many factors that discourage drug use and promote self-change, such as personal illness or accident, hitting 'rock bottom', the drug-related death of another person, legal or financial problems, employment, the establishment of an important relationship or marriage, or some meaningful religious experience (see Saunders and Kershaw 1979; Tuckfield 1981; Wille 1983). Swann and James (1998) asked prisoners why their drug-taking behaviour stopped in prison, and many respondents made reference to the positive impact of imprisonment on them. Comments included: 'being placed in prison woke me up from a dream world' and 'now there is much more incentive for me to stop. Look where it has got me'(1998: 262). Drug taking can also lead to stigmatization from non-drug users and feelings of shame as a consequence of participating in the activity (Fountain *et al*. 2004). Prisons are also controlled, regulated environments where specific efforts are maintained to stifle the availability and to restrict the supply of illicit drugs circulating within the population. These initiatives, explained in more detail later, also contribute to desistence from drug misuse in prison.

Policy responses to drug misuse and drug supply

Imprisonment is seen by many as an opportune time to provide therapeutic interventions intended to promote major lifestyle changes that should reduce reoffending – a key government aim (Lipton 1995). An effective drug service is therefore a strategic priority for the government and Prison Service. In England and Wales, the National Offender Management Service (NOMS) has published a drug strategy that forms an integral part of the government's national strategy, the aim of which is: 'to address the needs of problematic drug users during their engagement with the correctional services, irrespective of age, gender or ethnic background, with a view to reducing their re-offending and the harm they cause to themselves and others (Home Office 2005a). Within available resources, the NOMS' objectives are to provide a comprehensive treatment and support service that reduces problematic drug users' reoffending, minimizes the use of illicit drugs by offenders, limits the physical harm associated with drug use, meets the physical and mental health needs of problematic drug users, and works to ensure robust links with other agencies.

The Prison Service Drug Strategy (HM Prison Service 2003) informed much of the content of the NOMS drug strategy. Originally introduced in 1998 following a comprehensive review of previous arrangements, the Prison Service Drug Strategy was updated in December 2002. It remains part of the government's national drug strategy and is, essentially, the national strategy in microcosm (HM Prison Service 2004a). Broadly, the strategy is aimed at reducing the demand and harm associated with problematic drug use through effective treatment interventions and by curtailing the supply of illicit drugs into and around prisons.

Demand and harm reduction in prisons

Demand reduction strategies seek to prevent the onset of drug use, to help drug users break the habit and to provide treatment through rehabilitation and social reintegration (United Nations 2005). Although the ultimate aim is to persuade problematic drug users to abstain permanently from drug misuse and associated harmful or risky behaviours, it is recognized that drug misuse can be episodic and, therefore, a 'chronic relapsing condition' (Connors *et al.* 1996). The rates of relapse associated with drug use are high (Hunt *et al.* 1971), with some estimates suggesting that 60 per cent or more of individuals relapse after stopping drug use (McLellan *et al.* 2000). In these situations, harm reduction strategies – involving activities and services that acknowledge individuals' use of drugs but that seek to minimize the harm such behaviour causes – are promoted to maintain health and well-being (DrugScope 2004). Although every aspect of the Prison Service Drug Strategy is important, the main focus of the service's work currently falls on drug treatment interventions (HM Prison Service 2005b). This primarily concentrates on the demand and harm reduction elements of the drug misuse strategy, to be met through four major initiatives: clinical services to manage drug dependency, the CARAT (Counselling, Assessment, Referral, Advice and Through-care) Service, the provision of rehabilitation treatment and voluntary drug testing.

Clinical services to manage drug dependence

All prisons, especially local and remand establishments, are mandated to offer clinical services to manage drug dependence. These comprise maintenance and detoxification prescribing programmes as a prelude to broader-based drug treatment interventions. The Department of Health guidelines for the clinical management of drug misuse and dependence (1999) and *Prison Service Order* 3550 (HM Prison Service 2002a) inform this intervention. Healthcare standards require all prisons to have in place a written and observed statement of their substance misuse service that must be in line with the Prison Service order and Department of Health guidelines.

Detoxification (using a gradually reducing, prescribed, licensed medication to relieve the withdrawal symptoms associated with the body breaking down and eliminating drugs) is predominantly the most common method of clinically managing problematic drug users (Home Office 2005a). For those prisoners on short sentences or remand, maintenance prescribing (stabilizing the drug user on a substitute, prescribed, licensed medication) should be offered where

there is evidence that community-maintenance prescribing is being undertaken and is likely to continue upon release. The aim is to introduce a wider range of treatment options for the management of withdrawal symptoms, or to continue the prescribing and support programmes offered in the community (Home Office 2005a). Intensive psycho-social support will be required over this critical period to facilitate the development of coping skills that encourage relapse prevention.

The CARAT service and the Drug Interventions Programme

CARAT is a low-level intervention that provides a gateway assessment, referral and support service to prisoners in custody and immediately upon release (HM Prison Service 2004a). CARAT services are available to all adult offenders in prison in England and Wales and are provided by external drug agencies, prison officers, psychologists, probation officers and healthcare staff working in partnership. The CARAT service is informed by *Prison Service Order* 3630 (HM Prison Service 2002b). CARAT service staff take responsibility for managing non-clinical treatment while the offender is in prison. They complete assessments of drug treatment needs, create care plans based on a prisoner's specific requirements and may engage prisoners in individual or group-work support. CARAT staff aim to refer problematic drug users to short duration or intensive drug rehabilitation programmes; offer harm minimization advice; establish throughcare links; and work with resettlement and community criminal justice intervention teams to establish quality aftercare provision post-release, including housing support, family advocacy, education, training and employment, mental health treatment, and debts and benefits advice.

The Drug Interventions Programme (DIP) ensures that prisoners receive the support and treatment needed to minimize the likelihood of drug misuse and offending (Home Office 2005b). DIP aims to break the cycle of drug-related crime by engaging problematic drug users at all stages of the criminal justice system, directing them into treatment, and retaining and supporting them during and after sentence. DIP aspires to case manage effectively all problematic drug users at all stages while in treatment (throughcare) and upon sentence/treatment completion (aftercare) by providing a beginning-to-end support system which motivates and encourages the engagement and retention of drug-misusing offenders in treatment services. The rationale informing this provision is based on the presumption that, by engaging and retaining drug-misusing offenders in treatment, a direct reduction in drug-related crime will be observed, as demonstrated by the National Treatment Outcome Research Study (Gossop *et al*. 2001). CARAT and DIP teams work together to offer a comprehensive psycho-social support service.

Drug rehabilitation programmes

Eight drug rehabilitation programmes are provided in 117 prisons. Of the eight programmes currently operational, 23 are in dedicated accommodation set aside for treatment delivery (Home Office 2005a). Drug rehabilitation programmes take four forms: 1) cognitive behavioural therapy programmes,

informed by social learning theory (Bandura 1977), are designed to give problematic drug users better thinking skills, improved emotional coping responses and new behaviours that will lead to healthier lifestyles away from drugs and crime; 2) '12-step' programmes based on the Minnesota '12 steps to recovery' model (Anderson 1981), adopted by the Alcoholics and Narcotics Anonymous groups, where addiction is seen as a lifelong illness that can be controlled by following a series of steps but never completely cured; 3) therapeutic communities which are hierarchical in nature and include incentives, structured activities and a work hierarchy, as well as peer modelling, confrontation, support and friendship (Deleon 2000); and 4) the short duration programme – a motivational enhancement and harm minimization course to encourage short-term prisoners, unable to engage with longer duration groupwork, to seek more specific treatment, as listed above, in the community (Home Office 2005a).

Evaluation studies have shown that drug rehabilitation programmes can reduce drug-related problematic behaviours. Of the treatment modalities in the Correctional Drug Abuse Treatment Effectiveness (CDATE) database (Lipton *et al*. 2002a) – a meta-analysis of multiple treatment projects – cognitive-behavioural therapy had the highest impact on relapse rates. This view has been supported by many studies, where reductions in recidivism ranged from 25 to 60 per cent (Gendreau and Goggin 1991; Lightfoot and Boland 1994; Millson *et al*. 1995; Sherman 1997; Lipton *et al*. 1998). Studies have also shown cognitive behaviour programmes to impact on institutional behaviour. For example, the FOCUS high-intensity cognitive behavioural programme (Fenwick 2001), delivered to high-security long-term prisoners, reported (in a preliminary evaluation) attitudinal and behavioural improvements in the graduate treatment population, including a 70 per cent reduction in drug-related adjudications; a 41 per cent reduction in serious incident reports when comparing activity data six months pre- and post-programme; a 42 per cent reduction in positive mandatory drug-testing results; and a 33 per cent reduction in voluntary drug-testing results when comparing activity data twelve months pre- and post-programme (Wheatley *et al*. 2005). Also, there is considerable anecdotal evidence for the effectiveness of 12-step programmes, although there is little published material from scientific evaluations. A study by Martin and Player (2000) described an evaluation of the RAPt 12-step treatment programme in four male English prisons, which found, one year after completion, that graduates were reconvicted at a rate of 25 per cent compared with 38 per cent in a comparison group and that, at two years, graduates were reconvicted at a rate of 40 per cent compared with 50 per cent in the comparison group. Furthermore, Lipton *et al*. (2002b) found from analysing the CDATE database that therapeutic communities made a moderate and significant contribution to reducing recidivism. Consistent results were found in the four major therapeutic communities reviewed. For example, Amity therapeutic community reported a 26 per cent re-imprisonment rate one year post-treatment compared with a 63 per cent rate for non-treatment participants and Stay'N Out New York therapeutic community reported 27 per cent of graduates rearrested after three years compared with 41 per cent in a non-treatment group.

Voluntary drug testing

The Prison Service is committed to supporting all problematic drug users by offering opportunities for voluntary drug testing, either as part of a programme or in a residential unit (HM Prison Service 2003). Voluntary drug testing was supported by the Woolf Report (1991) and the Learmont Report (1995), which advocated developing drug-free units or programmes to help prisoners address their problematic drug use. Voluntary drug-testing units are usually discrete, with restricted access. They aim to provide sanctuary and help to those prisoners who are seeking a safe and secure environment in which to make a clear commitment to remain drug free (HM Prison Service 2000). Voluntary drug-testing programmes are an essential element of testing units, but they can also be extended to prisoners not resident in dedicated units. Two particular target groups are supported by voluntary testing: first, those who do not want to become victims of the prison drug culture; and secondly, those who have become abstinent following completed treatment interventions and who require further support to maintain their drug-free status.

If a prisoner enters into a voluntary drug-testing compact, which incorporates a commitment to remain drug free, he or she becomes liable to a minimum of 18 urine tests a year. Prisoners are helped by peer support programmes and by staff who have enhanced awareness of drug-related issues and basic counselling skills. There are often good referral links in voluntary testing units or programmes between medical support services, the CARAT service and rehabilitation programmes. Voluntary testing is available in every prison in England and Wales, and the requirement for programme or unit provision is determined by an annual needs analysis. *Prison Service Order* 3620 (HM Prison Service 2000) informs this service provision.

Supply reduction in prisons

Three key principles underlie drug supply reduction in prisons: detection, deterrence and disruption (Matthews 2004). Detection initiatives enable prison staff to intercept unauthorized items coming into and circulating around the establishment. Deterrence discourages staff or visitors from bringing illicit items into the prison or stifles circulation. When detection and deterrence fail, disruption is the tactic used to disorganize and disturb the supply. There are various detection initiatives, including staff, visitor and property searching on entry to, and exit from, the prison; using dogs trained to detect drugs to screen staff and visitors when entering the prison as well as to search prisoners' cells; surveillance via CCTV or via random phone-conversation monitoring; the use of PIN technology so that only pre-approved telephone calls can be made; illicit mobile-phone use detection; sociometry;[2] and collaborative working with other interdiction agencies, such as the police and Customs and Excise. Deterrence measures include the use of leaflets or posters that explain the consequences if illicit drug activity is detected. These include banning or restricting contact during visits, low-level furniture in visiting rooms to deter illicit exchanges and prison perimeter patrols by staff or drug detection dogs.

Finally, disruption techniques involve such things as inmate transfers to other prisons, using only approved suppliers of prisoner property and joint prison/ police operations to stifle middle-market distribution networks (see Pearson and Hobbs 2001).

There is little evidence demonstrating the effectiveness of supply reduction strategies, but one important aspect of such strategies – mandatory drug testing (MDT) – has been studied. The authority for prison staff to take urine samples from prisoners for drug screening (using coercion if necessary) was established by the Criminal Justice and Public Order Act 1994. The objectives of MDT are numerous: to detect and deter illicit drug use in prisons; to support prisoners in resisting peer pressure; to help identify drug misusers and direct them to support agencies with the intention of engaging them in treatment services; and to provide a means of establishing scales, trends and patterns of drug use in prisons. A positive MDT result is a breach of the Prison Rules and therefore attracts a range of punishment options, which can include additional days being added to a sentence. However, research from the Prison Service and the Correctional Service of Canada (CSC) is inconclusive with respect to the effectiveness of MDT in genuinely reducing the rate of drug use among prisoners. Recent urinalysis statistics from the Prison Service demonstrate that, between 1997 and March 2004, the positive rate (for all drug types combined) fell from 24.4 to 12.5 per cent, with detected opiate use declining to its lowest ever rate (HM Prison Service 2004b). A 2001 study by the CSC, on the other hand, found that, between 1996 and 2000, the positive rate for all drug types combined remained largely unchanged at 11–12 per cent (MacPherson 2001). MDT has had mixed reviews, with one commentator concluding that 'MDT is a policy driven by political posturing, and a desire to appear "tough on drugs", rather than on any evidence of effectiveness or good practice. It is a cynical and simplistic political response to an urgent and complex health problem' (Lines 2005).

Using MDT results as a trigger for referral to treatment services appears to be a crucial factor in determining whether MDT can contribute to lowering levels of drug use. Where strong links to high-quality treatment services exist, better results are found, but Lines (2005) concludes that MDT only really works if people are willing to be treated – if they aren't, it isn't much use. MDT, therefore, has to be offered as part of a comprehensive substance misuse service if it is ultimately to affect levels of drug use. With regard to establishing levels of drug misuse in prisons, Singleton *et al*. (2005) suggest (from theoretical analyses which took into account detection periods and likely patterns of drug use) that opiate-positive rates equate to frequency of use, whereas cannabis-positive rates tend to indicate the number of users and tend to be less sensitive to frequency of use. A note of caution, therefore, needs to be applied when using MDT rates to estimate levels of drug misuse in prisons.

The above discussion refers to random MDT only. MDT, however, also incorporates targeted non-random testing which attracts a variety of punishment outcomes if a positive result is found. Non-random MDT includes *reception* (all new prisoners can be asked to submit a urine sample), *suspicion* (where intelligence suggests inappropriate activity), *at-risk* (for example,

applications for temporary release and *frequent testing* (where, for example, a prisoner has a positive MDT result and, during his or her adjudication process, the prisoner agrees to a fixed period of regular urinalysis and a referral to treatment services in order to mitigate the punishment awarded). Non-random MDT can be used specifically to target the drug-misusing population and, therefore, may have more of a deterrent effect:

> Prisoners who are tested on reasonable suspicion or for the purpose of a risk assessment are more concerned about the likelihood of being detected. They are far more inclined than those undergoing random MDT to change their behaviour and improve their chances of being considered favourable for temporary release, parole or a progressive transfer (Gravett 2000).

The Prison Service advocates using random and non-random MDT procedures to maximize its detection opportunities and deterrence effects. Up to 15 per cent of the population may be tested this way each month, with a minimum (dependent on prison size) of 5 per cent undertaken by random allocation. Some 14 per cent of MDT should be undertaken at weekends (HM Prison Service 2004b).

Special populations

Women

Using data from between 1999 and 2001, Borrill *et al.* (2003a) suggest there has been an increase in drug misuse among women. Prevalence data indicated that 72 per cent of women had used illicit drugs in the month prior to imprisonment, 49 per cent were dependent on at least one drug and that 45 per cent had reported using illicit drugs while in custody. The drugs of choice were heroin (27 per cent), cannabis (21 per cent) and tranquillizers (17 per cent) (Borrill *et al.* 2003b). Despite the prevalence, between 20 and 30 per cent of women reported reducing or abstaining from drug use while in prison (Borrill *et al.* 2003b).

Drug misuse patterns among women may reflect their greater psychological and socioeconomic life problems than men (Peters *et al.* 1997; Pelissier *et al.* 2003; Chapter 11, this volume), which in turn may be related to the likelihood of women's continued drug misuse or relapse after stopping. For example, women prisoners are more likely than men to have such mental health problems as depression and phobic anxiety (Singer *et al.* 1995; Peters *et al.* 1997), to have experienced previous mental health treatment and to have attempted suicide at least once (Peters *et al.* 1997; Walsh 1997; Chapter 18, this volume). Imprisoned drug-misusing women were also found to have extensive histories of physical and sexual abuse (Windle *et al.* 1995; Taylor 1996; Peters *et al.* 1997; Robles *et al.* 1998; Browne *et al.* 1999), to have been the victims of assault within their relationships (Walsh 1997) and to describe their relationships as unstable (Peters *et al.* 1997). Furthermore, women

reported more pressures associated with childcare responsibilities (ACA 1990; Oppenheimer 1991), with almost 50 per cent having had a child by the age of 16 years (Wellisch *et al*. 1993). Unstable employment records are also reported (Miller 1984; Wellisch *et al*. 1993; Fiorentine *et al*. 1997; Bygvist 1999; Greenfeld and Snell 1999), often due to poor educational experiences (Sanchez and Johnson 1987; Wellisch *et al*. 1993).

Studies indicate that women's rationales and justifications for drug misuse differ from men's. Women are more likely to misuse drugs to self-medicate and to alleviate physical or emotional pain (Corcoran and Corcoran 2001; Langan and Pellissier 2001), which may be related to a conflicting or flawed identity (Broom and Stevens 1991) or to being trapped in a world that is perceived to offer little by way of escape than drugs (see Rosenbaum 1981). Murphy and Rosenbaum (1999) describe how pregnancy may often be seen as an opportunity to change for the better but, for the majority, it brings 'seemingly never-ending guilt'. This guilt may also be triggered by committing drug-related crime, which women are more likely to undertake prostitution to help fund a drug habit (Broom and Stevens 1991; Johnson *et al*. 2000). Women are also at greater risk of being initiated into drug misuse – as well as other anti-social behaviours – by male partners (Hser *et al*. 1987; Robles *et al*. 1998; Kassebaum 1999).

There is general agreement that drug misusing women have different and, often, more complex treatment needs from men because of the drugs taken, lifestyle and perceptions of themselves based on life experiences (Bean 2004). Wellisch *et al*. (1993) suggest that two models of treatment have emerged. The first is based on empowerment, where women are encouraged to perceive themselves as actors able to direct their own lives; the second involves increasing women's practical coping skills to facilitate the necessary lifestyle changes. The latter may include such things as their status as parents, family planning, and assertiveness and vocational training, and it aims to change inadequate and maladaptive social behaviour and cognitive skills while treating the drug misuse. Wellish *et al*. (1993) argue that treatment programmes for women should, irrespective of the underlying philosophy, contain the following components: first, the means for women to maintain or re-establish contact with their children; secondly, vocational training and career opportunities for higher-paying jobs; and, thirdly, appropriate healthcare.

Black and minority ethnic groups

The literature on black and minority ethnic drug misuse in prison is relatively limited and, in the UK, very few studies have been undertaken into this specific population. The Prisoners' Criminality Survey 2000 (Liriano and Ramsay 2003) categorized respondents into four ethnic groups: white, black, south Asian (Indian, Pakistani and Bangladeshi) and other. In the year before imprisonment, the survey found a significantly higher prevalence rate of misuse for most drug types (except cannabis and crack cocaine) in the white population than in other populations: 74 per cent of white prisoners had used drugs compared with 67 per cent of black and 50 per cent of south Asian prisoners (May 2005). Borrill *et al*. (2003b) report similar findings, with opiate

use being less prevalent in black and minority ethnic groups, which may be associated with the greater stigmatization of heroin use and injecting among this population.

Where ethnicity was known, 86 per cent of prisoners assessed by CARAT services between 2003 and 2005 were white, compared with 7 per cent black, 3 per cent Asian, 4 per cent mixed ethnicity and 1 per cent other (May 2005). In 2003, 75 per cent of the total number of prisoners in England and Wales were white (Fountain *et al*. 2004). Demand for drug treatment interventions by black and minority ethnic prisoners therefore appears significantly lower than for white prisoners (Borrill *et al*. 2003a; Liriano and Ramsay 2003; May 2005). Treatment services for black and minority ethnic prisoners with problematic drug misuse are clearly required. However, as many of these prisoners do not regard their use as problematic or perceive an appropriate medical treatment to be available (especially for crack cocaine misuse), accessing and engaging with drug treatment services appear less likely (Borrill *et al*. 2003a).

Policy development and service provision should be mindful of these findings so that opportunities to engage and retain black and minority ethnic prisoners in drug treatment services are optimized. Recruiting more drug workers from minority ethnic communities may help address this issue. Generally, however, the ratio of black and minority ethnic staff to prisoners is 1 to 4, and many of these staff members appear to be confined to administrative rather than front-line positions in drug treatment services (Fountain *et al*. 2004). The promotion of proportional representation in drug treatment services may therefore improve the engagement and retention of black and minority ethnic prisoners in drug treatment services. As Borrill *et al*. (2003b) state, this shortfall impacts negatively on prisoners' willingness to access services as a common belief is that they would be 'the only black person there' and that this would result in a lack of understanding of their culture and, potentially, racism (see Chapter 12, this volume).

Conclusion

This chapter has sought to illustrate that drug misuse in prison is prevalent and that individuals use or misuse drugs for a variety of reasons, which are often an interplay of various pharmacological, biological, psychiatric, psychological and socioeconomic factors. The treatment needs of drug misusers in prisons are therefore complex and diverse, and require a multi-modal approach to be effective: there are no universally superior interventions.

Three key themes on drug treatment have emerged from the drug misuse literature. First, it is important to ensure that the treatment services available in prison are shaped by the criminogenic risks and needs of the individual prisoners. The National Institute on Drug Abuse (1999) notes:

> No single treatment is appropriate for all individuals. Matching treatment settings, interventions and services to each individual's particular problems and needs is critical to his or her ultimate success in returning to productive functioning in the family, the workplace and

society… Effective treatment attends to multiple needs of the individual, not just his or her drug use. To be effective, treatment must address the individual's drug use and associated medical, psychological, social, vocational and legal problems.

Secondly, to promote change in the criminogenic risk and need factors of individual prisoners, adequate time in treatment is necessary. A relationship between the time in treatment and outcome measures has been found (see Bullock 2003), with high-risk, highly dependent prisoners requiring longer treatment doses. Thirdly, throughcare in prison and aftercare in the community are also essential – better outcomes are associated with interventions that have these components built in (see Bullock 2003). These key themes have to be integrated and embraced fully in correctional facilities if drug misuse strategies are to succeed. A skilled and competent workforce is required to deliver this service for, without such a workforce, any interventions would be fundamentally flawed.

For treatment interventions to be effective, the prison environment, both physically and culturally, has to be supportive. The prison environment can aggravate individuals' imported pre-existing vulnerabilities, with reported levels of distress being at their greatest on entry into custody (Liebling 2005). It thus becomes understandable why drug misuse is a palliative behaviour and why certain drugs are more popular than others as a means of reducing distress in prison. Effective ways to improve the prison environment include making physical changes where needed (for example, creating reception centres, first-night units, induction wings, detoxification facilities and mental health in-reach clinics); via staff training, promoting a supportive, helpful culture that aims for fairness and respect; and integrating therapeutic interventions into the prison regime. Supply reduction initiatives can complement therapeutic interventions, especially if referrals into treatment are encouraged. A final point worth underlining is that drug misuse in prison is a reflection of drug misuse in the community, and so a holistic, and honest, response to the problem is therefore required.

Selected further reading

Bean, P. (2004) *Drugs and Crime*. Cullompton: Willan Publishing, provides an informed and understandable exploration of issues related to drugs and crime. It discusses coercive treatment in the criminal justice system, drug markets and distribution networks, policing and ways to reduce supply at both a national and international level. Essential reading for those interested in the phenomenon of drugs and crime.

Gossop, M. (2000) *Living with Drugs*. Aldershot: Ashgate. This is a comprehensive study of drug taking covers aspects of lifestyle, effects, social influences, promotional factors and controls. The book illustrates how 'normal' drug taking is, and it challenges common perceptions of drug use. A key text in the field that is both thought provoking and educational.

Written from an informed perspective is Gravett, S. (2000) *Drugs in Prison: A Practitioner's Guide to Penal Policy and Practice*. London: Sage. This book provides practitioners with detailed information about drug initiatives in prison and the author shows a great

appreciation of the comprehensive range of the service responses required to address the issues effectively. The book is easy to navigate, with many useful appendices (including case studies and checklists to reinforce key points).

Another useful reference is Maruna, S. and Liebling, A. (2005) *The Effects of Imprisonment*. Cullompton: Willan Publishing. As the prison population increases, so does the potential risk of personal and psychological damage associated with imprisonment. This book explores the effects of imprisonment, assesses the implications and presents the results of research into this area. An essential criminological text and a fascinating insight into prisons.

Ramsey, M. (ed.) (2003) *Prisoners' Drug Use and Treatment: Seven research studies. Home Office Research Study* 267. London: Home Office. This book brings together seven research studies that discusses the progress of the Prison Service and provide the reader with essential information to ensure effective service development and delivery. It is also available online at http://www.homeoffice.gov.uk/rds/pdfs2/hors267.pdf.

Finally, Wanberg, K.W. and Milkman, H. (1998) *Criminal Conduct and Substance Abuse Treatment: Strategies for Self-improvement and Change: A Provider's Guide*. California: Sage. This book comprehensively explores the issues linking offending behaviour to alcohol and other drug misuse. Split into three sections – historical perspectives and theoretical foundations, the treatment platform and treatment curriculum – this book equips any would-be programme developer with all the essential information.

Notes

1 Theories of classical and operant conditioning explain this process (SAMHSA/CSAT 1999). Liese and Franz (1996) describe how this then develops and maintains drug use.
2 Based largely on the work of Jacob L. Moreno, sociometry comprises the techniques and theory used to measure all things social (see Marineau 1989). Moreno's techniques primarily establish the network of inter-relationships that exists between the various members of a group. The procedure for determining this set of relationships is the sociometric test, and the schematic diagram constructed from this test is called a sociogram (Reber 1985).

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Chapter 18

Prison suicide and its prevention

Alison Liebling

Introduction

> There is … an interaction between susceptibility of the individual and what is happening in the wider environment (Marmot 2004: 137).

Disagreement persists as to whether prison suicide is a primarily psychiatric problem, or whether there are also sociological, or environmental and structural, causes. It is most likely that individual and environmental factors interact, so that susceptible individuals find themselves in testing, hostile or difficult environments that bring out, for example, feelings of fear or isolation. Effective prevention strategies require a systematic and broad knowledge base in order to target both high-risk individuals and appropriate aspects of the prison environment. A recent evaluation of a wide-ranging suicide prevention strategy in high-risk prisons found that 1) prisons accommodate populations with significantly varying levels of imported vulnerability; 2) adherence to traditional (negative) cultures varies among prison officers; and 3) levels of perceived safety differ significantly between prisons. These three domains (individual vulnerability, prison officer culture and the safety of the environment) play a distinct role in the generation of distress in prison. Other aspects of the quality of prison life, such as the level and type of care offered to prisoners in distress, also vary between prisons and over time. This chapter reviews the recent literature and considers the findings from the 'Safer Locals' project (Liebling *et al*. 2005) and other recent research into the causes and prevention of suicide in prison. The implications for suicide prevention strategies and for broader penal policy are considered.

Prison suicide

Internationally, the prison suicide rate in England and Wales is relatively high although, according to Council of Europe figures, rates are higher in,

for example, France, Austria and Belgium (Council of Europe 2000). In most countries suicides in prison occur several times more frequently than in the community, although part of the explanation for these disproportionate figures is the composition of prison populations who are overwhelmingly male, disadvantaged and substance dependent. Rates tend to be based on average daily populations. They should ideally take account of turnover as well as demographic characteristics.

In 2005 in England and Wales there were 78 self-inflicted deaths in prisons, a rate of 102.6 per 100,000 prisoners. The rate of suicide in the community in England and Wales is 10–12 per 100,000 per year (but 18 per 100,000 for males aged 25–34).[1] Most of these deaths (63) occurred among male adult prisoners. Three deaths occurred among female adult prisoners (considerably fewer than in 2004 and 2003; see Table 18.1). Nine young men, one young woman (aged 18–21), and two male juvenile prisoners (aged 15–17) took their own lives. Some 71 of the 78 deaths occurred in public sector prisons, and the other 7 occurred in contracted prisons (which hold approximately 10 per cent of the prison population). Estimates of the number of prisoners who make determined attempts on their own lives but who are resuscitated by prison staff are 131 in 2005, 154 in 2004 and 204 in 2003 (HMPS press notice 001, 2006). A disproportionate number of resuscitated prisoners are women (Joint Committee on Human Rights 2004: 21–2).

Partly because of the special and often controversial nature of the circumstances, suicides in prison traumatize families; they raise serious questions about accountability, the care of prisoners and the use of imprisonment; and they often deeply distress prison staff. Suicides in prison often attract negative publicity, particularly when they involve young or female prisoners, or when they take place in prisons suffering from higher than average numbers or from a succession of deaths. The inquests (which are held before a jury) and investigations (which are conducted by the Prisons and Probation Ombudsman) are arduous, time consuming and expensive, and they often leave behind considerable ill-feeling.

For the first time in 10 years, the overall figure for 2005 represents a reduction on previous years. There were 95 self-inflicted deaths in 2004 (127.2 per 100,000) 94 in 2003 (128.7 per 100,000), and 95 in 2002. It is too early to know whether this downward trend will continue. Considerable policy attention and significant resources have been expended in the hope that a reduction would be possible. Recent reductions have also been reported in Scotland following revisions to policy. It should be noted that suicides are also common among offenders on probation (Sattar 2001a; see also Biles *et al*. 1999), and immediately following release from prison. Fifty per cent of suicides among released prisoners occur within 12 weeks of release (Sattar 2001b). The risk is particularly high during the first 28 days.

International and epidemiological studies of suicide in the community suggest that status differences are associated with variations in degrees of control over one's life, opportunities for participation, and social connectedness. In turn, these factors contribute significantly to a distinct health and life expectancy gradient, including suicide and depression (Marmot 2004). Higher status, control, participation and connectedness, access to which are mediated

Table 18.1 Number of self-inflicted deaths in custody, England and Wales[1,2]

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Males and females											
Number of self-inflicted deaths	61	59	64	68	84	91	81	73	95	94	95
Rate per 1,000 prisoners in custody	1.3	1.2	1.2	1.1	1.3	1.4	1.3	1.1	1.3	1.3	1.3
Males											
Number of self-inflicted deaths	60	57	62	65	81	86	73	67	86	80	82
Rate per 1,000 prisoners in custody	1.3	1.2	1.2	1.1	1.3	1.4	1.2	1.1	1.3	1.2	1.2
Females											
Number of self-inflicted deaths	1	2	2	3	3	5	8	6	9	14	13
Rate per 1,000 prisoners in custody	0.6	1.0	0.9	1.1	1.0	1.5	2.4	1.6	2.1	3.2	2.9

Notes:
1 Statistics supplied by NOMS.
2 Retrospective changes to past published figures and to classification of deaths sometimes occur, in light of information discovered after publication.

by levels of inequality, lead to lower rates of heart disease, suicide and depression.[2]

The characteristics and causes of suicide in prison

Why does someone kill himself? asked Klaus Mann in his autobiographical novel, *Turning Point*, and then gave the answer: 'Because one will not, cannot go through the next half hour, the next five minutes. Suddenly one comes to a dead end, the point of death. The limit has been reached' (Dieskstra and Hawton 1987: 43).

First, the patient finds himself in an intolerable affective state, flooded with emotional pain so intense and so unrelenting that it can no longer be endured. Second, the patient recognises his condition, and gives up on himself (Maltsberger 1986: 2–3).

Prison suicides occur disproportionately at the earliest stages of custody, often (but by no means always) among prisoners on remand (around 54 per cent). Around half occur within one month of entry into custody. Gibbs and others have argued that this pattern 'suggests that [the] street–jail transition engenders problems and pressures that contribute to self-destruction' (1987: 300; see also Dooley 1990). Several studies have found that anxiety and distress levels are elevated at the earliest stages of custody (Zamble and Porporino and Zamble 1988; Liebling 1999; Harvey 2004). Suicides tend to occur in the evening or at night, and when prisoners are alone (even if they are technically sharing a cell). Most occur by hanging. Only about a quarter of those who die by suicide have been identified as being at risk (Adeniji 2005). Interview-based studies with survivors of severe suicide attempts suggest that these prisoners usually feel intent on taking their own lives at the time of the act – they experience chronic depression and a sense of being out of control, and sometimes a longing to be with a lost significant other (Borrill *et al*. 2004). They may feel frustrated, hopeless, helpless, isolated, neglected and fearful (Liebling 1992: 168–9, 174–6). Immediate triggers can include problems with medication, transfers to another prison, losing custody of children, problems with bullying, flashbacks to previous abuse and a lack of trust in those around them. Prisoners express a need for 'someone to listen and talk to them' but often find this difficult to achieve (Borrill *et al*. 2004).

The imprisonment of vulnerable individuals

Prisoners have poor general health and high rates of physical illness as well as relatively high rates of mental disorder (Jenkins *et al*. 2004: 257).

Suicidal thoughts, and suicide attempts, are relatively common among prison populations. Some 34.6 per cent of male remand prisoners, 19.4 per cent of

male sentenced prisoners, 49.7 per cent of female remand prisoners and 33.9 per cent of female sentenced prisoners have thought about suicide during the past year. This compares with 3.6 per cent of 'males at home' and 4.1 per cent of 'females at home' (based on the general household population). Some 15.0 per cent of male remand prisoners, 6.6 per cent of male sentenced prisoners, 27.3 per cent of female remand prisoners and 16.5 per cent of female sentenced prisoners have attempted suicide during the past year. This compares with 0.5 per cent of 'males at home' and 0.5 per cent of 'females at home' (see Jenkins *et al*. 2004: 262).

Demographic characteristics, such as 'being young, single, white, leaving school early and experiencing poor social support and significant social adversity', provide some of the explanation, as they are risk factors for suicide among community populations (Jenkins *et al*. 2004). Prisoners are disproportionately drawn from socially excluded and disadvantaged groups who are likely to have experienced multiple life events (such as family breakdown, being taken into care, being homeless and witnessing or experiencing violence when young). Prisoners who had thought about or attempted suicide were more likely to have been in local authority care, to have been in an institution (for example, a Borstal or young offender institution), to have attended a special school and to have experienced a higher number of stressful life events. They had a smaller primary support group (Jenkins *et al*. 2004: 263).

Prisoners also have high rates of psychiatric disorder, including psychoses, neuroses (such as anxiety disorders) and personality disorders (see Table 18.2), although critics have also argued that they are especially susceptible to unhelpful psychiatric labelling. Disentangling psychoses from other disorders, identifying co-morbidity and avoiding unhelpful labels (such as 'attention-seeking behaviour') for borderline conditions become especially complex problems in a prison environment. These conditions often co-exist with multiple substance misuse, which may or may not be regarded as a psychiatric condition. Screening on reception into custody is often necessarily brief, and much drug use and mental disorder is missed (Prison Service 2001a: 39). Table 18.3 shows the results from a detailed survey of the psychiatric morbidity of prisoners, and the relationship between their psychiatric characteristics and their suicide attempts. While it is important to treat some diagnoses with scepticism and to question the assumption that anxiety or drug use are rightly regarded as psychiatric problems, what is clear from this table is that the prison population is *vulnerable*.

A before–after study of randomly sampled prisoners in 12 prisons found that 19 per cent of prisoners came into prison having attempted suicide before; 48 per cent reported problematic drug use (Liebling *et al*. 2005). These figures were higher at the 'after' stage, two years later, following a surge in the prison population. It is possible that, alongside increased use of custody (e.g. at the threshold), the population becomes *increasingly vulnerable*. This pre-existing or imported vulnerability influences the experience of imprisonment, making certain aspects of prison life (such as relationships, safety and culture) particularly powerful. However, levels of imported vulnerability differed significantly between prisons of the same type (with previous suicide

Table 18.2 Psychiatric diagnoses of prisoners who make suicide attempts (per cent)

Proportion of prisoners who have	Past week	Past year	Life-time	Never	All
Neurotic disorders					
Depressive episode	42.5	25.6	18.9	7.9	10.4
General anxiety disorder	20.9	20.3	16.2	6.4	8.6
Obsessive-compulsive disorder	30.4	22.5	16.6	5.1	7.7
Phobia	29.1	21.1	15.1	4.1	6.6
Panic disorder	19.8	9.9	5.7	2.6	3.3
Mixed anxiety/depressive disorder	17.8	28.4	25.6	19.6	20.9
Any neurotic disorder	85.1	83.9	68.7	37.6	44.5
Psychotic disorder	41.2	27.0	19.2	1.8	5.7
Personality disorder					
Anti-social personality disorder	2.1	8.9	14.0	22.8	20.8
Other personality disorder	30.7	23.4	20.7	16.9	17.7
Anti-social and other personality disorder	67.3	57.0	51.4	31.6	36.0
Alcohol dependence					
AUDIT score of >16	54.6	39.5	39.2	27.0	29.7
Drug dependence					
Dependence on cannabis only	2.8	11.5	9.7	7.9	8.3
Dependence on stimulants only	24.2	23.6	21.2	14.9	16.3
Dependence on opiates only	6.2	8.1	8.8	8.9	8.9
Dependence on opiates and stimulants	33.5	19.0	15.6	10.0	11.3
Number of disorders					
5	11.3	9.4	7.2	0.5	2.0
4	39.7	32.5	23.1	11.2	13.8
3	42.8	39.2	37.4	27.7	29.8
2	4.1	13.2	20.7	30.3	28.2
1	2.1	4.3	8.7	21.2	18.5
0	–	1.6	2.9	9.1	7.7
Base	*22*	*269*	*690*	*2,414*	*3,104*

Source: Adapted from Jenkins *et al.* (2004).

Table 18.3 Vulnerability indicators (2002 and 2004, Time 1 and Time 2[1])

Percentage of prisoners in each establishment	Attempted suicide	Psychiatric treatment	Self-harmed	Drug misuse	All three indicators (suicide, psychiatric treat, self-harm)	All four indicators
Winchester	25.0 (34.6)	22.0 (41.3)	16.0 (30.8)	41.0 (59.0)	9.0 (13.5)	7.0 (4.8)
Lewes	25.2 (37.4)	28.9 (40.0)	12.5 (36.4)	45.2 (60.2)	5.8 (11.2)	4.8 (1.9)
Eastwood Park	38.8 (43.0)	35.9 (41.0)	16.7 (44.9)	58.3 (71.3)	13.6 (15.9)	9.7 (10.2)
Styal	36.0 (45.3)	37.0 (34.8)	17.0 (42.2)	53.5 (73.5)	14.0 (12.8)	8.9 (9.4)
Leeds	12.3 (20.5)	22.8 (33.3)	9.6 (17.3)	57.0 (69.9)	5.3 (7.1)	2.6 (5.3)
Liverpool	11.9 (17.1)	21.4 (27.0)	6.0 (17.9)	55.6 (71.8)	2.5 (4.3)	1.7 (3.4)
Wandsworth	18.7 (20.2)	24.1 (26.4)	12.3 (17.4)	42.6 (47.2)	7.4 (8.3)	5.6 (6.4)
Manchester	13.1 (15.9)	20.4 (23.1)	7.1 (12.1)	38.4 (48.1)	5.1 (4.7)	1.0 (2.8)
Feltham	12.3 (14.9)	15.0 (29.0)	10.6 (17.9)	31.3 (35.9)	3.5 (2.1)	1.7 (2.1)
Glen Parva	8.4 (16.3)	17.6 (26.0)	7.6 (22.1)	47.1 (57.7)	3.4 (8.6)	0.8 (6.7)
Swansea	17.9 (29.1)	27.1 (43.5)	10.3 (29.1)	62.7 (72.6)	5.9 (10.3)	3.4 (10.3)
Forest Bank	6.9 (21.9)	18.8 (21.7)	6.9 (19.8)	48.5 (58.1)	4.0 (3.8)	4.0 (2.8)

Note:
1 Time 1 = January–February 2002; Time 2 = January–February 2004.
Source: Liebling *et al.* (2005).

attempts ranging from 8.4 per cent at one prison to 38.8 per cent at another). It is important to match mental health and other provision to the needs of prisoners in particular establishments.

Special populations

Women

> The six women [who have taken their own lives at Styal Prison in the last 12 months] are … united by many aspects of their circumstances. The single most important factor is a history of drug abuse. Other factors … were mental health problems, fractured relationships and unstable living arrangements (Prisons and Probation Ombudsman 2005: 60).

Rates of suicide are high in women's prisons, matching the rate for men (Liebling 1992, 1994). In the community, the suicide rate among women is substantially lower. Studies have found fewer distinctions than among men between suicidal women and other women in prison (Liebling 1992: ch. 7). It is likely that the population of women in custody is more vulnerable and finds aspects of prison life (such as loss of contact with children and withdrawal from drugs) more difficult. Women prisoners suffer from higher levels of past abuse, and maltreatment may increase into adulthood (McClellan *et al*. 1997).[3] Their offending tends to be linked with higher levels of disorder and disadvantage. Women have often experienced the erratic or abusive use of authority. Use of prescribed medication and levels of substance dependence are high among women in prison. Around 70 per cent enter prison with severe substance misuse problems and in need of detoxification (Prisons and Probation Ombudsman 2005). Women prisoners are likely to arrive in prison with prior problems of depression, suicide attempts and self-harm. Studies suggest that women use drugs to dull pain and as an attempt to seek order, community and calm. They often describe their drug use as a means of blocking out painful emotions associated with early experiences of sexual, physical or emotional abuse, or later domestic violence. They frequently leave children behind, and they are less likely to receive support from partners. Women in prison have stronger links with their pasts[4] and with their lives outside (McClellan *et al*. 1997); 'The loss of primary ties can be viewed as the most significant 'pain of imprisonment' for women' (Hart 1995: 71); 'Men 'do their own time' while women's family networks provide an often painful link to pre-prison identities' (Hart 1995: 72; see Chapter 11, this volume).

Two women's prisons in the UK have experienced a dramatic succession of self-inflicted deaths over a relatively short period of time (Cornton Vale in Scotland, see Loucks 1998; and Styal in England, see Prisons and Probation Ombudsman 2005). In both cases, drug dependence and withdrawal from drugs played a major role in the deaths. Important changes were introduced to detoxification procedures, reception and induction processes, and to the management of the prisons concerned, leading to considerable improvement in the care of prisoners. Also in both cases, critics (and families) asked why so

many deaths had been necessary before the relevant changes were introduced and the required resources found.

The young

> These incidents are the extreme expressions of children's distress in locked institutions. They are located at the most harrowing end of the vulnerability continuum (Goldson 2002: vii).

Barry Goldson points out that young people are often confined in order to keep them safe and to 'serve their best interests', as well as to keep others safe from the risks they pose. The child is both a *victim* and a *threat*. Institutional responses tend to adopt one but not both these approaches to individuals, and it is more likely that penal institutions adopt the latter attitude. The mental health of young prisoners is often fragile (Lader *et al*. 2000), but there is 'an institutional (mis)conceptualisation of "need" as manipulation' (Goldson 2002: 27). Studies have found young prisoners in distress to be especially dependent on supportive relationships with staff. They prefer staff to be more supportive in both personal (emotional) and practical ways, but it is often practical support they feel is more urgent (for example, if they are unfamiliar with the prison and its regime; Biggam and Power 1997). Young offender institutions (YOIs) differ significantly in their overall approach to young prisoners, some having therapeutic ideologies and cultures, and others overusing authority and having more distant staff–prisoner relationships (see, for example, HMCIP reports on Ashfield, Hindley and Lancaster Farms). Other studies have found that vulnerable young prisoners have particular difficulties in forming and maintaining relationships, and yet their need of others is great (Harvey 2004). Vulnerable prisoners tend to have an external locus of control, feel less safe and find it difficult to trust others (Harvey 2004).

The death of Joseph Scholes, a 16-year-old, at Stoke Heath YOI after only nine days in custody in 2002 led to an investigation, and a review conducted by the Youth Justice Board. Joseph had a history of sexual abuse and suicide attempts, and the trial judge had been made aware of his vulnerability. Major concerns were raised about the appropriateness of the sentence, the operational effectiveness of pre-sentence procedures and the appropriateness of the juvenile estate. This case has led to a request for clearer guidelines from the Sentencing Guidelines Council as well as a review by the Youth Justice Board of the adequacy of current provision for vulnerable young offenders (Harvey 2007).

Lifers

> About half of the 'early' deaths appeared to be linked to the impact of the conviction: one man killed himself 24 hours later, after hearing his case reported on the radio. Two others had been in recent discussions about their tariff … Five of the 12 'later' deaths were linked with perceived lack of progress through the prison system … Three prisoners had recently returned to prison after having had their license revoked (Safer Custody Group 2004: 2–3).

Life-sentence prisoners, and prisoners facing life sentences, constitute a particularly high-risk group whose profile looks rather different from other prison suicides. The rate of suicide is higher than for the rest of the prison population (at around 176 per 100,000 prisoners). Their deaths may be planned rather than impulsive, they tend to be older than average and the causes may be related to the offence (for example, the murder of a partner) or to a rational decision not to face a long term in prison. Some 20 per cent of lifers who took their own lives during 2002–3 were women. While suicides among life and long-sentenced prisoners may be influenced by changes in sentencing policy (including recall and parole procedures), there is also concern about the increasing use of close supervision or maximum security confinement for long-sentenced prisoners regarded as dangerous and the psychological conditions imposed by such regimes (see, for example, Haney 2003). For example, 91 per cent of prisoners held in Pelican Bay's security housing unit suffered from anxiety and nervousness, 86 per cent suffered from oversensitivity to stimuli, 77 per cent suffered from chronic depression and 27 per cent had experienced suicidal thoughts (Haney 2003: 133–4). Such prisoners may be emotionally unstable to begin with, and 'prisoners with pre-existing mental illnesses are at greater risk of having this suffering deepen into something more permanent and disabling' (Haney 2003: 142). A disproportionate number of suicides occurred in the segregation units of high-security prisons in England during 2003–4, leading to a revised strategy on the use of (and cultures in) segregation.

Minorities and foreign nationals

White prisoners are over-represented in prison suicide figures (few accurate contemporary data are available on the risk of suicide in different ethnic groups in the UK). Black prisoners are proportionately under-represented (e.g. 6 per cent of deaths compared with 13 per cent of the prison population), but this should be seen against a baseline of severe over-representation in custody and despite very high levels of distress found among black prisoners (see Liebling *et al*. 2005). Self-inflicted deaths among Asian prisoners are proportionate (5 per cent of deaths, 5 per cent of the population) (Adeniji 2005). Eight of the 94 self-inflicted deaths in England and Wales in 2003 were of foreign national prisoners. Two of these deaths were of immigration detainees. Other deaths in immigration (rather than prison) custody have received sustained attention, particularly following a major disturbance in Harmondsworth immigration detention centre triggered when a detainee was found hanged (Joint Committee on Human Rights 2004: 28; Prisons and Probation Ombudsman 2004).

The neglect of the prison environment in prison suicide research

The vulnerability of the prison population is often exacerbated by extreme pressures of overcrowding, inadequate facilities, regimes and procedures in establishments, and poor communication between staff, or negative attitudes among some staff groups (see, e.g., Liebling 1999; OICS 2004). It is also

possible for the prison environment to induce psychological disturbance among prisoners with no prior disorder (see, e.g., Gibbs 1987). Sociological literature has identified certain common 'pains of imprisonment' and has shown how these pains are related to the deprivations of status, liberty, family contact and security (Sykes 1958). Little of this literature differentiates among prisoners, or between prisons, however, or mentions the problem of suicide. Toch (1992) shows how different types of prisoners require different types of environment to survive psychologically – that is, there has to be a person–environment 'fit'. It is clear that the prison experience can be deeply distressing in general, but also that certain prison environments are more survivable than others. Controlling for individual characteristics, the prison and the nature of its organization exert an independent effect on distress (Liebling *et al*. 2005) and on behaviour (Mandaraka-Sheppherd 1986).

Suicide prevention: the Safer Locals strategy

> The Home Secretary and I are determined to reduce the incidence of suicide within prisons. These tragic deaths devastate families and deeply distress both prisoners and staff (Goggins 2004).

The Prison Service has faced a rising number of suicides and high rates of self-harm. It has a duty of care to the prisoners in its custody. The recent internal review of the *Prevention of Suicide and Self-harm in the Prison Service* (HM Prison Service 2001a), which follows publication of a review conducted by the former Chief Inspector of Prisons, marks a significant change in the previous strategy for dealing with this problem. In particular, it sets out a vision for the service that emphasizes prevention, pays more attention than previously to self-harm as a problem in its own right and advocates putting significant additional resources into establishments that are at highest risk of suicide and self-harm – notably large local prisons with a high turnover of prisoners, and female and young offender establishments (HM Prison Service 2001a).

Prior to the launch of the new Safer Locals strategy in 2001, suicide prevention in prison had focused mainly on the identification and observation of prisoners at risk. This strategy had several flaws (including the difficulties in determining risk among already risky populations) and had in any case never been satisfactorily implemented (HMCIP 1999). Rising numbers of suicides, increasing criticism by reform organizations and management concern led to a major review of procedures and thinking in this area. One of the major difficulties was the reception or admission process: prisoners often arrived at busy local prisons late into the evening, in large numbers, withdrawing from drugs, feeling terrified and in a state of shock. The physical facilities were often cramped and inappropriate for the purpose. Contacting relatives was difficult. At the highest-risk time, and in the highest-risk places, prisoners had access to very little support (see Chapter 1, this volume).

As a result of this major review, the 'Safer Locals Programme' formed part of a broader Safer Custody Programme aimed at reducing suicides and making

prisons safer places. Both programmes were led by the newly strengthened Safer Custody Group, established in November 2000. The Safer Custody Programme included the appointment of 30 full-time suicide prevention co-ordinators at the 30 establishments identified as at highest risk, strengthening of the Samaritan-led Listener scheme and improved partnership work with the National Health Service, including the provision of increased mental health in-reach support in establishments.[5] The Safer Locals Programme consisted of a specific set of interventions in five pilot sites, including major improvements to the built environment. These changes included newly built first-night centres, new or refurbished reception and induction areas, improved reception screening, healthcare centre refurbishment, dedicated detox units, day-care centres, safer cells and care suites, additional training support, increased provision of specialist (e.g. mental health in-reach) staff and increased use of peer support. All the pilot sites were provided with a project manager. Two explicit aspirations for the programme were, first, that prisoners would receive better treatment during their first 24 hours and first weeks of imprisonment; and, secondly, that this improved treatment would continue elsewhere in the prison as increased attention to these areas of work would gradually bring about cultural change in difficult local prisons:

> There is a hope and expectation that the programme will result in a shift of the culture of the prisons as a whole towards the 'Care' end of the 'Care and Control' spectrum and that organisational norms, staff–prisoner relationships and support offered to all prisoners will improve as a result (HM Prison Service 2001a).

The Safer Locals evaluation

> The risk of self-harm and suicide is not evenly distributed across the prison estate (HM Prison Service 2001b: 4).

High-risk prisons tend to be prisons with local and remand (high turnover, short stay) populations, poor physical and regime facilities, a lack of specialist support and, often, poor industrial relations or weak management. Ten such prisons were identified by the Prison Service for this evaluation, based partly on the above criteria and partly on their suicide figures. Five were selected as pilots for the new suicide prevention strategy. Each of the five was matched with a similar prison holding the same population. In all, the sample of ten included two women's prisons, two YOIs and six adult local prisons. The five pilots each received considerable additional resources and embarked on a long-term set of improvements, mainly to the built environment, but also to training, regimes and practices. The five 'comparator' prisons also sought to improve their practices, and some attracted investment from elsewhere (for example, the National Health Service). To improve on the design, we included two additional comparators whose populations were high risk, but where suicides were relatively rare. The sample, then, looked as shown in Table 18.4:

Table 18.4 Safer Locals Programme: pilot institutions

Pilots	Comparators	Additional comparators
Feltham Prison (YOI)	Glen Parva (YOI)	Swansea (Local Prison)
Eastwood Park (Women Prison)	Styal (Women Prison)	Forest Bank (Local
Leeds (Local Prison)	Liverpool (Local Prison)	Prison, private)
Wandsworth (Local Prison)	Manchester (Local Prison)	
Winchester (Local Prison)	Lewes (Local Prison)	

The study involved detailed surveys of the quality of life, at the before and after stages, carried out with all staff attending a full staff meeting and presentation, and with 100 randomly selected prisoners at each site on each occasion; observations of reception and induction procedures at all sites; long semi-structured interviews with staff and prisoners involved in suicide prevention work; 'off-site' interviews with all establishment governors and some deputy governors; and further observation. The research was conducted between November 2001 and November 2004. The before–after surveys were conducted in January–February 2002 and January–February 2004. The process study was conducted periodically at each site in between.

Main findings

The Prison Service must pay special attention to the safe management of prisoners in the early stages of custody in a prison, with a focus on excellence of care for all prisoners in reception, first night, induction and detoxification units (HM Prison Service 2001b: 5).

All the project prisons started out with significant difficulties and high-risk populations. While the majority of the new facilities and practices were widely welcomed, and the suicide prevention co-ordinator role was very successful, implementation was complex, new staffing and working arrangements took time to sort out, and delays were experienced at most prisons, so that several initiatives were only just complete at the outcomes stage. Considerable noise and disruption were encountered during implementation so that most of the benefits only followed once full implementation was complete. The key purpose of the suicide prevention co-ordinator role was to ensure that each prison provided a high-quality level of support to prisoners at risk of suicide or self-harm through compliance with national and local policy, dissemination of good practice and promoting 'a safe and caring environment'. Mental health in-reach and outreach teams made a particularly important contribution to new ways of working. Group work (e.g. self-harm support groups), detox programmes, listeners and insiders were also significant. However, training for uniformed staff was insufficient; while the strategy was appropriate, the two-year implementation timetable was (with the exception of one establishment) unrealistic.

Levels of distress among prisoners were extremely high and varied significantly between establishments. They were highest on entry into custody.

There was a statistically significant association between mean (aggregate) levels of prisoner distress and three year moving average suicide rates in each prison. Aspects of prison life and quality made a significant contribution to prisoner distress. High-vulnerability prisoners were significantly less distressed when they were in prisons where they spent less time locked in a cell, where they had employment, where association was infrequently cancelled, where they were doing offending behaviour courses and where they had regular contact with their families. Controlling for establishment differences, lower levels of distress were most significantly correlated with higher perceived safety. Levels of distress were also associated with relational dimensions (including relationships with staff, respect and fairness), dignity, frustration, family contact and participation in offending behaviour courses and personal development activities.

Staff and prisoners widely praised the improvements to induction and felt certain that these improvements alleviated prisoner distress. A well structured induction, delivered with care by trained officers, addressed many of the aspects of prison life that contributed to distress, such as safety, family contact and assistance for the vulnerable. The best induction processes took place in dedicated facilities: prisoners were spoken to in a friendly way, staff sorted out their immediate needs and procedures were good (e.g. prisoners had access to information, there were structured routines and risk assessment was carried out thoroughly and in private). Increasingly, the use of enthusiastic 'insiders', as well as listeners, added reassurance. First-time prisoners found the transition to prison life less distressing via an induction unit. They were less intimidating than prison landings and they improved prisoners' feelings of safety. Moves from a first-night centre on to a poor induction wing were difficult.

Dedicated detox facilities made an impact on the experience of entry into custody, although facilities at most prisons were incomplete at the outcomes stage. Knowing that effective detox programmes were available was reassuring for prisoners. Prisoners going through detox needed a high level of understanding from those who were supporting them. A holistic approach to detox seemed to work best. This included effective screening, good medication, specialist care, support from staff, drug support workers, padmates and relaxation. Counselling, Assessment, Referral, Advice and Through-care (CARAT) programmes and various drug-awareness programmes were said by prisoners to make them feel 'good in themselves'; that 'they've taken the first step'. In-reach teams provided a very valuable source of support for prisoners, who wanted to talk to someone who understood their specific problems.

There were Listener schemes in all the prisons in our study (volunteer prisoner counsellors, trained and supported by the Samaritans), although some were more expansive and well supplied than others. There were often areas of the prison (for example, the segregation unit or vulnerable prisoner wings) that were not represented. Listeners made a difference to many prisoners in distress, and intervened effectively in some cases where prisoners were intent on taking their own lives. For the right people and at the right time, listening 'worked'. Staff culture played an important role in maximizing the potential effectiveness of Listener schemes. There were some issues of trust, privacy

and expertise that meant that Listener schemes should not be relied upon to the exclusion of other means of support.

The effectiveness of safer cells (designed to minimize opportunities without being austere) depended on staff approaches and good management. In prisons where staff used safer cells to enable care through better observation and support, and where efforts were made not to stigmatize prisoners located in them, this initiative was valuable to staff and to prisoners at risk. Safer cells were sometimes used as a way of asserting authority over prisoners who were perceived to be using suicide threats to 'get what they wanted'. The design and facilities in some safer cells were experienced as punitive. For example, some did not have a TV, and some prisoners felt that the windows were claustrophobic and that air did not circulate well. Safer cells were sometimes used in a limited way to contain rather than address risk.

Prisons with strong traditional cultures suffered from greater problems of implementation. The roles played by culture, safety and other aspects of prison quality of life are addressed further below.

The role of prison officer culture

So would you say there is ownership of the policy, as it were, by the staff?
Yes, but I don't think you'll ever get staff to admit that to you.

Why is that?
It's, I think it's just prison culture. 'Oh, let them hang, let them cut theirself [*sic*], you know, they won't do it…' You see it day-in day-out, they're there to help them, but to each other, they'll never admit it, or to me, or you. They would never admit it (officer).

Some prisons were better able to improve their practices in caring for prisoners at risk and in *attitudes* towards suicide prevention than others. Some prisons had higher proportions of staff adhering to a 'traditional culture' (see Chapter 20). These staff groups were characterized by unfavourable views of prisoners and governors, alertness to danger, a 'them and us' attitude to prison life and firm loyalty to colleagues. In general, in the high-risk prisons in particular, there tended to be higher proportions of uniformed staff in the 'negative attitudes' category than in the 'positive attitudes' category (except at Feltham, Glen Parva, Swansea and Forest Bank). In these prisons, specialist staff often struggled to be accepted, and prisoners were faced with barriers to staff and to the resources they needed. Staff with traditional cultural attitudes maintained a distance from prisoners, tended to assert their authority more readily and quickly became suspicious when prisoners expressed problems. The atmosphere created by staff who subscribed to more traditional cultural attitudes often intensified prisoner distress:

Did staff talk to you in a friendly way at all [in reception]?
No … I called one of them 'mate' by accident and he jumped on me. He said 'call me boss or something, don't call me that'. It was horrible.

He was really nasty. But anyway, that's prison isn't it? As I say you're not here to be ... its not a holiday camp, is it? But they are really hard on people coming in.

Why do you think they do that?
I don't know. Maybe that's just the way they are and they're frustrated they're in the Prison Service or ... just taking it out on people coming through. Maybe it's to make you not like prison, so you don't come back ...

Did you feel that you could ask staff questions?
No, totally unapproachable, totally unapproachable, yeah (prisoner).

Prisoners on the receiving end of these attitudes did not feel able to approach staff for information, let alone support.

Staff subscribed to varying degrees to the attitude that self-harm and suicide attempts were a form of manipulation and 'attention-seeking', rather than an expression of genuine distress and a sign that the person required care and assistance. Interviews and observations suggested that there was a relationship between traditional cultural attitudes and the view of self-harm as a form of manipulation and 'attention-seeking', and this relationship was borne out in the quantitative data. The item 'prisoners who attempt suicide are usually attention-seeking or trying to be manipulative' had a correlation with the dimension 'traditional culture' of 0.35 ($p > 001$).[6] The same item was positively and significantly correlated with the moving average suicide rates for 2000–2 and 2001–3, and with General Health Questionnaire (GHQ) scores and levels of prisoner distress in each prison (0.61 and 0.70, respectively; $p < .05$). This relationship was stronger and more consistent in 2002 than in 2004, suggesting that aspects of the Safer Custody strategy may have started to make inroads into these matters. Better cultural attitudes were related to levels of care experienced by prisoners, to better and faster implementation of the strategy, and to lower levels of distress. Changing staff culture, however, was difficult (see Chapter 20, this volume). Uniformed staff attitudes to self-harm were significantly influenced by their relationships with prisoners, their levels of job satisfaction and by suicide prevention training.

The role of safety and well-being

What helps someone to feel safe?
To be reassured that everything's alright. To have a good padmate who knows the score, who's been here before. Not to be shouted at, you know? (prisoner)

You can't feel safe in prison, can you? (prisoner)

Safety emerged as a major theme in our study of suicide prevention. *Feeling unsafe* was central in prisoners' experiences of distress.[7] They were often

worried by the reputation of a prison, by stories they had heard and by fears about other prisoners (for example, that they might meet enemies from outside, or individuals with uncontrolled violent tendencies or coming off drugs):

Did they talk to you in a friendly way?
Yeah.

Did that have any kind of impact on you or…?
Well, I mean I've been told loads of stories about this place … and then it was nowt compared to what I thought, you know, it was just like…we're all doing our time at the end of the day, we're still human beings.

What were the stories that you'd heard about it?
Oh that … phew … you know you get bullied for burn and all that, you know, you get bullied for your canteen (prisoner).

These early fears were either allayed when staff approached them individually and with care, or they were exacerbated by stand-offish or unfair and indifferent treatment. Prisoners felt safe when staff were approachable, drug use in the prison was low and the prison was well organized. Much of the significance of good staff–prisoner relationships seemed to be that they *provided reassurance*. Individual prisoners had to feel they could 'stand up for themselves'. Prisoners with mental health problems, difficulties with communication or physical disabilities often felt especially vulnerable.

About half of all prisoners surveyed reported that they felt safe from being injured, bullied or threatened by other prisoners and by staff. Perceptions differed significantly between prisons. Prisoners felt safer from being 'injured, bullied or threatened' by staff than they did by prisoners in most prisons (except at Feltham, Glen Parva and Liverpool at Time 1, and Leeds and Wandsworth at Times 1 and 2). In 2002, prisoners felt least safe at Eastwood Park and most safe at Swansea. In 2004, prisoners felt least safe at Liverpool and most safe at Swansea. By this stage, after implementing major changes to the reception and induction procedures, Eastwood Park was perceived as the second safest prison, together with Forest Bank. The results suggested that:

- prisons differ in how safe, or unsafe, they feel;
- feelings of lack of safety are strongly correlated with prisoners' feelings of distress;
- ratings of 'staff–prisoner relationships', 'respect', 'fairness' and 'dignity' (among other things, such as responses to individuals in distress) are strongly related to perceptions of safety; and
- prisons can significantly improve their levels of safety.

The safest prisons were characterized by caring staff attitudes, well functioning regimes, and the availability and integration of specialist support. Two

distinguishable safety dimensions emerged from the analysis: physical safety and 'care and safety'. 'Physical safety' was related to feelings of fear of others and experiences of threats; 'care and safety' was related to staff approaches to incidents, including bullying. 'Physical safety' had a direct relationship with distress, whereas 'care and safety' played an indirect role, contributing significantly to perceptions of physical safety. Feelings of safety and unsafety were not related to actual levels of assault, but the prisoners' levels of *trust in the environment*. Feeling unsafe reflected a sense of anxiety and powerlessness. Seeing staff around and knowing they would respond swiftly to incidents, as well as positive interactions with staff (or with other prisoners), could significantly improve prisoners' feelings of safety (see, further, Liebling and Tait 2006). In some prisons, staff tended to cluster in offices or to turn a blind eye to tension, or there were low staffing levels on the wings which meant that incidents could go unnoticed. Prisoners were often intimidated by verbal threats, but staff tended to see their role as preventing physical violence. Larger wings could be intimidating, and it was not unusual for staff unwittingly to collude with threatening prisoner hierarchies by giving trusted jobs to 'heavies' on the wing. Likewise, clear information about day-to-day routines and about how to go about making applications or contacting families, and consistency of regime provision, were reassuring. Some prisons had started to introduce 'insider' teams of volunteer prisoners who spent time on reception and induction units answering prisoners' questions and passing on information. These schemes were highly valued. Some prisoners experienced distress as a feeling of not trusting themselves when under pressure. If they were frustrated or provoked, they were afraid of the consequences of retaliation, but were not sure they could contain their feelings ('if someone winds me up, I'll hit them … I don't want to, you know what I mean?'). Being in prison required a level of emotion containment that was especially difficult without the usual coping assistants (drugs, alcohol, activity and friendship).

Appropriate interventions (as opposed to superficial responses to the behaviour) could provide the groundwork for trust to develop between staff and prisoners, and for behaviour to be modified:

> Somebody who had had a problem with my brother out there come on [my] Wing, and he was bigger than me and older than me, and I was going to get my head smashed in – and on [this] Wing it happens very easy. So, I was pretty scared. So, I cut my arms, gone out with a brush, and whacked him over the head with the brush … alarm bells went off – all the screws come running … I had lost the plot. Mr – just called all the officers off, grabbed me, took me downstairs into his little office and sat there and had a brew with me. And asked me what was up and this, that and the other. Just talked to me till I calmed down – which I thought was very good of him, because I could have been twisted up and dragged off, do you know what I mean? But he didn't let that happen. He understood why I done what I done. He just couldn't understand why I had cut my arms to do it…

And what was it about that experience that made you feel better?
It showed that you can approach them – some of them are alright – and
you don't have to do things like that (prisoner).

This was skilled work and involved officers in making careful judgements
about the behaviour involved.

There were three ways in which drug problems contributed to suicide
risk in the prisons in our study. First, there were extremely high levels of
drug dependence, and a high level of need for effective detox programmes.
Secondly, there were often major underlying emotional, mental and physical
health problems linked to drug dependence. Where detox was effective,
prisoners reported having to face these difficulties, often for the first time.
Thirdly, levels of drug use, and the state of the drugs trade, fluctuated inside
prison and had serious implications for prisoner safety. Trade in prescribed
medication was a further ongoing problem.

Once prisoners felt safe (often with support) they were more able to engage
in activities and approach staff and prisoners with confidence. This led to
improved well-being. Active regimes felt safer than restricted regimes, but only
when staff were sufficiently present and involved in prison life on the wings.

Other aspects of prison quality

Other aspects of prison quality that influenced levels of prisoner distress
included the reliable provision of purposeful activity and offending behaviour
courses, the relationships between specialist and non-specialist staff, and
the facilitation of contact with families (for example, visits that were long
enough and good access to telephones). Prisoners reporting high levels of
vulnerability but low distress were more likely to be employed in prison and
much less likely to be locked up for more than six hours during the day. They
were less likely to report that association was frequently cancelled (reflecting
conscientious regime provision). Well run prisons with active regimes were
'protective'. These prisons were more likely to be on the enhanced regime,
to be doing an offending behaviour course, to be receiving visits and to be
close to home.

Management strength and expertise made a difference to the effectiveness
of implementation. Governors needed strong, well integrated senior manage-
ment teams ('a very united top team' who 'speak as one' and 'have the same
principles'), and they needed access to resources. They needed some expertise
in the population they were catering for, and they needed confidence and
clarity in their dealings with staff. The best governors seemed able to feel
and express outrage at unacceptable practices, without alienating staff. They
also needed 'champions' (for example, good suicide prevention co-ordinators)
and to establish trust between their team and the rest of the prison. They
needed a convincing vision (e.g. 'we want to be the model local prison for
women') and 'a commitment to that performance culture' – but also a way of
making it feel meaningful to staff and prisoners. Establishments needed 'more
than just gloss'. They needed 'deep-entrenched changes and cultural changes',

including an opening up of the regime, achieved with staff support, and a tightening up of procedures. The organization had to 'work', in addition to relationships being good. All staff needed 'a very clear vision of what they're responsible for', which required a 'very clear management structure' and comprehensible expectations.

Summary and implications

> Person-centred explanations demand person-centred solutions (Gibbs 1987: 290).

Individual factors relating to mental health and drug use play an important role in suicides in prison, but it should be acknowledged that structural factors play a role in offending, in drug and alcohol abuse, and in the distribution of suicide risk in the community. It is also the case that sentencing practice and the use of remand are both disproportionately directed at disadvantaged and vulnerable populations. Prisons are intended to punish by depriving offenders of their liberty. They are not, according to official pronouncements, intended to inflict intolerable distress. Material conditions have improved in British prisons over recent decades, but the psychological conditions of imprisonment may have become increasingly harsh as the predispositions of offenders have changed, control strategies have become more subtle and effective, and sentences have become longer. If prisons are to be more rather than less legitimate, they should not be places that prisoners cannot endure. Use of and faith in the prison should be limited by our increasing knowledge about its negative effects. Once in the hands of the state, prisoners are owed an enhanced duty of care by those who administer prisons.[8]

Suicide prevention in prison requires attention to be paid to the needs and vulnerabilities of the prison population, which differ by prison and with the sentencing climate. Careful consideration should be given in particular to diverting vulnerable groups away from custody and to providing support and opportunities for change in the community. Transitions (between prisons or from one wing to another) should be minimized or used with care (see Harvey 2004). In prison, specialist (mental health) support, adequate training, good reception and induction facilities and procedures, and proactive screening and support are all essential. Attention also needs to be paid to the general prison environment: to levels of activity, to safety, to culture and to staff–prisoner relationships. Some prison environments are clearly more survivable than others. More should be learnt about survivable models of imprisonment and the organizational conditions that render them so, as well as about more constructive alternatives to custody.

Direct therapeutic interventions with those identified as at risk of suicide (or in distress) seem to have some positive effects (for a recent review of research in the prisons context, see Dear 2006). Cognitive-behavioural techniques can be used to improve tolerance and management of negative emotions and to enhance problem-solving skills. They can reduce dichotomous thinking, feelings of entrapment and susceptibility to environmental influence (all

characteristics of suicide attempters), and can increase flexibility (see Pollock and Williams 2006). Dialectical behaviour therapy is currently being piloted in several prisons in the UK and in Australia based on positive results in some US studies (e.g. for those diagnosed with borderline personality disorder or problems in self-regulation). Group therapy, self-help groups, the use of 'crisis card' access to hospital services and other coping-focused strategies can be effective with some individuals. Supportive and non-judgemental staff attitudes are regarded as very valuable by users of services (Borrill 2002).

Selected further reading

A good introduction to the literature in this field can be found in Liebling A. (1999) 'Prison suicide and prisoner coping', in M. Tonry and J. Petersilia (eds) *Crime and Justice: A Review of Research. Vol. 26*. Chicago, Il: University of Chicago Press. Important recent contributions include: Dear, G. (2006) *Preventing Suicide and Other Self-harm in Prison*. London: Palgrave Macmillan; Liebling, A. and Maruna, S. (2005) *The Effects of Imprisonment.* Cullompton: Willan Publishing (especially chapters 1–5, 8, 9, 13 and 14); and Harvey, J. (2007) *Young Men in Prison: Surviving and Adapting to Life Inside*. Cullompton: Willan Publishing. A thorough, descriptive study of the psychiatric and social characteristics of the prison population in England and Wales is provided by Jenkins, R., Bhugra, D., Meltzer, H., Singleton, N., Bebbington, P., Brugha, T., Coid, J., Farrell, M., Lewis, G. and Paton, J. (2004) 'Psychiatric and social aspects of suicidal behaviour in prisons', *Psychological Medicine*, 35: 257–69. More general accounts of the prison experience and some of its difficulties can be found in Toch, H. (1992) *Living in Prison: The Ecology of Survival*. New York, NY: The Free Press (first published 1977) and Haney, C. (1997) 'Psychology and the limits to prison pain: confronting the coming crisis in the Eighth Amendment law', *Psychology, Public Policy and Law*, 3: 499–588.

Acknowledgements

Notes

1 Trends over the last 10 years show a significant decline (Samaritans 2005).
2 However, 'the causes of individual differences may not be the same as the causes of group differences' (Marmot 2004: 32).
3 It is unwise to make direct comparisons between the male and female prison populations as they are hardly equivalent. Since women constitute around 6 per cent of most international prison populations they are less representative of the population of women as a whole. Their offending is less violent and they have more severe histories of maltreatment and psychiatric intervention. It would make more sense to compare women in prison with a matched subsection of the male prison population.

4 One Australian study has suggested that the informal rules of dysfunctional prison life ('don't talk, don't trust, don't feel') are uncannily similar to the dysfunctional family histories suffered by abused women (Easteal 2001). The cycle of abuse and addiction is reproduced within the dysfunctional prison (Easteal: 108).

5 A detailed outline of the programme can be found in *The Government Response to the Third Report from the Committee on Deaths in Custody* (Joint Committee on Human Rights 2005).

6 This correlation is for all staff, 2002 and 2004 data merged.

7 In a regression analysis, the dimension 'physical safety' explained 40 per cent of the variation in distress, and 30 per cent of the variation in GHQ-12 anxiety and depression scores (see, further, Liebling *et al.* 2005).

8 Specifically, prisoners should maintain the right to life; to freedom from inhuman and degrading treatment and from discrimination; and to privacy, personal identity and physical integrity (Joint Committee on Human Rights 2004).

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Chapter 19

Prisons and the media: the shaping of public opinion and penal policy in a mediated society

Yvonne Jewkes

Introduction

The role of the mainstream media in making penal practices more visible to a public infatuated with incarceration yet ignorant of its effects (Simon 2000) remains under-explored but, in seeking to comprehend more fully the mediated relationship between prisons and the public, this chapter explores two different aspects of the prisoner–media relationship. First, it discusses the ways in which popular newspapers shape public opinions about prisons and prisoners. It highlights some of the prominent themes that underpin press reporting and considers the role the media play in subduing public debate about some of the worst atrocities that take place in British prisons. Secondly, the chapter focuses attention on the other end of the media–prisoner relationship, discussing the extent to which the controversial introduction of media into prisons has qualitatively altered the experience of imprisonment. It reflects on the impact of in-cell television within prison regimes and on prisoners' everyday lives, and considers the arguments for and against the introduction into prisons of computer resources. The chapter concludes with a brief discussion of the potential role of the Internet in prison.

Media and prisons

It is increasingly recognized that the media are situated within, and fully interwoven with, many other social practices and, moreover, that mass-produced symbols and meanings take on even greater importance when they pertain to situated experiences which most of us do *not* experience, such as incarceration. Prisons, then, like other aspects of criminal justice, cannot be separated from their representations in television, film and the press (Sparks 1992; Ferrell 2001, 2004). Indeed, one commentator has gone so far as to argue that the Gothic façade of the prison that once projected a message of sombre

austerity and dark fears to the community at large has now been replaced by the contemporary prison drama which conveys a similar message (Fiddler 2005). This premise seems entirely plausible given the 'disappearance' of the prison from public knowledge – a phenomenon originating in the nineteenth century when the Victorian middle classes decided that the dangerous classes must be 'pushed behind the scenes of the civilized world' (Pratt 2002: 35; see Chapter 8, this volume).

There are many examples that could be drawn upon to make the point that public understanding of prisoners' lives, and deaths, in custody remains suppressed to the point of ignorance. For example, between 1998 and 2002, 1,659 incidents of self-injury or attempted suicide by juveniles in prisons were recorded in England and Wales, and 24 children have taken their lives in custody since 1990 (Drakeford 2006). At the other end of the life course, recent research on ageing and elderly inmates reveals that the fear of dying inside prison is profoundly distressing (Crawley and Sparks 2005; Chapter 10, this volume) and can be viewed as comparable to being diagnosed with chronic or terminal illness (Jewkes 2005), though issues surrounding ageing prisoners receive scant attention in the media. Moreover, there are around 20 prisoners in England and Wales serving whole life (or 'life means life') tariffs but, with a handful of exceptions, most would probably be unknown to the British public. Similarly, there has been little discussion in the mediated public sphere about the UK government's introduction of a range of new sentences permitting indefinite imprisonment for public protection.

An acquaintance with the processes of news production helps us understand why deaths in custody are not considered newsworthy (Jewkes 2002). Suicides and attempted suicides usually only reach the pages of the press if the story conforms to several cardinal news values – e.g. it concerns a particularly notorious ('celebrity') inmate, thus meeting the required 'threshold' for inclusion, and is reduced ('simplified') to an event that was both 'predictable' and therefore preventable (the suicides in prison of Fred West and Harold Shipman in 1995 and 2004, respectively, are examples). The more general trend, however, is for prison suicides to go unreported, and few newspaper readers may be aware that there were 95 self-inflicted deaths in prisons in 2004, including 13 women (see Chapters 11 and 18, this volume). Similarly, escapes generally only feature in the national press if the inmate concerned is well known or is especially dangerous. They are more likely to be reported in the local press (i.e. newspapers proximate to the location of the prison from which the prisoner absconded) but, again, only if the escapee represents a danger to the public or if the story constitutes a 'filler'. In any case, the press relies on contacts within the police or Prison Service to feed them information about security lapses, which may not be forthcoming. Following the escape from open conditions of a man convicted of drug smuggling and originally classified as a dangerous Category A prisoner, the Prison Service's Director General defended the decision not to inform the public, saying: 'We have a duty to keep in custody those committed by the courts but we do not have a duty to inform the media of every escape' (www.PrisonToday.com).

Arguably the least salient type of story concerning prisons is the abuses and assaults inflicted on prisoners by staff or by other inmates. Generally,

stories about victimization in prisons will be reported only when an official inquiry has taken place. Like crime news more broadly, the appearance of a story about an assault in prison is dependent upon editorial judgements being made about the victim, with some victims being considered more worthy than others (Jewkes 2004). And, again, in common with wider media constructions, a story will always be more newsworthy if the victim's relatives make themselves part of the story (Jewkes 2004). But, aside from a few notable examples where a family campaigns tirelessly to keep a case in the public eye (as have relatives of Zahid Mubarek, murdered by his racist cell-mate at Feltham Young Offender Institution in March 2000), most assaults and abuses remain hidden behind prison walls.

The reasons why inmate suicides, lapses in security and assaults on prisoners by staff and other inmates fail to make it on to the media's list of news priorities – much less register on the public's radar – are complex. There is a perception that the public do not care what happens to prisoners; they are the dregs of society, an underclass who are not deserving of our attention. Yet while assumptions are made about hard-line public stances on punishment, we also know that – when given context and background information – people's responses are more complex and nuanced than is frequently supposed (Roberts and Hough 2002; Gillespie and McLaughlin 2003; Hutton 2005; Ryan 2005). Perhaps, then, the problem is one of omission: of lack of context and background. If we reflect on the findings of one of the most recent content analyses of news reporting (Mason 2006), it becomes apparent that the prison is constructed simplistically and unproblematically. Reflecting the 'what works' philosophy of the Labour government, the meaning of punishment constructed by the media is one that not only supports the use of imprisonment but also actively seeks its expansion:

> [T]he prison population is not created by crime but by political decisions influenced and indeed often driven by inaccurate media misrepresentations and silences. It is the media that construct the prison as the essential cornerstone of criminal justice, echoing New Labour's notion of a 'working prison', through its discourses around dangerousness and fear (Mason 2006: 254).

The problem is twofold. First, news reporting of prisons is negligible, especially in comparison with coverage of crime and policing, and public knowledge about imprisonment is correspondingly low compared with related crime and justice issues (cf. Gillespie and McLaughlin 2003). Thus we find that, in one month (October 2005), only six stories about prisons were featured on television news: three on *Channel Four News*, two on BBC1 and one on ITV's *Early Evening News* (Mason 2006). While 65 stories appeared in the newspapers during the same period, that constitutes just over two stories per day across 19 national newspapers. Furthermore, 13 of the 65 were 'fillers' and constituted less than 100 words (Mason 2006).

Secondly, what news coverage there is appears to be predicated on the belief that large segments of the media audience regard prisoners as society's detritus and believe that prisons are full of dangerous individuals living the

life of Riley. The lazy contempt that most journalists display towards prison inmates is underlined by Mason's finding that, when writing about prisons and prisoners, reporters and editors use crude and violent language that conveys an obvious subtext, regardless of what the story is actually about. Thus a self-taught prison law expert (sentenced 25 years previously) who has challenged a ruling forbidding prisoners the right to vote is routinely referred to as '54-year-old axe killer' (*Daily Mirror* October 2005), while a superficial disturbance on the same day at Hindley Young Offender Institution is prefaced with the headline 'Prisoners' Jail Frenzy' (*Daily Mirror* 7 October 2005). A week later, *The Times* greeted the news that the Home Office was seeking to extend home detention curfews to try to ease the problems of overcrowding with the headline 'Time in Jail May be Slashed for Prisoners' (14 October 2005).

To this extent, it is a mistake to believe that news reporters even strive for accuracy. Newspapers are not engaged in dispassionate analysis but precisely the opposite – passionate engagement for the purposes of exercising moral sentiment. When people read news reports about prisons and prisoners, they are looking for both confirmation of their existing views, which – without context and background – tend to be punitive, and for further opportunity to be shocked and outraged (Katz 1987). On the whole, then, the grim and frequently inhumane conditions of incarceration only reach public attention if accompanied by a sound-bite by Her Majesty's Inspector of Prisons in language that will appeal to the popular media.[1] In most newspapers, coverage of issues such as overcrowding, racism among inmates and prison staff, drug addiction, mental illness and suicide, is sparse and, on the whole, press reporting about prisoners and prisons tends to concentrate on (in)famous inmates: individuals who are either notorious by virtue of their crimes, such as 'Yorkshire Ripper', Peter Sutcliffe, and Soham murderer, Ian Huntley, or 'celebrities' who have fallen from grace – e.g. pop stars Pete Doherty and Gary Glitter, or politicians Jeffrey Archer and Jonathan Aitken. So newsworthy are prisoners whose names – and crimes – are already known to the public that the tabloid press will frequently go to extraordinary lengths to get close to the individuals concerned, as when an undercover *News of the World* journalist gained a job as a prison officer in order to take photographs of Huntley and his cell at Woodhill Prison in April 2004.

The perceived newsworthiness of celebrity inmates merges with two other themes that dominate press coverage of prisons: pampered prisoners and sexual relations in prison. Stories which characterize prisons as 'holiday camps' in which notorious inmates enjoy advantages they do not 'deserve' – whether it is good food, personal television sets or extended visits from their spouses or partners – fuel the tabloid media's view of a criminal justice system which is soft on crime. While many of these stories are little more than comic turns expressed in tones of outrage, the more serious repercussions of irresponsible reporting of such issues are poignantly conveyed by Richard Sparks in his reflexive account of how research he was involved in played a small but significant part in the closing down of the Barlinnie Special Unit in Scotland in 1994. Sparks recounts how a single paragraph in a lengthy report that mentioned the private nature of the unit's visiting arrangements was seized

upon by the popular press who, on the day after the report was published, led with headlines such as 'Sex Sessions Behind Bars' (*Daily Express*), 'Sex Behind Bars in the Nutcracker Suite' (*Today*) and 'Rage as Prison Bars Allow Cons Nookie in the Nick' (*Sun*) (Sparks 2002: 574).

One has to hope that a similar fate will not befall one of the success stories of penal policy in the last few years first-night centres although Mason's research suggests otherwise. Designed to accommodate vulnerable prisoners for at least two nights, the first prison to benefit from a first-night unit was Styal where six women had previously taken their own lives over the 12-month period 2002–3. Research shows that, although newly incarcerated prisoners often attempt to prepare for what awaits them, the shock of entering such an austere and depersonalized environment, together with the sudden and enforced separation from family and friends, can result in severe trauma. Withstanding 'entry shock' is, then, the first of many psychological assaults which the new inmate has to face, and attempts at suicide and self-harm, and the onset of self-destructive psychiatric disorders, are most prevalent in the initial phase of confinement (Liebling 1992; Liebling and Krarup 1993; Chapter 18, this volume). In an attempt to combat some of the distress inherent in the reception process, first-night units house prisoners in bright and comfortable surroundings while mental health and detoxification assessments are carried out. News of the introduction of a new first-night unit at Holloway Prison was reported by the *Express* in typically scornful and misleading tones:

> *Prison? It's Like a Hotel*
> Inmates at one of Britain's supposedly 'toughest' jails have said life there is more like staying in a hotel. In a damning indictment of softtouch [*sic*] Britain, new arrivals at Holloway women's prison eat in a bistro-style dining room, sleep in comfortable beds and have 'befrienders' to help them settle in (1 October 2005 cited in Mason 2006: 258).

The mediated construction of prisoners as 'distant others'

Many commentators have argued that it is the media's inclination to construct some individuals and groups as despised 'others' that leads to indifference to their suffering (Giddens 1991; Craib 1998; Minsky 1998; Jewkes 2004; Chouliaraki 2006). Certainly, in their capacity to shock, high-profile mediated criminal events and their aftermaths tend to intensify the polarization between 'us' and 'them' and create 'extremes of otherness' against which we position ourselves in order to assert our own normalcy (Greer and Jewkes 2005). It is unsurprising, then, that the men, women and children who are confined in prisons are marginalized psychically as well as literally. In an analysis of the ways in which distant suffering is portrayed, reproduced and consumed, Chouliaraki reflects on the relatively weak potential for public identification with the 'far away other' (2006: 1). Noting that the mainstream media evoke pity for those like 'us', she reflects on the nature of media consumption in late modernity:

> We live in a society where our own private feelings are the measure against which we perceive and evaluate the world and others. The media reflect this. They are almost obsessively preoccupied with our 'interiors' – our intimate relationships, fears and desires, homes, bodies and appearance. Reality television is one obvious manifestation of a public culture that takes intense narcissistic pleasure in staging the private for all to see. The news genre, formal and detached from emotion as it often appears to be, becomes part of this culture of intimacy in so far as it, implicitly, reserves the potential for us to pity 'our' own suffering and leaves the far away 'other' outside our horizon of care and responsibility (2006: 13–14).

Writing about the unprecedented international response to the nations affected by the tsunami along the Indian ocean coastline in December 2004, she observes that whom we care for is a matter of whether or not their suffering is presented as 'relevant and worthy of our response' (2006: 14).[2] While her focus is on victims of distant natural disasters and terrorist attacks, Chouliaraki's comments equally pertain to those who are socially excluded to the extent where they do not induce in us a sense of social responsibility. The fact that the media are unable or unwilling to evoke pity for those who are constructed in terms of their 'otherness', and hidden from public gaze behind the walls of the prison, suggests that journalists, editors and newspaper owners have 'abandoned respect for the irreducible value of every human life' (2006: 14).

A further obstacle to the media audience's capacity to care lies in the domesticity of reception which interrupts any possible sense of connectivity (Chouliaraki 2006). In an environment where sensory deprivation is paramount, bodily sensations – smell, touch, cold, discomfort, stupor, tension, pain and so on – are arguably heightened considerably. But even the most sophisticated of prison dramas is unable to mediate physical senses. When asked in a radio programme what is missing from media portrayals of prisons, Benjamin Zephaniah, the poet and playwright, who has served time in prison, answered:

> I think we miss the boredom of it … most of the time, people just sitting around doing nothing. I was in a prison called Winson Green in Birmingham where we did nothing. We were banged up 23 hours a day. We were just let out to walk around a yard … And one thing I always think is missing is the smell of the place – when you're in a room which was built for 1 or 2 people and you've got 4 or 6 people in there … We used to slop out so we used to have chamber pots, for want of a better word, and you've got the smell of 4 or 6 people's urine, the smell of masturbation, in one little room. I mean you can never capture that …' (*Start the Week*, Radio 4, 22 December 2003 cited in Jewkes 2006).

There are numerous and diverse cases that could be called upon to illustrate the point that the media-consuming public are distanced from the reality of

what is happening in our prison system and are immobilized to act on it anyway due to the demonization of mediated 'others'. However, by way of example, let us consider the imprisonment and death of 14-year-old Adam Rickwood, the youngest person to die in British custody (although not included in Home Office figures because he died at a privately run secure training unit; www.howardleague.org/press). In his essays on the creation of public acquiescence, Mathiesen (2004) suggests that, while populist public opinion *can* be mobilized to fracture notions of 'otherness' that are manufactured by the media in relation to vulnerable, disenfranchised and marginal groups, in many cases the possibility of public opinion intervening is thwarted, not in a noisy or even noticeable way, but quietly and unnoticed. This process, which he calls 'silently silencing', enables the audience to distance themselves morally from potentially disturbing events. Mathiesen claims that, in order to maintain the silent character of silencing, it becomes important to cut the event out of the fabric in which it exists; to isolate it from the bigger picture of which it is an integral part. He calls this 'pulverization' and argues that such pulverization of totality or context becomes more important the more extensive and sensational the event is (Mathiesen 2004: 37). In cases as potentially emotive as that of a 14-year-old suicide victim, the pulverization of context and totality makes the punitiveness of the punishment appear both just and unusual, so it is instructive to consider some of the strategies that are instrumental in the process of creating public acquiescence about the death of Adam Rickwood.[3]

First, the case was *individualized* – presented as atypical, extraordinary or special. This was achieved by both what was included in the media coverage – extensive narratives that told a very personal story of Adam and his family ('How the hell was my boy allowed to hang himself?'; *Sun* 15 August 2004) – and by what was omitted: the statistics on children and young people who self-harm and attempt or commit suicide while in custody. Secondly, the event was *normalized* in such a way as to make the punishment seem like a necessary consequence. The *Mail* peddled a familiar narrative of feckless youth with no family values or respect for law and order: 'The truth is that while one would not wish to compound the grief of his close relatives, Adam's story is a bleak tale of family breakdown, and an absence of discipline, as well as a blasé acceptance of drug-taking, underage drinking and petty theft' (16 August 2004 cited in Drakeford 2006). The newspaper continued its highly subjective account with the observation that Adam was the child of a single mother and that 'as a toddler he set himself on fire with a lighter he had been playing with'. We learnt that, as an older child, he was excluded from school before being sent to the privately managed Hassock Field Secure Training Centre (STC) in County Durham for breaching bail conditions in relation to a more serious charge of assault. In recycling the language of right realism and locating Adam Rickwood firmly within notions of a dangerous and amoral underclass, the *Mail* perpetuated the idea that a custodial sentence was the inevitable consequence of a young life that had gone off the rails.

Thirdly, the event was *split up* into more or less free-flowing and unrelated bits and pieces; for example, the *Mail* reported that Adam 'was the result

of a brief fling between his mother and a man he never met'. Fourthly, central questions tied to the event have been put off to a distant and vague *future*. Where deaths in custody are concerned, it is common practice that any coroners' inquest that takes place will take a long time to report their findings. In the case of Adam, who died in August 2004, the coroner's inquest did not open until May 2007 (http://inquest.gn.apc.org/). The inevitable consequence of this delay is that, when the time eventually comes for the findings of the investigation to be published, the public have put a distance between themselves and the event.

In short, an individual event – the self-inflicted death of a child in a secure training centre that has been described by a senior civil servant at the Home Office as resembling a Category 'B' adult prison (*Face the Facts*, BBC Radio 4, 26 August 2005) – is pulverized from the totality of its context – which is that approximately 2,900 young people under the age of 18 are incarcerated in the UK. This is approximately twice as many children as are locked up in Belgium, Portugal, Spain, Denmark, Sweden, Finland, Austria, France and the Netherlands combined (Goldson 2003). Furthermore, the four privately run STCs which hold children as young as 12 have been marred by high staff turnovers and chronic staff shortages, and an inspection report in 2002 found that, at Hassock Field, the STC where Adam died, 'there was a shortfall in childcare expertise'. This finding was supported by the fact that two members of staff had to be dismissed from Hassock Field for 'inappropriate use of physical restraint', a fairly common control technique that was allegedly used on Adam (*Face the Facts*, BBC Radio 4, 26 August 2005). Five months before Adam Rickwood committed suicide, another boy, 15-year-old Gareth Myatt, died at Rainsbrook STC in Northamptonshire. Less than five foot tall and weighing less than eight stone, Gareth lost consciousness while being restrained by three adult members of staff (see Chapter 9, this volume).

Taken together, the techniques of isolation described above construct the 'absolute other' (Greer and Jewkes 2005) within a nexus of legal, actuarial, political and media discourses which are alien to the average person's everyday life. The result is that Adam Rickwood's confinement from the rest of society after a life marred by various forms of social exclusion seems natural, even necessary. The techniques function to make some of the most punitive actions seem both extraordinary and acceptable, and the public are thus prevented from being disturbed by thoughts of a more long-term character (cf. Mathiesen 2004).

It might be reasonably concluded, then, that sections of the media have not only abandoned respect for the irreducible value of every human life (Chouliaraki 2006) but also appear to have colluded with the experiment of mass incarceration and with the closing down of debates about the legitimacy of incarcerating vulnerable individuals, including children. In their Introduction to *The New Punitiveness*, Pratt *et al.* (2005) suggest that the prison is no longer a social laboratory designed with the purpose of improving its occupants, but has been reborn as a container for human goods; for society's waste. But how many 'socially and psychologically rich human beings' (Lynch 2005) like 14-year-old Adam Rickwood must be identified before these

aspects of punitiveness are to be seen in relation to each other as fundamental components of a vengeful penal policy as opposed to normalized penal practices?

Populism and punitiveness

Even if the media were to generate debate about this case – and issues of prison suicide and deaths in custody more generally – it seems likely that their construction of public opinion would be characterized by vengeful punitiveness. Yet often this hard-line position stems from governments' claims to be speaking and acting on behalf of the people, subsequently reported back to the people by the media – a practice that has been dubbed 'ventriloquist populism' (Jessop 1988; Matthews 2005). It is important, therefore, to remain alert to the ways in which the practices of news production link up to broader organizational networks, particularly the political field (Chouliaraki 2006). Not only may we be experiencing a wave of populist punitive sentiments driven from 'below' by an angry and anxious public, but we may also be simultaneously witnessing a top-down process known as 'authoritarian populism' (Hall *et al*. 1978) whereby ambitious and manipulative politicians capitalize on public fears and prejudices in order to maximize their electoral appeal and display their 'tough on crime' credentials.

While arguments proposing that we are witnessing a 'punitive turn' in Western societies hold a great deal of currency in contemporary studies of crime and social control, far from being emotive and ostentatious, much penal practice, including (or especially) the worst atrocities taking place in our prisons, is muted and hidden. In other words, it is arguable that public interest is being subtly and unobtrusively suppressed to the point where the public sphere is no longer operating as a forum for rational-critical debate (cf. Mathiesen 2004). Most cultural theorists would acknowledge that we know little about the capacity of the media to cultivate an engagement with, or sense of social responsibility for, 'others', let alone 'criminal others'. However, symbolic interactionists assert that the process of 'othering' that defines one group's inferior status in relation to another's rests on the establishment and 'group sense' of symbolic boundaries of membership, one aspect of which is keeping 'them' under control, behind bars, as a symbolic solution for audiences. Moreover, alongside the discourse of pity for those like 'us' (more likely directed at victims, rather than perpetrators of crime) is a concern for justice (Altheide and Coyle 2006; Chouliaraki 2006). This dichotomy might help us to understand the fundamental inconsistency regarding public perceptions of prisons – i.e. that, while the majority of people get their ideas about incarceration from the gritty narratives of movies and TV dramas which portray imprisonment as brutal and dehumanizing, they are none the less interpellated or hailed by popular newspapers which seek to harness their most punitive sentiments by portraying dangerous criminals living it up in prison holiday camps at the taxpayer's expense.

Media *in* prisons

This returns us to a theme introduced earlier, which will be developed in the remainder of the chapter, namely, that any suggestion of prisoners being treated with respect or dignity – or even having access to goods, services and rights that the wider population take entirely for granted – is conveyed to the public in tones of outrage and derision by the popular press. For example, the idea of prisoners enjoying what are invariably quaintly referred to as 'conjugal visits' or being allowed to watch television in their cells may fuel resentment among many in the free world who – informed by a popular media who persist in presenting a skewed image of incarceration – picture prison as a 'kind of country club for the lower classes' (Johnson 2005: 256). In the final section, I discuss current debates surrounding prisoners' access to computer technologies and other 'new' media. First, though, let us consider the introduction of personal, in-cell television sets in the 1990s – a controversial period during which much of the ongoing heated political and public debate (especially concerning prisoners' use of the Internet) was rehearsed. The discussion that follows is based on empirical research conducted primarily in four men's prisons in the English Midlands between 1997 and 2000 (see Jewkes 2002 for a full analysis).

In-cell television

While personal radios have been permitted in prisons in the UK for more than 30 years, personal televisions have been introduced across the prison estate only in the last decade, and their instigation followed a great deal of prevarication. Although precedents had been established in Europe and elsewhere (for example, in-cell TV was installed in French prisons as long ago as 1985; Vagg 1994), in the UK, media use has always been integrated into the system of Incentives and Earned Privileges (IEP), and one of the aims of the IEP policy is to meet 'public expectations about what kind of place prison should be' (Liebling *et al.* 1997). The principle of deterrence known as 'less eligibility', whereby conditions in prisons must be no *better* than those experienced by the poorest sections of the working classes, is clearly not of relevance here, as 99 per cent of the British population has at least one television set per household (Jewkes 2002). Yet, despite being the medium of greatest penetration in the UK and being regarded by most people as a public utility rather than a luxury, the provision of television sets was – if the press are to be believed – a deeply unpopular move as far as prison staff, governors, politicians and the public at large were concerned.[4] A tongue-in-cheek editorial in the *Independent* summed up the prevailing view in an editorial under the heading 'Television – a Force for Good in our Nation's Prisons':

> Prison, eh? Nice cosy beds, good food, gyms, libraries … More like Butlins than a punishment. It'll be colour televisions next. The right-wing tabloids will be in full cry, no doubt, as will some backbenchers.

> Michael Howard will lose no opportunity to remind us that he rejected
> the idea, and to mock Jack 'tough on crime' Straw for his wet liberalism
> in this regard. Nor will the reaction be confined to politicians and
> editorialists. The verb 'to cosset' will be vigorously conjugated in
> the snug bars and Happy Eaters of the nation. Many people will be
> genuinely outraged … It is a fundamental social trait to want to see the
> guilty suffer. All cultures provide for punishment and we are a very
> rare example in human history of a culture which doesn't kill at least
> some of its criminals. Here, and now, the instinct for retribution means
> support for tough and unpleasant prison conditions. If they are not to
> hang, or go hungry, then they should at least squirm a little – be bored
> and uncomfortable, not leisured and entertained (30 November 1997).

The history of personal televisions in prisons can be dated back to 1991 when
the Woolf Report first gave the idea of in-cell TV as a potential earnable
privilege formal recognition (although it had been the subject of discussion
since at least 1981 when a working group evaluating control in dispersal
prisons considered the possible benefits and drawbacks of personal television
sets; McClymont 1993). However, the 'get tough' rhetoric of that political
era perpetuated the view that the more humane prison regimes become, the
less effective they are as a deterrent. By 1993 Michael Howard was Home
Secretary and, not wanting to appear 'soft' on any aspect of penal policy,
he publicly rejected the advice of Sir John Learmont who, in a report on the
escape of three life-sentence prisoners from Parkhurst in 1995, recommended
extending the installation of in-cell television across all prisons. In 1996,
Howard announced, to the contrary, that the 20 prisons which currently
had the facility would be required to remove televisions from cells almost
immediately (Jewkes 2002).

Howard's decision did not come as a surprise for most prisoners and
prison service personnel as the availability of personal television sets for
individual prisoners' viewing had always been a contentious subject. The
very attributes that are viewed positively by in-cell television's supporters
– that it normalizes the prison regime, links inmates to the outside world,
minimizes contact time between inmates and prison officers (thus reducing
staff costs) and makes earlier lock-up times acceptable to prisoners – were
viewed as potentially negative qualities by its detractors. When a new Labour
government was elected in 1997, in-cell television again became the subject
of fierce debate within the Prison Service and in political and public arenas.
Ultimately, however, balancing public opinion about what kinds of places
prisons should be, with the promise of cutting costs and reducing contact
among prisoners and between inmates and staff, proved to be a relatively easy
decision. The Blair government's commitment to installing in-cell television
across the prison estate was thus generally viewed as a humanitarian decision,
even if its roots were economic.

In addition to historic notions of less eligibility, and contemporary concerns
about prisoners being an 'undeserving' underclass, one of the latent concerns
that may have impeded its progress is the belief that electronic media are
fundamentally changing the nature of incarceration, eroding the 'totality' of

total institutions and allowing prisoners to participate in wider debates about their treatment and rights:

> Prisons were once more than places of physical incarceration; they were places of informational isolation as well. A prisoner was not only limited in movement but also 'ex-communicated' from society … Today, however, many prisoners share with the larger society the privileges of radio, television, and telephone … For better or worse, those prisoners with access to electronic media are no longer completely segregated from society. The use of electronic media has led to a redefinition of the nature of 'imprisonment' and to a *de facto* revision of the prison classification system: The communication variables of 'high information' prisons versus 'low information' prisons now have been added to the physical variables of 'high security' and 'low security' (Meyrowitz 1985: 117–18).

In his influential study of television's impact on our lives and culture, Meyrowitz (1985) develops this point, arguing that the impact of media on prisons and the resulting inclusion of prisoners in the public sphere is the latest development in a long history of gradual democratization via the mass media, whereby previously marginalized or formally isolated groups – women, children, the poor, the disabled, ethnic minorities and homosexuals – have had access to, and been included in, all spheres of public participation (Meyrowitz 1985: 118, 131 ff). Two key points arise from this development. First, those 'on the outside' can no longer use television as a private forum in which to discuss the problems of crime and crime prevention since inmates can now 'enter' society via the media (Meyrowitz 1985: 118). Secondly, it is possible that, as prisoners are increasingly able to monitor and interact with the larger environment informationally, they correspondingly increase their demands for greater physical access to the outside world and expect entitlements commensurate with those accorded the wider population. These two processes arguably create a shift in the balance of power so that, instead of normalization happening at the pace at which the Prison Service think appropriate, inmates are themselves playing a role in change.

However, the idea that prisoners are included in all spheres of public participation is naïve. While it is true that television, telephones, radio and audio equipment such as CD players penetrate places of physical isolation and offer some semblance of democracy to their occupants, it would be a mistake to believe that being in prison affords the same kinds of communications experiences that most of us in the broader community enjoy. First, a limited and regulated level of exposure to the outside world via television paradoxically can serve to intensify feelings of being removed from normal life. Secondly, in the prison context, communication almost always flows in one direction, inmates being forbidden to transmit information back to the world outside. Consequently there is a palpable sense of frustration that the outside world can, and does, impact upon them, but that they can do little to impact upon it (Jewkes 2002).

A third impediment to the participation of prisoners in the public sphere is spatial and temporal. Space and time are experienced differently in prison, and prisoners' 'mobility rate' is limited by their spatial horizons, their access to goods and services, and by their restricted movement. More than that, though, is the way that media reorganize the time–space relation. Prisoners are largely immune from the transformations of time and space that have arisen from new communications technologies. While most of us are aculturized to a world where time is speeded up, slowed down, suspended, repackaged, reordered and re-experienced through the mediums of film, video, television, satellite, digital and computer technologies – a set of processes known collectively as 'timeshifting' – most prison inmates (certainly those who are serving long sentences) experience time in a more traditional, chronological sense (Matthews 1999). Thus, time becomes conceived in spatial terms, with prisoners existing through time in a much more linear fashion, almost as if in a pre-media age.

The result of recent developments, from the Internet satellite and mobile-phone technologies through to MP3 players and pod-casting, is that new information and communication technologies have expanded the social worlds of free citizens almost to the four corners of the globe[5] (Johnson 2005) while simultaneously reconfiguring citizenship as something dependent on money and technology. Writing about the conditions under which it is possible for the media to cultivate an ideal identity for the spectator as 'a citizen of the world – literally a cosmo-politan' (2006: 2), Chouliaraki writes: [M]ediation is indispensable in today's public life. How else could we hear or see what is going on in the world at any moment without the radio, television or the Internet? … Mediation makes the world visible and audible to spectators and invites them to engage with it' (2006: 29–30).

But for Johnson, the fact that prison inmates are limited to the most modern technology readily at their disposal – terrestrial television – constitutes a 'distinctive pain of modern imprisonment' and may even make prisons obsolescent as social institutions (2005: 257). Even relatively 'media-rich' institutions still feel profoundly isolated from the larger society (Jewkes 2002), although the situation is clearly bleakest for those prisoners held in the most extreme conditions – e.g. special secure units in the UK, 'supermax' prisons in the USA – where the loss of freedom, dignity and autonomy is felt most acutely. These individuals are 'cavemen in an era of speed-of-light technology' (Johnson 2005: 263).

All that said, it is undoubtedly true that, in general, prisons today are far better integrated into the wider community than ever before and it would be misleading to suggest that in-cell television is unpopular among prison inmates. The small incremental steps that have been made in terms of media access – newspapers, magazines, in-cell radio and now in-cell television – *are* all important indices of the process of democratization that Meyrowitz alludes to. Like those of us in the outside community, prisoners gain a number of benefits from having relatively unrestricted access to television and other media; indeed, their capacity to inform, to entertain and to facilitate escapism may be felt more acutely in an environment that feels both removed from

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the rest of society and a great deal less colourful. But the celebration of our planet as a global village must be held in check not least because of the 'asymmetrical and unjust landscape' of media flows that further stabilizes existing relationships of power (Chouliaraki 2006: 4). The digital divide created by differential access to satellite technologies is even more marked by uneven access to computers and the Internet, and until these media resources are routinely available to inmates, a profound and arguably unprecedented level of disconnection exists between prison and society. To add to all the other forms of social exclusion they experience, prisoners are the new information-impoverished.

The Internet

While the implementation of in-cell television has undoubtedly altered qualitatively the experience of imprisonment, access to the Internet is likely to have a much greater impact still on the lives of those who are confined and, as a media technology, it overcomes some of the problems mentioned in relation to in-cell TV. It is not unidirectional, but would allow users to interact with individuals and groups on the outside. This might include potential employers, public sector organizations that might help inmates with particular issues such as housing prior to release, and increased contact with tutors, lawyers and family via email. Consider the fact that, during my research, many respondents who were parents said that they watch children's television and sporting events to participate in the same experiences as their children. Knowing that their children were doing the same thing at the same time, and that they would have something to talk about on their next visit, was seen as very important by several respondents (Jewkes 2002). However, given that many prisoners are accommodated in prisons at considerable distance from their family homes, visits can be few and far between. The facility to exchange emails – most young people's communication method of choice, after phone texts – would be a positive contribution to many prisoners' quality of life.

In addition, Internet access would provide prisons with a wider range of resources for delivering effective courses, and offer prisoners and staff opportunities for the acquisition of new skills. Computer technologies could also be used by prison officers and staff in prison education to co-ordinate prisoners' learning more effectively. At present, a lack of centrally held records means that some prisoners repeat the same courses over and over again as they move in and out of prison or from one prison to another. Furthermore, there is little integration between courses followed in prison with those available to offenders on probation (*Guardian* 20 April 2005).

On the other hand, the benefits to the education and resettlement of prisoners have to be seen against the potential drawbacks, including issues of security, the cost of equipment, staff shortages and availability of and access to classes. In addition, notions of prisoner empowerment do not sit easily with modern political rhetoric which is arguably still more concerned with public perception than with prisoners' rights. At a national conference on prisoners' education and e-learning held in 2005, wider public concerns raised included fears that the Internet will be used by inmates to view pornography,

contact victims, intimidate witnesses or plot escapes. As intimated earlier in this chapter, the idea of prisoners watching television in their cells, young offenders having access to computer games or criminals getting an education they wouldn't have been afforded on the outside may fuel resentment among many in the outside community who adhere to the notion that prison should be as uncomfortable as possible in order to act as a deterrence. More fundamentally still, the Internet affords its users a virtual freedom that many people would feel ideologically opposed to granting to prisoners: freedom of speech, freedom of access, freedom of information, freedom to join subcultures and fan cultures, even freedom to hide, change or play with one's identity (Jewkes 2003). It is for these reasons that Internet access may have an even more difficult route to acceptance in prisons than the introduction of in-cell TV a decade ago.

At the time of writing, Internet access in prisons is still being hotly debated. The All-party Parliamentary Group for Further Education and Lifelong Learning has argued that facilities for distance learning and e-learning should be enhanced in every prison, and supervised Internet access made available to prisoners who are studying courses that require it. In relation to education beyond basic-level numeracy and literacy, access to computer technologies is becoming vital, as providers such as the Open University move increasingly towards online provision. But the demands of prison security make online learning difficult. Not only are most prisoners denied access to the Internet but also many are not allowed to have CD-ROMS or DVDs because the discs are considered potential weapons for assault or self-harm. This means that prisoners have to make do with simulated tutorials that are loaded on to their computers rather than the real thing.

At the time of writing, only seven prisons offer Internet access. In line with its more general education policy, the e-learning facilities and training that currently exist in prisons are directed at the basic-level skills end of the spectrum. Learndirect, which operates a network of more than 2,000 online learning centres, has installed servers and networked PCs in 20 prisons. These are used to deliver courses in literacy and numeracy and to impart skills for employment. Networking company Cisco has set up centres in 18 prisons under a scheme called the Prisons ICT Academy. Some 600 prisoners have completed courses that cover basic computer skills and PC maintenance. Another initiative is Summit Media, a digital media company who run their operation from within Wolds and Rye Hill. At Wolds 25 prisoners have completed a full training programme in order to work producing websites and online marketing services to companies doing business on the web (http://www.hmpwolds.co.uk/main_pages/prison_industry.htm).

While these initiatives are very important given the social exclusion many prisoners have faced before custody, they represent only part of the picture and there is still much room for the expansion of education beyond the current provision. During my fieldwork, the Chief Education Officer at a maximum-security prison proffered the view that the government's policy of focusing almost exclusively on Level 1 literacy and numeracy is a disaster because 'there is only so far you can go with basic skills' with long-term and life-sentence inmates. Vocational training is clearly hugely important for

the majority of prisoners who need all the help they can get to resettle on release (see Chapter 28, this volume). But at the other end of the education spectrum, learning (as opposed to training), particularly in relation to degree programmes, is at risk of being squeezed.

Introduction of the Internet in prisons probably will happen, although – as with the precipitation of in-cell television – it is unlikely that there will ever be a political climate tolerant of a media-rich learning environment in prisons. Change may thus occur only when the Prison Service is forced, through, for example, human rights legislation, to permit inmates to use computers (this is already happening to a degree; there have been a small number of successful legal challenges by prisoners who have won the right to use computers to prepare a defence). Meanwhile small advances are being made quietly in several prisons in England. For example, following unsuccessful tests on software that restricts users to particular websites and disables the command key on their systems, trials are now taking place at Wandsworth Prison which not only permit access to the Net but also to email. There is also a pan-European project, Pipeline, involving nine countries that are sharing information on Internet access in prisons. Furthermore, some individual prison governors are known to be favourable to the idea: in fact, Chelmsford Prison has pioneered a scheme whereby foreign national prisoners can study online in their own language on condition that they study English language classes as well. Swaleside and Gartree Prisons also have ICT suites. The problem, as ever, is that policy is a matter of local discretion: there is no uniformity across the estate.

A further point of contention is that, perversely, despite the negligible access prisoners have to media technologies that the rest of us increasingly take for granted, the 'privilege' status attached to Internet access – like in-cell television before it – will result in other, arguably more socially beneficial privileges being curtailed or withdrawn. Johnson (2005) notes that, in the USA, prison visits, telephone calls, work-release programmes, compassionate leaves, permission to decorate cells and keep pets, facilities to cook one's own food, and permission to receive personal property and wear civilian clothes, have all been eroded in prisons where the one 'perk' allowed is access to television. Similarly, I argue that a parallel pattern of social and behavioural control may be occurring in the UK, and that it is difficult to avoid the Foucauldian conclusion that personal media have one great, unspoken advantage as far as prison authorities are concerned, which is to normalize the regulation and surveillance of inmates. In other words, television and Internet access – for all their acknowledged advantages to inmates – may be used as the 'sweetener' which is intended to mask, or compensate for, the situational control measures that are creeping back into the logic of imprisonment. The fact that media resources are designated a 'privilege' to be earned and an incentive to good behaviour also means that the threat of withdrawing them is ever present. The 'carrot-and-stick' mentality behind the provision of in-cell television causes many prisoners to be ambivalent about it, and it is becoming increasingly recognized that technology in prisons tends to be used for purposes of control and punishment, rather than reform or rehabilitation (Jewkes 2002; Johnson 2005). This view may be supported by reports that the

self-inflicted death of 14-year-old Adam Rickwood, discussed earlier in this chapter, occurred the day after his television and hi-fi were removed as a punishment for smoking (www.againstprisonslavery.org).

Conclusion

While this chapter has focused on two quite distinct areas of analysis – first, media representations of prisons and prisoners and, secondly, the arguments for enhancing provision of media within prisons – it is hoped that the intrinsic relationship between the two is apparent. The prison authorities are faced with a dilemma. Concerns about television and computer technologies constituting 'bad culture' (i.e. having the potential to corrupt) have gained popular credence and are as intrinsic a part of everyday cultural currency as the related belief that prisoners must be subjected to sufficient deprivation in prison to deter them from ever reoffending again. Over the last 50 years, when much public attention has been focused on the erosion of traditional values and cultural ties (Corner 1995), television has provided a convenient scapegoat, and nowhere more so than in the frequent – if methodologically unsound – attempts to link media images with rising crime. Notions of prisoner empowerment therefore do not sit easily with modern political rhetoric which is arguably still more concerned with public perception than with prisoners' rights.

The provision of television sets and computers (and, for that matter, mobile phones) in prisons is entirely consistent with normal life. Put simply, if the Prison Service adheres to the view that the vast majority of people in its institutions are not pathological, but are 'normal' individuals who happen to have transgressed the consensual codes of society, it has to concede that prisoners have as much right as anyone else to use media in whatever form and quantity they so desire, even if its normalization of the prison environment leads to an escalation of prisoners' demands and expectations. Punishment is about the deprivation of liberty; the experience of the prison should in itself not be punitive.

Selected further reading

In recent years there has emerged a wealth of literature on media constructions of prisons. Paul Mason's (2006) edited collection, *Captured by the Media: Prison Discourse in Popular Culture.* (Cullompton: Willan Publishing), contains chapters by some of the leading scholars from criminology, media and cultural studies, each of whom contributes a highly readable account of how punishment is performed in media culture, ranging from Victorian newspapers and fiction (Helen Johnston) to 'future punishments' in science fiction film (Mike Nellis). My own chapter in Mason (2006) – 'Creating a stir? Prisons, popular media and the power to reform' – discusses the extent to which media representations, including TV shows such as *Porridge* and *Bad Girls* – can be linked to public attitudes and drives for penal reform.

In contrast, relatively little has been written about the use of media by prisoners, and the only book devoted to media in prisons remains Jewkes, Y. (2002) *Captive*

Audience: Media, Masculinity and Power in Prisons (Cullompton: Willan Publishing). However, Robert Johnson has written a fascinating chapter (2005) called 'Brave new prisons: the growing social isolation of modern penal institutions', in A. Liebling and S. Maruna (eds) *The Effects of Imprisonment*. Cullompton: Willan Publishing, and Thomas Lindlof's (1987) empirical study of media consumption in prisons is also well worth a look: 'Ideology and pragmatics of media access in prison', in T. Lindlof (ed.) *Natural Audiences: Qualitative Research of Media Uses and Effects*. Norwood, NJ: Ablex.

Finally, there is now a journal dedicated to the crime, media, culture nexus, which publishes on the multifaceted relationship between prisons and the media (see, for example, the references in this chapter). *Crime, Media, Culture: An International Journal* is available at: http://cmc.sagepub.com

Notes

1 There are exceptions, of course. The *Guardian* deserves praise for bringing numerous 'unpopular' prison issues to the attention of its readers (www.guardian. co.uk/prisons) and Rex Bloomstein has made several films and TV programmes challenging public perceptions about prisoners, including 'kids behind bars' (see Bennett 2006).
2 Chouliaraki (2006) notes that Secretary General of the UN, Kofi Annan, explained the unique international response to tsunami-hit nations as being due to two factors: global footage (the whole world saw the tragedy) and global suffering (over 40 countries lost their own citizens in the disaster).
3 Mathiesen discusses seven techniques of pulverization or isolation, although limitations of space mean that I will discuss four of them in relation to this case.
4 'Why should this lot get television for £1 a week when my auntie in hospital has to pay £25 a week to rent a TV?' was how one prison governor put it to me.
5 In the UK, a recent study found that Internet use has overtaken television as the chief non-work activity (apart from sleeping) with the average user spending around 164 minutes online every day, compared with 148 minutes watching television (*Guardian* 8 March 2006). Moreover, a 2005 survey by the Oxford Internet Institute found that three out of five individuals regularly use the Internet; 85 per cent use mobile phones; 51 per cent own digital cameras; 1 in 10 own an iPod; and 6 per cent have personal digital assistants (http://www.oii.ox.ac.uk/research/oxis2005_report.pdf).

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Part 4

Staffing, Management and Accountability

Yvonne Jewkes

The chapters in Part 3 were all, in various ways, concerned with the quality of life in prison and the consequences of getting it wrong (either too comfortable or too austere), which can lead to a crisis of legitimacy. In Part 4, our focus shifts to the staffing and management of prisons, and to the various forms of accountability that exist to ensure that prisons meet expectations (of the Prison Service, the Prisons Inspectorate, the public and international law) about what prisons should be like.

First, Helen Arnold, Alison Liebling and Sarah Tait (Chapter 20) discuss the role of the prison officer. Their contribution captures the complexities of prison officers' working lives and seeks to put an end to common stereotypes of prison officers which exist not only in the popular imagination (one need think no further than officers Barrowclough and MacKay in the BBC sitcom *Porridge*) but also – if they are visible at all – in some academic studies. The authors explore the multifarious roles undertaken by uniformed staff in the course of their duties and provide a fascinating glimpse into their backgrounds and motivations for joining the Prison Service, the training they must undergo, the salaries they earn and the impact on their working lives of unionization and the Prison Officers' Association (POA). They also consider the private sector and how the experience of being a prison officer differs in private prisons. In the course of their analysis, Arnold, Liebling and Tait highlight what makes a 'good' prison officer and, by implication, what makes a good prison.

Andrew Coyle (Chapter 21) takes up this theme, emphasizing that, no matter where a prison is located or how it is managed from 'above', any judgement about its success in terms of the treatment of prisoners will be made on the basis of what occurs *within*. As previous chapters have made clear, relations between staff and prisoners are fundamental to evaluations of decency or humanity, but prisons must also be places of regulation and discipline. In a chapter that focuses on the role of the prison governor, Coyle examines this potential contradiction, discussing whether the management of prisons creates an irresolvable tension between humanitarianism and

accountability. He provides a synopsis of the responsibilities of prison governors and their role in relation to broader organizational structures, including government and the POA. Recent developments are discussed, including the implementation of performance measures and the awarding of agency status to the Prison Service. While these changes have had a dramatic impact on prison management and on the responsibilities and accountability of those in charge of prisons, Coyle concludes that the role of prison governor has not fundamentally altered.

Jamie Bennett (Chapter 22) further considers the role of prison managers and the quantifiable measures by which their performance, and that of their prisons, is assessed. His discussion focuses on order and control, the conditions necessary for their maintenance and the reasons why disorder can occur. Developing the narrative of the previous chapter, Bennett discusses the relationship between providing security and care within a framework of performance indicators, targets and auditing procedures. The emergence of 'new public management' in the 1980s and 1990s has underpinned a number of reforms in prisons which have received mixed responses. Bennett charts these developments, underlining the complexities involved in attempting to measure a prison's performance and 'output' systematically in an area as complex and value laden as order. There is an inevitable tension between the moral dimensions of prisons and the auditing culture within which they are now located and, as Bennett points out, the 'quality of life' issues that have already been described elsewhere in this Handbook are not easily quantifiable. He describes the various and eclectic means by which the task is attempted, which include management hierarchies, independent monitoring boards (IMB), key performance indicators and targets (KPI and KPT), a model that measures the quality of prison life (MQPL) and the benchmarking programme. He also considers the role of the National Offender Management Service (NOMS) and the introduction of 'contestability'. While he is critical of some aspects of its implementation, Bennett views performance measurement as a necessary precaution to ensure that prisons are decent, humane and safe.

Following on from the previous chapter's discussion of largely internal and quantitative mechanisms for measuring performance, Richard Harding (Chapter 23) considers the role of Her Majesty's Inspectorate of Prisons and the importance of independent, autonomous (and, where possible, unannounced) prison inspection. In a wide-ranging review, Harding provides a comparative analysis of inspection in several jurisdictions (with a primary focus on England and Wales, and Western Australia), a description of the role of the Prisons Ombudsman, an assessment of the law in relation to prisoners' rights and a discussion of the history, scope and remit of the inspectorate, along with some of the barriers to its effectiveness. He observes that accountability processes frequently come into play only in response to a crisis, when damage has already been done, but that they are none the less vital given the limited rights that prisoners possess in relation to their conditions and treatment.

Dirk van Zyl Smit (Chapter 24) takes up the story of accountability in the final contribution to Part 4. The state's duty of care towards prisoners is enshrined in law and the focus of this chapter is prisoners' rights. Van Zyl Smit's discussion falls into three main areas. First, he examines how English

courts have approached the question of prisoners' rights historically. Secondly, he examines the laws available to English jurisprudence for recognizing prisoners' rights. Thirdly, he describes European initiatives, including the role of the European Convention on Human Rights. In his concluding analysis, van Zyl Smit discusses potential future directions for the recognition of prisoners' rights. While he sees evidence of progression in the protection of prisoners' rights, he cautions that the wording of some statutes is ambiguous and that legislation can be easily reversed. More fundamentally, however, he reminds us that individuals held in captivity are not in a strong position to defend their rights, and that legislation surrounding discretionary decision-making, particularly in relation to the release of individuals sentenced to life imprisonment, remains one of the most controversial areas of penal law.

Chapter 20

Prison officers and prison culture

Helen Arnold, Alison Liebling and Sarah Tait

Introduction

Research on prison life tends to neglect prison officers, casting them as monolithic, male, power-hungry enforcers of authority. Such accounts are sociologically impoverished and deeply misleading. Prison work is complex and varied, and those at the coal face underuse their authority in the interests of their peacekeeping tasks far more often than they overuse it. Talk is central to everything officers do. It is impossible to understand the experience of prison life for prisoners, or the significant variations between prisons, without a clearer understanding of the role of the prison officer. In this chapter we draw selectively on several studies recently conducted by the authors on the nature of prison work (Liebling), high-performing prison officers (Arnold) and the role of prison officers in suicide prevention (Liebling and Tait). We provide an overview of the current conditions of employment of prison officers in the UK, describe the process of becoming a prison officer and reflect on what prison officer work looks like at its best, and within the current climate of contestability and privatization. The final part of the chapter explores prison officer culture, and one attempt to operationalize and measure the existence and impact of prison officer culture in 12 prisons.

Who are prison officers?

The Prison Service employs a workforce of 48,252 (as at 30 September 2005). As well as the unified grades (governors and officers), this figure includes other employees such as psychologists, chaplains, medical staff, operational support grades, agency workers and administrative staff. As of 31 March 2006 the total number of uniformed officers working within 128 public sector prisons in England and Wales was 24,728. Of these, 79 per cent (19,499) were main-grade prison officers; 3,946 were senior officers; and 1,283 were principal officers. Uniformed officers of the three grades combined make up just below

74 per cent of the overall staffing profile.[1] We shall refer to the more limited information available on prisoner custody officers working in the private sector below. The proportion of women employed as main-grade prison officers has risen steadily in recent years due to a rise in the proportion of women working in prisons for men (13 per cent in 1999 to nearly 22 per cent in 2006), and due to the expansion of the female prison estate. The proportion of male officers working in women's prisons has remained about the same (about one third) over this period. According to voluntary self-declaration data, the vast majority (90 per cent) of main-grade officers are white (5 per cent describe themselves as black and minority ethnic; 5 per cent did not state their ethnic background). About one third of officers have served under four years in the job, and just under 10 per cent of officers have over 20 years' experience in the Prison Service.[2]

The minimum gross annual general-entry wage for new-entrant prison officers is £17,319, with a maximum of £25,490.[3] Senior officers earn a salary of £28,202 and principal officers earn £29,695 for the first year, rising to £30,643 in the second. Officers can also receive, in addition to their basic pay, a local pay allowance of between £2,600 and £4,000 depending on location. A recent advert on the Prison Service website for officer vacancies in several London prisons, for example, offered a starting salary of £20,620 plus the maximum locality pay allowance of £4,000. In terms of hours worked, prison officers are required to work a variety of shifts, including nights, varying in length from 6 hours to 12 hours. Their normal weekly working hours average 39 hours over a weekly shift cycle, net of meal breaks. Some officers supplement their income by taking extra shifts (for example, going out on hospital bed watches). On entry, officers are entitled to 22 days' annual leave in addition to 11 days' public and privilege holidays per annum.

In the year to 30 June 2005 a total of 1,836 officers began training; of these, 69 per cent (1,263) were new recruits and 573 were existing staff employed by the Prison Service that had converted to that role.[4] Many of those converting to the job of an officer had previously worked as an operational support grade (OSG), often for a number of years. Their experience and familiarity with the prison environment had confirmed their interest in working within such a setting, they felt confident they could do more than the tasks required of an OSG and wanted more direct contact and dealings with prisoners.

Other than those with previous experience of working in prisons, those joining the Prison Service as officers come from a variety of backgrounds and occupations that are too numerous to list fully here (see Arnold 2006):[5] from bus driver to graphic designer; sales manager to builder; estate agent to tailor; financial services adviser to milkman; student to secretary; professional footballer to butcher; Royal Navy to landscape gardener; and shop keeper to engineer. The influences that prompted people to apply for the job were also numerous. Many had no prior knowledge of prison or of the role of a prison officer. They had come across an advert in local or national newspapers or their local job centre and felt it was a job they had the ability to do that sounded interesting and different. Others learned of the job through word of mouth: knowing a neighbour, colleague, friend or family member who was either in the process of applying or held an existing position as

an officer had encouraged them to think about being a prison officer as a career. A few officers came into the job more or less straight after leaving school with A levels; others were looking for an alternative career because they were dissatisfied with their current job, had been made redundant or because family commitments required relocation. Some, but very few, had had a longstanding interest in prisons and had set their sights on the job from a relatively early age. A further group of applicants had had previous experience of working with offenders in other capacities (such as a warrant officer, a court clerk, or having worked in police custody cells or for prisoner escort companies) and had developed a desire to work more closely with prisoners in an institutional setting.

The underlying motives for joining the Prison Service were also numerous but could be broadly divided into two categories: appealing terms and conditions of employment, and the potential for personal growth and development. The most common incentives cited were pay, job security, promotional prospects, the pension, and the hours and shift patterns. Alternative or additional reasons included the variety of the work, the personal challenge of dealing with a difficult group of people, and the rewards and satisfaction from helping people. Often the disciplined and structured environment was attractive, especially for those who had previously been employed in the armed forces.

For most officers, then, it seems that they almost 'fell into' the job for primarily practical and financial reasons; they had little prior knowledge of prisons but had their interest sparked by either an advert or the recommendations of friends/family. What they seemed to share was self-efficacy: a belief that they would be able to rise to the challenge and accomplish the tasks required.

Becoming a prison officer

In 1996 the process of prison officer recruitment and selection in the UK was decentralized from a national to a local level, meaning that individual prison establishments became responsible for recruiting the officers they required. Recruitment primarily took place via advertisements in local newspapers, job centres and magazines. In recent years vacancies for officers have also been advertised on the Prison Service website (www.hmprisonservice.gov.uk).

This site is currently one of the most up-to-date sources of basic descriptive information about the role of the prison officer in today's prisons (Vince 2006). It includes some description of the duties and tasks that officers are required to undertake, and it also details eligibility criteria, pay scales, benefits and conditions and has links to a number of other written documents (depending on the vacancy location) outlining the application process, job specification and recruitment information sheets, and an example of the Prison Officer Selection Test (POST) to be used as a self-assessment tool provided for information only. The site emphasizes the role of relationships in an overview of the job: 'In addition to custodial duties, prison officers are called upon to build up and maintain close relationships with those in their charge. This is a complex challenge, balancing authority with a large

amount of understanding and compassion' (www.hmprisonservice.gov.uk/careersandjobs/typeswork/prisonofficer/). The tasks listed include: carrying out security checks and searching procedures; supervising prisoners and maintaining order; taking care of prisoners and their property, taking account of their rights and dignity; writing fair and perceptive reports on prisoners; taking an active part in rehabilitation programmes for prisoners; promoting anti-bullying and suicide prevention policies; providing appropriate care and support for prisoners at risk of self-harm; and employing authorized physical control and restraint procedures where necessary. Applicants may be required to complete a 'skills assessment form' along with the standard application form, which consists of a number of sections where applicants are asked to describe specific situations they had experienced. It is designed to assess some of the individual competencies derived from the Prison Service Core Competency Framework (such as communicating clearly, problem-solving and teamwork).

There are a number of minimum eligibility requirements that must be fulfilled before an offer of appointment can be made. Applicants must be between 18½ and 57 years old at the time of appointment; must not be an undischarged bankrupt; must have good vision in both eyes; must be a British or Commonwealth citizen, a British-protected person, an EU national or national of Iceland, Norway, Liechtenstein or Switzerland; and must not be a member of a group or organization that the Prison Service considers to be racist. Applicants are also required to pass a medical examination and a fitness test. Currently, there are no minimal educational requirements for the job. However, as part of the selection process, upon successful application and passing of the competency-based sift (when required), applicants are invited to attend a centre in order to complete the 1-hour, 45-minute POST, which is designed to assess a number of essential job-related abilities. These include numerical skills; listening, taking notes and recalling heard information; completing a standard form; checking information and the application of rules; reading comprehension; and observational reporting.

Following the POST, successful applicants are invited to attend a job-simulation assessment centre (JSAC). The introduction of this assessment centre in 1998 as part of the selection process was 'a considered response to the pervasive dissatisfaction with, and distrust of, the previously used panel interview process' (Prison Service booklet, 'Why JSACs? An introductory guide for staff'). The purpose of the JSAC is to gauge candidates' interpersonal skills through their participation in a series of non-prison specific, but work-related, role-play situations. Each situation is designed to assess a number of different observable behavioural skills that are consistent with the Prison Service's vision, goals and values, such as non-verbal communication, showing understanding, suspending judgement, assertion, respect for diversity, and exploring and clarifying. Candidates' performance in each role play is independently scored by trained prison staff assessors according to a set of behavioural indicators. If candidates are successful they progress to the fourth and final stage of selection, which is the medical and fitness test. Potential new officers are then accepted on to the Prison Officer Entry Level Training (POELT) course.

Between 2000 and 2003, 2,245 prison officers were recruited. Of these 1,390 left within two years of signing up – a drop-out rate of 60 per cent (Hansard, House of Commons written answer, September 2003). The training course for new entrant prison officers has undergone many changes since its inception, both in terms of course content and structure, such as variations in length and in the amount of time spent in the prison environment (Vince 2006). Published descriptions of the nature of training for new officers are almost non-existent (although see Crawley 2004).

The POELT Foundation course, as it is now known, was introduced in January 2005, and is eight weeks in duration. The current name of the course indicates an expectation that it provides an opportunity for trainees to become part of a team of officers and that effectiveness in the role will develop over time learning 'on the job' (Arnold 2006). According to Vince (2006), the new course philosophy focuses on the purpose of the Prison Service and 'thus on the officer's tasks to keep prisoners secure, aid their rehabilitation, and encourage them to become pro-social members of society'.

Participants spend the first induction week undergoing a familiarization period at the 'parent' or recruiting prison where the candidate will be working after successful completion of training. This is followed by three weeks' training, at either the national Prison Service staff training college or one of a number of local training centres based at a prison establishment in the area, where practical exercises and classroom-based teaching take place. This is followed by a 'gap' week back at the prison and a return to the training centre for the final three weeks. At the end of both of the three-week teaching periods trainees are required to sit an assessment paper to appraise their knowledge and skills.

The course covers the purpose of the Prison Service; the role of a prison officer; professional attitudes; interpersonal skills (such as communication, assertiveness, relationship building); security, control and restraint techniques; managing prisoners and professional standards; the use of a radio; searching; diversity; and understanding prisoners' behaviour (including suicide and self-harm, substance misuse, violence reduction and mental health). At the prison establishments student officers are expected to follow a training timetable designed and implemented by the prison, to observe the day-to-day operations in different departments, become acclimatized to the working environment of the prison and to gain some practical experience in applying some of the technical and interpersonal skills taught during their time at the college. The course is guided by a 'personal development portfolio': a folder containing worksheets and learning outcomes to be completed by the trainees both at the college and at the prison and countersigned by the course tutor or training manager. After successful completion of the training course, new officers remain on probation for a period of 12 months. The purpose of the probationary stage is to give the newly recruited staff further opportunity to practise and contextualize the skills learnt during training (Arnold 2006) and 'to show their suitability in terms of conduct, performance and attendance for confirmation in the grade or post to which they have been appointed' (*Prison Service Order* 4180: 4).

Good prison work

What kinds of personal skills are required to be an effective prison officer? Is it possible to identify a 'role model' officer? These questions have seldom been specifically addressed in previous international prison research (although see Wahler and Gendreau 1990; Kriminalforsorgens Uddannelsescenter 1994) and are particularly rare subjects of inquiry in exploratory empirical study in the UK (although see Liebling and Price 2001; Arnold 2006). Few studies seek the opinion of prisoners and most research that does describe and discuss perspectives regarding good prison officers tends to have focused on staff–prisoner relationships (e.g. Homant 1979; Ben-David and Silfen 1994; Liebling and Price 1999) or on staff behaviour within the context of the regime (Sparks *et al*. 1996). These studies typically present findings that have arisen indirectly within interviews that are not explicitly concerned with investigating the personal attributes of officers.

One study conducted in Denmark involved asking prison officers and their managers to identify the qualities that the 'ideal' prison officer might have and to nominate an individual whom they considered to operate effectively. The nominated officers were then interviewed about their working styles, attributes and perspectives on their work. The researchers then compiled an extensive, aspirational profile of the skills an ideal prison officer should possess. Perhaps unsurprisingly, many of the attributes listed were in tension with one other. They included, for example, 'be loyal to decisions already made' but also 'be flexible and able to change opinion when the circumstances change'. The profile also included 'physical characteristics' (such as verbal skills, the ability to act with self-confidence and personal authority, and satisfactory strength to answer to hard-working conditions); 'mental capacity' (to think and be able to hold many things in mind at the same time); and the ability to learn, watch, make decisions, solve problems and do administrative tasks. In addition it was stated that, among other things, prison officers should be able to interact with others; bear difficult emotions; seek to understand other people's thoughts and emotions; be interested in one's environment as much as oneself; be sensitive in personal interaction; have a sense of humour; handle conflict situations; possess self-confidence; be reliable, trustworthy and responsible; and acquire positive energy outside the institution (Kriminalforsorgens Uddannelsescenter 1994).

The research conducted by Liebling and Price (1999) exploring staff–prisoner relationships asked prison officers, their managers and prisoners which prison officers they admired and why. They found that, in general, a mix of different officers was appreciated:

> You need the friendly and the fair; you need the very strict; you need the very easy. You need all of them. *Porridge* is the closest that outside people understand. You need your McKays and your Barrowcloughs, as well as everybody in between. If we were all exactly the same, the job wouldn't tick, would it? (Officer cited in Liebling and Price 2001: 46).

Although the authors found that slightly different 'role model' officers, and reasons for the choices of these officers, were given for different locations within the prison, and by different groups, they also concluded that 'there was a common core of desirable characteristics that were relevant in all locations and that were identified by senior managers, prison officer colleagues and prisoners alike' (2001: 46). The best officers were good at decision-making, using their discretion, and communicating known and consistent boundaries to prisoners. They had 'moral fibre' (confidence, integrity, honesty, good judgement and flexibility), a 'professional orientation', an optimistic outlook, understood the pain of imprisonment and the effects of their own power (2001: 47).

The aim of a more recent study by Arnold (2006) was to examine the main characteristics, skills, qualities and abilities shown by high-performing prison officers and to develop a theoretical model, or typology, of prison officer performance. The fieldwork was conducted at Norwich Prison and consisted of 13 focus group discussions with all grades of staff and 7 with prisoners; 12 periods of shadowing officers identified as effective on a shift; several periods of unstructured observation; numerous informal conversations; and in-depth semi-structured interviews with 24 'good' prison officers. Some key emerging findings are discussed here.

First, there appeared to be consensus among the different groups of staff and prisoners consulted as to the qualities, attitudes and key characteristics used to describe the 'best' officers. These included, for example, empathy, patience, integrity, confidence, consistency, resilience, fairness, a sense of humour, adaptability, professionalism, compassion, reflexivity, and maturity, as well as being non-confrontational, non-judgemental, observant and communicative. However, there were some differences of opinion as to which officers exhibited these characteristics. There were several reasons why different officers were considered to be 'good', especially among different staff groups, from being liked by their colleagues to the type of work they did. For example, a distinction was made by one senior manager who classified high-performing officers as either 'good stock officers' or those who had emerged 'out of the woodwork' as a result of their involvement in 'special projects' or work with particular groups of prisoners.

Secondly, the 'core' characteristics identified were thought to be part of a 'good' officer's underlying personality, and there was a commonly held view that these 'traits' had to be in existence before an individual could become a high-performing prison officer and that 'not everyone could do this job'; they felt 'it takes a certain kind of personality'. Thirdly, the list generated above was fairly exhaustive. As Liebling and Price (2001) ask in relation to the Danish study described above: if these are the attributes of the 'perfect' prison officer, can such an officer exist? An officer could not possibly be all these things all the time; rather, the list represented a 'tool bag' of skills that a good officer carries with him or her. The key ability common to the good officers lies in selecting the right 'tool' for the 'job'; knowing when it was appropriate to use which skill, and to what degree, when dealing with different situations and people. Achieving the right balance of skills is also important: too much or too little of some of the identified qualities could

be detrimental and hinder effective performance. In terms of empathy, for example, too little empathy could result in role detachment, a lack of care and unprofessional conduct out of line with the Prison Service ideals and values. On the other hand, too much empathy could result in high levels of involvement, an inability to switch off, undesirable emotional consequences and a lower degree of resilience. This highlights the importance of having a mix of officers with different skills on one wing: officers do not have to be good at everything. They need to find their niche, use their strengths and acknowledge their weaknesses. The research identified more than one 'ideal-type' officer, or more than one way of being a good officer. For example, one officer could be a 'good landing officer' maintaining order, control and discipline; another could be 'everyone's favourite aunt' whose working style embodied a more compassionate, caring and counselling ethos.

All the officers interviewed acknowledged that they had changed in both positive and negative ways as a result of their training course. For example, some had become more confident, more able to deal with and assess people and situations appropriately, and better listeners. Others had become more cynical, more suspicious, hardened and less tolerant outside the prison (Arnold 2005). They highlighted the importance of resilience and emotional detachment (which were enablers in the job and assisted officers in performing effectively – especially when dealing with incidents). They described ways in which they needed to 'survive' and adapt (for example, being able to 'switch off' when leaving the prison and between interactions) and described the ways in which they showed care to prisoners without becoming too involved (without expression). Good officers seemed to have gone though a kind of cycle where, following a period of reality testing (and sometimes disillusionment with the process of achieving change) they managed to reconstruct their sense of 'meaningfulness' in the job and their concept of what it means to 'make a difference'. It was easy to see how officers could become over-challenged, cynical and distant from managers. Bad prison work arises from the structural difficulties of working in a volatile, power-laden, low-visibility environment where rewards and recognition are seen as limited. We return to these issues below.

Studies that have aimed to evaluate whether women and men accomplish prison officer work in different ways have generally concluded that there are little, if any, gender differences, and that the influence of occupational culture may be more important. Zupan (1986) detects few substantive differences in the perceptions and attitudes of prison officers and suggests that men and women officers similarly misidentified prisoner needs. Jurik and Halemba (1984) found no difference in punitiveness and conclude that women were no more sensitive to prisoner needs than men. Jenne and Kersting (1998) uncovered no gender differences in the use of reciprocity or overlooking minor rule violation, in men and women officers, and report that all officers use this selectively.

Women and men may perceive themselves as having different supervisory styles, with women described as having a more personalized, human-service approach to prisoners (Jurik and Halemba 1984; Crouch 1985; Pollock 1986; Zimmer 1986; Farkas 1999; Carlson *et al*. 2004). Pollock hypothesizes that,

although individual men and women have unique approaches to the role of officer, and that the institutional context may influence gendered differences, 'there may be broad difference that can be defined as a *masculine authoritarian approach* and a *feminine personal or caring approach*' (1995: 113, emphasis in original). She bases this hypothesis on research on gendered approaches to relationships, where women's relationships are more likely to be care based, and on research in corporate settings, where women managers tend to reduce the social distance between themselves and other workers to gain compliance (1995: 104). A study conducted by one of the authors is underway to understand gender differences in the approach to care for prisoners in one male and one female prison (Tait forthcoming). This study includes an observational component as well as interviews, and hopes to address some of the shortcomings of previous work on how women and men accomplish prison officer work.

We turn now to the wider context of prison officer work and consider the role of the Prison Officers' Association, as well as the role of the private sector, in providing an alternative model of what it is to be a prison officer.

Unionization, performance and the Prison Officers' Association

> During the sixties, the mines started to close; steel workers started to be thrown out of work; fishermen, and the trawling industry started to decline; the building industry started to decline. And what did the Prison Service do? We rushed into these areas and we recruited like mad … and they murdered us, for about seven years. They took us by the tail and they swung us around. And when they'd finished with the governor, they started on the Directors (former regional director, 'Prison Britain III', *Fresh Start*, BBC Radio 4, 5 August 1997 cited in Liebling and Price 2001: 161).

With over 35,000 members, the Prison Officers' Association (POA) is the largest union in the UK, representing uniformed prison officers, custody officers working in (most) private prisons, and uniformed staff working in secure forensic psychiatric settings (see www.poauk.org.uk). If the purpose of a trade union is 'to get the best possible deal for its members' then, despite its growth, the POA has lost much of its power since private sector competition became the norm in 1991. Relatively speaking, the pay and conditions for prison officers have declined as prison numbers have increased, and much of the public sector faced a modernization of working practices and conditions throughout the 1990s and early twenty-first century.

The POA became renowned throughout the 1970s and 1980s for its militancy, its intransigent attitudes towards prisoners and managers, overtime scandals and opposition to penal reform (Stern 1993; Laming 2000). It began its life unofficially as the Prison Officers' Federation in 1916, affiliated to the Labour Party, and became the officially recognized Prison Officers' Association in 1939. In so far as its history is documented at all, it appears in fragmentary accounts

of industrial disputes, challenges to management competence and legitimacy (principally voiced in its magazine, *Gatelodge*), and public pronouncements on the favoured status of prisoners.

Locally, attendance patterns, health and safety matters and staffing levels, are negotiated with the POA. The state of industrial relations in individual prisons is clearly related to the performance (quality) of the prison for prisoners. At a national level, relationships have improved and the power balance has altered (in favour of senior managers), but there are establishment-level differences, as well as turbulent times ahead nationally over market testing, a low pay deal in 2006 (1.6 per cent) and the removal of the right to take industrial action. The POA has co-operated with several performance tests of existing prisons and negotiated a retraction from a full market test of a cluster of prisons on the Isle of Sheppey, to a 'single bid' performance test, which led to the Prison Service being granted a service-level agreement to run this cluster of prisons in 2005. Performance testing has resulted in the deployment of fewer staff, with the promise of greater 'productivity' (hours of activity, resettlement work, and so on, for prisoners) in return.

One of the criticisms of the traditional public sector Prison Service has been its failure to tackle poor performance, its high rates of sickness absence and the mistreatment of prisoners by some prison officers. Professional standards, in other words, have not been clearly articulated or enforced. This has changed in the light of a high-profile legal case against officers at Wormwood Scrubs in 2001, which led to three sentences of imprisonment for brutality against prisoners and the establishment of a professional standards unit where complaints can be lodged and investigations of individual staff members undertaken:

> Prison Service staff are expected to meet high standards of professional and personal conduct in order to deliver the Prison Service Vision … Staff must carry out their duties loyally, conscientiously, honestly and with integrity … Staff must be courteous, reasonable and fair in their dealings with all prisoners, colleagues and members of the public. They must treat people with decency and respect (Prison Service *Professional Standards Statement* 2002).

The private sector prides itself on the swift removal from duty of staff who fail to follow the rules. The public sector is beginning to follow suit, with a clear code of conduct and increasing numbers of investigations and dismissals following the use of violence, racist language, corruption or other inappropriate behaviour.

The private sector

> What we were going to avoid was the negative bits of the Prison Service: the negative attitudes of staff to prisoners, negative attitudes of staff to management and negative attitudes of management to staff. We were going to avoid organising things in a way that put what was convenient

to us first and what was convenient to prisoners second (senior manager, private sector, cited in James *et al.* 1997: 68).

Part of the purpose of privatization in the UK was to change the working practices and cultural habits of prison staff in traditionally resistant, older prisons. This meant weakening the workforce in order to lower costs and increasing flexibility in order to bring about improvements in management control. It is a curious paradox of privatization that, while the quality of life is sometimes better for prisoners, it is arguably worse for prison staff (see James *et al*. 1997; Liebling 2004). The 'ferocity of the tendering system' (Scottish Parliament 2002) means that fewer staff are deployed, on significantly lower levels of pay.

Four private companies (Serco, formerly Premier; Group 4 Securicor; Kolyx, formerly UKDS; and Global Solutions Ltd) run a total of 11 newly built, privately managed prisons in England and Wales. Each company recruits and trains its own staff. Prisoner custody officers (PCOs) are usually recruited from the local area and are trained on site over a period of eight weeks. All four companies have avoided recruiting staff with prison experience in order to establish their own, more explicitly respectful, culture. Turnover is relatively high among PCOs, and this is related to inexperience, lower pay and conditions, lower staffing levels and poorer promotion prospects (rates of pay for senior managers are, typically for the private sector, higher). This leads to a 'green' (naïve) workforce, which carries certain risks (Camp and Gaes 2001; Miller 2003; Chapter 1, this volume). Levels of safety tend to be lower, and the risks for staff of being assaulted are higher. Private prisons have a flatter management structure, resulting in lower levels of support and oversight, and fewer promotions (James *et al.* 1997). On the other hand, private prison buildings tend to have better and more economical designs.

Prison staff in private prisons are different from prison staff working in the public sector Prison Service (although there is some movement from the private to the public sector, and to the police, encouraged by better pay). They are often younger, their motivation for joining is often related to other employment prospects (for example, redundancy) and the ratio of female to male staff is higher (see, e.g., NAO 2003). Their career horizons may be short term, but their loyalty to a geographical area (and therefore their identification with a particular establishment) is often high.

Prisoners describe staff working in private prisons as 'approachable, down to earth, and friendly', compared with staff in public sector prisons (see Liebling 2004: 187), but they also complain of inexperience, lack of training and lack of information. Staff in private sector prisons wear name badges and use prisoners' first names, whereas in the public sector Prison Service views (and practices) on these matters are mixed. PCOs often express (that is, clearly understand) the declared values of their directors, and they articulate a 'feeling of accountability' that is not always obvious in the public sector, partly as a result of the existence of a contract, which results in penalties if aspects of the regime are not delivered, and their more precarious working conditions. Three of the four companies recognize the POA, and PCOs are now eligible to join, but they more frequently join the alternative (more moderate)

Prison Service Union (established in 1988) or a company's own union (such as Group 4 Securicor Justice Services Union). One of the striking visible differences between the two sectors is that senior managers and specialists often wear uniforms in the private sector. The 'us and them' appearance of 'uniforms and suits' is absent. In the absence of nationally available data or detailed sociological studies, one good source of information on staff working in private sector establishments is HM Chief Inspector of Prisons' reports (http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/hmp-yoi-inspections.html).

Prison officer culture

[T]hose officers who closely embody the values of the police culture are more coercive compared with those that differentially align with the culture, suggesting that the police use of force is a function of officers' varying attitudinal commitments to the traditional view of police culture (Terrill *et al*. 2003: 1003).

Links between themes in the culture and specific outcomes are needed rather than generalities about what the police do, or feel … (Terrill *et al*. 2003: 1030).

The above accounts of unionization, malpractice and new private sector practices could be said to have cultural matters at their core. Studies of prison staff culture are few and far between, despite several acknowledgements that in at least two well established areas of interest in prison studies – reconviction studies and public–private sector comparisons – more should be known about differences in prison culture and the impact of these differences on all aspects of prison life (e.g. Lanza-Kaduce *et al*. 1999; Pratt and Maahs 1999). Research in policing suggests a need for studies that acknowledge the complexity of culture and the variation among officers, and that link adherence to traditional or negative cultural attitudes to specific outcomes, such as the use of force (see e.g. Terrill *et al*. 2003). In the remainder of this chapter, we review the literature and outline findings from two relevant studies conducted by the authors which begin to show how and why culture shapes prison life. The first is a research project in five prisons which developed measures of 'what mattered' to staff and prisoners in evaluating prison quality. The second is a 12-prison study, one aim of which was to establish the role of prison staff in the prevention of suicide. A measure of adherence to a 'traditional culture' was devised, and the links between scores on this measure and 1) care for prisoners, 2) prisoner distress and 3) institutional suicide rates were explored.

Culture consists of the shared stories, frames, rituals, meanings and values through which individuals working in organizations view particular social issues (Herbert 1998: 345–6) and individual incidents. Culture can be variegated and complex, and cultural assumptions can be incomplete and contradictory (Herbert 1998). However imperfect, culture consists of some

basic assumptions and beliefs, representing a 'shared construction of social reality' learnt via shared social experience (Sackmann 1991: 21). Culture binds people together. It provides labels (a language) and categories, accounts of *how* things are done, accounts of how they *should* be done, in certain situations, and a set of assumptions about *why* this is the case (Herbert 1998). In the workplace, staff tend to operate with an assumed basic rationale for the organization, and several stereotypes about their interactions with other disciplines, managers, and, in prison, prisoners. These 'craft rules', or habits of thought, are accompanied by emotions which often remain unacknowledged. Once formed, culture shapes organizations and socializes individuals to different degrees. Culture can be an obstacle to reform (Chan 1997). However, it can also bring about, in response to individual agency and improvization, changing expectations, structural changes in the organization, new methods of accountability and management direction.

As there is very little in-depth or recent research on prison staff culture and, given the similarities between police and prison work, we look briefly at the policing literature to understand how prison officer culture might develop.

The development of prison officer culture

> [P]olice officers see their work as uncertain and unclear ('You never know what to expect next') and hence decisions are based on experience, commonsense and discretion, rather than 'an abstract theory of policing, the law, or police regulations' (Manning 1978 cited in Chan 1997: 79).

Staff culture in the workplace is thought to develop as a coping mechanism in response to 'common problems' in the work environment. The account of culture above suggested that culture is 'comprised of attitudes and values that are shared and socially transmitted among groups of people, in an attempt to cope with common problems and/or situations' (Paoline 2001: 7). These habits of thought, or 'dispositions', arise as a solution to perceived problems and as a way of making life more predictable (Chan 1997: 71–2). The literature identifies two sources of 'common problems' for the police: the *occupational* environment and the *organizational* environment. In policing, the occupational environment is characterized by difficult interactions with citizens, physical danger, the right to use coercive authority, and ambiguity of role. The organizational environment is characterized by hierarchical management and unpredictable supervisory oversight. Solutions to these problems might be to overplay the dangerousness of their work and to block the efforts of non-uniformed staff; to maintain an edge over 'suspects' by displaying and maintaining authority; and to 'lay low' in order to avoid management criticism (Terrill *et al.* 2003). Traditional police culture includes high levels of loyalty to colleagues, high levels of suspicion, alertness to danger, distrust of superiors and an 'us *versus* them' approach to others. The most important ideas in this literature, then, are staff feelings about their *status*, feelings of *lack of safety* and a *reluctance to engage* with other staff.

The following interview excerpt describes one prison officer's perspective on the 'problems' of his working life.[6] The themes from the policing literature resonate in his description:

What makes [your work] stressful though?
You are constantly watching all the time. You are constantly counting numbers, you are constantly watching out for incidents happening, watching your own back and your other colleagues. Demands are put on you by management all the time to get certain things done in certain ways, but not necessarily the correct ways, just to get things done on time.

Is this line management or senior management?
Covertly it comes from the top and filters through. Everyone is in the same situation all the way up to make deadlines and you are constantly under pressure to get the work done. As I say, you are dealing with a very volatile environment and dangerous prisoners all day long. People say they are just kids but there is no two ways about it they are not just kids they are tomorrow's Cat As. There are some really nasty pieces of work here and they wouldn't think twice of stabbing you in the back and it has been proved in the past. So you're always on the ball and always looking out for that and that makes you tired. You don't get a lot of time to relax during the working day. You always feel if you've got a quiet spell you feel you are being watched all the time. You might have processed 40 prisoners in the morning, now we've got half an hour and be sitting round chatting but you are constantly being watched by management. What are you doing now? What are you doing now?

Few studies of prison staff culture have been conducted, particularly recently and in the UK. The prison as an *institution* tends to get less attention from researchers than the prisoners, so we know more about the effects of imprisonment on prisoners, especially after custody, for example, than we do about the effects of different styles of governing on prison quality, or the effects of prison work on staff (although see Crawley 2004; Arnold 2005). A handful of broader sociological studies provide important insights into prison staff culture (e.g. King and Elliott 1977; Sparks *et al.* 1996; Carrabine 2004; Liebling 2004). We know that there is, or often has been, a widely shared prison officer culture, or 'working personality', characterized roughly by insularity, group solidarity among officers, pragmatism, suspiciousness, cynicism, conservatism, machismo and distance from senior management (see, for example, Reiner 1992; Liebling and Price 2001). This set of values can be transmitted during new-entrant training courses, despite the best intentions of course designers. Officers often perceive 'others', including the public, as caring more about prisoners than prison officers. They share a wariness about revealing their occupation to outsiders. These factors may explain the insularity often found among prison staff. Staff rely on colleagues to respond readily to signs of trouble. A tight loyalty to one's peers is another basic requirement of the job. Prison officers have always complained that senior managers are 'too remote' (e.g. Lombardo 1981); they 'never come to us for suggestions' (Lombardo 1981); and that 'they don't care about us' (Kauffman 1988). We also know that the degree and precise character of this culture can vary considerably between establishments, and that some individuals subscribe to these cultural norms

more readily than others. Individual prisons often have an 'ethos', which is a commonly expressed set of beliefs and values about 'the way things are done around here'.

Findings from a study on the moral performance of prisons

During some exploratory research to develop measures of 'what mattered' to staff and prisoners in evaluating prison quality, for example, we found five distinctive cultures characterized by very different values, organizational goals and emotional climates (Table 20.1) (see further, Liebling 2004). This was despite a similarity of function in four of the five cases.

Belmarsh and Wandsworth were rated poorly by prisoners and had fairly negative cultures at the time of our research. But they were negative in different ways, with Belmarsh prioritizing security and Wandsworth more explicitly concerned with discipline. There were deep divisions between staff, managers and prisoners at Belmarsh, and a single-minded pride among staff in being 'better than the security manual', but little reflection on attitudes towards prisoners. At Wandsworth, the regime was more restricted, and prisoners felt intimidated by staff. We noted that staff and prisoners sometimes shared a similar (albeit negative) emotional climate (e.g. at Risley and Wandsworth) and that, even where the emotional climate was positive (e.g. at Doncaster), problems (such as 'under-policing') could emerge. The greatest difficulties were experienced at the two prisons where the emotional climate among staff and prisoners was dissonant (Belmarsh and Holme House). These establishments went on to have major disturbances in the year following our attempt to characterize them. The analysis was tentative and simply suggested that far more attention should be paid to the feelings and behaviour of prison staff in unpicking the differences between well functioning prisons and poorly performing ones.

In a recent study of police culture and coercion, Terrill and colleagues (2003) explored the relationship between adherence to a 'traditional police culture' and the use of verbal and physical coercion in routine encounters with suspects. They found that officers differed in their adherence to the traditional culture, and that those who adhered closely to this culture were more likely to use coercion (see also Alpert and Dunham 2004). Whereas the policing literature has focused on the link between strong alignment with these attitudes and the use of force, we focus on the link between these feelings and the prevention of suicide or, rather, the provision of support for prisoners.

Table 20.1 Organizational goals and emotional climates in five prisons

Prison	Organizational goals	Staff	Prisoners
Belmarsh	Security	Nervous	Angry
Holme House	Re-education	Confident	Controlled
Risley	Survival	Anxious	Uncertain
Doncaster	'*As* not *for*' punishment	Committed	Confident
Wandsworth	Discipline	Weary	Resigned

Findings from a study on suicide prevention in prison

Below we report on data from a Home Office-funded project intended to evaluate the Prison Service's suicide prevention strategy. The study included a before-after survey of staff attitudes in 12 local prison establishments, 10 of which were included in the study as a result of their relatively poor record on suicide and other difficulties (such as poor physical infrastructure, staff shortages and so on). Two relatively high-performing prisons were included in the study, for contrast. Five of the difficult prisons received substantial investment at the beginning of the evaluation as part of the pilot for the new suicide prevention strategy. The surveys were conducted in 2002 and 2004, at full staff meetings held for the purpose. Surveys of 100 randomly selected prisoners were also conducted in each establishment at each time. Finally, 112 prisoner interviews and 141 staff interviews were conducted during the 'process' stage of the research. The prisons concerned were Winchester and Lewes, Feltham and Glen Parva, Eastwood Park and Styal, Wandsworth and Manchester, Leeds and Liverpool, and Forest Bank and Swansea (see Chapter 18, this volume).

Our expectations when conducting the analysis were that 1) significant differences in the degree of adherence to a traditional culture would be found between establishments; 2) establishments with a high adherence to traditional culture would implement the strategy less effectively; and that 3) establishments with high adherence to traditional culture would provide less care for prisoners and would be characterized by higher-than-average levels of distress among prisoners. We focus on two survey dimensions from the staff questionnaire that are most relevant to our discussion of culture. The first is a general dimension on the quality of the working environment, culture or climate as seen by staff, and is closely related to staff–management relationships. The second reflects the more sociological meaning of the term 'culture' outlined earlier, and refers to staff attitudes and values.

Work culture and climate
This dimension contained nine items and reflected the degree to which staff felt valued, satisfied and comfortable in their working environment. It included items on 'praise for my work', 'encouragement to use initiative', 'morale', 'satisfaction with training' and 'communication between staff and management'. It measured the extent to which staff felt that they worked in a positive and rewarding climate.

This was one of the lowest-scoring dimensions in the project. None of the project prisons scored positively on this dimension in 2002. Only the comparator prisons, Swansea and Forest Bank, scored positively (above 3 on a scale of 1–5). By 2004, Lewes, Eastwood Park and Feltham showed significant improvements and had achieved positive scores.

This dimension was at the centre of the model we developed from the data, showing what contributed most directly and powerfully to 'suicide prevention effectiveness' which, in turn, was highly correlated with institutional suicide rates (see Figure 20.1). 'Work culture and climate' was highly correlated with 'communication', and with 'relationships with senior management' and 'role and responsibility'. Together, these dimensions contributed most to
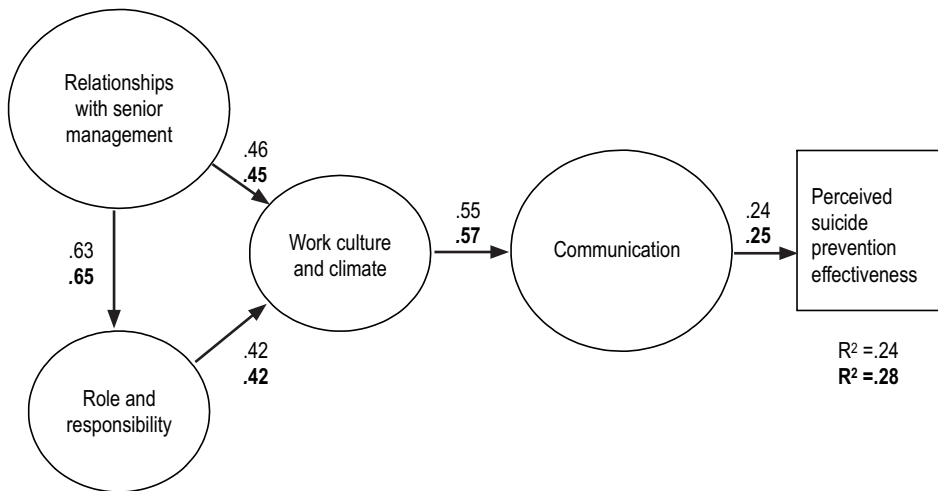
Figure 20.1 Suicide prevention effectiveness: disciplinary staff in contact with prisoners, 2002 and 2004
Note:
Results are from a stepwise multiple regression analysis, controlling for the effect of individual establishment. Numbers attached to arrows are beta coefficients resulting from the regression analysis.

variations in suicide prevention effectiveness. We linked these findings to the concept of *personal efficacy* – that is, where staff feel they have clear roles and responsibilities, are involved in the organization and feel able to do the job they are asked to do, communication and suicide prevention effectiveness are better. A positive work culture is about good relationships and clear roles.

Traditional culture
Six items in our staff questionnaire arguably measured most of the components of a 'traditional' (negative or resistant) culture:

1 I trust the Governor grades in this prison.
2 I feel a sense of loyalty to the Governor of this prison.
3 I feel a sense of loyalty to the Prison Service.
4 I feel safe in my working environment.
5 I trust the prisoners in this prison.
6 The level of power and responsibility that prisoners have in this prison is too high.

A factor analysis suggested that these six items reflected an underlying dimension. A lower score reflected a more 'them and us' stance, and a stronger adherence to 'traditional prison staff culture'. In other words, negative attitudes towards managers, the Prison Service and prisoners reflected a high adherence to a traditional culture among staff. Our findings are presented in Table 20.2. Two characteristics of traditional culture need to be explored: how strong is it, and what proportion of staff adhere to it? The overall mean score arguably reflects overall strength: the lower the score, the stronger the

Table 20.2 Staff with 'very pro' and 'very anti' attitudes (adherence to traditional culture), in 2002 and **2004** (per cent)

Traditional culture	Win-chester %		Lewes %		Eastwood Park %		Styal %		Leeds %		Liver-pool %		Wands-worth %		Man-chester %		Felt-ham %		Glen Parva %		Swan-sea %		Forest Bank %	
Very 'pro' all staff	14.0	**27.7**	10.0	**18.4**	18.8	**13.3**	15.7	**22.3**	14.6	**13.5**	18.5	**6.3**	9.0	**9.8**	4.0	**14.0**	23.4	**15.5**	25.2	**23.7**	30.8	**20.9**	32.6	**14.9**
Very 'pro' uniformed staff	4.2	**5.4**	2.7	**3.4**	8.1	**8.8**	5.3	**7.5**	11.2	**5.1**	6.7	**1.3**	3.2	**0.0**	1.9	**10.3**	8.0	**6.7**	5.7	**5.9**	13.0	**7.1**	27.9	**7.1**
Very 'anti' all staff	19.	**12.0**	20.0	**13.2**	7.1	**5.3**	11.8	**3.3**	33.5	**25.8**	37.7	**49.6**	33.3	**16.7**	40.0	**9.6**	13.1	**4.8**	12.9	**15.3**	7.7	**9.3**	8.1	**17.5**
Very 'anti' uniformed staff	31.3	**21.6**	27.0	**24.1**	13.5	**5.9**	17.5	**10.0**	47.2	**39.4**	52.2	**57.7**	41.3	**24.6**	51.9	**15.5**	20.0	**10.0**	27.1	**29.4**	13.0	**14.3**	4.9	**21.4**
Mean score	2.9	**3.09**	2.76	**3.07**	3.15	**3.17**	3.03	**3.2**	2.70	**2.76**	2.66	**2.36**	2.57	**2.86**	2.42	**2.97**	3.06	**3.14**	3.03	**3.02**	3.22	**3.12**	3.27	**2.91**

Note:
Significant improvements were found at Lewes, Wandsworth and Manchester between 2002 and 2004; significant deteriorations were found at Liverpool and Forest Bank.

negative culture. Taking the mean scores first, the two high-performing prisons, Swansea and Forest Bank, had by far the highest scores (that is, the lowest adherence to traditional culture in 2002). Eastwood Park also had a relatively positive culture, with relatively few staff adhering to a traditional or negative culture. This is important, as Eastwood Park was the most successful and speedy implementer of the Safer Locals Programme, suggesting that negative cultures can make implementation of new policies difficult.

We constructed the rest of Table 20.2 based on the proportion of staff one standard deviation above the mean and one standard deviation below the mean on adherence to negative cultural attitudes at 2002 and at 2004. This reflects the proportion of staff expressing either strong negative attitudes or strongly positive attitudes. The table shows considerable variation between prisons, and it also shows a general tendency for uniformed officers to express more negative than positive attitudes. The numbers of 'positive staff' in some prisons was so small that these individuals found themselves working very much against the cultural grain of the rest of their wing, and were often sanctioned by other staff for 'liking prisoners'. We found that adherence to traditional culture was significantly related to rank, so that the higher the rank, the lower the adherence to traditional culture.

Traditional culture had a direct and significant association with levels of care for prisoners in most prisons. For example, we found a significant cultural change at Lewes Prison between 2002 and 2004, where we also found significant improvements in prisoners' perceptions of the amount of 'assistance for the vulnerable' and in a composite measure of prisoner care. Other major improvements to prisoner care were generally only found at prisons where the culture was already reasonably positive (such as Eastwood Park and Feltham). At Styal, the trend was similar – care for prisoners improved but did not reach a statistically significant level, although improvements in traditional culture did. At Swansea, the culture was relatively positive in both 2002 and 2004, and levels of care for prisoners were among the highest found in the study.

Culture also had a direct relationship with prisoner perceptions of fairness and the quality of staff–prisoner relationships. The following quotation from an interview with a prisoner illustrates some of these links:

> When they start talking to you like that, you either keep your mouth shut, which I tend to do at the minute now because I want, like, to get my enhanced, so I can get my own clothes in, get more visits, get to spend more on my canteen, but if staff start having attitude with me … that's where the tension builds up.

> *Can you just describe for me what you mean by attitude?*
> Like, if you ask them for things, just something you're entitled to … a phone call, you've put in for your phone call, say if you're not out on association. You put an application in. You put your bell on … 'I hope this is an emergency, if not, you're getting a strike.' And you say, 'well, I've put in for an application to use the phone', 'no, you can't, no' and it's like, that sort of attitude. They start shouting in your face and the

> attitude like … when you ask them for things, and they say, 'Yeah, in a minute. I'll do it in a minute' and you'll go back and you ask them and they just see you as a nuisance and they don't want to do anything for you at all. It just does your head in. The decent members of staff that will do things for you, it must do their heads in because they know the decent members of staff are who everybody goes to then, just to get things done. And the others … it's like, shouting and bawling at you. 'Get to your cell', 'do this' and there's just no need for it.

The quality of relationships contributed significantly to levels of distress among prisoners. The 'way officers talked to you' made a significant difference to how safe prisoners felt in the prison and to their general well-being. Answers on one staff attitude item, 'prisoners who attempt suicide are usually attention-seeking or trying to be manipulative', predicted levels of distress among prisoners, as well as institutional suicide rates. The more prison staff agreed with this statement, the higher levels of distress were found in establishments. There was a significant correlation between this item and the dimension 'traditional culture' (0.35, $p < .001$).

We concluded that adherence to a traditional culture significantly influences both levels of distress (and therefore suicide risk) among prisoners in establishments and levels of care for prisoners. This is in conflict with both the decency agenda and with suicide prevention. However, it is to some extent a natural outcome of, or reaction to, prison officer work, but varies significantly between establishments. It is a dimension of prison life and quality we should understand better and explore more carefully. Prison officer subculture is by no means homogeneous, and the links between values, attitudes and behaviour have not been established. There may be a very complex relationship between what officers *say* and what they *do*.

Prison officer culture and prisoner distress

The link between traditional culture and prisoner distress operates in three ways. First, officers with a strong adherence to traditional culture antagonize and frustrate prisoners (that is, they contribute directly to high levels of distress). Research suggests that disrespectful or aggressive treatment by individuals in positions of dominance causes resentment (Ahmed *et al*. 2001), a loss of legitimacy on the part of the organization (Tyler and Huo 2002), resistance (Scott 1990) and distress (Liebling *et al*. 2005). Secondly, these officers are inhibited from responding in practical or interpersonal ways to prisoners' expressed needs (that is, they fail to act positively when prisoners ask for help or demonstrate distress). Such apparent indifference is perceived by prisoners as an act of withholding rather than as an omission. It is likely that the signs of distress are automatically interpreted by staff as 'threats to authority' in these cases. In high-risk occupations (such as policing and prison work), considerable low-level discretion is used. Scope to interpret the actions of 'potential suspects' on the basis of stereotypes and suspicions is wide. In the area of suicide prevention, such negative assumptions can be especially dangerous. In high-turnover prisons where a large proportion of staff are 'unavailable' to prisoners, those who do respond to prisoners' needs

often become overwhelmed and burnt out. Thirdly, establishments with high proportions of officers expressing adherence to traditional cultural attitudes are genuinely resistant to the implementation of new policies.

Variables that contribute to a high adherence to traditional culture among staff included feeling undervalued, lack of safety, a cynical view of the Prison Service, low trust of senior management, low job satisfaction and role ambiguity. Establishments with little adherence to a traditional culture were characterized by excellent working relationships across and up and down the organization, staff who felt that good work was noticed and appreciated, staff who felt involved in the process of change, effective work across disciplines and senior officers who provided a seamless and constructive link between uniformed officers and managers further up the chain. There seems to be a link between how confident and comfortable officers feel in their authority and their tendency to use it appropriately.

It seems clear from the analysis presented here that negative prison staff cultures contribute to prison suicide and that, conversely, low adherence to a negative culture is associated with lower levels of distress among prisoners and a lower suicide rate. Staff culture can, of course, only constitute *part of* the explanation for prison suicides which also have individual and other institutional as well as social-structural causes (see Chapter 18, this volume). This is a potentially fruitful area for further research. Future studies should include explorations of the formation and evolution of prison staff cultures; better measurement of the concept of traditional culture (including officers' visions of their role); differences between those staff who adopt and who resist negative cultures; the role of gender; the changing role of the POA and further investigation of the role of senior managers, training and modern managerial techniques in shaping prison staff culture. Schein suggested that the most powerful mechanisms deployed, consciously or otherwise, by senior managers which embed and reinforce an organization's culture include the following:

• What leaders pay attention to, measure, and control;
• Management reactions to critical incidents and organisational crises;
• Deliberate role modelling, teaching and coaching;
• Criteria for allocation of rewards and status;
• Criteria for recruitment, selection, promotion, retirement and excom-munication (1985: 224–5 paraphrased in Chan 1997: 90).

Chan also argues, however, that changing the context or 'field' – the social, economic, legal and political status of powerless groups – also assists in the process of culture change (1997: 92).

Prisons inevitably tend to emphasize security and order, and have an inherent propensity to bring about 'chronic suspiciousness' (Chan 1997: 78), abuses of power and attitudes of disdain towards the imprisoned. Some seem more inclined towards these problems of punishment than others. These tendencies should be monitored and checked at all times. While some offenders can sometimes pose serious challenges to the sympathy and tolerance of staff, losing sight of a professional orientation poses major challenges for the legitimacy of state-sanctioned punishment institutions.

Conclusion

> *And what are the most stressful or frustrating aspects of the job?*
> The public perception of prison officers (Colin Moses, Chairman, POA, in interview).

Prison work is complex and demanding and takes place within an increasingly stringent management and financial climate. Officers often feel exposed at the front end of unworkable policies, which have to be implemented in impossible conditions. Much of their day-to-day work remains invisible, and the dangers of the overuse of authority, corruption, indifference or burn-out are always great. At their best, officers deal professionally and sometimes heroically with troubled, vulnerable or disturbed individuals, whose behaviour is challenging in the extreme. In a more mundane sense, they cater for the needs of an often unwanted population. Prison staff frequently support rehabilitative aims enthusiastically, and many wish above all to 'make a difference' to the lives of those they imprison (as well as to the lives of future victims). Negative cultures arise often, however, and make a considerable impact on the experience of prison life for prisoners. The fact that prisons differ significantly in this respect, in ways that are identifiable, makes this aspect of prison life ripe for further research. Prison officers remain the 'invisible ghosts' of penality, neglected in research, in policy decision-making and in the public's imagination.

Selected further reading

J.E. Thomas's (1972) *The English Prison Officer since 1850: A study in Conflict*. London: Routledge & Kegan Paul, offers a historical perspective on prison officers in the UK. Liebling, A. and Price, D. (2001) provide a single accessible volume on the nature of prison officer work in *The Prison Officer*. Leyhill: Prison Service and Waterside Press, addressing staff–prisoner relationships and the centrality of discretion. Elaine Crawley's (2004) *Doing Prison Work: The Public and Private Lives of Prison Officers*. Cullompton: Willan Publishing, is an in-depth qualitative study of prison officer work, paying particular attention to emotion management and performance. For further information on the effects of prison officer work, see Helen Arnold's (2005) chapter, 'The effects of prison work', in A. Liebling and S. Maruna (eds) *The Effects of Imprisonment*. Cullompton: Willan Publishing. Linda Zupan (1992) highlights the key issues pertaining to women officers in her chapter, 'The progress of women correctional officers in all-male prisons', in I.L. Moyer (ed.) *The Changing Roles of Women in the Criminal Justice System*. Prospect Heights, Il: Waveland. Finally, a forthcoming collection, *Prison Staff*, J. Bennett *et al*. (eds). Cullompton: Willan Publishing, will comprise contributions from academics and practitioners on a comprehensive range of issues for prison officers and other prison staff, including therapeutic workers and managers.

Notes

1 Information from Prison Service Pay Review Body (2006).

2 Information from Personnel Corporate Database, Human Resources Planning, HMPS Headquarters.

3 There are two long-service increments for standard-grade officers, taking the salary to £25,918 and £26,433, respectively. Information regarding pay obtained from the Prison Service website and Prison Service Pay Review Body (2006).

4 Information from Prison Service Pay Review Body (2006).

5 The following account draws on interviews with 24 standard-grade officers from Norwich Prison and 16 officers from a Prison Officer Entry Level Training (POELT) cohort.

6 Interview excerpt from the Safer Locals Evaluation (Liebling *et al.* 2005).

7 See, for example, Colvin (1977), Crawley (2004). For research from the USA, see Crouch (1980), Lombardo (1981), Toch and Klofas (1982), Cheek and Miller (1983), Marquart 1986, Johnson (1987) and Kauffman (1988). For Australia, see Moyle (1995).

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Governing, leadership and change

Andrew Coyle

Introduction

As places where citizens are deprived of their liberty, prisons have always had to be accountable at a number of levels. In terms of the law, accountability is channelled through the governor of the prison. In recent years accountability within the prison system has become much more detailed and business oriented, concentrating as much on processes as on outcomes. This raises fundamental questions about the nature of accountability within prisons, to whom it is due, from whom and on what basis.

As well as being efficient managers, those who govern prisons have to be leaders who are capable of enthusing the staff for whom they are responsible with a sense of decency in the way they carry out their difficult daily tasks. The character of the person in charge can be decisive in setting the culture of the establishment since those involved in prisons will tend to look to the person at the top for a lead as to what is expected in terms of attitude, behaviour and manner of working. The prisons with the most humane atmosphere, with the most positive culture, are likely to be those with the most visible leadership. Strong leadership is also more likely to produce efficient security systems and a safe environment.

Leadership can be demonstrated in a number of ways. A strong leader will often have a recognizable charisma, which will attract trust and confidence from staff. Genuine leadership will also be linked to organizational ability in a way that ensures that it does not degenerate into idiosyncrasy. The best leaders will place great emphasis on the ethical context within which the prison should operate and will set very clear parameters about what is to be done and what is not, about what kind of behaviour is acceptable and what is not. Having set the parameters, the leaders will then encourage staff at lower levels to use their initiative in implementing the details of the agreed policy.

Prisons as places of detention

The prison has been analysed and scrutinized many times over the years from philosophical, historical, sociological, legal, literary and other perspectives. The chapters in this Handbook continue that tradition in a worthy manner. However, underlying all this important research there is one fact which scholars and others must never forget – that prison is first and foremost a place where human beings are deprived of their liberty. Prison and its effects impinge directly on these men, women and children and it does so in a negative manner. Prisoners are cared for primarily by prison staff. These staff have a twofold task. In the first place, they have to hold the prisoners in captivity in a manner which is most likely to reduce the negative effects of imprisonment. Secondly, they have to provide prisoners with the opportunity to use their time in captivity in as positive a manner as possible so that, once their sentence has been completed, they can return to society to live as law-abiding citizens.

In every country in the world prisons are organized into some kind of system. In some countries, such as the USA, there is a variety of independent systems, including federal, state and local or county prison departments. In countries with a federal structure of government, such as Germany, Brazil and India, each state may have an autonomous prison system. In other federal countries there may be a national prison system in addition to state or provincial systems, as is the case in Canada. In other countries there may be one national system, as is the case in England and Wales and in Scotland. Even where there is one national system, the organizational structures may vary. In some Scandinavian countries, for example, policy is set at a national level but there is significant local autonomy in operational matters. In England and Wales, on the other hand, there is tight central control of many operational decisions as well as of policy issues.

Notwithstanding these wide variations in the way prison systems are organized, there is a consistency to be found in all prisons. This is the core reality referred to above, that all prisons are places of detention, in which the two key groups of people are the prisoners and the prison staff. No matter what may be the overarching organizational system in a country, be it national, federal or more local, any judgement about decency or humanity will be based on the situation in individual prisons. This fact was best summed up a number of years ago by a wise Council of Europe expert following a visit to a Western European country which was at the time very proud of the progressive changes it had introduced to its prison system. His comment was: 'Country X, ah yes, wonderful policies; pity about the state of its prisons.' That is also why, in the course of its visits to individual member states, the European Committee for the Prevention of Torture does not pay a great deal of attention to the way that prison systems are organized.[1] Instead, it focuses on the state of individual prisons and the manner in which prisoners are treated within them. Closer to home, the same principle is applied by HM Chief Inspector of Prisons in her work. From time to time she analyses themes which have more general application, such as suicides, healthcare, and the needs of women prisoners, young prisoners and juveniles. But the main focus

of her attention, as reflected in her terms of reference, is inspection of 'the treatment of prisoners and conditions in prisons'. All this serves to underline the key function of the person who is in charge of the individual prison, the person known in the UK as the prison governor.

The prison hierarchy

Given their coercive nature and the fact that people are sent there against their will, prisons need to be places of regulation and discipline. One way of implementing these requirements is through their hierarchical structure. In broad terms this hierarchy consists of, in descending order, the governor, various levels of management, prison staff (including officers) and the prisoners. The prisoners themselves also have a hierarchical structure but that is not a matter for discussion in this chapter (see Chapter 6, this volume). The relationship within the hierarchy between various levels of management and staff can be unclear at times but there is little dispute that the governor is at the top. For example, every member of staff has his or her own set of security keys, individually numbered. The hierarchy of the prison can be discovered, at least in broad terms, according to the number of a person's set of keys: the lower the number, the more senior the person. This definition of the prison 'pecking order' can be very important to many members of staff. However, there is never any dispute that key set Number One is allocated to the governor and, for that reason, the governor is often referred to colloquially as 'The Number One'.

So, if the governor is head of this hierarchical chain, what is his or her[2] responsibility likely to consist of and what qualities are necessary to fulfil the role? Writing in 1841, Frederic Hill, one of the first five independent inspectors appointed in the middle of the nineteenth century to inspect prisons throughout the UK, presented his vision of the ideal prison governor:

> The Governor of a large prison should be a person of strong native talent, and of great decision of character, yet of kind and affable manner; he should possess a great insight into human character, and into the various causes of crime and the springs of action; and he should be influenced by a strong desire to promote the permanent welfare of the prisoners committed to his charge. He should be possessed of powers of command, and of holding others to responsibility; and in order to maintain these effectually, it is necessary that he should be able to determine what everyone under his authority can reasonably be expected to perform, and to judge of the manner in which every duty is discharged (Cited in General Board of Directors 1841).

At the time Frederic Hill was writing there was no centralized prison system in England and Wales and, like their modern successors, the task of Hill and his colleagues was to inspect individual prisons. It is quite clear from the comments in their annual reports that they regarded the governor of the

prison as the crucial factor in determining the way the prison was managed and the way prisoners were treated. Before discussing whether the role of the prison governor remains as central today as it was over 160 years ago, we should consider what his responsibilities entail. In order to do that, we need to be clear about their legal basis.

The purpose of prison according to law

The purpose of any prison and the only legal reason for its existence is that it should hold persons who have been sent there by a court. The grounds on which a court may sentence a convicted person to prison are laid out in the Criminal Justice Act 2003, s. 152 as follows: The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.' In this chapter we are not concerned with the question of whether all custodial sentences currently meet this legal requirement, but we do need to bear in mind the fact that in each individual case the court is required to conclude that imprisonment is the only sentence that can justifiably be imposed.

The primary legislation concerning prisons is the Prison Act 1952, which defines the prison as 'a place of confinement for prisoners':

12. Place of confinement of prisoners
    (1) A prisoner, whether sentenced to imprisonment or committed to prison on remand or pending trial or otherwise, may be lawfully confined in any prison.

It is a matter for the Secretary of State to decide the prison in which individual prisoners shall be held:

12 (2) prisoners shall be committed to such prisons as the Secretary of State may from time to time direct; and may by direction of the Secretary of State be removed during the term of their imprisonment from the prison in which they are confined to any other prison.

When a person is sent to prison either pre- or post-sentence he[3] is passed into the legal care of the prison governor:

11. Legal custody of prisoner
    (1) Every prisoner shall be deemed to be in the legal custody of the governor of the prison.

The main legal duties of the governor as regards the management of convicted prisoners are laid out in the secondary legislation which is contained in the Prison Rules 1999:

Purpose of prison training and treatment
3. The purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life.

Classification of prisoners
7. (1) Prisoners shall be classified, in accordance with any directions of the Secretary of State, having regard to their age, temperament and record and with a view to maintaining good order and facilitating training and, in the case of convicted prisoners, of furthering the purpose of their training and treatment as provided by rule 3.

In respect of unconvicted prisoners, the Prison Rules place the following obligation on the governor:

7. (2) Unconvicted prisoners:
(a) shall be kept out of contact with convicted prisoners as far as the governor considers it can reasonably be done, unless and to the extent that they have consented to share residential accommodation or participate in any activity with convicted prisoners; and
(b) shall under no circumstances be required to share a cell with a convicted prisoner.

Terminology

Given the severe nature of the punishment involved in imprisonment, it is important to give due weight to the legal terminology. Neither the Act nor the Rules refer to people in prison as inmates or as offenders. Inmate is a term which is frequently used by academics, the media and other commentators when referring to prisoners. This description was first used in reference to prisoners at a time when there was a softening of the terminology of punishment, what the Scandinavian criminologist Nils Christie has described as the 'denial-of-existence strategy'. This involved renaming prisoners as inmates and prisons as institutions. Christie (1978: 181) explains how these changes of terminology came about:

First, it makes life somewhat easier for the personnel within these institutions. The hangman's job was never very popular. Those who got a chance slipped into the doctor's role as fast as possible. There is a need for a defence. Major strategies are to claim that what one is doing to other people does not hurt, is intended to help, or actually is very efficient in helping them even though it might hurt a bit in the beginning – just like so many good cures.

The use of the euphemism 'inmate' is now virtually universal in North America and is similarly used in preference to 'prisoner' by many other jurisdictions in English translations of their documents. The official documents of the Prison Service of England and Wales, such as their annual reports,

have always referred to 'prisoners' but there was a period, particularly in the 1990s, when the term 'inmate' was used in many contexts (for example, Directorates of Inmate Administration and Inmate Programmes in Prison Service headquarters). Official documents now refer generally to 'prisoners'.

In the same way, prisons are referred to in a number of jurisdictions as 'correctional institutions' and the systems which administer these prisons are known as Departments of Corrections. The term 'corrections' has no legal standing in the UK, although it has begun to creep into administrative use in recent years. For example, for a short period at the end of the twentieth century the Prison Service was overseen by a Strategy Board for Correctional Services. This term has no legal or intellectual locus in England and Wales and its use should not be encouraged.

The term 'offender' includes everyone who has been convicted or cautioned for an offence (Home Office 2004: 14). This means that many people who are in prison (those who have not been convicted) cannot be referred to as offenders. This is an issue which will have to be dealt with when the legislation for the National Offender Management Service comes to be enacted.

Clarification of all this terminology is important since its misuse betrays a lack of understanding of the legal status of prisoners and of the extent and limitations of the power of the Executive, working through the Prison Service, in the way that prisoners are treated.

The management of prisoners according to the law

Having defined the purpose of the treatment of convicted prisoners in Prison Rule 3, the legislation goes on to define the principles which should underlie the management of prisons:

> 4. (1) Special attention shall be paid to the maintenance of such relationships between a prisoner and his family as are desirable in the best interests of both.
>
> (2) A prisoner shall be encouraged and assisted to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the governor, best promote the interests of his family and his own social rehabilitation.

This principle applies to all prisoners, whatever their legal status. The following Rule deals specifically with convicted prisoners:

> 5. From the beginning of a prisoner's sentence, consideration shall be given, in consultation with the appropriate after-care organization, to the prisoner's future and the assistance to be given him on and after his release.

The next Prison Rule comes as close as any to specifying how prisons are to be managed:

6. (1) Order and discipline shall be maintained with firmness, but with no more restriction than is required for safe custody and well ordered community life.

(2) In the control of prisoners, officers shall seek to influence them through their own example and leadership, and to enlist their willing co-operation.

(3) At all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility, but a prisoner shall not be employed in any disciplinary capacity.

This Rule is remarkably similar in sentiment to the statement of Frederic Hill in 1841.

The remainder of the Prison Rules describe how these guiding principles are to be implemented. They also confirm the legal obligation which staff have to implement them:

General duty of officers
62. (1) It shall be the duty of every officer to conform to these Rules and the rules and regulations of the prison, to assist and support the governor in their maintenance and to obey his lawful instructions.

An analysis of the law relating to prisons leaves us in no doubt about the authority of the governor and of the fact that his legal responsibilities have changed little over the years. The days when the governor of the local prison had a reserved seat in the Assize Court in order to acknowledge receipt of the prisoners committed into his charge by the judge may have long gone but the court warrant still commits the prisoner to the prison governor. Similarly, if any matter arises relating to imprisonment, whether it be court dissatisfaction with any issue relating to the imprisonment of a prisoner or appearance at court or a civil case brought by a prisoner, the respondent will invariably be the prison governor, rather than anyone working in Prison Service headquarters or the Home Office.

The administrative management of prisons and prison staff

One of the more unusual features of prisons in England and Wales is that they are administered entirely by central government, with no input at a local level. This distinguishes them from other public institutions, such as schools, hospitals, police and fire services. The historical basis for this can be traced back to the Prisons Act 1877. Before that date the majority of prisons in England and Wales were under local control, usually linked with benches of local magistrates. In the middle of the nineteenth century a national system had been set up to administer the new prisons which held the convict prisoners who would previously have been transported for hard labour in the colonies. This Directorate of Convict Prisons served as the model for the

national Prison Commission and the Chairman of the Convict Directorate, Colonel Joshua Jebb, became first chairman of the new commission. From 1878 all prisons came under the control of the Prison Commission. From the outset the national system emphasized the need for uniformity and regulation. The third chairman of the commission, Edmund Du Cane, boasted that he could look at his watch and know what was happening at that precise moment in every prison in the country. Anyone who has any knowledge of the management of prisons will find Du Cane's boast very hard to reconcile with reality but it was indicative of the determination which existed to create a nationally regimented system (see Chapters 2 and 8, this volume).

An important consequence of the creation of a national prison system was that all staff, who had previously been locally employed, became civil servants, with national conditions of employment and subject to transfer from one prison to another when vacancies occurred. This meant that their local links were weakened, especially since the Home Office usually provided housing estates, often in the lee of the prison walls, where staff and their families were expected to live. What Coyle (2005: 45) has called the 'organizational dissonance' of the national prison system was reinforced by the fact that the interest of the Prison Commissioners was concentrated on the treatment of prisoners. All issues to do with staff, such as conditions of employment, rates of pay and decisions about their transfer, were decided within the Home Office by what were known until comparatively recently as 'Establishment (that is, Personnel) Officers' who were administrative civil servants. Prisons were referred to within the Home Office as 'outstations', a term which underlined their perceived marginal significance.

In 1963 the Prison Commission was abolished and was subsumed into the Home Office as the Prisons Department. Over the previous 45 years there had been ongoing disquiet among staff about their treatment by what came to be known as 'management', a term that was applied in the first instance to Home Office administrators, since prison governors locally had little involvement in staff pay or conditions of employment. Between 1918 and 1938 staff fought, ultimately successfully, for recognition of their trade union, the Prison Officers' Association (POA). The bitterness of that struggle left an enduring legacy that influenced the attitude of both sides towards industrial relations in the Prison Service for most of the twentieth century (Thomas 1972). Any analysis of prison administration in England and Wales needs to take this into account. One of the main complaints of staff over the years was that the Prison Commissioners focused their attention on prisoners and paid little heed to the needs of staff. This perception continued when the Home Office Prison Department took over responsibility for the national administration of prisons and when it subsequently became HM Prison Service.

Like any self-respecting trade union, the POA concentrated its efforts on improving pay levels and safeguarding conditions of employment for its members. Its way of operating presented an interesting contrast to the manner the prison system itself was administered. For a variety of reasons, which need not interest us here, from the early 1970s onward the POA became something of a federal organization. The national committee continued to negotiate on major issues with the national prison administration but increasingly branches

representing the staff in individual prisons began to act autonomously in local matters. Prison governors, with little or no training in industrial relations, found themselves having to deal with local committees on a wide range of matters. These were to do with issues such as hours of attendance. The total number of hours to be worked each week by individual officers was settled at a national level in accordance with main Civil Service conditions but the daily patterns of attendance or staff rosters were negotiated at local levels. In theory these were dictated according to the demands of work. For example, the pattern in local prisons, where a group of staff had to escort prisoners to and from court each day and where prisoners had to be sent to court early each morning and be received back late in the evening, would be quite different from that in training prisons, where the priority was to staff a variety of prisoner activities throughout the course of the day. In many prisons the seven-day weekly working cycle which was necessary in each prison could not be accommodated within the 39 hour working week for staff. This led to an increasing dependence on overtime working, which attracted enhanced rates of pay and was welcomed by many staff. By the late 1980s overtime payments accounted for almost one third of the entire pay bill for the Prison Service. This nettle was finally grasped in 1987 with the introduction of new conditions of employment which abolished most overtime payments (Chapter 20, this volume).

A number of prison governors felt uncomfortable negotiating with staff on these matters, particularly since they were never confident they would receive the backing of the national prison management in any dispute. Some of them delegated discussions about complicated patterns of attendance to chief officers, when that grade still existed, or later to equivalent middle managers. Many of these were former or indeed existing POA members and were willing to agree to attendance patterns that suited staff. One consequence of this was that many large local prisons in effect operated on a Monday to Friday, 8.00 am to 5.00 pm basis, with the vast majority of prisoners locked in their cells outside this core period.

For most of the twentieth century the prison system was a prime example of poor industrial relations. The fault for this has been laid largely at the door of the POA, which even today is referred to by some as one of the last dinosaurs of the trade union movement. The reality is more complex than that. A report in 1991 by a senior businessman, who had previously been a naval admiral, concluded: 'Difficult unions fill the vacuum left by ineffective management and all managements are ineffective if they are not allowed to manage' (Lygo 1991: 6). In writing this, Lygo was referring to the fact that the national management of the Prison Service was located in the Home Office, which imposed a bureaucracy and centralization on individual prisons that made it difficult for governors to manage them efficiently.

The poor state of industrial relations continued through the 1980s and early 1990s and led to the introduction of legislation that banned prison officers from striking. In subsequent years relationships between the POA and prison management, especially at national level, improved. The two sides agreed a legally enforceable voluntary collective agreement that precluded prison officers from inducing or taking part in industrial action. In 2005 the

government obtained parliamentary approval to disapply the 1994 legislation and to restore full trade union rights to the POA.

Throughout all this period there were instances of good management and progressive industrial relations. These generally occurred when individual governors were clear about the way they wanted their prison to be managed and worked hard to build up good relations with the local POA committee and with staff as a whole, involving them in plans to develop regimes and activities for prisoners and making clear that this also contributed to increased job satisfaction for staff.

To some extent the suspicion among many staff that those responsible for national prison administration were more concerned about prisoners than about them was justified. Prisons only exist because there are prisoners and prison staff are only in employment because prisoners have to be taken care of. The primary task of prison management is not to employ prison staff; it is to look after prisoners. That is not meant to suggest that management should ignore the needs of staff. On the contrary, if staff are to take care of prisoners in a decent, humane and effective manner, they need to be properly trained, paid at an appropriate level and managed in a fashion that is likely to realize their potential. As described above, this has not always happened.

The administrative management of prisoners

Before 1878 there were close links between local prisons and the courts which they served. In broad terms, those in charge of individual prisons were clear about their responsibilities, which were to receive prisoners from court, to hold them in custody as long as the court demanded and to make them available to the court when it required. In many instances the conditions in prisons were appalling and they were frequently places of inhumanity and depravity. On the other hand, their objectives were simple and they were relatively little used. From the late nineteenth century and throughout the twentieth century various pressures conspired to introduce a wider range of objectives for the prison. These were largely to do with what has been called at various times reformation, rehabilitation or more recently reducing reoffending. Put simply, this was the proposal that prison existed not only as a method of implementing the punitive sentence of the court but that it could also be a means of diverting those who had been convicted from a future life of crime.

This notion sprang from a number of sources. In the first place, many of the early reformers were inspired by the Christian principle of the redemption of the wrongdoer through expiation. In a prison context this meant that the punishment of imprisonment could become a cleansing force which would lead to a future honest life. Scratch under the surface of today's philosophy of the prison and this notion can still be found, either expressed or unexpressed. The modern expression of this is that in some way prisoners are deformed human beings and the experience of imprisonment can be used to make them whole again, particularly if they are subjected to some sort of personal change process.

The second source of the concept of the prison as a place of reform was the new breed of prison staff, particularly at a senior level, who saw their task as being much more than that of mere warders or jailers. Many of them were inspired by a sense of vocation that they could improve the lot of their fellow men. They were not satisfied merely to deprive prisoners of their liberty but also saw themselves as professionals with the task of changing some of the most difficult and problematic human beings into law-abiding and upright citizens. They sought to achieve this through a combination of exerting positive personal influence and of subjecting prisoners to a programme of 'treatment and training'. For them the prison was no longer to be a place of punishment; instead, it was to be a place of reform, a reformatory.

Finally, this notion that the prison could be a place of positive experience, of personal rehabilitation and reform as well as of punishment, was attractive to other players in the criminal justice field. Judges, who previously might have been reluctant to send offenders to prison, were now able to justify doing so on the grounds that prisoners would receive 'treatment and training'. This notion was encouraged by senior administrators in the prison system. Sir Alexander Paterson, a Prison Commissioner, was confident enough to inform the Persistent Offenders' Committee in 1931 that 'The problem of Recidivism is small, diminishing, and not incapable of solution' (Ruck 1951: 55). In a similar vein, in 2002 the Director General of the Prison Service, during whose tenure there was a significant increase in the number of children held in Prison Service custody, was able to announce: 'At every single juvenile establishment huge progress has been made. At a fraction of the cost of a place in a local authority secure unit or a Secure Training Centre, young people's lives are being changed' (Narey 2002).

More recently the notion of prison as a place of personal reform has become attractive to governments, which have marketed the idea to the public and the media as one of the justifications for enacting legislation which provides for more and longer custodial sentences. Paradoxically the use of prison is increasing alongside research evidence which shows that a significant number of people who are sent to prison are reconvicted within two years of release. In a rational world one might expect this evidence to lead legislators, the executive and the judiciary to question the rehabilitative value of prison and, as a result, to restrict its use to punishing the most serious of crimes. But this is not what has happened. Instead of regarding the high rate of recidivism as an indicator of the failure of the concept of the prison as a reforming environment, it is suggested that the failure lies in the way prisons are managed and that if only they can be made to operate more efficiently then rates of recidivism, as Paterson claimed over 75 years ago, can be reduced. The fault, it is argued, lies not in the concept itself but in the way it is implemented.

Management of the Prison Service

These increasingly complex models of how prisons, prison staff and prisoners should be managed have led over the last century to increasingly sophisticated

models of management. This has resulted in the first place in a highly complex form of centralized control. When the national prison system was established in 1878 the line of responsibility was very straightforward, with governors of prisons reporting directly to the Prison Commissioners, who in turn were responsible to the Secretary of State. In the course of the succeeding 130 or so years the organizational chart has changed significantly.

The system currently in use was set up in 1990. Most prison governors are supervised by area managers, of whom there are 13. They in turn report to a national Operational Director, who is a member of the Prison Service Board, which is responsible to a Home Office minister. There are separate arrangements for high-security prisons and for contracted-out prisons. There are now proposals for further management lines involving the National Offender Management Service, which was established in 2004.

In addition, there are approximately 30 policy or service units in the headquarters structure, with input on a wide sweep of matters, ranging from policy on women and juvenile prisoners and personnel management to professional standards and 'land-based activities'. It is sometimes difficult to understand the remit of individual units. For example, in November 2005 one of them was responsible for Phoenix Programme Management, which is 'business transformation for finance, HR and procurement facilitated by oracle ERP system' (*Prison Service News* November 2005). In all, some 2,000 persons are employed in the various headquarters departments and units.

The main task of the national management of the prison system is twofold. In the first place, it has to interpret the broad policy laid down by government ministers who are ultimately responsible to Parliament for the way prisons are run and to articulate that policy in sufficient detail to enable governors to implement it in individual prisons. Linked to that, it has to make sure that there are sufficient resources to ensure that the policy can be implemented. Secondly, it has to be satisfied that governors do indeed implement government policy in their prisons. In plain terms, this means that the task is to set the parameters within which prisons are to be run and then to ensure that these parameters are adhered to. These are quite simple tasks which should not be labour intensive. This was recognized when the new structure was set up in 1990. It was envisaged that the small 'policy units' in headquarters would be focused on major policy issues and would not interfere in the operational management of prisons. At the same time, the line management was to be kept very slim, with 'area office' being limited to the area manager, a staff officer and a personal assistant. This was a way of ensuring that area managers did not try to become super-governors, trying to run prisons at one step removed.

Over the last ten years this model has been inflated for a variety of reasons. The headquarters units have moved from a concern about policy (that is, what is to be achieved) to an involvement in process (that is, how things are done). This has resulted in a proliferation of manuals full of instruction about what procedures to follow in every situation in respect of matters as diverse as race relations and suicide prevention. Yet despite all these detailed sets of excellent instructions the Prison Service continues to have major problems in respect of matters such as race relations and deaths in custody. The main lesson

to be learnt is not that the policies are wrong but that the implementation cannot be driven from the centre without reference to local circumstances. For example, when expressing concern about the number of self-inflicted deaths in custody in 2005, the Chief Inspector of Prisons pointed out that this issue could not be separated from other problems, such as levels of overcrowding and the large number of prisoners with significant mental illness (see Chapter 16, this volume).

Also in recent years the original concept of having minimalist area offices has been all but abandoned, with some of them becoming replications of national headquarters on a smaller scale. Much of this increase has come about because of the perceived need to monitor closely the wide range of performance measurements which have been introduced in recent years. The Prison Service began to measure the performance of prisons in the early 1990s when it introduced a set of what it called corporate objectives for itself. Governors were required to produce plans to demonstrate how they intended to meet a total of 22 objectives in their individual prisons. Throughout the last decade of the twentieth century the business model of managing prisons developed in line with similar government initiatives in other major public institutions. This was achieved in the first instance through defining the Prison Service as an agency. The intention of this change was that the day-to-day operation of prisons should be carried out at one step removed from government and that ministers, through their officials in the Home Office, would restrict themselves to defining general policy on imprisonment. In a highly symbolic development when the new agency was set up, the Home Secretary required the serving Director General of the Prison Service to apply for his own job and then failed to reappoint him to it. Instead, a new Director General with a finance background in the private sector was brought in.

The new Director General developed the efficiency arrangements which his predecessor had introduced and also made it clear that there was to be a new style of management. He had not been impressed by what he had found: 'During these early weeks the pieces of the jigsaw puzzle began to fit together to form a picture of the management of the service. It was far worse than I had been led to believe: indeed, it was difficult to find anything that was right about it' (Lewis 1997: 29). Lewis's answer was to build on what his predecessor had done. As part of the new arrangements for agency status the Prison Service had already published a corporate plan, describing in general terms what it aimed to achieve over a three-year period, and a business plan, with details of its activities for the following year. Since it was now defined as a 'business', the Prison Service soon found itself with a statement of purpose, a vision, a set of six goals and eight key performance indicators (KPIs) against which achievement of its goals was to be measured. This model has been pursued with increasing enthusiasm in succeeding years. At the latest count, the prison service had 14 KPIs or targets, reinforced by 45 key actions and outcomes, and it has become increasingly difficult to pick one's way through the complexity of aims, objectives, targets and indicators which are set for the Prison Service by the government and its various departments.

In 2003 the Prison Service introduced a new 'benchmarking programme' in order to 'to improve and reward performance in the Prison Service' (HM

Prison Service 2004). This was a sort of league table by which every prison was allocated to one of four levels of performance according to a range of criteria. In ascending order, a level-one prison is one that is discovered to be 'failing to provide secure, ordered, or decent regimes and/or has significant shortfalls against the majority of key targets'. Prisons in level two are those that are 'basically stable, secure and providing a limited but decent regime; experiencing significant problems in meeting targets and/or experiencing major operational problems'. Those in level three are considered to be 'meeting the majority of targets, experiencing no significant problems in doing so, delivering a reasonable and decent regime'. Level-four prisons are 'exceptionally high performing, consistently meeting or exceeding targets, no significant operating problems, achieving significantly more than similar establishments with similar resources'. The benchmarking is reviewed regularly, with prisons being promoted or demoted according to how they have performed since the previous assessment. Those in the lowest category are described as 'failing prisons' and can be subjected to 'special management measures' and ultimately may be 'market tested' – that is, offered to the private sector.

Prisons are not factories with conveyor belts where the task is to produce so many hundreds or thousands of goods a day and therefore capable of simple quantitative measurement. They have a multiplicity of tasks, some of which are common to all of them and some of which are more specific. Their tasks can be defined in a variety of ways, some positive and some negative. In some important respects success in the Prison Service is measured by absence of failure. So, the KPI of whether a prison delivers its obligation on security is in fact an absence of lack of security; that is, that no prisoner escapes. There are other instances where the decision to use a negative performance measure may serve to indicate a degree of disproportionality in approach. For example, the requirement that prisons should be places of safety and good order could be measured in a number of positive ways but, in the current business plan, ministers have chosen to use two negative measurements: that there should be a reduction in the number of serious assaults and that the number of self-inflicted deaths should be lower than a set rate.

If measurements are set in a mechanistic fashion, prisons can respond in an equally mechanistic manner in reaching them. When KPIs were first introduced in the mid-1990s a governor in one of the main London prisons recruited one member of staff whose responsibility it was to ensure that the prison was able to demonstrate in its monthly returns that it had reached its targets. This allowed the rest of the prison to get on with its daily business without becoming target driven. The use of what are described as 'weighted score cards' to measure the performance of a prison and therefore its rating in a league table invariably involves a degree of subjective judgement. This goes some way to explaining why, from time to time, a prison may receive a satisfactory report from an internal audit team and within a few months receive an unsatisfactory report from HM Chief Inspector of Prisons, or vice versa.

The increasing tendency to centralize micro-management is not peculiar to the Prison Service. It is a feature of many public institutions in Britain today:

in health, in education, in the police. Performance indicators, audit trails and league tables are all part of the government's determination to impose uniformity of process on public sector organizations. What interests us in this chapter is the extent to which this emphasis on managerial efficiency has affected the core task of governors and whether it has changed their role in running individual prisons.

The prison governor

So far, this chapter has described in some detail how the relatively simple legal features of imprisonment, based on the obligation of individual prisons to fulfil the mandate imposed on them by the courts which they serve, have been made increasingly complex by the introduction of structures based on administrative priorities and the demands of the Executive rather than the Judiciary. We can now return to a consideration of what all this implies for the role of the prison governor.

There are a variety of features which are common to the management of all prisons. These are based on the legal obligations described in the early part of this chapter. All prisons, no matter how large or how small, no matter the type of prisoners which they hold, are 'people institutions'. Each of them exists to hold human beings who have been detained by order of the court, and prison staff are employed to ensure that the court order is carried out. One of the best summaries of how these legal obligations are to be implemented is to be found in the Woolf Report (1991: 225):

9.19 The evidence from Part I of this Inquiry shows that there are three requirements which must be met if the prison system is to be stable: they are security, control and justice.

9.20 For present purposes, 'security' refers to the obligation of the Prison Service to prevent prisoners escaping. 'Control' deals with the obligation of the Prison Service to prevent prisoners being disruptive. 'Justice' refers to the obligation of the Prison Service to treat prisoners with humanity and fairness and to prepare them for their return to the community in a way which makes it less likely that they will reoffend.

9.21 There are two basic rules if these requirements are to be met. They are:
    i) sufficient attention has to be paid to each of the requirements;
    ii) they must be kept in balance.

An interesting feature of this concise summary provided in one of the most important reports on prisons published in the twentieth century is the extent to which it reflects the terminology of the Prison Act and the Prison Rules as described in the early part of this chapter. This is not at all surprising, given that it was written by one of the most eminent judges of his generation. In defining the task of the Prison Service, Lord Justice Woolf did not use

complex management terminology, preferring instead to provide a clear judicial interpretation of the law relating to prisons.

The responsibility for ensuring that these legal duties are carried out falls on the prison governor in terms of the Prison Act 1952, s. 11(1) and Prison Rule 62 (1). In broad terms there are two main characteristics that are necessary for the implementation of these duties: good leadership qualities and sound management skills.

Leadership

One of the consequences of the hierarchical nature of the prison is that people at all levels, prisoners as well as prison staff, look to the person at the top to provide a clear lead in defining the culture of a prison. 'Number One' is not merely a decorative or honorary title; it indicates the responsibility which that holder of that set of keys has in setting the tone of his prison. For the 80,000 men, women and children in prison in England and Wales the experience of imprisonment is a very personal one. They have little concern that they are in a national prison system; what is important to them is the one prison in which they are being held today. They are concerned about the way they are treated by the staff who are in charge of them on a daily basis and the regime under which they are held here and now. While making allowances for the difference in their situation, the same broad principle applies to staff. They have little sense that their daily experience of prison work is influenced by area managers or by persons in national headquarters, whatever their level. What matters to them is the environment in which they work each day. If he is a real leader, the person who will determine the culture of that environment will be the prison governor. Of course, if the governor does not lead, then someone else will step into the gap; it may be a deputy or a middle manager (in former days, it might have been the chief officer) or it might be the chairman of the local branch of the POA. But these will only lead by default; the person whose task is to lead is the governor.

Leadership in any organization has a number of key characteristics. In the first place men and women must be attracted to their leader. They must have confidence in his ability to direct and to protect them. This implies a degree of charisma which inspires trust, but this charisma must not degenerate into idiosyncrasy. If it is genuine, it must be expressed in a consistent manner and to create an ethos in which both staff and prisoners know what is expected of them. It must also include organizational ability. The task of a real leader is to lay down the broad parameters of what is to be done, of what kind of behaviour is acceptable and what is not. Having set policy out clearly, a successful leader will then encourage staff at lower levels to use their initiative in implementing the details of the agreed policy.

Just as staff will trust a governor who is a genuine leader, so he will trust his staff. In some prisons the first thought of staff on being called to the governor's office is what they might have done wrong. In the prison environment failure cannot be tolerated and the first priority is to make sure that things do not go wrong – particularly that there are no escapes or major incidents. In such an environment the tendency may well be to punish failure but not to celebrate success. The governor who is a leader will encourage

innovative working, even if at times it carries a degree of risk. Staff will know that provided they work within the broad parameters set by the governor he will support them on the occasion that things go wrong. A real leader will have the personal confidence to hit the proper balance between preventing failures and encouraging success and will imbue staff with a sense of belief in their own ability.

Leadership also implies high visibility. In common with many public sector managers today, governors are inundated with paperwork and with instructions to report on procedural matters. A prison governor can work hard from first thing in the morning until late in the evening and never leave his office, chairing meetings, dealing with official visitors and signing reports in triplicate. Some governors find the experience of walking round the prison, with the likelihood of having to answer awkward questions from prisoners and staff, being presented with difficulties and sometimes facing personal criticism, very intimidating. It is easy to find reasons not to do so and to hide behind a mountain of files. The irony is that the less frequently a governor leaves his office, the harder it becomes to do so. If the governor is a real leader, hardly a day will go past when he is not to be seen in the parts of the prison where prisoners and staff come together. This visibility should be seen as supportive rather than inspectorial, particularly by staff. It will encourage committed staff to devote themselves wholeheartedly to their work. It will, of course, also have the effect of ensuring that middle-ranking staff who might also be tempted to stay in their offices dealing with the ever-present paperwork do not do so. A practical consequence of this way of leading is that governors, and other senior members of management, will not restrict their attendance to week-day office hours. On a regular basis they will be seen around the prison early in the morning, late in the evening, at night and at weekends.

To sum up the whole issue of leadership, there is clear evidence that the prisons with the most visible and consistent leadership are likely to be those which have the most humane atmosphere and the most positive culture. They are also likely to have efficient security systems and to provide a safe environment for staff and prisoners.

Good management

The modern prison is a complex organization which needs to be well managed. Before the present generation, few governors would have regarded themselves as managers. Until the middle of the twentieth century governing a prison was regarded in many instances as a task for retired army officers. The main duty was to make a ceremonial tour of the prison each day in the company of the chief officer. The 'governor's rounds' invariably began at 10.30 am and followed the same route each day, beginning with the orderly room, then passing through the various wings of the prison, into the workshops and ending with a ritualistic tasting of the lunch meal. Staff knew exactly when to expect the governor's visit, had the prisoners prepared and the area clean and tidy. Anyone who had the temerity to raise any issue with the governor without warning was likely to be called to see the chief officer very soon after the rounds had been completed. I remember a national conference some 30

years ago when a senior governor became irate at the proposal that governors would in future have some accountability for the budget of their prison. This governor made it very clear that had he wanted to be a book-keeper he would have chosen another career. His task was to be in charge of his prison and he did not intend to sully his hands with mere administrative matters. That was the responsibility of the steward, as the senior administrative officer was then known. This was a world which has been described in the memoirs of governors of the time: Rich (1932), Grew (1958) and Miller (1976). Times have changed since then, and rightly so. Modern prison management requires a high degree of professional skill and awareness. The American academic John Jacobs saw the beginning of this change in the USA when he was carrying out field research in Stateville Penitentiary in Illinois in the 1970s. While he was there a new warden arrived. Jacobs noted that this person 'brought to the prison a commitment to scientific management rather than to any correctional ideology… He stresses efficient and emotionally detached management' (1977: 103).

Given that the prison is a complex organization, it needs to be professionally managed. This means that the modern prison governor needs to have knowledge of a wide range of management skills, including strategic planning, personnel management, finance and budgeting and handling the media. He also has to have the ability to respond to the demands of ministers, senior officials and local, national and international inspectors, as well as community groups, in a way which meets their legitimate expectations without having a negative influence on staff and prisoners. Management is not an end in itself; rather, it is a means of achieving an end. In the prison context that end is what has been described at the beginning of this chapter as the legal purpose of the prison. There is a danger in any large organization that management can become an end in itself. When this happens we are left with what is often described today as 'managerialism'. This is a concentration on what are called processes and outputs rather than on outcomes. In common language, this means a concentration on how things are done and what the organization achieves rather than on the stated objectives of the organization.

There is no doubt that organizations that are well managed are likely to be run more efficiently, to be cost effective and to produce what is expected of them. At the same time, effective management is not sufficient of itself, especially in a prison system. The prison colonies of the Soviet gulag system were very well managed and were extremely efficient. But they are not models which we would wish to follow. It is also essential that prisons should operate within an ethical context. If one loses sight of this, there is a real danger that the perfectly proper insistence on performance targets and process delivery will encourage the ever-present danger of forgetting that the Prison Service is not the same as a factory which produces motor cars or washing machines. The management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues that go beyond effectiveness and efficiency. When making decisions about the treatment of human beings the question which must always be asked when considering any new managerial initiative is: 'Is it right?'

Selection and professional development of prison governors

If one accepts that prisons are highly complex organizations, it follows that special care needs to be taken in the selection and development of those who are to govern them. Reference has already been made to the tendency in the nineteenth and first half of the twentieth century to appoint former military men to govern prisons. Grew (1958: 15) describes how he was appointed straight from the Army to be deputy governor of Rochester Prison in 1922. Later in the twentieth century assistant governors were recruited from a variety of backgrounds, including some former prison officers, and were given a variegated training programme at the former Staff College in Wakefield. More recently there has been a tendency to recruit future governors straight from university or very shortly thereafter through what is known as an intensive development scheme. Following an assessment process, which includes psychometric and written tests, successful candidates undertake the same eight-week training course as prison officer recruits before spending a period as a uniformed prison officer, working in different prisons at different grades. During the course of this period the individual continues to be assessed and is supported by mentors and should be provided with a training programme to meet personal needs. A few years later the person can expect to be appointed as a junior governor, responsible for a discrete area or function of a prison. There have also been a few examples of individuals with business or administrative experience being appointed directly to senior grades.

In view of the complexity of prison governing and the demands now made of those who do so, the degree of personal development and training offered is woefully inadequate. A limited number of prison governors, usually at an early point in their careers, undertake some form of personal postgraduate study. The Masters Degree in Prison Studies at Cambridge University is an example, as are a variety of MBA degrees. However, these are all a matter of personal choice, unlikely to be either an advantage or a bar when it comes to progress. As an organization the Prison Service is seriously remiss in the paucity of training and development it offers to governors, although this failing applies also to prison officers.

So far we have concentrated on the qualities and skills which are required for the governors of all prisons. In addition to the generic skills which all must possess, specific skills are required in different settings. These settings include the following:

- Large inner-city prisons, which have a high turnover of remand and convicted prisoners, unpredictable populations with a high degree of mental illness, severe overcrowding and buildings which are several hundred years old.

- Prisons holding those serving very long sentences, some of whom will be amenable to opportunities for personal training and development, while others may be volatile and aggressive and may require to be held in high-security conditions.

- Prisons for women, who have needs which are very different from men which are often given a low priority because of their relatively small numbers.

- Prisons for young offenders, both juveniles and children.

The Prison Service provides no special development training, other than what is picked up by experience, for governors who work in these different environments. A governor can be transferred from one setting to another with little warning and be expected to know instinctively what to do.

Conclusions

So, what is to be concluded from this analysis of the role of the prison governor and the manner in which it has developed over the years?

The structure for the administrative management of prisons has changed significantly, particularly over the last decade. Since 1878 the prison system in England and Wales has been a highly centralized structure in broad terms but, until relatively recently, this centralization did not extend to minor matters of administration. Governors now have to meet increasingly specific central demands on a wide range of issues affecting the daily management of prisons and have to report to area managers and national headquarters on detailed performance. There is also constant oversight from internal auditors and external inspecting bodies. Many of these changes are the result of the Prison Service responding to the centralizing demands which government now makes of all public institutions. However, despite this centralizing tendency, the 'role of the governor in creating and shaping a good prison is crucial' (Bryans and Wilson 1998: 137). As individuals, governors still set the tone of their prisons and their method of governing can determine whether or not a prison is a place of decency, humanity and justice. As an organization the Prison Service recognizes this. Time and again the response from the Director General to critical reports on prisons from the Chief Inspector has been to remove governors who are thought to have failed in their task and to bring in new governors with the express instruction to 'turn the prison round'. The most successful governors today are those who can combine the skills of leadership and management. Neither on its own is sufficient; both are necessary.

The most important lesson to be drawn from our analysis is that the key role of the governor is not determined by administrative fiat. No matter how many policy-makers there are in prison headquarters, no matter whether the Prison Service is structured into regions, as it was in the past, or into areas, as it is now, or under regional offender managers, as it may be in the future, the basic role of the governor does not change. This is because it is determined by law; a law that has changed little since 1878. It defines the narrow purpose of prison in society. It confirms the close relationship that there should be between prisons and the courts they serve and it states clearly that the governor is the person charged with carrying out the order of the court.

Selected further reading

The literature on prison management is not extensive. The classic text on English prison staff, which includes extensive references to prison management, is Thomas, J. (1972) *The English Prison Officer since 1850: A Study in Conflict*. London: Routledge & Kegan Paul. More recently Bryans and Wilson, two former prison governors, have written on the subject in Bryans, S. and Wilson, D. (1998) *The Prison Governor: Theory and Practice*. Leyhill: Prison Service Journal. A number of interesting texts have been published in the USA. Most useful perhaps in this context is: DiIulio, J. (1987) *Governing Prisons: A Comparative Study of Correctional Management*. New York, NY: Free Press. A number of retired prison governors have written about their professional experiences. They include Rich, C. (1932) *Recollections of a Prison Governor*. London: Hurst & Blackett; Grew, B. (1958) *The Prison Governor*. London: Herbert Jenkins; and Coyle, A. (1994) *The Prisons We Deserve*. London: HarperCollins.

Notes

1 Although it should be noted that, in the late 1980s and early 1990s, one of the conditions of entry for new member states to the Council of Europe was that they were required to transfer administrative responsibility for their prison systems from the Ministry of the Interior to the Ministry of Justice. England and Wales and Spain are now the only two jurisdictions in the Council of Europe in which the administration of prisons is the responsibility of the Ministry of the Interior (Home Office).
2 The breakdown by gender of governors in charge of prisons in January 2006 was 73 per cent male and 27 per cent female (of whom one was in a privately managed prison). Given these proportions, for ease of reference governors are referred to throughout this chapter in the masculine.
3 In England and Wales, 94 per cent of all prisoners are male. For ease of reference all prisoners are referred to in this chapter in the masculine. The needs of women in prison are often quite different from those of men and are frequently overlooked. These matters are dealt with elsewhere in this book (see Chapter 11, this volume).

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Chapter 22

Measuring order and control in the Prison Service

Jamie Bennett

Introduction

There are 12,000 assaults officially recorded every year in prisons in England and Wales[1] and, in 2004, almost 50,000 incidents were reported, including absconds, attempted escapes, barricades, hostage incidents, self-harm and concerted indiscipline.[2] Research figures indicate that violence may be more prevalent than official figures suggest, with one extensive study reporting that 30 per cent of young offenders and 19 per cent of adults said that they had been assaulted during the last month, while 32 per cent and 16 per cent respectively, stated that they had assaulted someone else during the last month (Edgar *et al*. 2003). In itself, the level of violence and disorder in prisons is a matter of concern, but is also significant as order and control provide the foundation upon which successful prison performance is built. In the view of the Prison Service: 'without ordered control and safe prisons almost none of our other work can be done successfully' (2004a).

Prison managers are far from helpless in attempting to come to terms with violence and disorder. It has been argued by both practitioners (Wheatley 1997, 2002a) and researchers (DiIulio 1989; Sparks 1997) that the way prisons are managed can have a significant influence on order. During the last 15 years, the most significant development in the management of the public sector in general and prisons in particular has been the introduction of private sector practices in the guise of 'new public management' (Hood 1991; Pollitt 1993; Ferlie *et al*. 1996). Perhaps the most visible manifestation of this is the growth of performance measurement. However, while such measures may be effective where quantifiable performance indicators exist – such as 'financial profit' – it has been argued that it is less suited to measuring intangible societal values or general social conditions such as 'peace' (Hennessey 1990). It could therefore be argued that similar social conditions such as 'order' would be equally elusive to quantification. Within the prison context, performance measurement has also been criticized as inappropriate to the unique moral environment (Wilson 1995; Godfrey 1996). The focus of this chapter is to consider how

these techniques have been developed within the Prison Service to measure and manage order and control in prisons, and to consider whether these are effective.

In attempting to understand whether performance measures are effective, it is first necessary to consider the definition of 'order' and 'control', what causes disorder and what approaches are effective in maintaining order. These issues are explored in the first section of the chapter. The second section critically assesses performance measurement techniques used in the Prison Service and considers how far these reflect research into order in prisons, and therefore provide meaningful measures that can have a positive impact. The chapter closes by identifying the major themes emerging, including the increasingly 'eclectic' approach to performance measurement and the model of 'new public management' in the Prison Service.

Order and control in prisons

For the purpose of this chapter, the definitions of order and control that will be used are those formulated by Sparks *et al*. (1996: 119):

> *Order* – An orderly situation is any long-standing pattern of social relations (characterised by a minimum level of respect for persons) in which the expectations that participants have of one another are commonly met, though not necessarily without consternation. Order can also, in part, be defined negatively as the absence of violence, overt conflict or the imminent threat of chaotic breakdown of social routines.

> *Control* – the use of routines and of a variety of formal and informal practices – especially, but not only, sanctions – which assist in the maintenance of order, whether or not they are recognised as doing so.

These definitions show that 'order' is a general social situation, while 'control' is a variety of practices that can contribute to achieving 'order'. 'Control' is not in itself of value, but is only important for instrumental purposes, while 'order' is of normative as well as instrumental value in providing a foundation for the delivery of the work of prisons.

The causes of disorder in prisons

The causes of disorder have been widely debated, with two major explanations being proposed. The first is known as the psychological approach, or 'importation' model. This suggests that prisoners are anti-social and disruptive prior to their arrival in prison and simply continue to behave in that way. The second explanation is the sociological, or 'functional', model. This suggests that the coercive nature of imprisonment and the way that the institution operates are in themselves a cause of conflict.

On the psychological side, research has identified that some individual characteristics are predictive of violent conduct in prison. This includes age (younger prisoners are more disruptive, particularly under 25), offence (those convicted of robbery, aggravated burglary, attempted murder or assault are more likely to be disruptive, while those convicted of murder, manslaughter, sexual offences and drug offences are less likely to be so) and length of sentence (short-term offenders and remand prisoners are more disruptive) (Ditchfield 1997; Wheatley 1997). However, the likelihood of disruptive behaviour is highest when these factors are in combination (Ditchfield 1990 and 1997). It has further been suggested that prisons not only 'import' psychological problems but also other factors that may influence order, such as changing public values and attitudes to authority, and individual grievances against other criminal justice or state bodies (Morgan 1996). However, 'psychological' explanations have been criticized because the identification of 'disruptive' or 'control problem prisoners' is inconsistent between staff, establishments and over time (Bottoms 1992). It has therefore been suggested that such classifications are not merely based on objective prisoner behaviour but are also 'socially constructed' by staff, who may perceive or treat prisoners differently (King and McDermott 1990).

However, the psychological approach does not provide a complete explanation for prison disorder. While some prisoners are more likely to be 'control problems', individual prisoners respond differently in different environments and are managed differently by different staff (Bottoms 1992). This has led researchers to examine the institution of the prison itself. At its most extreme, this perspective asserts that prison is coercive by nature and prisoners will inevitably resist. Therefore 'there is no solution to the control problem in prisons, nor can there be' (King 1985: 187; see also King and McDermott 1990) and violence is a 'rational response' to inadequate conditions (Scraton *et al*. 1991). Alternatively, it has been suggested that prisons are 'subculturally warped', where staff and prisoners glorify violence, giving it spurious credibility (Toch 1994). More positively, research on special units for the most disruptive prisoners in particular shows that these prisoners can become more co-operative and less violent when managed in a different environment (Bottomley and Hay 1991; Walmsley 1991; Clare and Bottomley 2001). Within general rather than special prison units, it has also been demonstrated that institutional management can influence levels of order (DiIulio 1989).

There has therefore emerged an understanding that disorder is contingent upon both the characteristics of the prisoner population and the context of the organization. In a study of female prisons, it was concluded that 'almost two-thirds of the explained variance [between prisons]…in physical violence was attributable to institutional characteristics' (Manadaraka-Sheppard 1986: 187). While such a conclusion could not be uniformly applied to all prisons, it supports the view that there is much that prisons can do to influence and manage order. We now turn to the aspects of institutional management that can support the maintenance of order.

Maintaining order in prisons

Practitioners have described the methods available to manage order as either 'reactive' (i.e. used to reassert control after an incident) or 'proactive' (i.e. they prevented disorder occurring) (Barclay *et al*. 1994; see also Staples 1992). Reactive measures are 'control' measures used to re-establish order following a temporary breakdown, usually a violent incident. This includes adjudications, use of control and restraint, segregation and transfers. These are available in all prisons, but when and in what circumstances they are employed varies between prisons and this says as much about staff and organizational culture as it does about the behaviour of individual prisoners (King and McDermott 1995).

In respect of more 'proactive' measures that can support the achievement of good order, an important contribution was made by Sparks *et al*. in *Prisons and the Problem of Order* (1996) and by a series of articles by the authors on the same issue (Hay and Sparks 1991; Sparks and Bottoms 1995; Bottoms and Sparks 1997; Bottoms 1992, 1999). This research contrasted the approach taken in two high-security prisons, Albany and Long Lartin, and drew a distinction between 'situational' and 'social' approaches to achieving order.

Situational methods have been defined as:

- Measures directed at highly specific forms of crime;
- Which involve the management, design or manipulation of the immediate environment in which these crimes occur;
- In as systematic and permanent a way as possible;
- So as to reduce the opportunities for these crimes (Clarke and Mayhew 1980).

In prisons, this includes designing prisons in order to facilitate surveillance; using staff supervision and electronic surveillance technology; searching; controlling movements; removing opportunities (e.g. cash, tools, etc.); and segregating disruptive prisoners. In a comparison between a high-security prison in the UK and another in the USA, it was identified that design played a major part not only in making the prison safer but also in improving the amenities and quality of life of prisoners (King 1991; see Chapter 8, this volume). While situational approaches are important in practice, it has been argued that reliance on purely situational approaches is both unrealistic and undesirable. It is unrealistic as prison design, resources and human rights prevent the use of comprehensive surveillance (Toch 1994; Sparks and Bottoms 1995). It is undesirable for instrumental reasons as increased situational methods are likely to provoke further resistance (Cooke 1991; Sparks and Bottoms 1995), and for normative reasons, as highly intrusive measures undermine fairness and respect (Sparks and Bottoms 1995).

In contrast, social approaches attempt to alter the outlook of individuals, fostering an inbuilt resistance to crime through socialization and social relations. This includes such approaches as legitimizing authority, developing internal inhibitions, fear of penalties, or shame or censure (Sparks *et al*. 1996). In prisons this could be achieved through acceptable basic conditions,

such as accommodation and food; allowing prisoners to exercise reasonable responsibility; certainty and consistency in access to facilities, services and activities; effective grievance procedures; good access to families and friends for prisoners; using incentives and earned privileges; and good staff–prisoner relationships. Such approaches have found support from practitioners, researchers and in official reports (e.g. Dunbar 1985; Cooke 1991; Woolf and Tumin 1991; Barclay *et al*. 1994). The importance of social approaches is that they expand the issue of order beyond narrow, technical discussion into a broader context, linking it both to quality of life in prison and a moral climate of just and humane treatment (King and McDermott 1995).

Through these measures, it is argued that prisons can provide not only an efficient service but also one that is perceived as fair and humane (Sparks and Bottoms 1995). This may therefore create the conditions where the staff and prison regime are perceived as 'legitimate' – i.e. morally justified. By gaining this moral assent, this increases the degree to which prisoners accept detention and co-operate with the requirements of authority. Under these conditions, in both practical and moral terms, the prisoners have a 'stake' in the prison community (Dunbar 1985; Young 1987; Toch 1994). This stake may improve order as 'those who have a high investment in the system are not likely to seek to destroy it' (Woolf and Tumin 1991: 374). It has therefore been suggested that legitimation of prison regimes provides the best foundation for long-term improvements in order (Bosworth and Liebling 1995).

Staff–prisoner relationships play a particularly strong role in social approaches (Sparks and Bottoms 1995). Staff deploy a wide range of 'peace-making' skills and use their powers selectively through informed discretion (Liebling and Price 2001). The deployment of these skills may provide some of the explanation for the finding that experienced staff are less likely to be the victim of assaults than less experienced staff (Davies and Burgess 1988; Ditchfield 1997). These relationships are important for instrumental reasons because 'control is achieved, in the main, through positive staff–prisoner relations' (Crawley 2004: 158, see also Sparks *et al*. 1996). However, they also have normative value in creating a sense of fair and human treatment (Sparks and Bottoms 1995; Liebling and Price 2001).

Social approaches to achieving order have their critics. In particular, they are sometimes seen as giving too much control to prisoners (Jenkins 1987; Sparks *et al*. 1996). It has also been argued that, where it is not accompanied by increased social as opposed to self-interested values, providing a level of trust simply increases the opportunities for crime (Halpern 2001). This has led writers to conclude that situational and social measures need to be held in balance in order to be effective. Woolf argued that the three fundamental obligations of the Prison Service were security, control and justice and that these needed to be given sufficient attention individually and kept in balance (Woolf and Tumin 1991). Similarly, it has been argued that, by maintaining an appropriate balance, a 'smooth flow' of power is facilitated (Hay and Sparks 1991), which helps staff, prisoners and the organization to achieve their legitimate aims (Jenkins 1987).

In practice, this balance can be difficult to achieve and maintain (Sparks *et al*. 1996). This can be seen in the shifting emphasis in the Prison Service

since 1990. The Woolf Report, following the widespread and serious prison disorder of 1990, placed 'justice' and social approaches at the heart of prison management (Woolf and Tumin 1991). However, the escapes from two high-security prisons, Whitemoor in 1994 and Parkhurst in 1995, marked a shift back to situational measures such as physical security, searching and controls on property and family contact (Woodcock 1994; Learmont 1995). Staff–prisoner relationships were seen in terms of risk of intimidation and conditioning, marking a retreat from social approaches. These moves were viewed as achieving improvements in order, but at the cost of social values such as perceived fairness, relationships and participation (Liebling 2002). Having successfully reduced escapes and reasserted control, the Prison Service used this foundation to re-engage with social approaches, with 'the pursuit of a reconfigured legitimacy' (Liebling 2002: 100). This development was informed by the emergence of influential research about the role of prison officers and staff–prisoner relationships (Liebling and Price 2001) and the advocacy of 'decency' in prisons (Wheatley 2002b; also see Coyle 2003; Liebling 2004), with its emphasis on positive, respectful relationships. It has been argued that this has led to an approach to order described as 'a "situational-plus" model of social control, with a certain amount of self-governance added' (Liebling 2002: 136); in other words, situational measures provide the foundation of order upon which social methods are constructed.

In summary, this section has examined the concepts of order and control in prisons. It has considered the explanations for the causes of disorder and concluded that, while the nature of the prison population itself provides some explanation, there is significant opportunity for prisons to influence order. It has described how prisons use reactive measures to contain disruption, but also attempt to create the conditions in which order is maintained. The section then concluded by describing that those conditions are created by a mixture of situational and social methods that need to be held in balance, although that is not always readily achievable or a simple matter to maintain, as illustrated by the shifting emphasis during the last 15 years.

An overview of performance management in prisons

Prior to the early 1990s there was little objective measurement of the management of prison performance, other than the Prison Inspectorate (which became independent from the Prison Service in 1981) and boards of visitors (BOVs, now known as independent monitoring boards, IMBs). The BOV consisted of members of the community who worked voluntarily as the 'eyes and ears' of the Home Secretary – a virtual on-site inspectorate. However, until the early 1990s they also carried out disciplinary functions, so they had a conflict of purpose. As early as 1985, it was recommended that performance management could be further developed to reinforce the organizational philosophy; raise morale by demonstrating positive achievement; and provide a means of internal and external assessment (Dunbar 1985).

The late 1980s and 1990s saw the emergence of the new public management (NPM) movement (Hood 1991; Pollitt 1993; Ferlie *et al.* 1996), which sought

to reform public sector management practices. Although there is no single, agreed definition of what NPM is, four models have been identified (Ferlie *et al*. 1996):

1 *The efficiency drive*: using private sector practices to make the public sector more 'business-like'.
2 *Downsizing and decentralization*: looser, more flexible organizations, or strategic business units.
3 *In search of excellence*: based on human relations school, emphasizing the importance of culture.
4 *Public service orientation*: a fusion of public and private sector ideas with a distinct public service mission.

It has been argued that, in the criminal justice system, special problems are presented by the need to incorporate values, particularly 'justice', into this NPM framework (Raine and Willson 1995).

Within the Prison Service, the 'efficiency drive model' predominated initially, particularly between 1992 and 1994 when Derek Lewis, a successful commercial television executive with no prison experience, was Director General (see Lewis 1997). Reforms included setting quantifiable targets known as key performance indicators (KPIs) and introducing commercial competition through the opening of privately operated prisons. The later 1990s saw further development in performance management methodologies, including process auditing by a service-wide audit team and the development of a larger range of performance measures, known as key performance targets (KPTs), applied to individual prisons rather than the service as a whole.

The model for the contemporary performance management system was set out in the report, *Modernising the Management of the Prison Service* (Laming 2000). This described the inter-relationship between different methods of measuring prison performance (see Figure 22.1). This model was developed in advance of, but applying similar principles to, government-wide guidance on performance measurement (HM Treasury *et al*. 2001). It was aimed at an external audience (including politicians and citizens) in order to improve accountability, and internally, to reflect the organizational priorities and act as a driver for improved performance (Wheatley 2005).

These reforms have not been universally welcomed in the public sector generally, or in prisons particularly. It has been suggested that defining performance measures is difficult as there is often little consensus among stakeholders about what is important (Cave *et al*. 1990; Smith and Goddard 2002), a fact that is relevant in prisons given the complex, even contradictory, aims set out in the Prison Service Statement of Purpose.[3] Priorities can also change rapidly in response to political imperatives or public concerns (Nash and Savage 1995). Public services are often complex, value-laden and intangible, making them difficult, even impossible, to measure (Hennessy 1990). As a result, the measures that have been developed have been criticized as 'incomplete (rarely capturing all acknowledged aspects of performance), prolix (compromising numerous indicators of performance) and opportunistic (measuring what is measurable rather than developing new systems for PM
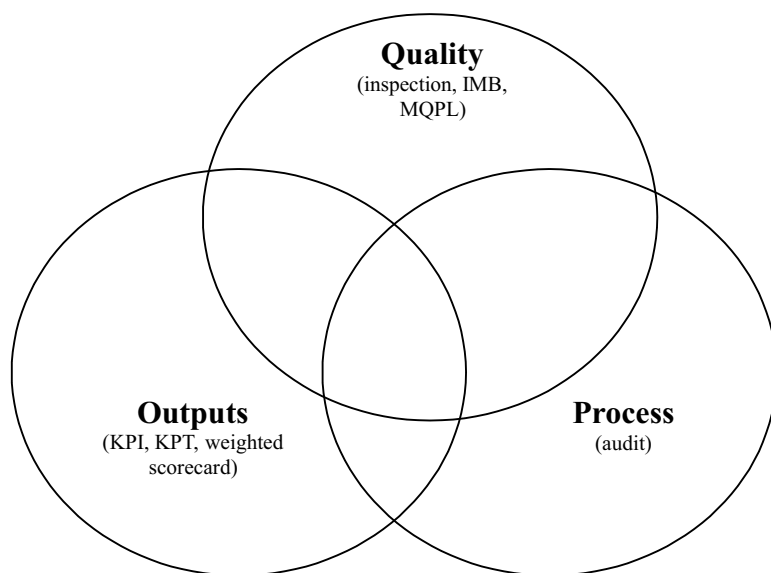
Figure 22.1 The inter-relationship between different methods of measuring prison performance
Source: Adapted from Laming (2000)

purposes)' (Smith and Goddard 2002: 250). In prisons, the development of performance measures has been criticized for increasing the administrative burden on managers (Selby 1994) and undermining the moral dimension of prison management (Wilson 1995; Godfrey 1996).

This raises the question of how the Prison Service has attempted to develop measures for the complex, intangible and value-laden, but nevertheless critical, issue of order. Below, the range of measures is reviewed critically, including output measures, process audit and quality measures.

Measuring outputs

Output measures attempt to create quantifiable measures as indicators of performance. In the Prison Service, they currently take the form of 45 KPTs (although approximately 40 will apply to each prison). These cover a wide range of areas in five categories: 'decency and health'; 'organizational efficiency and effectiveness'; 'regimes'; 'safety'; and 'security' (HM Prison Service 2005a).

Producing this large range of measures creates difficulties in getting an overall picture of performance, making comparisons over time or between prisons, and differentiating between more or less important targets. In order to address these issues, an analytical tool was developed, known as the 'weighted scorecard' (Kaplan and Norton 1996, 1998). This gives the prison a numeric score calculated by taking account of performance and the relative importance of the various targets. The scorecard produces four reports:

1. Performance relative to the target set for the current financial year;
2. Performance improvement i.e. compared to performance in the previous financial year;
3. Performance against standard i.e. an expected performance for similar prisons;
4. An overall score combining all of the above measures (HM Prison Service n.d.).

The scorecard is available to prisons in an IT package. This presents the results for the prison and allows analysis to identify strengths and weaknesses. It also lists the performance of all prisons, which has led this to be compared with a 'league table' (Wagstaffe 2002).

The principal output measure for assessing order in prisons is the level of assaults. This has an intuitive appeal as there is a commonsense assumption that assaults will indicate the level of disorder. It is also appealing externally as the assaults rate is understandable to a public versed in crime figures reported by the police. However, the measurement of assault has been widely criticized as unreliable. The main criticism has been that, previously, the measurement of assaults was based on guilty findings at adjudications and therefore did not reflect the 'dark' figure of unreported and unrecorded assaults (Davies 1982), a figure that research indicates may be extensive (Edgar *et al*. 2003). It has also been argued that, as officers use discretion, alternative but similar charges may be used or minor infractions ignored (King and McDermott 1995; Sparks *et al*. 1996; Liebling and Price 2001; Liebling 2004). It has therefore been concluded that, while measuring assaults may be useful, it is not reliable (Wagstaffe 2002).

In 2003, the Prison Service moved from a measure of all assault adjudications to recorded 'serious' assaults, whether this resulted in an adjudication or not.[4] While this may curb some of the worst excesses, it does not resolve the fundamental problems regarding reporting and recording. Indeed, when the service failed to achieve the target, they attributed this to 'more accurate and complete data, which we believe explains the apparently high rate of serious assaults' (HM Prison Service 2004b). In other words, previous recording was not reliable, and the report does not say what has been done to address this.

In light of these concerns, it has been argued that a wider range of measures would be required to give a full view of the level of assaults, such as injuries requiring medical attention; the numbers of prisoner requests for 'protection'; the numbers of staff days lost from work following incidents; and periodic staff surveys (King and McDermott 1995); or levels of bullying, minor and major disorder, and the use of incentives and earned privileges (Liebling 2004). This seems to have been tacitly conceded by the Prison Service, as the instructions on tackling bullying in prisons suggest that, to measure the extent of the problem, a survey of prisoners should be carried out every two years and a much wider range of factors should be considered: absconds, assaults, applications to IMB, escapes, fights, requests for 'protection', refusal to work, request for wing transfer, self-harm, security information reports, physical injuries and bullying referrals (HM Prison Service 1999). This is also apparent

in the requirement on prisons to complete daily and weekly 'stability audits', which consider the prison population, the number of adjudications, assaults, serious incidents, security information reports, short-term staff sickness, prisoners in segregation and the number of prisoners on the 'basic' level of the incentives and earned privileges scheme (HM Prison Service 2005b). From this information, prisons assess whether they are faced with high, medium or low risk to stability. These examples indicate a division between measures that are useful for external purposes (the simplified and limited assault measure) and the wider, more complex information that is used for internal purposes, more realistically assessing order. In other words, there is a difference between what is *politically* important and what is *operationally* important.

However, even when these wider measures are considered, this approach remains conceptually weak because these factors do not measure order or control, but measure *disorder* and *loss of control*. In other words, they measure 'reactive' management techniques. Such figures provide an incomplete picture as they do not reflect 'proactive measures' and therefore a low level of assaults does not necessarily indicate good order, merely the absence of disorder. For example, one study described a prison where the 'latent level of hostility and tension seemed, if anything, greater than in the other institutions' (King and McDermott 1995). However, due to the paucity of the regime and the extensive periods spent in cell, there were limited opportunities for assaults to take place and therefore the assault rate was low.

A second KPT, used more as a preventative tool, is KPT 33: 'Score 3 prisoners.' A Score 3 prisoner is one who is under 25 years of age, sentenced to less than four years and currently convicted of robbery or burglary (HM Prison Service 2005b). Such prisoners are considered to be more likely to commit disciplinary offences and increase the risk of disturbances. This is based on research of prisoners involved in such disturbances (Ditchfield 1997). All Category C prisons are provided with a maximum capacity for holding Score 3 prisoners based upon their physical security and situational control measures, or 'control capability'. This ranges from 8 per cent for those with a poor control capability, to 18 per cent for those identified as very good. Although the overall impact of these measures has not been evaluated, this is an example of the Prison Service incorporating the 'importation' model into performance measurement.

There are a number of other targets that contribute to the maintenance of order – in particular, purposeful activity, time unlocked, staff training, overcrowding and the various rehabilitation targets. However, these have only an indirect impact and cannot be directly, causally linked to levels of order and control. They cannot therefore be used, in themselves, as proxy measures.

Output measures are continually refined and developed. The two race relations KPTs, one for staff and one for prisoners, provide an illustration (Spurr 2005). These KPTs are 'mini-scorecards', providing a composite of a number of measures. For prisoners, this includes aspects of the race relations and racial incident audits, scores from prisoner surveys, scores from visitor surveys and information from ethnic monitoring. For staff it includes aspects of audits, the percentage of staff employed from minority ethnic groups and the percentage

employed in prisoner contact roles. This is an attempt to 'strike a balance between processes (eg audit measures) and outcomes (eg ethnic monitoring data) [and]…qualitative measures…that gauge perception e.g. through the use of prisoner and visitor surveys' (Spurr 2005). Although the validity and impact of such measures are still to be evaluated, this methodology illustrates possible future developments. Given the range of factors suggested in relation to order, it may present a significant opportunity to build a more effective output measure and to bridge the gap between politics and operations.

Process audit

Defined minimum standards have received the support of prison reformers (Casale 1984) and have been adopted as a basis for international conventions on prisons (Penal Reform International 1995). Standards became more widely used in the Prison Service in the mid-1990s, and the auditing of these has developed extensively. Currently there are 61 performance standards, each containing a number of 'baselines' that define in detail the work that must be completed (HM Prison Service 2004c).

Each prison has its own in-house audit team, which conducts audits of all standards over a two or three-year period, although some high-priority standards will be audited annually (e.g. security) (HM Prison Service 2005c). The Prison Service also has its own Standards Audit Unit, which visits annually to check the quality of in-house auditing, every two years to cover security and every four years to cover other standards (in practice this will cover a number of high-priority standards and a range of other baselines, which are identified as 'critical'). Every audit, conducted by both in-house and external auditors, results in a percentage score being awarded and an action plan being developed to address non-compliant areas.

Operationally, it has been asserted that audit is an important means by which managers can ensure that required work is being done (McDonnell 2000); indeed, this was the basis upon which it was developed (Learmont 1995). However, process audit has been criticized on the grounds that it is not holistic and therefore there may be a gap between an audit compliant procedure and a good-quality one (Bryans 2000). For example, a prisoner complaint may be answered within the required timescales, but may be inadequately investigated or explained. In terms of order, evaluation of well-performing prisons has indicated that a holistic approach is required, involving leadership, good communication and a vision that is shared by all staff, rather than procedural compliance alone (Sparks 1997).

However, it has been found that, despite some important exceptions, there is a relationship between audit scores and the results of a measure of the quality of prison life (MQPL) (described further below): prisons that performed well on audit also performed well on MQPL (Liebling 2004). Further exploration has shown that, while there is a relationship on overall scores, in individual areas, such as sentence planning, there is not a good 'fit' between audit results and the relevant MQPL dimension score. This is being explored further in order to inform greater integration between the

measures (Liebling 2005) but it suggests a more quality-focused approach is required: identifying those procedures that support good quality and therefore provide a more meaningful measure. Although this is a long-term project and may lead to some duplication between measures, it does highlight the value of MQPL as an operational research tool as well as a performance measure.

In considering order, the most relevant standards are: 'Adjudications' (2); 'Categorization and allocation' (3); 'Close supervision centres' (5); 'Incentives and earned privileges' (25); 'Incident management' (26); 'Violence reduction' (53); 'Security' (54); 'Segregation units' (55); and 'Use of force' (61). Space will not allow for a consideration of all these, so the standards on 'Security' and 'Violence reduction' will be used as an illustration.

The 'Security' audit covers areas including management of tools, searching, supervision of prisoners, keys and locks, and the management of escorts (including the use of cuffs). These are the core elements of the situational approach to achieving order. As situational approaches are essentially design and technology led and attempt to minimize discretion and individual autonomy, the fact of compliance is in itself a sufficient measure of performance. Of course, individuals may use situational measures incorrectly (for example, issuing a tool without using the proper procedure, not fastening cuffs correctly or leaving gates unlocked), but this is precisely what is assessed in a process audit. It is therefore suggested that process audit is particularly well suited to measuring situational measures.

The 'Violence reduction' standard has 16 baselines, including requirements to produce statements, policies and procedures and to communicate these to staff and prisoners (eight baselines); to have a multidisciplinary team in place who must consider relevant information (five baselines); to complete cell-share risk assessment forms; to investigate unexplained and non-accidental injuries; and to offer opportunities to prisoners to participate in the strategy. It can be seen that, aside from investigations and cell-share risk assessments, much of the standard is focused at the managerial level rather than front-line service delivery. In respect of investigations and cell-share risk assessments, no quality threshold is prescribed; the requirement is simply that there is evidence that they are completed. It could be argued that there is therefore a 'gap' between process and quality. One baseline requires prisons to produce 'local publicity, including posters or similar images'. This is the sole requirement identified as measuring how a prison 'builds of a culture…that supports non-violence' – in other words, the conditions for social order. It is easy to see that this measure is unlikely to contribute significantly to building a positive culture in itself. This illustrates the limited potential of process audit to measure social approaches to achieving order.

It has been argued here that process audit is particularly well suited to measuring situational measures, but limited in its ability to measure social approaches, although integration with MQPL may inform more meaningful development of this. However, it does not necessarily follow that what is advocated is that the number of baselines audited should be drastically reduced. It may be that, while measures such as publicizing the prison's commitment to reducing violence may not significantly contribute to creating

a culture that supports non-violence, making such a statement may be important *in itself* – i.e. for normative rather than instrumental reasons. It is therefore argued that the purpose of process audit needs to be reconsidered. Rather than used in an indiscriminate way, it should be focused on those areas that it is particularly suited to measuring (e.g. situational measures), on processes that are important for normative reasons and on specific policies that are shown to support quality through research using MQPL.

Assessing quality

The third element is quality, or the overall atmosphere and experience of prison life – issues that are not easily quantifiable (McLaughlin and Muncie 1994). This was initially addressed through three forums: area managers' visits, the role of the IMB and HM Inspectorate of Prisons. However, this has now been supplemented by MQPL, which is considered in the next section.

Each prison is managed in a geographical area, led by an area manager (usually an experienced former governor). Area managers make regular, documented visits to the prisons in their area. These reports attempt to look beyond the performance information to get a sense of what is often described as the 'feel' of the prison (Wagstaffe 2002; Wheatley 2005). IMBs report annually on the welfare of staff, prisoners and the state of the buildings, 'providing a voice for the community in setting out what we expect to be done in our name' (AMIMB 2005). The Laming Report (2000) called for IMB reports to be 'revitalized' and, in response to this, guidance has been produced to structure the work of boards (AMIMB 2005). The section of this guidance concerning 'Security, order and control' sets 126 questions covering order and control, security, control and restraint, use of segregation, management of incidents, adjudications and transfers. The section on 'Order and control' covers the Incentives and Earned Privileges (IEP) scheme, publication of rules, staff–prisoner relationships, the investigation of 'suspicious' injuries, the use of CCTV and the use of 'unofficial' punishments. In this way, the reports address both situational and social control measures. As no specific evaluation has been conducted, it is not clear how far this provides 'revitalized' accountability.

HM Inspectorate of Prisons conduct a full announced inspection of each prison every five years. Their purpose is 'To provide independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of "healthy prisons" in which staff work effectively to support prisoners and detainees to reduce re-offending or achieve other agreed outcomes' (www.homeoffice.gov.uk/justice/prisons/inspprisons/). Reports are informed by standards, called 'expectations', derived from the United Nations' 'healthy prison' criteria. These criteria cover:

- Safety – that prisoners, even the most vulnerable, are held safely.
- Respect – that prisoners are treated with respect for their human dignity.
- Purposeful Activity – that prisoners are able, and expected, to engage in activity that is likely to benefit them.

- Resettlement – that prisoners are prepared for release into the community, and helped to reduce the likelihood of reoffending (HMCIP 2004a; see Chapter 1, this volume).

Independent inspection in the UK is recognized internationally as a standard of excellence (Casale and Bennett 2005). These reports potentially provide a rounded picture of establishment performance: 'a well informed and detailed assessment of quality' (Liebling 2004). However, the reports have also been criticized for being subjective, without a clear, consistent measurement (Laming 2000; Liebling 2004). The publication of *Expectations* attempted to address this concern (HMCIP 2004a). HMCIP has also started to award a numeric score to each prison inspected, from one ('The prison is performing poorly against this healthy prison test') up to four ('The prison is performing well against this healthy prison test') (Newcomen 2005). This provides an immediately understandable overall assessment, but is also being used as a risk assessment tool, with less well performing prisons receiving quicker, more detailed and more regular unannounced follow-up inspections. It will be interesting to see whether in the future these assessments correlate with the Prison Service's own four-level scoring system, described below.

In relation to 'Good order', there are 60 detailed expectations covering security and rules, discipline, and incentives and earned privileges. The overarching expectation is:

Security and good order are maintained through positive staff–prisoner relationships based on mutual respect as well as attention to physical and procedural matters. Rules and routines are well-publicized, proportionate, fair and encourage responsible behaviour. Categorization and allocation procedures are based on assessment of a prisoner's risks and needs; and are clearly explained, fairly applied and routinely reviewed (HMCIP 2004: 97).

These three approaches to assessing quality are more impressionistic than other approaches, and are based on structured judgement rather than quantifiable measures. Potentially this means that they can capture the 'feel' of a prison and can assess social approaches and the balance with situational measures in a more holistic way. However, there are considerable complexities and tensions in this. The assessments may conflict with each other and their 'looser' nature means that the reports are often considered subjective, contestable or even controversial.

Measuring the quality of prison life

At the Prison Service conference 2002, Phil Wheatley, now Director General of the Prison Service, set out the importance of 'decency' in prisons. As well as some explicit measures, he also set a general test, regarding 'whether or not staff would be happy with their relatives being held there' (HM Prison Service 2001). This reinvigorated interest in the moral dimension in prison

performance. At more or less the same time, research developments were taking place looking at a quality measure for prisons. This research, exploring the values of both staff and prisoners, led to the development of a tool to measure the quality of prison life (MQPL) (Liebling 2004). This uses prisoner questionnaires and focus groups in order to assess the following areas:

- Relationship Dimensions (Respect, Humanity, Relationships, Trust, Support)
- Regime Dimensions (Fairness, Order, Safety, Well-being, Personal Development, Family Contact, Decency) (Liebling 2004).

Liebling's work has received a positive reception from practitioners (Bennett 2005; Newell 2005) and, in 2004, became an integral part of Standards Audit Unit visits, and prisons will be assessed every two years (HM Prison Service 2005c). Although the author have admitted to 'mixed feelings' about the adoption of this methodology within a managerialist framework, they support the pragmatic effect and are working with the Prison Service to develop the tool further (Liebling 2005). This measure is important as it takes audit beyond process into quality. This also gives prisoners a direct stake in the measurement of prisons and incorporates an 'explicitly moral element' into prison performance (Liebling 2004).

The author describes the 'moral performance' of prisons as 'those aspects of a prisoner's mainly *interpersonal* and material treatment that render a term of imprisonment more or less dehumanizing and/or painful' (Liebling 2004: 473, emphasis in original). Although broader, this is linked to notions of legitimacy and decency, and has been described as 'legitimacy-plus' (Liebling 2005). These ideas are critical to creating the conditions for social approaches to maintaining order.

However, there are a number of potentially controversial issues arising from the application of MPQL. First, as acknowledged by the author, there is a risk that, by focusing on the moral aspects of imprisonment and quality of relationships, the prison moves from legitimacy to 'appeasement', where there is insufficient exercise of staff control. This was highlighted by the evaluation of Doncaster, where MQPL results were among the highest, but this masked a situation where staff had insufficient distance and scepticism about prisoners, which contributed to two escapes (Liebling 2004). Trying to get the balance right is difficult, perhaps even unobtainable or impossible to maintain for prolonged periods. The authors acknowledge that, while MQPL reflects social values that contribute to order, the tool will not, in itself, measure whether a proper balance between situational and social measures has been achieved: 'it is extraordinarily difficult to pursue respect and security values simultaneously' (Liebling 2004: 442). In light of this, the authors suggest that '[security] may be one dimension of prison life where audit procedures constitute a more suitable approach to evaluation' (2004: 444). It has similarly been argued above that process audit is particularly well suited to measuring situational approaches. However, the use and extent of situational measures are not 'morally neutral' and cannot be isolated, which will have an impact on prisoner behaviour and the overall prison culture (Cooke 1991; Sparks

et al. 1996). This therefore needs to be considered a limitation of MQPL in measuring order, as acknowledged by the author.

Another potential difficulty with MQPL is that results are not 'user-friendly'. They are complex, covering many dimensions, and are displayed as the mean score on a five-point Likert scale. This could be improved by expressing these results as a percentage, although such a move may be anathema to the author as an example of 'the worst excesses of managerialism' (Liebling 2005). While it may improve accessibility if an overall percentage score is derived from the mean of the individual dimension scores, it is not clear that this provides a valid measure, despite its presentational attractions. This complexity also limits external use and as a result, MQPL receives only a passing mention in the annual report (HM Prison Service 2004b).

Despite these concerns, and the fact that MQPL remains to be evaluated over time as a management tool, it is the most significant new development in prison performance management this century. It provides a tailored, prison-specific tool that attempts to make values and quality, or the 'feel' of a prison, measurable, and it introduces a specifically moral element into performance measurement. This is crucial to all aspects of prison performance, including order.

The Benchmarking Programme

With such a wide range of performance measures there is a problem that this is complex to analyse and prisons will do well on some measures and less well on others. In order to draw these together into a 'coherent whole' (Laming 2000), the Benchmarking Programme was introduced, identifying the overall 'performance level' of each prison (HM Prison Service n.d.). The four performance levels are as follows:

- *Level 4*: exceptionally high performing, consistently meeting or exceeding targets, no significant operating problems, achieving significantly more than similar establishments with similar resources.

- *Level 3*: meeting the majority of targets, experiencing no significant problems in doing so, delivering a reasonable and decent regime.

- *Level 2*: basically stable, secure and providing a limited but decent regime; experiencing significant problems in meeting targets and/or experiencing major operational problems.

- *Level 1*: failing to provide secure, ordered or decent regimes and/or has significant shortfalls against the majority of key targets. There are no prisons at this level currently.

The performance level takes account of all measures and assesses performance in achieving the aims of the Prison Service, including maintaining good order. The performance levels for prisons are approved by the Director of Operations or the Director of High Security Prisons, who are advised by experienced operational managers and performance management specialists.

Prisons that fall into Level 1 or have been underperforming consistently may be subject to performance testing. This is a supported and resourced opportunity for that prison to plan to address performance deficits. If that plan is not accepted, the prison risks being offered to the private sector without the opportunity for a further in-house bid. All other prisons that do not achieve Level 4 must, during a seven-year cycle, undergo performance improvement planning. This provides a robust diagnosis of performance, supported by external expertise. Establishments that consistently maintain Level 4 and demonstrate potential to maintain an excellent standard may be awarded 'high-performing prison' status. This results in increased flexibility to use resources to reward staff or develop prison regimes.

The Benchmarking Programme is significant as it links performance measurement to specific management actions, whether that is high-performing prison status, performance improvement or performance testing. In this sense it can be seen as a move from performance *measurement* to performance *management*. It can also be seen as a form of risk assessment, targeting attention on those establishments that are underperforming. This follows the principles of good practice in risk management and organizational development (Johnstone-Bryden 1995; Rainey 2003). In practice, it is possible to point to individual prisons, such as Leicester and Reading (both of which underwent performance testing in 2002) or Dartmoor (which underwent testing in 2003), as examples of where this method has contributed to substantial improvements in performance and culture (see HMCIP 2003a, 2003b, 2004b), although there are also others, such as Liverpool and Wandsworth (which underwent performance testing in 2003 and 2004, respectively), where fundamental and sustained improvement has been more elusive (HMCIP 2004c, 2004d). Of course, incidents can still occur spontaneously (Laming 2000) and external factors, such as increasing prisoner population, may have an adverse effect, which cannot be controlled (HM Prison Service 2004b). However, benchmarking is a significant development that has enjoyed some success and has provided a systematic approach to risk management, including order.

A comment on the National Offender Management Service

Prison management has entered a period of major change, heralded by Patrick Carter's report, *Managing Offenders, Reducing Crime: A New Approach* (2003). This report resulted in the establishment of the National Offender Management Service (NOMS), a commissioning body for criminal justice services, including prisons and probation, which also has a stake in sentencing guidelines. Two major aspects of this report are relevant to prisons. First, NOMS is developing new, more extensive measures of reoffending and there is potential for this to become a more significant element in performance measurement; indeed, it may become predominant. Secondly, the organization is reviewing commercial competition. The Carter Report states that there is limited private sector interest in operating prisons in England and Wales due to the fact that only newly constructed prisons and poorly performing prisons are subject to competition. The report recommends that, in order to enhance

performance and encourage greater private sector interest, 'contestability' should be improved by identifying wider opportunities for contracting out ancillary services and offering public sector prisons for routine market testing, irrespective of their performance. This would operate in a similar way to how contracts for private prisons currently work. These contracts are awarded for a defined period, at the end of which there is an open competition for the contract. It therefore appears that competition rather than improvement will provide the rationale for performance measurement. Prisons will have to compete for business 'based only on their cost effectiveness in reducing reoffending' (Blunkett 2004).

The first competition, for the cluster of three prisons on the Isle of Sheppey in Kent, was announced in March 2005. This was a 'test case' of 'contestability' as none of the prisons was underperforming (NOMS 2005a). However, following ministerial intervention, the competition was suspended and, instead, the prisons were provided with a time-bounded opportunity to present a plan to develop their performance, tied to a wider national reform package agreed with the Prison Officers' Association (NOMS 2005b). Although the reform package floundered, the public sector proposal for the prisons was still accepted (Home Office 2005). This case showed that the pace and extent of the development of competition may not be as extensive as was originally conceived.

Although these developments are still emerging and evolving they nevertheless represent important changes in the use and purpose of performance measurement in prisons, marking a shift in both rationale and priorities.

Conclusion

The most obvious conclusion to be drawn is that there is an extensive and complex range of methods available to measure prison performance. While this 'eclectic' mix is not unique (Flynn 2000), the extent of these developments and the rigour with which they have been adopted illustrate that the Prison Service views performance measurement and managerialism as techniques that work (Wheatley 2005). As order is complex, intangible and difficult to measure, such a diverse approach is necessary. With the mix of situational and social approaches, and the balance between them, a range of tools is required to make meaningful measurement.

However, not all measures are treated equally. Key performance indicators and targets remain the most prominent measure, particularly in external and political accountability, despite their weaknesses. The primacy of such measures in the public sector was challenged during the 2005 general election campaign when the Prime Minister came under pressure with regard to the perverse effects of targets set for appointment times at GP surgeries. In response to this, he acknowledged that the use of targets had got out of control (Wintour and Carvel 2005). Although it is yet to be seen how this may affect prisons in the future, it may be that a more diverse range of measures receives public prominence as well as operational use.

The second issue that emerges from this chapter is that there is scope for better co-ordination and consistency between performance measures. In relation to order, it could be argued that audits are best suited to measuring situational approaches; MQPL is most appropriate when measuring social approaches; and IMB and inspection are better suited to describing the balance between these. The development of the race relations KPTs also illustrates how composite measures could be developed to incorporate these different elements. In addition, the moves to use MQPL as an operational research tool to inform the development of other measures, particularly audits, also show that greater co-ordination may be possible. However, such a neat division and framework appears to be emerging incrementally rather than systematically.

Perhaps the most important issue is that the developments described suggest a shift in the model of NPM being used by the Prison Service. Although when it first emerged, performance measurement was informed by the 'efficiency drive' model, the re-emergence of an explicitly moral agenda presents a challenge to this orthodoxy and reflects an alternative model of NPM, more akin to the 'public service orientation' model. In particular, the new focus on measures of quality, the focus on the service users (i.e. prisoners through MQPL), the reinvigoration of community representation through the IMB, a focus on social benefits (i.e. reducing reoffending) and the reassertion of distinctive values (i.e. 'decency') all reflect this model. It has been argued that there is a wider shift in criminal justice from simple efficiency to re-engaging with values – the efficiency gains of recent years providing the foundation for a new concern with morality (Raine and Willson 1997; Caines 2000). As with the approach to order, where it has been argued that the improvements in situational methods during the 1990s provided a foundation to re-engage with social approaches (Liebling 2002), it could also be argued that the efficiency drive of the 1990s has become institutionalized and normalized (McLaughlin *et al*. 2001), providing a foundation upon which to re-engage with wider values. In contrast to this, the 'contestability' approach of NOMS reflects the 'efficiency drive' model. There is therefore significant tension within the management of prisons as to which model will predominate. The Isle of Sheppey 'test case' in 2005 could be seen as a conflict between these models, with the emerging 'public sector orientation' model living to fight another day.

Performance measurement has undergone major changes over the last 15 years. Increasing sophistication and the emergence of a revised public service orientation have significant implications for order in prisons, by increasing the prominence of social approaches and issues of legitimacy, within a foundation of situational measures. In this way, performance measurement is playing a part not only in developing managerial practices but also in supporting the conditions for fairer, more decent and safer prisons.

Selected further reading

Arguably the most important book in understanding order and control in prisons is Sparks, R., Bottoms, A. and Hay, W. (1996) *Prisons and the Problem of Order*. Oxford:

Clarendon Press. This highlights the distinction between situational and social control measures and acknowledges that the success of a prison is based on its ability to find an equilibrium between these measures. Ferlie, E., Ashburner, L., Fitzgerald, L. and Pettigrew, A. (1996) *The New Public Management in Action*. Oxford: Oxford University Press is a key text exploring NPM in the UK. This approach is used to characterize the public management reforms of the 1980s and 1990s, including the increasing use of techniques adopted from the private sector. The book sets out the diverse nature of NPM and describes how this is operated in different organizations. Commissioned in 2000, following the appointment of a new Director General and Deputy Director General of the Prison Service, Laming, Lord of Tewin (2000) *Modernising the Management of the Prison Service: An Independent Report by the Targeted Performance Initiative Working Group*. London: HMPS, reflects a desire to set a new agenda for improved performance management. As with many commissioned reports, it could be criticized for being under-researched and merely confirming a preordained direction in prison management. Nevertheless, it provides a blueprint for performance management in the Prison Service. Liebling, A. assisted by Arnold, H. (2004) *Prisons and their Moral Performance: A Study in Values, Quality and Prison Life*. Oxford: Clarendon Press, provides the foundation for perhaps the most important new development in performance management in prisons. The book includes the results from research at five prisons into quality of life. The results have been adapted by the Prison Service into a performance assessment tool (MQPL) and an operational research tool being used to refine other measures such as audit. Newcomen, N. (2005) 'Recent changes in the inspection of places of custody', *Prison Service Journal*, 161: 49–52 is an article written by the Deputy Chief Inspector of Prisons, providing an overview of developments in the Inspection process. Finally, Coyle, A. (2003) *Humanity in Prisons: Questions of Definition and Audit*. London: International Centre for Prison Studies, provides tools for assessing prisons based upon international prison laws and conventions. These include a guide to examining physical conditions, surveys, and interview schedules for staff, prisoners and visitors. The book provides a highly practical guide which practitioners can use to gain a rich and rounded picture of prison performance. The major advantage is that the tools not only focus on problem identification but also help to provide clear follow-up actions.

Notes

1 Figures provided by the National Operations Unit in the Prison Service show that, in 2002, there were 11,481 recorded assaults; in 2003 there were 11,773; and in 2004 there were 12,433.
2 Figures provided by the National Operations Unit in the Prison Service show that, in 2002, there were 35,179 recorded incidents of all types; in 2003 there were 44,814; and, in 2004, 49,572.
3 'HM Prison Service serves the public by keeping in custody those committed by the courts. It is our duty to treat them with humanity and help them lead law abiding and useful lives in custody and after release.'
4 The definition of a 'serious assault' is: 'Assault on any person, including fights, if resulting in detention in outside hospital as an inpatient, medical treatment for concussion or internal injury, fractures, scalds and burns, stabbing, crushing, extensive or multiple bruising, black eye, broken nose, lost or broken tooth, cuts requiring suturing, bites, temporary or permanent blindness or sexual assaults' (HM Prison Service 2005a).

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Chapter 23

Inspecting prisons

Richard Harding

Understanding the context: the limits of standard accountability mechanisms

Closed institutions of all kinds – prisons, juvenile detention centres, police lock-ups, secure psychiatric wards, immigration detention centres and similar custodial services – pose accountability challenges for democratic societies. An effective inspections system seems on balance to be the best model, and this chapter aims to describe the role of Prison Inspectors in prison management accountability, using the examples of England and Wales, and Western Australia, to draw points of synthesis and comparison. The chapter also draws on a further example of inspection and accountability – that of the European Committee for the Prevention of Torture. This organization acts as an inspection system for closed custodial institutions in all 46 nations of the Council of Europe.

Reactive accountability: Royal Commission and special inquiries

Quite often, accountability processes only cut in when the damage has already been done and an inquiry has been held. These situations include major prisons riots, such as the riots at Bathurst and staff misconduct at other prisons in New South Wales, Australia, which led to the 1978 Royal Commission Report (Nagle 1978) and, in the UK, the torching of Strangeways and six other prisons which resulted in the 1991 Woolf Report (Woolf and Tumin 1991). Sometimes prisons are called to account following a long trend of avoidable custodial deaths – e.g. the 1990 Australian report of the Royal Commission into Aboriginal Deaths in Custody (Johnson 1991).

When situations have been allowed to get to such extreme levels of crisis, governments at least tend to take the subsequent recommendations seriously and make genuine attempts to implement them. Thus, the Woolf Report was

the catalyst for the most radical improvements to the British prison system in the second half of the twentieth century, and all Australian governments likewise tried to respond positively to the Royal Commission into Aboriginal Deaths in Custody.

However, these responses inevitably lose momentum and eventually peter out (Brown 2004). There are complex reasons for this, but a crucial factor is that they are 'one-off' recommendations or requirements, and usually no machinery is put in place to check and maintain continuously the implementation of the policies to which governments have apparently made an initial commitment. Crisis response is an erratic lever for achieving and maintaining systemic change.

Standing accountability agencies: the ombudsman model

Several less ephemeral devices have developed over the years, however. In Australia important examples of an ongoing accountability mechanism are the various State Offices of the Ombudsman, each of which has jurisdiction and sufficient powers to inquire into individual complaints by prisoners. Unfortunately, an inherent problem with ombudsman jurisdiction is that by its very nature it involves delay. Consequently, by the time a case has come before the ombudsman, the prisoner's position has quite often been prejudiced irretrievably by unavoidable interventions in his or her life – e.g. confinement to the punishment block, transfer to another prison or loss of privileges – before the complaint can be resolved. Another drawback is that, although a ruling in favour of any given prisoner should in theory spill over into the general running of the prison system for the benefit of *all* prisoners, in practice the impact tends to be restricted to the complainant. In other words, no 'case law' develops that is applicable across the system.[1]

To compound matters, most general ombudsman systems have moved away from a model of direct and immediate investigation of a complaint to one where they expect prisoners to exhaust internal complaints mechanisms first before taking their grievance further. The ombudsman often characterise their 'office as being one of last resort', meaning that the ombudsman expects that the prisoner will have tried to resolve the complaint directly with the prisons' department or agency before an active investigation will be launched. In practice, this means that relatively few investigations are undertaken and, of these, a minuscule number are upheld. Not surprisingly, therefore, prisoners tend to be deeply cynical about the efficacy of ombudsman offices (Minogue 2002).

Partly in response to this perception, the UK set up a specialized Prisons Ombudsman in 1994. The 'office of last resort' philosophy that might be justifiable in relation to a generalist ombudsman office receiving multiple complaints from across the whole bureaucratic spectrum clearly could never be defensible in the context of a specialist ombudsman established to deal with complaints by prisoners. This was the *raison d'être* of the new office – to deal with prisoners' complaints, not to avoid doing so. Nevertheless, and

somewhat surprisingly, the criteria the Prisons Ombudsman has adopted still require that the complainant first attempts to deal with the matter through the available mechanisms set up by the Prison Service itself. However, the time limits for the service to deal with the matter are rigorous, and the right to take the matter on to the Prisons Ombudsman is not artificially circumscribed, simply stating that the complainant should be 'dissatisfied' with the outcome. The 'last resort' barrier is thus not as unbreachable as in generalist ombudsman jurisdictions. As might be hoped, therefore, prisoners have not been as stifled by this system as is apparent elsewhere in the world, and the number of complaints within the Ombudsman's remit has steadily increased, reaching 1,689 in 2004–5. These were dealt with in a timely manner, with a 12-week turnaround in relation to more than 60 per cent of cases (Prisons and Probation Ombudsman 2005). In addition, the UK Prisons Ombudsman has attempted to bring a 'case law' element to his decisions by publishing them thematically in his annual report. He also claims to have achieved a reasonable degree of compliance, stating that 'the Prison Service has re-confirmed this year [2005] that recommendations will only be rejected in exceptional circumstances – if they raise major operational difficulties or if my Office's reasoning is seriously in error' (Prisons and Probation Ombudsman 2005: 7).

The place of the Prisons Ombudsman in the UK system is now well entrenched, having been extended first to complaints about probation matters (with a consequential change of name to the Prisons and Probation Ombudsman) and, in 2004, to the investigation of deaths in custody. Occasionally, he has also been specially commissioned to inquire into critical incidents, such as the February 2002 fire that destroyed much of the Yarl's Wood Immigration Removal Centre and the custodial management incidents that preceded it.

Litigation and the limited nature of prisoners' rights

The context that makes ombudsman jurisdiction potentially so important – if in practice rather disappointing – is that prisoners do not in the common law jurisprudential model possess *rights* in relation to their conditions and treatment.[2] Rather, the imprisoning authority possesses non-enforceable obligations. These may seem to be reasonably comprehensive – as, for example, in relation to the *European Prison Rules* or the *Standard Guidelines for Corrections in Australia*[3] – but they are not legally binding in the sense of giving prisoners a right of action against prison authorities in a court of law.

This traditional view is so embedded that these obligations will not even be taken into account in collateral matters. This point has been starkly illustrated in the Western Australian case of *Bekink* v. *The Queen*.[4] In that case the accused appealed against his sentence on the basis that its impact was far more repressive in practice than the sentencing court could have anticipated or intended. This was because the prison to which he had been sent, Casuarina, had been subject to a 23-hour-a-day lock-down for many months following

a major disturbance that had occurred *before his conviction and sentence*. The *Standard Guidelines* prohibited collective punishment (para. 1.71), yet patently that was what was happening. Nevertheless, the court showed no appetite for going beyond the prison gatehouse and dealing with the day-to-day realities of prison conditions, and the appeal was rejected. The 1940s jurisprudence thus, half a century later, still remained impenetrable in Australia.

However, in the UK this barrier has been occasionally breached via the route of the European Convention on Human Rights and the enacting domestic legislation, the Human Rights Act 2000. Rather than invoking a common law template that has become somewhat rigid in its working hypothesis as to the relation of the state to the individual, this now enables prisoners to assert their claims within an alternative template – international human rights law – which is focused more upon the individual. The progress that has been made to this point is not radical; for example, voting rights have been protected, which is hardly something that changes the quintessential nature of the prison experience. Nevertheless, this legal window could let some light into the confined space of prisoners' rights (Chapter 24, this volume).

Those obligations that impose legal duties upon prisons' departments, such as hygiene requirements under the applicable environmental health statutes, are only enforceable by the regulatory authorities themselves, not by prisoners. However, it has become clear that imprisoning authorities owe a common law duty of care to prisoners. This extends not only to ordinary negligence – for example, in the prison workplace – but also to such matters as placement of vulnerable prisoners with predators. The practical drawback is that this right can only be identified and become legally enforceable once it has been breached. Prison authorities, for their part, have been adept at keeping cases out of court, by settling them on terms that include a confidentiality clause. Consequently, the jurisprudence in this area remains somewhat undeveloped.[5]

In summary, the accountability mechanisms that can be activated by prisoners constitute an unsatisfactory patchwork. Nigel Walker's observation that '"prisoners' rights" exemplifies the rhetorical and unreflective use of the notion … It is a slogan rather than a term of art' (1980: 166) seems to be still valid in 2007. The occasional 'victory', while gratifying to the particular individual, typically has little or no impact across the system. Meanwhile, while there exist many individuals and groups who occasionally succeed in exerting pressure on the prison system – activist human rights lobbies, the media, politicians, trade unions when it suits their industrial purposes, and other concerned citizens when they can make their voices heard – their efforts inevitably become diffused or are event driven, and their access to accurate information is sometimes restricted. It is for these reasons that a standing mechanism is needed to achieve system-wide accountability of prisons and closed institutions.

The inspectorate model

History and scope

In modern times the UK prison inspectorate (i.e. in the context of this chapter, the inspectorate whose primary remit covers England and Wales) has been the pacesetter for the rest of the world (Ramsbotham 2003; Chapter 1, this volume). It was established by statute in 1982 (s. 5A of the Prison Act 1952, as enacted by s. 57(1) of the Criminal Justice Act 1982), The Scottish inspectorate followed four years later. At the present time, comparable inspectorates exist in Ireland, South Africa, Norway and Western Australia. In addition, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides for a visits-based inspection system for closed custodial institutions in all 46 nations of the Council of Europe. The Committee for the Prevention of Torture carries out these inspections. The United Nations Special Rapporteur on Torture in principle possesses similar jurisdiction in relation to those member states that consent to its exercise.[6] All these jurisdictions are important and interesting in themselves. However, to keep the material manageable, primary attention in this chapter will be focused on the UK inspectorate (as I shall continue to call it) and that of Western Australia. The main policy and practical issues that any inspectorate must confront emerge from the experience of these two models.

The jurisdiction of the UK inspectorate has progressively been extended from prisons to young offenders' institutions (YOIs), immigration removal centres, prison transportation arrangements and military prisons, as well as geographically to Northern Ireland. Commenting on the progressive increase in jurisdiction, HM Chief Inspector, Anne Owers, has tellingly commented:

> You can…gauge the importance of inspection by reference to places that are not inspected. In 1999 we were given the responsibility for inspecting immigration removal centres, and have recently [2003] completed the first seven inspections. We have found that the same tests of a healthy environment apply to these custodial environments also, and that many fail (2003: 5).

For the purposes of simplicity, however, the discussion will mostly take prison inspection as the reference point, though the accountability and inspection issues in relation to all closed institutions where people are involuntarily detained mirror those in relation to prisons.

With regard to Australian experience, the Western Australia model – setting up the Office of the Inspector of Custodial Services as from June 2000 – is the most relevant. It is closely derived from the UK model. However, its statutory basis[7] is much more explicit and detailed, reflecting what currently happens in the UK by way of 'custom and practice'[8] and taking matters somewhat further.[9] Substantively, the jurisdiction relates to prisons, juvenile detention centres and other 'custodial services', which for these purposes means prisoner transportation arrangements and court custody centres. Immigration detention or removal centres, being a Commonwealth (i.e. federal) function,

are not within the jurisdiction of the Office of the Inspector of Custodial Services, which is a state-based agency.

Autonomy

It is essential that an inspectorate be autonomous, in the sense that it does not report to or through the department or agency responsible for prison operations nor depend upon it for funding (Chapter 1, this volume). Otherwise, there is an extreme likelihood that its findings and recommendations will only be taken seriously if they happen to coincide substantially with what the operational arm already thinks or wants to hear. That is the nature of hierarchical structures: an inspectorate must be outside that hierarchy, therefore. The UK inspectorate is fully autonomous. This is also the case with the Western Australian inspectorate, as well as those in Scotland, Ireland, South Africa and Norway. In the UK, the reporting line for inspection reports is to the responsible minister, fortified by annual reports direct to Parliament. In Western Australia the reporting line is to Parliament, fortified by organizational links to the responsible minister. In each case, the full inspection reports are publicly available on websites and in printed format (http://inspectorates.homeoffice.gov.uk/hmiprisons/inspect_reports/www.custodialinspector.wa.gov.au).

Of course, prisons' departments should have their own internal compliance auditing or quality assurance systems and personnel to ensure that the standards they have set for themselves are being met. The inspection role should go further than this, however, concentrating on what the standards should be, how they can be developed and improved, and whether they meet international criteria.

One of the threats to inspectorates is the view – attractive to bureaucrats and some politicians – that inspectorates should inspect against the operational agency's own standards. A 'Trojan horse' version of this, epitomized by the Laming Report in the UK, is that the inspectorate and the operational agency should jointly develop and monitor agreed standards (Laming 2000: 23). Wisely, both the Chief Inspector of the time (David Ramsbotham) and his successor (Anne Owers) resisted this superficially tempting argument, understanding that it would be the first step in a process of making autonomous inspection redundant. The danger is that 'healthy prison tests' and international standards would be swamped by bureaucratic key performance indicators (KPIs) that, by their very nature, focus on, and are sustained by, 'self-referential' organizational criteria (Owers 2003: 3; Ramsbotham 2003: 160).

The same potential problem applies to operational departments and in-house monitoring groups. In other Australian states – notably Victoria, Queensland and New South Wales – the 'inspectorate' reports in-house to the head of the prison service, as is also the case in New Zealand. Anne Owers has articulated the inexorable compromises that are made in these circumstances:

> The closed nature of prisons also means that they can become self-referential – their own worlds, with rules that are there because they

always have been, or because they are convenient, rather than because they are necessary or right. That can be seductive, both to those working within and those monitoring prisons (Owers 2003: 3; see also Chapter 1, this volume).

Access to prisons

A crucial aspect of autonomy is 'free and unfettered access' to prisons at any time the inspector chooses. An inspection that occurs by the leave and at the convenience of the inspected agency is no inspection at all. This is so whether it relates to drug testing for athletes, to weapons of mass destruction allegedly possessed by rogue states, to environmental pollution by manufacturers, or to any other situation where the inspected persons may have something they prefer to conceal (Chapter 1, this volume). Nor is an inspectorate autonomous if the inspected agency can veto who is an eligible participant in the inspection process. In Western Australia the inspector was obliged to fight off the attempt of the prisons' department to apply to inspections staff its general statutory power to exclude from entry persons whom it decided posed a risk to the good order and security of the prison (see ss. 31(4)–(6) of the Inspector of Custodial Services Act 2003). In the UK 'custom and practice' has developed to the point where the Chief Inspector selects her team as she sees fit. There are no constraints to their entry. The risk of an inspection team member undermining in some way the security or good order of the prison is thus carried by the Chief Inspector; the fact that the head of the inspectorate carries the risk ensures that individual authorizations are not handed out lightly.

The powers of the inspectorate extend not only to entering prisons but also to dealing with and interviewing persons (i.e. staff or prisoners) in the prison, to inspecting vehicles used to transport prisoners and, in Western Australia, to requisitioning documents in the possession of the department that relate to the prison or the custodial service (ss. 28–30 of the Inspector of Custodial Services Act 2003). This last provision is exceedingly important. It enables the Inspector to go behind the failures or gaps that are seen within the prison itself to the administrative or policy matters that may have contributed to the situation.[10] Also, inspectorates may take into prisons with them any equipment they consider necessary. The most usual item is a camera. Thus in Western Australia the reality of impoverished conditions in 'Aboriginal prisons' – a term coined by the inspector to describe prisons whose normal population is more than 80 per cent Aboriginal – has been revealed to Parliament, the responsible minister and the public far more graphically by way of photographs than could have been achieved by words (Office of the Inspector of Custodial Services 2001a: 21–2). Similarly, in the UK photos may be taken as required. For example, in the well-known 1995 'walkout' by the Chief Inspector from Holloway Prison – on the basis that the place was too fetid and oppressive to be inspected at that time – photographic evidence of the conditions was preserved (Ramsbotham 2003: 5).

Announced or unannounced inspections

Typically, legislation sets a minimum expectation with regard to inspections – once every five years in the UK, once every three years in Western Australia. Thus inspectorates work to a known schedule. There are tangible benefits in doing so, not only from the point of view of internal management of resources but also because this facilitates a greater degree of co-operation and a better information flow from the head office and the inspected prison administrators. The department can be given notice, documentation requested and provided, a presentation about the prison and its issues made, a thorough inspection plan worked out, experts commissioned and so on. Also, inspectorates have come to rely increasingly on survey information obtained from prisoners and staff, so that an announced schedule enables these processes to be carried out in advance of the on-site inspection activity.

However, the notion of a planned, announced and highly structured inspection implies substantial normality in the way the prison is functioning. The situation may be different if the prison is in some kind of crisis. Just as there must be free and unfettered access once the inspector has decided to make an announced inspection, an element of surprise may also be necessary if the purposes of inspection are to be achieved. It is difficult to imagine, for example, that the elaborately negotiated and prearranged inspection of prisons in Tibet by the UN Special Rapporteur on Torture (see note 6) can fully achieve the human rights objective of the inspection – though it is certainly preferable to no inspection at all.

The UK inspectorate makes unannounced inspections quite frequently – usually but not invariably for short follow-up inspections of a prison that has revealed problems during an announced inspection, and also where there is reason to suppose that some serious abnormality may subsequently have developed in the prison regime. Unannounced inspections are, in fact, part of the inspectorate's normal modus operandi. For example, 112 of the 237 inspections carried out between 1995 and 2001 were unannounced (Ramsbotham 2003: 219).

By contrast, in Western Australia, this device has been utilized exceptionally – on only two occasions in the first five years of operation. The first of these related to the inspection of the Special Handling or Management Unit – a 'prison within a prison' – at the state's maximum-security prison, Casuarina. The context was that there had been allegations of systematic brutality by staff; indeed, a prisoners' action group had sent a file to the office of the UN Special Rapporteur on Torture. Obviously, if the prime objective were to try to ascertain whether staff members were involved in systematic brutality to prisoners, an unexpected, untimely and unimpeded arrival on the premises was essential. This occurred at dawn one summer's morning. The conclusion reached was that, while systematic brutality was not occurring, there were many serious management problems in the Special Handling Unit (Office of the Inspector of Custodial Services 2001b). An apparent paradox of this modus operandi was that the prisons' department was a primary beneficiary. The fact that an autonomous body was able confidently to make this finding pursuant to robust inspection processes crucially affected the subsequent

debate in a way that could never have been the case if the department had simply involved itself in a process of self-exoneration. Moreover, the prisoners' action group accepted the finding. In summary, this approach to inspection best served the overall public interest.

The second occasion of an unannounced inspectorate visit in Western Australia took place at Eastern Goldfields Regional Prison. Information available to the inspector had led him to believe that this prison was the repository of serious structural and attitudinal racism – structural in the sense that conditions were such as would never have been tolerated if the population had been predominantly non-Aboriginal, and attitudinal in the sense that there was discriminatory advantage for non-Aboriginal prisoners. Such serious potential findings needed to be tested without any opportunity being given for concealment or obfuscation. In the event, both forms of racism were clearly established (Office of the Inspector of Custodial Services 2001a).

One reason why these two inspectorates have such contrasting practices with regard to unannounced inspections relates to the sheer volume of work. The UK inspectorate has about 140 prison establishments within its jurisdiction, as well as other important areas of jurisdiction such as immigration removal centres. There are simply too many prisons for the inspectorate to 'keep a handle' on them between scheduled inspections. In such a context, unannounced inspections are a crucial tool for ensuring prison management remains focused. Indeed, the published schedule of announced inspections leaves gaps during which, as the Prison Service well knows, unannounced inspections are likely to occur somewhere. In Western Australia, on the other hand, there are only 14 prisons (and seven work camps which, for inspection purposes, count as prisons). Even though they are spread over a vast geographic area, it is feasible to maintain a 'watching brief' on each of them between scheduled inspections. This is done by regular 'liaison visits' by inspections officers, akin sometimes to 'mini-inspections', though without the full rigmarole. In this way prisons can be kept up to the mark, with the objective that performance does not deteriorate to the point where, because it is failing or other unacceptable practices have arisen, an unannounced inspection is required. Each inspectorate thus has its own way – appropriate to local conditions – of seeking to achieve the same broad objective (i.e. that prisons are being managed according to acceptable standards).

Inspection standards

The most important single issue about inspection is that the inspectorate should have a clear philosophy as to what it is seeking and what it expects the operational department to achieve. The UK inspectorate has set the tone in this regard, with the development of its 'healthy prison test'. A healthy prison is one where safety, respect, purposeful activity and preparation for release and resettlement are achieved to an appropriate degree and balance (see Chapter 1, this volume). The Chief Inspector has recently emphasized that 'Safety and respect above all must be found in prison systems. These are the bottom lines of any custodial environment; they should be expected and demanded as things in themselves, whether or not they are "effective"

in process terms or can be shown to prevent re-offending' (Owers 2003: 2). The human rights agenda, or the 'decency agenda' as it is sometimes called, is thus the paramount, though not the exclusive, focus of the healthy prison test as currently applied in the UK.

The European Committee for the Prevention of Torture also conducts its inspections predominantly from a human rights point of view. Its remit is to 'examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman and degrading treatment or punishment' (Committee for the Prevention of Torture 2005).

The Western Australian inspectorate has proceeded on the basis that prisons should seek to achieve a balance between four values or cornerstones: custodial containment and safety; care and well-being; rehabilitation; and reparation. What is considered an appropriate balance will vary somewhat from prison to prison, according to each institution's profile and its role in the custodial continuum. In every case, however, the systems and resources must also be appropriate, and these become in effect a fifth cornerstone to be evaluated as part of an inspection.

In the early days, the inspection standards in Western Australia were not sufficiently articulated. Arguably, they lay too much in the eye of the beholder; the inspected parties could, and sometimes did claim they had been entrapped when they received an adverse finding. However, in 2007 the Inspector's Code of Standards was published and now constitutes the template for future inspections. It is a living document, however, that must and will evolve in the light of changing circumstances and needs.

The UK inspectorate was also thus characterized in the Laming Report: 'Until recently, …Governors complained that they did not know the basis upon which their establishments were being judged. Understandably, this resulted in a sense of ambush and disgruntlement' (2000: 22). The UK inspectorate confronted this accusation with the publication in April 2004 of *Expectations*: *Criteria for Assessing the Conditions in Prisons and the Treatment of Prisoners* (HM Chief Inspector of Prisons 2004; see Chapter 1, this volume). In fact, an earlier version of this document had been developed and was available in-house as early as 2000, but extraordinarily the Home Secretary had blocked its publication (Ramsbotham 2003: 225–30).

Expectations sets out the broad criteria for inspection, the detailed tests within those criteria, sources for each of those tests and the evidence base that will be explored in assessing whether the test has been satisfactorily met. The sources may be mandatory (binding international or regional conventions, domestic statute, case law) or normative; the evidence base can be documentary, observational or survey based. It is no longer possible, therefore, for governors or the Prison Service to assert that there is uncertainty or lack of clarity as to inspection standards. With this publication – which is the culmination of many years of evolving custom and practice – the credibility of the inspection process has been consolidated. The UK inspectorate has subsequently produced parallel documents relating to inspection standards for YOIs and immigration removal centres. The Committee for the Prevention

of Torture has likewise spelt out exactly what meets its standards. These are derived and defined by previous inspections, by decisions of the European Court of Human Rights and by the committee's own publications (Committee for the Prevention of Torture 2005).

In the UK, the Prison Service has not greeted *Expectations* with unbridled delight. There is a feeling that the inspectorate is pushing the boundaries to an uncomfortable extent, particularly by its adoption of normative instruments as the basis for some of its standards. This takes us full circle to the arguments put forward by the Laming Report in 2000 – namely that the inspectorate and the Prison Service should jointly develop a set of standards so that prisons can 'be both managed and inspected against agreed standards' (Laming 2000: 7). Such a position would mark the demise of autonomous inspection.

Incentives for co-operation

Operational departments understandably do not always welcome the inspection process. There are many ways in which they can hinder or undermine the process. This may be direct – for example, by delays in facilitating entry or attempting to refuse access to required documentation. Or it can be indirect – for example, by conniving at, or even tacitly encouraging, non-cooperation by staff.

The Western Australian inspection model uniquely provides for these possibilities by creating criminal offences of hindrance, victimization and intimidation (Inspector of Custodial Services Act 2003, ss. 32, 49 and 50) and there have been several occasions when the inspector has contemplated the possibility of activating one of these provisions. However, evidence to support such a measure is always elusive, for 'whistle-blowing' is something about which most informants feel ambivalent or pressured. Moreover, the culture that facilitates and supports full co-operation between the inspectorate and the department will not grow out of punitive sanctions but from mutual respect. A criminal prosecution would, except in the most extreme circumstances, represent a failure of communication rather than a successful assertion of authority. However, suggestions that prisoners, and also staff, have been harassed following some contact with the inspectorate never completely abate, so the possibility of invoking criminal sanctions is not entirely fanciful.

Thematic reviews

One problem with a continuing sequence, or endless loop, of prison inspections is that the individual details can obscure the broad patterns. Some of the most valuable work of the UK inspectorate has been thematic – for example, on suicide and self-harm (where the 'healthy prison test' was developed), on prison conditions for 'lifers', on elderly inmates, on the imprisonment of women and on race relations in prisons. Similarly, the Western Australia statute (s. 22) specifically empowers the inspector to carry out thematic reviews. To date, five such reviews have been completed and one other is in train.

The first of these explored the difficult problem, common to all prison systems, of how to handle vulnerable and predatory prisoners. While the

primary objective was to log the situation in Western Australia accurately by way of fieldwork and documentation, to identify problems on the ground and to try to offer guidance on how best to address them, the intention in such a universal subject must also be to make some contribution to the literature. In other words, through the vehicle of thematic reviews an inspectorate should try to locate the local experience in the wider world of prison administration (Office of the Inspector of Custodial Services 2003a).

The other completed thematic reviews relate to deaths in prisons (taking one particular prison as a case study and generalizing from there) and to a review of cognitive skills training in the Western Australia prison system (Office of the Inspector of Custodial Services 2004a, 2004b). A further review, completed in 2005, was technically a government-directed review: a device covered explicitly by the Western Australian legislation (s. 17) and implicitly in the UK statutory arrangements. It amounted in effect to the creation of a blueprint for custodial policy over the next decade (Office of the Inspector of Custodial Services 2005a). The fifth published thematic review relates to offender health services (Office of the Inspector of Custodial Services 2006). The sixth about to be published relates to custodial transport services.

Thematic reviews thus arise out of, and help to develop, broad concepts and standards as to where the prison system should be heading if it is to continue to improve and to produce better outcomes both generally and from the point of view of human rights. Arguably, this is where the greatest value of an inspectorate system ultimately lies.

The question of effectiveness: reporting, acceptance of recommendations and implementation

The objective of inspection is to get the operational department to change deficient processes and implement the applicable inspection standards. The corollary to this, always assumed though sometimes not articulated, is to encourage the consolidation and promulgation of those processes that are already up to a good standard, though prisons' departments are not always adept at or receptive to this type of cross-fertilization (Ramsbotham 2003: 219–20).

In a broad sense, effectiveness will always be partly a function of how well the inspectorate does its work. The UK Office of Public Service Reform has identified a code against which inspectorates – not just prison inspectorates – should carry out their work. The ten principles are to:

1 aim to bring about an improvement in services;
2 focus on outcomes;
3 ensure a user perspective;
4 inspect according to criteria that are proportionate to risk;
5 encourage self-assessment by the inspected agency;
6 proceed on the basis of impartial evidence;
7 work against clear and disclosed criteria;

8 follow open and transparent processes;
9 ensure that, as an inspectorate, it remains mindful of providing value for
    money; and
10 continue to review and improve its processes.

To these should be added the need constantly to understand that every inspection bears upon the working life of employees in that place, that they should be treated with respect and that criticisms of overall performance should not be made lightly. This is an aspect of another principle, implicit in several of the ten listed above, but so crucial that it needs to be made explicit – that the inspectorate must constantly ask itself whether its observations and judgements have been made with absolute honesty and integrity.

At a more immediate and measurable level, reporting processes (including timeliness), rates of acceptance of recommendations and modes of actual implementation determine the extent of effectiveness. The Western Australian protocol requires that draft reports should be sent to the department (or other affected parties) to enable comments to be made. In practice, this has become an interactive process, with factual challenges and/or clarification and debates as to the thrust of the recommendations. This is also the situation in the UK. Ultimately, however, in each jurisdiction the inspector controls the content and tone of the report.

If a report is not presented in a timely manner, however, it loses currency and this in turn enables the prisons' department more readily to challenge its relevance and erode its cogency. Ramsbotham (2003: 62) has suggested that, in the early days of his period as Chief Inspector, the Prison Service would deliberately delay a response to his draft report for the specific purpose of being able to claim that it was nothing more than remembrance of things past, and that his description of the key deficiencies was somewhat fanciful. The UK system has now evolved to the point where an inspection report is normally published within four months of the end of the on-site inspection period.

While the Western Australian inspectorate has occasionally achieved as rapid a turnaround as that, for the most part it has struggled to do so. For that reason, the inspector has developed the practice of distributing in written form a comprehensive exit debrief within a week or so of the on-site inspection period. This is so that the prisons' department will know where the report is headed in the interim period before it actually appears. Importantly, in Western Australia the department's responses to the report's recommendations are appended to and printed with the report itself, and become the basis of an implementation or action plan. With the subsequent parliamentary tabling of the report, these undertakings or intentions thus become public. In the UK, the action plan remains a negotiated matter between the inspectorate, the Prison Service and the minister; it does not become part of the public record. This seems to be a structural weakness.

With regard to the nominal acceptance of recommendations in Western Australia, this has so far run at a high rate – more than 90 per cent. Of course, not all recommendations are of equal significance. The inspector has

attempted to differentiate between categories of recommendation and to calibrate his expectation of their acceptance accordingly. For example, those relating to human rights or racism should be accepted in their entirety – a parallel approach to the UK inspector's emphasis on respect and safety – while those relating to staffing issues can quite properly be seen as falling to a considerable extent within managerial prerogative as to when to act, even if it is broadly accepted to be a desirable initiative (Office of the Inspector of Custodial Services 2002: 28–9, 2003b: 26). For its part, the prisons' department has evolved a practice of rating the risk of non-acceptance in formulating its responses and action plan. Inevitably, there is some slippage between acceptance and on-the-ground implementation. This has sometimes, but not necessarily, been a symptom of bad faith. On other occasions, it has been because circumstances have changed, or with the passage of time matters have ceased to be relevant, or policy and funding priorities have had to give way to more pressing exigencies. Nevertheless, too great a disparity would be worrying.

In the early stages of the inspectorate's existence, it was not easy to measure actual implementation as opposed to nominal acceptance. Progress was monitored in various ways, particularly through liaison visits and reports of independent prison visitors. Nevertheless, as the second phase or cycle of inspections commenced, the suspicion remained that often only the most egregious shortcomings received the promised attention. There was still a strong undercurrent that the priorities and standards of the prison system were really a matter exclusively for the operational department (Office of the Inspector of Custodial Services 2004c: 4–6, 2005b: 4–5). The Western Australian inspectorate was certainly not the first, and will not be the last, to encounter that culture (Ramsbotham 2003: 214–19). Subsequently, after major embarrassment had been caused to the department and the government as a consequence of the non-implementation of some recommendations (Office of the Inspector of Custodial Services 2004d), a 'governance framework' has been agreed that will enable reliable assessments of implementation to be made. In the Western Australian model, where the inspector appears before parliamentary committees from time to time to report on the discharge of his statutory functions, this is a compliance lever that should henceforth be effective.

In the UK, the Chief Inspector's 2003 annual report analysed implementation rates by checking the operational status of previous recommendations when returning to that site for a follow-up inspection. A total of 5,170 recommendations made in the course of 49 inspections had resulted in a 55 per cent achieved rate, a 15 per cent partially achieved rate and a 30 per cent not achieved rate. These figures would be more informative if the implementation rates were broken down into categories of recommendation, facilitating an evaluation, for example, of the extent to which the Chief Inspector's 'decency agenda' is being taken seriously on the ground.

Barriers to effectiveness

One of the obstacles facing inspectorates is that they run the constant risk of not producing the outcomes that the politically dominant players are seeking. The worst-case scenario is that they may be used as part of a charade preceding a policy change or course of action that the findings of the inspection do not objectively support. The most notable modern example of this is the inspection of Iraq for weapons of mass destruction (WMD). In many ways this was an exemplar of the inspection process, made more challenging by the fact that Dr Hans Blix's task was to inspect so as to prove a negative (i.e. that there were *not* any such weapons). UNMOVIC (the United Nations Monitoring, Verification and Inspection Commission for Iraq) was set up as an autonomous inspectorate in the classic mould – its own budget, freedom to hire people on the basis of their skills rather than on the usual UN basis of national representation, unfettered access to sites, access to documentation, support from other intelligence systems and so forth. We now know that their findings that there were no WMD were correct. Blix has written:

> It is becoming clear that inspection … by UNMOVIC …backed by military, political and economic pressure, had indeed worked for years, achieving Iraqi disarmament and deterring Saddam from re-arming… The UNMOVIC experience showed that it was possible to build up a professional and effective UN inspection system that was supported but not controlled by individual governments and that, therefore, had international legitimacy (2004: 272, 273).

Yet the invasion of Iraq went ahead. The intention to invade had been irrevocably formed long before (Clarke 2004: 30–3) and inspection findings were never going to divert the powerful players from this course.

Prison inspections seldom encounter dilemmas of this magnitude. A more common problem concerns the nature of their relationship with the operational department. Capture must be avoided at all costs, but that does not mean that active antagonism is an acceptable alternative. A point may be reached where a deteriorating relationship can become a political factor in itself and thus a significant barrier against effectiveness. Governments, when forced to do so, tend to side with the operational department rather than the watchdog.

For example, in New South Wales, a fully autonomous inspection agency – the Inspector-General of Corrective Services – was wound up in such circumstances. The office had been established in 1997 although, rather oddly, the enabling legislation contained a sunset clause that it would cease to exist on 30 September 2003 unless Parliament reaffirmed the legislation. In retrospect it is evident that such a clause facilitated or even encouraged resistance to the inspectorate, and that the political lever for discontinuance was there, waiting to be pulled. Certainly, there was an element of the operational department setting out to undermine the inspectorate from its inception. Equally, the inspectorate failed to guard its own professional and political base, carrying out its work in ways that made it a ready target. In February 2003 the Minister

for Corrective Services set up an inquiry to advise him as to the continuation of the office in the light of the statutory sunset clause. The starting point of the report of that inquiry, it must be said, was scepticism as to the role of such bodies: 'The concept and function of the Office of the inspector-general inevitably places that Office among the raft of monitoring organizations that, by their nature, take a problem-oriented approach' (Review of the Office of the Inspector-General 2003: 8). The fact that the Inspector-General had indeed done this was a source of concern:

> In major inspections of two correctional centres, the Inspector-General adopted a problem-oriented approach, seeking shortfalls and difficulties rather than basing his approach on maximizing organizational strengths in a way that would lead to substantial change and best practice… From the outset it appears that there was considerable tension between the Inspector-General and the Department of Corrective Services. The alleged aggressive, combative, adversarial approach adopted by the Inspector-General has entered into corrections folklore. This is particularly disappointing when it is clear that the Government was anticipating a jointly collaborative, constructive approach and a positive role for the Inspector-General (2003: 3, 11).

In the light of these findings, the office was discontinued; it lapsed on 30 September 2003. A directorate of Probity and Performance Management, reporting to the Commissioner of Corrective Services and possessing no statutory autonomy, has now been set up in its place.

One cannot possibly make a sensible judgement as to whose 'fault' it principally was that the arrangement failed. However, it is evident from this saga that even an apparently autonomous inspectorate can only go so far if it does not bring the inspected organization along with it, at least some of the way. However, it goes without saying that no inspectorate can go so far as to avoid drawing attention to problems, as the inquiry seemed to wish.

Inspecting private prisons

Operational departments can manipulate privatization so as to confuse accountability. If service standards are deficient, that is always ultimately the responsibility of the operational department, for the prisoners remain state prisoners, not those of the private operators. Sometimes the private operator may muddy this fundamental truth by claims of contractual compliance, as if the contractual standards somehow have over-ridden inspection standards. Conversely, the operational department may fall back on the assertion that neither contractual nor inspection shortcomings are its own responsibility, but rather that of the private contractor.

In Western Australian, the inspector has determined that, to inspect a private prison or custodial service properly, he should inspect not only

prisoner services and regime quality on the ground but also the capability of the operational department as contract managers and the continuing financial capacity of the private operator. If contract management is weak, on-site performance may slip; if the operator is strapped for cash, this factor will inevitably flow back into the quality of service delivery. The first inspection of Acacia Prison – the only privately managed prison in the state – was an exemplar of this approach (Office of the Inspector of Custodial Services 2003c). The UK inspectorate, on the other hand, seems to have taken the view that regime quality is its only legitimate concern, leaving it to the other players to draw their own conclusion as to where to take the matter thereafter. Each approach has in its own way been effective. The three elements of the Acacia inspection – regime quality, contract management processes and corporate financial arrangements – all subsequently improved somewhat, while a negative report by the UK Chief Inspector on the regime quality at the privately managed Ashfield YOI led to the temporary takeover of the institution by the Prison Service and a total reconstruction of management and the regime before the running of the prison was returned to the private operator. Ashfield YOI was in fact subjected to three full inspections in the course of 27 months between July 2002 and September 2004, a fact that is indicative of the power of an inspectorate to focus intensively upon a failing institution so as to bring it back up to an acceptable standard.

However, in the contentious area of Australian immigration detention facilities, privatization arrangements have been used as a shield by the government to fend off full responsibility for regimes that are in breach of international standards. This has emerged in several inquiries, most notably the National Inquiry into Children in Immigration Detention conducted by the Human Rights and Equal Opportunity Commission (HREOC 2004). The purchaser/contract manager was the Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) and the private operator was Australian Correctional Management (ACM, subsequently absorbed into GEO). The contract price was, by any reasonable calculation, at the very top end of the scale for these kinds of service.

The inquiry found that severe psychological trauma and developmental disadvantage had been caused to children in detention, as well as exposure to tangible risks of sexual and other abuse. DIMIA claimed to have developed immigration detention standards (IDSs) as, it was said, 'the highest contractual expression of its understanding of what ACM had to do so that the … Government was complying with its international obligations'. These standards contained no reference whatsoever to the UN Convention on the Rights of the Child (CRC). The report stated:

> When it was put to DIMIA that these standards were inadequate as a statement of the standard of care owed to children in detention, the spokeswoman replied: 'The fact that there may not be specific words or specific references in these Standards doesn't … take away from the general point that I'm making which is that taken in their context they represent an acknowledgement on our part and a requirement as part of

the contract to be alert to the sorts of issues that are encompassed in our international obligations.' The Inquiry finds that the IDS failed to provide sufficient guidance to ACM as to what needed to be done to satisfy the duty of care owed to children according to the CRC, even when read with the remainder of the contract. The IDS did not mention the CRC nor incorporate the fundamental principles applying to children in immigration detention. For instance, the principle that the best interests of the child must be a primary consideration in all decisions affecting the child is absent (HREOC 2004: 5.3.3.).

Here, then, is a case of the purchaser (i.e. the government) attempting to over-ride or finesse inspection (i.e. international) standards by invoking contractual standards – an attempt so blatant as not to be explicable on the simple grounds of incompetence at making and managing contracts.

To compound the matter, standards so vague and content free as the IDS can hardly be monitored (Australian National Audit Office 2005: 3.54). To the extent that there might be some residual possibility of doing so, the monitoring arrangements of DIMIA were ineffectual. Many of the DIMIA staff had been captured (i.e. identified with the policies of the purchaser and the interests of the provider). For those who were still trying to bring about some sort of compliance with decent standards, most of the communications between the on-site DIMIA representatives with their head office remained oral and – as it was subsequently learnt from another inquiry (Palmer 2005) – were in any case treated with disdain. From the point of view of detainees, the badge-wearing private contractor was as far as they could get in raising complaints. The model of contracting enabled ACM and its personnel both to claim they were complying with (contract) law and to blame an inaccessible government authority for problems that could not be evaded. The privatization of service delivery effectively muddied the waters of accountability. A government had thus, through the device of privatization, purchased moral distance from indefensible non-compliance with international standards. In the absence of a standing autonomous inspectorate, the disgraceful situation in relation to children detainees had drifted for more than six years. The HREOC inquiry is an example of the sort of one-off inquiry, referred to at the very beginning of this chapter, which only occurs once a situation has reached a crisis point. Good inspection systems are designed to stop custodial situations descending to that level and also to ensure that governments cannot create moral distance between themselves and their actions.

The future of the autonomous inspection model

Inspection systems pose numerous paradoxes. Governments do not take kindly to criticism, yet effective inspection can protect them from criticism by identifying operational and thus political risks at an early stage. Governments want freedom to set their own spending programmes rather than have costly system defects identified in a manner that is politically premature, yet effective

inspection can head off ineffectual or unwise spending commitments. Good democracy depends on checks and balances, hence the need for inspectorates; yet inspectorates tend to pick up standards and norms that are ahead of where the government is ready to go. Incarceration within closed institutions puts citizens in their most vulnerable relationship to the democratic state, yet the fate of such persons is generally of limited public concern and unlikely to impact upon democratic election outcomes.

It is evident, therefore, that steady, linear growth in inspection systems around the world is unlikely to occur. Much will depend on a society's own culture, its stage of development and its perception of its own needs. In this regard, there are some surprises. For example, neither New Zealand nor Canada has autonomous prison inspectorates, even though in many ways each has been among the most progressive social democracies in the modern world. Similarly, neither the Netherlands nor Finland – nations that are acutely aware of the delicacy of the relationship between the state and the individual – has truly autonomous inspectorates, though of course each is subject to the European Committee for the Prevention of Torture visits-based inspection system. Other notable absentees from autonomous inspection systems are those states with the world's highest imprisonment rates and/or numbers – the USA, Russia, China, Indonesia, Thailand, Singapore, for example. The incentive to meet international conventions and standards is apparently not a robust one.

Yet there is growing curiosity about such systems. Canada, for example, recently asked the UK Chief Inspector, Anne Owers, to lead inspections of the women's prisons in that country. States continue to sign up for Council of Europe membership, even though that entails signing up also for visits-based inspections of closed institutions. In Australia, an inaugural conference of offices and personnel involved in inspection, monitoring and accountability processes for prisons was held in December 2005 with a view to developing a 'community of practice'. In the USA a high-level Commission on Safety and Abuse in America's Prisons (www.prisoncommission.org) was established in January 2005, partly in response to the revelations of brutality in the Abu Ghraib Prison but primarily to explore the sorts of domestic prison issues that inspectorates examine as a matter of course – overcrowding, the safety and health of prisoners, and the availability of offender programmes. A prominent part of the agenda is to ascertain whether the oversight and accountability arrangements can be improved.

The UK inspection agenda is far ahead of that of most countries. Its working assumption is that inspection will continue to be an integral part of all aspects of the administration of criminal justice, not just prisons and closed institutions. As Anne Owers has said, it is only when an inspection system is finally put in place that one fully realizes why it had always been needed. Autonomous inspection of prisons and closed institutions is an essential part of the fabric of a mature democracy.

Selected further reading

Ramsbotham, D. (2003) *Prisongate: The Shocking State of Britain's Prisons and the Need for Visionary Change*. London: Simon & Schuster, is a fascinating memoir of the issues facing an autonomous Inspector of Prisons. The book brings alive the abstract principles underlying a successful inspection regime. Liebling, A. assisted by Arnold, H. (2005) *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life*. Oxford: Clarendon Press, is a ground-breaking study demonstrating that the quality of prison life and the prevailing social climate are quantifiable factors. This takes the notion of inspection beyond the suggestion that it is primarily qualitative and thus inevitably to some extent subjective. *Expectations* is the major document setting out the standards the Chief Inspector looks for in inspecting a prison (see also Chapter 1, this volume). The legal and normative sources of these standards are identified, as well as the evidence bases that will normally be tested in ascertaining whether the standard has been met. It is available online at http://inspectorates.homeoffice.gov.uk/hmiprisons/docs/expectations06.pdf.

Just Law. London: Vintage (2005) by Helena Kennedy QC, a leading British jurist and human rights advocate, argues that human rights are an organizing concept for examining the relationships between people and social systems. The strongly argued hypothesis ranges far beyond imprisonment, but its thrust is particularly persuasive when the case for justifying the autonomous inspection of closed institutions is being discussed. Morgan, R. and Evans, M. (1999) *Protecting Prisoners: The Standards of the European Committee for the Prevention of Torture in Context*. Oxford: Oxford University Press, although somewhat dated, is at present the only available source on the European Committee for the Prevention of Torture. One of the most significant autonomous inspectorates in the world, it has an active and well focused website describing its activities (www.cpt.coe.int/en).

Notes

1 Most ombudsman statutes permit 'own motion' investigations into systemic issues. In Australia both the Western Australian Ombudsman (2000) and the Tasmanian Ombudsman (2001) have published useful reports on deaths in prisons. However, the nature of a generalist ombudsman office is that reviews such as these are few and far between.

2 See *Arbon* v. *Anderson* [1943] 1 KB 242; *Flynn* v. *The King* (1949) 79 CLR 1.

3 This document, which is derived from the UN's *Standard Minimum Rules for the Treatment of Prisoners*, was first produced in 1978. It amounts in effect to a voluntary code agreed upon by the ministers and administrators of Australian correctional systems. A revised version was adopted in August 2004. Juvenile justice ministers and administrators have adopted a comparable code, based on applicable international conventions and instruments.

4 [1999] WASCA 160.

5 However, the racist murder of Zahid Mubarek by his racist cellmate at Feltham Young Offender Institution in 2000 and the subsequent judicial inquiry have highlighted the responsibilities of prison administrators so cogently that systemic change has occurred at least in this one area. Specifically, a cell-sharing risk assessment protocol has been established and there is now a much greater emphasis on race relations in both the Prison Service and the HMCIP reports. There was some evidence that prison officers deliberately placed incompatible

prisoners together in cells, betting upon the 'gladiator game' of how long would elapse before there was a violent incident.

6 In November 2005, the special rapporteur commenced a 12-day inspection of prisons in the People's Republic of China, including Tibet. This inspection followed almost ten years of negotiation. The USA has imposed unacceptable conditions upon the special rapporteur's proposed inspection of Guantánamo Bay prison, where more than 500 people have been detained without trial since 2002, and accordingly the inspection will not go ahead. Clearly, the fact that jurisdiction is consent based drastically limits the potential efficacy of this inspection model.

7 Initially, the Office of the Inspector was created by way of the Prisons Amendment Act 1999. The statutory framework was clarified, consolidated and extended by the Inspector of Custodial Services Act 2003, which became law on 15 December 2003.

8 Section 5A of the Prison Act 1952 is remarkably non-specific as to the powers and role of the UK inspectorate, providing merely that 'it shall be the duty of the Chief Inspector to inspect or to arrange for the inspection of prisons in England and Wales and to report to the Secretary of State … in particular on the treatment of prisoners and the conditions in prisons'. The Office for Criminal Justice Reform in its report of November 2005 (Scotland 2005: 1.4) recognized that the current arrangement is somewhat fragile and recommended that a comprehensive legislative scheme should be adopted for future inspection arrangements (2005: 2.6).

9 A prime example relates to head-office policies or decisions underlying or driving prison-based deficiencies. The definition of 'prison services' explicitly includes administrative arrangements in relation to those services. Sir David Ramsbotham has recorded that the Prison Service itself was beyond his remit. Although the Home Secretary agreed verbally to his including the service within his inspections, 'he had no intention of formally amending my parliamentary terms of reference' (Ramsbotham 2003: 64–5).

10 This approach is fortified by the fact that the Inspector of Custodial Services Act 2003 defines custodial services as including 'an administrative arrangement in relation to the management, control or security of a prison or the security, control, safety, care or welfare of prisoners committed to the prison' (see s. 3).

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Chapter 24

Prisoners' rights

Dirk van Zyl Smit

Introduction

The abstract case for recognizing prisoners' rights is so simple as to be almost trite. Prisoners are human beings. Civilized legal systems recognize that all human beings have certain basic rights. Therefore prisoners have rights too, although imprisonment may lead to them being denied at least some of these rights. Prisoners are removed from society and legally deprived of their freedom of movement. In practice they are also subject to numerous further constraints that greatly reduce their rights and liberties (Richardson 1993).

In the case of prisoners awaiting trial or sentence, the reduction of rights and liberties that imprisonment entails is justified only by the pragmatic need to ensure that their being at large does not undermine the smooth operation of the criminal justice process. Therefore any restrictions that do not serve that purpose directly or indirectly are not acceptable. In the case of sentenced prisoners, the justification for their detention is the penalty of imprisonment. However, imprisonment – the most severe form of penalty allowed by English law – has not, since the abolition a long time ago of sentences such as imprisonment with hard labour, provided formally for any punishment except the loss of liberty. In the words of the aphorism, sentenced offenders are sent to prison *as* punishment rather than *for* punishment.

It is clear, therefore, that prisoners, both unsentenced and sentenced, retain many rights. However, because they are being held in captivity they are not in a strong position to defend their rights. Indeed, as Richardson has pointed out: 'precisely because prisoners must suffer the loss of certain legal rights they become particularly vulnerable to further loss, and in order to safeguard their basic human rights their remaining legal rights require careful specification and even supplementation' (1985: 22).

The abstract case for prisoners' rights leaves many fundamental questions unanswered. It does not clarify what basic human rights all people have, nor which of these rights remain in spite of their bearers being imprisoned. It provides no guidance on which rights of prisoners require positive

'supplementation' in order to compensate in some way for imprisonment. Most significantly, the abstract case does not indicate how prisoners' rights should be enforced. This last point is particularly important in a common law system where the emphasis has been on remedies that allow for the assertion of rights, rather than directly on the rights themselves.

In English[1] law this lack of guidance in providing clear answers to these questions has been particularly pronounced. As there is no written English constitution with a modern, justiciable bill of rights, there is considerable debate about what fundamental human rights people have in England and Wales. This has not been compensated for directly by prison legislation that spells out the rights of prisoners or states clearly a purpose of imprisonment from which some rights of prisoners could be deduced logically (Lazarus 2004).

Consequently, this chapter approaches the fundamental questions about prisoners' rights indirectly. It first considers the reasons for the lack of clear answers to many of these questions in England by examining historically how English courts have approached the question of prisoners' rights. It then examines more closely the sources of law available to English jurisprudence for recognizing prisoners' rights and how these are developing in a wider European context. Finally, it considers what can be done to ensure the wider and more systematic recognition of prisoners' rights in the future.

History

All prisoners' rights could be challenged directly if it were argued that prisoners are in a sense subhuman. Historically this has been suggested in formulations such as that imprisonment is a form of 'civil death' or that prisoners are 'slaves of the state' (Jacobs 1983). However, at least since the late eighteenth century, English courts have recognized that they had power over prisoners and therefore, notwithstanding very harsh regimes, could come to their protection.[2]

The possibility of judicial intervention in prison life increased in the nineteenth century as prisons became subject to legal regulation. A body of law emerged on how prisons should be managed. Prisoners found that they could rely on this law for relief and the courts that they could use it to adjudicate the prisoners' claims. National prison legislation was introduced at an early stage: the Gaols Act 1823 was followed by the Prisons Act of 1877 and 1898. The Prison Act 1952, which, as amended, is still the governing prison legislation in England and Wales, largely follows the model of its predecessors in that it is relatively brief and places prisons under the primary authority of the Home Secretary. It is elaborated by the Prisons Rules, which the Home Secretary makes to provide for the 'regulation and management of prisons … and for the classification, treatment, employment, discipline and control of persons required to be detained therein' (Prison Act 1952, s. 47(1)).

Two early cases illustrate how the courts could intervene in matters involving the rights of prisoners. In 1850 in *Cobbett* v. *Grey*[3] the court ruled that the plaintiff was being held in a harsher form of debtor's prison than the

statute allowed; and in 1886 in *Osborne* v. *Milman*[4] it was again held that a civil prisoner should have been treated as a 'first class misdemeanant' and not as a criminal prisoner detained under a stricter regime. Unfortunately, this early flowering of litigation by prisoners was limited by the nature of English prison legislation and the significance that English courts were prepared to attach to it. In 1943 in *Arbon* v. *Anderson*,[5] Lord Goddard returned to these older cases and ruled that they were not relevant to an action that claimed that conditions of detention were unlawful because they did not meet the requirements of the Prison Rules. He argued that the earlier cases did not provide a precedent for such an action, as they related to the nature of the imprisonment rather than the conditions of imprisonment. In words that would often be quoted, Lord Goddard dismissed any action against conditions of imprisonment that would infringe on prisoners' rights based on the Prison Rules:

> it seems to me impossible to say that, if [a prisoner] can prove some departure from the prison rules which caused him inconvenience or detriment, he can maintain an action. It would be fatal to all discipline in prisons if governors and warders had to perform their duty always with the fear of an action before their eyes if they in any way deviated from the rules. The safeguards against abuse are appeals to the governor, to the visiting committee, and finally to the Secretary of State [i.e. the Home Secretary], and those, in my opinion, are the only remedies.

Lord Goddard's views were enthusiastically endorsed in 1972 in *Becker* v. *Home Office*[6] where Lord Denning declared ringingly that: 'If the courts were to entertain actions by disgruntled prisoners, the governor's life would be made intolerable. The discipline of the prison would be undermined. The Prison Rules are regulatory directions only. Even if they are not observed, they do not give rise to a cause of action.'

Only a few years afterwards, however, there appeared to be a move away from this narrow approach. In 1975 the European Court of Human Rights in the case of *Golder* v. *United Kingdom*[7] gave its first major ruling against the UK when it held that denying a prisoner the right to contact his solicitor infringed his right of access to the courts established by Article 6 of the European Convention on Human Rights (ECHR). This was the first of a long line of decisions taken at the European level in which pronouncements were made about the rights of prisoners incarcerated in England and Wales. These decisions, although not directly binding on English Courts at the time of *Golder*, have had considerable and growing influence in England – a process reinforced by the virtual incorporation of the ECHR by the Human Rights Act 1998, which entered fully into force in October 2000. In broad terms it is now possible to say that the rights recognized by the ECHR are core fundamental rights which, although they are not the only human rights recognized in English law, must be borne in mind whenever the issue of prisoners' rights arises.

In 1979 the focus shifted back to England: the Court of Appeal held that it could review disciplinary decisions made by boards of visitors and thus protect prisoners' rights to due process before these bodies.[8] This approach

was subsequently confirmed in a major decision by the House of Lords in *Leach* v. *Deputy Governor of Parkhurst Prison*,[9] which is still a leading English case on prisoners' rights in the context of prison discipline.

Judicial review of the decisions of prison authorities was becoming a growing force in English prison law. Meanwhile, in 1982 Lord Wilberforce had brought about a marked change in the approach to the rights of prisoners in English law. In *Raymond* v. *Honey*,[10] another case involving access to the courts, he held, on behalf of a unanimous House of Lords, that 'under English law, a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication'. This is still regarded as the classic declaration of the rights of prisoners in English law.

The work of legal scholars was important too. In an influential article, Graham Zellick (1981) argued that careful analysis showed that, in some instances at least, the courts should enforce the Prison Rules to the benefit of prisoners.

In 1992, however, the pendulum appeared to swing back. In the major decision of *Ex parte Hague*[11] the House of Lords declined to over-rule the earlier decisions in *Arbon*[12] and in *Becker*,[13] when it again held that prisoners could not rely on the Prison Rules in actions against the prison governor for damages resulting from a breach of a statutory duty. Furthermore, the Lords found that when prisoners had been lawfully incarcerated they lost their liberty and could not rely on a claim for some residual liberty on which to base an action for wrongful imprisonment.

How is the decision in *Hague* to be explained? The answer lies in the type of action the House of Lords was asked to approve as a basis for the assertion of a right to be segregated and transferred only if a particular procedure was followed. The ruling by the House of Lords was in fact much narrower than it appears on first reading. All the House of Lords did was to hold that private law actions against individuals for damages of the kinds mentioned could not succeed: the action for a breach of a statutory duty failed because the prisoners could not rely on the rules in these actions. The action for wrongful imprisonment failed because the imprisonment itself was not wrongful. Remedies for bad, or even 'intolerable', conditions of detention could be sought, the House of Lords explained, in ways other than declaring the imprisonment unlawful and releasing the prisoner. They could be addressed at public law by way of judicial review or at private law by another action: for example, by a claim for damages based on the allegation that the governor had been negligent in the treatment meted out to the applicant.

As *Hague*'s case is still regarded as good law, it is necessary to explain how the major public law and private law remedies continue to function to protect prisoners' rights in England and Wales.

Judicial review

Judicial review is the remedy that is used in English law to ensure the legality of actions by state officials. The traditional view is that judicial review is limited to examining whether officials are acting in accordance with the

law and does not consider the merits of the actual decisions they make. Parliament delegates operational powers to government ministers and officials, including penal administrators. The courts should not usurp these powers for themselves. Instead their function is to ensure that administrative power is exercised according to the law, within the limitations and for the purposes that Parliament intended. On application for judicial review the court must determine whether an official acted *ultra vires*, beyond the scope of delegated powers. Traditionally, English judges have no power of substantive judicial review over primary legislation. They intervene in the name of legality and the sovereignty of Parliament to ensure that administrative power is kept within proper bounds.

In practice it is not so simple. Crucially, the law to be considered includes the common law and thus also general propositions, such as the protection of the civil rights of prisoners articulated in *Raymond* v. *Honey*[14] that, with some exceptions, prisoners retain their rights. Prior to the enactment of the Human Rights Act the direct limitation of such rights in primary legislation could not be challenged because the doctrine of the sovereignty of Parliament excluded such scrutiny. However secondary legislation, such as the Prison Rules or any policy made in terms of it, could be closely examined to see whether it limited fundamental rights and, if so, whether it was clearly authorized by the primary Act. If it were not authorized, the action would not be allowed and the fundamental rights could be enforced (see, generally, King *et al*. 2002).

Judicial review is also concerned with questions of whether the procedure followed in making decisions is fair and whether the outcome is substantively reasonable. The last test is, however, traditionally a weak one. The test that has been formulated is that a decision may only be set aside for irrationality if it is so unreasonable that no public body could have made it.[15] This test has been modified somewhat in that heightened scrutiny is required where human rights are involved, but it has remained the basis of the common law in this area.

The Human Rights Act has changed judicial review in important ways. First, primary legislation can now also be challenged as being in contravention of the fundamental rights guaranteed by the ECHR, which are incorporated by the Human Rights Act. If this is found to be the case, the court must issue a notice of incompatibility and steps will normally be taken to rectify it. Secondly, all legislation must be interpreted in the light of the convention rights. Moreover, the Human Rights Act emphasizes that it is unlawful for public authorities to act in a way that is incompatible with a convention right. As the Prison Act is cast in very general terms, a direct challenge to it is unlikely, but there may well be stricter examination of the rules as well as of administrative orders and instructions.

There is also the interesting possibility that there will be closer scrutiny of actions by prison authorities that limit fundamental rights than was the case prior to the Human Rights Act. In *Daly*,[16] a case involving a prisoner's right to be present while his legal correspondence was being searched, Lord Steyn emphasized that where convention rights were at stake the courts would also have to assess the balance that the authorities had struck. Any intervention would have to be proportionate to the legitimate aim to be pursued. As

Lord Steyn was at pains to stress, this test would often overlap with the traditional test for unreasonableness: in this instance the prisoner's right to be present was upheld both on the traditional test and on the new test based on proportionality. The new test, he emphasized too, would not amount to a full consideration of the merits. Nevertheless, it remains possible that the scope of judicial review in prison matters will gradually increase as courts become more adept at the balancing exercise that the new test requires.

It remains the case that the intensity of judicial review will vary according to the subject matter at hand. The risk is that there will be an uneven approach to judicial review in respect of prison matters, in that the courts are more likely to defer to the expertise of prison administrators in some areas than in others. The best way to describe this risk is to examine areas in which judicial review has been most successful in protecting prisoners' rights and to seek to contrast it with other areas where this has not been the case.

Prison discipline

The emphasis that judicial review places on procedural matters has greatly assisted prisoners in disciplinary matters. In this area, too, courts were initially reluctant to get involved (see, generally, Creighton and King 2005). They saw prison discipline as directly analogous to military discipline – that is, as something that traditionally had been left to commanding officers without judicial intervention (Fitzgerald 1985). However, this analogy did not hold, for prison disciplinary hearings could result in loss of remission, which would effectively lengthen prison sentences significantly. This was recognized in *Ex parte St. Germain*[17] in which the Court of Appeal held that the proceedings before a board of visitors, the 'outside' body responsible for trying the more serious infringements of prison disciplinary rule, could be reviewed to determine whether they met the fundamental standards of natural justice. Although the government had sought to portray these hearings as not being criminal trials, the English courts[18] and the European Court of Human Rights[19] recognized that substantively they were very similar and therefore should meet the various requirements set by Article 6 of the ECHR for a fair hearing before an impartial tribunal. These included a right to legal representation.

The question remained whether the same rights should be recognized in respect of hearings before the prison governors. In this area, too, the courts eventually recognized that the military analogy was outdated. They were prepared in principle to exercise a power of review, particularly as the governor could order loss of remission that prisoners would otherwise legitimately expect to be awarded to them. The case of *Leech* v. *Deputy Governor of Parkhurst Prison*,[20] in which the House of Lords came to this conclusion, is particularly important as it recognized a general right of prisoners to approach the court for judicial review in the disciplinary area (Louglin and Quinn 1993: 506–21).

Prisoners' rights in respect of prison discipline have remained controversial. In 1992 the disciplinary jurisdiction of the boards of visitors was abolished and a policy decision was taken to deal with serious disciplinary matters by

way of criminal trials in 'outside' courts as far as possible. However, prison governors continued to be the key figures in disciplinary hearings. They were allowed to impose as a penalty not a loss of remission but additional days to be served before a prisoner could be released on licence. The Court of Appeal found that this was sufficient to ensure that disciplinary proceedings before the governor were not to be regarded as criminal proceedings in which all the rights of Article 6 of the ECHR have to be recognized.[21] However, the European Court of Human Rights (ECtHR) disagreed and ruled that the imposition of extra days before release was a key factor in determining that these were criminal proceedings.[22] This prompted the government to introduce a new requirement. Prison governors must now refer cases to an independent adjudicator if the case is so serious that additional days could be awarded.

In spite of all the progress that has been made in the area of prison discipline it must be recognized that judicial review does not mean prisoners' rights in this area are unrestricted. Thus, for example, the right to be represented by legal counsel is not automatic unless the matter is considered as being the equivalent of criminal proceedings. It means that, although governors must consider whether a prisoner who requests such legal advice should be allowed it, it will in practice only very rarely be granted if the hearing is before the governor. The courts continue to accept that the swift exercise of disciplinary authority is important enough routinely to deny prisoners such support (Livingstone *et al.* 2003: 331–2). Only before an adjudicator, where the loss of liberty is directly at stake, is legal representation now automatically allowed.

Release

The emphasis on the importance of the right to liberty has been particularly significant in developing the law surrounding discretionary decision-making in the area of release. Nowhere has this development been more dramatic than in relation to the release of prisoners sentenced to life imprisonment.

In respect of prisoners sentenced to life imprisonment in the discretion of the court, both English courts and the ECtHR first recognized that the life sentence in fact consisted of two different parts. The initial part, the 'tariff,' had to be served for purposes of punishment, but detention beyond this minimum was only justifiable if the prisoner continued to pose a danger to society. The result was a clear ruling by the ECtHR that prisoners serving life sentences had a liberty interest in ensuring that their release was considered by an impartial tribunal that met the requirements of due process. A parole board that did not allow prisoners access to information or legal representation at its hearings and which merely advised the Home Secretary on release did not meet this standard.[23] The further consequence was that the law relating to the release of discretionary lifers was amended in 1991 to recognize the procedural rights of prisoners serving discretionary life sentences (Van Zyl Smit 2002: 113–16).

A similar, although more gradual, development has taken place in respect of mandatory life sentences. Here, too, there was initially an informal procedure for setting a minimum period, after which the Home Secretary

could release the prisoners on advice of the parole board. Gradually this practice evolved: the English courts began to review the decisions of the parole board[24] and to compel it to meet the standards of natural justice, even though they were not prepared to rule that the Home Secretary had the final say on whether to allow release or not. Finally, in 2002, the ECtHR ruled that prisoners sentenced to mandatory life imprisonment, like those serving discretionary life sentences, had a right in terms of Article 5(4) of the ECHR to have their sentences reviewed by a court.[25] The House of Lords followed this up at the end of the same year.[26] It ruled that existing English legislation was incompatible with the Human Rights Act because it allowed the Home Secretary to determine the minimum period that prisoners had to serve, thus contravening Article 6 of the ECHR by allowing the Home Secretary rather than a court to perform what is essentially a sentencing function. The result of these twin developments was that courts now openly set a minimum period that all lifers must serve, after which an independent parole board determines when they are to be released. The discretion of the Home Secretary has been eliminated and the formal procedural rights of the prisoners recognized.

There have been some developments too as far as prisoners serving fixed terms are concerned. Most recently, in early 2005, the House of Lords ruled that, when such prisoners are recalled to prison and their re-release is considered by the parole board, they must be treated in a procedurally fair way.[27] This includes consideration in every case of whether an oral hearing is necessary. The House of Lords emphasized that their rights in terms of Article 5(4) of the ECHR should be recognized – that is, their right to have the lawfulness of their redetention determined speedily by a court. The parole board was regarded as an independent court for this purpose and had to act accordingly.

It is noticeable, however, that, even where release is involved indirectly, there is less enthusiasm for recognizing procedural rights for prisoners, if the liberty interest is not clear. Thus the House of Lords has refused to recognize that prisoners who are given extended determinate sentences because of the danger they pose to the public should have their sentences reviewed automatically by the parole board after they have served the punitive part of their sentences.[28] The House of Lords had been asked to regard the situation of these prisoners as similar to that of lifers who had completed the minimum period of their sentences and whose further (indeterminate) detention depended solely on their still being dangerous, but it declined to do so. Similarly, the Court of Appeal has denied that the consistent refusal of a review committee to reclassify a prisoner from Category A (maximum security) undermined his right to a fair parole hearing, even though the parole board had requested his reclassification and had made it clear that in practice he could not be granted parole as long as he was so classified.[29]

Even where liberty is directly involved, the court of final instance in England is still sometimes prepared to defer to the executive and recognize restrictions on the right of a prisoner to a full and fair consideration of his release. In *Roberts*,[30] a deeply divided House of Lords upheld the power of the parole board, at the request of the Home Secretary, not to reveal to a lifer, who had served his minimum term and whose release was being considered

by the board, 'sensitive material' that had been placed before it – that is, the content of evidence given by an informer or informers who wished to remain anonymous. The evidence was not released to the lifer's lawyers either, not even in anonymous and summarized form, but only to a 'specially appointed advocate' who could not take instructions on it and who, as the House of Lords itself recognized, would therefore be handicapped severely in representing the applicant in those aspects of the board's hearing involving that material.[31]

The decision in *Roberts* is troubling because it allowed a highly restrictive procedure that had previously been followed only in cases involving the security of the state to be used in an 'ordinary' criminal matter without primary legislative authority for doing so. Arguably, if key evidence had been revealed to the court but had been withheld from the defence in a criminal trial in this way, a conviction could not legally have been obtained. It is clear that liberty interests of a potential parolee, even one who has served the minimum period, are still not given the same weight as those of someone accused of a criminal offence.

Other

While extreme deference to the executive is rare in matters where liberty is directly involved or where the related question of access to lawyers or the courts is in issue, the position is very different where prisoners seek judicial review of the administrative decisions of the prison authorities that affect substantive conditions of imprisonment. Although such decisions are subject to judicial review too, in this area the courts have continued to defer markedly to the judgement of prison authorities. They have emphasized that they are reluctant to second guess the authorities when they make or change policies. Thus, for example, the courts have been very loath to intervene in deciding in which prison a prisoner should be held. This has applied even where a prisoner could show that keeping him in a particular prison would make it difficult for his relatives to visit him and for him to prepare his defence. As long as the authorities acted within the law, by taking these factors into account, the court regarded it as 'undesirable – if not impossible' to review on its merits a decision purportedly taken on security grounds.[32]

This deferential approach has also meant that, even where the hopes of prisoners have been raised by a particular policy, which would work to their advantage if they met certain criteria, this did not necessarily give rise to a 'legitimate expectation' that they would benefit in the same way in the future if they then met the prescribed criteria. Thus, for example, in *Ex parte Hargreaves*[33] the applicants were told on admission to prison that they could be considered for home leave after they had served a third of their sentences. They also entered into a 'compact' with the prison authorities that, if they behaved well, they would be considered for home leave when they became eligible for it. Subsequently, the minimum period that prisoners had to serve before their release was considered was changed by the Home Secretary to half the sentence. The Court of Appeal refused to find that prisoners had a legitimate expectation to be considered for release after a third of their

sentence. In coming to this conclusion the court refused to consider the overall fairness of the impact of the decision on the applicants but looked narrowly at the policy-making powers of the Home Secretary. As these powers were exercised correctly it would not intervene.

Private law remedies

The rather erratic development of judicial review as a means for protecting the rights of prisoners is ameliorated to some extent by the private law remedies available to prisoners. Although private law remedies are used against people acting in their individual capacities, the state may be held vicariously responsible for actions of its officials and awards for damages may also be made against it.

The effective denial of private law actions for damages for wrongful imprisonment and breach of statutory duty to legally incarcerated prisoners does not mean that there are no private law remedies that are still available to prisoners to defend some of the substantive rights that are not directly protected by judicial review. The House of Lords in *Hague*[34] recognized explicitly that, where conditions were 'intolerable', prisoners could still bring such actions in some circumstances. There are primarily three claims in tort law that prisoners can bring – namely, actions for negligence, assault and battery, and misfeasance in public office.

Negligence

Negligence claims are particularly important to prisoners as it has long been recognized that the prison authorities have a duty to take reasonable care of prisoners' safety. Where the authorities negligently, or of course deliberately, do not take such care, they commit a civil wrong and are liable for damages to the prisoner concerned. This duty of care is very wide. Thus it has long been accepted that the authorities have a duty to protect prisoners against third parties, such as fellow prisoners who might harm them.[35] Other common examples of where the duty may be breached are where the staff are directly negligent (for example, by providing inadequate medical treatment or failing to ensure that premises are safe), with the result that an injury is caused to prisoners.[36] The duty of care extends also to the possessions of prisoners; for example, possessions that are stored by the authorities have to be safeguarded. If they are lost or damaged as a result of the negligence of the authorities, they will be liable for damages (Livingstone *et al*. 2003: 64–5).

Assault and battery

Although prisoners who are lawfully incarcerated cannot bring an action for false imprisonment, private law actions for assault and battery can be brought against the authorities (or anyone else) who trespass against their bodily integrity. Where the authorities are concerned, the threat of force and even the actual use of force against prisoners are allowed in certain prescribed circumstances. Where these are not present (for example, where the force used

is excessive, where it is used to execute an unlawful order or where prisoners are deliberately attacked by staff members), a claim for assault and battery may arise (Livingstone *et al*. 2003: 65–6).

Misfeasance in public office

The somewhat unusual tort of misfeasance in public office may be the basis for a claim for damages against an official who deliberately, with 'targeted malice', does something in order to injure someone; or who does something knowing both that he does not have the power to do so and that it would injure someone. Although the House of Lords in *Hague*[37] specifically recognized that this form of action was available to prisoners and although prison officials clearly hold public office, it may be difficult in practice to bring an action based on 'misfeasance'. The element of malice is difficult to prove. The alternative form of the tort is also difficult to substantiate. Prison officials have very wide legal powers and it cannot easily be shown that they knew they acted beyond their powers or even that they were reckless in this respect (Livingstone *et al*. 2003: 68–72).

Some of the practical difficulties relate to all tort-based actions. As in the case of the judicial review of prisoners' non-liberty-related interests at public law, the difficulty for prisoners may be that courts are reluctant to find that the authorities have in fact been negligent in, for example, failing to protect a prisoner against fellow prisoners. Thus the courts by their excessive deference may hollow out a recognized private law action.

Other mechanisms

Thus far, the focus has been on the recognition of prisoners' rights by the English courts. However, there are other less formal mechanisms that may impact on the recognition of rights too. Internally, prisoners may lodge complaints to the prison authorities directly or address them to a prison ombudsman. These complaints are often informally cast in the language of rights and expectations. On occasions the ombudsman has been prepared to support prisoners' claims, only to be over-ruled by the courts.[38]

The inspection of prisons is dealt with elsewhere in this Handbook (Chapter 23, this volume; see also Chapter 1, this volume) but, although the focus of the inspections is on prisons and the treatment of prisoners, it inevitably entails consideration of prisoners' rights. The same is true of the inspections conducted in terms of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment by the European Committee for the Prevention of Torture (CPT). From the perspective of prisoners' rights the work of the CPT is of particular interest, as it has given a progressive interpretation to Article 3 of the ECHR: the right not to be subject to inhuman or degrading treatment or punishment. The CPT not only reports on conditions of imprisonment in individual countries but also its annual reports contain substantive general comments on desirable practices in detention facilities as well as descriptions of what are regarded as totally

unacceptable – that is, 'inhuman' or 'degrading' practices (Evans and Morgan 1998). It has developed these general comments into a flexible set of standards that draws on other European instruments, such as the European Prison Rules, as well as on the Torture Convention. Strictly speaking, neither the general comments of the CPT nor the European Prison Rules directly define prisoners' rights that are binding in law. However, they have had considerable impact as, after some initial hesitation, the ECtHR has increasingly begun to rely on their general comments and on the European Prison Rules in its explications of the rights that prisoners derive from the ECHR. (The impact of the ECtHR on prisoners' rights in the UK is explored more fully below.)

An important general international instrument relevant to prisoners' rights is the International Covenant on Civil and Political Rights (ICCPR). This deals in wider terms with prisoners' rights than does the ECHR, providing specifically that people deprived of their liberty 'shall be treated with humanity and with respect for the inherent dignity of the human person' (Article 10(1)), and also that the treatment of prisoners shall aim at their 'reformation and social rehabilitation' (Article 10(3)). The UK has not ratified the optional protocol to the ICCPR, which allows individuals to petition the Human Rights Committee established by the ICCPR. Prisoners do not, therefore, have direct access to the committee. The UK has, however, ratified the ICCPR itself, but not incorporated it into English law by an Act of Parliament. This means that its provisions can still be relied on indirectly when arguing about prisoners' rights in an English context, for the state is assumed to act in terms of its treaty obligations. The provisions of the ICCPR are very general and international bodies such as the Human Rights Committee have looked towards other international legal instruments in order to interpret them. The most important of these is the venerable 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners. These rules are not binding in international law, but their use in interpreting international instruments has led to a gradual increase of their status. Rodley (1999: 281) has noted that 'serious non-compliance with some rules or widespread non-compliance with some others may well result in a level of ill-treatment sufficient to constitute violation of the general rule', such as the prohibition against cruel, inhuman or degrading treatment or punishment by the ICCPR. In this indirect way they, too, may be of relevance in establishing the rights of prisoners in England and Wales.

The European Convention on Human Rights

In spite of the fact that the Human Rights Act has made the ECHR and its jurisprudence into a source English law, prisoners who have exhausted their remedies in England may appeal to the ECtHR if they believe their rights in terms of the ECHR have been infringed. This is still an important additional safeguard of the rights of prisoners, but it has a wider significance, for the ECtHR was, and continues to be, an important source of jurisprudence on prisoners' rights.

As we have seen, historically many of the impulses for the recognition of prisoners' rights in England came from the European Commission and the ECtHR in Strasbourg. However, for many years, as in England, the European focus was strongly on procedural rights. As late as 2000, Stephen Livingstone could still conclude in his overview of prisoners' rights in the context of the ECHR that procedural compliance with convention standards had been more important to the court than how prisoners were in fact treated (Livingstone 2000; for an earlier overview, see Zellick 1982). This has changed dramatically in recent years as increasing attention has been paid to conditions of detention (Feldman 2002: 420). The ECtHR has now held in a large number of cases that overcrowding,[39] lack of medical attention[40] and even the conditions under which prisoners are transported[41] can amount to inhuman or degrading treatment, thus infringing the substantive right that prisoners share with other people not to be subject to such treatment. The Grand Chamber of the ECtHR summarized these developments recently when it declared:

> [P]risoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention. For example, prisoners may not be ill-treated, subjected to inhuman or degrading punishment or conditions contrary to Article 3 of the Convention; they continue to enjoy the right to respect for family life, the right to freedom of expression, the right to practise their religion, the right of effective access to a lawyer or to court for the purposes of Article 6, the right to respect for correspondence and the right to marry. Any restrictions on these other rights require to be justified…
>
> There is, therefore, no question that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction.[42]

A close reading of this passage reveals that the Grand Chamber is summarizing the growing recognition of two kinds of prisoners' rights by the ECtHR. Many of the judgements to which it refers deal with positive rights – rights to adequate accommodation, for example – to ensure that the treatment that prisoners receive is not inhuman or degrading; or with positive actions by the authorities to ensure that prisoners can exercise their freedom of religion.[43] At the same time, the passage is a bold assertion of the proposition that prisoners retain many rights and that a good reason has to be given to remove them.

The salience of this last aspect is apparent from the outcome of the *Hirst (no. 2)* case, from which the passage is drawn.[44] The case turned on the question of whether it was lawful for all prisoners serving sentences of imprisonment without the option of a fine to be denied the right to vote. The English court that had initially considered the matter had paid a great deal of deference to the views of Parliament.[45] The Grand Chamber, in contrast, while recognizing that application of the ECHR required a margin of appreciation for the policies of individual states, was prepared to make a clear assessment of proportionality. It found that the denial of the right to vote to all sentenced

prisoners was a blunt penal instrument and that 'such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be' (para. 82).

Applying European human rights

The European human rights discourse and the practical measures proposed by treaty bodies such as the CPT have the capacity to revive flagging local liberal reforms. In particular, the interpretation of human rights norms as placing a positive duty on the state to improve prison conditions has made it easier to continue to focus on requirements of what precisely needs to be done.

One recent illustration of this process is to be found in the Scottish case of *Napier* v. *The Scottish Ministers*.[46] In Scotland, as in England and Wales, it was long the custom for prisoners to be held in cells without access to lavatories. At night they had to use chamber pots which had to be 'slopped out' in the mornings. In 1994 this practice had been subject to 'trenchant criticism'[47] by the CPT, which was told in mitigation by the Scottish Prison Service that integral sanitation would be introduced in all cells by 1999. This had not been done by 2001, as the Scottish Executive had elected to spend money earmarked for prisons elsewhere. (In England and Wales slopping out had been phased out completely.) In that year Napier was admitted to prison while awaiting trial. As a result of the unsanitary conditions in the prison he suffered from severe eczema and sued for damages in the Scottish courts, based on the infringement of his right not to be subject to inhuman or degrading treatment under the ECHR, which is now applicable directly in Scots law.[48] In its judgement the court referred to the report of the CPT and drew a negative conclusion from the failure of the Scottish Executive to implement the changes it had admitted were necessary. It noted that the conditions did not comply with recommendations in respect of sanitary facilities of both the United Nations Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules. Finally, the Scots court gave considerable weight to the many recent judgements of the ECtHR that have interpreted more strictly the duty of states to ensure that prison conditions are not inhuman or degrading. The outcome was not only that Napier won his case but that urgent steps also have to be taken to ensure that the practice of 'slopping out' is discontinued throughout Scotland.

Conclusion

Uncertainty about prisoners' rights is a problem that goes beyond mere jurisprudential concerns. Narrow legalistic decisions, such as those limiting the recognition of the 'legitimate expectations' of prisoners, may have negative implications for prison life generally. If one takes a wider view of what prisoners regard as their 'rightful' entitlement, it is not hard to understand why such decisions infringe prisoners' sense of fairness. The Woolf Report

(1991) on prison unrest in 1990 emphasized the importance of perceptions of fairness in getting prisoners to accept the legitimacy of the exercise of authority in prison and this has been underlined by subsequent empirical research (see Sparks *et al*. 1996; Liebling 2004).

The picture of prisoners' rights that emerges from this discussion is unfortunately that the recognition of such rights is extremely patchy in England. Procedural rights of English prisoners are generally recognized if there is a liberty interest at stake. Other very basic rights are usually recognized only if prisoners can demonstrate that what they are being subject to is 'intolerable', although this generalization does not hold equally for all rights. A reason for this that has emerged clearly from the case law is that English courts are extremely deferential to Parliament and have been reluctant to recognize rights of prisoners when they have been denied by what is perceived to be a deliberate policy. The Human Rights Act has had some impact in this regard but it has been uneven. In recent years, however, the ECtHR in Strasbourg has been less deferential in conflicts between fundamental rights and government policy even where it is enshrined in legislation. The mixed impact of the courts has been compounded by the somewhat restrictive approach to rights adopted by the prison authorities. Although some individual senior prison officers are open to a engaging with the full range of legal issues surrounding prisoners' rights (Padfield 2002), the resistance to rights talk remains. The general culture is still sometimes to look for strategies that will not be subject to challenge under the European Convention on Human Rights, rather than to explore imaginative ways of incorporating an active focus on rights into all aspects of prison life. This culture may be changing, however (Cheney *et al*. 2001: 195).

The possibility that prisoners' rights jurisprudence in England and Wales will be developed further by the courts cannot be ruled out.[49] Precisely because developments hitherto have been so patchy and uncertain, the definitions of prisoners' rights are still open for expansion. Liora Lazarus (2004) has argued that, even prior to the Human Rights Act, a careful reading of the leading cases can lead to a 'best' conception of prisoners' rights that incorporates principles that go beyond a mere statement that prisoners retain residual rights. She explains that it would include the requirement that 'in the absence of Parliament's express words to the contrary, the negative aspects of prisoners' fundamental rights would be protected as far as possible and in line with the principle of proportionality designed to ensure minimum interference with those rights' (2004: 194). Applied in this way, the English courts may use the principle of proportionality to develop prisoners' rights further. There is also the possibility that, if the ECtHR continues to adopt more progressive interpretations of prisoners' substantive rights, the English courts, which now must 'take into account' this jurisprudence (Human Rights Act 1998, s. 2), will follow suit.

Recognition of prisoners' rights by the gradual accumulation of precedents is a slow process and one that could easily be reversed. One obvious reason for the reluctance of English courts to intervene has been that English prison legislation was not designed to spell out prisoners' rights but rather to enable government to manage its prisons. Legislation that dealt clearly with rights

and duties of prisoners and the obligations of the state would go a long way towards resolving many of the uncertainties. This is urgently required if the UK is to meet its growing international obligations in the area of prisoners' rights. Given the nature of English constitutional law in which the courts, notwithstanding the Human Rights Act, are very concerned about not infringing the sovereignty of Parliament, they are unlikely to apply a fully rights-based analysis to prison issues without a clear legislative lead.

A strong case can be made for also spelling out the purpose of imprisonment in such legislation, for it would give the courts a much clearer basis for evaluation of the rationality of administrative actions that affect the rights of prisoners (Lazarus 2004). It would also greatly assist in making judgements about whether restrictions of rights are proportionate. A well formulated purpose for imprisonment, clearly stated in primary legislation, may even allow prisoners to claim positive rights which have not hitherto been recognized in English law.

The question of the purpose of imprisonment arises particularly acutely in the case of sentenced prisoners. The UK has ratified the ICCPR, which speaks of 'reformation and social rehabilitation' in this regard, but these terms may be hard to convert into domestic statute law. There is also the danger that the use of 'rehabilitation' in this context could allow for compulsory treatment that would be inimical to prisoners' rights.

A more useful model is provided by the new European Prison Rules which were adopted in January 2006 by the Council of Ministers representing all European states (Council of Europe 2005). It specifies that 'the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime free life' (Rule 102.1). The emphasis is on the duty of the state to offer prisoners opportunities and it provides a conceptual basis for developing positive rights for prisoners.[50] The danger that such an objective could be abused to place additional obligations on sentenced prisoners is restricted by the immediately following sub-rule that provides: 'Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment' (Rule 102.2). Such general legislation alone will not be sufficient to develop a culture in which the positive rights of prisoners are recognized. Nevertheless, it will provide an important foundation on which human rights lawyers and others concerned with prisoners' rights could build.

Selected further reading

English prison law is well served by textbooks. Livingstone, S., Owen, T. and MacDonald, A. (2003) *Prison Law* (3rd edn). Oxford: Oxford University Press, has a strong focus on prisoners' rights. It also makes fulsome reference to the jurisprudence of the European Court of Human Rights. Its appendices include the full texts of the Prison Act 1952 and the Prison Rules 1999, as well as the Human Rights Act 1998, the European Convention on Human Rights and various other instruments. Creighton, S. and King, V. (2005) *Prisoners and the Law* (3rd edn). Haywards Heath: Tottel, is a further textbook by two practitioners with a great deal of experience of prison law. It deals well with many aspects of the daily prison regime.

Lazarus, L. (2004) *Contrasting Prisoners' Rights: A Comparative Examination of England and Germany*. Oxford: Oxford University Press, is a sophisticated analysis of English prisoners' rights jurisprudence. The contrast with Germany reveals the shortcomings of English law in this area and explains the reluctance that English courts sometimes have to intervene to protect the rights of prisoners.

The Prisoners' Legal Rights Group bulletin, Prisoners' Rights, which is published by the Prisoners' Advice Service, contains case reports of recent decisions of the courts. These are particularly valuable, as they appear shortly after judgement is given and include cases not published in the general series of law reports.

Notes

1 This chapter focuses on the prison law of England and Wales and, unless otherwise specified, does not include Scotland nor Northern Ireland, which have separate prison systems. Where references are made to the UK they are relevant to all the systems.
2 *Rioters* 1774 Lofft 436; 98 ER 734.
3 *Cobbett* v. *Grey* (1850) 4 Ex 729; 154 ER 1409.
4 *Osborne* v. *Milman* (1886) 17 QBD 514; 16 Cox CC 138.
5 *Arbon* v. *Anderson*; *De Laessoe* v. *Anderson* [1943] 1 KB 252.
6 *Becker* v. *Home Office* [1972] 2 QB 407.
7 *Golder* v. *United Kingdom* (1979–1980) 1 EHRR 542.
8 *R* v. *Board of Visitors of Hull Prison, ex parte St. Germain* [1979] QB 425.
9 *Leach* v. *Deputy Governor of Parkhurst Prison* [1988] 1 AC 533 (HL (E)).
10 *Raymond* v. *Honey* [1983] 1 AC 1 (HL (E)) at 10H.
11 *R* v. *Deputy Governor of Parkhurst Prison and others, ex parte Hague* [1992] 1 AC 58 (CA).
12 *Arbon* v. *Anderson*; *De Laessoe* v. *Anderson* [1943].
13 *Becker* v. *Home Office* [1972].
14 *Raymond* v. *Honey* [1983].
15 This is the test of what is called 'Wednesbury unreasonableness', derived from the old case of *Associated Picture Houses Ltd.* v. *Wednesbury Corporation* [1948] 1 KB 223 at 228–30 (see Craig 2003: 553–4, 610–17).
16 *R (Daly)* v. *Secretary of State for the Home Department* [2001] 2 AC 532 (HL (E)); [2001] UKHL 26.
17 *Ex parte St. Germain* [1979].
18 *R* v. *Home Secretary, ex parte Tarrant* [1985] QB 251.
19 *Campbell and Fell* v. *United Kingdom* (1985) 7 EHRR 165.
20 *Leach* v. *Deputy Governor of Parkhurst Prison* [1988].
21 *Carroll, Al-Hasan and Greenfield* [2002] 1 WLR 545.
22 *R v Home Secretary ex parte Ezah and Connors* v. *United Kingdom* (2004) 39 EHRR 1.
23 *Thynne, Wilson and Gunnell* v. *United Kingdom* (1991) 13 EHRR 666.
24 *R* v. *Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 (HL (E)).
25 *Stafford* v. *United Kingdom* (2002) 35 EHRR 32.
26 *R (Anderson)* v. *Secretary of State for the Home Department* [2003] 1 AC 837 (HL (E)); [2002] UKHL 46.
27 *R (West)* v. *Parole Board* [2005] 1 WLR 350 (HL (E)); [2005] UKHL 1.
28 *R (Giles)* v. *Parole Board and another* [2004] 1 AC 1 (HL (E)); [2003] UKHL 42.

29 *R (Williams)* v. *Secretary of State for the Home Department* [2002] 1 WLR 2264 (CA); [2002] EWCA Civ 498. However, the Court of Appeal did order the review committee to follow a more open procedure in these 'exceptional circumstances'.

30 *R (Roberts)* v. *Parole Board and another* [2005] 3 WLR 152 (HL (E)); [2005] UKHL 45.

31 For a general discussion of 'public interest immunity' as a justification for refusing to disclose information to a party in legal proceedings and for an analysis of the potential shortcoming of using special counsel who have access to information that is not made available to those they represent, see Roberts and Zuckerman (2004: 238–44).

32 *R* v. *Secretary of State for the Home Department and another, ex parte McAvroy* [1984] 1 WLR 1408 (QBD).

33 *R* v. *Secretary of State for the Home Department and another, ex parte Hargreaves and others* [1997] 1 All ER 397 (CA).

34 *Ex parte Hague* [1992].

35 *Ellis* v. *Home Office* [1953] 2 All ER 149 (CA).

36 *Pullen* v. *Prison Commissioners* [1957] 3 All ER 470.

37 *Ex parte Hague* [1992].

38 See the question of whether prisoners who deny their guilt may be refused places on a sexual offender's treatment programme, discussed by Lazarus (2004: 246).

39 *Kalashnikov* v. *Russia* (2003) 36 EHRR 587; *Van der Ven* v. *The Netherlands* (2003) Application no. 50901/99, ECHR 2003-II.

40 *Keenan* v. *United Kingdom* (2001) 33 EHRR 38.

41 *Khudoyorov* v. *Russia* (8 November 2005) Application no. 6847/02.

42 *Hirst* v. *United Kingdom (no. 2)* (6 October 2005) Application no. 74025/01 at paras. 69–70. The many references by the court to its own judgments have been omitted.

43 *Poltoratksiy* v. *Ukraine* (2003) Application no. 38812/97, ECHR 2993-V.

44 *Hirst* v. *United Kingdom* (2005).

45 *R (Pearson and Martinez)* v. *Secretary of State for the Home Department* [2001] HRLR 39.

46 *Napier* v. *The Scottish Ministers* 2004 SLT 555.

47 *Napier* v. *The Scottish Ministers* 2004 at 585.

48 The Scottish authorities were liable on two grounds. First, as in England, the Human Rights Act 1998 made the authorities liable for breaches of the provisions of the ECHR. Secondly, s. 57(2) of the Scotland Act (the law that devolved power to the Scottish Assembly) provides that members of the Scottish Executive have no power to do anything that is incompatible with convention rights.

49 For a more pessimistic view, see Schone (2001).

50 A similar formulation in German law has been interpreted as incorporating the right of prisoners to be provided with opportunities for resocialization and as part of the legal foundation for recognizing the positive rights of prisoners in the administrative sphere (Van Zyl Smit 1988).

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Part 5

Regimes, Rehabilitation and Resettlement

Yvonne Jewkes

The final chapter in Part 4 illustrated that legislation concerning prisoners' rights is not always as effective as it might be, and the contributions that make up Part 5 demonstrate that the problem is magnified further when there is a conflict between law and psychiatry, as is frequently the case with individuals who are imprisoned 'for public protection'. Notions of risk and dangerousness have achieved extraordinary currency in recent years and are a ubiquitous part of the penal lexicon. However, as Sophie Holmes and Keith Soothill (Chapter 25) demonstrate, concerns about 'dangerous offenders' are nothing new. They consider changing definitions of dangerousness since the mid-nineteenth century and discuss shifting debates about what should be done with dangerous offenders, noting that, in the current penal landscape, protection of the public and political desire to be seen to be tough on crime are the principal forces in definitions of and responses to dangerousness. These twin motives come together to fuel a surge of populist punitiveness which gives politicians a mandate to enact laws that may severely inhibit the rights of individuals diagnosed as dangerous, while simultaneously appearing to be responding to public opinion. As Holmes and Soothill emphasize at the beginning of their chapter, for many years the media have salaciously reported random, serious offences perpetrated against 'innocent' victims by 'dangerous' individuals. Society's obsession with dangerousness results in a tendency to view crime in wholly individualistic terms: offending as the result of individual pathology; victimization as befalling tragic innocents who happened to be in the wrong place at the wrong time. Holmes and Soothill remind us that such constructions perpetuate a very narrow definition of dangerousness and ignore the broader picture of harm caused by the negligence and greed of multinational corporations. They weigh up the usefulness of 'dangerousness' and conclude that, while the public have a right to be protected from dangerous offenders, clinical assessments of future risk can be somewhat blunt in application.

Clinical and actuarial methods of predicting and treating dangerous behaviour provide the focus of the next chapter by Clive R. Hollin and

Charlotte Bilby (Chapter 26). The chapter is broadly divided into three main sections. The first section charts the emergence – and subsequent decline – of rehabilitation in penal policy over the last century and the changes in policy and practice in the mid-1990s which moved the field from a position of 'nothing works' to a commitment to a 'what works' agenda. Following this analysis of evolving attitudes to intervention, the next section of the chapter assesses the effectiveness of offender behaviour programmes in practice. Among the programmes under discussion are 'Reasoning and Rehabilitation' (R & R), the Sex Offender Treatment Programme (SOTP) and the various initiatives that come under the rubric 'enhanced thinking skills' (ETS). Throughout the chapter Hollin and Bilby locate their discussion within the context of the dominant political ideologies and policies that have shaped approaches to addressing offending behaviour and, indeed, criminal justice policy more widely. Like Holmes and Soothill in the previous chapter, they imply that the language of dangerousness and risk returns us to nineteenth-century positivist discourses and paves the way for correctional policies based on populist desires for retribution, rather than on a commitment to rehabilitating offenders. Furthermore, like many other contributions to this Handbook, this chapter underlines the inherent tension that exists within a prison system that seeks to punish individuals while holding a commitment to their welfare and well-being. In the final section of the chapter Hollin and Bilby ask 'is what works working?' – i.e. have offending behaviour programmes achieved the reduction in crime and offending aimed for by the New Labour government? They discuss the efficacy of random control trials (RCTs) as a means of evaluating programmes and reflect on the extent to which the current evidence base is informing National Offender Management Service (NOMS) policy and practice.

The emergence of discourses of risk, dangerousness and public protection is a theme that continues into the next chapter, which highlights the parallels between cognitive programmes undertaken in prison and the approach of some desistance theorists (both being interventionist strategies aimed at changing behaviour). Focusing on resettlement and offender management, Kirsty Hudson, Mike Maguire and Peter Raynor (Chapter 27) discuss the innovation of the 'seamless sentence' (or 'Custody Plus') intended to serve offenders' needs in prison and 'through the gate': a philosophy that underpinned the establishment of NOMS. The chapter looks at the recent history of release and resettlement initiatives and draws on empirical work carried out by the authors and others. In their discussion, Hudson, Maguire and Raynor relate some of the most significant research findings to broader developments in the penal system, and to theories and evidence about desistance from crime. While they applaud the progress that has been made in achieving a genuinely 'joined up' system to support prisoners on release, they note that important questions remain concerning the likelihood that these advances will achieve the desired outcome of reducing reoffending. They highlight the aspects of the resettlement strategies they believe to have shown some success and emphasize the importance of the offender–supervisor relationship. Their contribution ends with some reflections on the likely success of reoffending reduction strategies in the near future, and they reiterate the point made

elsewhere that offender management – beyond as well as within prison – is weakened by the tension that exists between the drives to punish and to rehabilitate.

Hudson, Maguire and Raynor's argument that work aimed at the rehabilitation of offenders must be informed by a theoretical and evidence-based understanding of the process of desistance from crime is supported in the next chapter by a contributor who has extensively researched the subject. Shadd Maruna (Chapter 28) offers an overview of what is known about desistance, the age at which it typically occurs, the inherent problems for the individual in 'going straight' and the role of the criminal justice system in determining whether individuals recidivate or not. Where the previous chapter focuses on policy and programme implementation, this contribution focuses on theory and practice. Maruna points out that, while it is a well established fact within criminology that as offenders grow up they tend to grow out of committing crime, for those individuals who are released from prison and attempting to reintegrate into the community, the levels of stigma, social exclusion, social isolation, earning capacity and addiction problems they may face represent a 'lethal combination'. It is for this reason, Maruna argues, that ex-offenders should not be left alone to get on with the process of maturing and forming the kinds of pro-social bonds that are known to facilitate desistance from crime; it simply takes too long and leaves too many victims in its wake. Equally, though, the evidence that prison does not work in preventing people from committing further crimes is overwhelming. Imprisonment takes individuals from their families and whatever stability they have in their lives, damages their chances of returning to or finding new employment and frequently leads to homelessness. Maruna discusses the factors that would potentially ameliorate the likelihood of recidivism given this context. Optimistic about the growing inclination to link desistance theory with resettlement practice and to follow strength-based approaches rather than risk-based interventions, Maruna welcomes the drive towards a positive focus on assisting ex-offenders to 'make good' and calls for continued research to inform future approaches to resettlement.

While Maruna alerts us to some of the consequences for offenders of being isolated from their families, Alice Mills and Helen Codd (Chapter 29) discuss the effects of imprisonment on the close relatives of the prisoner. They observe that, although the beneficial impact of stable family environments in promoting effective resettlement and reducing reoffending is well known, families continue to experience a range of difficulties and challenges, with relatively little official support or recognition. Their chapter highlights the ways in which domestic ties can support the processes of confinement, resettlement and desistance, but also some of the limitations inherent in relying on family involvement. Mills and Codd underline the fact that, in many cases, a prisoner's family is consigned to serving a 'second sentence', and that the emotional, financial and social impact of having a close family member in prison can be devastating. They review the policy initiatives that have been introduced with the aim of helping prisoners to maintain relationships with family, evaluate the role of charitable and campaigning organizations, and make recommendations concerning future directions.

In the final chapter of this volume, Mick Ryan and Joe Sim (Chapter 30) discuss prison reform and abolition in their account of campaigning for, and campaigning against, prisons. Abolitionism is frequently confused with, assumed to be one part of, or even thought to be the end goal of penal reform, but Ryan and Sim adopt a more radical position, suggesting that the penal reform lobby arguably has had a damaging impact on debates about the efficacy of prisons. They acknowledge that *some* reforms at *some* historical moments have enhanced the position of the confined. For example, they discuss the emergence in the 1970s and 1980s of key prison reform groups which achieved some degree of success in campaigning for reform while at the same time calling for the abolition of aspects of the penal system that were particularly problematic, dehumanizing and/or otherwise neglected in wider debates about imprisonment. However, they further suggest that the prison reform movement more broadly has helped to reproduce dominant discourses that unproblematically perpetuate the idea that prison is a natural and necessary response to crime. They are particularly critical of prison reform post-Woolf, arguing that Woolf did little to challenge the centrality of the prison in penal philosophy, and that the ideological slide from the philosophy of 'prison works' to the new-generation 'working prison' signals the death knell for any serious attempt to reduce the use of imprisonment. They are also critical of the introduction of privatization and new public management, which has resulted in concerns about value for money overtaking a desire for reform. Throughout the *Handbook on Prisons*, contributors have articulated the ideological contradiction of imprisonment; that humane and humanizing intentions may be corrupted by the drive to punish. In this chapter Ryan and Sim argue that prison reform legitimates the role of the prison and consolidates the power of the state to incarcerate. Simultaneously, those who adopt an abolitionist stance or who are committed to seriously and systematically reducing the use of imprisonment are caricatured as soft on crime liberals whose ideologies run counter to the privileged, commonsense agenda of the public and especially victims of crime. Their discussion picks up many of the issues raised in the previous 29 chapters and frames them within a theoretical and political context which questions whether we need prisons at all. Somewhat ironically, then, Ryan and Sim provide a fitting final chapter for the *Handbook on Prisons*.

Chapter 25

Dangerous offenders and dangerousness

Sophie Holmes and Keith Soothill

Introduction

In 1977, Professor (now Sir) Anthony Bottoms delivered his inaugural lecture, 'Reflections on the renaissance of dangerousness'. This was a critical response to the proposals of several committees to introduce indeterminate prison sentences for offenders deemed to be 'dangerous'. Now 30 years on, his work is rarely cited in contemporary literature on dealing with dangerous offenders; he was anti-protectionist (against protective measures for 'dangerous' people) and the debate seems to have moved on with a greater focus on victims' rights and protecting society. Nevertheless, the ethical issues he raised still implicitly permeate debates about how to treat or deal with dangerous offenders in the twenty-first century. A consensus has not yet been achieved. In fact, there are essentially three crucial areas on which agreement is yet to be reached: first, conceptual problems; secondly, practical and technical problems in predicting dangerousness and in applying the law; and, lastly, the role of politics.

'Dangerousness' is a relative concept – one which, like the concept of crime itself, is socially constructed. That prisons contain dangerous offenders is hardly a revelation, but exactly who and what are considered dangerous are not the same now as they were a hundred years ago. Moreover, although we may share a commonsense understanding of what constitutes 'dangerousness', mental health professionals working within the criminal justice system are yet to reach an agreement on a precise and meaningful definition of the concept. Some criteria for defining dangerousness have been laid down in legislation but there remains a lack of clarity, which makes practical decisions on an offender's dangerousness unworkable for both judges and clinicians. Whether clinicians or health professionals are able to predict accurately which offenders will be dangerous in the future has become a key consideration in deciding whether or not dangerousness is a helpful concept. The serious issue of the so-called 'false positive' – that is a person whom a clinician or other medical professional falsely predicts will be violent when in fact he or she would not be – is of great concern to critics of dangerousness, although

such concern is often outweighed by the public's fear of a 'false negative' – someone, like Graham Young,[1] who remains a public danger when he or she is not expected to be. There is no perfect balance: policy and practice change over time. If more offenders on indeterminate sentences are released from prison, then more 'false negatives' are likely to be evident, and a moral outcry, usually in and orchestrated by the media, develops. In contrast, 'false positives' cannot so readily be tested. In such a case, the direct sufferer will be the offender who may spend more time unnecessarily in captivity, while the indirect sufferer will be the community spending more money than necessary on incarceration. It is no surprise that clinicians and those on parole boards therefore tend to err on the side of caution when assessing and predicting 'dangerousness' because the consequences of a false judgement have a differential impact – 'false negatives' may produce an inquiry, whereas 'false positives' may simply contribute to a bottleneck in the system with no individual blame attached. As a result, despite media coverage that would suggest otherwise, there are few such cases of people being released as safe, who then commit violent acts. Some criminologists, like Bottoms (1977), may believe it is theoretically wrong to continue to lock up 'dangerous' offenders once their original sentence has been served; the general public and the majority of politicians do not, however, share this view. Protection of the public, combined with a wish to be seen to be being tough on crime, sits at the top of the political agenda and, by continuing to keep dangerous people off the streets and in prison, politicians gain the majority vote.

The over-riding issue remains one of morality: even if dangerousness could be easily defined and predicted with an increased level of accuracy, is it morally justifiable to deny someone his or her freedom, based on an assessment of his or her past behaviour or on predictions of future behaviour patterns? To label a person 'dangerous' based on a few instances of dangerous behaviour is, itself, unethical because dangerousness is *not* a character trait: it is situational. In other words, most people are not dangerous all the time and some may never be again. 'Violence prone' would perhaps better describe many of these 'dangerous' offenders.

Despite protests made by mental health professionals and critics of dangerousness throughout the 1980s and 1990s that dangerous behaviour could not be predicted, recent literature suggests that, in certain situations, clinicians *can* accurately predict dangerousness using both clinical and actuarial assessment (Quinsey 1995). However, it would be wrong to view Bottoms' (1977) concerns as now unfounded; it is more likely that we simply do not hear about the many 'false positives' who remain in custody.

The history of dangerousness

The concept of dangerousness – specifically in relation to dangerous offenders – is not anything new. Indeed, dangerousness was of concern to people in premodern society. Although the term 'dangerousness' has remained, what constitutes dangerousness and what is regarded as dangerous shifted throughout the nineteenth and twentieth centuries. It is a relative concept, informed by

public attitudes and values to crime and punishment, as well as being shaped by a series of laws introduced to govern the dangerous. Those classified as dangerous may have varied across time, yet they have all represented similar threats to the values of normal society – the 'ungovernables' (Pratt 1997: 1). Repetition of crime is something many of these so-called dangerous offenders have in common, although an offender can still be considered dangerous if he or she has committed just one very serious crime.

Repeat offenders featured in premodern society, but it was at the end of the nineteenth century that they were regarded as a risk to the security and well-being of modern society, which the state was expected to provide for its citizens. However, modern societies had fewer options available for use as sanctions than previously: transportation, for example, had largely been taken off the penal agenda, as had execution and flogging for non-capital offenders (Pratt 1997: 2). Offenders were to be sentenced to prison and, under the recommendations of the Penal Servitude Bill 1864, seven years was to be 'the mandatory minimum term…for anyone [already] with a conviction for felony…[then] the Habitual Criminals Bill of 1869 included a clause making seven years' penal servitude mandatory on third conviction for a felony' (Radzinowicz and Hood 1986: 244–5). This type of cumulative sentencing was punishment for the willingness to commit crime, which some offenders demonstrated with their continued recidivism. However, the recidivists seemed unmoved by the new strategies; they were not fearful of prison nor deterred by it, and there seemed no solution to governing these 'ungovernable' offenders. In reality, they were mainly petty property offenders and vagrants, and were referred to as the habitual criminals – those people who lived by robbery and thieving. The 'habituals' had placed themselves beyond control and governance and this prompted the emergence of 'dangerousness' as a penal concept.

The final abolition of transportation of offenders to Australia in 1853 meant that these dangerous and criminal classes were now present in the community, a growing social problem concentrated in large numbers in the early Victorian cities. They were referred to as a separate class of people and, following the first comprehensive publications of English crime statistics, the extent and size of the problem became apparent. Solly (1887) noted that the number of men and youths who comprised the criminal and dangerous classes was estimated at about 40,000 in England and Wales and that, besides them, there was 'an immense army of vagrants, of whom about 60,000, though not at present reckoned criminal, are continually being tempted or driven into the criminal ranks, and constitute a standing danger and disgrace to the community' (cited in Pratt 1997: 13). Early fears revolved around the perception of the collective force of the dangerous classes. *En masse* they had the potential to challenge the existence of the state itself and 'possessed a power of destruction: destruction not simply of property but order, tradition and law itself; and without these central pillars of support, modern society was thought to be in danger of collapse' (Pratt 1997: 14). Criminality and dangerousness at this point seemed to be a threat from the popular masses as a whole. By the end of the nineteenth century, however, this threat had all but diminished as a result of the weakening of the unity of the working classes in

general and, inadvertently of the dangerous classes. They had, for example, split into the skilled and unskilled, and the deserving and undeserving poor (Pratt 1997). In many ways the perceived threat from the dangerous classes that Victorian society believed they faced was certainly different and in some ways far more dangerous than the individuals who are today considered dangerous.

Thus, the threat posed to society by the dangerous classes shifted to a perceived threat to individuals by dangerous criminals or habituals. Yet, although not so large in number, the dangerousness associated with these individuals was more pervasive than that of the dangerous classes. Petty crimes were the biggest problem, specifically property crimes which, by their sheer quantity, seemed to outweigh a single serious crime. The exceptions were the crimes of Jack the Ripper which, because of extensive media coverage, caused greater fear among the public. In the late nineteenth century, in the East End of London, he 'mutilated and murdered' female bodies with no ready explanation and 'the age of sex crime' was ushered in (Caputi 1988: 10). In fact, murder in the East End was by no means rare, but the Ripper case was unprecedented in its ferocity and, through the media's vivid and sensational coverage, it caught and held the imagination of all London and beyond, contributing to women's sense of vulnerability in modern urban culture (Caputi 1988). Nevertheless, the overall focus in the late nineteenth century and into the twentieth century was the protection of property which, while not threatening a person's physical well-being, was considered threatening to the victim's quality of life and social status. The way risk was calculated also meant that property crimes were regarded as more dangerous to the general population because, as Anderson (1907 cited in Pratt 1997: 17) explains, a man who kills his wife is not necessarily a terror to the wives of other men while, in contrast, few nights pass when a burglary is not committed and, thus, this type of risk is more dangerous to the general population. Certainly violence in private was still generally tolerated and, while sex crimes were on the increase, they were not viewed as being as problematic as property crime – after all, sex crimes, like the Ripper case, were directed almost invariably at women, and the issue was unsuitable for polite conversation (Carpenter 1864 cited in Pratt 1997: 19). In short, dangerousness was a reflection of the values, class and gender of the period.

These habitual offenders were not deemed to be insane and psychiatrists had little interest in them. However, a shift took place in political rationality, from classical liberalism to welfarism, with laws introducing indeterminate prison sentences designed to lock up the habitual criminals who put at risk the well-being of many individuals through their repeated criminality. The supposed links between recidivism and degeneracy were the theoretical underpinnings to such a shift. The habituals were no longer depicted as amoral or incorrigible. Instead, they were part of a broader class of degenerates, including the physically handicapped, the mentally ill and drunks, who were thought to be undermining the racial health of the population. They were punished for the risk they posed rather than simply by matching the punishment to the crime. Classifications of criminals were emerging, as was the individualization of punishment (Pratt 1997: 34). The lower classes

were reproducing fast at this time, and Sir Francis Galton (Darwin's cousin) appeared to provide scientific proof that parental qualities were being inherited through what he called 'eugenics' (in regard to the habituals and continued racial degeneration) (Reilly 1987: 153). The idea that criminality could be inherited in the same way as physical characteristics also supported eugenics and the idea of the 'born criminal' (Ferri 1895 cited in Pratt 1997). Eugenics called for the sterilization of the habitual criminals to prevent future generations. However, it was rejected and the government chose instead to protect the public through indeterminate sentences, which meant it was still possible for a criminal eventually to be reformed (Pratt 1997: 49).

Public protection was written into law for the first time in the Prevention of Crime Act 1908. This new penal concept meant the state had a duty to intervene and protect its subjects from those who endangered them (Pratt 1997: 51). This extended form of state power became embedded in modern society, so when fears about the habituals resurfaced as vagrancy increased (mainly because discharged soldiers were unable to find work during the postwar period, but also amplified by the economic crisis of the 1920s and 1930s), the state responded with further legislation. The Criminal Justice Bill 1938 proposed the division of the habituals into the mentally and morally weak, and the pathological. But, owing to the Second World War, these provisions were not enacted.

After the Second World War, the Criminal Justice Act 1948 went further and subdivided the habituals into those who were young – who, it was thought, had some hope of responding to psychological corrective training – and those who were old, for whom nothing could be done. In fact, public protection was the paramount justification for this (Pratt 1997: 53). Corrective training and ideas of possible reform increased the role psychologists had to play, and an increased focus on the discipline of psychology helped to shape laws as well as broaden out the concept of dangerousness. An increased interest in psychoanalytical ideas, for instance, widened the boundaries of dangerousness. Freud, for example, explained homosexuality as arrested development and he believed homosexuals to be a danger to others, especially the young, because of their predatory instincts against the norm of family life (Pratt 1997: 61).

By the 1960s the habituals or 'inadequates', as they came to be referred to, were no longer associated with dangerousness (neither were homosexuals), and hostels and mental institutions replaced prison as more appropriate accommodation. The Mental Health Act 1959 also replaced old definitions and ideas of biological deficiency with mental disorders. Hospital orders and restriction orders were introduced to the courts, and an offender now had to be found by two doctors to be suffering from a mental disorder of such a nature as to warrant the court ordering him or her to be detained in hospital (Pratt 1997: 70). This demonstrated the courts' increased trust in medical opinion. Following this, in the late 1960s and early 1970s, there was a prevailing rationale shift to neoliberalism, with dangerousness being reclassified as violent and sexual behaviour. Property offences were no longer associated with dangerousness and they were handled very differently – possibly because of the increased security of having property insurance. The 1970s may have led to increased individual freedom, but the state none the

less maintained its commitment to protect the public from the dangerous. In the Scottish Council's *Report on Crime* (1975), dangerousness was described as including 'the mentally abnormal and all potentially repeat violent offenders' (cited in Bottoms 1977: 73). What constituted dangerousness from the mid-twentieth century is indicative of changing values, which were increasingly placed on the body.

The media further fuelled the fear of dangerousness, especially in the 1970s and 1980s when rapists were portrayed as the archetypal dangerous offender (Greer 2003). The media highlighted the dangers of personal attacks and the self-protection measures that should be taken, which almost certainly served to increase the fear of dangerousness. Meanwhile, victims' and women's rights campaigners targeted their concerns at the politicians who tapped into this populist punitive stance. This surge of publicity enabled politicians to enact laws against the dangerous while appearing to respond to public opinion. Increasingly, dangerousness has been much more specifically defined by the state rather than being left to the judiciary: the state sets the rules and judges are told whom they may send to prison and when, who is dangerous and who is not. However, with the increased reliance on professionals in the calculation of dangerousness and in the light of overpredicting in the high-profile American case of the Baxtrom patients,[2] scepticism increased. Certainly the 1970s saw a revival of the issue of dangerousness and what to do with the offenders. Custody was not regarded as feasible for those simply regarded as inadequate or non-dangerous, so there was a growth in multi-purpose day centres. There was a concerted effort to keep people out of custody by using more non-custodial sentences (Bottoms 1977: 71–2).

At the end of the twentieth century there was a move to looking at the crimes that offenders might commit in the future – consequentialism and old risks lost their dangerousness quality (Soothill 1998: 54). Even with more non-custodial sentences available, the answer to this problem has continued to be an increase in the use of prisons. Many repeat offenders are still floundering in prison, and general concerns that England and Wales has one of the highest prison populations seem to have disappeared. Instead, the use of prisons appears to be a symbol of the politicians' fight against crime (getting 'tough on crime' but, as yet, not on the 'causes of crime'). The right to protection has transcended political changes and has become a way of gaining or maintaining political power. Protective sentences are regarded as the present panacea. The Criminal Justice Act 2003, for example, lays out a new scheme of sentences for dangerous offenders and replaces discretionary life sentences with 'imprisonment for public protection' (Thomas 2006c).

Addressing the concept of dangerousness

Understanding the concept of dangerousness is of vital importance in deciding whether dangerousness is still, or ever was, helpful in dealing with offending behaviour. In order to maintain a justice system that is consistent in its decisions regarding dangerous offenders, clear definitions and criteria for dangerousness need to be laid down, rather than waiting for clarification

on an *ad hoc* basis. Reaching a consensus on the concept of dangerousness has been made more difficult because of the interdisciplinary conflict between law and psychiatry (Floud and Young 1981: 22). Although the two disciplines work together to determine whether an offender is dangerous, they both serve different purposes and neither seems completely satisfied with a workable definition of the concept.

Academics have attempted to define dangerousness in varying ways. Gunn (cited in Hamilton and Freeman 1982: 7), for example, believes that there are three elements that stand out: destructiveness, prediction and fear. His inclusion of fear (an inherently subjective notion) as one of the key elements of dangerousness further confirms that his concept of dangerousness is bound by subjectivity. The element of prediction, however, is one that is overwhelmingly agreed upon – and it is this prediction of dangerousness that much of the recent literature has focused upon; that is, prediction of future dangerousness based on probabilities calculated by looking at past behaviour and at an offender's personal characteristics and social situation. According to Walker (1983: 23), the probability or 'likelihood of harm' that an offender will inflict upon someone must be more than negligible and above a certain level. That level does, however, vary and is not easily defined, but Walker argues that it is 'not impossible'. Pseudo-scientifically, Walker is tempted to say that the formula for dangerousness is Seriousness × Probability of harm, yet he acknowledges the problems for the judiciary in determining complex notions, such as seriousness (1983: 24). Dworkin (1977), however, believes that we should only detain a so-called dangerous person when the future danger he or she presents is 'vivid'. His test of 'vivid danger' was further analysed by Bottoms and Brownsword (1983: 17) who, like Gunn, suggest there are three main components:

1 *Seriousness* (what type and degree of injury is in contemplation?).
2 *Temporality*, which breaks down into *frequency* (over a given period, how many injurious acts are expected?) and *immediacy* (how soon is the next injurious act?).
3 *Certainty* (how sure are we that this person will act as predicted?).

In this definition, the element of certainty is pivotal: if it is not very certain that a person will commit any act, then, however serious that act is, it cannot be said to be a vivid danger. Likewise, if the injurious act being contemplated is not considered serious, then the danger will not be described as vivid. There is a fine balance between seriousness and dangerousness, yet neither can be defined objectively when it is based on probabilities. Dworkin's test of 'vivid danger' is a severe one and cannot easily be attained. In some respects the tension over the past 30 years has been in seeking the balance between Dworkin's strict test and a rather more watered-down version of this.

It must be remembered that, in England and Wales, there is no actual crime of 'dangerousness'; instead, legislation has been passed to extend the powers given to the courts to deal with offenders who are deemed dangerous. It is this that constitutes the so-called dangerousness legislation. Protective sentences can be imposed under a number of provisions, which

include s. 80(2)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (formerly s. 2(2)(b) of the Criminal Justice Act 1991) by which courts may extend the 'normal sentence' that may be appropriate for a serious 'violent' or 'sexual' offence if of the opinion that only such a sentence would be adequate to protect the public from 'serious harm' from the offender. The prospective harm must be of a grave nature, and s. 31(3) of the Criminal Justice Act 1991 further provides that 'serious harm' for the purposes of these sections means 'protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by [the defendant]'. Section 109 of the Powers of Criminal Courts (Sentencing) Act 2000 (formerly s. 2 of the Crime (Sentences) Act 1997) provides for automatic life sentences for offenders who commit a second 'serious offence'. 'Extended sentences' are also used under s. 85 of the Powers of Criminal Courts (Sentencing) Act 2000 (formerly s. 58 of the Crime and Disorder Act 1998), as well as discretionary life sentences. The Criminal Justice Act 2003 has, however, recently repealed the provisions of the Powers of Criminal Courts (Sentencing) Act 2000 but because the new provisions only came into force on 4 April 2005, the old provisions still apply to relevant offences committed before that date (Thomas 2006a, 2006b, 2006c). Routinely, dangerous people who have committed an offence have been dealt with in one of the aforementioned ways, while individuals in need of treatment have been processed through the mental health system. There is, however, one other category that has emerged – that of the dangerous person with a dangerous and severe personality disorder (DSPD) who is deemed untreatable and who can also be subject to indeterminate sentencing (McAlinden 2001).

There are, then, no clear-cut criteria on dangerousness. Those laid down in legislation still leave unanswered questions, such as how likely and how serious the predicted harm must be before it is justifiable to lengthen a prison sentence beyond its proportionate term, and how prospective psychological harm should be interpreted (Ashworth 1996). It remains a matter of degree and the spectrum is wide, but there is an expectation that, if anyone is to be justly detained under supervision in anticipation of the harm he or she may do, the legal conditions must be clearly defined (Floud and Young 1981: 20).

While various systems are in place, the concept presents legislators with two major problems: the selection of people for special measures of control and the selection of activities for inclusion in the criminal law (Walker 1983: 24). It is generally accepted that certain activities should be made criminal because of the grave harms they may cause, but deciding who should be made a 'dangerous person' is not agreed upon. There is discussion over whether you can in fact identify people as dangerous at all – arguably it is wrong to objectify danger as a characteristic of a person, rather than something that he or she might do in certain circumstances (Walker 1983: 25). People are not, for example, either good or bad; in general, they can be both at different times. Nevertheless, the law considers dangerousness as a pathological attribute of character, 'a propensity to inflict harm on others in disregard or defiance of the usual social and legal constraints' (Floud and Young 1981: 20). A dangerous person is not a psychological entity, nor is 'dangerousness' a scientific or medical concept, or necessarily associated

with mental illness. There is evidence, however, to suggest that a significant proportion of offenders identified as dangerous also show some signs of mental illness However, this could simply be a social construction. Critics argue that, as a society, we would sometimes rather believe that normal people are simply not capable of the most evil crimes and that, instead, the perpetrator must be sick.

It is too readily accepted, for example, that 'dangerous' or 'serious offenders' are the serial killers and psychopaths who kill when it should not be forgotten that crimes of omission can be just as dangerous as crimes of commission. In Bottoms' (1977: 91) paper 30 years ago, Bottoms pointed out that any adequate penal theory 'must take seriously the offences of the powerful as well as those of the powerless'. There remains no adequate justification as to why certain types of offenders are deemed 'dangerous' when others who may pose the same or greater level of harm are not labelled as such. 'Grave' harms are frequently the result of negligent and avoidable actions. For example, multinational corporations, some of whom are responsible for polluting rivers and water supplies, often in the name of profit, may come into the frame. Indeed, some of these corporations deliberately shop around for countries with lax regulatory controls in order to maximize their profits. The Indian Bhopal disaster is an extreme example of a different type of dangerousness, when thousands of people were killed after a gas leak at the Union Carbide factory. To some extent Union Carbide is more dangerous than a psychopath on a shooting spree because they were fully aware of the situation and did nothing to avert it. In fact, they silenced an alarm that warned of chemical leaks a few months prior to the disaster (*Independent* 2 December 2004). Finding the people behind such decisions is, however, more difficult, and it is certainly easier to find and detain the so-called dangerous individuals who are overtly violent. Furthermore, physical violence is easier to identify than psychological harm. While one needs to recognize that not all violence is dangerous, likewise dangerousness should not always be characterized as physical violence.

Coming to a decision

Discretionary decisions on dangerousness remain, ultimately, with the judiciary who, not unexpectedly, focus disproportionately on legal factors (such as previous convictions and offence seriousness) in making their judgements on risk and harm assessment (Henham 2001). It requires judges to weigh (often) complex medical evidence regarding predicted behaviour with conventional legal factors relating to aggravation and mitigation. Henham makes reference to a case involving a paedophile with abnormal personality traits, where the judge concentrated on the defendant's past record and predisposition in assessing risk, while ignoring the fact that the psychiatric report specifically advised against an extended sentence – saying a normal commensurate term would be as effective in reducing the risk of reoffending. This case highlights the problem inherent in attempting to conceptualize dangerousness, especially when it is linked with changing conceptions of punishment – in this case,

whether public protection should now be given greater weighting than proportionality when sentencing.

Even if there is no mental disorder, or an untreatable one, the courts still tend to look to the evidence of psychiatrists to assist them in coming to a conclusion as to whether someone is dangerous or not, and whether he or she needs to be detained. Whether psychiatrists should be so involved in providing information for the assessment of dangerousness if a person is *not* suffering from a mental disorder is, however, questionable. Perhaps most would follow Bluglass's (1982) rather paradoxical view that psychiatrists are ill-equipped to carry out this task but, nevertheless, he argues that they are no worse than judges and so it is reasonable for them to make a contribution.

The difficulties of measurement and prediction are bound up in the concept of dangerousness, but such technical issues are only one aspect of whether dangerousness is a workable and helpful concept when dealing with those offenders who pose a vivid danger to society. It is possible to say that legislators have narrowed down a certain type of offender (and offence) who can be considered dangerous. It seems that there is a hierarchy of dangerousness and that this can be categorized as follows: first to others; secondly, to oneself; thirdly, to the environment; and, fourthly, to social networks (Hamilton and Freeman 1982: 98). Critics may argue that the concept is too entwined in politics and policy because the focus is on the powerless and those who present a visible danger to others. Interest in dangerousness also has little to do with increases in the number of dangerous offenders. Instead, targeting dangerousness is more a symbolic political move, as the history of dangerousness has shown. A Home Office Research Unit report went further, however, when it referred to Bottoms' (1977) paper and stated that he and other authors seem to 'assume that the dangerous offender exists as no more than a symbol of bourgeois fears or of bureaucratic repression' (Brody and Tarling 1980: 33). Bottoms and Brownsword, however, argue this is a 'wholly erroneous inference' (1983: 9). They may disagree with the concept itself on the grounds of the individual rights of persons who may be subject to preventative custody, but it does not mean they do not acknowledge their existence. They oppose dangerousness legislation but do so knowing full well that the absence of such sentences may lead to a slightly higher violent crime rate in the community.

Is dangerousness a helpful concept? The argument for

Late modern society is constrained in its delivery of punishment, and the media are full of apparent miscarriages of justice whereby offenders do not seem to have been given harsh enough sentences for the gravity of the crimes they have committed. It is in this atmosphere that society feels the justice system is failing them and implicitly supports the growth in prisoner numbers and the expansion of the government's prison-building programmes. There is dissatisfaction with the relatively short and finite sentences that are being handed out for serious offences (Pratt 1997: 2). By identifying an offender as dangerous, however, sentences can be extended to reflect the risk of serious

harm that he or she poses to society. Dangerousness is subjective but it is, none the less, a very real concept to those who have fallen victim to a serious violent or sexual attack or to those who live in fear of such an attack. There is little doubt in layperson's terms of the reality of the concept and of the need to label and detain certain people for the protection of society. Protection of the public should arguably be regarded as a justification for punishment, which is as sound as retribution and deterrence and not completely at odds with the principle of proportionality. The concept is complex but the legal criteria, which have been laid down on a case-by-case basis, have provided the courts with a more than adequate definition.

On 13 March 1996, Thomas Hamilton shot and killed 17 children and a teacher before turning the gun on himself in the deadly Dunblane massacre in Scotland. The local police had previously investigated him because of his strange behaviour towards 'his boys' at one of the boys' clubs he had set up in the 1970s and 1980s. The former head of Central Scotland Police's Child Protection Unit, Detective Sergeant Paul Hughes, had also written a damning report on Hamilton, recommending his gun licence be revoked because of his 'unsavoury character' and 'unstable personality'. The police were, however, unable to find anything unlawful in his actions. The shocking nature of this crime was felt across the nation and there was public outcry after the newspapers reported that the police had harboured suspicions about Hamilton's character. Similarly, after Ian Huntley was convicted of the murders of Holly Chapman and Jessica Wells, it emerged he had prior convictions for sexual offences, yet he was able to work in the grounds of a school. The media, drawing on the public mood, began asking questions concerning why he was not detained after the early warning signs became apparent. To do so would have been a very positivist action (a school of thought from which academic criminologists have moved firmly away). The idea of the criminal justice system intervening where no serious act had been committed may not sit well with academics and classicists but the law-abiding populace might feel safer. The need for a feeling of safety is very powerful and must not be underestimated. The dangerousness legislation has not yet, however, gone as far as locking people up for crimes they have not committed, and it would be a gross oversimplification to say it has.

The government has decided that extended detention in custody is the best way to meet the growing public alarm and anger at the increasing numbers of paedophiles and other dangerous offenders who are deemed untreatable and who would normally be released at the end of their sentences, even though they remain a danger to the public. It allows for an element of discretion after a sentence has been passed, which can be viewed as a responsible step to take (McAlinden 2001). The government and the judiciary recognize that detaining people indefinitely on the basis that they pose a danger to society is also a serious step and, as such, they aim to ensure the system will involve a robust system of checks, balancing both legal and clinical issues (McAlinden 2001). It is often maintained that the target group of seriously dangerous offenders is very small, for it is not the ordinary recidivist who is identified as dangerous. The Criminal Justice Act 1991 makes it quite clear that the mere possibility that someone might reoffend is not grounds enough

to sentence him or her under s. 2(2)(b) – only those whom the psychiatrists assess as presenting serious harm to society. Furthermore, the courts rarely impose protective sentences, though the mere existence of such legislation and the identification and labelling of the threat to society have a powerful symbolic value.

When psychiatrists predict dangerousness, there are two broad categories of assessment: clinical and actuarial. Clinical assessments take place in a controlled setting. They can be performed without any personal interaction between the clinician and the person in question, and the clinician has full access to records of the individual's behaviour, which can include any psychological tests performed. It is perhaps the most subjective of clinical judgements and is based on the experience a clinician has had with certain types of offenders. Actuarial predictions are based on analyses of statistics compiled from series of previous offenders and assessments of the individual's previous offending behaviour to determine the actuarial or statistical class to which the offender in question belongs (Floud and Young 1981: 26). Actuarial predictions also attempt to determine an offender's suitability for release. Both types of assessment have their benefits and weaknesses but there is overlap in the assessment used: it is not an 'either or' situation. Clinicians can use static indicators (for example, the age of the person and the offences he or she has committed) as well as dynamic indicators, such as attitude and progress in treatment (if the person has already been detained). Shaffer *et al*. (1994), for example, assessed the accuracy of assessments of dangerousness in a large sample of both violent and non-violent psychiatric patients and prison inmates. Their findings indicate that dangerousness can be predicted with a better than chance accuracy level, and the predictor variables (i.e. age, race, marital status) showed that the difference between the violent and non-violent subjects was generally consistent with the literature. In short, the violent group was younger, more likely to be non-white, more likely to have a poor vocational history, more likely to have a juvenile arrest history and more likely to have a history of psychiatric hospitalization (Shaffer *et al*. 1994). Monahan (1992) is also very optimistic about the improvement in the accuracy of violence predictions that actuarial studies can achieve. In fact, evidence shows that predictions are reasonably accurate in predicting which offenders will be violent in the short term and also the outcome of 'high risk' behaviour groups (Shaffer *et al*. 1994). Nevertheless, it remains an imperfect science, which the medical and legal professions recognize. There is a delicate path to be trodden between criminalizing and decriminalizing a patient or client, and the consequences of failing to identify a dangerous individual can obviously have serious social and professional implications.

One of the most fundamental justifications for having a system of criminal law is to protect citizens from harm to their person and their property inflicted unjustifiably by others. The core of public protection is related to personal safety and to the rights of the general population to be free from victimization. Foucault (1965 cited in Pratt 1997: 6) wrote about 'a right to life' and a right to protection from risks thought to endanger that quality of life, and dangerous offenders are one such risk. It is argued that the greatest risks to life come not from dangerous offenders but from accidents and

disease. Protection from criminal harms is, however, important because they can be more hurtful, involving physical humiliation and deliberate disregard of our personal safety by another. Criminal acts are committed intentionally or recklessly and with a level of culpability high enough to warrant criminal conviction in the first place (Ashworth 2004). Arguably, a recidivist's rights should not be held as highly as a victim's. In choosing to commit a crime from the outset, a recidivist has compromised someone else's rights and is punishable for persistently reoffending. The government's duty to protect arguably takes precedence over such matters as proportionality. Proportionality still remains a key principle in sentencing, but dangerous offenders are the exception to the rule. For advocates of protectionism, identifying dangerous offenders can only be for the greater good and protection of society – an objective we should all support.

Is dangerousness a helpful concept? The argument against

Those who are less enamoured by the protectionist arguments have a different stance. The concept of dangerousness in the twenty-first century is ill-defined and emotive and, as a result, very unhelpful in dealing with offending behaviour. The objections to dangerousness do not lie simply with its lack of adequate definition but with the notion that human behaviour is predictable and people can be labelled dangerous on that basis. The concept of dangerousness and dangerousness legislation is, in many ways, unethical, legally unworkable and politically bound. Nearly 30 years ago the Howard League set up a committee under the chairmanship of Mrs Jean Floud to inquire into 'the protective sentencing of dangerous offenders in England and Wales'. The conclusions of that committee regarding the unhelpful nature of the concept of dangerousness still resonate (Radzinowicz and Hood 1981: 756). The committee revealed inherent difficulties that they did not believe could be overcome, and they reported that, at the heart of the problem, was the 'ambiguous, historically shifting and essentially political notion of justifiable public alarm' (1981: 757). Underlining this point, the Floud Committee noted that 'the singling out of certain kinds of conduct as dangerous was essentially a political process' (1981: 757). In light of the fact that the committee published its findings prior to the enactment of special sentencing powers for 'dangerousness' offenders, in particular before the Criminal Justice Act 1991, it is disturbing that none of the problems the Floud Committee raised had been resolved.

The concept of dangerousness violates many of the fundamental principles of criminal law. Giving someone an initial sentence and then extending it on the basis of a quasi-medical opinion is contrary to due process of law and approximates double jeopardy (McAlinden 2001). It is also unclear in relation to the burden and standard of proof: who will bear the burden of deciding whether an offender poses a grave risk of harm to the public, and what standard of evidence will they need to produce (McAlinden 2001)? This presents gross implications for individual freedom as well as for civil rights when offenders are effectively being deprived of their liberty for an indefinite

period after they have completed their original sentence for offences they have committed. Clearly the concepts of dangerousness and justice do not sit well together.

Labelling theorists would certainly agree that labelling someone as 'dangerous' is not helpful in dealing with offending behaviour. The label itself may make him or her more dangerous and it could even make a dangerous person out of someone who is not actually dangerous. The reasons and ethics behind labelling someone dangerous can also be brought into question when a person is labelled purely in order to justify special measures of control, such as a longer prison sentence, on the basis of that label. Hinton (1983: 148) goes further and describes this process of labelling as immoral. There is an argument that dangerousness should never be ascribed to people, only to situations or actions, because there is a situational factor in much violent behaviour and the vast majority of people are not unconditionally dangerous. Moreover, by labelling some people dangerous, they become outcasts from 'normal' society, which cannot be helpful if they are ever to be reintegrated. In general, stigmatizing and excluding certain people can never be a helpful value in any society (Soothill 1998: 56).

At the same time as the Floud Committee reported on the problems of dealing with so-called dangerous offenders, they also evaluated the major studies of the time into assessing dangerousness. A Home Office study by Brody and Tarling (1980) found that only 17 per cent of the dangerous offenders who had been released from custody went on to commit a further dangerous offence within five years. The aforementioned Baxtrom affair, in 1960s America, also provides striking evidence of the gross inaccuracy of clinical judgements. The Baxtrom case provided a rare opportunity to observe a natural experiment in which people who had been declared dangerous were suddenly released from secure confinement in hospitals, and it was possible to determine whether the predictions of dangerousness were justified. Johnnie Baxtrom had been an inmate in Attica Prison, New York State and, towards the end of his sentence, he was diagnosed as a dangerous epileptic and transferred to a security hospital for the criminally insane. Here he was kept under compulsory detention for some years after the expiry of his original sentence and, following a legal challenge, the Supreme Court ruled that the procedure under which he was compulsorily detained was unconstitutional. It then followed that other people in the same position were also being detained unconstitutionally, so rather than go through new constitutional procedures, the state authorities released all 967 such patients from the security hospitals into ordinary civilian mental hospitals. The psychiatric doctors at those 18 hospitals later agreed unanimously that the so-called Baxtrom patients were no different from other patients in their hospitals. This led Steadman and Cocozza (1974), the main authors of the research report into the Baxtrom affair, to subtitle their book *Excessive Social Control of Deviance*. The Butler Committee, however, saw the Baxtrom affair in a different light and tried to rebut the evidence by citing figures that showed 20 per cent of males and 26 per cent of the females had assaulted people in a follow-up sample (Bottoms 1977).

The psychiatrist has a great deal of responsibility in balancing the patient or offender's interests against the public interest. Some problems stem from

the lack of consensus over treatability, and from whether personality disorders should best be treated in a therapeutic setting or in other institutional settings, such as prisons. Bottoms (1982) takes a libertarian viewpoint on the subject and says that the way in which dangerousness is assessed is inadequate and unethical as it is impossible to say how people will behave in the future. While there is little doubt that assessment procedures have improved, the moral dilemmas remain the same.

Henham's (2001) findings from his empirical analysis of the Crown Court's use of protective sentencing powers reveal reluctance on the part of judges to use such powers, which Henham believes reflects the fundamental flaws in determining dangerousness. It seems that the legislation is not specific enough – for example, s. 2(2)(b) of the Criminal Justice Act 1991 fails to provide a standard or degree of the likelihood of reoffending that is needed before a protective sentence can be passed (Von Hirsch and Ashworth 1996). There appears to be confusion between the degree of probability of further offences occurring and the anticipated seriousness of any further offence. Probability is a crucial issue in deciding on the use of extended sentences, yet in the courts it seems not to enter discussion. Instead, the focus is simply on deciding whether a public protection sentence is necessary (Von Hirsch and Ashworth 1996). The indirect influence or perceived public opinion of dangerousness, together with the perceived vulnerability of victims, may (together with previous convictions) assume disproportionate significance (Henham 2001). This also highlights the fine balance between seriousness and dangerousness, both of which are 'vague and elusive' concepts for the courts to grapple with (McAlinden 2001).

One of the key factors in the prominence of dangerousness in political and popular discourse is the media. By concentrating on a few high-profile cases, an atmosphere of fear has been created and – as with any type of news coverage – it is the spectacular cases of dangerous offending, usually against individual victims, which make the headlines and strike fear in audiences. The misleading belief that there are many violent and sexual predators on the prowl in the community has led successive governments to enact legislation to demonstrate their 'tough on crime' credentials. As a consequence, a progressively more punitive justice system is being created under the guise of public protection, and imprisonment (often for very lengthy and/or indefinite periods) is becoming increasingly normalized. The notion of public protection underlies much of the dangerousness legislation. It is presented as the justification for imprisoning 'dangerous' offenders for longer than commensurate terms. In recent years several pieces of legislation have been passed in the name of public protection (for example, the Sexual Offences Act 2003 and the Anti-social Behaviour Act 2003, as well as anti-terror laws). These laws neglect the values and principles on which the justice system rests and are not supported by evidence that they are effective in protecting the public from harm. The fact is that the prison population has risen by over 30,000 between May 1993 and August 2005, even though it is widely recognized that the preventative confinement of dangerous offenders has little impact on crime rates and is only of marginal value as a protective device (Radzinowicz and Hood 1981). Home Office researchers have calculated that a 25 per cent

increase in imprisonment is necessary to reduce crime by just 1 per cent (Brody and Tarling 1980). Garland (2001) believes that the government is fully aware of the limited positive effects of imprisonment, but adopts such policies for reasons of electoral support. Just as the dangerous have been used as scapegoats in the past, the continued focus of policy on controlling dangerous offenders is not helpful when, in reality, it would be more helpful to tackle broader issues of care in the community (Soothill 1998: 55). It is suggested that, rather than continuing to introduce new powers to target further dangerous offenders, it would be better to consider amending problems which exist in the current criminal justice and mental health systems in respect of serious violent and sexual offenders (Radzinowicz and Hood 1981: 761).

The government has acknowledged that the prediction and assessment of dangerousness are 'not a counsel of perfection' (Koffman 2006). They have not, however, recognized the imperfection of 'locking up many to save a few' (Monahan 1976 cited in Bottoms 1977: 80). The concerns the Floud Committee raised about the notion of dangerousness have further been proven with the enactment of recent dangerousness legislation. Not only is the definition still inadequate but the prediction of dangerousness is also still ethically unsound, and the practical ethics of applying it to real offenders have been met with reluctance from the courts. At the same time, under the banner of dangerousness and public protection, a once 'constitutional state is further giving way to the security state' (Ashworth 2004).

Conclusion

In considering whether dangerousness is a helpful concept, one is launched on a hazardous journey. It seems superficially attractive that 'dangerous' offenders should be detained for extended periods of time to protect the public from the danger they might pose, and to create a feeling of safety, principally on the streets. However, there are other issues to confront. The concept itself is, arguably, ethically wrong, practically very problematic and bound by shifts in political and legal frameworks.

To decide whether it is a helpful concept in dealing with offending behaviour, it is necessary to establish what is the aim for dealing with offending behaviour in this way. If by 'deal with' one is referring to rehabilitation, then by labelling an offender dangerous he or she has already been stigmatized and is probably less likely to be reintegrated into society. If 'dealing with' means using dangerousness as an excuse to detain offenders in prison for longer than their commensurate sentence, then it is a helpful justification for public protection. In fact, public protection is currently the primary justification for dangerousness and there is little disputing its importance. Nevertheless, it cannot be used by just putting aside other fundamental principles and values that underpin civil rights, due process and justice (Stenson and Fraser 2003: 3). Greater protection from harm is much desired, but it should not be pursued at such costs.

Notably, the need for special protection against 'dangerous' offenders is exaggerated. Public opinion is misinformed and misdirected by the mass

media (see Chapter 19, this volume). High-profile cases secure the biggest headlines and also have a disproportionate effect on the readership. Folk devils are created, and particular groups of people become targets for increasingly hostile communities. With the exception of some liberal broadsheets that may question the relentless toughening up of criminal justice policy, the media are creating an increasingly punitive climate (Greer 2003: 4). The dangers and difficulties are clearly evident. There is a need to be careful because members of the public do not differentiate between one sex offender and another, regardless of their offences, which can mean the concept of dangerousness expands and may become an umbrella term for excluding all those people 'who cause a flutter of fear in our hearts', echoing the situation in the nineteenth century (Stenson and Fraser 2003: 3).

More optimistically, assessment using actuarial and clinical methods has meant predicting dangerousness is improving. New projects have also been put in place, such as the digital Violent and Sex Offender Register (ViSOR), which may improve the knowledge professionals working in the community have of these offenders. Likewise, multi-agency public protection arrangements (MAPPAs) represent a big step forward in public protection and risk management which should at least calm some of the hysteria that can surround prolific offenders (Bryan and Payne 2003: 20–1). Dealing with violent and sexual offenders is an issue that needs to be addressed. 'Dangerousness' may not be a helpful concept, but that is not to deny it exists.

There remains unconvincing evidence on the successes of the new approaches to dangerousness. There are great inconsistencies across the country, which MAPPA supporters acknowledge (Bryan and Payne 2003: 20–1), yet it comes as little surprise that such research is not broadcast. It is possible to say there is a distinct lack of interest in evidence that does not fit with the political mood, and this is especially true for dealing with sexual and 'dangerous' offenders (Soothill 1998: 55). Prediction of human behaviour can never be 100 per cent accurate, because no one, not even the offender, can be certain they will, or will not, reoffend (Von Hirsch cited in Floud and Young 1981: 39). Ultimately, the question is a moral one; it comes down to the balance of freedom versus control in society.

Selected further reading

Bottoms, A.E. (1977) 'Reflections on the renaissance of dangerousness', *Howard Journal of Penology and Crime Prevention*, 16: 70–96, is a seminal article that raised concerns about the increasing interest in dangerousness as a justification for punishment and/or indeterminate sentencing. First published in 1981, Floud, J. and Young, W. (1981) *Dangerousness and Criminal Justice*. London: Heinemann, is the report of a working party convened in May 1976 by the Howard League for Penal Reform to review and report on the law and practice in relation to 'dangerous' offenders. It is still the most thoughtful summary of the issues relating to dangerousness and criminal justice, including protective sentencing. McAlinden, A. (2001) 'Indeterminate sentences for the severely personality disordered', *Criminal Law Review*, February: 108–23, challenges recent incapacitative efforts aimed at dealing with dangerous people in the community by arguing that the new measures have serious civil liberty implications and are

largely unworkable in practice. Ashworth, A. (2004) 'Criminal Justice Act 2003. Part 2. Criminal justice reform – principles, human rights and public protection', *Criminal Law Review*, July: 516–32, scrutinizes the notion of public protection and argues that many current policies are not supported either by principle or by evidence of effectiveness.

D.A. Thomas writes commentaries on appeal cases, and the following series of articles shows how the courts are interpreting recent legislation on dangerous offenders: (2006) 'Sentencing: dangerous offenders – Criminal Justice Act 2003 – "significant risk of serious harm"', *Criminal Law Review*, February: 174–9; (2006) 'Sentencing: imprisonment for public protection – significant risk of serious harm', *Criminal Law Review*, April: 356–60; and (2006) 'Sentencing: imprisonment for public protection', *Criminal Law Review*, May: 447–9.

Notes

1   Graham Young was a man on conditional release from Broadmoor Prison, who was found to have committed two murders, two attempted murders and two offences of causing grievous bodily harm – all by poisoning, all on different victims and all within nine months of his discharge from Broadmoor. It was following his conviction in 1972 that the Butler Committee was set up and proposed a new form of indeterminate sentence be introduced for 'dangerous' offenders (Bottoms 1977: 76).
2   The Baxtrom patients (named after one of their number, Johnny Baxtrom, who successfully brought a legal challenge before the Supreme Court) were released in 1966 from secure hospitals in New York, where they were being detained for extended periods of time after the expiry of their original sentences. They were released because it was found that the procedure under which they were detained was unconstitutional. Psychiatric doctors at the hospitals to which they were sent reported that they posed no more danger than any other patients (Bottoms 1977: 76).

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Chapter 26

Addressing offending behaviour: 'What Works' and beyond

Clive R. Hollin and Charlotte Bilby

Introduction: what works in changing criminal behaviour?

This chapter provides a brief overview of the history of the treatment of offenders, drawing on literature from criminology and psychology. We discuss the shift in policy as criminal justice professionals moved from thinking of offenders as rational actors who must be punished, to regarding them as maladjusted individuals who could be treated. We then explain how psychologists, using meta-analyses, developed evidence-based principles for practice in working with offenders in prison. Finally, we explore the extent to which rehabilitation efforts were underpinned by a principle of 'What Works' in custodial settings, and we discuss a wide range of treatment programmes from their first incarnation, Reasoning and Rehabilitation (R&R), to the suite of programmes now delivered under the Sex Offender Treatment Programme (SOTP).

An historical perspective

In the UK, as in other Western societies, the recent history of offender punishment is heavily influenced by classical theories of crime and its causes (Roshier 1989). With their philosophical basis in the writings of Cesare Beccaria and Jeremy Bentham, classical theories adopt a utilitarian approach to crime. Of their own free will, criminals weigh the gains and costs of an act of crime, taking advantage of the opportunity when the benefits outweigh the losses. In order to prevent criminal behaviour it follows that society must deter the criminal by setting the costs of crime higher than the benefits it produces. Thus, a variety of punishments to match the crime, including the increasing use of incarceration, is available to the courts to deter criminals from committing more crimes.

The notion of rehabilitation rather than punishment came to prominence in corrections policy, in both the USA and the UK, in the early 1900s. The movement away from a purely punitive philosophy based on deterrence

towards a more constructive, rehabilitative approach signalled a shift from classical theory towards more contemporary theories. With the growth in the 1900s of disciplines such as psychology, psychiatry and sociology, there was a direct challenge to an explanation of crime based on the individual's free will. Sociological and psychological theories emerged that explained behaviour in terms of a complex interaction between the person (in terms of biology and psychology) and the environment, as seen in both social structure and social process (Carrabine *et al.* 2004). It follows that, if social and psychological factors can provide an explanation for the occurrence of crime, then these same social and psychological factors must be addressed to prevent crime and reduce recidivism. Accordingly, there was a shift of emphasis away from models of retribution and deterrence towards social welfare and psychological and medical treatment. Within the criminal justice system, this shift created obvious tensions between proponents of free will and punishment (who advocated tough sentencing and harsh prison regimes) and those who favoured psychology and rehabilitation, both within prisons and in relation to 'alternative' non-custodial sentences.

The position that emerged over time was that the state had an obligation to intervene in the lives of citizens who committed crime and to 'cure' them of their criminal tendencies (Hudson 1987). As crime was caused by factors often beyond the direct control of the individual, so the state's role was to ameliorate the effects of these factors. The height of the rehabilitation model in the 1950s and 1960s in the UK coincided with the expansion of the role of the state in general, and the welfare state in particular. A consensus developed that crime was a problem that could be overcome if the state spent more on the treatment of offenders. Rehabilitation as the cornerstone of the criminal justice system was reinforced by the Royal Commission on the Penal System in England and Wales (1967). This commission took a social democratic approach in that it saw crime as being a consequence of social and economic deprivation, thus leading to a solution couched in terms of increasing state activity in both crime prevention and in the rehabilitation of offenders. It was decided that offenders should be treated as individuals with individual problems and needs, and that prisons could successfully rehabilitate as a progressive and humanitarian means by which to return offenders to the community as law-abiding citizens.

However, the rehabilitative approach came under increasing criticism, which reached its peak in the 1970s. Three fundamental, ideological principles were put forward in support of this critical stance (Hudson 1987). First, as rehabilitation was (arguably) based on determinist principles, it was assumed that people had no choices in life. Thus, individuals were portrayed as manipulated and controlled by circumstances beyond their control, which was contrary to understanding a person as an active agent making his or her own decisions. Secondly, it was argued that individuals have the right to retain their unique personality, unaffected by treatment, even if this produced conflict with the state or with fellow citizens. Thirdly, rehabilitation in the form of treatment gave the state unacceptable power to intervene in people's lives. In addition, there was also a concern among some on the political right that the rehabilitative model made prisons look like a soft option and brought the

criminal justice system into disrepute (Hudson 1987). Moreover, lawyers argued that rehabilitation concentrated on the offender rather than the offence, which resulted in disparities in sentencing (Cavadino and Dignan 2007). To have judges who passed sentences based on the uncorroborated opinion of experts rather than on the objective facts was seen as a less than desirable position. Some right-wing commentators also argued that rehabilitation was ineffective in reducing crime (van Den Haag 1982). These arguments gained support from studies which claimed that community sentences were no more or less effective than custodial sentences, and that expensive treatment programmes were no more successful in reducing crime than simply incarcerating offenders or giving them non-therapeutic, non-custodial sentences such as fines (Brody 1976).

The effectiveness of rehabilitation was being researched on both sides of the Atlantic, with the eventual claim that it was ineffective in reducing reoffending. In particular, Martinson's (1974) work was used to herald the notion that 'nothing works' (1974), although there were similar sentiments to be found elsewhere in the literature (Bailey 1966; Robinson and Smith 1971). Thus, a range of rehabilitative strategies, ranging from education and vocational training to counselling and therapeutic communities, was condemned to failure. The view that nothing works was used to support the assertion that retributive and punitive sentences for offenders were, indeed, the only way to reduce the crime rate. However, there is little empirical evidence to show that the incapacitation of offenders is effective in reducing reoffending after release. For example, Tarling (1979) calculated that it would take a 25 per cent increase in the prison population to achieve a 1 per cent reduction in the crime rate. Further, it is unlikely that punishment on its own has a significant effect in changing offenders' behaviour (Hollin, 2002a).

More recent times

While retribution and punishment were consistent themes in the literature during the 1970s, 1980s and into the 1990s, there were some challenges, principally from a group of North American researchers (Palmer 1975; Gendreau and Ross 1979, 1987; Andrews 1989), but with some British support (McGuire and Priestley 1995). Martinson (1974) had made the point that poor research methodologies could be responsible, at least in part, for the nothing works findings. In turn, Thornton (1987) took issue with Martinson's methodology in reviewing the evidence, arguing that it was too simplistic an approach to a complex question. This debate hinges on the use of a narrative literature review, which is necessarily dependent upon the reviewer's own, potentially biased, reading and interpretation of the literature.

Meta-analysis

The development in the 1980s of the statistical technique of meta-analysis provided a way of distilling the findings of large empirical literatures (Glass *et al*. 1981). Meta-analysis is now widely used in many scientific disciplines that rely on empirical data. The advantage of meta-analysis, compared with narrative review, is that the review process is transparent: the reviewer must

show their procedures, such as the weight given in the analysis to different studies and how key variables are coded. Importantly, sufficient details should be given to allow a meta-analysis to be replicated. This is not to claim that meta-analysis is faultless or without its critics (Hollin 1999), but it has become an established technique in the scientific literature. The first meta-analytic studies of offender treatment were published in the mid-1980s, followed by more in the 1990s. Building on these studies, contemporary meta-analysts have developed complex coding systems to take account of differences between studies, such as offender group, offence type, follow-up period, criterion of outcome and treatment setting (Lipton *et al*. 2002a, 2002b; Redondo *et al*. 2002).

Since the first reported meta-analysis (Garrett 1985), there have been to date over 50 meta-analytic studies (for a review, see McGuire 2002) of offender treatment, incorporating hundreds of primary research studies (e.g. Whitehead and Lab 1989; Andrews *et al*. 1990; Izzo and Ross 1990; Lipsey 1992; Antonowicz and Ross 1994; Redondo *et al*. 1999; Dowden and Andrews 1999a, 1999b, 2000). Reflecting the literature, most meta-analyses have incorporated primary studies conducted with male young offender populations. However, there are meta-analyses with women offenders (Dowden and Andrews 1999a), sexual offenders (Hanson *et al*. 2002), drink-drivers (Wells-Parker *et al*. 1995), violent offenders (Dowden and Andrews 2000) and drug-abusing offenders (Prendergast *et al*. 2002).

The meta-analysis reported by Lipsey (1992) is widely cited and can be used to illustrate this methodology. Lipsey's study is a very large meta-analysis, incorporating 443 treatment studies involving offenders aged 12–21 years. With a focus on offending as an outcome, two main findings emerged from Lipsey's study. First, there is a great deal of variability in the outcome from intervention studies. However, when treated offender groups are compared with non-treatment groups, there is an overall positive net gain. It is difficult to state exactly the magnitude of this overall treatment effect, but the consensus is that the treatment gain is approximately a 10 per cent reduction in offending (Lipsey 1992; Lösel 1996). The second finding is that not all interventions have the same effect: some interventions have a significantly higher effect than others on reoffending. Lipsey (1992) estimates that the 'high effect' studies are associated with reductions in reoffending of around 20 per cent, compared with the baseline levels taken from mainstream criminal sanctioning. In contrast to the positive treatment effect, punishment and deterrence-based interventions had a negative effect in that they were associated with *increased* levels of reoffending.

As have others, Lipsey reported that studies that produced a treatment effect on reoffending shared various characteristics. As the meta-analyses increased in number, so a consensus developed with regard to the components of interventions that were effective in reducing offending. These components are as follows:

1 Indiscriminate targeting of treatment programmes is counterproductive in reducing recidivism: programmes should focus on criminogenic targets with medium to high-risk offenders.

2 The type of treatment programme is important: structured behavioural and multimodal approaches are preferred to less focused approaches.

3 Successful programmes, while behavioural in nature, include a cognitive component to focus on attitudes and beliefs.

4 Programmes should engage high levels of offender responsivity.

5 Treatment programmes in the community have a stronger effect than residential programmes. While residential programmes can be effective, they should be linked structurally with community-based interventions.

6 The most effective programmes have high treatment integrity in that they are carried out by trained staff and the treatment initiators are involved in all the operational phases of the treatment programmes.

The characteristics of effective interventions with offenders in terms of reductions in reoffending, therefore, incorporate a cognitive-behavioural approach to behaviour change, are structured with specific targets for change, and focus on offenders with a high risk of reoffending. Further, effective programmes also have high levels of treatment integrity, are delivered by trained staff and have high levels of organizational support. As this consensus formed around the findings from the meta-analyses, so attempts were made to develop evidence-based principles for practice in working with offenders to reduce reoffending.

Principles of effective practice

As syntheses of the meta-analyses appeared (e.g. Lösel 1995; Gendreau 1996; Hollin 1999; Andrews 1995, 2001), so they informed the formulation of the principles of effective practice. Andrews and Bonta (1994) gave four principles for the design and delivery of effective services to reduce reoffending. The *risk principle* states that offenders assessed as medium to high risk of recidivism (by criminal history or a standardized measure) should be selected for intensive treatment programmes. The *need principle* draws attention to the distinction between *criminogenic* and *non-criminogenic* needs. Criminogenic needs are a subset of an offender's risk level – they are dynamic attributes of an offender that are associated with the probability of offending. Non-criminogenic needs are also dynamic but they are not associated with the probability of offending. It follows that effective practice should target criminogenic needs in order to reduce offending. The *responsivity principle* refers to the need to deliver services in a manner that will engage offenders (for example, treatment design should be sensitive to offenders' gender and culture, and treatment delivery should aim to match offenders' individual abilities and learning styles). Increasing responsivity will minimize attrition and maximize the potential of treatment to impact on offending. Finally, the *integrity principle* refers to the management of the implementation and maintenance of treatment at an organizational level. Achieving high levels of treatment integrity makes many organizational demands: managers must attend to the training and supervision of the staff delivering treatment, as well as the necessary physical resources. Collectively,

evidence-based practice formulated from the principles of these meta-analyses became known as 'What Works'.

Thus, the evidence provided by the meta-analyses and the ensuing principles for service delivery set up a testable hypothesis. If services and treatment delivery can be configured in accord with the evidence, then there is a likelihood of lowering rates of recidivism. The next challenge was to design interventions that would be in keeping with 'What Works'. Further, could the findings included in the meta-analyses, typically of programmes run by trained professionals for small groups of offenders, be replicated on a national scale with less inexperienced staff and much larger offender cohorts?

Evidence into practice: what happened?

Offending behaviour programmes

In mainstream clinical psychology, where there is an obvious concern with behaviour change, the use of structured, manualized treatment programmes is a firmly established way of working (Wilson 1996). In the late 1980s manualized treatment programmes were beginning to be designed for the specialized field of offender treatment. The first recognizable offending behaviour programme to be widely used with offenders was Reasoning and Rehabilitation (R&R), developed in Canada by Ross and Fabiano (Ross *et al*. 1988, 1989). It was accepted that an approach to treatment based on programmes offered a way to design treatments that were in keeping with 'What Works'. Programmes are structured, they have explicit targets for change, they are deliverable over a manageable period of time and they can be evaluated. If programmes could be designed and delivered according to the principles of effective practice, then the 'What Works' evidence base could be made operational.

At this point terminology becomes important: inevitably the term 'treatment' is associated with a 'medical model' of offending, implying an understanding of criminal behaviour in terms of psychopathology. However, the theory underpinning most offending behaviour programmes is derived from social learning theory which, as seen in mainstream criminology (Akers 1985), is not a theory of psychopathology. The difficulty with terminology lies in deciding how to describe the processes and interactions within an offending behaviour programme. There are terms such as 'psychoeducational' but these are awkward and can seem contrived. 'Treatment' can have a broader meaning, however, in the sense of a process, as in, say, the statistical treatment of data. It is in this broader sense that the term 'treatment' is generally used in the context of offending behaviour programmes. More specifically, the term 'treatment programme', as currently used in the UK criminal justice system, is generally taken to mean an intervention with offenders that is informed by the 'What Works' evidence base.

The R&R programme was the first offending behaviour programme to be systematically applied in prisons in England and Wales. The R&R programme is based on research that suggests links between styles of thinking and offending (Ross and Fabiano 1985), and it aims to help offenders develop new

ways of thinking to promote prosocial behaviour and to reduce offending. R&R was designed to be delivered by a range of staff and was introduced into the English and Welsh Prison service in the early 1990s. In 1991 an adaptation of R&R, called Straight Thinking on Probation (STOP), was introduced by mid-Glamorgan Probation Service in Wales (Knott 1995; Raynor and Vanstone 1996). In the early 1990s, the Prison Service pioneered the development of treatment programmes for sex offenders with the Sex Offender Treatment Programme (SOTP) (Grubin and Thornton 1994). The prison programme was accompanied by community treatment programmes for sex offenders, gradually implemented in England and Wales during the early 1990s (Barker and Morgan 1993), but growing rapidly into the mid-1990s (Proctor and Flaxington 1996).

Thus, two types of programme were established: first, general offender programmes, such as R&R (not focused on any particular type of offence) that typically address cognitive and social skills; and, secondly, offence-focused programmes, such as SOTP, directed at certain types of offender. In the first category there are now programmes such as Enhanced Thinking Skills (ETS), developed by the Prison Service in England and Wales (Clark 2000), and Think First (originally called Offence-focused Problem Solving) used in the Probation Service (McGuire 2005). In the second category there are now, for example, programmes for violent offenders, such as Aggression Replacement Training (ART) (Goldstein *et al*. 1998), and for drug-related offences – e.g. Addressing Substance-related Offending (ASRO) (McMurran and Priestley 2004). The expansion of programmes into the 1990s had several consequences. In a narrow sense there was the need to maintain the quality of programme development and implementation but, from a wider perspective, programmes presented political and professional challenges to accepted orthodoxies.

Maintaining quality: accreditation and audit

If programmes are to have their intended effect on reoffending, then it is important that they are designed and delivered in accordance with the evidence base, as captured by 'What Works'. In the early 1990s the Prison Service established a process by which to accredit programme design and to audit programme delivery. Initially there were two separate programme accreditation panels, one for general programmes, the other for the SOTP. The panels were replaced in 1999 by the Joint Prison/Probation Accreditation Panel (renamed the Correctional Services Accreditation Panel (CSAP) in 2002), set up by the Home Office as part of the Crime Reduction Programme (Rex *et al*. 2003).

The initial task of the panels was to set the criteria by which the fit of programmes with the principles of effective practice could be judged. The first criteria were published in 1996 (Lipton *et al*. 2000) and have been modified over time, but the CSAP criteria remain close to the original. These criteria are as follows:

1 Programmes must have a clear model of change.
2 The selection of offenders must be justified.

3 The targeting of a range of dynamic risk factors.
4 Programmes should use effective methods of change.
5 Programmes should be skills oriented.
6 Sequencing, intensity and duration of treatment should be justified.
7 Attention should be given to the engagement and motivation of offenders taking part in the programme.
8 Continuity of programmes and services within sentence planning.
9 Programmes should show how they will maintain integrity.
10 There should be procedures to allow the continued evaluation of a programme.

Once accredited as fit for purpose, a programme is rolled out into practice, with accompanying training, manuals and so on. Once in use with offenders, programmes are audited to ensure that they are being delivered with integrity (Hollin 1995). An audit may be used to give an implementation quality rating (IQR) that provides feedback to service deliverers on the strengths and weaknesses of their performance.

The introduction of accreditation did not slow the development of new programmes. For example, since the late 1990s three programmes for sexual offenders have been accredited (Mandeville-Norden and Beech 2004). Similarly, the prison service has expanded SOTP into a suite of five separate programmes. The main programme delivered in prisons is called the Core Programme. If offenders complete the Core Programme a long time before their release, they can complete the Better Lives Booster Programme which aims to refresh learning from the original programme while planning for release. In addition, the Prison Service runs a Rolling Programme for low-risk sex offenders, an Extended Programme for high-risk and high-need sex offenders, and an Adapted Programme for sex offenders with lower functioning capabilities. In prisons and probation there are currently over 15 accredited offending behaviour programmes being delivered in England and Wales but, while there is a range of technical issues connected with offending behaviour programmes (Bernfeld *et al*. 2001), there are also wider professional and political matters to consider.

Professional and political issues

The introduction of offending behaviour programmes into the UK, particularly in the English and Welsh Probation areas, fell short of meeting unanimous approval. For example, offending behaviour programmes are often manualized, meaning that the content of each session is set out in advance, with information on theory, management and evaluation in other manuals. In prisons, a range of staff (from officers to chaplains) deliver programmes, working alongside colleagues primarily involved in training and rehabilitation. For many prison officers, taking part in programmes leads to skill development and the widening of their role, and so this is seen as a positive aspect to their careers. Conversely, for some probation officers, running manualized programmes has been seen as deskilling and detracting from their professionalism. Probation officers from social work backgrounds

comment that the programmes do not enable discussion about wider problems in offenders' lives, such as accommodation or health issues, and do not allow their professional skills to be fully used (Newman and Nutley 2003). The fact that the programmes are set out in such detail has led practitioners to question the level of professionalism needed to lead sessions. Whether programmes should necessarily be run by treatment specialists with an in-depth understanding of the theoretical underpinnings of a given programme is a point of debate. However, more recent moves to a 'systems approach', linking programmes with community services, make at least some of these points redundant (Hollin 2002b).

The advent of offending behaviour programmes led to some furious criticisms from probation that included the involvement of unions, accusations of 'positivism' and plain name-calling (Mair 2004). Raynor (2004) makes the point that this professional in-fighting simply opens the door for those who oppose rehabilitative efforts and demand more retribution. The professional thus merges into the political as the use of offending behaviour programmes shows that the criminal justice system not only punishes but also seeks to address some of the individual and social factors associated with crime. This is a significant point as the aim of rehabilitation is the sole obligation on the state to care for offenders' needs and welfare. This is not to say that rehabilitation should be the *only* aim of the prison and probation services – although some might argue this – but, rather, that rehabilitation has a legitimate place alongside retribution, deterrence and reparation. Thus, through the dual delivery of punishment and rehabilitation, the criminal justice system seeks to satisfy demands for retribution while trying to reduce the likelihood of reoffending. Offending behaviour programmes, as part of a rehabilitative strategy, are concerned to offer offenders an opportunity to change their behaviour. Thus, prison and probation services should arguably facilitate change, rather than coerce offenders into being 'cured' (Crow 2001). However, it might be questioned whether rehabilitation and punishment can actually be delivered within the same system. It is also questionable whether the coercive element can really be removed; for example, perhaps participating in a prison treatment programme may affect parole board decision-making.

The election of the Labour Party in 1997 gave an added impetus to rehabilitative efforts. A review of the reoffending literature by Nutall *et al.* (1998) – contributing to the new government's Crime Reduction Programme – announced that 'It was not true that "nothing works"' (1998: 1). Since the 1997 election agencies within the criminal justice system have been undergoing a period of transformation described as managerialization, where policies and practices have become incrementally centralized and their effectiveness audited and measured (McLaughlin and Muncie 2000). Setting targets is a key component of crime reduction policy, with agencies and central government endeavouring to meet their set goals. For example, the target set for the Crime Reduction Programme was to reduce the crime rate between 1998 and 2001 by 5 per cent, which would be achieved, in part, by 23,000 offenders taking part in offending behaviour programmes. In turn, there were targets for offending behaviour programmes in prisons. For example, Rex *et al.* (2003) note that in 2001–2 the Prison Service had a key performance indicator (KPI) linked

to a target of a programme completion rate of 6,100 offenders. However, the quality of delivery was not to be neglected: the IQR resulting from audit was used to moderate the quality of a prison's completion rate. If the IQR was judged to be below a set level, then completions did not count towards the target; if it was above the level but less that 100 per cent, then the IQR was used as a multiplier to adjust completion rates. Thus, 200 offenders completing a prison-based programme with an IQR of 90 per cent would contribute 180 offenders to the national target. Inevitably, meeting targets was linked to future finance and resources.

This approach to performance management has been questioned on a number of levels, from the micro nature of the audit, to the macro of a political ideology that links measurement and audit with the delivery of public (and sometimes privatized) services. None the less, performance management appears to have become an accepted method for achieving success. As McGuire *et al*. (2000: 289–90) note: 'Few individuals of any political persuasion now dispute the importance of insisting that statutorily provided services would be accountable, in that they should both monitor and be able to demonstrate their achievement of publicly appointed objectives.' Indeed, the Treasury has to consider generally the costs of reducing the crime rate, and to estimate specifically the costs and benefits of rehabilitation programmes versus simple incapacitation or the supervision of offenders. Given that significant funds have been set aside for rehabilitative programmes, including basic skills and offending behaviour programmes, then evaluation of this investment of public money is critically important.

Evaluation: what's working?

The evaluation of the STOP programme in mid-Glamorgan Probation Service found that, at 12 months' follow-up, the actual and the predicted rates of reconviction were the same for the treatment and comparison groups (Raynor and Vanstone 1997). However, for offenders who *completed* the programme there was a significantly lower reconviction rate than predicted. Beech *et al*. (2001), in a six-year follow-up of men who had taken part in community-based sex offending programmes, reported a similar finding. For those offenders who had responded to treatment, the reconviction rate was 10 per cent, compared with 23 per cent for those not responding to treatment. Friendship *et al*. (2003b) found that with a shorter two-year follow-up period, the low base rate for sexual offence reconviction (2.6 per cent for SOTP and 2.8 per cent for the comparison group) made it impossible to draw any conclusions about the prison SOTP. However, when Friendship *et al*. (2003b) compared the reconviction rates for sexual *and* violent offences, there was a lower reconviction rate in the SOTP group.

The first large-scale UK evaluation of R&R and ETS with prisoners compared reconvictions for offenders who had participated in the programmes (including 10 per cent who did not complete their programme) with a matched comparison group of prisoners who had not participated in a programme (Friendship *et al*. 2003a). In comparing the reconviction rates of the two groups, a significantly lower rate, by up to 14 per cent, was found for medium-risk

offenders in the programme group, with a similar tendency in the low and high-risk comparisons. These findings are consistent with the risk principle in that programmes produce the least effect with low and high-risk offenders. However, Falshaw *et al*. (2004) failed to replicate the earlier study. Following prison-based R&R and ETS programmes, Cann *et al*. (2003) compared the reconviction rates of both adult male prisoners and young offenders with matched comparison groups. As before, the group comparisons were made on the basis of assessed risk of reconviction. When all prisoners who had started a programme were included, there were no significant differences in the reconviction rates for the programme starters and the comparison groups. However, there was about a 9 per cent programme drop-out rate for both adult and young offenders. When the drop-outs were excluded, leaving only programme completers, the analysis showed significantly lower one-year reconviction rates for both adult and young offenders.

A similar pattern to the prison studies has emerged in evaluations of community-based offending behaviour programmes conducted in the English and Welsh Probation Service. When the whole sample is considered there are no effects on reconviction. However, there are significant decreases in reconviction among offenders who complete the programme compared with non-starters and non-completers (Hollin *et al*. 2004; Roberts 2004).

While encouraging outcome studies continue to be published (Van Voorhis *et al*. 2004) alongside new positive qualitative reviews (Wilson *et al*. 2005; Tong and Farrington 2006), clearly there is much still to learn. In particular, the 'drop-out effect' on reconviction studies remains a puzzle: is this effect due to offender characteristics (Wormith and Olver 2002) or is it simply a selection effect as the completers would not have reconvicted regardless of the intervention (Debidin and Lovbakke 2005)? Further, there is the issue of 'going to scale', which suggests that when programmes are delivered to very large numbers of offenders by a correspondingly large number of tutors, and when responsibility for data collection passes out of the hands of researchers, there is a diminution in the effects of programmes (Lipsey 1999). Further, it is also apparent that research methodology and design can impact on the findings of outcome studies (Gondolf 2004). Taken together, it is evident that evaluation of offending behaviour programmes is a less than straightforward task (Hollin, 2006).

Where to next?

Policies and programme evaluation

When the Home Secretary announced the Crime Reduction Programme (CRP) in 1998, it was to be the first centrally co-ordinated crime reduction programme of such a size anywhere in the world. The CRP would be based on comprehensive research and, critically, would have in-built evaluation. It was even anticipated that many of the research projects would take some time, perhaps even a decade, to produce their full results. Research projects investigating many areas of the criminal justice system were commissioned, including evaluations of offending behaviour programmes. At the time,

researchers may have been forgiven for thinking that their findings would be considered according to the timescale of a research cycle, rather than the timescale of a political policy cycle.

However, rather than being at the mercy of the policy cycle, unexpectedly the reconviction studies (along with most of the extant literature) were condemned as 'sub-optimal' (Chitty 2005), following a shift in the research methodology favoured by elements of the Home Office's Research and Statistics Directorate. Following the experimental methods favoured by medical research, the Randomized Control Trial (RCT) was portrayed as the only research design that could produce reliable evidence in programme evaluation. The Scientific Methods Scale (SMS) (Sherman *et al*. 1997) was modified by Home Office researchers to assess the quality of reconviction studies (Friendship *et al*. 2005). This 'reconviction scale' was then used to (down)grade the quality of the extant research (Debidin and Lovbakke 2005). Now, as Farrington *et al*. (2002: 17) stress, the SMS 'focuses only on internal validity': thus, the Home Office adaptation changes the original intent of the scale from the specific assessment of a study's internal validity to a general overall measure of the quality of a reconviction study. Given the lack of any scientific or reasoned argument for this change in purpose, the veracity of the 'reconviction scale' appears doubtful. None the less, there is a clear Home Office emphasis on RCTs as the highly preferred design in reconviction studies. While it is far from certain that RCTs are as superior as claimed to all other designs in the nature of the evidence they produce (see Hollin 2006), to focus exclusively on RCTs is a less than optimum research strategy with offending behaviour programmes.

The Home Office (2001: 7) note that 'some things can work for some people, provided the right programmes are selected and implemented properly'. If this view is to be tested, then it is necessary to investigate whether a programme is being properly implemented. The assessment of implementation needs to include the use of process evaluation (Hollin *et al*. 2002): this type of research contains a large element of qualitative work which is clearly outside the scope of an RCT.

When implemented within the criminal justice system, RCTs raise a number of issues. First, the practical implications of conducting a trial mean that researchers should be involved *before* the commencement of the trial. In practice, this rarely happens as researchers are most often recruited to evaluate a project that is either running or long past the planning stage. Secondly, to ensure that offenders were randomly allocated either to the experimental or control group, sentencers would have to be involved and be willing to comply with the research procedures. Similarly, those involved in managing or delivering treatment to offenders would have to comply with the research to ensure that allocation to group was maintained. This level of compliance from all those involved may well be difficult to maintain. An RCT conducted on New Deal policies was abandoned after delivery personnel moved participants from the control to experimental groups after concern for their well-being (Walker 2001).

Thirdly, the process of random allocation to treatment or control groups negates the principle that treatment should be provided on the basis of need.

This point raises an important ethical issue. If a treatment is deemed to be effective, why is it being withheld from a control group? Indeed, Friendship and Falshaw (2003) suggest that offenders would be within their rights to apply to the European Court of Human Rights or through the judicial review process for the right to participate in the treatment programme. Conversely, if programmes are untested, then why should they be tested on a national basis, given the potential negative impact on both the offender and public safety? Of course, new treatments have to be tested, but RCTs should be the penultimate point in an evaluation. As Everitt and Wessely (2004) note, a clinical trial moves through five discrete stages:

1 *Theory*, where the concern is with developing the theoretical basis of the intervention.
2 *Modelling*, in which an understanding is gained of the intervention and its effect, typically using small-scale surveys, focus groups, and observational studies.
3 An *exploratory trial*, during which preliminary evidence is gathered.
4 A *definitive RCT*, where a randomized study is conducted.
5 *Long-term implementation*, during which the focus is on whether the intervention's effects can be replicated over time and in different settings.

Thus, before rushing to a large-scale RCT, there should be an empirically supported *a priori* justification for the treatment.

Fourthly, Hedderman (2004) makes the point that, in practice, RCTs are difficult to implement and maintain, while Gondolf (2004) notes that the very act of introducing an RCT can be disruptive to practice and may even change the system that is being evaluated. Fifthly, there is the nature of the evidence produced by RCTs. As Hedderman (2004: 187) states: 'RCTs do not answer other important questions such as *why* an intervention works or *which parts* have the most effect'. Given that 'What Works' is based on empirical evidence flowing from theories (mainly psychological) about offending behaviour, there is a great deal to be learnt by looking closely at the dynamics of intervention at the individual level. For example, there are obvious benefits to be had in studying the untoward effects of dropping out of a programme. As Nutley and Davies (2000) note, researchers need to understand the 'blackbox' of treatment programmes. Indeed, as Pawson and Tilley (1997: 11) state, only when we understand the causal links of offending behaviour will we 'Understand what the programme actually does to change behaviour and why not every situation is conducive to that particular process'. An RCT will simply not answer these types of questions.

Regardless of the type of outcome evaluation, there are problems with a reliance on reconviction rates as the predominant assessments of the effects of a programme. Reconviction rates are certainly key indicators for the Home Office, who state they aim to reduce offending by 10 per cent by 2010 (NOMS 2005), but reconviction does not accurately reflect the complex nature of offending. If only 3 per cent of offences results in conviction (Hedderman 1998), itself a simple dichotomous measure, it might be asked whether reconviction is a sufficiently sensitive measure of changes in offending behaviour. The Home

Office (2000) has recognized that there needs to be a more flexible approach to measuring outcome and that, for example, police call-out or incident data may be a more accurate indicator of an offender's behaviour.

Future of treatment within criminal justice

During the 1990s and the early 2000s the Labour government proposed to be tough on crime and its causes, but they also stated that they would base policy on the evidence provided by independent evaluations. Such evaluations had the capacity to show that less punitive measures with offenders could be most effective in reducing crime. However, the prison population is continuing to grow and, given the ambiguity about the government's role in stopping this growth, it might be thought that current policies are more punitive than those of the previous administration who famously proposed that 'prison works'. It is questionable whether the Criminal Justice Act 2003 will lead to a reconceptualization of the nature of punishment and rehabilitation, despite requiring sentencers to consider a range of punishments when dealing with offenders. The Act's guidance suggests that different forms of sentence are linked to traditional sentencing aims. For example, fines and prisons will punish offenders, community supervision is linked to rehabilitation and community work is for reparation. It remains to be seen whether the Act will reverse the 'sentencing drift' seen to have occurred over the last 15 years (Hedderman 2005) and promote a wider suite of sentences with the consequence of more offenders punished and rehabilitated in the community. It also might be considered as to whether the aims of the Act are compatible with the aims of the National Offender Management Service (NOMS), which are simply to reduce offending and protect the public.

Under the remit of NOMS, the Ministry of Justice is working with other government departments – Health, Education and Skills, Work and Pensions – to reduce reoffending, and has highlighted six areas that need to be addressed. These areas include changing offenders' attitudes, thinking and behaviour and so are linked to the criminogenic needs, such as education and training, accommodation and families, identified within the 'What Works' literature. The aim of NOMS is to provide 'end to end' management of offenders, to create, as Friendship *et al*. (2005: 4) put it, 'An effective, integrated offender management system that is based on proven interventions and focuses on offenders rather than the institutions that work with offenders'. This statement suggests that the use of offending behaviour programmes, in some guise or other, will continue and increasingly become integrated with other forms of offender education and support. It might be thought that research to support or challenge the effectiveness of such interventions will still be required. The 'What Works' literature indicates that offending behaviour programmes are best implemented in a community setting. While the aims of NOMS appear to encourage this suggestion, this is not supported by the sentencing guidelines in the Criminal Justice Act 2003. The Act does not focus on lowering the prison population: a high prison population reduces the opportunities for effective work in both the community and with imprisoned offenders.

Prisons and probation are currently working together to develop common offender assessment tools and programmes for short-term offenders, high-risk violent offenders and substance-using female offenders (NOMS 2005). This activity seems to be a positive step towards the integration of services, but it is questionable how this fits with the concept of contestability and the separation of commissioning and programme delivery. The claim from NOMS (2005: 11) is that this separation is intended to 'broaden the market of providers and allow many more organisations to bring their skills and expertise to bear in helping offenders to turn away from crime'. However, it may be questioned how the relationships between the probation areas, prisons, and treatment providers will work in practice. Further, it remains to be seen whether or not performance indicators, such as programme completion rates, will become the paramount measure of an intervention's success, rather than changes in offenders' attitudes, behaviour and offending.

While performance measures, including the number of programme completions in prisons and probation, will continue to be important to the Ministry of Justice, there is also an acceptance within the policy and delivery documentation (National Probation Directorate 2005) that research, systematic reviews and the expansion of the use of RCTs will play an important role. Such a policy will at least ensure that there is some evidence available on which to base future policies. However, it seems that what constitutes evidence, together with the role of qualitative and quasi-experimental research, may need to be reconsidered. In addition, questions about the use of the evidence base by policy-makers will remain. If the government continues with a stance of being seen to be tough on crime, it is questionable whether punitive sentencing will be influenced more by political and ideological considerations rather than the research evidence.

Conclusion

One of the fascinating aspects of offending behaviour programmes is that they touch so many different figures, from policy-makers and managers, through professionals and practitioners, to academic researchers and theorists. There is a great deal to be taken from both the (sometimes controversial) debate and the research evidence generated by offending behaviour programmes. The debate around the utility of offending behaviour programmes and what they represent is worth having as it keeps alive the momentum for effective work with offenders. Whether offending behaviour programmes do reduce criminal behaviour and prevent victimization is, in truth, a question that remains to be satisfactorily answered. If the debate is allowed to run dry before an answer is available, a very different type of discussion may well be on the agenda.

Selected further reading

Hollin, C.R. and Palmer, E.J. (eds) (2006) *Offending Behaviour Programmes: Development, Application, and Controversies*. Chichester: Wiley, provides a summary of thinking and controversies in the use of offending behaviour programmes. The paper by

Lipton, D.S., Thornton, D.M., McGuire, J., Porporino, F.J. and Hollin, C.R. (2000) 'Program accreditation and correctional treatment', *Substance Use and Misuse*, 35: 1705–34, describes the development of accreditation and accreditation criteria. McGuire, J. (ed.) (1995) *What Works: Reducing Reoffending*. Chichester: Wiley, was the first collection of material under the 'What Works' label, showing the concerns and thinking at the time, while McGuire, J. (ed.) (2002) *Offender Rehabilitation and Treatment: Effective Programmes and Policies to Reduce Re-offending*. Chichester: Wiley, shows that the 1995 book has grown older and wiser! A chapter that gives a good overview of the nature of evidence in criminal justice policy is Nutley, S. and Davies, H. (2000) 'Criminal justice: using evidence to reduce crime', in H.T.O. Davies *et al.* (eds) *What Works? Evidence-based Policy and Practice in Public Services*. Bristol: Policy Press. Finally, Raynor, P. (2004) 'The Probation Service "Pathfinders": finding the path and losing the way?', *Criminology and Criminal Justice*, 4: 309–25, is a consideration of the victories and pitfalls in carrying out research under the CRP, and is a notable rejoinder to Harper and Chitty (2005).

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Chapter 27

Through the prison gate: resettlement, offender management and the 'seamless sentence'

Kirsty Hudson, Mike Maguire and Peter Raynor

Introduction

The last 30 years have seen some major shifts in thinking about the place of imprisonment in the penal system and in the concept and aims of a prison sentence. The 'nothing works' arguments of the late 1970s and 1980s led to a reduction in emphasis on rehabilitative goals both in sentencing decisions and in prison activities, including a decline in 'through the gate' work by prison and probation officers. This culminated in the Criminal Justice Act 1991, which enshrined the notion of 'just deserts' as the fundamental guiding principle for sentencers, specifying that decisions about the use and length of custodial penalties should be determined first and foremost by the gravity of the current offence, rather than by rehabilitative considerations or the offender's past record. There was also a common theme running through influential reports, such as the Carlisle Report (Home Office 1988) on the future of parole and the Woolf Inquiry (1991) into prison disturbances, that, while prisoners should be offered access to activities aimed at changing their offending behaviour, participation should be entirely voluntary and should not affect their chances of early release; rather, the emphasis should be on treating all inmates with fairness and respect.

However, since that time, although the delivery of justice through punishment has remained the primary stated aim of imprisonment, policy and practice have been increasingly influenced by the emergence of 'risk' as a major focus of social and political concern in Western societies, underpinned by the insecure economic conditions of 'late modernity' (Giddens 1990; Beck 1992) and reflected in part in heightened fear of crime and demands for greater community safety (Garland 2001). As a result, growing importance has been attached by sentencers, legislators, policy-makers and practitioners to the aims of *protection of the public* and the *reduction of reoffending*. Both of these priorities have led to a greater emphasis on risk assessment and 'risk management', often entailing the imposition of greater controls over offenders' lives. For those assessed as dangerous, these include longer incarceration and increased

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post-release surveillance (Chapter 25, this volume). For many others, too, there has been an increase in the use of conditions attached to sentences or post-release licences. An important factor here has been a shift away from the pessimism of 'nothing works' supported by positive messages from the 'What Works' movement and research suggesting that properly targeted interventions can have a significant effect on offenders' thinking and behaviour (Vennard *et al.* 1997; Raynor 2007; Hollin and Palmer 2007). This has underpinned a renewed readiness to direct offenders to take part in activities to address their 'criminogenic needs' (i.e. the social and personal problems considered to lie behind their criminal behaviour) and a concomitant increase in resources for services such as drug treatment and group programmes (Chapter 26, this volume). All these developments have been accompanied by a strong new emphasis on 'through the gate' activities. Thus the development of multi-agency public protection arrangements (MAPPAs) for high-risk offenders has fostered much closer co-operation and information-sharing between prisons, the police and probation (Maguire and Kemshall 2004). Equally, it has been widely recognized that rehabilitative interventions in prison are more likely to be effective if followed up systematically after release, and that ex-prisoners are more likely to respond positively to supervision if their transition from custody to community is planned and coordinated from an early stage in their sentence.

This kind of thinking has not only led to a revival of government interest and investment in 'resettlement' services such as help with accommodation and employment,[1] but it also permeated the Carter Report (Home Office 2003), which argued that prison and probation interventions were too disjointed and could only be effective if co-ordinated through a holistic system of 'end-to-end offender management'. This argument was rapidly accepted by the government and used as the main rationale for the establishment of the National Offender Management Service (NOMS). Similar thinking had earlier been evident in the major review of sentencing undertaken by John Halliday (2001), particularly in its advocacy of a new kind of 'seamless' sentence, which resulted in 2003 in legislation (albeit still not implemented) to allow the introduction of 'Custody Plus', a penalty combining a few weeks in prison with several months of statutory supervision after release.

It is developments in these areas of 'offender management', 'seamlessness' and 'through the gate' activities that constitute the main focus of this chapter. The chapter draws on a series of studies carried out by the authors and others over the last ten years which have documented changes in thinking and practice. It also relates their findings to broader changes in the penal system, as well as to theories and evidence about how people desist from crime. We begin with a brief account of recent moves towards the ideal of 'seamlessness', as well as efforts to involve mainstream public service agencies more centrally in the resettlement of ex-prisoners. We then consider the prospects for these developments in terms of the goal of reducing offending, with reference both to practical obstacles and to lessons from the desistance literature.

The road to seamlessness

Through-care and automatic conditional release

It is only very recently that serious and systematic attempts have been made to integrate work with offenders carried out before and after release. However, the benefits of such integration have been recognized for a considerably longer period. For example, aspirations in this direction were evident in the introduction of automatic conditional release (ACR), which was created under the Criminal Justice Act 1991 as a replacement for parole (Maguire and Raynor 1997).[2] The rules, which remain in force today, stipulate that all prisoners with sentences of between one and four years are released automatically at the half-way point and supervised for the next quarter of their sentence (for the final quarter they are not supervised, but remain at risk of recall to prison if convicted of a new offence). The rhetoric surrounding ACR painted a picture of a period in custody and a period under supervision combined into a single sentence planned as a coherent whole. ACR can thus be seen as an early attempt to devise a so-called 'seamless sentence'. To some extent the concept of 'seamlessness' had been prefigured by that of 'through-care', popular in the Probation Service since the 1970s. However, 'through-care' mainly implied an early start to the process of release planning and early pre-release contact with the prospective supervisor: many probation officers believed that its purpose was to mitigate the harm done by imprisonment rather than to reinforce and continue a constructive sentence plan. 'Seamlessness' went further than through-care because it implied that the periods in custody and under supervision in the community were both phases of one essentially indivisible sentence: ACR was for *all* prisoners serving from one to four years, and they were *all* sentenced to post-release supervision in addition to imprisonment.

Despite the general orientation of the 1991 Act towards punishment, there was from the beginning an assumption that rehabilitative interventions – especially drug treatment and help with problems such as finding accommodation or employment – delivered 'through the gate' could contribute to the reduction of reoffending. However, research carried out during the 1990s provided ample evidence that, despite its designers' intentions, ACR was anything but 'seamless' in reality. For example, Maguire *et al.* (1996; see also Maguire and Raynor 1997) found that communication between prisons and probation services was generally poor. When it was good, this was because good working relationships already existed between particular prisons and particular teams rather than because people had complied with circulars instructing them to co-operate. Sentence plans were poor and superficial, and were not written to cover the sentence as a whole. At best, prison staff wrote sentence plans about what would happen in prison, and probation staff wrote supervision plans about what would happen in the community. The researchers found from analysis of samples of files that 'statements about offenders' needs tended to be superficial, or to turn into statements about what courses they wanted to attend, if they were available' (Maguire *et al.* 1996: 78). Overall, they concluded, what was happening in practice was so different from what was supposed to happen that 'if we had not known how

the system was meant to work, it would have been virtually impossible to infer this from studying the files' (1996: 80). In other words, seamlessness was an aspiration rather than a reality.

A new focus on short-term prisoners

Unsatisfactory as the ACR arrangements were, they were far in advance of those for prisoners sentenced to under 12 months. Adult short-termers were not subject to any form of statutory supervision after release,[3] and those in need of assistance had traditionally relied on 'voluntary after-care' (VAC) provided by probation officers. However, the availability of VAC had declined dramatically during the 1980s following Home Office instructions to probation services to prioritize statutory supervision (Maguire *et al.* 2000). Short-termers not only represent the majority of receptions into prisons – over 61,000 in 2004 (Home Office RDS/NOMS 2005) – but also high proportions have major social and personal problems, and their reconviction rates are higher than any other group of prisoners. They are also less likely than other inmates to receive programmes or substantial services in prison. Concerns on these scores were expressed in a number of substantial studies and reports (Maguire *et al.* 2000; NACRO 2000; HM Inspectorates of Prison and Probation 2001), most importantly in the Social Exclusion Unit's (2002) report, *Reducing Re-offending by Ex-prisoners*, which specifically linked the exceptionally high reconviction rates of short-termers to the failures of mainstream agencies to meet their needs. For example, the report documented that two thirds of short-term prisoners had been unemployed before going to prison; nearly a third had no accommodation to return to after release; over half had no qualifications; and well over half were involved in substance misuse.

One response to such concerns was the setting up of a number of pathfinder projects financed under the government's Crime Reduction Programme, which were designed to test new approaches to the provision of resettlement services for short-term prisoners. Evaluations of these projects (Lewis *et al.* 2003; Clancy *et al.* 2006), which are described in more detail later, demonstrated the importance of 'continuity' between work in prison and after release, including efforts by professional staff or mentors to develop relationships with prisoners which will be continued 'through the gate'. The most significant response, however, was the government's decision, arising from recommendations in the Social Exclusion Unit's report, to require the development of co-ordinated multi-agency strategies and action plans at both national and regional level (see the next section).

Reducing re-offending action plans and the strategic pathways

One of the key conclusions of the Social Exclusion Unit's (SEU) report was that little significant impact was likely to be made on the high reconviction rates of prisoners – and especially of short-term prisoners, many of whom suffer from major social problems which trap them in a 'revolving door' of frequent (minor) offending and repeated imprisonment – without a major co-ordinated effort by mainstream service agencies to assist their 'resettlement' in the community. This would require action to promote a broad shift in

attitudes towards ex-prisoners, whereby they would be treated as in priority need rather than ignored or (as was evident in some areas) deliberately excluded from access to services, as well as a proactive, partnership-based approach to service provision.

The location of the SEU within the Office of the Deputy Prime Minister enhanced the report's political influence. It also allowed its authors to adopt a cross-departmental approach, pointing out to departments with little previous interest in ex-prisoners the wider benefits of helping to reduce reoffending. Some of its main recommendations were initially translated into policy through the government's Reducing Re-offending National Action Plan (Home Office 2004). This created seven strategic service 'pathways' for systematic development: 'Accommodation'; 'Education, training and employment (ETE)'; 'Mental and physical health'; 'Drugs and alcohol'; 'Finance, benefit and debt'; 'Children and families of offenders'; and 'Attitudes, thinking and behaviour'. While the high levels of need among short-termers were recognized as particularly challenging, the plan was designed to apply to all prisoners.[4]

It is intended that the development and implementation of the Reducing Re-offending National Action Plan are taken forward largely at a regional level. Regional partnerships of relevant agencies have now been set up across the country, overseen by the nine regional offender managers (ROMs) in England, and the Director of Offender Management in Wales, who are employed by the new National Offender Management Service (see below). For example, the South West region has set up a 'Reducing Re-Offending Partnership Board' whose membership includes the ROM, the Home Office Director from the Government Office, and senior managers from criminal justice, health, education, employment and other major public sector and voluntary organisations. Each region has also produced its own 'reducing re-offending strategy' and corresponding 'action plan' for the delivery of key services, organized under the various strategic 'pathways'. The core aims have been set centrally to increase collaborative working across the public, private and voluntary sectors; to identify the level of current and projected demand for key services; and to ensure that information is available and shared between agencies to enable them to provide appropriate ranges of services (Home Office 2004). At regional level, each pathway is managed by its own multi-agency subgroup, which reports to the main board. There is also a lead agency for each pathway at national level. Although the development of such arrangements was patchy for some time, all regions now appear to be making progress in terms of target-setting, partnership activities and the setting up of concrete projects.

Offender management: the National Offender Management Service and the NOMS Offender Management Model

The National Offender Management Service (NOMS) was created very rapidly in 2004–5 following recommendations by Patrick (now Lord) Carter in his *Correctional Services Review* (Home Office 2003). One of the core tasks of the new agency was to set up and run a new system of so-called 'end-to- end offender management', whereby anyone facing a prison or community sentence

would be assigned a specific 'offender manager' at an early stage, who would be responsible for carrying out a pre-sentence assessment, recommending sentence conditions to the judge or magistrate, and arranging supervision and interventions throughout the whole duration of the sentence, whether the offender was in prison or outside. This would take place within the framework of the NOMS Offender Management Model (NOMM), which defines broad parameters for work with different categories of offender, based substantially on the degree of risk of harm or reoffending they are adjudged to pose. Offender management was to be seen as quite distinct from the provision of 'interventions' (such as drug treatment or offending behaviour programmes), which was to be commissioned under a system of 'contestability' (competitive tendering) from a variety of other organizations – these could include prisons or probation areas, but also any other public, private or voluntary agency that bid successfully. Such bids were to be made to the ROMs, who were to take over control of the relevant budgets formerly managed separately by the prison and probation services. Early steps have been taken to operationalize many of these plans, although they have undergone several changes already and, at the time of writing, there is still considerable uncertainty about how they will be implemented in practice.

Many of the NOMS reforms – especially those concerning 'contestability' – have attracted considerable criticism (see, for example, Rumgay 2005; Hough *et al*. 2006). On the other hand, the basic concept of 'end-to-end offender management' has been broadly welcomed by academics and practitioners, especially in the context of 'through the gate' work with prisoners, where it appears to fit well with evidence of the value of 'continuity', as mentioned above. However, the question which remains to be discussed later in the chapter is whether its aims are likely to be successfully realized within the framework of the NOMM, and particularly in the context of a rigid separation between 'offender management' and 'interventions'.

Custody Plus

A final – and potentially the most significant – development affecting resettlement practice is the (currently postponed) plan to introduce Custody Plus. Originally recommended by Halliday (2001) and legislated in the Criminal Justice Act 2003, this represents a response to the problem of resettling short-term prisoners, which is different but to some extent complementary to the 'pathway' arrangements (described above) originating from the SEU and the Reducing Re-offending National Action Plan. As noted earlier, Custody Plus aims to be the first genuinely 'seamless' sentence, consisting of a short period in prison (a maximum of 13 weeks) followed by a much longer period of statutory supervision in the community. Offenders subject to Custody Plus would also be subject to the new 'end to end' offender management system embodied in the NOMM (again as outlined above).

The advantages of Custody Plus clearly include the opportunity for prisoners who would previously have had no assistance after release to obtain access to services that may facilitate their resettlement. In theory, too, it should result in reduced time in custody for minor offenders, easing both

the general overcrowding situation and individual problems such as losses of tenancies due to failure to pay rent while inside. However, there are clearly risks, discussed later, that neither of these advantages would materialize as hoped. The effective implementation of the 'through the gate' and community supervision elements of the sentence might be undermined by pressures of numbers and shortages of resources. Importantly, too, the change might result unintentionally in an overall *increase* rather than the planned decrease in the use of imprisonment. First of all, there is a risk that sentencers would use Custody Plus for large numbers of offenders who would not in the past have received a custodial sentence at all; and, secondly, that many offenders would fail to meet the conditions of their supervision and would hence be returned to prison, making their situation worse.

Resettlement practice and desistance: theory and evidence

Much of the activity described above appears to represent major improvements to the state of resettlement arrangements that existed during the 1990s. In particular, genuine attempts are being made to 'join up' prison and probation systems of offender management and interventions; mainstream public sector service providers are being pressed to treat ex-prisoners as priority cases (instead of, as was the prevailing culture in some areas, people to turn away); and, above all, thought is at last being given to how supervision and services might be provided on a systematic basis to short-term prisoners. However, important questions remain about the likelihood that these organizational changes will lead to the primary desired outcome of a reduction in reoffending. To begin to address them, it is necessary to look first at relevant theory and research evidence. Consideration is also given later to some of the daunting practical problems that will have to be overcome if what is planned is to be delivered successfully.

Three areas of research can be of particular help. First, recent research on resettlement offers some clues about aspects of pre-release preparation and post-release supervision and assistance which may increase offenders' chances of avoiding reconviction. Secondly, both the resettlement studies and wider research and theorization on the process of desistance from crime offer some understanding of the trajectory and thinking of those who successfully decide to stop offending. New arrangements for offender management, if they are to succeed in reducing offending, will need to understand, support and reinforce these processes of change. Thirdly, there is a long-established literature about the constructive use of personal influence and of relationships with offenders which has arguably been neglected in favour of an emphasis on establishing effective group programmes. Practitioners' personal attributes and skills, and the establishment of appropriate relationships with people under supervision, are gradually being rediscovered as a form of effective practice in their own right, and as a necessary support for the effective delivery of other interventions, such as programmes. We comment on these three areas in turn.

Lessons from the resettlement pathfinders

First of all, it has to be admitted that there is little conclusive evidence about the effectiveness of resettlement strategies *per se* in reducing reoffending. There are, however, some indicative findings which suggest that certain elements are important to success in this area. Some recent evidence is available from the evaluations of the 'resettlement pathfinders' (see Lewis *et al*. 2003; Clancy *et al*. 2006; Maguire and Raynor 2006).

These seven projects involved a variety of collaborative approaches to resettlement between the prisons and either local probation services or voluntary organizations. Some of the offenders in the probation-led projects attended 'FOR – A Change', a structured cognitive-motivational programme designed specifically for pre-release use with short-term prisoners (Fabiano and Porporino 2002). This was intended for delivery in the weeks preceding release and consisted of 12 group sessions and one individual session. The group sessions concentrated on developing motivation and setting goals, and included a 'market-place' attended by representatives of agencies likely to be of use to prisoners on the outside, in accordance with the longstanding observation that the appointments most likely to be kept on release are those arranged before release (see, for example, Maguire *et al*. 2000). The rationale of the whole programme was closely based on established principles of motivational interviewing (Miller and Rollnick 1991, 2002) and was designed to be followed up through continuing contact with resettlement workers after release. The 'motivational' approach can be summed up as attempting to 'develop discrepancy' – in other words, promoting awareness of gaps between what prisoners want or aspire to be and their current situations or behaviour. As people become aware of such gaps and motivated to close them, work proceeds on setting achievable goals and developing concrete plans. The assumption is that prisoners will face obstacles on release, and will need motivation, resourcefulness and determination to overcome them even with the assistance of available support and services: motivated prisoners are likely to make more and better use of whatever help is available. Group leaders are trained to show empathy, recognize discrepancies (for example, between previous and current statements) and promote self-efficacy.

The initial evaluation (Lewis *et al*. 2003) measured changes in attitudes to crime and in self-reported problems between early in the sentence and shortly before release. It found significantly greater improvements in both respects among offenders in the probation-led projects, especially those who had attended the programme. However, subsequent analysis of reconviction data after one year indicated that, while work undertaken in custody was important, the most significant factor associated with lower than predicted reconviction rates was contact with resettlement workers after release (Clancy *et al*. 2006). This finding was particularly strong where the post-release contact was maintained with volunteer mentors. An important factor here seemed to be that the mentors had already established a positive relationship with the prisoner in custody, which was continued after release.

In summary (although the results refer only to one-year reconviction rates and involved relatively small numbers, so must be treated with some

caution), the overall lesson to be taken from this research seems to be that successful resettlement requires at least three broad elements – the provision of opportunities to deal with practical problems, work on motivation and thinking skills, and 'continuity' in the sense of personal support being maintained 'through the gate'. One promising approach may therefore be to combine a structured programme of work in prison with post-release help and support provided by mentors.

Recent theory and research on desistance from crime

The results of the resettlement pathfinder research lend further support to a group of academic writers – sometimes referred to as desistance theorists – who have recently argued, in a broader context than that of resettlement alone, that, if it is to be effective, work aimed at the rehabilitation of offenders must be informed by a theoretical and evidence-based understanding of the process of desistance from crime (see, for example, Maruna 2000; Farrall 2002; Burnett 2004a; Maruna and Immarigeon 2004; Burnett and McNeill 2005; Farrall and Calverley 2005). The general message from this literature is that *agency* is as important as – if not more important than – *structure* in determining whether or not people commit crime and, in particular, whether or not they desist from an offending career. In other words, people often make conscious decisions to offend or not, based on how they perceive themselves and the world around them, rather than being driven inexorably to offend by their social problems. This view is reminiscent of the finding of Zamble and Quinsey (1997) from their survey of Canadian male recidivists that reoffending typically followed an encounter with practical obstacles, followed by a negative or pessimistic emotional response and a lack of belief in the feasibility of non-criminal solutions. The researchers concluded that 'factors in the social environment seem influential determinants of initial delinquency for a substantial proportion of offenders … but habitual offending is better predicted by looking at an individual's acquired ways of reacting to common situations' (1997: 146–7).

Similarly, Maruna's interview-based study of offenders in Liverpool emphasizes the importance of thinking and belief in processes of desistance from crime. He describes different kinds of 'narrative' on which people draw for their understanding of their own situations or the accounts they give to others. Some of these narratives support continued offending and some support desistance. A key element of desistance narratives was found to be the offender's belief that he or she had begun to take control of his or her own life: 'Whereas active offenders … seemed to have little vision of what the future might hold, desisting interviewees had a plan and were optimistic that they could make it work' (Maruna 2000: 147). Recidivist narratives, on the other hand, tended to present the offender as the victim of circumstances. However, these are not simple one-way journeys: for many offenders desistance is a difficult and lengthy process, involving reversals and relapses. Burnett (2004a) describes a 'zigzag' process, and offenders will both vary over time and differ from each other in their motivation and readiness for change. Clearly, she concludes, services which aim to help offenders to

change need to engage with these realities, and especially to support them in the maintenance of motivation.

McNeill (2006) has argued that the key messages from the above kinds of research should underpin the development of a new, 'desistance paradigm' for probation practice (including 'through the gate' supervision. This would be built around 'empathetic', 'collaborative', 'person centred', relationships (or 'working alliances') with offenders, in which the probation officer pays heed to the offender's own perspectives and current life situation and supports his or her efforts to change. He contrasts this with the 'treatment' paradigm, presently represented by cognitive-behavioural programmes delivered in a standard manner to groups of offenders (currently, the most commonly used type of intervention for changing prisoners' thinking and attitudes – see McGuire 2002), which are seen as failing to accord sufficient attention to the group members' individual situations, 'narratives' and degrees of readiness to engage with change processes. Nevertheless, it can be argued that 'desistance focused' and 'cognitive-behavioural' approaches have much more in common than appears at first sight, and there seems no reason why they cannot be fruitfully combined. Both emphasize the importance of assisting offenders to change the way they think about their lives and their involvement in offending, and both recognize the importance of sustaining motivation to change. Indeed, it can be argued that the individual-centred, motivation-focused work advocated by desistance theorists is very similar to the kind of work that advocates of cognitive behavioural programmes expect to be undertaken by case managers (now offender managers) in order to prepare offenders for attendance at the group programmes and to support them at intervals throughout (for further discussion of these issues in relation to resettlement practice, see Maguire and Raynor 2006). This raises further questions (discussed below) about the kinds and levels of staff skills that are necessary to the success of both offender management and interventions.

Skills and consistency in offender management

Some recent research has tried to identify those characteristics of case management (or 'offender management') and supervision which are most likely to facilitate and reinforce change, and also to support the effectiveness of other 'interventions' such as structured programmes. Burnett (2004b) has drawn attention to the long and diverse history of one-to-one supervision based on personal relationship and continuity, while Dowden and Andrews (2004) have used meta-analysis to identify those staff skills which enhance the effectiveness of rehabilitative work with offenders. They define these skills as 'core correctional practices' (CCPs), which can be summarized briefly as the effective use of authority; appropriate modelling and reinforcement; the use of a problem-solving approach; and the development of relationships characterized by openness, warmth, empathy, enthusiasm, directiveness and structure. (In the past these would often have been identified and taught as general social work skills; see Raynor and Vanstone 1984.)

The mean effect sizes of programmes were found to be higher when these CCPs were present, and significantly higher when other principles of programme effectiveness were also applied: staff skills and programme design

complemented each other, rather than one being a substitute for the other. However, Dowden and Andrews point out that 'Clearly these CCPs were rarely used in the human service programs that were surveyed in this meta-analysis … These results suggest that the emphasis placed on developing and utilizing appropriate staff techniques has been sorely lacking within correctional treatment programmes' (2004: 209).

In addition, recent literature and practice emphasize two approaches which depend on individual practitioner skills and underpin practice both within and outside 'programmes'. One is prosocial modelling, derived from Trotter's work in Australia (Trotter 1993); the other is motivational interviewing, derived from the work of Miller and Rollnick (1991) in the field of substance misuse, and already described as one of the methods informing the 'FOR – A Change' programme. Their relevance to the issue of continuity is that both require time and consistency: modelling and reinforcement of prosocial behaviour needs to be consistent and repeated, and motivational interviewing depends on a patient process of helping offenders to see discrepancies between how they behave and what they say they want.

Persuading offenders to stick to a plan and to cope with obstacles and difficulties can be easier if the supervisor was involved in the formulation of the plan in the first place. Similarly, some offenders will feel a sense of personal obligation to a probation or prison officer whom they see as helpful and reliable, and this is not quickly or easily transferred to a stranger. One frequent message of recent research is that offender supervision and management which aim to support positive narratives and constructive processes of change need to be provided in a context of continuing personal communication: that is, in the context of offender management as a relational process. Further support for this comes from recent writing about the practicalities of offender management (Partridge 2004; Robinson 2005). For example, Partridge found that offenders clearly wanted continuity of contact with a particular person. They were 'more likely to trust their case manager, address their problems and ask for help if they saw the same person over a period of time' (2004: 9). Offenders whose supervision was fragmented were confused about what they were supposed to be doing, and did not like having to tell their personal histories to a succession of new supervisors.

The prospects for more effective resettlement

In the light of the above discussions, it is now time to ask whether the organizational changes described earlier – especially the establishment of 'end-to-end offender management through the gate' and the implementation of national and regional multi-agency plans – are likely to be successful and, most importantly, achieve their central goal of reduced levels of reoffending. As noted earlier, to make any judgements in this area it is important to consider not only the compatibility of the new systems with theory and research evidence about the most effective ways of promoting desistance from crime, but also potential practical obstacles. Clearly, the effectiveness of any intervention depends upon the soundness of both its underlying principles and its implementation in practice.

Can the NOMM deliver on integration and continuity?

We begin by looking a little more closely at what many see as the heart of
the new system, the NOMM. The NOMM is designed to deliver Carter's
vision of integrated case management by a single agency, and in principle
is intended to overcome some of the problems of fragmentation which
were noted in the early resettlement research. It also incorporates some of
the main principles which have been identified by theorists and researchers
as critical to the reduction of reoffending – in particular, continuity of
relationships between offenders and those working with them, and attention
to attitudes and cognitive skills in addition to welfare problems. However,
presentation of the model itself (see NOMS 2005) is curiously divided up
and compartmentalized. There are to be four tiers of offenders, classified
according to the level of risk and need presented. All are described as subject
to punishment; some of these will also receive 'help', understood as assistance
with practical or welfare problems; a smaller number will also be targets for
'change' (for example, through accredited programmes); and a few of these
will in addition be subject to special measures of 'control' as prolific, priority
or dangerous offenders. All will be subject to enforcement in accordance
with national standards, and may be subject to a number of requirements
introduced by the Criminal Justice Act 2003. A number of uncertainties still
surround this model. For example, recent high-profile offences by offenders
under supervision cast doubt on the consistency and effectiveness of some
risk assessment practice (HM Inspectorate of Probation 2006), and it is also
unclear how far one's position in the four-tier system might come to reflect
the seriousness of the offence and consequent severity of the sentence rather
than actual levels of risk and need. There also seems to be little thought so
far about where to fit those who will require control but reject help and refuse
to engage in a process of change, or how to handle those whose motivation
for help or change is fluctuating and unstable, as suggested by the 'zigzag'
aspect of the desistance process.

   In addition to the tiered model, the NOMM subdivides offender
management itself into separate processes of 'management' and 'supervision',
which may be carried out by two separate individuals or just one, depending
on levels of risk, resources and other considerations.[5] Some commentators
have argued that a process which is subdivided in this way may not carry
the intended message of consistency and continuity to the offender. As
Robinson (2005) has recently argued: '"What works" at the level of aggregate
"offender management" does not necessarily work for offenders, or indeed
the practitioners responsible for supervising them.' The evidence put forward
in this chapter suggests that it is important to secure considerable overlap
between case management and supervision, and hence that the model may run
into difficulties if the two main roles are undertaken by different people. For
example, there may be problems associated with the idea of being supervised
by somebody who cannot make the main decisions, and may therefore appear
marginal to the offender. There is also little evidence in support of the idea
that most offenders can be successfully managed by people with whom they
have minimal human contact (for discussion of such issues in the context

of managing offenders in the community, see Raynor and Maguire 2006). Of course, 'end to end' offender management of people sent to prison is by definition challenging, as it is logistically difficult for the same person to see the offender regularly both in prison and after release. There is no simple solution to this problem. Judging from early arrangements made in several areas, it appears that the normal practice will be to appoint a prison officer as the supervisor, working under the broad guidance of an offender manager (usually a probation officer) based outside. In addition to the issues raised above, this carries the risk of communication problems and inconsistency between supervisor and manager, which will require considerable effort to overcome. Add to this the division between 'offender management' and 'interventions', and the prospect that contestability may lead to these being delivered by different organizations which in other contexts are competing with each other, and the NOMM's declared aim of delivering 'consistency, continuity, commitment and consolidation' appears still more challenging.

Resettlement and desistance: partnership and the pathways

Assessing the prospects for success of the new partnership and 'pathway' arrangements set in motion by the Reducing Re-offending National Action Plan is, if anything, more difficult, not only because they are complex and variable but also because they are increasingly intertwined with the NOMS agenda and the introduction of 'end-to-end offender management' – an issue which requires some preliminary discussion. This was not always the case: the two developments not only had different origins (the action plan being primarily a response to the Social Exclusion Unit report, and NOMS a response to the Carter Review), but also very different focuses. Indeed, the partnership and pathways agenda still represents a much broader strategy than NOMS for reducing reoffending. It is aimed not only at offenders who are under sentence or on licence (i.e. under the control of the prison or probation service), but also at 'ex-offenders' – in particular, people who have been released unconditionally from prison after a short sentence, and offenders who have reached the end of a period under statutory supervision. This recognizes that offenders do not suddenly cease to have 'criminogenic' problems and needs at the moment their sentence ends. Rather, they may move from the category of 'offender' to that of 'homeless person', 'person with a substance misuse problem', 'unemployed person' and so on. As such, they are theoretically entitled to the same assistance from public service providers as any other person in these categories, including those who have never offended. However, it is also recognized 1) that ex-offenders (especially ex-prisoners) have often in the past been treated as less deserving of help and hence excluded from services; and 2) that the potential benefit to society of offering them assistance which will reduce their future offending is considerable, and hence may merit treating them not just as equals but as a *priority group* who may in some cases 'jump the queue' for treatment, supported accommodation and so on. This, of course, is highly controversial and alien to the culture of some service provision agencies, but the government has already taken some tentative steps in this direction. For example, 'ex-offenders' have been listed by the

Department of Communities and Local Government among the groups that should be given priority under local provisions for tackling homelessness (in Wales, indeed, this is specified in homelessness legislation).

In a sense, then, these partnership arrangements, which depend upon major service agencies each playing their part in an overall plan to tackle some of the problems thought to lie at the root of persistent offending behaviour, began as quite separate from – if complementary to – the core work of NOMS, which concerns the assessment and management of offenders who are under sentence. However, the two strands have since moved rapidly much closer together. One major reason for this is that the Home Office (now Ministry of Justice) decided to give ROMs the prime responsibility for developing the regional partnership and pathways agenda. In most regions, ROMs have begun to steer this agenda towards serving the needs of offender managers, so that they will have ready points of referral for offenders under their supervision. The ROMs have also tended to press other agencies to develop services especially for high- risk and 'prolific' offenders, categories assigned high priority in the NOMS agenda. Another potentially important factor in the merging of the two strands is Custody Plus. As discussed earlier, the broad 'reducing reoffending' plans stemming from the SEU report had a primary focus on services for short-term prisoners, most of whom were leaving prison without supervision or help with their social and practical problems; by contrast NOMS had little direct interest in short-termers once they had left prison. However, as Custody Plus would bring *all* prisoners under NOMS' offender management system if it is implemented, this difference of focus will no longer exist, and offender managers will be seeking services for a much wider range of offenders.

It should also be noted that, although they have become somewhat obscured, underlying the new arrangements are two rather different sets of ideas about how reoffending may be reduced – or, as Raynor (2004a) puts it, two 'implicit criminologies' at work. The core thrust of the SEU report's argument was that short-term prisoners reoffended in such large numbers mainly because they were in the grip of major social and personal problems that were not being addressed. This broadly reflects a positivist/determinist explanation of offending (in other words, a view that individual offenders are largely the victims of social circumstances and problems beyond their control) and a corresponding assumption that, if prisoners can be helped to 'get back on their feet' in practical terms, their chances of avoiding new offending will be reduced.[6] Not unnaturally, the reducing re-offending strategies also place a major emphasis on 'welfare' services, with Pathway groups seeking more effective ways of providing accommodation, employment opportunities, drug treatment and so on. By contrast, the NOMS' model places much more emphasis upon the cognitive element in offending, reflecting the assumption that offenders to some extent make conscious decisions to commit crime, and hence that it is important to attempt to change negative aspects of their attitudes, motivation and thinking processes. This is consistent with recent philosophical and policy trends in the probation and prison services, including the large investments in cognitive-behavioural programmes made under the 'What Works' initiative in the late 1990s and early 2000s (see, for example, Hollin 2005; Chapter 26, this volume).

In terms of the prospects for reducing reoffending, it may be argued that each of the above approaches on their own have disadvantages. Hence the single-minded focus on programme content and delivery, which marked the introduction of cognitive-behavioural programmes into British prisons and probation, led to a corresponding neglect both of case management and of welfare service provision. This may partly explain the relatively disappointing results of programmes to date, despite their impressive results in Canada (Mair 2004; Raynor 2004b). Vice versa, there has never been any strong evidence that the provision of welfare services alone results in reduced reoffending: it may often be a necessary condition for desistance, but is probably not a sufficient condition.

For these reasons, it may be that the recent 'coming together' of the SEU and Carter agendas (i.e. improved, partnership-based resettlement services becoming combined with and co-ordinated through 'end to end' motivational case management) offers a promising model for an effective system of resettlement. It is noteworthy, for example, that one of the pathways being developed, which has equal status to the other more 'welfare' oriented pathways, is named 'attitudes, thinking and behaviour' and focuses mainly on the delivery of cognitive-behavioural programmes. The intention is that attendance at such programmes, supported by motivational supervision, will not only help offenders to see the advantages of a crime-free life but will also equip them to make better use of the improved services and opportunities offered under the other pathways.

That, of course, is the optimistic view. The risk is that the sound principles and good intentions described above are undermined by practical obstacles such as prison overcrowding, shortages of resources, poor organization, high offender-manager caseloads, lack of staff skills or low morale. If Custody Plus is implemented, these kinds of issues are likely to provide an even greater challenge as the numbers of offenders under supervision increase dramatically. It is also likely that – as now – probation officers or others managing 'through the gate' cases will place far less emphasis on motivational work or on addressing 'thinking and attitudes' issues than they do with offenders on community sentences. This is partly because of the pressing nature of the practical problems that tend to confront people coming out of prison, and partly because it is likely to be felt that there is insufficient time on licence to undertake much serious work. Of course, many will have undertaken programmes in prison, but the 'What Works' literature suggests that, unless the learning from these is reinforced after completion, much of the benefit may be lost.

Finally, there are questions about the effectiveness, organization and sustainability of the partnership work. Other agencies have wider interests and responsibilities than the reduction of reoffending and, although many managers from the health, employment, accommodation and education services currently display enthusiasm for – and contribute considerable resources to – the work of the various pathways, this may not always remain the case when they face periods of higher workload or financial restraints. The co-ordination of services also poses major challenges in practice. There is a danger that some pathways become separate 'silos', although one offender

may need services from two or three of them simultaneously (for instance, it is often important to link drug or mental health interventions with supported accommodation, as failure to deal with the former problems may lead to eviction). While knitting the interventions together is seen as a task for offender managers, this will be very difficult to achieve in practice, especially where the offender manager has no specific control over the agencies to which he or she is referring offenders.[7]

Concluding comments

Throughout this chapter we have drawn attention to many positive aims of the NOMS agenda and its associated 'seamlessness', as well as of the related partnership-based resettlement agenda stemming from concerns about the lack of services for short-term prisoners. However, we have also identified a number of problems, and it is unclear where the balance lies between the strengths and weaknesses of the developments. It is also important to remember that they are taking place within a climate of public and political opinion that is distinctly unsympathetic to offenders and their needs, and has little patience for arguments that offenders should be afforded priority for welfare services or that public funds should support expensive rehabilitative interventions, including hours of individual counselling by supervisors. More broadly, many criminologists have identified a strong worldwide trend towards toughness and punitiveness, attributable to fundamental economic, social and cultural changes and a pervasive sense of insecurity characteristic of late modern societies (see, for example, Bottoms 1995; Garland 2001). Some of the recent changes in British correctional services are clearly in line with these arguments – notably, greater use of imprisonment and a preoccupation with risk and the technology of risk management (cf. Feeley and Simon 1992; Kemshall and Maguire 2001; Hudson 2003). The new developments in 'hybrid' and 'seamless' sentencing which combine elements of custodial and community sentences recall Cohen's arguments, over 20 years ago, about the 'blurring' of different forms and levels of control (Cohen 1985). The globalization of capital and the colonization of public life and public services by commercial business models and economic rationality (Christie 1993, 2004) define the context for privatization and 'contestability', while developments in information and communication technology (ICT) transform the possibilities for impersonal supervision of offenders by ever more sophisticated forms of tagging (Nellis 2004).

   The same or related developments in ICT also allow new forms of technical routinization of what used to be areas of professional discretion (Robinson 2003) and more managerialist supervision of staff, which may impact negatively upon their interpersonal skills in relating to offenders. Other influences on penal policy stem from political short-termism and the media-driven need for constant new initiatives and knee-jerk policy proposals, identified by Garland (1995) as 'signs and symbols', and by Christie (2004) as the use of criminal justice as an arena for 'self-presentation' by politicians. The New Labour governments since 1997 have created new criminal justice

policy and legislation at a rate never contemplated by previous governments. Developments in 'seamless sentencing' are particularly open to displays of toughness, partly because some of the offenders involved present genuine problems of control, and partly because politicians will see a need to defend schemes like Custody Plus against charges that they are simply a way of being soft on offenders and saving money by letting them out of prison early.

However, as Garland (2001) points out, current distortions of penal policy are not inevitable, but are the product of human and political choices. If the new 'seamless' sentence of Custody Plus is implemented, those guiding its development will have some important choices to make. For example, if it is one sentence, is the *whole* sentence primarily a form of punishment, or does it contain a period of custodial punishment followed by a period of community supervision in which the priority is resettlement? If the whole sentence is punishment, this risks establishing a norm of rigorous and severe enforcement for non-dangerous offenders which will not only be inconsistent with the research we have reviewed concerning the nature and process of desistance but will also threaten Carter's attempt to design a strategy to avoid the overuse of short prison sentences. Already increasing numbers of ex-prisoners are being returned to prison for technical failures in compliance with licence requirements (Solomon 2005). If the wrong choices are made the revolving door may simply revolve faster.

Selected further reading

One of the most important publications on the resettlement needs of prisoners is the Social Exclusion Unit's (2002) report, *Reducing Re-offending by Ex-prisoners*. London: ODPM, which has strongly influenced the development of regional multi-agency partnerships and 'Pathways' to co-ordinate and improve 'through the gate' services. The notion of 'seamless' sentencing was brought into prominence through John Halliday's (2001) report, *Making Punishments Work*. London: Home Office, which led to the Criminal Justice Act 2003, including the new – though still unimplemented – sentence of 'Custody Plus' to replace short-term prison sentences. It also underpinned the concept of 'end-to-end offender management' advocated in Patrick Carter's (2003) report, *Managing Offenders, Reducing Crime*. London: Home Office, which led to the rapid introduction of the National Offender Management Service (NOMS). Familiarity with all three reports is essential to a full understanding of recent government policy on resettlement.

Where academic work is concerned, detailed research findings on prisoners' resettlement needs and how they might be better met can be found in Clancy, A., Hudson, K., Maguire, M., Peake, R., Raynor, P., Vanstone, M. and Kynch, J.'s (2006) monograph, *Getting Out and Staying Out: Results of the Prisoner Resettlement Pathfinders*. Bristol: Policy Press. For a variety of thoughtful critiques of NOMS, including its offender management model, see Hough, M., Allen, R. and Padel, U.'s (2006) edited volume, *Reshaping Probation and Prisons: The New Offender Management Framework*. Bristol: Policy Press. Robinson, G. (2005) 'What works in offender management?', *Howard Journal*, 44: 307–18, provides some useful insights on effectiveness issues. Finally, a new book edited by Hucklesby, A. and Hagley-Dickinson, L. (2007) *Prisoner Resettlement: Policy and Practice*. Cullompton: Willan Publishing, brings together several

of the most prominent writers in the resettlement field and offers a valuable overview of the current state of play.

Notes

1 The term 'resettlement' has broadly replaced 'through-care', which was current in the 1980s and 1990s. The new name was recommended in a government report in 1998 (Home Office 1998), when it was no longer fashionable to use the term 'care'.

2 Release under the previous parole system was discretionary, depending on the parole board's judgements of how the offender had responded to custody, his or her risk of reoffending, likelihood of co-operating with supervision and so on (Maguire 1992). Discretionary release (DCR) was retained for those serving over four years, with the over-riding consideration being specified as risk to the public.

3 Short-term prisoners under the age of 21 were subject to a short period of supervision under licence.

4 The Reducing Re-offending National Action Plan also relates to offenders on community sentences, although its core focus is on the resettlement of prisoners after release.

5 There is also a third function, 'administration', which will normally be carried out by support staff.

6 There may also be an assumption that offenders who are assessed as 'needing' services (for example, because they are under-educated, have a poor employment record or are addicted to drugs) are also likely to *want* them, and hence that they largely share the goals of those assisting them: they want to attain a crime-free life, improve their skills, find a job, free themselves from drugs and so on (for further discussion, see Maguire and Raynor 2006).

7 There is a difference, for example, between drug interventions specifically ordered by a court (drug rehabilitation requirements – 'DRRs'), which will normally be supplied by an agency contracted and paid by NOMS to do so, and referrals on a voluntary basis to drugs agencies which are not under such a contract. The offender manager has no control over the nature and timing of interventions by the latter.

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After prison, what?
The ex-prisoner's struggle
to desist from crime

Shadd Maruna

Introduction

In its media version – and hence also in the public imagination – the drama of crime and justice typically ends with a guilty perpetrator being carted off to jail. Someone does something wrong. This person is pursued by the police, captured and made to stand trial. Evidence is presented, the jury finds the individual guilty and he or she is sentenced to prison. 'Justice is served.' Story over.

Of course, the real story is far from over, as evidenced by the other contributions to this Handbook. The convicted individual next has to navigate the experience of incarceration with all of its many risks and grim realities. Yet, even another struggle awaits at the completion of one's term of imprisonment. Except for those individuals who die in custody (see Chapter 18, this volume), the prisoner also faces the challenge of resettling back into society as an 'ex-prisoner'. For many, this last test – the struggle for reintegration – can be the most difficult of all.

The plight of the returning prisoner is not, of course, at all new. Indeed, 'coming home' is one of the better known motifs in literature and film (see Nellis 2006). The problems ex-prisoners face have been documented since the earliest days of the modern experiment of punishment through incarceration, as evidenced in the Prisoners' Aid Act 1862, the Gladstone Report of 1895 and books such as Maud Booth's (1903) *After Prison – What?* None the less, perhaps because the process of justice (identifying and prosecuting wrongdoers) is the focus of so much attention, the public and even those involved in criminal justice can often forget the truism that 'they all come back' after we 'lock 'em up'.

Indeed, this blind spot is aptly demonstrated by the remarkable reaction in the USA to a somewhat modest, ten-page document published in 2000 by the then director of the National Institute of Justice (NIJ) with precisely that title: *But They All Come Back: Rethinking Prisoner Reentry* (Travis 2000). Travis's brief bulletin (2000) describes the scale of the resettlement project in the USA in

clear terms and outlines how little attention the subject has received despite its potentially central role in community safety and recidivism reduction: 'The explosive, continuing growth of the Nation's prison population is a well-known fact … Less well recognized is one of the consequences of this extraordinarily high figure … If current trends continue, this year more than half a million people will leave prison and return to neighborhoods across the country.' In other words, if you lock two million people up in prisons and jails as the USA has done, you are going to create an enormous number of ex-convicts, so you'd better be prepared (as had they). A fairly unremarkable observation, really. Yet, the reaction among policy-makers, criminologists and research foundations internationally has been nothing short of remarkable. Since the NIJ published this call to arms, there have been literally countless conferences, commissions, reports, articles, books, research projects and government initiatives launched around the issue of returning ex-prisoners in the USA (for reviews, see Maruna and LeBel 2003; Petersilia 2003; Travis 2005), culminating in the remarkably weighty, 650-page *Report of the Re-entry Policy Council* (Re-entry Policy Council 2005).

As is often the case (see Newburn 2002), there have been parallel developments around resettlement on the British scene over the last decade with numerous new reports and commissions of equal importance (e.g. Morgan and Owers 2001; Social Exclusion Unit 2001; House of Commons 2005). These various reports from both sides of the Atlantic have been reviewed in detail elsewhere (Crow 2005). However, an easy way to summarize the various findings is to say that, when it comes to the drama of reintegration, there is some bad news, and there is some good news.

The bad news is that, as bluntly stated in the book, *Coming Out Cold: Community Reentry from a State Reformatory*, 'The released offender confronts a situation at release that virtually ensures his failure' (McArthur 1974: 1). The lethal combination of stigma, social exclusion, social learning, temptation, addiction, lack of social bonds and dangerously low levels of human and social capital (not to mention financial capital) conspires to ensure that over half of all ex-prisoners typically return to prison within a few years of their release (Social Exclusion Unit 2001; Langan and Levin 2002; Chapter 1, this volume). The problems of reintegration may be exacerbated by the record-high numbers of individuals being processed through probation and the prison system in the UK and USA. This strain on the system of release and parole, combined with recent high-profile scandals in England and elsewhere involving released prisoners under community supervision, gives the impression of a resettlement establishment in a period of crisis (see Padfield and Maruna 2006). None the less, it is clear that the difficulties ex-prisoners face are anything but 'new' problems. Indeed, they could have been easily predicted by reading Irwin (1970), McArthur (1974), Soothill (1974), Crow (1979) or indeed any of the research on ex-prisoners from the early 1970s (the last period in which criminologists demonstrated an active and widespread interest in prisoner reintegration).

The good news is that, despite these considerable obstacles, almost all one-time offenders do eventually manage to 'go straight' and desist from crime. The 'age–crime curve' is one of the best established facts in criminology,

and it is well known that criminal behaviour is far more prominent among adolescents and young adults than it is among those in their 40s, 50s and older. Based primarily on longitudinal studies in the 'criminal careers' tradition, criminologists estimate that approximately 85 per cent of crime-involved young people will desist by the time they are 28 years old (see, e.g., Blumstein and Cohen 1987). Moreover, very few of the remainder actually stay engaged in criminality throughout their lives (Laub and Sampson 2001).

To some degree, the bad news and good news about resettlement are simply two sides of the same coin (if half of any sample of released prisoners is reconvicted, then this means half will be more successful upon release). Yet the perspective one takes in looking at ex-prisoner resettlement – either a 'recidivism' focus or a 'desistance' focus, respectively – transcends simply seeing the reintegration glass as half empty or half full. Recidivism research tends to focus on programmes, whereas desistance focuses on individuals. Recidivism studies typically span a window of two to three years at most, whereas desistance research is by definition life-course oriented. Recidivism research tends to be compartmentalized (assessing the impact of attendance at a cognitive-behavioural workshop, for instance), whereas desistance research typically takes a holistic perspective on all the factors impacting an individual's life. Recidivism research usually utilizes quasi-experimental or (more rarely) an experimental approach, whereas desistance research typically involves longitudinal designs or in-depth retrospective histories of individuals. Most importantly, recidivism research (obviously by its very name) is solely concerned with reoffending, whereas desistance is typically understood to be more than just an absence of crime. Desistance is the maintenance of crime-free behaviour and is – as inferred in the familiar phrases 'going straight' or 'making good' – an active process in itself. Beyond the avoidance of crime, it also involves the pursuit of a positive life.

A growing movement in criminology has argued that resettlement research should become 'desistance-focused' in perspective (see especially Rex 1999; Farrall 2004; Maruna *et al.* 2004; Rumgay 2004; Harris 2005; Lewis 2005; McNeill 2003, 2006). Most directly, this means that resettlement efforts should be about seeking to promote or enhance those factors associated with desistance. In other words, the best resettlement policy not only reduces the pains of imprisonment (separation from one's family, detachment from work, isolation in an environment of negativity) but also seeks actively to encourage those attachments, roles and situations that appear to be associated with success upon release. This, of course, is easier said than done.

In what follows, I first briefly review what is known about desistance from crime. Although there are a variety of theories on how the process works, all these perspectives agree that desistance involves the development of alternative, prosocial sources of achievement and affiliation in the lives of crime-involved individuals. The next section outlines the impact of the criminal justice system on the process of desistance. Arguably, the majority of criminal justice interventions appear more likely to impede this normative process by detaching individuals from their families, derailing career paths and breeding hostility and defiance (see Liebling and Maruna 2005 for a review of these

damaging effects of imprisonment and other punishments). These negative effects are better known (and more obvious) than the potentially benevolent impacts of criminal justice interventions. As such, the last section reviews how criminal justice interventions, such as those operating under the banner of 'resettlement' or reintegration practices, might help to facilitate desistance (see also Maguire and Raynor 2006; McNeill 2006).

Desistance from crime

One of the best-known criminological facts is that deviant or anti-social behaviour is fairly stable over time. In general, personality tends to be consistent across the life course, and past behaviour is the best predictor of future behaviour (Caspi 1993). Yet there is an important paradox here, pointed out most emphatically by Sampson and Laub (1993). Even though most adult offenders were at one time juvenile delinquents, most juvenile delinquents do not grow up to be adult offenders. The issue is a matter of perspective. Long and Vaillant write: 'The transmission of disorganization and alienation that seems inevitable when a disadvantaged cohort is studied retrospectively appears to be the exception rather than the norm in a prospective study that locates the successes as well as the failures' (1984: 344). Hence, the inevitability of anti-social continuity has been overstated. This is particularly problematic for criminology, as almost all traditional criminological theories either explicitly or implicitly suggest that criminal behaviour is 'an amplifying process that leads to further and more serious deviance' (Gove 1985: 118). This rather significant problem with the major criminological theories was first pointed out by David Matza (1964) with his 'embarrassment of riches' critique where he argued that many theories vastly overpredict criminal behaviour by implying that there should be an escalation of offending at exactly the moment that many people would appear to desist (see also Glaser 1964: 466).

In fact, for most individuals, participation in 'street crimes', such as burglary, robbery and drug sales (the types of offences of most concern to criminologists), generally begins in the early teenage years, peaks rapidly in late adolescence or young adulthood and dissipates before the person reaches 30 years of age (see Figure 28.1). Official conviction statistics, like those in Figure 28.1, are not easy to interpret and might be skewed by any number of factors (older offenders may be better at avoiding apprehension than young people, might be more likely to die or spend long periods in incarceration and so forth). However, longitudinal cohort studies such as the Cambridge Study in Delinquent Development (CSDD) (see, e.g., Farrington 1992) seem to confirm that the primary reason that relatively few street crimes are committed by older persons is that they have 'grown out' of these behaviours. Farrington found that, for the CSDD sample, self-reported criminal behaviour peaks at around the age of 17 or 18 and decreases sharply as the youths progress through their 20s.
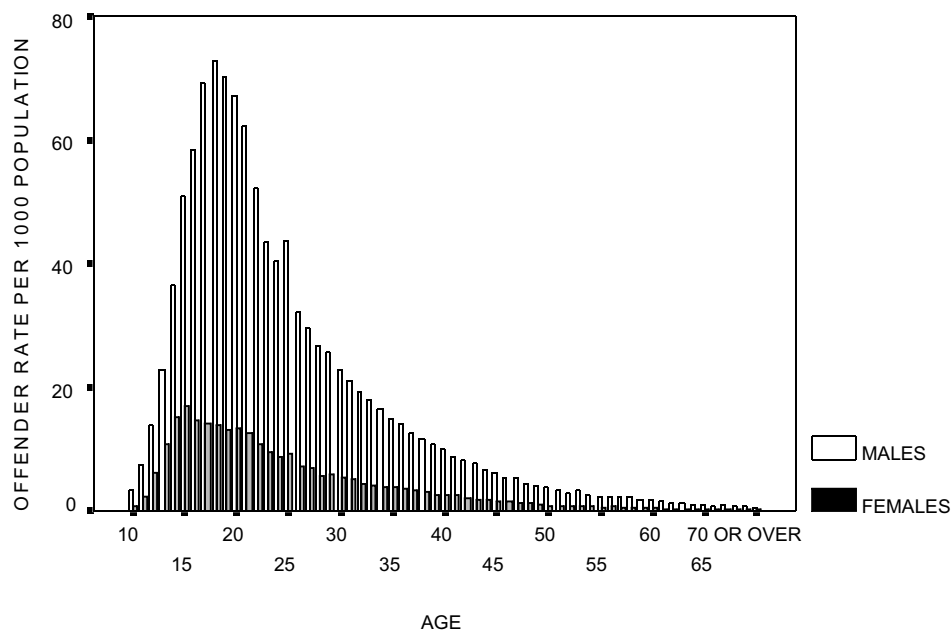
Figure 28.1 Recorded offender rates per 1,000 relevant population by age year and sex, England and Wales (2000)
Source:
From Bottoms *et al.* (2004)

Desistance as a natural process

The frequency with which exactly this pattern has been found in such a wide variety of international studies on criminal behaviour has led numerous observers to argue that desistance from crime and deviance with increasing age is a 'natural' process akin to puberty. This idea dates back at least to Goring (1919), who described the process of ageing out of crime as a 'law of nature', and to Sheldon and Eleanor Glueck's (1940) notion of 'maturational reform'. They argue that 'Father Time' has an 'inevitable effect upon biologic and psychologic processes' (1937: 15), and 'Aging is the only factor which emerges as significant in the reformative process' (1940: 105). More recently, contemporary researchers have explicitly sought to resurrect the idea that desistance is due primarily to the 'inexorable aging of the organism' (Gottfredson and Hirschi 1990). Gottfredson and Hirschi suggest that 'crime declines with age. Spontaneous desistance is just that, change in behavior that cannot be explained and change that occurs regardless of what else happens' (1990: 136; see also Wilson and Herrnstein 1985).

This argument rests on the highly controversial claim that the age–crime curve is universal and invariant across time, place and offence type – an argument that has not stood up well to empirical scrutiny (Steffensmeier *et al.* 1989; Greenberg 1994). It also presupposes limited variation in the timing and pattern of desistance among offending populations, which has also been contradicted in recent research (see Bushway *et al.* 2001). In short, ageing is a

remarkable process, but it is not magical. That is, simply becoming 30 years old has no mystical property whereby young people are instantly transformed into mature adults. As the famous quotation attributed to the artist Andy Warhol goes: 'They say that time changes things, but you actually have to change them yourself.'

Although ageing certainly plays some role in the process of desistance, critics suggest that the biology-based argument of maturational reform explanations fails to 'unpack' the 'meaning' of age (Sampson and Laub 1992). Age indexes a range of different variables, including biological changes, social transitions, and life experiences. For age to be a meaningful explanation of social behaviour, according to this argument, one must ask which features indexed by age 'constitute the mediating mechanisms' at work in this process (Rutter 1996: 608).

Theorizing desistance

Rather than being a natural process, then, desistance appears to be a normative transition, linked to other culturally sustained and biologically influenced developmental milestones. In general, efforts to 'unpack' this age–crime relationship have been dominated by three basic paradigms: informal social control theory, differential association theory and variations of symbolic interactionist or socio-cognitive theories (for a more complete review, see Laub and Sampson 2001; Farrall and Calverley 2006). A more recent development focuses on the effects of prosocial labelling on desistance (Maruna *et al*. 2004). Although sometimes put into competition against one another, all these plausible theoretical frameworks are largely compatible with more essential commonalities than differences. Each will be discussed briefly before outlining these links.

Informal social control

Sampson and Laub's (1993) theory of informal social control is by far the best developed and best known theory of desistance. They argue that desistance is largely the result of social bonds developed in adulthood. Following the control theory axiom that a person who is attached to mainstream institutions will be less likely to risk the consequences of offending, the theory suggests that new opportunities for attachments in young adulthood (especially to a spouse or a career) account for the process of desistance. They provide the individual with 'something to lose' by offending. Sampson and Laub further emphasize the 'independent' and 'exogenous' impact of these bonds. They argue that these triggering events occur, at least in large part, by 'chance' (Laub *et al*. 1998: 225; see also Horney *et al*. 1995). If these turning points were entirely the result of the reasoned decisions or personal predilections of individual actors, control theorists admit, they could not argue for 'the independent role of social bonds in shaping behavior' (Laub *et al*. 1998: 225). According to Laub and his colleagues: '"Good" things sometimes happen to "bad" actors' (1998: 237).

Differential association

Warr (1998, 2002) has provided the best developed sociological alternative to Sampson and Laub's theory. Warr counters that changes in post-adolescent peer relations, rather than the development of adult institutional attachments, are at the heart of the desistance process. In his social learning or differential association-based reinterpretation, Warr argues that changes in social networks (e.g. exposure to offending or delinquent peers, time spent with peers and loyalty to peers) can account for the decline in crime with age. When a person drifts away from criminal peer networks who promote and rationalize deviant behaviours, he or she loses both the motivation and the means of committing most types of criminal behaviour. Warr does not doubt that adults who are employed and in stable marriages are most likely to desist from crime, but he argues that this is because married and employed individuals have the least amount of time on their hands to associate with their rowdy friends. Therefore, it is the associations, rather than the informal social control factors, that are driving desistance.

Symbolic interactionist

The other well-known rejoinder to the informal social control theory originates in a critique of the claim that salient life events, such as marriage and employment, are mainly exogenous occurrences. Gottfredson and Hirschi (1990), for instance, scoff at the notion that 'jobs somehow attach themselves' to individuals, and emphasize that 'subjects are not randomly assigned to marital statuses' (1990: 188). Similarly, in her review of Sampson and Laub's (1993) *Crime in the Making*, McCord (1994: 415) argues that the authors' own qualitative case histories 'seem to show that attitude changes precede the attachments which Sampson and Laub emphasize in their theory'. In what Uggen and Kruttschnitt (1998) refer to as 'motivational models of desistance,' desistance theorists have started to focus on what specific changes on the level of personal cognition (Zamble and Quinsey 1997; Giordano *et al.* 2002) or self-identity (Burnett 1992; Shover 1996) might precede or coincide with changes in social attachments. Often emerging from a symbolic interactionist tradition, these models suggest that 'turning point' events may have a different impact depending on the actor's level of motivation, openness to change or interpretation of the events (Maruna 2001).

The most fully developed theory of this sort is probably Giordano and colleagues' (2002) four-part 'theory of cognitive transformation'. They argue that the desistance process involves the following four stages:

1 A 'general cognitive openness to change' (p. 1000).
2 Exposure and reaction to 'hooks for change' or turning points (p. 1000).
3 The envisioning of 'an appealing and conventional "replacement self"' (p. 1001).
4 A transformation in the way the actor views deviant behaviour (p. 1002)

The 'replacement self' most often described in the literature is that of the parent, 'family man' or provider (Shover 1996; Burnett 2004). Gove (1985: 128), for instance, argues that desistance results at least in part from 'a shift from

self-absorption to concern for others; increasing acceptance of societal values…; increasing comfort with social relations; increasing concern for others in their community; and increasing concern with the issue of the meaning of life'.

Prosocial labelling

Finally, some observers have drawn on labelling theory's notion of a 'delabelling process' (Trice and Roman 1970) in understanding desistance (see Maruna *et al*. 2004). Meisenhelder (1977: 329), for instance, describes a 'certification' stage of desistance in which 'some recognized member(s) of the conventional community must publicly announce and certify that the offender has changed and that he is now to be considered essentially noncriminal'. Maruna (2001) found considerable evidence of what he calls 'redemption rituals' in the life stories of successfully desisting ex-convicts. As with the 'degradation ceremony' (Garfinkel 1956) through which wrongdoers are stigmatized, these delabelling ceremonies are directed not at specific acts, but to the whole character of the person in question (Braithwaite and Braithwaite 2001: 16). Delabelling is thought to be most effective when coming from 'on high', particularly official sources such as judges or teachers, rather than from family members or friends -- where such acceptance can be taken for granted (Wexler 2001). Yet, this sort of certification is most likely when an individual has non-criminal others (especially spouses, employers or work colleagues) who can act as 'personal vouchers' to testify to an individual's credentials as a 'changed person' (see Maruna and LeBel 2002).

There is scattered evidence in support of this sort of Pygmalion effect in the behavioural reform process. For instance, in a now famous experiment, Leake and King (1977) informed treatment professionals that they had developed a scientific test to determine who, among a group of patients, were most likely to be successful in recovering from alcoholism. In reality, no such test had been developed. The patients identified as 'most likely to succeed' were picked purely at random. Still, the clients who were assigned this optimistic prophecy were far more likely to give up drinking than members of the control group. Apparently, they believed in their own ability to achieve sobriety because the professionals around them seemed to believe it so well. Likewise, some research on desistance suggests that secondary desisters avoid crime because they see themselves as fundamentally good (or non-criminal) people, and not because they 'have to' to avoid sanctions (Maruna 2001).

Desistance as a normative process

These various theoretical positions are not necessarily in competition with one another; indeed, they share numerous commonalities. In particular, all these accounts, in some way or another, reflect the fulfilment of human needs for 'agency' and 'communion' (Bakan 1966) in the desistance process. That is, each theory predicts that desistance should be associated with the achievement of competence, autonomy and success in the prosocial world (usually in the form of a career) and the development of intimate interpersonal bonds (usually in the form of a family). That such things are important to one's ability to go straight is hardly surprising. Sigmund Freud nominated these two aspects of life – work and love – as the two essential ingredients of a

happy and well adjusted personality. More recently, Deci and Ryan (2000: 229) have included the polarities of agency and communion as among the basic human 'needs' or 'innate psychological nutriments that are essential for ongoing psychological growth, integrity, and well-being'.

If it is true that human beings have a natural predisposition 'to experience themselves as causal agents in their environment' and to earn the esteem and affection of valued others (Gecas and Schwalbe 1983), then crime might be associated with constraints on these human needs. For instance, Moffitt describes the five to ten-year role vacuum that teenagers and young adults face during which 'they want desperately to establish intimate bonds with the opposite sex, to accrue material belongings, to make their own decisions, and to be regarded as consequential by adults' only to find they are 'asked to delay most of the positive aspects of adult life' (1993: 686–7). When social structures constrain one's ability to achieve agency and autonomy (or, in Marxist terms, when the individual is alienated from his or her labours), an individual might turn to criminal or delinquent behaviours in order to 'experience one's self as a cause' rather than an 'effect' (Matza 1964: 88; see also Messner and Rosenfeld 2001). Conversely, and logically, desistance from crime may be facilitated when the individual finds an alternative, intrinsically rewarding source of agency and affiliation. Trasler (1980: 10) writes: '[A]s they grow older, most young men gain access to other sources of achievement and social satisfaction – a job, a girlfriend, a wife, a home and eventually children – and in doing so become gradually less dependent upon peer-group support' (cited in Gottfredson and Hirschi 1990: 135). Additionally, the desisting individual may find some sort of 'calling' – be it parenthood, painting, coaching or what Richard Sennett (2003) calls 'craft-love' – outside the criminal world through which he or she finds meaning and purpose outside crime.

All the various theories of desistance might also be linked to a concept that developmental psychologists call 'generativity' (see Maruna 2001; Maruna *et al.* 2003; Barry 2006). McAdams and de St. Aubin (1998) define generativity as: 'The concern for and commitment to promoting the next generation, manifested through parenting, teaching, mentoring, and generating products and outcomes that aim to benefit youth and foster the development and well-being of individuals and social systems that will outlive the self.' According to Erikson's original theory (1959), generativity emerges as a key developmental theme for most individuals at approximately the same time that delinquent and criminal behaviours typically dissipate – around mid-adulthood. This correlation may not be coincidental. Generative commitments seem to fill a particular void in the lives of former offenders, providing a sense of purpose and meaning, allowing them to redeem themselves from their past mistakes and simultaneously legitimizing the person's claim to having changed (Maruna 2001).

For all its problems, being an offender provides individuals with at least momentary escapes into excitement, power and, sometimes, fame, among other material and social benefits. If going straight means little more than accepting docility, self-hatred and stigma, there is little reason to desist from such occasional diversions. Some incentive is needed in order to give up the status and respect conferred to offenders on 'the streets' and inside prisons.

The intrinsic rewards and social respectability associated with generative roles (e.g. father, provider, creative artist, leader) may provide just the dignified alternative necessary to justify a break away from criminality. For the individual engaged in generative commitments and concerns, criminal behaviour either seems pointless (for example, its role in establishing one's masculinity is no longer needed) or else too risky (in the sense that it could jeopardize the person's generative self-identity, reputation and commitments).

In many ways, it is precisely such a discovery that is often called 'growing up'. In describing the eventual maturation of the character of Alex in his novel, *A Clockwork Orange*, Anthony Burgess (1988: viii) writes:

> What happens in that twenty-first chapter? … Briefly, my young thuggish protagonist grows up. He grows bored with violence and recognizes that human energy is better expended on creation than destruction. Senseless violence is a prerogative of youth, which has much energy but little talent for the constructive. Its dynamism has to find an outlet in smashing telephone kiosks, derailing trains, stealing cars and smashing them … There comes a time, however, when violence is seen as juvenile and boring. It is the repartee of the stupid and ignorant. My young hoodlum comes to the revelation of the need to get something done in life – to marry, to beget children, to keep the orange of the world turning…, and perhaps even create something – music, say … It is with a kind of shame that this growing youth looks back on his devastating past. He wants a different kind of future.

Although not 'natural' in the sense that it is biologically hard-wired, this shift may be a normative process that can be facilitated or impeded by social interactions, cultural norms and structural obstacles and pathways.

Criminal justice impacts on desistance

Some have taken the very impressively consistent age–crime curve to be evidence that the criminal justice system plays little role in whether individuals recidivate or not. Farrall (1995: 56) writes: 'Most of the research suggests that desistance "occurs" away from the criminal justice system. That is to say that very few people actually desist as a result of intervention on the part of criminal justice system or its representatives.' Certainly, as Garland (2001) and others have pointed out, factors largely outside the criminal justice system's control (e.g. economic, political and cultural factors) appear far more important in determining rates of crime and recidivism than do the often-futile actions of the criminal justice system to promote change. As a result, some observers conclude that the criminal justice system should not bother itself with efforts to reduce recidivism. Nettler (1984: 384), for instance, writes: 'Since most offenders "mature out", it is questionable whether 'the war on crime' should attempt to reduce criminality by correcting predators.'

Yet, the lesson of desistance research is not that ex-offenders should be left alone to get on with the business of self-change. The process of desistance

takes far too long and leaves too many victims in its wake. The lesson of desistance research is that correctional interventions should recognize this 'natural' process of reform and design interventions that can enhance or complement these spontaneous efforts (Farrall 2002; McNeill 2006). The Gluecks (1937: 205) recognize this possibility when they ask: 'Can educators, psychologists, correctional workers, and others devise means of "forcing the plant", as it were, so that benign maturation will occur earlier than it seems to at present?'

A parallel can be taken from the medical world. In the immune system, the body has regenerative powers that can naturally fight off a variety of infections and complications. Faith healing, non-traditional medicine and the more pedestrian practice of prescribing 'two aspirin and call me in the morning' are all founded on the fact that the body itself works to heal many ills. Yet, our white blood cells and other protectors can be slow warriors, sometimes allowing annoying or painful symptoms to persist beyond the point that we can tolerate. We therefore turn to professional help to boost or speed up this process. The antibiotics that we are frequently prescribed are intended to *work in partnership* with our bodies' natural, self-restorative functions, not over-ride them. Although we sometimes mistakenly credit our own recoveries to pharmaceutical treatment, in fact, we were doing the work ourselves with some assistance. A similar model – so-called 'desistance-focused resettlement' (McNeill 2006) – may assist in the reduction of recidivism.

Criminal justice interventions, however, can work the other way as well: impeding the normative processes of maturation rather than speeding it up. Indeed, arguably, the majority of criminal justice interventions derail rather than facilitate the normative processes of maturation associated with desistance from crime. In the two sections below, both possibilities are considered in turn.

Desistance–impeding interventions

While the idea that 'prison works' as a specific deterrent is favoured by vote-seeking politicians (see Irwin and Austin 1994), the idea that the prison experience should reduce offending among ex-prisoners (Andeanaes 1968) has almost no support in the criminological literature. In fact, not only has specific deterrence theory been long pronounced dead (see especially McGuire's 1995 essay, 'The death of deterrence') but also criminologists refuse to offer any respect for the deceased (see, for example, Lynch's 1999 article entitled, 'Beating a dead horse: is there any basic empirical evidence for the deterrent effect of imprisonment?').

The most conclusive evidence of the futility of the 'prisons as deterrence' thesis to date is Paul Gendreau and colleagues' (1999) meta-analysis synthesizing the findings from 50 prison effects studies dating from 1958 involving over 300,000 prisoner subjects. Combining the data across studies that either compared prison sentences with community sentences or else correlated length of time in prison with recidivism outcomes, the authors concluded there was no evidence that prison sentences could reduce recidivism and substantial evidence that the relationship worked the other

way around. Indeed, they found the higher the quality of the study (including two randomized designs), the more likely it was to find a strong positive correlation between time spent in prison and recidivism.

Contemporary research on specific deterrence tends to focus on explaining this 'positive punishment effect' (e.g. Paternoster and Piquero 1995; Pogarsky and Piquero 2003). However, it is not hard to imagine why the rational-sounding deterrence hypothesis seems to fail in the case of prisons. The use of incarceration as a sanction meets none of the suggested conditions for success (e.g. certainty, severity and celerity) in the basic psychology of punishment (Moffitt 1983; McGuire 2002). Moreover, the average prison regime meets none of the criteria that various observers have suggested for promoting long-term compliance and conformity (e.g. Kelman 1958; Bottoms 2000).

Most importantly for the purposes of this chapter, imprisonment disrupts the normative processes that encourage and sustain desistance from crime by cutting off opportunities for achieving success in employment, education and even in marriage (Sampson and Laub 1993). Indeed, no institution does a better job of *hindering* the development of generativity than prison, with its unique ability to separate individuals from their social responsibilities and civic duties. As the Home Office reported in the 1991 white paper, *Custody, Care and Justice*, following the Woolf Report:

> [Prison] breaks up families. It is hard for prisoners to retain or subsequently to secure law-abiding jobs. Imprisonment can lessen people's sense of responsibility for their actions and reduce their self-respect, both of which are fundamental to law abiding citizenship. Some, often the young and less experienced, acquire in prisons a wider knowledge of criminal activity. Imprisonment is costly for the individual, for the prisoner's family and for the community (1991: para. 1.16).

Almost two thirds of the prisoners in employment at the point of sentence lose their jobs as a result of their imprisonment (Morgan and Owers 2001), four out of ten prisoners are homeless on release and over two fifths lose contact with families or friends in the course of a prison sentence (House of Commons 2005). The Home Affairs Committee reports that 66.6 per cent of prisoners have no job on release and only 16 per cent receive any advice or guidance about finding a job. Numerous surveys of employers find that a record of incarceration is almost fatal in hiring contexts (see Conalty and Cox 1999; Metcalf *et al*. 2001); likewise, Wilson and Neckerman (1986) have found that incarceration experiences badly reduce a male's 'marriageability' in the social sphere.

Ex-prisoners, then, are often left with limited opportunity for achieving self-respect and affiliation in the mainstream – but may be welcomed among subcultural groups of similarly stigmatized outcasts (Braithwaite and Braithwaite 2001). In such circumstances, continued criminal behaviour appears perfectly rational and generativity loses its social imperative. This criminogenic outcome of incarceration appears so predictable that numerous commentators (following Foucault 1979) have speculated that it is not even an unintentional consequence. One of the prison (or 'correctional')

system's clearest (and most successful) outcomes is 'creating criminals' (Stern 2006).

Desistance-enhancing interventions

In light of the criminogenic qualities of incarceration, the criminal justice system has two options: either send fewer people to prison, especially those who are not considered to be a risk to the public (before being incarcerated); or, alternatively, make the experience of incarceration less damaging for the individual and more in tune with the normative processes associated with desistance. Of these two options, the first is clearly the easier and more obvious, but may be less politically viable in a climate of penal populism (see Roberts *et al*. 2003). As this chapter is about post-incarceration experiences, I will leave aside this question of penal alternatives (but see Bottoms *et al*. 2004), and focus on the second option: creating correctional interventions that promote desistance.

The idea of reducing crime through interventions used to be referred to as the 'rehabilitative ideal' although, because of the demise of this term (if not the ideal) in the 1970s (Allen 1981), this is more likely to be thought of as the 'resettlement agenda' in the UK or the 're-entry agenda' in the USA (Chapter 27, this volume). The UK Association of Chief Officers of Probation recently defined 'resettlement' as:

> A systematic and evidenced-based process by which actions are taken to work with the offender in custody and on release, so that communities are better protected from harm and re-offending is significantly reduced. It encompasses the totality of work with prisoners, their families and significant others in partnership with statutory and voluntary organizations (cited in Morgan and Owers 2001: 12).

Essentially, then, reintegration involves everything – from literacy training to electronic monitoring to job training to cognitive-behavioural therapy – that is intended to reduce recidivism after release from prison. As such, public and governmental interest in successful re-entry is, of course, of longstanding vintage (for a review of resettlement practices in the UK, see Haines 1990; Crow 2005; Raynor and Robinson 2005).

If nothing else, the long history of experimentation with rehabilitative interventions in the UK and elsewhere demonstrates that good intentions are not always enough to overwhelm the multiple criminogenic effects of imprisonment. This was obvious from the results of the resettlement pathfinders for short-term prisoners in the UK (Lewis *et al*. 2003) where numerous implementation problems were thought to account for the lack of clear reductions in recidivism. In particular, critics have suggested that the resettlement work that goes on inside and outside prisons today is too haphazard and ill-planned (for reviews, see Morgan and Owers 2001; Crow 2005; Re-entry Policy Council 2005; Maguire and Raynor 2006; Chapter 27, this volume). That is, there is no clear theory behind how resettlement is supposed to work in today's society beyond what Maloney *et al*. call the

'rather bizarre assumption that surveillance and some guidance can steer the offender straight' (2001: 24).

One promising, recent theoretical development in resettlement discussions has been the linkage of desistance theory to resettlement practice (see especially Farrall 2004; Maruna *et al.* 2004; McCulloch 2005; Farrant 2006; Halsey 2006; McNeill 2003, 2006). McNeill (2006: 46) explains this movement thus: 'Put simply, the implication is that offender management services need to think of themselves less as providers of correctional treatment (that belongs to the expert) and more as supporters of desistance processes (that belong to the desister)' (see also Harris 2005). Farrall (2004) distinguishes 'desistance-focused' perspectives from 'offending-related' approaches on the basis that, whereas the latter concentrates on targeting offender deficits, the former seeks to promote strong social bonds, prosocial involvements and social capital (Farrall 2002). Indeed, there is some evidence that such approaches to resettlement are more effective than individual-focused interventions (see Haines 1990).

Recently, observers have characterized this distinction as the difference between risk-based interventions and strengths-based approaches (Maruna and LeBel 2003; Raynor and Robinson 2005; Burnett and Maruna 2006). Emerging out of positive psychology (e.g. Seligman and Csikszentmihalyi 2000), strengths-based approaches shift the focus away from criminogenic needs and other deficits and instead ask what the individual can contribute to his or her family, community and society. How can their lives become useful and purposeful (see Ward and Brown 2004)? This shift represents a move away from the principle of entitlement to what Bazemore (1998) calls 'earned redemption'. Strengths-based interventions involve opportunities for offenders and ex-offenders to make amends, demonstrate their value and potential, and experience success in support and leadership roles.

In other words, desistance-focused resettlement also puts the development, encouragement and facilitation of generativity at the heart of effective practice with offenders (see especially Toch 2000; Cullen *et al.* 2001). Although originally conceived by Erikson as a distinct, age-graded stage in the life course, contemporary generativity theory suggests that adults of all ages engage in some level of generative behaviour (see especially McAdams *et al.* 1998). This literature suggests that such generativity is a product not only of inner desire but also of social and cultural demands; therefore, social institutions can both foster and impede its development.

In other words, on some level, generativity is an acquired taste. In the same way that one learns to enjoy drug use and find this a pleasurable experience through an interactive, subcultural process (Becker 1963; Chapter 17, this volume) one conceivably learns generativity by *doing* generative things in a setting or niche in which such behaviour is defined as rewarding and good. The latter part of this equation, the enabling niche, is critical because there may not be anything inherent about parenting, productivity or mentoring the next generation that makes these behaviours appealing. Frankly, generativity can be very hard work. When it is modelled and appreciated by significant others, however, one learns to enjoy intrinsically and even to 'need' or crave the feelings one gets when doing this work.

Far from new, these ideas can be traced at least to the 'helper principle' of the 1960s New Careers Movement (Caddick 1994): the idea that it is better (that is, more reintegrative) to give help than to receive it. The central premise of the New Careers Movement was that disadvantaged people (including ex-offenders) could be trained and placed in entry-level social service jobs that would take advantage of their life experiences as well as their geographic, cultural and functional similarities to other persons in need. The goal of strengths-based practice, like the New Careers Movement before it, would be to devise ways of creating more helpers. More specifically, the question would be how to transform receivers of help (cast as welfare recipients) into dispensers of help; how to structure the situation so that 'receivers of help will be placed in roles requiring the giving of assistance' (Pearl and Riessman 1965: 88–9; Grant 1968).

The idea is not that returning prisoners do not have any needs that have to be filled or pose any particular risks. Only, the problem with these preoccupations and with the practices they produce is that 'they tend to accentuate precisely those aspects of an offender's history, behaviour and attitudes which intervention aims to diminish' (McNeill 2003: 155–6). By contrast, the 'strengths-based' or 'desistance-focused' approach requires a more positive focus on what kinds of 'giving back' or 'making good' can and should be facilitated on the basis of an individual's potential, rather than a negative focus on what kinds of controls, sanctions and treatments need to be imposed in order to address an individual's riskiness or neediness (see also Maguire and Raynor 2006). Whereas the strengths-based approach recognizes and requires the possibility of the reconstruction of a new generative identity, the deficit approach, by identifying the offender with his or her needs/risks/offending, runs the risk of unwittingly reinforcing the passivity and fatalism of the old identity.

Empirical evidence in support of strengths-based approaches is still very slim. Quasi-experimental evaluations of community service for offenders consistently show that such penalties often outperform both standard probation and custodial sentences in reducing reconviction (Schneider 1986). Participants in community service work almost always rate the experience as positive, particularly where there is contact with the beneficiaries of the service (McIvor 1992: 177). Moreover, there is some evidence that this sort of public service can aid in moral development and personal growth (Van Voorhis 1985; Uggen 1999). Most recently, Raynor (2004) has argued that the evaluation findings from the resettlement pathfinders for short-term prisoners provide some support for strengths-based argument as well, on the basis that purely welfare (or need-based) projects performed worse than those projects that paid attention to offender motivation and self-identity issues (Lewis *et al.* 2003). More work is certainly required in the future before claims can be made of the effectiveness of these models, however (see Seiter and Kadela 2003).

Conclusion

In summary, the recent resurgence of research concerning the ex-prisoner's

return to society has produced far more 'bad news' than 'good news'. The challenges ex-prisoners face are considerable and the success rate for efforts to reintegrate into society are not at all encouraging. In the long term, most ex-prisoners do eventually 'go straight' and find a way to desist from crime. It is encouraging that social scientists have turned their attention to understanding this process in such numbers in recent years (see Farrall and Calverley 2006 for a review). With some luck, this research should be able to aid the development of theoretically based and empirically testable approaches to resettlement. If so, the forgotten drama of reintegration may indeed one day have a happy ending.

Selected further reading

As discussed above, there has been an absolute explosion of research and theory in the field of ex-prisoner resettlement in recent years and a comparable wave of research on desistance from crime. Interestingly, only a limited number of fairly recent works discuss the intersection between these two bodies of research. The most complete and up-to-date review of ex-prisoner re-entry issues in the UK is Iain Crow's (2005) report, *Resettling Prisoners: A Review*. Sheffield: University of Sheffield. Likewise, the reintegration of prisoners in the USA is reviewed in Jeremy Travis's (2005) book, *But They All Come Back: Facing the Challenges of Prisoner Reentry.* Washington, DC: US Department of Justice, National Institute of Justice. The literature on desistance from crime is comprehensively reviewed in Stephen Farrall and Adam Calverley's (2006) book, *Understanding Desistance from Crime: Theoretical Directions in Resettlement and Rehabilitation*. Maidenhead: Open University Press. For a series of papers that attempts to explore the intersection between these two areas of research (so-called 'desistance-focused resettlement'), one might turn to the edited book, *After Crime and Punishment: Pathways to Offender Reintegration*, edited by Shadd Maruna and Russ Immarigeon. Cullompton: Willan Publishing. A special issue of the journal *Criminology and Criminal Justice* (February 2006: Vol. 6, no. 1), guest edited by Stephen Farrall and Richard Sparks, also contains a number of important articles in this regard, including but not limited to Burnett and Maruna (2006), Maguire and Raynor (2006) and McNeill (2006).

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Chapter 29

Prisoners' families

Alice Mills and Helen Codd

Introduction

Since the publication of Pauline Morris's influential study of prisoners and their families (Morris 1965), research into the needs and experiences of prisoners' families has emerged from a range of disciplines, including sociology, social work, law, health and psychology. More recently, prisoners' families have become of interest to criminologists as strong family ties and community links have been recognized as important factors in promoting effective resettlement and reducing reoffending by ex-prisoners. There are, however, inherent contradictions in penal and social policies in relation to prisoners' families: while they are increasingly recognized as having a key potential role in prisoner resettlement and in preventing reoffending, families continue to experience a range of difficulties and challenges, with relatively little official support or recognition. Emphasizing the role they can play in resettlement assumes that families are both willing and able to support prisoners on release, but their own needs may consequently be ignored, despite the considerable practical and emotional difficulties they often face due to the imprisonment of a family member.

   This chapter examines the role played by supportive families in facilitating ex-prisoner resettlement and in reducing reoffending. It documents the practical and emotional support that families can offer ex-prisoners and discusses the importance of strong familial social bonds which may encourage desistance from crime. It then outlines the factors that can help or hinder families in playing this role through assessing the maintenance of family contact and the familial effects of imprisonment in the broader penal context of mass imprisonment and rising prison populations in a number of jurisdictions.[1] The chapter concludes with a discussion of the lack of statutory support for prisoners' families and of the evolving role of the voluntary sector in this area.

The role of prisoners' families in resettlement and reducing reoffending

The importance of stable family relationships and community ties in assisting the resettlement process and helping to reduce reoffending by ex-prisoners has been well documented in the research literature, and has been recognized by several recent official reports (HM Inspectorates of Prisons and Probation (HMIPP) 2001; Social Exclusion Unit 2002 (SEU); Home Office 2004). In a review of research in this area, Ditchfield (1994) found that prisoners without active family support during their imprisonment are between two and six times more likely to offend in the first year after release than those who demonstrate or receive active family interest. One of the earliest studies to uncover a relationship between family ties and post-release success was that by Ohlin in 1954, who used an 'index of family interest' to compare the number of visits and visitors for releasees from Illinois state prisons between 1925 and 1935. Seventy-five per cent of those inmates classified as maintaining active family interest were successful on parole, in comparison with 34 per cent of those who were classified as loners (Ohlin 1954). Similarly, Holt and Miller (1972) followed up 412 men who had been paroled for at least one year and discovered that men with more family social ties, as measured by the number of different visitors received during their final year of incarceration, had the fewest parole failures. Studies with different prison populations, over different periods of time and using different methodological procedures, have consistently confirmed a relationship between strong family ties during incarceration and better post-release outcomes, usually in the form of lower recidivism (Hairston 1991). However, the strength of this relationship appears to be modest at best, and there have been few attempts to understand the nature of any causal link between family ties and a reduction in recidivism, or to explore the impact of family influences on an individual's transition from prison to the community, which might account for such a link (Visher and Travis 2003: 99). Questions of how and why active family support, both during incarceration and in the post-release period, can assist in the resettlement process and in reducing reoffending are therefore still be to addressed. From the research evidence, we can see that family relationships appear to be of importance for two reasons: families can be a rich resettlement resource and can be a motivation to desist from crime.

Families as a resource 1: the provision of practical resettlement support

Perhaps the most obvious way in which family ties can assist in the resettlement process is through the provision of practical and financial support in the immediate post-release period. This includes help with finding employment and accommodation – two key factors in promoting successful resettlement and reducing reoffending. Stable employment can reduce the risk of reoffending by between a third and a half (SEU 2002). Employment may provide an income and occupy ex-prisoners' time constructively, so they have

fewer opportunities for deviant activities, but it may also improve their sense of self-worth by facilitating the development of new skills and allowing them the opportunity to provide for their families. However, imprisonment can severely damage employment prospects, as two thirds of those who have a job before going into prison will lose it when they are incarcerated (HMIPP 2001), and the stigma of a criminal record means that many prospective employers will automatically reject ex-prisoners' applications. Family members can be instrumental in helping ex-prisoners to find a job, either by directly employing them or by using their own resources and social connections to seek out a possible employer. The 2003 Home Office resettlement survey found that 51 per cent of prisoners who had an employment, training or education (ETE) place on release had made these arrangements through family members, friends or their personal contacts. Where the individual was going to a new ETE place, 85 per cent had arranged this through family, friends or other personal contacts (Niven and Stewart 2005a).

Appropriate and stable accommodation can reduce the risk of reoffending by a fifth (SEU 2002), partly because it improves the chances of obtaining secure employment. Yet approximately one third of prisoners lose their housing during a period in custody (HMIPP 2001), and ex-prisoners often face significant barriers to obtaining accommodation of their own on release. They may be denied access to public housing stock unless they are deemed to be vulnerable by local councils,[2] and may have accumulated large rent arrears from previous accommodation during their imprisonment. For many ex-prisoners, families are therefore likely to be one of the few available sources of accommodation, if only as a temporary measure (Paylor and Smith 1994; Richards *et al*. 1994; Paylor 1995; Visher and Travis 2003). The Home Office resettlement survey found that, of those who were homeless or in temporary accommodation before custody but had a new address arranged on release, 69 per cent were moving in with family members (Niven and Stewart 2005a). Ex-prisoners who return to live with their family are less likely to abscond from parole (Nelson *et al*. 1999), and this may be attributed to the supervisory role that families can perform when ex-prisoners are living with them. Family members may dissuade them from having contact with certain acquaintances or encourage them to avoid specific circumstances that are likely to lead to reoffending.

Families as a resource 2: the provision of social and moral support

Far less is known about the social and psychological support that family ties offer, both during imprisonment and after release, which may help to reduce the risk of reoffending (Mills 2005a; see also Paylor and Smith 1994, Visher and Travis 2003). Family acceptance, encouragement and perceived emotional support have been related to post-release success (Nelson *et al*. 1999), but quite what such emotional support consists of and why it is of significance is unclear. Families may help ex-prisoners to tackle their offending behaviour by providing advice and guidance to help them to settle back into the community – for example, by pointing out the negative consequences of engaging in

criminal activity and encouraging a sense of responsibility. They may also be able to persuade ex-prisoners to accept help or guidance from other agencies (Mills 2005a), or encourage them to abstain from substance misuse – or to start or continue appropriate treatment (Petersilia 2003). Additionally, moral support can help to build up ex-prisoners' self-confidence (Fishman 1990; Nelson *et al*. 1999) and convince them that it is possible and practical for them to 'go straight'. This may take the form of 'nurturing', to reinforce conventional behaviour and help them to transform their social identities, although Fishman (1990) found in her study of prisoners' wives that such nurturing was generally ineffective in breaking the cycle of arrest, courts and prison, and wives tended to move on to strategies of active resistance in an attempt to dissuade their husbands from engaging in criminal activity.

The importance of family contact during imprisonment

Clearly, then, family relations can facilitate the resettlement of ex-prisoners through the provision of practical and moral support. However, while the research on resettlement outcomes demonstrates the role of prisoners' families in the immediate pre- and post-release period, the relationship between these outcomes and active family contact *during imprisonment* has remained largely undetermined. The 2003 Home Office resettlement survey found that those who received at least one visit during their imprisonment were more likely to have accommodation and employment arranged on release, which may go some way to explaining the lower recidivism rates among those with active family ties. The chances of having accommodation arranged on release were nearly three times greater for prisoners who received family/partner visits during custody. The likelihood of having an ETE place arranged on release was more than doubled if a prisoner had received at least one visit from a family member or a partner, and the frequency of visits also increased the likelihood of positive ETE outcomes. Forty per cent of those receiving visits at least once a month had ETE arranged in comparison with 27 per cent of those receiving visits less often (Niven and Stewart 2005a). As the authors of this study conclude; 'efforts to improve resettlement for prisoners might be facilitated through more attention to the ways that partners and families can more effectively participate in this process' (Niven and Stewart 2005b: 23).

However, while the link between visits and positive resettlement outcomes may appear straightforward, the authors caution against seeing this as a direct causal relationship (Niven and Stewart 2005a, 2005b). The exact nature of the role played by visits in arranging jobs and housing is not known. Visits may allow or facilitate the discussion of arrangements for employment and/or accommodation on release, or simply operate as a demonstration of support during incarceration which reflects a promise of continued support after release (Shafer 1994). They may act as an indicator of a strong support network which is resourceful and thus well equipped to provide assistance (Shafer 1994; Niven and Stewart 2005a). The use of visits as a 'proxy measure' of strong family ties (Niven and Stewart 2005a, 2005b) in the Home Office and other studies should also be treated with a degree of caution. Only the frequency or quantity of visits, rather than their quality or content, is

measured. As we shall see later in this chapter, families can find it difficult to visit prisoners for a variety of different reasons, and the number of visits cannot therefore be easily equated with family support. Prisoners who do not receive any visits are not necessarily lacking in family support, and the quality and meaning of other forms of family contact, such as letters and telephone calls, and their role in maintaining family ties and facilitating effective resettlement also need to be considered (Niven and Stewart 2005b).

Families as a motivation: desistance, social bonds and social capital

Strong family ties may not only provide the resources to encourage resettlement but also the motivation for desistance: 'the causal process that supports the termination of offending' and 'maintains the continued state of nonoffending' (Laub and Sampson 2001: 11). Being part of a supportive family or relationship may give ex-prisoners a 'stake in conformity' (Petersilia 2003) or a reason 'to go legit' (Sampson and Laub 1993) when tempted to become involved in criminal activity. The study of desistance and the social contexts in which it occurs has been an area of significant growth in criminology in recent years, as researchers have sought to discover why criminal careers come to an end and to examine particular social or psychological factors that may lead to desistance. Several different theoretical frameworks have emerged from this research (see Laub and Sampson 2001), but that which examines the importance of developing strong social bonds in adulthood appears to have great salience when discussing the role of offenders' families. The idea of criminal behaviour being inhibited by close ties to institutions of conventional society, such as the family, can be traced back to social control theories, particularly Hirschi's (1969) social bond theory, which suggests that ongoing social relationships or 'social bonds', particularly with the family or school, operate to restrain deviant motivations and account for conformity among adolescents. Contemporary studies in life-course criminology have drawn upon such ideas by examining changes in social bonds over the life course to show how desistance from crime can be linked to successful transition to adult roles (Uggen *et al*. 2004). Perhaps the most well-known study in this area is that of Sampson and Laub (1993). Using the data set from *Unraveling Juvenile Delinquency* (Sheldon and Eleanor Glueck's longitudinal study into the causes and development of delinquent behaviour in the 1940s and 1950s[3]), they argue that differences in criminality are not stable across the life course. Changes in the strength of informal social bonds to family and employment in adulthood can explain changes in criminality over the lifespan, regardless of early childhood propensities towards offending. In the case of family bonds, Sampson and Laub (1993) examine the influence of a strong marriage as a factor in the promotion of desistance by measuring attachment to spouse at the ages of 17–25 and 25–32. Those with strong attachment to their spouses at these times were less likely to engage in deviant behaviour than those who were only weakly attached, irrespective of other factors such as prior adult crime. Additionally, early marriages (at ages 17–25) characterized by social cohesiveness and strong emotional attachments led to a growing preventative effect (Laub *et al*. 1998; Laub and Sampson 2001), but those

with strong attachment to spouses at ages 25–32 also had lower levels of crime in later periods. Sampson and Laub draw upon the concept of 'social capital'[4] to underscore the importance of family ties in providing motivation to desist from crime and deviance. They argue that 'adult social ties… create interdependent systems of obligation and restraint that impose significant costs for translating criminal propensities into action' (1993: 141). In other words, the strength of the social relations within the family represents social and psychological resources that individuals can draw upon and increased investment in social relationships and institutions, which in turn increases the costs of deviant behaviour to the individual, inhibiting criminal activity.

The salience of strong adult social bonds and the social capital that they offer can also be applied to other family relationships to explain desistance. Those who live with a supportive partner are more likely to desist from crime than those who do not (Horney *et al*. 1995; Burnett 2004), and becoming a parent can also lead to an increased chance of desisting from crime (Irwin 1970; Sampson and Laub 1993), particularly for female offenders (Graham and Bowling 1995; McIvor *et al*. 2004). The desister may have acquired something that he or she values in some way, which initiates a re-evaluation of his or her life and sense of who he or she is (Farrall 2002). This may lead to a transformation of the desister's identify and lifestyle, in which offenders advance a new sense of self as a 'parent' or 'partner' and realize that further involvement in criminal activity may jeopardize this 'legitimate' role.

However, there has been some criticism of the emphasis on strong social bonds and social capital to explain why events, such as marriage and parenthood, lead to a reduction in criminal activity. It is suggested instead that such events impose limits on the opportunity, time and energy available to engage in deviant activities (Gartner and Piliavin 1988). Warr (1998), for example, has criticized Sampson and Laub (1993), by drawing upon the concept of differential association to explain the links between desistance and marriage. It is not a strong marriage *per se* that leads to less criminal behaviour, but marriage reduces the time spent with delinquent peers and the exposure to high-risk situations. Similarly, Graham and Bowling (1995) suggest that disengagement from deviant peers is a precondition for desistance from crime for male offenders (see also Laub and Sampson 2001), so weakening peer relations might account for the effect of marriage and parenthood on desistance among younger offenders.

In discussing the effect of family relationships and social capital on reducing recidivism among ex-prisoners, the role of different family members in promoting resettlement and desistance in different ways is also worthy of consideration. As Farrall (2002, 2004) has noted in his study of desistance among probationers, the family of formation (consisting of partners and children) tends to act as the motivating influence on desires to desist, but families of origin (e.g. parents, siblings, grandparents, aunts, uncles) offer an avenue of support, both practical and emotional, to achieve this change. As the ties and obligations associated with social capital may be cultivated over many years within families of origin, they may be more amenable to exploitation in times of need (Farrall 2004).

Great expectations? Difficulties and dangers of involving families in resettlement and reducing reoffending

In view of the research evidence discussed above, it is unsurprising that policy-makers have now started to look at the role of the family in reducing reoffending and what might be done to encourage active family support in prison and on release. Yet there are several inherent dangers in placing such high expectations on families, which deserve consideration here. Some families may themselves engage in criminal activity and are therefore unlikely to promote a reduction in reoffending,[5] which may lead some ex-prisoners to distance themselves from their families, perhaps if they feel that they were the source of their deviant behaviour. Families may also be unable or unwilling to support prisoners or maintain family ties for a variety of reasons. Many family/partner relationships will break down during imprisonment, and not all families are ready to receive prisoners with open arms at the end of their sentence, as is frequently assumed (Ditchfield 1994). They may 'not want to know any more', especially if they have already supported them through several sentences (Noble 1995), or they might be nervous or even terrified by the prospect of the release, particularly if the offender has committed some kind of crime against them or put them in danger due to his or her offending in the past (HMIPP 2001). It is therefore inappropriate to assume that every prisoner has supportive family ties, which simply need to be maintained, or that every prisoner and his or her family wish to be reconciled.

Families who wish to be involved in resettlement have limited opportunities to do so, as they are often excluded from any sentence or pre-release planning within prisons. Prison governors are required, where appropriate, to ensure that families are given the opportunity to contribute to the sentence planning process for under 18s and those given detention and training orders. In adult prisons, however, family involvement is left to the discretion of individual prison governors,[6] rather than being prevalent throughout the system. Families are therefore often left with very little and distorted information about how much prisoners are prepared for conventional life (Fishman 1990), and this may contribute to the difficulties that ex-prisoners and families can face in readjusting to family life after release. Relationships may have changed considerably during the period of imprisonment (Noble 1995), as partners left at home often become stronger and more independent because they have been forced to cope on their own and they may be unwilling to relinquish this new-found state of mind (Fishman 1990; McDermott and King 1992). McDermott and King (1992) found that male ex-prisoners can struggle to adjust to this change, particularly if it threatens their position as providers and protectors, which may destabilize family relations or lead to relationships ending, thereby reducing the chances of effective resettlement. Conflict with other family members may also emerge after release. In a study of the previous resettlement experiences of female prisoners in Arkansas, Harm and Phillips (2001) found family relations were the most difficult part of the reintegration process for the majority of women. This was particularly apparent where the resumption of their parenting role had to be negotiated with their children's carers, usually the women's own mother, who had assumed

the role of disciplinarian and had conflicting ideas of how to raise children.

Furthermore, as discussed later in this chapter, prisoners' families can face considerable practical and emotional problems of their own during the imprisonment of a family member, and stressing the resettlement role of families may place them under further pressure. It may increase the guilt and stigma that families face when a loved one is imprisoned, and they may fear that they will be held responsible or blamed if an offender fails to 'go straight', as they were unable to control him or her in some way. This pressure on families to ensure that further offending does not occur may lead them to becoming 'agents of social control' particularly if, for example, they are expected to ensure that relatives living with them on home detention curfew are at home during the prescribed times (Condry 2004a).

Emphasizing the potential of families to assist in the resettlement process may also lead to the needs of families becoming ancillary to those of the criminal justice system, as they are defined in relation to the prisoner and his or her risk of reoffending (Noble 1995). Any support offered to families to alleviate the problems they face may be given because of 'their instrumental value, not because of any commitment to maintaining families for their own sake' (Codd 2004: 3) or to meeting their own health and social needs. Supporting families in their resettlement role could therefore be seen as a manifestation of what Crawford calls the 'criminalization of social policy' (2002: 121), as their social policy-related problems are redefined in terms of their implications for crime and their crime prevention potential, rather than being important issues that deserve attention in their own right.

The challenges of maintaining relationships 1: family contact with prisoners

As good family relations are potentially of considerable benefit in encouraging successful resettlement and providing the motivation to desist from crime, it seems desirable to ensure that prisoners are able to maintain their family ties where possible, at the very least on crime reduction grounds (Paylor and Smith 1994; Laub and Sampson 2001), if not for the sake of the family themselves. Yet over 40 per cent of prisoners lose contact with their family during their imprisonment (NACRO 2000), and those families who wish to stay in touch face considerable challenges doing so. Prisoners and families can maintain contact through several methods: visits, telephone calls, letters and tapes, and home leave (sometimes known as home furloughs), all of which have different strengths and limitations. For example, telephone calls may be a lifeline for those with learning difficulties and for foreign national prisoners (Brooks-Gordon 2003), but are expensive, can be difficult to access and, as conversations are monitored, offer little privacy. Letters are much cheaper but may be unsuitable for those with literacy difficulties. Visits are the preferred method of contact among both prisoners and families (Noble 1995; Murray 2003) and have been described as 'an essential component of the rehabilitative process' (Shafer 1994: 17), which perform several functions. They can act as a

reminder of the world outside and its associated responsibilities, they allow prisoners to continue their role and relationships as family members and they help to smooth the adjustment of both family and prisoner to release. In England and Wales, Prison Rule 35 (2) entitles a convicted prisoner to receive two visits every four weeks, while unconvicted prisoners may receive as many visits as they wish, subject to limits and conditions as the Secretary of State may direct (Rule 35 (1)).[7] Yet in 2001 the Inspectorates of Prisons and Probation found that approximately two thirds of convicted prisoners in local prisons and just under half in training prisons did not receive their statutory entitlement (HMIPP 2001).

The many challenges that families wishing to visit prisoners face can help to explain why they do not use their full entitlement and why the number of visits has fallen in recent years, despite a substantial increase in the prison population.[8] First, prisoners may be held some distance away from their local area, often in geographically remote prisons, which makes it difficult for families to travel to visit them. In 2004, over 9,000 prisoners were held over 100 miles away from their committal court town, with male prisoners held an average of 51 miles away and female prisoners held an average of 62 miles away (Prison Reform Trust 2005).[9] Travelling to visit prisoners is therefore likely to be time consuming and expensive, and may be difficult with small children, particularly if the journey involves several changes of public transport.

A survey of prisoners at Camphill Prison on the Isle of Wight, one of the most geographically remote prisons, found that 55 per cent of respondents had not received any visits since arriving there (Murray 2003). Seventy-two per cent of these prisoners said that this was because the journey was difficult for their families, with cost being the second most important factor. The Assisted Prison Visits scheme provides financial help for two visits a month to close relatives and partners of prisoners who are in receipt of income-related state benefits, or who have particular health difficulties. However, many families remain uninformed about the scheme and others find it difficult to negotiate the claims process (SEU 2002). Payment is only made after the visit, and families may struggle to find the money to pay for costs associated with visiting up front. Prisoners may therefore prefer to stay in a local prison close to their families where conditions are poor, rather than move to a more remote training establishment with a better regime (Woolf 1991; HMCIP 2000). Local community prisons, as advocated by Woolf in 1991 and more recently by the Home Secretary (Clarke 2005), would enable prisoners to serve their sentences closer to home, which could help to overcome many of the barriers to family contact. However, other considerations, such as security category and suitability for particular types of accommodation, can outweigh family ties and resettlement needs (HM Prison Service 2001: para. 4.6), while existing population pressures and the design of the prison estate mean that community prisons are highly unlikely to become a short or medium-term reality.

Families often suffer from a lack of information as to how to arrange visits and what they can expect when they arrive at the prison and in the visits room. Booking visits is a frequent source of frustration, particularly at busy prisons where this has to be done via an often engaged telephone line. The

degree of contact between prisoners and visitors, and what, if anything, can be brought into the visits room or handed in on a visit, varies considerably from prison to prison. Even when families are able to visit prisoners, the ability to offer any kind of support may be limited. Visits rooms offer little privacy, and prisoners and visitors may be inhibited from talking freely about personal issues in this public arena, when time is so limited and bored or fractious children may be present (Clarke *et al*. 1992). Many family members and prisoners report sticking to 'safe' topics in order to make the visit as enjoyable as possible and so as not to upset the other party by broaching more difficult subjects that may cause them to worry or they may not have time to resolve. Serious family problems may therefore be concealed until release (McDermott and King 1992; Jamieson and Grounds 2005), contributing to readjustment difficulties when the prisoner returns home.

Security rules and procedures can also 'conflict with the stated goal of encouraging prisoners to maintain domestic ties' (Fishman 1990: 157). Visitors are often subjected to a 'rub down' or even a strip search, both of which can be humiliating and degrading and cause considerable distress. In her study of prisoners' wives in America, Fishman (1990) suggested that security measures give the impression that visitors possess a special low status, creating a sense of shame, which makes visitors feel like criminals too (see also Boswell and Wedge 2002; Comfort 2002). Hairston has consequently argued that 'it is relatively easy to see how some prisoners and families choose to forego regular visits to save themselves the embarrassment and helplessness associated with family contact under poor visiting conditions' (1988: 624). Prisoners themselves may actively discourage families and friends from visiting as they are reluctant to put their families, particularly children and elderly relatives, through the ordeal of visiting (HMIPP 2001; Broadhead 2002; Mills 2005b). Imprisoned parents, particularly mothers, may be unwilling to let their children see them in prison (Richards *et al*. 1994; Boswell and Wedge 2002), feeling that prison is not a suitable environment for children. Visits can also stir up unwelcome emotions in prisoners, and research on the family ties of life-sentence prisoners has suggested that they often limit family visits because visits make it harder for them to cope with their sentence (Mills 2005b).

In response to these challenges, several initiatives have been developed to make visiting prisoners easier and more enjoyable for all parties. Some prisons now hold extended visits (also called family days) where the prisoners and families are able to spend a day together, making use of the prison's recreational facilities and having a meal together. Similarly, children's visits or days offer the opportunity for prisoners to spend time with their children in a more relaxed and normal environment with minimal uniformed staff surveillance, and with play equipment and activities, usually run by volunteer child-carers, for prisoners and their children to participate in. These visits are popular with prisoners and families (Richards *et al*. 1994) as they seek to maintain or re-establish the parent–child relationship, but they also serve the best interests of the child by providing 'good-quality access' to their parents (Boswell and Wedge 2002: 86). However, these schemes are vulnerable to funding difficulties and staff changes, and their provision is still somewhat limited through the prison estate (HMIPP 2001).

Visitors centres now exist in 112 out of 139 prisons in England and Wales (Prison Reform Trust 2005). Most centres aim to reduce the stress and anxiety caused by visits, but the facilities offered there vary drastically, ranging from a Portakabin for visitors to wait in, to purpose-built centres, often run by prisoners' families support groups, where visitors can receive emotional and practical support, use childcare facilities and attend surgeries with other agencies such as community nurses. Some administrative tasks (such as booking visits, receiving property and checking ID) may also be performed here. The Home Office (2004) has recently accepted in principle that all closed prisons should have a visitors centre, but existing centres still go unrecognized or unsupported by prison management (Loucks 2002). Many have to rely on volunteers and short-term funding or one-off grants from charitable organizations to survive. As such they may have unstable and uncertain futures, and this has led many to call for such centres to be properly funded and resourced (Loucks 2002).

In the Scottish prison system, each establishment is required to have at least one family contact development officer (FCDO), whose job it is to encourage and re-establish ties between prisoners and family members. They provide families with information and advice on visiting, outside support agencies, the Assisted Prison Visits Scheme and other benefits. FCDOs may help to arrange special visits and contribute to induction and pre-release courses for prisoners and families and training for prison staff (SEU 2002; Loucks 2005). Although FCDOs are usually heralded as an example of good practice that the English and Welsh prison system should adopt, many face significant barriers to their work (such as a lack of resources and management support), and staff shortages and other priorities may mean that they are regularly allocated other duties (Loucks 2005).

The visits that some prisoners make to their families through home leave are also worth mentioning here. Subject to a risk assessment, prisoners serving over one year can be released on a temporary licence towards the end of their sentence, in order to maintain or strengthen family ties and to help prisoners readjust to life in the community and to prepare for their eventual release. However, for such leave genuinely to maintain family ties, it has been argued that it should take place at regular intervals throughout the sentence. This would allow housing, financial and childcare arrangements to be made at the beginning of the sentence, and would ensure that contact is more likely to be realistic and constructive, thus helping to minimize any problems of readjustment (Clarke *et al*. 1992; Richards *et al*. 1994).

The challenges of maintaining relationships 2: families serving 'the second sentence'

The difficulties of maintaining relationships with prisoners go hand in hand with the other, manifold challenges families may face when a member is incarcerated, which can place relationships under significant strain (Braman and Wood 2003). There is a romantic view that imprisonment can bring a couple closer together (Bandele 1999), but hardship and emotional

difficulties are more prevalent, and relationships within families coping with imprisonment from the outside may also be disrupted. Although imprisonment may confer positive benefits on some families, such as when it results in children receiving better and more stable parenting (Eddy and Reid 2003), the negative consequences can include financial difficulties and stigmatization. It may have a profound effect on children's well-being, and some studies have suggested that prisoners' children are at high (or higher than usual) risk of future criminality or anti-social behaviour (Johnston 1995; Eddy and Reid 2003; Murray and Farrington 2005).

The financial impact

Across jurisdictional boundaries, the experiences of prisoners' families are almost universally of extreme financial difficulties, as most families experience financial losses and/or incur additional expenses as a result of the imprisonment of a loved one. The consequent poverty has been described as 'a shadow punishment [which] is marginalized and largely invisible to the public gaze' (Aungles 1993: 259). The financial impact of imprisonment is greatest where families try to maintain their relationship with the imprisoned person, and where they fulfilled a functional parenting role prior to custody (Hairston 2003), largely because maintaining relationships is expensive (Davis 1992; Braman 2002). Where prison regimes supply limited provisions or, as is usual in the UK, prison wages are low, family members supply funds for telephone calls, clothes, magazines, books, educational and hobby materials, and toiletries (Codd 2002).[10] Many prisoners' families are already struggling to make ends meet, so any additional expenses usually entail more than a reduction in leisure activities or in the consumption of luxuries (Comfort 2002; Hairston 2003). It should be noted that regardless of the gender of the inmate, it is *women* who bear these burdens of caring from the outside (McDermott and King 1992; Girshick 1996; Chapter 11, this volume). That is not to say that all women 'stand by their man', but that where prisoners do receive visits, financial support and correspondence from the outside, these are likely to have been provided by women, who may 'get by' simply by putting themselves at the lowest level of their priorities (Davis 1992). This provision of material goods is not simply of practical significance but can signify expressions of love and caring and can provide women with a way of maintaining their role as a caring partner, wife or mother despite the absence of one or more family members from the home environment.

For some families, imprisonment means the loss of a main family income, even if that income may have been illegally earned. This, in turn, can lead to housing problems as a consequence of mortgage or rent arrears, and families may also find themselves affected by other debts. In a study of the cause, extent and effects of debt problems among prisoners and their families in Australia, Stringer (2000) found that not only are debts created or exacerbated unnecessarily by a prison sentence but family members also impoverish themselves by paying prisoners' debts. Such debts may be familial, informal or quasi-legal, and families may be harassed, pressurized or even threatened by debt collectors or unpaid drug dealers. They may repay prisoners' debts due to this harassment or because they believe they are legally responsible, or

wish to preserve the asset, such as a car, for which the debt was incurred. A lack of access to responsible financial advice can aggravate these difficulties. Family members are often unaware of their rights and therefore vulnerable to unprincipled and unlawful debt-collection practices.

Financial hardship may not be universal among prisoners' families but, as Hairston (2003) notes that since only just over half of prisoners in the USA indicated they were employed before incarceration, and most report a history of drug problems, it is reasonable to assume they were drains on, as opposed to contributors to, the family income, and that their incarceration in prison places their families in an improved financial position. There is, however, little evidence of this improvement of financial circumstances in the recent published empirical literature in the UK.

Stigma

Research on prisoners' families has commonly asserted that they are stigmatized within their communities and in their interactions with official agencies and institutions, sharing the 'spoilt identity' of the inmate or being presumed 'guilty by association' (Codd 1998). The fear of this 'courtesy stigma' (Goffman 1963), which arises through affiliation with the stigmatized, can cause family members further stress through the pressures of maintaining secrecy. Yet the extent, impact and nature of stigmatization and shame are debatable, as this may be a minor concern in the context of the other problems that families face. Some families do suffer assaults, criminal damage and threats but, for many others, the level of fear experienced is greater than any actual hostility (Codd 1998; Condry 2004b). Furthermore, feelings of shame can vary historically and socially. For example, Morris (1965) identified the absence of a man from a woman's household as a source of shame, but there are strong arguments for suggesting that this is no longer the case. Morris (1965) also reported that feelings of shame were experienced by the wives of first-time prisoners, but were found to fade quite quickly, and the wives of recidivists claimed that they were not ashamed at all. In contrast, in a recent study of ex-prisoners, adult children and caregivers, the caregivers described the experience as embarrassing and shaming (Bates *et al*. 2003). These feelings of shame and alienation from mainstream society prevented them from seeking help from social services. Community responses to imprisonment have also been contested in the literature. Schoenbauer (1986) argues that the broader socio-cultural context in which prisoners and their families are embedded stigmatizes involvement in the criminal justice system, and the loss of a family member as a consequence of incarceration seldom results in sympathy from others. However, other research has suggested that, depending on the nature of the offence, families may feel supported by their communities; it is when they visit the prison or deal with official bodies that they feel stigmatized. Where the prisoner is incarcerated as a consequence of what could be seen as a 'crime of principle' or conscience, as in the case of political prisoners, the community support for the families may be greater (McEvoy *et al*. 1999). In contrast, the police may pay the family more attention because they have been redefined as a 'criminal' family (Davies 1980; Mazza 2002).

The impact on children

A significant number of children and young people experience the imprisonment of a family member during their childhood. In 1998, it was estimated that around 125,000 children in England and Wales had a parent in prison (Ramsden 1998) but, as the prison population has risen rapidly in recent years, this number is likely to have increased significantly although the precise figure is unknown. It is difficult to assess the number of children specifically affected by the imprisonment of their mother (Young and Smith 2000) but, in the UK, around 55 per cent of female prisoners have a child under 16, with over a third having a child under 5 (Home Office 2001), and a fifth of women prisoners are lone parents with dependent children (SEU 2002).

Most of the published research into the impact of imprisonment on children has not involved direct consultation, observation or interviews with prisoners' children (Johnston 1995), but has, instead, concentrated on studying prisoners' relationships with their children. There are, however, some important exceptions to this. 'No one's ever asked me' is especially aptly named as the study interviewed or analysed questionnaires from 53 young people aged between 12 and 18 (Brown 2001). Boswell and Wedge (2002) studied the children of imprisoned fathers (see also Boswell 2002) and recorded some of the feelings of very young children, some as young as 3, who are often totally silent (or silenced) in the research literature.

It is clear that children do suffer various effects of the imprisonment of a family member, which are difficult to divide into neat categories and will vary according to the age of the child, the length of the separation and community responses (Parke and Clarke-Stewart 2003). It is difficult, however, to assess whether the range of negative outcomes they may experience is a consequence of imprisonment or interlinked with other social and economic factors. It is important to remember that, for some children, the imprisonment of a parent can improve their familial and emotional circumstances, such as where a parent is experiencing substance abuse or perpetrating violence or abuse within the family. In such circumstances, the maintenance of the child–parent relationship may not be mutually beneficial.

Imprisonment, while sometimes improving children's stability, more often leads to children feeling that "the world fell apart" and "panic and confusion reign" (Mazza 2002). Young children may not be able to understand the criminal justice system or the reasons why their parent has been apprehended and detained, so the whole process may appear unpleasant, possibly violent – that is, experienced by the child in the same way as witnessing an assault by a stranger or family violence (Wilson 1996). Children may not believe that their family member could be guilty or, conversely, may feel guilt or responsibility, especially if the parent's arrest is as a consequence of a crime against the child.[11] The involvement of criminal justice agencies with the family may also be accompanied by child protection intervention, as, for example, in the case of the arrest of a parent for violence or abuse within the family, and this may cause additional stress and uncertainty for children. They may not understand where their parent or other family member has gone and may be

disorientated by whatever arrangements for their temporary care are put in place. This shock and confusion can be exacerbated by a lack of information, sometimes involving the web of 'secrets and lies' in which a substantial proportion of prisoners' children find themselves (Shaw 1987; Mazza 2002). The 'conspiracy of silence' (Jose-Kampfner 1995) or 'forced silence' (Johnston 1995) concerning the family member can lead to increased anxiety and can undermine children's ability to cope (Parke and Clarke-Stewart 2003). Parental deceptions may not be believed and children may be told the truth by others, but they may feel bound to pretend they believe the parent in order not to upset him or her or to conceal the truth from other, younger siblings or the outside world. Research indicates that children cope better with their feelings if they are allowed to talk about them (Mazza 2002), and they therefore need information to make sense of their situation, space to grieve the loss of the absent parent and support to cope with their changed circumstances (Parke and Clarke-Stewart 2003). Yet non-imprisoned family members may be physically, emotionally and mentally unavailable to offer such support at this time (Mazza 2002). Instead, children may take on additional responsibilities and become helpers for the adults in the family, caring for younger children, taking on household chores or bearing some of the emotional burdens of the prisoner's partner.

The psychological consequences of imprisonment for children of prisoners can include depression, emotional withdrawal, anxiety, low self-esteem and 'acting in' or 'acting out' at home or at school (Johnston 1995; Mazza 2002; Travis and Waul 2003). Incarceration has been argued to increase the impact of other factors that adversely affect children's growth and development (Braman and Wood 2003; Travis and Waul 2003). Their emotional energy may be diverted from developmental tasks and they may regress into old reaction patterns such as the need for special toys and security blankets or bedwetting (van Nijnatten 1998). Girls are more likely to display internalized problems and boys are more likely to externalize their feelings, although often these behaviours co-exist (Cummings *et al.* 2000; Parke and Clarke-Stewart 2003).

The greatest negative consequences for children arise when mothers are imprisoned. The dramatic expansion in the women's prison population seen in a number of countries during the last decade means that increasing numbers of children are suffering a variety of profoundly disruptive practical and emotional consequences. Many children lose their primary carer and are subsequently cared for by family members (often grandparents) or family friends, or are taken into care by social services departments. Research has found that the children of women prisoners tend to have quite serious emotional and behavioural problems, whereas the children of male prisoners tend to have relatively minor problems (Friends World Committee for Consultation 2005a), possibly because they are much more likely to continue to be cared for in the family home (Gampell 2003). While the type and severity of problems experienced by individual children with imprisoned mothers vary, their extent is wide. Caddle and Crisp (1997) found that, following imprisonment, 44 per cent of the mothers they interviewed reported problems with their children's behaviour, and 30 per cent said they had become withdrawn.

There is growing international concern as to the impact of women's imprisonment on children, particularly in relation to children's rights and international human rights commitments, such as those embodied in the UN Convention on the Rights of the Child (Taylor 2004). Although it is possible for babies to live with their mothers in prison in mother and baby units (MBUs), depending on the availability of suitable places, this raises concerns about the physical, mental, emotional and developmental well-being of the children, as does separation from their mothers (Chapter 11, this volume). A recent Quaker report summed up the difficulties. It is 'not a question of choosing between a good option and a bad option, but between two bad options' (Nari 2000 cited in Friends World Committee for Consultation 2005b: 44). Furthermore, mothers leaving prison may find themselves facing a 'Catch-22' situation as social services departments may not allow their children to live with them in the absence of suitable accommodation but, without responsibility for their children, they may be deemed a low priority for social housing (O'Brien 2001).

Supporting families: policy and practice

While there has been some official recognition of both the importance of families in resettlement and families' own needs (SEU 2002), little policy has emerged to ease their plight, to facilitate active family ties or to support their potential rehabilitative role. No one statutory agency has overall responsibility for looking after prisoners' families or ensuring the maintenance of links between prisoners and families (Paylor and Smith 1994; Codd 1998; SEU 2002), and this may reinforce the idea that family contact is a privilege to be earned rather than a right or aid to social integration (HMIPP 2001). A number of specialist measures designed to help maintain relationships or encourage family involvement in resettlement do exist, but these are currently limited to individual prisons or individual projects in a small number of prisons rather than being widespread throughout the system. For example, family and relationship counselling, such as that run by Relate and Time for Families, can help prisoners and partners to reduce the harmful effects of prison on the family and prepare prisoners and families for release, but is only available in a handful of prisons. Both families and prisoners would like families to be involved in sentence planning (HMIPP 2001; Murray 2003) but, as noted above, families of adult prisoners rarely have the chance to contribute, even though they are the most aware of the circumstances that are likely to lead to reoffending and could act as advocates for prisoners (HMIPP 2001). Their participation in resettlement work may also encourage prisoners to be more honest in their assessments of their own behaviour, and to engage with other activities such as drug treatment.

Most help given to prisoners' families is currently provided by the not-for-profit sector, which plays a key role in responding to their needs and, under the auspices of the national umbrella group, Action for Prisoners' Families (APF), in promoting public awareness and campaigning for policy reforms. Since the 1960s a number of support groups have emerged, many of

which have evolved from small, *ad hoc* groups of (usually) women meeting together to share their experiences and to offer mutual support. In recent years many of these non-statutory not-for-profit organizations have started to work jointly with prisons to develop services and projects for families, such as children's visits. For example, Partners of Prisoners and Family Support Groups (POPS) has been established for over 15 years and is a good example of the growing importance of 'third sector' organizations working in partnership with official agencies and institutions in this context. It began as a support group established by and for the partners of prisoners, and now has a number of paid staff and runs visitors centres in a number of prisons in the north west, working in partnership with the Prison Service. Although in the beginning there was some suspicion of the POPS staff as being 'on the side of the prisoners', this relationship seems to have improved, and prison staff recognize the benefits to them of POPS undertaking responsibility for dealing with queries from families which would have previously taken up officers' time (POPS 2003). APF provides an active critical campaigning voice and has undertaken valuable research into the needs of families. It co-ordinates the free Prisoners' Families helpline, launched in July 2003, which is run by a consortium including POPS and the Ormiston Children and Families Trust. Parenting courses, such as the 'Family man' course, are now run in many prisons, as are 'Storybook dad' and 'Storybook mum' projects, which allow parents in prison to record bedtime stories for their children, thus encouraging family relationships and potentially improving prisoners' literacy. These initiatives have been recognized by the APF annual awards programme, the 'Daisy and Tom' awards, which seeks to reward prisons for initiatives that lead to significant improvements in family ties and provides a good illustration of the role of non-statutory agencies in working with prisons to facilitate and improve contact with families.

These organizations clearly have the most experience and expertise in helping families, but there are, of course, limits to the services that voluntary agencies can provide, and not all families will seek the help of a support group. Some commentators are uneasy that these organizations are having to assume responsibilities that are arguably the functions of the public sector, and recent policy initiatives have done little to demonstrate a commitment by state agencies to helping prisoners' families. The National Action Plan on Reducing Reoffending, announced in 2004, includes 'Children and families' as one of the seven pathways to support the rehabilitation of offenders (Home Office 2004), but it has been criticized as a 'missed opportunity for positive change' as it fails to tackle the chronic lack of services and support for prisoners' families (Action for Prisoners' Families 2004). Nor does it provide any resources to maintain and strengthen family relationships, and nor does it meet the needs of prisoners' families and encourage families' potential resettlement role. Instead, the plan focuses predominantly on what help is available for prisoners' children within existing mainstream provision, such as Sure Start and Connexions,[12] which are not specifically designed for prisoners' children. This is, of course, not only of little relevance to those prisoners and families who do not have children but, arguably, also suggests that the intention of such proposals is not to reduce reoffending by ex-prisoners by

strengthening their family ties but to prevent any future criminality among prisoners' children. Finally, the plan does not address the issue of statutory responsibility for prisoners' families. As in many areas of social policy in recent years, it appears that partnership and joint working between the public and not-for-profit sectors will continue to dominate practice and, in a recent policy speech to the Prison Reform Trust, the then Home Secretary, Charles Clarke, reiterated the key role to be played by voluntary sector agencies in relation to prisoners and their families (Clarke 2005).

Conclusion

The dramatic increase in the prison population of many jurisdictions over the last decade has led to a corresponding growth in the number of families facing the challenges of maintaining family relationships and living their family lives in the shadow of imprisonment. As has been seen in this chapter, there are both humanitarian and pragmatic arguments for supporting families of prisoners, to maintain family ties for their own sake and to promote their role in resettlement and desistance. However, the recent research literature has shown that many families continue to experience many of the difficulties documented by Morris (1965) 40 years ago, and family contact is still not a priority within the prison system. There is therefore a need for a much more critically informed understanding of families' potential contribution to successful community re-entry and desistance, which recognizes their needs and the problems they face, in order to ensure that this contribution might be effectively strengthened and supported. Certainly, families have a central and fundamental role to play but, as we have shown, this is not always facilitated or supported by current policies and practices, which remain patchy and unfocused.

Selected further reading

For a discussion of the link between family ties and reduced reoffending or positive parole outcomes, see Ditchfield, J. (1994) *Family Ties and Recidivism: Main Findings of the Literature. Home Office Research Bulletin* 36. London: Home Office, or the more recent Visher, C.A. and Travis, J. (2003) 'Transitions from prison to community: understanding individual pathways', *Annual Review of Sociology*, 29: 89–113, which provides an excellent, evaluative review of the research on family influences, both in prison and in the post-release period. S. Maruna and R. Immarigeon's edited collection (2004) *After Crime and Punishment: Pathways to Offender Reintegration*. Cullompton: Willan Publishing, considers the relationship between desistance and offender reintegration in several different contexts, and emphasizes the policy implications of desistance research. Although focused on probation rather than prisons, the chapter by Stephen Farrall ('Social capital and offender reintegration') is of particular relevance to family ties as it provides a sound introduction to the concept of social capital and the processes by which it can encourage desistance. M. Chesney-Lind and M. Mauer's edited collection (2002) *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York, NY: New Press, offers an interesting overview of the emerging research into the collateral consequences of imprisonment, specifically in the US context, as does

J. Travis and M. Waul's (2003) more recent collection, *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families and Communities*. Washington, DC: Urban Institute Press. In relation to the situation in the UK, Brown, K. (2001) *'No-one's ever Asked Me': Young People with a Prisoner in the Family*. London: Action for Prisoners' Families, provides a vivid insight into the experiences of the children of prisoners. Much useful material can also be found on the Action for Prisoners' Families' website (www.actionpf.org.uk).

Notes

1 The main focus of this chapter is on the situation in England and Wales. However, as a result of the increased awareness of the 'collateral consequences of imprisonment' in other jurisdictions such as the USA and Australia, reference will be made to selected research from outside England and Wales where this is appropriate and relevant.

2 In the USA, ex-prisoners have even less access to public housing than in the UK. Public housing authorities may evict all members of a household for criminal activities committed by any one member of the household. Public housing law requires public housing agencies to deny housing to certain groups of offenders, including those subject to a life-time registration requirement under a state sex-offender registration programme, and grants them the discretion to prohibit the admission of all other criminally involved individuals (Petersilia 2003). Such policies not only restrict the housing options for ex-offenders but also for their families, particularly any dependent children.

3 This data set encompasses data from 500 officially delinquent boys, selected from the Massachusetts correctional system and a matched control group of 500 non-delinquent boys chosen from schools in the Boston area (see Sampson and Laub 1993: 25–46 for more details on this study).

4 Definitions of social capital vary, but Halpern (2005) suggests that it consists of three basic components: a social network, a cluster of shared norms, values and expectancies, and sanctions that help to maintain such norms.

5 As has been recognized by Farrington (1995) and others, families may be the cause of much offending behaviour.

6 Written answer to a parliamentary question, Paul Goggins, Minister for Prisons and Probation (Hansard 20 January 2004).

7 Visits for convicted prisoners should last at least one hour (HM Prison Service 2002), although the length of visits may be reduced due to high demand and the time it takes to go through security procedures. Unlike many other jurisdictions, there are no facilities for conjugal visits in English and Welsh prisons.

8 Between 1999 and 2000, claims for financial assistance with prison visits (through the Assisted Prison Visits scheme) dropped by over 10 per cent (SEU 2002). The Prison Reform Trust (2004) have suggested that visits have fallen by a third in the past five years.

9 Female prisoners are likely to be accommodated further away from their home areas due to the smaller number of female establishments, making visiting difficulties even more acute, although visits may be even more important to them as they are more likely to have dependent children (HMCIP 2000; SEU 2002; Chapter 11, this volume).

10 The high costs of telephone calls in the USA are well documented (Braman 2002) and, in the UK, prisoners pay higher telephone costs than are available to other consumers.

11 Children who are victims of parental crime have been referred to as 'double victims' (van Nijnatten 1998).

12 The Sure Start programme consists of locally managed projects aimed at reducing social exclusion among children up to 5 years old in deprived areas. It has been announced that Sure Start is to be rolled out across the country into other areas. Connexions is a service that offers advice, guidance and support to young people aged 13–19 across England.

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Campaigning for and campaigning against prisons: excavating and reaffirming the case for prison abolition

Mick Ryan and Joe Sim

Introduction

> An abolitionist approach…would require us to imagine a constellation of alternative strategies and institutions, with the ultimate aim of removing the prison from the social and ideological landscapes of our society. In other words, we would not be looking for prison-like substitutes for the prison, such as house arrest safeguarded by electronic surveillance bracelets. Rather positing decarceration as our overarching strategy, we would try to envision a continuum of alternatives to imprisonment – demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care for all, and a justice system based on reparation and reconciliation rather than retribution and vengeance (Davis 2003: 107).

As we pass the mid-point of the first decade of the new millennium, raising the possibility that prisons in their present form could (or should) be abolished is likely to be dismissed as the whimsical and outmoded fantasy of a few tired 1960s political activists and/or ivory tower, academic idealists. In Western Europe, North America and indeed throughout the world, the drive towards more intensive and intrusive forms of state and social control seems to be accelerating and, with this acceleration, has come an expanded public and private penal system. In 2003, more than 8.75 million people were confined in 205 countries with half of them detained in just three jurisdictions: the USA, China and Russia (Walmsley 2003; see Chapter 5, this volume). Notoriously, England and Wales had by this point become the prison capital of Western Europe, with an imprisonment rate of 142 per 100,000. By July 2005, the average daily population had climbed to 76,500, a rise of 15 per cent since 1999. Projected figures indicated that the average daily population would be 91,000 by 2010 (*Guardian* 27 June 2005, 27 July 2005). But more worrying than any *projections*, Home Office figures released in 2004 revealed that 111,600 people were sentenced to immediate custody and 186,500 were

given community sentences in 2002. Both figures were the highest recorded (cited in Sim 2004a). It is a population that is overwhelmingly drawn from the economically and politically powerless, disproportionately racialized and increasingly female.

While many complex factors are at work (Ryan 2003), this punitive expansion has largely been driven and legitimated by a process of 'authoritarian populism' (Scraton 1987; Hall 1988: 7) which, while not achieving hegemony (as the surveys in England and Wales and elsewhere demonstrate, the public is less punitive than politicians claim), has none the less become central to the worldviews of politicians, judiciary and the wider population who have ideologically become locked into a deep-rooted fear surrounding a risk-filled present and an equally deep-rooted melancholic trepidation about an uncertain future (Young 1999; Garland 2001). At the same time, offenders have been confronted with alternatives to custody, built on a discourse of 'punishment in the community'. Taken together, the institutional and non-institutional have created an edifice of punishment which appears to be both unshakeable and unyielding in the ongoing conflict to maintain law, restore order and reduce risk to communities beleaguered by the activities of feral atavists who, according both to the New Labour government and their Conservative opponents, are either unwilling or unable to 'responsibilize' themselves and participate in the multifarious benefits offered by twenty-first-century, globalized, consumer capitalism.

Accompanying this considerable expansion of the penal apparatus in Western Europe and North America has been the explicit requirement of the New Right that penal services should be delivered economically, if necessary by reorganizing them into competitive markets, and that they function with full efficiency. This is to say, that state agencies and their new private partners should indeed 'responsibilize', 'redeem' and 'normalize' the socially excluded, working through a whole range of heavily promoted offender behaviour programmes which, allegedly, really do 'work' with offenders, including Reasoning and Rehabilitation, Enhanced Thinking Skills, Problem Solving and Controlling Anger and Learning to Manage It (CALM) (Sim 2005; see Chapter 26, this volume).

In this chapter we want to consider these developments within the theoretical and political context of abolitionism. We will do this by concentrating mainly on England and Wales as a case study. First, we provide a brief historical overview of the penal reform lobby as it existed in the immediate postwar period and explore the challenges to that lobby that appeared in the late 1960s and early 1970s which emanated from a number of newly formed radical prisoners' rights organizations. As we demonstrate, this significantly altered the politics of penal reform. Secondly, we explore the role of the state both in abolitionist thought and with respect to the politics of the traditional penal reform lobby. This is, in part at least, an excavation of some of the debates that surfaced in the 1970s and 1980s. Thirdly, we consider the pressures which helped to relegate this debate by producing a new choreography for reform around the Woolf Report, privatization and managerialism. Next, we consider the recent work of Thomas Mathiesen and Angela Davis and their arguments for the retention of an abolitionist strategy in the twenty-first century.

Finally, we conclude by challenging the caricatures that continue to surround abolitionist thought and argue for an abolitionist strategy that confronts the stultifying political and intellectual culture of contemporary modernity that is dominated by short-term, pragmatic expediency with respect to law and order in general, and crime and punishment in particular.

Penal reform in the postwar period

One of the distinguishing features of the British system of government in the immediate postwar period was its highly centralized nature. All roads led to Whitehall, where elected senior politicians in charge of the great departments of state worked with permanent civil servants, and accredited outside experts to map out the details of Britain's postwar Welfare State. Nowhere was this more evident than in the Home Office which, in the early 1960s, consolidated its already iron grip on the penal system by incorporating the Prison Commission – the mid-Victorian quango ostensibly in charge of prisons – into its fiefdom. Those operatives who actually ran the prison system (for example, prison officers, medical officers and governors) were rarely asked for their opinions on major issues of policy during these years. Or when they were asked, they were mostly ignored (Thomas 1972).

Given the highly centralized nature of policy-making at this time, it was inevitable that those campaigning around prisons should direct their attention towards Whitehall. The leading campaigners were mostly found in the Howard League for Penal Reform whose small, London-based and professionally educated membership had the inside track in terms of *access* to senior Whitehall civil servants and key members of the Prison Commission. Through close personal contacts (and family ties) with those in power, its overlapping membership on Home Office advisory bodies and its own (and not inconsiderable) body of legal expertise, the League played an important role behind the scenes in helping to shape Britain's postwar penal policy (Ryan 1978; Loader 2006).

The orientation of that policy, at least in theory, was directed more towards welfare than punishment (although how much this welfare orientation translated into practice on the ground given the harsh disciplinary ethos of the majority of prison officers is a matter of debate). The Labour Party, in particular, took the view that a good many of those who came into contact with the penal system had been victims of unbridled market forces and were, therefore, more in need of social support rather than simple punishment. However, this view was tempered by a cross-bench distrust in Parliament of 'do gooders' who sought to extend this liberal sentiment to the 'undeserving' rather than the 'deserving poor'. The consequence of this was a modest programme of penal reform which confidently reaffirmed the centrality of the prison as a vehicle for disciplining and reforming the poor and the powerless (Ryan 1983).

This 'top down' way of doing business around the welfare consensus was, as we have already suggested, not uncommon. Right across government in the immediate postwar decades it was grudgingly accepted that the 'men

from the Ministry' probably knew best and, buttressed by a highly restrictive Official Secrets Act and, latterly, by the threat (and use) of the insidious libel laws, politicians and civil servants were able to create the framework of the modern Welfare State without the level of public scrutiny that we would now take for granted (Rose 1965). This elite policy-making style was compounded in penal matters by the conviction among the 'great and the good' in both the major parties that penal reform was not popular with the public; that the more the public became involved in making policy, the more repressive that policy would become. Public opinion therefore became something to be actively 'managed' or 'circumvented' rather than persuaded, while prisoners' opinions were non-existent in the political and policy debates as well as at the level of popular consciousness.

This picture of the postwar penal lobby as a small coterie of privileged, well connected, self-satisfied reformers who did little to engage with the public to secure significant changes in the prison system is not a flattering one. And perhaps it does less than justice to those reformers who joined forces across the political divide in an effort to push penal reform higher up the political agenda at a time when other social priorities, like health and education, were clearly more pressing. None the less, while the Criminal Justice Act 1948 was not quite the dinosaur it has been painted, and the Homicide Bill 1957 was more of a breakthrough than the National Council for the Abolition of Capital Punishment would have cared to admit, there was little on the agenda of postwar penal reform to challenge the potential of the prison as a mechanism to deal with those who had fallen outside the progressive social democratic consensus. Indeed, all that was required was just a little more knowledge – as promised in the 1964 Labour Party document, *Crime: A Challenge to Us All* – and the prison could fulfil its disciplinary and reforming promise.

The fragmenting consensus

As in many other areas on the political landscape, this cosy world of penal reform inhabited by politicians, civil servants and reform groups was severely disrupted and challenged in the 1960s. Partly prompted by Britain's perceived economic decline, the top-down approach through which policy was constructed and delivered was confronted by a new generation of political activists who sought to secure more radical change by campaigning from below, bypassing the traditional machinery of central government with its array of obedient advisory committees. Instead of relying on civil servants, co-opted Whitehall experts and establishment pressure groups at the centre, these activist groups facilitated the development of new and *alternative realities* which were to be provided by those at the receiving end of the disciplinary network – by prisoners themselves, mental patients, benefit claimants and drug users – those, in other words, who had remained invisible and marginalized by the very process that was theoretically supposed to be offering them salvation and a road back to some kind of non-deviant normality. The emergence of new campaign groups, such as the National Prisoners' Movement (PROP) with its call for the unionization of prisoners *and* direct action to defend

prisoners' interests, Radical Alternatives to Prison (RAP) and Release, was significant not only because they sought to empower those contesting state control on a routine basis but also because their message often had a wider political resonance.

In general, many of those involved in these groups sought to question the historic compromise between capital and labour which underpinned the postwar welfare consensus, viewing much of the existing disciplinary network, and not least prisons, as serving the interests of capital rather than empowering those at the margins (Ryan 1978). This was unsettling for the privileged, liberal, metropolitan elite that had dominated the movement for prison reform through groups like the Howard League and NACRO, as it was for other architects of the wider Welfare State, including the Labour Party. More particularly, and arguably more challenging for the conventional penal lobby, was the growing belief among these new radical groups that prisons were incapable of being reformed; that the only strategy was to work for prison abolition. While the tactics to achieve this radical goal were a matter of much debate (Mathiesen 1974), discussions about the theory and practice of abolitionism began to be seriously considered both in the UK and in Western Europe (van Swaaningen 1997). These discussions can be seen as a response to a penal and criminal justice system whose commitment to welfare and rehabilitation was increasingly regarded as an ideological sham behind which lay a punitive system of disciplinary regulation which contributed, however tangentially, to the unequal distribution of power in a deeply divided and increasingly fragmented social order.

The consequence of these critical interventions, underpinned in Britain at an academic level by the sociologically driven National Deviancy Conference, was that, by the early 1980s, there was an enlarged, diverse and fractured policy network around imprisonment in England and Wales with some lobby groups campaigning for prisons, still believing that they could be improved to deliver reform, while other groups campaigned against prisons, arguing instead for alternatives to custody at every turn, even envisaging, in some cases, *A World without Prisons* (Dodge 1979).

It is also important to acknowledge that all social movements contain elements of contradiction and overlap, nor are they static. Indeed, it could be argued that the emergence of these new, more critical groups had a counter-hegemonic impact on the more traditional lobby, to some extent radicalizing them. So, for example, during the 1970s, the Howard League engaged with RAP to argue through the strategic possibilities around abolition, while NACRO sought to promote a whole range of voluntary alternatives to prison. Furthermore, the official May Report (1979) questioned whether, on the basis of the government's own evidence, the objective of the prison system could still be said to be 'reform', opting instead for 'humane containment', while the Criminal Justice Act 1972 legislated for community service orders which soon won great favour among liberal magistrates and judges, though arguably sometimes for the wrong reasons (Home Office 1975). The prison system itself was also affected by these wider debates. For example, it was destabilized by the national prisoners' strike in 1972, and by the Prison Officers' Association's (POA) uncompromising response to it (Fitzgerald 1977), by the

vigorous campaign against the notorious Control Units in 1974, and by the demonstration at Hull Prison in 1976. The state's brutal and racist response to the demonstration, which was exposed by PROP in a public inquiry instigated by the organization, and the legal challenges mounted on behalf of prisoners against the disciplinary hearings that took place in the aftermath of the demonstration, also presented a serious challenge to the state's ability to construct an 'objective truth' around prisons under the traditional blanket of secrecy that had prevailed since the early twentieth century.

As important as all these developments were, however, they did not seriously undermine the central role of the modern prison (Fitzgerald 1977; Fitzgerald and Sim 1979). Radical critiques of the penal apparatus *had* penetrated public discourse, ensuring that its central disciplinary purposes were no longer entirely uncontested in the reform lobby, and some genuine radical alternatives to custody were pioneered (Dronfield 1980). However, the prison retained its position as *the* symbolic, disciplinary institution at the centre of what was becoming an ever larger and increasingly complex penal network (Cohen 1985). Penal policy also remained firmly under state control, run by Whitehall civil servants who were theoretically accountable to Parliament through elected ministers. In practice, the power of the prison to punish remained largely in the hands of a hidden and unaccountable group – the prison officers – whose discretionary capacity for often violent interventions into the lives of the confined remained undiminished.

We shall return to the question of the impact of the radical prisoners' rights movement below but, before considering this, we want to excavate (and elaborate on) the debate about reform at this time as this issue goes to the heart of the abolitionist critique of the traditional reform lobby.

Abolitionism, reform and the state

> 'reform'…is isomorphic, despite its 'idealism', with the disciplinary functioning of the prison (Foucault 1979: 271).

Central to the abolitionist position has always been a critique of the penal reform lobby and its detrimental and deadening impact on the debates around prisons. Abolitionists, while recognizing that *some* reforms at *some* historical moments may have enhanced the position of the confined, would also maintain that the prison reform movement more broadly has, however unintentionally, helped to reproduce the dominant discourses that the prison is the *natural* response to crime and deviance. As Angela Davis has noted: 'As important as some reforms may be – the elimination of sexual abuse and medical neglect in women's prisons, for example – frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison' (Davis 2003: 20).

In some respects this should not be surprising for, as Michael Ignatieff pointed out in 1978, from its very inception the liberal penal reform movement, led by the self-flagellating John Howard, was caught in an ideological contradiction where humanizing prisoners was undercut by the drive towards 'disciplining

their bodies and reconstructing their minds' (Sim 1990: 73). For Ignatieff, the rhetoric of reform was built on a process of mystification that legitimated 'the further consolidation of carceral power' (1978: 220). Ignatieff's work appeared at a rich moment for abolitionist thinkers. Mathiesen's *The Politics of Abolition* (1974), published four years earlier, was followed by Foucault's *Discipline and Punish* (1975), Ryan's *The Acceptable Pressure Group* (1978), Fitzgerald and Sim's *British Prisons* (1979) and Mathiesen's *Law, Society and Political Action* (1980), all of which raised a series of analytical questions about the politics of liberal reform, its relationship to the state and its role in the consolidation of penal power both historically and contemporaneously. These issues, in turn, were tied in to a broader consideration of the role of the prison in the maintenance of a deeply divided social order. If the prison worked at all, it worked for the reproduction of that order rather than for the salvation of the confined.

This critical work had an immense impact on those campaigning around the prison in the 1970s and 1980s. It also appeared at a key historical moment which saw the emergence and consolidation of the New Right and this bloc's electoral success in the UK and the USA. Beginning with the election of the first Thatcher government in May 1979, the British state's response to crime and disorder was built around an authoritarian discourse that hegemonically cemented the ruling new-right bloc and the wider population into the politics of 'regressive modernization', dragging the society forward by taking 'us backwards' (Hall 1988: 164). The consequences of this for the penal system, and prisons in particular, are well known. By the early 1980s the government had committed itself to the biggest prison-building system since mid-Victorian times. Sentences for many offences, already long, were substantially increased while parole was made more difficult (Ryan and Sim 1984). The Home Secretary went on to announce that there were to be no limitations on the size of the overall prison population and that the government was committed to imprisoning all those that the courts thought should be locked up. The intensification in punishment was reinforced in the 1980s – a time of high unemployment, bitter strikes and inner-city disturbances – by a number of parliamentary debates on the restoration of the death penalty and the popular demand that life sentences should 'mean life'.

At this time, key liberal campaign groups (such as NACRO) were further incorporated into the state's expanding penal/disciplinary network. In one financial year alone, 1987–8, NACRO's income (mostly derived from the government for retraining and resettling offenders) reached a staggering £79 million (Wilson 2001). Less compliant lobby groups were mostly marginalized. Granted, the emergence of the Prison Reform Trust in 1981 went some way towards compensating for the Howard League whose certainties had been challenged by the debate over reform versus abolition, but its reform agenda as a self-confessed 'creature of the liberal establishment' was timid (Wilson 2001). In truth, neither those in charge of the Howard League at the time nor those behind the new Prison Reform Trust had any real appreciation of the weight of the ideological shift that was taking place. However, it quickly became clear to groups like RAP that Conservative politicians were more interested in listening to populist red-top editors than to the traditional penal

lobby's 'pissing liberals' (or self-proclaimed government 'experts') (Gilmour cited in Sim 2000: 322).

RAP's response to the intensification in state authoritarianism was to come back to the issue of reform and its relationship to abolitionism. For Tony Ward, editor of *The Abolitionist*, RAP's journal, while many reforms were simply 'a sugar coating on a toxic pill', it was also important to 'gain support for reforms of the penal system which while making it more humane will also *show up its inherent limitations and contradictions*' (cited in Sim 1994a: 269, emphasis in original). This meant that it was possible to call for the immediate abolition of the secrecy and censorship that dominated the prison system or the abolition of the prison medical service (which eventually did happen), while simultaneously being able to defend institutions like the Barlinnie Special Unit as a model of confinement for the future. As Ward noted, while liberals and abolitionists shared a number of medium-term goals with regard to prison reform, the former group failed to share:

> our political outlook: RAP's fundamental purpose is, through research and propaganda to educate the public about the true nature, as we see it, of imprisonment and the criminal law; to challenge the prevailing attitudes to crime and delinquency; and to counter the ideology of law-and-order which increasingly helps to legitimate an increasingly powerful State machine (cited in Sim 1994a: 269–70).

Unlike those involved in the traditional lobby, those involved with RAP also recognized that crime was a social construction in that acts and activities which were labelled as criminal – particularly those classified as violent and dangerous – depended on who had the power to label them as such. This position was further refined in the light of the work of feminist writers and activists such as Jill Box-Grainger, who forced the organization to consider the impact of sexual violence on the lives of women individually and collectively (Sim 1994a). For Ryan and Ward, this development raised crucial issues about the nature of power itself:

> No longer did the world appear to be neatly divided between the 'powerful' and the 'powerless', nor were 'crimes of the powerful' the sole prerogative of the ruling class, once the concept was extended to take account of the power of men over women, of white people over black and of adults over children. RAP was one of the first groups in the lobby to engage seriously with the issue of child sexual abuse (cited in Sim 1994a: 273).

The early 1980s also saw the emergence of two groups whose presence on the political landscape was to challenge seriously, not only the traditional lobby's emphasis on piecemeal reform but also because of its acquiescent relationship to the state, its neglect of a range of key issues around prisons. First, the emergence of INQUEST, founded in 1981, brought the disturbing issue of those who had died in the custody and care of the state to public and political prominence (Ryan 1996a). Secondly, the emergence of Women

in Prison, in 1983, formed as a pressure group to focus on the desperate but invisible plight of women in prison, also brought into the public and political domain a series of issues that had been neglected by the traditional lobby group and, more widely, by politicians and the mass media (Carlen *et al.* 1985). The radical orientation of these groups and, crucially, their adoption of a theoretical and political perspective that focused on issues of power and powerlessness, ensured that a different, more challenging and more critical series of questions began to be asked about deaths in custody and women in prison. Significantly, these groups also began to exert a counter-hegemonic influence on the more traditional reform groups by dragging them on to a more critical terrain.

Refurbishing reform: Woolf, privatization and managerialism

During the 1980s the critical debates about abolition/reform which we have sketched out were partly sidelined by the continuing, ongoing crisis in prisons which was manifested around overcrowding, prison officer militancy and the challenge to the legitimacy of the system in the shape of disturbances by prisoners themselves. This latest crisis reached its apotheosis in April 1990 with the 25-day demonstration at Strangeways. For liberals in the penal lobby, the state's response to these disturbances in the form of the Woolf Report appeared to herald a significant shift in the politics of reform in that a senior judicial figure was calling for a reappraisal in the philosophy and practice of the penal system and in the treatment of prisoners to the point where he argued that 'justice' was to be taken as seriously by the prison authorities as the twin pillars on which the prison system had traditionally rested, which were 'security' and 'control' (Woolf 1991).

Woolf's report 'transcended the divisions between politicians, penal reformers and media personnel and…united the different interests of these groups on the ideological terrain of penal reform' (Sim 1994b: 42). However, for abolitionists, Woolf's recipe for reform was problematic. Not only was his agenda quickly subverted and undermined by the Conservative government's ongoing law and order drive but, more crucially, the proposed reforms also did little to challenge the role and place of the prison as a punitive institution in a divided society. A further significant weakness in the report, and one which had been highlighted by radical prisoners' rights organizations over the previous two decades, was Woolf's failure to confront the deeply punitive and authoritarian tendencies that lay at the heart of prison officer culture and which continued to undermine seriously more enlightened policies and practices towards the confined (Sim 1994b: 37–8).

Woolf's agenda was also compromised by the struggle against private prisons. For those in the traditional lobby such as the Prison Reform Trust, the Howard League and NACRO, the prospect of private companies making a profit out of inflicting pain was bordering on the unethical. Others, most notably the POA, saw privatization as a threat to their members' conditions of employment and, ultimately, their job security in the competitive market's drive to reduce costs. More critical commentators (Ryan and Ward 1989)

argued that privatization would prove to be a vehicle for expanding the prison population. The private sector would at some stage offer to pick up the initial capital cost of building new prisons, thus enabling the Treasury to defer the full cost of its declared policy to provide even more prisons.

The fierce campaign against private prisons diverted resources away from the ongoing struggle to consolidate Woolf's liberal agenda. Yet the lobby could not have ignored this fight, not least because privatization was presented by some of its Conservative supporters as yet another new vehicle for reform: the private sector would deliver what the state had demonstrably failed to achieve for over a century, namely, prisons that truly 'redeemed' their inmates (Ryan 1996b). But the lobby was brushed aside on this issue (Windlesham 1993), and it is arguable that the pace of prison privatization was only slowed by a directive known as the European Transfer Undertaking Protection of Employment (TUPE), which provided that, where a public service was transferred into the private sector, existing workers' conditions of service had to be protected (Ryan 1996b). However, while this directive limited the market testing of existing prisons, contracting out the building and management of *new* prisons gathered momentum, and there was even a threat to privatize aspects of probation (Ryan and Ward 1990/1).

In addition to introducing market forces, the Conservative government also sought to improve the accountability of the prison service through the implementation of new public management (NPM) techniques borrowed from the private sector. These were aimed at allowing the government to disaggregate the Prison Service while, at the same time, increasing its control over management by the introduction of key performance indicators scrutinized by external audit. These indicators came to include auditing the number of escapes, the number of prisoner disciplinary offences and the time prisoners spent out of their cells. Like many other public sector workers and managers, prison staff came to be far more worried by efficiency audits than they ever had been about visits from the Chief Inspector of Prisons. Indeed, a serving Director General of the Prison Service Agency was to claim that NPM techniques had done more to improve the performance of the Prison Service competition than any other innovation, including the arrival of private prisons (Ryan 2003). The persistent complaint by prison administrators that this improvement, if that is what it was, was being achieved in practice by taking away their freedom to manage the newly disaggregated prison system was naively to miss the point. Neoliberalism as embodied in NPM is about governing and controlling more, not less, as managers across the public sector have learnt to their cost as they scramble to meet centrally imposed targets on limited resources.

Taken together, the changes we have outlined helped to transform the Prison Service towards the new millennium. What had once been a highly centralized service, run by public servants on uniform lines, became instead a competitive, binary system in which a growing number of prisoners and prison managers/operatives worked under different conditions of employment (and imprisonment) and for different rates of pay. This changed the policy-making network surrounding prisons. In the first place, it became global. Groups like the Corrections Corporation of America and Wakenhut moved into the

British (and Australian) penal market-place, and the normative discourse of campaigns around the prison became driven, less by notions of reform, and more by questions about value for money. The discourse of reform around the Woolf Report was not entirely rejected, it was simply overlaid. Inevitably, too, the policy network became far more complicated as auditors and inspectors became prominent, sometimes helping to shape normative goals that had once been the prerogative of liberal elites in the immediate postwar period.

The establishment of the liberal Penal Affairs Consortium in the early 1990s can reasonably be interpreted as a rational response to this changing policy landscape; it was an attempt to create a concerted, united front in punitive times. However, internal differences over its reform agenda (Wilson 2001) and the changing nature of British governance towards the millennium meant that it never regained the inside, single track as a lobby group that had once been the privilege of the Howard League, nor did it ever stand much chance of stemming the hard-edged, populist thrust of Thatcherism (and its ideological successor, Blairism) which was (and is) driven by much wider, and stronger, political considerations.

New Labour and the reformed prison

After New Labour came to power in 1997, Woolf's liberal, reformist agenda was relegated still further. Instead, what emerged were a series of proposals which affected the prison system at a number of different levels. First, private prisons were to remain. Secondly, the managerial reforms, which had dominated Conservative thinking, continued and arguably intensified in terms of the auditing of, and setting targets for, the public services. Thirdly, and more recently, under the rubric of modernization, the prison and probation services were amalgamated to create a National Offender Management Service (NOMS). This process began in 2004, and it is expected to be completed by 2009. Suggested by an internal Home Office review (Home Office 2001), the amalgamation is designed to bring the two services together in order to reduce reoffending rates by 10 per cent (another flexible target?) by ensuring that the 'Custody Plus' sentences introduced by the Criminal Justice Act 2003 are more effectively managed. This reorganization is intended to have a major impact on the way penal services are to be delivered.

A comprehensive regional structure is promised in which markets will ensure the efficient allocation of service delivery across the whole penal apparatus, from prisons to punishment in the community. In these new, 'joined-up' times, it does not matter much whether the services in question are delivered by the state, by for-profit organizations or by voluntary providers. The more important point is to guarantee *contestability*, to ensure that in service provision *value is added* and to conduct research in order to identify *what works*. Some lobby groups, NACRO for example, clearly see this blurring of the public/private boundary in the disciplinary network as providing further opportunities for the organization's growth as it is already thinking hard about how to engage with the new market-place (NACRO 2004).[1]

Legislation to secure these changes in the form of The Offender Management Bill (2006/7) is currently (April 2007) before Parliament.

Thus, what has emerged from Blair's government is a set of proposals that are designed once again to reform/integrate the prison on the ground without challenging its extraordinary capacity to deliver punishment and pain. These reforms are designed to shift the discourse around the prison from the less eligible, nineteenth-century bleakness of Michael Howard's philosophy of 'prison works' to the sleek, late twentieth-century managerial smoothness of Jack Straw's 'working prison' built around:

> a combination of joined-up policies, practices and programmes. In official and expert discourses, the confined are socially constructed as socially excluded subjects whose reintegration will allow them to participate in the globalized marketplace, as opposed to individuals whose identities have been forged, and social subordination maintained through the dialectics of class, gender, 'race', age and sexual divisions. These programmes are being built into an expanding system through the construction of new institutions and in the 're-rolling' of former male prisons which are being transformed into female prisons. Thus the 21st century working prison has arrived (Sim 2005: 222–3).

For Pat Carlen, this development can be understood through the concept of 'carceral clawback' where reforms are constantly being incorporated and reincorporated into the system to the point where 'there has been no serious attempt to develop strategies for a reduction in the use of imprisonment' (cited in Sim 2005: 223). New Labour is therefore the latest link in a punitive chain which stretches back two centuries and which continues to accept the inevitability and naturalness of the prison in the fight against crime. In that sense, to paraphrase Foucault, the New Labour prison *is* the reformed prison.

Towards an abolitionist future

At the present moment the prison has achieved a hegemonic status that has made it virtually impregnable to sustained ideological and material attack. As politicians and media commentators have mobilized a deeply regressive and reductionist discourse around law and order, with a concomitant consolidation in the authoritarian clampdown discussed earlier, so the abolitionist critique of the prison is socially constructed as the idealistic ramblings of an unreconstructed, dislocated few who are out of touch with the 'real' feelings, fears and sensibilities of the hard-working, respectable many.

It is in this febrile context that acquiescence towards the prison is constructed. It is an acquiescence which, as Thomas Mathiesen has noted, is organized around a process of 'political "silencing"', by which he means:

> the attitudinal and behavioural subordination to political standpoints which are regarded as authoritative in the society or group, so that acquiescence follows and given standpoints are accepted without protest.

> 'Silence' in this sense is a continuum, from silence despite disagreement (grudgingly you go along) to silence as an accepting attitude (you accept the standpoint, not even noticing that silencing has taken place, or at least not taking the fact of silencing seriously) (2004: 9).

Mathiesen's insight is persuasive. To borrow a phrase from Foucault (cited in Cohen 1981: 220) – which he applied to the state of criminology – despite the 'garrulous discourse' around the prison – scores of official reports, numerous academic research projects and seemingly endless media discussions – which in turn leads to what appears to be a highly visible debate about penal policy, in reality there is also a deeply embedded acquiescence to state-defined 'truth' which silences fundamentally radical solutions, particularly abolitionist solutions, to the problem of the prison. How, therefore, can a critical perspective be developed and sustained towards prisons and criminal justice policy more generally which both challenges current commonsense and political mentalities and offers credible policies that will respond positively to the offender and offer protection to the wider society? In other words, how can the current bleak situation be contested and overturned?

To begin with, it is important to recognize, as Gramsci did, that, while a bloc or an idea can strive for hegemonic domination, that domination is never completely achieved. In short, hegemony is 'fought for, won, lost, resisted' (Bennett 1986: xv). This point can be applied to the question of penal power and to the typology of resistance which Mathiesen has developed. Within this typology he calls for 'the creation of an alternative public space in penal policy, where argumentation and principled thinking represent the dominant values' (2004: 106). There are three dimensions to securing this space. First, there is what he terms 'liberation from the absorbent power of the mass media, especially television' (2004: 106). In focusing on the issue of absorption he develops a theme he first identified in his 1980 text, *Law, Society and Political Action*. Here he discussed the power of the absorbent state and in particular the processes which encouraged a reformist gradualism and consensual co-operation towards penal policy. For Mathiesen, absorption operated through a strategy of 'defining in', which allowed the state to co-opt those organizations concerned with the development of social policy in general and penal policy in particular. These organizations were allowed to comment on 'official reports, legislative bills etc' so that '"everyone is heard" – and thus everyone is involved' (1980: 286). At the same time, an equally powerful strategy 'defined out' those policies and practices that challenged the punitive fundamentals of the system. Critics of the system were ideologically constructed as irresponsible non-conformists, divorced from the realities of life, 'oppose[d] to short-term improvements', extremist in their beliefs and who were supported by extremist organizations (1980: 288–91). Taken together, these processes operate hegemonically to construct an 'objective truth' around prisons: 'the more absorbent and defining-in the state becomes, the more *reasonable* it will appear *to define out those who nevertheless are unwilling to conform* (1980: 288, emphasis in original). Thus, while radicals are likely to find it impossible 'to refrain completely from

media participation', Mathiesen counsels against gratuitous participation in these institutions as:

> it is certainly possible to say 'no!' to the many talk shows and entertainment-like 'debates' which flood our various television channels, and, most importantly, it is certainly possible not to let the definition of our success and our very existence be dependent on our face being constantly on the television screen (2004: 106).

Secondly, Mathiesen points to the enduring role of grassroots organizations which emphasize 'network organization and solidarity' as pivotal to a continuing spirit of resistance to the operation of power. As he notes, these movements, through the baleful influence of the mass media, have lost faith in themselves and therefore need to engage in a process based on the 'restoration of self-esteem and feelings of self worth' (2004: 106). This point has been developed by Julia Sudbury who argues that 'an effective challenge to the interlocking systems of militarism, incarceration and globalization demands the establishment of broad-based, cross-movement coalitions in the US and internationally' (2004: 27). For her:

> cross-fertilization between movements will encourage activists to address wider issues that are not always made visible in issue-based campaigns. For example, intensified analysis of globalization might encourage prison abolitionists to consider the need for anti-capitalist economic models as a prerequisite for a world without prisons (2004: 27).

In the USA, these strategies and links have been pursued by groups using the new communication technologies like the Internet to create their own 'alternative public space[s]' (Mathiesen 2000: 193). These groups include Critical Resistance, which is working 'to build an international movement to end the Prison Industrial Complex by challenging the belief that caging and controlling people makes us safe' (www.criticalresistance.org). The organization's website lists a range of new policy enactments which a number of states, Democrat and Republic, have introduced:

> to reduce their prison populations, create programs that productively meet the needs of individuals coming home from prison and find fiscal savings in their prison budgets. The over all message is clear: reducing the prison population and prison spending is the only way to create genuine public safety. (www.criticalresistance.org)

In England and Wales, the links between different social movements are much less developed as 'prisoners are still ghosts who rarely haunt the consciousness of even the most well-informed radicals in these [broader social] movements' (Sim 2004b: 47). However, what has transpired is that the strategies pursued by groups like INQUEST, which, as noted above, have direct interpersonal links with those who were involved with Radical Alternatives to Prison (Ryan 1996a) have illustrated how an abolitionist

perspective can inform radical practice. To use Davis' phrase, INQUEST (and Women in Prison) can be seen as providing an 'abolitionist alternative' (2003: 105) for analysing and responding to deaths in state custody. The interventionist work of the group has impacted hegemonically on a number of liberal, state and non-state organizations including the Howard League, NACRO, the Prison Reform Trust and the Chief Inspectorate of Prisons, as well as those involved in debating and framing legislation in Parliament. At the end of 2004, the Joint Committee on Human Rights, drawn from members of the House of Lords and House of Commons, published its report, *Deaths in Custody* (Joint Committee on Human Rights, 2004). Arguably, the critical nature of this report, and the human rights discourse which underpinned it, would not have happened without the influence and impact of INQUEST which 'as an organization has successfully avoided state co-optation while providing a model for abolitionist praxis from which other radical groups in different countries could learn' (Sim 2004b: 48).

Mathiesen's third point of resistance involves two dimensions: a 'restoration of the feeling of responsibility on the part of intellectuals' as well as an 'increase in a wide range of resources for victims of crime [which] would help the victims as well as ameliorate attitudes towards offenders' (2004: 106–7). In terms of intellectuals, Mathiesen argues that social scientists should attempt to 'revitalize research' (2004: 107). This is a crucial issue perhaps easier to articulate than to implement. As a number of writers have pointed out (Tombs and Whyte 2003; Walters 2003; Hillyard *et al*. 2004), the funding crisis in higher education in the UK and the liberal empiricism of traditional criminology have meant that the discipline has been pulled on to a terrain in which obtaining grants from any source has become for many criminologists their *raison d'être*, thus abrogating even further the discipline's moral responsibility in both critiquing the existing arrangements around crime and punishment and offering alternatives to the prevailing political discourses in the area. In short, it is a discipline that has become, to quote Pink Floyd, 'comfortably numb'.

A similar development can be seen in penology particularly with respect to the impact of the discourse of 'What Works'. As politicians, state servants and academics have articulated this discourse and, in the case of the Home Office, allocated funds for research accordingly, so prison researchers, under pressure from an underfunded and often desperate higher education sector, have been proactive in seeking these funds. This has had profound implications with respect to the development of a critical perspective on prisons in that the discussion concerning 'What Works' with offenders has been restricted to an increasingly narrow and authoritarian terrain. Consequently, those programmes and policies which *have* worked, and *continue* to work with offenders (for example, the Barlinnie Special Unit, Parkhurst C Wing, Blantyre House resettlement prison, Grendon Underwood and the Carlford Unit for young offenders, which would be regarded as positive models of confinement by abolitionists) have been mercilessly attacked, closed down or remained on the periphery of the prison estate, constructed as idealistic 'experiments' while the prisons get on with the 'real' business of punishing offenders.

Such attacks have been built on the fact that these institutions, and many of the staff involved with them, provide a fundamental challenge to the law-and-order discourse of successive governments and the narrow, punitive parameters on which their vision of penality is based. They provide a glimpse of a different way to respond to offenders which is humane, empathic and supportive. This, in turn, makes their worthiness ideologically suspect. As David Jones has noted, Grendon Underwood 'is a model of decency and respect. Yet as that, it inevitably stands as a criticism of every other prison in the service' (2004: 5). In that sense, the discourse of 'What Works' has had a profoundly conservative impact on the debate around penal policy, perpetuating a narrow, reformist and reductionist perspective on how to respond to the confined while simultaneously distracting attention away from debates around what does *not* work with offenders (Sim forthcoming).

Conclusion

Abolitionism has been consistently criticized for its idealism, its naiveté and for its apparent disregard for the victims of crime and the often desperate depredations committed against them (Sim 2006). In particular, it has been characterized as a movement which would simply 'tear down the walls' and allow prisoners their freedom, irrespective of their crimes. These crass caricatures, and the 'straw men' which underpin them, have had an impact on the prisons debate in three distinct ways.

First, they have distracted attention away from the richness and subtlety in abolitionist thinking which, as noted above, *has* attempted to provide a model of confinement that recognizes that some individuals need to be detained because of their predatory behaviour. It is the *nature* of that confinement which is the issue for abolitionists. Pat Carlen's abolitionist vision for women's prisons provides a clear model for responding to the crimes committed by women without degenerating into either idealism or naiveté. As Carlen has argued:

> To reduce the prison population we must first reduce the number of prisons; to reduce the number of prisons we must first abolish certain categories of imprisonment. Women's imprisonment is, for several reasons, a prime candidate for abolition. Those reasons can, first, be derived pragmatically from the characteristics of the female prison population and, then, be related more fundamentally to *possible* shifts in the social control of women and *desirable* shifts in the relationships between women and men…*I am suggesting that, for an experimental period of 5 years, imprisonment should be abolished as a 'normal' punishment for women and that a maximum of only 100 custodial places should be retained for female offenders convicted or accused of abnormally serious crimes* (1990: 121, emphasis in original).

Secondly, these caricatures, particularly with respect to serious and dangerous crimes, distract attention away from the relationship between crime and social

harm, and the impact of both on people and populations. In other words, while it is clear that there are individuals who have committed serious crimes, as conventionally defined by the criminal law, there are a range of other activities which can be equally devastating for those who experience them which are ideologically and materially marginalized by the criminal justice system and beyond that the mass media. As Hillyard and Tombs have noted:

> Many events and incidents which cause serious harm are either not part of the criminal law or, if they could be dealt with by it, are either ignored or handled without resort to it…corporate crime, domestic violence and sexual assault and police crimes [are] all largely marginal to dominant legal, policy enforcement, and indeed academic agendas, yet at the same time [they create] widespread harm, not least among already disadvantaged and powerless peoples. There is little doubt, then, that the undue attention given to events, which are defined as crimes, distracts attention away from more serious harm. But it is not simply that a focus on crime *deflects* attention from other more socially pressing harms – in many respects it positively *excludes* them (2004: 13, emphasis in original).

In making this point, it could be argued that we are not saying anything new. Crimes committed by the powerful have been a focus of attention and analysis for some criminologists since Edwin Sutherland developed his series of papers on white-collar crime between 1940 and 1949 (Pearce and Tombs 1998: 92). Crucially, however, in 2005, the depredations committed by the powerful – individuals, organizations, institutions and states – remain virtually ignored by those in the mainstream of the discipline to the point where, 65 years after Sutherland's first paper, emerging paradigms such as 'crime science', and the very well funded research its protagonists carry out, can discuss 'new approaches to preventing and detecting crime' (Smith and Tilley 2005) without considering the depredations of the powerful and the policy responses to them.[2] The continuing failure to address these crimes by criminology has led to a reductionist and distorted theorization not only around dangerousness and social harm but also with respect to what actions get punished and what do *not* get punished in the world of twenty-first century capitalism. In this respect, the prison continues to exist and reproduce a vision of modernity that is based on delivering *in*justice rather than justice. As Morrison has noted:

> The relationship between conceiving global justice and modern forms of development is problematic, and one may suspect that a global justice is precisely what modernity is *not* orientated towards…the biggest non-punitive area that we inhabit is the global international system. The century just concluded perhaps saw the greatest amount of inter-human slaughter, rape, and destruction of property of any century; in partial recognition of which we even created a new crime, genocide, but in the face of which extremely few persons were ever punished (2005: 290, emphasis in the original).[3]

The third point to consider is that these caricatures continue to distract attention away from the fact that even on its own terms the prison is an immensely destructive institution, both for those held in captivity and for those families and communities left behind (Chapters 11 and 29, this volume). Foucault's famous seven-point list which documents the abject failure of the modern prison at the precise moment of its birth in the early nineteenth century (1979: 268–70) remains pointedly and poignantly relevant today. At the time of writing, HM Chief Inspector of Prisons published two reports. The first concerned the women's unit in Durham Prison. The report was based on an unannounced inspection, and the inspectorate found that six women remained in the unit:

> They were held in an environment that was even less suitable than the one we inspected last year. On all our tests of a healthy prison – safety, respect, purposeful activity and resettlement – the provision for women scored poorly…The Prison Service itself was well aware that this situation was having a seriously damaging effect on the few remaining prisoners. Three months before this inspection, representatives of the women's team at headquarters had noted that distress levels were very high among the women and that there was a real risk of suicide unless significant changes were made quickly. In the three months before the inspection, four women accounted for nearly a third of self-harm incidents among the prison's total population of over 700; and seven of the fifteen most serious suicide attempts in the prison as a whole had been carried out by women (2005a: 5).

The second report concerned Holloway prison. Here the inspectorate found that women in the prison 'felt noticeably less safe' compared with women in other prisons. This was due not only to:

> the unsafe built environment…but it also reflected the absence of systems and procedures that we expect to find in place for vulnerable women: proper reception and first night procedures involving residential staff, effective systems for identifying and dealing with bullying, positive engagement with women at risk of suicide or self-harm. Indeed, nearly a third of women claimed to have been victimized… Black and ethnic minority women felt particularly vulnerable. Standards of cleanliness were unacceptable: there were pest infestations, many communal areas were dirty, rubbish-strewn or poorly decorated. The problems of the physical environment were exacerbated by the fact that signage, throughout the prison, was either missing or misleading, so that it was impossible for prisoners (and some staff) to orientate themselves (2005b: 5).

These reports (and many more that are published each year by HM Chief Inspector of Prisons) not only provide an insight into the continuing corrosiveness of many prison regimes but they also illustrate that the prison crisis, so often discussed by academics, politicians and media commentators, is

also a crisis of liberalism in that this discourse can offer very little beyond the endless, debilitating cycle of crisis–reform–crisis. As Foucault has noted, 'word for word, from one century to the other, the same fundamental propositions are repeated. They appear in each new, hard-won, finally accepted formulation of a reform that has always been lacking' (1979: 270). Thus the key question that is always asked of abolitionists – is a world without prisons in their present form defensible and realizable? – should be turned on its head and instead it is liberal defenders of the reformist agenda who should be asked to justify their position. Can they, for example, imagine the world continuing with prisons in their present form, given their malignant capacity for destroying rather than rebuilding lives? Should we not be thinking about the prison as a dysfunctional entity, as a place of punishment and pain, which instead of delivering redemption for the individual offender and protection for the wider society, is more likely to contribute to the psychological immiseration and sometimes physical destruction of offenders and to the maintenance of an unjust and unequal social system?

Asking these questions, and presenting the damning evidence against the institution, means that it is the liberal defenders of the system, and the reform industry that they sustain, who need to make the case for the institution's retention. With two hundred years of futile history behind it, the bankrupt nature of that reformist defence remains undiminished. We acknowledge that getting penal lobby groups and politicians to accept our abolitionist message will not be easy. Harried by a punitive and sometimes ignorant tabloid press, liberal reformers today huddle together defensively, unwilling to think 'outside of the box'. We hope this chapter, and indeed this book, will inspire them to be more ambitious, to challenge the orthodoxy of reform and also to reach out beyond Whitehall to engage with the public, a public which in less deferential times increasingly refuses to be left out of the debate on contested penal questions like the future of the prison.

Selected further reading

Scandinavian and Dutch criminologists were at the forefront of the abolitionist movement in the 1970s and 1980s. Some of these criminologists, Louk Hulsman, Nils Christie and Herman Bianchi, for example, directed their attention beyond prison abolition, arguing that the criminal justice system had stolen the entire business of resolving disputes between ordinary people, placing it instead in the hands of professional lawyers and the state, a process that had to be reversed. For examples of this wider critique, see Christie, N. (1981) *The Limits to Pain*. Oxford: Martin Robertson; Bianchi, H. and van Swaaningen, R. (eds) (1986) *Abolitionism*. Amsterdam: Free University Press; and de Haan, W. (1990) *The Politics of Redress*. London: Unwin Hyman. As powerful as such critiques were, arguably British radical activists were more influenced by Thomas Mathiesen; (1974) *The Politics of Abolition*. London: Martin Robertson, and (1980) *Law, Society and Political Action*. London: Academic Press. These texts were not only more explicitly socialist but also they addressed the strategic and tactical concerns abolitionists faced as they sought to intervene against the prison and other forms of penal repression. For a detailed, British perspective on these debates, and the impact that the call for prison abolition had on liberal opinion, see Sim, J.

(1994) 'The abolitionist approach: a British perspective', in A. Duff *et al.* (eds) *Penal Theory and Practice: Tradition and Innovation in Criminal Justice*. Manchester: Manchester University Press, and Ryan, M. (1978) *The Acceptable Pressure Group*. Farnborough: Teakfield. For a view from continental Europe on these political struggles, see van Swaaningen, R. (1997) *Critical Criminology: Visions from Europe*. London: Sage. A full collection of *The Abolitionist*, the journal of Radical Alternatives to Prison, which contains a range of original writing on abolitionist theory and strategy, is held in the library of the Institute of Criminology, University of Cambridge. For a critique of the idealistic tendencies in abolitionist thought see Brown, D. and Hogg, R., (1985) 'Abolitionism Reconsidered: Issues and Problems' in *Australian Journal of Law and Society* 2, 2: 56–75.

American abolitionist thought is discussed by Davis, A. (2003) *Are Prisons Obsolete?* New York: Seven Sisters Press. In particular, she criticizes abolitionism for its lack of analysis of racism in the historical development of the prison, points to the processes through which gender structures prison regimes and considers strategies for abolishing American prisons. Sudbury, J. (2004) 'A world without prisons? Resisting militarism, globalized punishment and empire', *Social Justice,* 31: 9–30, develops these themes further and discusses the relationship between the processes of globalization, the development of the prison industrial complex internationally and the need for abolitionist groups to make political links with the anti-globalization movement. Carlen, P. (1990) *Alternatives to Women's Imprisonment*. Milton Keynes: Open University Press, outlines an abolitionist strategy for women's prisons, while Braithwaite, J. (2003) 'Restorative justice and a better future', in E. McLaughlin *et al.* (eds) *Restorative Justice: Critical Issues*. London: Sage, outlines the relationship between abolitionism and restorative justice. Bianchi, H. and van Swaaningen, R. (eds) (1986) *Abolitionism*. Amsterdam: Free University Press, and West, W.G. and Morris, R. (eds) (2000) *The Case for Penal Abolition*. Toronto: Canadian Scholars' Press, are two edited collections which bring various writers together to analyse different aspects of abolitionist thought, some of whom discuss the question of the crimes of the powerful and how abolitionists should respond to them. For how abolitionists have responded to the continued resilience of the modern prison see two texts from Thomas Mathieson, *Prison on Trial* (2000) and *Silently Silenced* (2004). See also Maeve McMahon's *The Persistent Prison?* (2000) and Nils Christie's *Crime Control as Industry: Towards Gulags Western Style?* (1993) which also deal with this issue.

Two websites also contain further reading on abolitionist thought. Critical Resistance (www.criticalresistance.org) provides detailed information on the activities of various abolitionist groups in America. http://www.alternatives2prison.ik.com/ is an abolitionist website for no more prisons an abolitionist group based in Britain and posts a range of information and articles concerning the debates on, and politics of, abolitionism.

Notes

1 NACRO is likely to pick up more work as a result of the government's intention, revealed in leaked Cabinet documents, to abolish the 42 existing local probation boards and replace them with '"new, smaller, more business-focussed bodies" that will phase in the radical extension of market testing probation services' (Travis 2005: 6).

2 Supporters of this paradigm also utilize studies in behavioural ecology to discuss human behaviour. Thus they point to 'optimal foraging theory' where animals when hunting 'aim to maximize the resources acquired while simultaneously

minimizing the consequent chance of getting injured (or eaten!) and the search time (or effort) involved'. They then ask: 'To what extent do offenders behave in this way?' (Johnson *et al*. 2005: 149).

3 Thanks to Barbara Hudson for pointing out this reference to us.

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Glossary

Adjudications
Internal disciplinary hearings for breaches of the Prison Rules. The prison governor is responsible for conducting adjudications and for deciding on any punishment that may be imposed in accordance with the Prison Rules.

Appreciative Inquiry (AI)
An approach to changing organizational culture that emerged from work on organizational management in the USA in the 1980s. AI is based on the premise that an organization which inquires into problems will keep finding problems, but an organization which attempts to find its strengths, accomplishments and best practices will discover a more positive representation which can be turned into positive action. Although developed as a management tool, AI has developed into a research framework and is used in a variety of different contexts including, since the 1990s, in UK prisons where the first application was at HMP Wandsworth following a poor Inspectorate report.

Argot
A form of slang, sometimes unique to the prison, but frequently borrowing from external cultures, including criminal groups and street jargon.

Audit
An approach that was originally developed in financial management as a means of ensuring accuracy and reliability of financial accounts. However, recent years have seen the expansion of this method as a tool for managing wider aspects of performance. An audit culture in prisons initially emerged as a means of measuring compliance with security requirements, but it has subsequently been applied to a wide variety of areas including an increasing focus on developing audit methodologies that measure quality as well as compliance.

Bifurcation
Coined by Anthony Bottoms in 1977, the term "bifurcation" refers to the differentiation between penalties for serious offences and those for minor offences. While prison sentences for serious criminals lengthen, and are sometimes imposed for indefinite

periods, the range of non-custodial penalties for minor offenders has also grown. In theory, bifurcation allows governments to control prison populations while still being seen to protect society from serious and persistent offenders.

BME prisoners

Black and minority ethnic (BME) prisoners are those prisoners from ethnic groups who do not self-classify as White British using the Census 2001 codes. These include Mixed; Asian/Asian British; Black/Black British; and Chinese/Other Ethnic groups. Each category can be further broken down to reflect national, regional or continental origins, e.g. Asian/Asian British – Pakistani or Black/Black British – Caribbean.

Category/'Cat'

Denotes the security classification of prison that all adult male prisoners are placed in. Category A inmates are 'dispersed' among the high security estate (which consists of five Dispersal prisons plus four additional high security prisons); Category B prisons accommodate prisoners for whom escape must be made very difficult; Category C prisons cater for inmates who have neither the intention nor the resources to attempt escape, while Category D establishments are intended to house individuals who can be trusted in open conditions.

Certified Normal Accommodation (CNA)

The 'uncrowded capacity' of a prison. CNA represents the good, decent standard of accommodation that the Prison Service aspires to provide all prisoners, and it is part of the Inspectorate's duty (as laid down in the Prison Act 1952) to ensure that it is not exceeded. In practice this has not been possible in recent years and many prisons operate above their CNA. At the end of January 2006, 78 prisons (58 per cent) were overcrowded, and 10 were operating at more than 150 per cent of their CNA (see www.prisonreformtrust.org.uk).

Close Supervision Centres (CSC)

Close Supervision Centres (CSCs) were introduced in February 1998 to replace the previous network of CRC units established after the Control Review Committee (CRC) report in 1985. Prison Rule 46 states that: 'Where it appears desirable, for the maintenance of good order or discipline or to ensure the safety of officers, prisoners or any other person, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Secretary of State may direct the prisoner's removal from association accordingly and his placement in a close supervision centre of a prison. Like its predecessors the CSC has proved controversial because of its emphasis on segregation and control rather than treatment and care.

Committee for the Prevention of Torture (CPT)

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is a Council of Europe organization with the right of unlimited access to places of detention in member states and the right to move inside such places without restriction. The CPT visits prisons and juvenile detention centres, police stations, holding centres for immigration detainees and psychiatric hospitals, to see how persons deprived of their liberty are treated and, if necessary, to recommend improvements. Its members are usually experts in the criminal justice field (see www.cpt.coe.int/en/).

Contestability

Contestability refers to a situation where a provider – e.g. the Prison Service or a

private contractor – faces a credible threat of competition. Contestability became a key rationale in the establishment of NOMS, although the 'test case' whereby it was announced in 2005 that three prisons on the Isle of Sheppey in Kent would be offered for open competition proved controversial as none of the prisons were under-performing. Following ministerial intervention, the competition was suspended and, instead, the prisons were provided with a time-bounded opportunity to develop their performance.

Custody Minus
Enacted in the Criminal Justice Act 2003 as the Suspended Sentence Supervision Order, Custody Minus enables sentencers to impose a suspended prison sentence with condition that community penalties be carried.

Custody Plus
A new approach to short-term prison sentences enacted under the Criminal Justice Act 2003 which allows sentencers to impose a penalty that combines a short period in prison with community penalties.

Dangerousness
There is no crime of 'Dangerousness' in England and Wales but the Dangerous and Severe Personality Disorder (DSPD) programme was the government's response to acute public concern about the most serious violent and sexual crimes. The concern focused on very dangerous people who were not diagnosed with a treatable mental illness, and so could not be detained under the Mental Health Act. If an offender is deemed 'dangerous', it can mean they are imprisoned for longer than is commensurate with their original offence.

Decency Agenda
The decency agenda was formally launched by the Prison Service in response to the exposure of prisoner abuse by officers in several local prisons and YOIs in 2000 and 2001. Then Director General Martin Narey declared that he wanted to make prisons 'decent and reformative places' and the term 'decency' has proved sufficiently flexible to be acceptable to governors and staff. However, its very ambiguity has also attracted criticisms from those who believe it can be interpreted as little more than reasonable basic conditions.

Desistance
The study of desistance essentially asks why individuals stop offending. Research in this area has particularly highlighted that imprisonment interferes with, and is detrimental to, the maturation process that supports offenders stopping offending.

Detention and Training Order (DTO)
Aimed at young people between 12 and 17 years, the DTO is given by the courts to young persons who represent a high level of risk. The sentence can be between 4 months and 2 years and the first half of the sentence is spent in custody, while the second half is served in the community under the supervision of a YOT (Youth Offending Team) (see http://www.yjb.gov.uk/en-gb/yjs/).

Deterrence
A rationale of punishment that suggests that sentencing should be used to prevent future potential offending. There are two approaches; individual deterrence, which aims to tailor a sentence that will prevent an individual offending again, while general

deterrence is the aim of sentencing in a way that deters other potential offenders from committing similar crimes.

Dispersal prisons

High security prisons used for the detention of Category A prisoners, considered to be a major threat to public safety and/or to the security of the nation. The Mountbatten Report (1966) recommended a new maximum security establishment on the Isle of Wight to house the increasing numbers of prisoners convicted of crimes of violence who would be in prison for a very long time. However, this proposal was rejected and 'Dispersals' came into being following the publication of the Radzinowicz Report in 1968, which recommended that prisoners who need the highest levels of security are dispersed around a select number of especially secure prisons (HMPs Frankland, Full Sutton, Long Lartin, Wakefield and Whitemoor).

Early release schemes

Early release schemes enable prisoners to leave custody prior to their designated release date. Under the provisions of the Criminal Justice Act 2003, those sentenced to less than four years are released halfway through their sentence; if the sentence was more than 12 months, they are eligible for Automatic Conditional Release (ACR), while those serving a determinate sentence of four or more years are eligible for parole or Discretionary Conditional Release (DCR) at the halfway stage. While parole has long been a feature of penal policy, two more recent forms of early release are the Home Detention Curfew scheme (HDC), using electronic monitoring to enforce curfew restrictions, and the Early Removal Scheme (ERS) for foreign national prisoners subject to deportation. In some circumstances, prisoners may also be eligible for periods of Release on Temporary Licence (ROTL).

Electronic monitoring

Often referred to as 'tagging' because the most common form of electronic monitoring involves an offender wearing an electronic tag to monitor compliance with a curfew condition. Advances in technology now permit satellite tracking which, unlike standard monitoring, tracks the offender at all times, and can locate him within 2 metres on an Ordnance Survey map, using the Global Positioning System (GPS). Currently the tracked subject must wear a tag around their ankle and a tracking device on their belt or at waist height. The tag checks that the device is being worn by the correct subject and is within close proximity of the tracking device, while the tracking device calculates the offender's location and relays it to the monitoring centre (see http://www.probation.homeoffice.gov.uk/).

Enhanced Thinking Skills (ETS)

An offending behaviour programme designed to encourage prisoners to look at how they react to problems, difficult situations and other people. Although not offence-focused, ETS is designed to address 'thinking deficits' that can lead to offending or reoffending. Successful completion of ETC does not guarantee HDC or parole but it can indicate a reduction in risk.

First Night Centres/ First Night Units

Many local prisons now have dedicated First Night Centres, where new prisoners can be supported during the reception period; often the most distressing time for a first-time inmate. Designed to accommodate vulnerable prisoners for at least two nights, the first prison to benefit from a First Night Centre was HMP Styal. Although their quality varies considerably, the best First Night Centres house prisoners in bright

and comfortable surroundings while mental health and detoxification assessments are carried out.

Fresh Start

'Fresh Start' was the name given to the new policy initiative for prison staff introduced in the Prison Service in 1987. The package consisted of several measures designed to address and resolve some of the longstanding problems related to the structure and organization of the Service, particularly those associated with pay and conditions of service for prison officers.

HM Inspectorate of Prisons

Her Majesty's Inspectorate of Prisons for England and Wales (HMIP) is an independent inspectorate which reports on conditions for and treatment of those in prison, young offender institutions and immigration removal centres. HM Chief Inspector of Prisons is appointed by the Home Secretary, from outside the Prison Service, for a term of five years. He or she reports directly to the Home Secretary on the treatment and conditions for prisoners in England and Wales and other matters as directed by the Home Secretary (see http://inspectorates.homeoffice.gov.uk/hmiprisons/).

Home Detention Curfew (HDC)

This allows prisoners serving sentences of over three months but fewer than four years to spend up to 90 days at the end of their sentence in the community. Most of these prisoners are automatically considered for the Home Detention Curfew, although not all will be placed on the scheme. At home the prisoner is fitted with an electronic tag and monitoring equipment will be installed at their home address. If the prisoner breaks the curfew they may be sent back to prison and they will not be placed on Home Detention Curfew again.

Incentives and Earned Privileges (IEP)

Introduced in 1996 following recommendations made in the Woolf Report, IEP aims to reward good behaviour and deter indiscipline among prisoners. There is a three-tier system by which prisoners are assigned Basic, Standard and Enhanced status. Most prisons operate a system which starts prisoners on either the basic or standard level. The privileges that can be earned affect a prisoner's daily life in prison. They include: the number of hours allowed out of their cell; the number of visits allowed above the minimum requirement; access to more of their own money to spend (on top of their prison wages) in the prison shop or on phone calls; the opportunity to wear their own clothes and to cook their own food; and the chance to have a television in their cell, paid for by the prisoner.

Independent Monitoring Boards (IMB)

Every prison has an Independent Monitoring Board; the body of people selected by the Home Secretary to act as watchdogs. IMBs took over from Boards of Visitors (BOV) in 2003.

'Just deserts'

Forming the basis of sentencing reforms under the Criminal Justice Act 1991, 'just deserts' or 'proportionality' is a retributive rationale of punishment, the basis of which is that punishment is justified as a morally appropriate response to crime and that the amount of punishment should be in proportion to the degree of wrongdoing.

Key Performance Indicators (KPI) and Key Performance Targets (KPT)
Key performance indicators and targets (KPI and KPT) are quantitative indicators used to measure performance. KPIs measure the performance of the Prison Service as a whole, whereas KPTs are used to measure individual prisons. The use of these measures emerged in the early 1990s as part of the New Public Management agenda, which saw the incorporation of private sector practices into the public sector.

Less eligibility
The nineteenth century utilitarian principle that in order to deter the rational offender, the pain of punishment must outweigh the pleasures derived from the crime. The application of the doctrine of less eligibility ensures that the upper margin of prison conditions are guaranteed not to rise above the worst material conditions in society as a whole, and that in times of social hardship the rigours of penal discipline will become more severe to prevent the weakening of its deterrent effect.

Listener schemes
Listener schemes provide a Samaritan service to individual prisoners in crisis. Samaritan volunteers work through their local centres to assist prisons in a number of ways, including training and supporting prisoners as Listeners. The first prisoner Listener scheme in England and Wales started in 1991 at Swansea prison in Wales.

Local Authority Secure (Children's) Homes (LASH/LASCH)
Local Authority Secure Children's Homes are run by local authority social services departments, overseen by the Department of Health and the Department for Education and Skills. LASCHs provide young people with support tailored to their individual needs and focus on attending to the physical, emotional and behavioural needs of the young people they accommodate. To achieve this, they have a high ratio of staff to young people and are generally small facilities, ranging in size from six to 40 beds. LASCHs are generally used to accommodate young offenders aged 12 to 14, girls up to the age of 16, and 15-to-16-year-old boys who are assessed as vulnerable.

Local prisons
Local prisons constitute one of the largest sectors of the prison estate, currently numbering 44 in England and Wales. Their main function is to serve the courts by holding those remanded in custody awaiting or during trial. Often thought of as little more than transit camps because of the constant movement of prisoners to and from court, local prisons ('locals') do more than house prisoners during their trial. Indeed it is estimated that around 75 per cent of the local prison population comprises those already sentenced to short, medium, long and even life terms.

Long-term prisoner
A female prisoner serving three years or more, or a male prisoner serving four years or more.

Mandatory Drug Testing (MDT)
Mandatory drug testing was introduced in all prisons in 1996. A prisoner selected for MDT provides a urine sample, which is analysed in a laboratory. Concern has long been expressed that MDT causes prisoners to switch from using cannabis to heroin in order to reduce the chances of detection because cannabis remains detectable for 10 days or more, while heroin is only detectable for two or three days (see http://www.homeoffice.gov.uk/rds/drugs1.html).

Measuring Quality of Prison Life (MQPL)
MQPL, devised by researchers at the Cambridge Institute of Criminology's Prison Research Centre, consists of a series of questionnaire items, organised statistically into dimensions intended to reflect 'what matters' most to prisoners. The survey has been routinely used in several research studies and by the Prison Service in all prison establishments in England and Wales since 2002. The MQPL survey represents an attempt to develop a more satisfactory theoretical and conceptual approach to the question of prison climate or quality, without the inevitable distortions of managerialism driving the quest. Ongoing research using versions of the MQPL survey has demonstrated significant variations in the quality of prison life, some departures from official measures of the prison, and links between MQPL scores and, for example, levels of prisoner distress.

Ministry of Justice
In March 2007, the Prime Minister announced that from May 2007 a new Ministry of Justice was to take over the staff and responsibilities of the Department for Constitutional Affairs (formerly the Lord Chancellor's Department) and many of the functions hitherto managed by the Home Office – the National Offender Management Service, including the Prison and Probation Services, Youth Justice and the Office of Criminal Justice Reform. The Ministry now has lead responsibility for criminal law and sentencing, while the Home Office retains responsibility for security, as well as for the police, crime reduction, drugs, immigration and asylum, identity and passports.

Miscarriage of justice
A miscarriage of justice is a criminal conviction which an appeal court later finds to have been unsafe, especially if it had previously been tested, but left unchanged, by the ordinary appeal mechanism. It's impossible to know how frequently miscarriages of justice happen, but among the most notorious cases are those of the so-called Guildford Four (who had their convictions quashed by the Court of Appeal in 1989 after 15 years in prison), the Birmingham Six (released in 1991 after 16 years inside) and the Bridgewater Four (three of whom were released in 1997 after 18 years in prison; the fourth, Patrick Molloy, died in prison in 1981 aged 53).

Mother and Baby Unit (MBU)
Mother and Baby Units are designated separate living accommodation within women's prisons, which enables mothers to have their children with them while in prison up to the age of 18 months. There are currently seven MBUs nationally.

Mountbatten Report
Published in December 1966 following a number of high-profile escapes and other security incidents involving prisoners, the report of the committee chaired by Lord Mountbatten was a major watershed in modern penal history. The report made a number of criticisms about security and, as a result, considerable resources were diverted during the next few years to improving this aspect of the prison system. A new method of classifying adult male prisoners based on security considerations was also introduced; and consequential measures begun to adapt physical facilities and penal regimes.

Mubarek Inquiry
20-year-old Zahid Mubarek was killed by his cell-mate, Robert Stewart, in his cell in Feltham Young Offenders' Institution on the morning he was due to be released,

21 March 2000. In 2003 the House of Lords ordered the Home Secretary to initiate an inquiry into Mubarek's death. The Inquiry made 88 recommendations, including recommending the elimination of forced cell sharing, but it stopped short of describing the Prison Service as 'institutionally racist'.

Multi-Agency Public Protection Arrangements (MAPPA)

Multi-Agency Public Protection Arrangements (MAPPA) are the means by which the police, probation and prison services (working together as the 'responsible authority') carry out their statutory responsibilities to assess and manage the risk of harm posed by sexual and violent offenders in the community.

NACRO

NACRO (formerly the National Association for the Care and Resettlement of Offenders) is the largest voluntary agency working in the fields of crime reduction and offender resettlement in the UK. It is engaged in a wide range of activities supporting ex-offenders directly, partnering organisations that work with ex-offenders and conducting lobbying work (www.nacro.org.uk).

National Offender Management Service (NOMS)

The blueprint for the National Offender Management Service was set out in the Carter Report (2004) which recommended that, instead of managing two separate services – prison and probation – there should be a service responsible for end-to-end management of offenders through the entire system. NOMS now co-ordinates all the different organizations that work to reduce reoffending.

New Public Management (NPM)

New Public Management describes the introduction into the public sector of managerial practices from the private sector to improve performance through commercial competition. In prisons, NPM took root during the early 1990s when the Prison Service became an agency, providing operational independence from the Home Office. In addition, a Director General with no previous public sector experience, Derek Lewis, was recruited from the commercial sector. He introduced more business-like management, including explicit goals and quantifiable targets. The reforms also included two controversial measures; the opening of the first private prison in 1991 and the outlawing of industrial action by prison officers under section 127 of the Criminal Justice and Public Order Act 1994.

Nothing works

'Nothing works' describes academic analysis of interventions in prison settings undertaken between 1945 and 1967, although it also gained wide currency in professional circles and among policy-makers. The philosophy of 'nothing works' reflects the finding at that time that most of these interventions were poorly developed and implemented and few could be shown to have any positive impact in reducing criminal recidivism. It thus marks the point at which penal policy and public opinion were moving away from rehabilitation and towards retribution or deterrence as justifications for the punishment of offenders.

Offender Assessment System (OASyS)

A system developed jointly by the Prison and Probation Services to help practitioners assess how likely an offender is to reoffend and the likely seriousness of any offence they might commit. OASyS identifies and classifies personality characteristics, thinking deficits and social issues in order to assess the risk of harm offenders pose to themselves and others.

Open prisons
There are currently 19 open prisons in England and Wales, of which four are women's prisons and in total 6 per cent of the prison population (4,500) are held in open conditions. The rationale behind open prisons is to allow prisoners more interaction with the community in which they are situated. Historically catering for prisoners in the final stage of their sentence, open prison are now receiving increasing numbers of prisoners in the middle stage of sentences because of the increasing prison population and overcrowding in the prison estate. This trend has been accompanied by growing concerns about prisoners absconding from open conditions (estimated to be approximately 700 prisoners in the 12 months to April 2006, 401 of whom remained at large).

Operational Capacity (OP CAP)
A jail can be overcrowded but below its maximum operational capacity. Overcrowding is reached when a jail surpasses its Certified Normal Accommodation (CNA) level. At this point prisoners will have to share cells designed for one person. But a prison reaches its maximum operational capacity when it runs out of all remaining available space to house prisoners.

Panopticon
An architectural concept proposed by Jeremy Bentham in the late 18th century which has, more recently, become a metaphor for CCTV and other surveillance systems. Essentially a prison inspection tower, Bentham's design consisted of a circular building with individual cells built around its entire circumference, and a central watchtower in which the activities of the prisoners could be constantly watched. A system of lighting that illuminated the cells but kept the inspection tower in darkness made it possible for just one person to monitor many inmates, each of whom knew they were under surveillance, but did not know exactly when. They were therefore obliged to behave as if they were being monitored at all times, and conformity and passivity were assured. The mental state of being seen without being able to see the watcher induced a fear that eliminated the need for visible deterrents or overt force (www.ucl.ac.uk/Bentham-Project).

Penitentiary Act 1779
The Act that first formally enshrined the concept of using imprisonment as punishment and led, eventually, to the building of the first national penitentiary, Millbank, in 1812.

Prison Rules
Prison Rules lie at the heart of prison policies and explain the day-to-day administration of prisons. The Prison Act 1952 specifies the law relevant to prisons, and the current Prison Rules are made under the authority of this Act. The Prison Rules cover a wide range of issues and separate rules have been made for Young Offender Institutions, though they are very similar to the main Prison Rules.

Prisons and Probation Ombudsman
The Prisons and Probation Ombudsman heads an independent office with two main functions. The first is investigating complaints from prisoners and those on probation. The second is investigating all deaths in custody; that is, self-inflicted, accidental, natural causes and homicides of prisoners, residents of probation hostels (Approved Premises), and those held in immigration detention. The need for an Ombudsman emerged during the prison riots in Strangeways and elsewhere in 1990 and the

subsequent Woolf Report. Woolf said that one of the central causes of the disturbances was the belief of prisoners that their grievances were not properly investigated. The first Prisons Ombudsman began work in 1994 and the office was re-badged as Prisons and Probation Ombudsman in 2001 when the remit was extended to those subject to probation supervision.

Private Finance Initiative (PFI)
A form of Public Private Partnership (PPP) in which the government offers a project, (e.g. to design, construct, manage and finance a prison), which private investors bid to provide most efficiently. By allowing a private company to build and finance a prison, the state does not have to pay the large sums involved in constructing the prison itself.

Privatization
Privatization – or 'contracting out' – refers to a process whereby the state hands over, under contract, the delivery of new or existing penal services to private operators. Sometimes private operators are global, profit-making organizations, sometimes local, non-profit-making bodies, often registered as charities. Examples of contracting out can be found right across the penal system and private prisons now operate in a number of Western democracies.

Probation Service
The Probation Service – or National Probation Service (NPS) as it is more properly called – is the organization within the criminal justice system that has responsibility for those offenders serving sentences in the community rather than in custody, 70 per cent of whom are on community orders imposed by the courts and 30 per cent are on licence from prison. The service is headed by the National Probation Directorate, which manages the 42 probation areas across 10 regions in England and Wales. Currently employing in the region of 19,000 staff the Probation Service now sits alongside the Prison Service in the newly established National Offender Management Service (NOMS) which is responsible for co-ordinating all the different organizations that work to reduce reoffending (see http://www.probation.homeoffice.gov.uk/).

Reasoning and rehabilitation (R&R)
One of the first offending behaviour programmes to be introduced in prisons, R&R is designed to build cognitive skills in a progressive manner and to move offenders through stages of change – from accepting the existence of problems, decision-making about choices, taking action, maintaining new behaviours, and preventing relapse, through learning to monitor and self-correct thinking in new situations. The programme is designed primarily for offenders with a high number of convictions, as well as medium- to high-risk offenders.

Recidivism
Describes a habitual relapse into crime. Where desistance research focuses on individuals, recidivism research tends to focus on programmes, and while desistance research is life-course oriented, recidivism studies typically focus on two to three years.

Rehabilitation
Rehabilitation is a treatment-based process, intervention or programme to enable individuals to overcome previous difficulties linked to their offending. Belief in the 'rehabilitative ideal' – i.e. that law-breaking tendencies could be changed by criminal

justice interventions – peaked in the 1960s but declined in the 1970s and 1980s when the belief that 'nothing works' became the prevailing orthodoxy.

Release on temporary licence (ROTL)

Release on temporary licence (ROTL) is an arrangement for a prisoner to leave a prison temporarily before they have completed their sentence. There are three forms of temporary release; compassionate licence, facility licence and resettlement licence. A compassionate licence may be granted, for example, if a close relative dies or is diagnosed with a terminal illness; a facility licence allows a C or D category prisoner to do work experience and educational courses outside the prison provided they have completed one-quarter of their sentence; a resettlement licence may be granted to allow a prisoner to renew ties with their family or community and become reacquainted with the outside world prior to release.

Remand prisoners

Remand prisoners are those that are detained prior to being awarded a sentence of imprisonment. They make up 17 per cent of the prison population at any one time. Remand prisoners are usually held in local prisons, often in the most overcrowded and difficult conditions. They may be held when unconvicted, before and during their trial, or when convicted but not sentenced. There is a presumption that those who are unconvicted or unsentenced should remain in the community on bail unless there are substantial grounds for believing that they would fail to appear for trial, would commit further offences or would obstruct the course of justice. However, given the relatively high numbers of individuals held on remand (which peaked at 26 per cent of the prison population in 1996) many commentators have expressed concerns about the over-use of remand.

Safer Custody Group

The Prison Service's Safer Custody Group has been active in developing better supportive arrangements for those at risk of suicide: ranging from 'safer cells' (without ligature points) to the development of a Listener scheme, where Samaritan-trained prisoners support their peers. Procedures for identifying and caring for prisoners at risk have also improved, and a recently introduced system aims to promote interaction with prisoners, rather than simply observation of them. After years of steadily rising numbers, the rate of prison suicide has decreased over the last three years for which statistics are available, and stood at 67 in 2006.

Secure Training Centre (STC)

Secure Training Centres (STCs) are purpose-built centres for child offenders – male and female – up to the age of 17. Originally proposed in 1993, just days after the murder of James Bulger, they were intended to tackle an assumed 'epidemic' of persistent offending by children. STCs currently only exist in England and are unique in western Europe. In 2006 there were four centres, each run by private operators working under a Private Finance Initiative with the Youth Justice Board for England and Wales and the Home Office. STCs differ from Young Offender Institutions (YOIs) in that they have a higher staff to young offender ratio (a minimum of three staff members to eight 'trainees'), are smaller in size, admit children as young as 12 years old, and focus on providing education, vocational training and correction.

Segregation

Segregation is the shorthand word for what is referred to in Prison Rules as 'removal from association'. Prison Rule 45 allows the governor of an establishment to remove

a prisoner from associating with other prisoners to maintain good order or discipline, or in his or her own interests (i.e. for his/her own protection). Such a decision must be reviewed by the Secretary of State or Independent Monitoring Board within three days, and should not exceed a period of one month for adults or 14 days for a prisoner under 21 years of age.

Sex Offender Programmes (SOP/SOTP)
Sex Offender (Treatment) Programmes use a cognitive-behavioural approach to target distorted attitudes, the development of victim empathy, problem solving and coping skill deficits, emotional loneliness, control of deviant fantasy, relapse prevention strategies and new lifestyle goals. Sex offenders can be required to spend between 100 hours and 260 hours in treatment depending on their level of risk and deviance. The programmes are designed for all types of male sex offending (child abusers, abusers of adult women/men, exhibitionists and pornography users). There are no accredited programmes for women sex offenders who comprise less than 1 per cent of the caseload.

Short-term
Prisoners serving up to and including 18 months.

Special Secure Units (SSU)
Special Secure Units (SSU) are designed to house exceptional risk Category A prisoners. These are the prisoners who not only present the highest levels of risk to the police, the public or the security of the state, but also present a higher risk of escape by virtue of their access to resources or their personal resourcefulness. These units are effectively a prison within a prison, being small units with their own additional security measures including a perimeter wall, housed within a high-security prison. SSUs became particularly high profile in 1994, when six prisoners, including five terrorist prisoners, escaped from the SSU at HMP Whitemoor.

Therapeutic Community (TC)
Penal therapeutic communities work with offenders to address the root causes of their criminal behaviour. There are two types of TC: democratic therapeutic communities, which engage serious offenders in psychodynamic therapy in order to help them understand and change their behaviour; and hierarchical therapeutic communities, which offer a structured treatment programme for drug users. There are currently five prisons that have therapeutic communities, although only one is a dedicated TC in its entirety; HMP Grendon. Grendon specialises in treating violent offenders who predominantly suffer from psychopathy or personality disorder. Its 235 'residents' volunteer for TC treatment and may elect to return to the mainstream prison system at any time.

Training prisons
A training prison is one that a prisoner may be transferred to after initial assessment at a local prison. They are either 'open' or 'closed' depending on the type of security required and provide training and vocational courses in a wide range of subjects.

Visiting Order (VO)
A prisoner is allowed one Visiting Order every fortnight. He or she fills in the Visiting Order with the names and addresses of up to three people (not including children under ten years) that they wish to visit them. The governor then checks the list of requested visitors, and if approved, the prisoner can send the VO out in their next letter. The visitor then has to bring their VO with them to the prison.

Vulnerable Prisoner Unit (VPU)
Usually a separate wing inside a prison used to accommodate prisoners classified as vulnerable, such as sex offenders and former police officers. There are no vulnerable prisoner units (VPU) in the female estate because of the very small numbers of convicted female sex offenders.

Woolf Report
Widely regarded as the most progressive attempt at penal reform in the last century (though not without its critics), the Woolf Report (1991), written by Lord Justice Woolf, was commissioned after serious disturbances at Strangeways Prison in Manchester occurred in 1990. With 12 central recommendations and a further 204 supporting recommendations, the report was wide-ranging but its central message was that offenders should be treated humanely and should not leave prison embittered or disaffected as the result of an unjust experience. Commitment to improving prison conditions, developing penal standards, and facilitating 'just' prisons, were inextricably linked to prisoner 'compacts' or 'contracts', setting out prisoner 'expectations' and responsibilities alongside those expected by the prison in return. Although most criminologists and penologists agree that Lord Woolf's intentions were good and were building on a liberal consensus, their interpretation by a Conservative Home Secretary famous for the slogan 'Prison Works' left many feeling despondent about the chances for positive reform of the prison system.

Young Offender Institution (YOI)
Young Offender Institutions are facilities run by the Prison Service. They accommodate 15-to-21-year-olds. YOIs have lower ratios of staff to young people than STCs and LASCHs and generally accommodate larger numbers of young people.

Youth Justice Board (YJB)
The Youth Justice Board (YJB) has been responsible for overseeing the youth justice system for England and Wales since 1998. In 2000 it was also made responsible for commissioning custodial provision for juvenile offenders aged 10–17 (see http://www.yjb.gov.uk/en-gb/).

Youth Offending Team (YOT)
YOTs are made up of representatives from the police, Probation Service, social services, health, education, drugs and alcohol misuse and housing officers. The YOT identifies the needs and specific problems that make the young person offend, as well as measuring the risk they pose to others. It also identifies suitable programmes to address the needs of the young person with the intention of preventing further offending (see http://www.yjb.gov.uk/en-gb/yjs/).

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