

Prisons and How to Get Rid of Them

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Let me start by quoting from two different sources—both from work published in 1990. The first is from a book by the Labour peer Baroness Blackstone:

Britain has a disastrously expensive and inhumane penal system, which is compounded by a huge injection of resources into building more prisons. Placing so much emphasis on building prisons is a sad reflection on the innovative abilities of the government. A little more imagination, rather more attention to the evidence in front of them, and greater political courage would have led ministers down a quite different path. It would have led them to a sustained effort to reduce substantially the prison population.

Baroness Blackstone ended her book with a demand that the prison population be cut by half—to around 24,000 people.

The second quotation comes from the Norwegian criminologist Thomas Mathiesen. Mathiesen optimistically predicts that *reason* will eventually persuade policy-makers that prison is illogical:

Victim work and offender work will certainly prove more satisfactory than prison, and we may envisage further contraction, possibly abolition. This would be congruent with the whole weight of evidence on prisons...anything else is tantamount to acceding towards

This article is based on Professor Wilson's lecture to the PMPA, which he gave in February 2006.

irrationality.

An Exploding Population

From our vantage point some 15 years after these statements were made, we can see that New Labour has presided over unparalleled growth in the penal system—rather than the prison population falling by 24,000 since coming to power in 1997, there are an extra 30,000 people behind bars. We now have now more life sentenced prisoners in Britain than the whole of Western Europe combined; New Labour has presided over more penal privatization than the sum total of their Tory predecessors, despite Tony Blair claiming in 1993 that Labour opposed prison privatization, and we have our current Chief Inspector of Prisons echoing all of her predecessors about how awful the experience of incarceration actually is in this country.

No one, it would seem, would currently agree with Mathiesen that there might come a day when contraction and eventual abolition of prison is possible, and that to do otherwise is 'irrational'.

Current justifications of prison suggest that 'prison works' by incapacitation—it takes people out of society and thus gives communities a rest from those who have broken the law; through individual and general deterrence—it makes those who might be thinking about committing a crime think again; by punishing those who do actually commit crimes; and, finally, by rehabilitating—it helps those who have committed crimes to think through the causes of their offending so as to change their behaviour by developing new skills, which they are then able to put to good use on release from custody. These justifications are now so widespread that few people bother to question whether they are actually true or not and the one place that we can forget about 'evidence-led practice' in relation to

public policy is when prisons are discussed.

It would be easy to unmask these false justifications by patiently pointing out the realities about who gets imprisoned and who does not; the relationship—or otherwise between the crime rate and the rate of imprisonment; what happens to people when they are inside and especially what happens to them after they are released. We'd point to the fact that four out of every five young offenders are reconvicted within two years of leaving jail; that one out of every two adult men are similarly reconvicted; and, that just under one out of every two women suffer the same fate. Would a school that failed to teach two out of every three of its pupils to read and write, or a hospital that killed one out of every two of its patients continue to receive widespread political and popular support? However, we know all of this too; we know that prison fails by almost every measure that it sets for itself; we know that prison is a useless, outdated, bloated Victorian institution that is well past its sell-by date; or to quote a former Tory minister, 'an expensive way of making bad people worse'. How, then, do we create a scepticism about what prison was, now is and what is claimed for it by its supporters?

Creating a Road Map to Decarceration

What has been absent from the debate to date is a solid 'road map' of how we get from where we are to where I think we should be. I have been attempting to create a road map for some time, most recently in my book—*Death at the Hands of the State*. My starting point for my road map is to look at historical examples of decarceration. A particularly interesting example from England and Wales was the decline in the prison population between 1908 and 1939 from 22,029 to 11,086—or in terms of the numbers of prisoners per 100,000 of the

general population from 63 to 30 (Rutherford, 1988). In effect, prison numbers halved and, as a result, around 20 prisons had to close down despite the fact that the crime rate in this period actually increased by around 100%.

How can this phenomenon be explained? I think that we have to consider three issues:

- For decarceration to have begun to this extent there was a great deal of scepticism about what prison and imprisonment could do, and that scepticism was shared by a wide range of people who were able to exercise influence over the political process—an echo perhaps of what Mathiesen from our own day has described as creating ‘alternative public space’.
- There was a credible, practical alternative to incarceration.
- Prisons and prison staff responded to this changing sensibility, both prompting and supporting the drop in prison numbers.

Scepticism

In relation to the first of these three points one of the realities that characterizes this historical period is that several politicians and several key social groups became absolutely convinced that prison was a corrupting and counter-productive experience. The most obvious example to give is Winston Churchill, who as Home Secretary between February 1910 and October 1911, set about reducing the use of imprisonment, especially for those who had hitherto been sentenced to very short sentences. He noted, for example, that in 1910 some two-thirds of sentenced prisoners had received sentences of two weeks or less, and he described this as ‘a terrible and purposeless waste of public money and human character’. More famously, in July 1910 he also suggested that ‘the mood and temper of the public to the treatment of crime and

criminals is one of the most unflinching tests of the civilization of the country’. Just why Churchill was so against prison is a matter of conjecture, but perhaps we can trace his antipathy back to his own experience as a prisoner of war during the Boer War, and it is worth noting that those politicians who have had direct experiences of incarceration—such as Nelson Mandela and the Czech President Vaclav Havel—are usually the most ardent penal reformers when they come to power.

Churchill’s scepticism was mirrored in this period by other key and influential groups and commentators, who created the right ‘mood music’ for decarceration to take place. For example, Oscar Wilde was arrested in 1895 on charges of gross indecency and sent to gaol for two years. While inside he wrote *The Ballad of Reading Gaol* which had a tremendous popular impact when it was first published in 1898 and remains, as far as I am concerned, one of the best pieces of prison writing that this country has ever produced. Similarly, just prior to the First World War the incarceration of suffragettes and their treatment inside, and thereafter the imprisonment of conscientious objectors, created two powerful groups of people who were prepared to campaign for changes in relation to imprisonment. The most obvious example to give is the formation of the Howard League for Penal Reform in 1921, and two of the conscientious objectors who had been imprisoned—Stephen Hobhouse and Fenner Brockway conclude in their book about prisons, published in 1921 that:

Our prison system, whilst it sometimes makes good prisoners, does almost nothing to make good citizens. It fails to restore the weak will or to encourage initiative; it reduces energy by the harshness of its routine and adds

depression to the depressed...and the more the system costs the country, the more highly it is organized, the more monumental must that failure be.

The Alternative to Incarceration

The second development that I believe creates the preconditions for decarceration to take place in this period is the development a credible alternative to incarceration. Specifically it is during this period that we see the development of probation. The roots of probation stem from the 1876 and the Church of England Temperance Society. In 1907 the government had passed its first Probation Act giving probation a statutory footing. In short, imprisonment is not seen as the ‘only club in the golf bag’ of policy options when it comes to responding to offenders, and allows the hegemony of incarceration to be challenged.

Responses from Government

The Home Office, prisons and prison staff, too, responded to these changing social and policy developments. They were not the passive recipients of change, but rather both prompted and responded to change. Their response is perhaps best symbolized by the Gladstone Committee of 1898 which completely re-defined the purpose of imprisonment:

We think that the system should be made more elastic, more capable of being adopted to the special cases of individual prisoners; that prison discipline and treatment should be more effectively 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.

These challenges were admirably taken up in prisons and by prison

staff through, for example, the development of the borstal regime for young offenders, and in relation to the introduction of psychologists and educationalists into prison regimes.

Lessons for Today

What lessons can we learn from this historical example about decarceration in our own day, at a time of not just record prison numbers, but also of the closer relationship between HM Prison Service and the National Probation Service (and thus where a credible alternative to imprisonment seems further away); the domination of our prison regimes by cognitive skills courses of various kinds which seem to promise that prison can in some circumstances be ‘good for the offender’; and a seemingly never-ending procession of politicians prepared to see the prison population grow higher and higher and to ignore a mountain of evidence to the contrary?

The key lesson for me is that we have to re-create a sense of scepticism into the policy debate, and that scepticism has to be robust enough to transcend party politics, while at the same time creative enough to engage the public with the message that prison is costly, counter-productive and, except in a very few cases, in no-one’s interests. This seems like a pipedream, but there are various ways that this can be achieved.

The work of the Howard League for Penal Reform, and the Esmée Fairbairn Foundation is essential, but we need to go a step further and create a space in which a challenge to prison can be mounted. I think that the scepticism from our historical example was shared more widely than the scepticism about prisons that exists today. For that to take place we really do have to create the ‘alternative public space’ that Mathiesen was describing and I think that means that we have to be prepared to engage with the media.

I say this because of my involvement with the Channel 4 series *Buried*, on which I acted as a consultant, and which generated more column inches about penal reform—and at a stroke a bigger audience for penal reform through the viewing public than any other event of the past five years. *Buried* exposed the still largely closed world of prison to public scrutiny, and presented the violence, hopelessness, madness and pervading sense of decay that permeates prison for all to see. The tragedy here is that *Buried* did not get re-commissioned, despite a public appeals on behalf of the series by, for example, the *Guardian* and the *Daily Mirror*. Nonetheless, there will be other ‘Burieds’, and the next time we should do what we can to support the space that programmes like this create, for it is that space which allows a challenge to imprisonment to take hold in an audience that does not normally think too much about prison or prisoners. Above all, and while not is now the time to debate the media’s use and misuse of prisoners and imprisonment, *Buried* created that space because it seemed ‘real’; it seemed genuine, rather than the obvious fakery of *Porridge* and *Bad Girls*.

But we shouldn’t just wait for another *Buried* to come along—things are too desperate for that, and so here I want to briefly allude to *Death at the Hands of the State*. The book was consciously written with a reductionist/abolitionist agenda, and I had to think very carefully about how to engage an audience with that agenda. I didn’t want to reproduce the same mountain of evidence that already exists about the irrationality of prison simply for that evidence to be ignored yet again. So how could an audience for penal abolition be created? Here I was influenced by the success of *Buried*. Why had that series been a success? What was it that sustained its audience? Now I have written

about cinema’s use of prisons and imprisonment before—in *Images of Incarceration* (with Sean O’Sullivan), and I don’t intend to debate this too deeply here, although this might be something that we can take up in questions, but what struck me about *Buried* was the power of its emotional appeal to the audience. It told believable stories about believable people—prisoners—who were just like you and me, and who were worried about those things that you and I worry about too: families, relationships; finding work; surviving, consuming and simply progressing through life. So, in writing *Death at the Hands of the State* I wanted to tell stories—emotional stories—and infuse the argument with a narrative based on real people who ended up inside, or who had family members end up inside. More than this I used the book to tell stories about the scandal of the numbers of people who die while in our penal system, especially children—either through having committed suicide, or having been murdered, or dying as a result of old age, or inadequate health care.

I tell stories about people like Pauline Campbell—a modern-day suffragette. Pauline is a former college lecturer in her late 50s, who during 2004 was arrested over ten times as a direct result of her own unique protest aimed at drawing attention to the deaths of women prisoners in British jails. Every time a woman died, Campbell would go to the prison where the death had occurred and stand in the road to prevent any prison van from bringing more women to that jail. The police would be called and Campbell would then be ordered by them to move out of the van’s way. She would refuse and then she would be arrested. She describes this as her ‘one woman, self-funding protest’, although it was not something that she had originally been drawn to and Campbell is honest enough to admit, ‘I had no

idea about the appalling state of women's prisons before Sarah's death'.

Sarah was Campbell's only child, who died aged 18 in January 2003 while 'in the so-called care of HMP & YO1 Styal'. Sarah had spent six months on remand in 2002 and on 17 January 2003 was sentenced to a term of imprisonment and returned to Styal. The following day Sarah was taken unconscious to a local hospital and died later that evening without regaining consciousness. Campbell says that she protests to 'demonstrate that prisons are unsafe places which constantly failed to uphold the duty of care that the Prison Service has to all prisoners. People must speak out. It's medieval'. So she held her first demonstration outside of HMP Brockhill, following the death of Sheena Kotecha, then outside of HMP Holloway when Julie Hope died and a third outside HMP New Hall after the death of Louise Davis. Since then the demonstrations have kept on coming, for women in prison are 40 times more likely to kill themselves than women in the community. Indeed in 2004, 12 women—a new record, took their lives in English and Welsh jails and so, tragically, Campbell is rarely out of the news.

I use Pauline Campbell's emotional story—and many other stories about people like her in the book, to shamelessly connect people with the scandal of what happens behind our prison's walls, and in doing so I do not necessarily pretend to be objective, empirical or indeed logical. Rather I am emotional, partisan and passionate, and through that passion I hope to engage the reader with the cause of prison contraction and abolition. After all, prison and penal expansionists have been very adept at using logic and objectivity to mask their policy goals.

Call to Arms

I want to end this article with a plea and a challenge to the *Review's* readers, an group which includes a

number of academics. For the alternative space that needs to be created has also to be created by you working in the academy. You are not the passive recipients of that space but, rather, have a key and pivotal role at resisting the mass incarceration that is currently taking place in this country. After all, you are 'real' in this debate too. But, with the exception of a group of committed abolitionists, such as Joe Sim and Barry Goldson to name, but two where has been your voice? Where has been your opposition? Too often fellow criminologists—and others, have seemed to me intent on re-legitimizing the prison, by describing, for example, the circumstances in which the prison's moral performance can be assessed and then measured, or have been satisfied at investigating the culture and sub cultures of prisons, their drugs economy and the like. Too often colleagues have been prepared to take the Home Office's shilling and conduct evaluations of this or that regime or initiative, and stay silent about the scandal that goes on behind the prison's walls as more and more people are sent inside, for having committed fewer and less severe offences. Now that really is a scandal—and it is also the truth, and I want you too to be prepared to challenge that. But the truth can never be revealed through silence, and if that is what you do—stay silent, all that will happen is that our prison numbers will grow and grow again and again. ■

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Prison Matters: Reflections on Prisons and How to Get Rid of Them

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The Issues

Professor Wilson has produced a trenchant, passionate and wide-ranging argument for prison contraction in the UK. The key tension in the penal policy debate 'remains that between penal populism on the one hand and welfarism and penal reform on the other' (Nutley and Loveday, 2005, p. 264). When New Labour was elected on a manifesto which made a commitment to follow the principle of 'What counts is what works' (Labour Party, 1997), there was an expectation of an non-ideological evidence-based approach to policy-making, not least in the area of criminal justice. In practice, however, as David Wilson points out, far from adopting Baroness Blackstone's suggestion to cut the prison population, New Labour has put around an extra 30,000 people behind bars. Thus it appears that the guiding principle of criminal justice policy for both major parties has become Michael Howard's stark, but evidence-light, statement to the 1993 Conservative Party conference that 'prison works'. New Labour accordingly has been very concerned to demonstrate that it is 'tough on crime' through the increased use of the penal system, including the expansion of the number of private prisons, the promotion of longer prison sentences, and the introduction of a wide range of new criminal justice legislation.

Developing Scepticism

As Professor Wilson argues, however, there are some positive signs that scepticism about prisons is developing. For example Charles Clarke's recent publication of a five-year strategy for tackling the reoffending rate by developing community punishments. The Home Secretary's statement to the House of Commons was refreshingly honest in its acceptance that: 'Prison does not work in stopping reoffending...it is best for the most serious offenders, particularly those who are dangerous...there are better punishments for others...properly organised community sentences can be a powerful, effective and tough punishment that offers the best chance of stopping offenders offending again' (Hansard, 2006).

This explicit repudiation of the Howard doctrine offered at least some hope of change, and so earned 'two cheers' from the *Guardian* (2006) and a welcome for the policy shift from the Prison Reform Trust.

The key problem, of course, with the proposed development of community punishments is the initial investment required in order to make the strategy effective. It is in the area of the increasing costs of punishment that there is surely scope for developing scepticism about prisons in the policy debate. Revisiting Winston Churchill's argument that short prison sentences are 'a terrible and purposeless waste of public money' could prove fruitful. It costs around £36,000 to keep a person in prison for one year. Given the high reoffending rates of ex-prisoners, this appears to be very poor value for money and certainly does not conform with New Labour's original guiding principle of 'What counts is what works'. Since the growth in public expenditure is likely to be strictly constrained for the rest of the decade, studies of the current comparative costs of prisons and of community punishments could contribute to the debate by highlighting credible costed

alternatives to incarceration.

Developing Opportunities for Offenders

Further, given the limitations in what can be achieved through public expenditure, penal reformers and the government ideally should have a common interest in developing more opportunities for offenders involving the voluntary and business sectors. It is, after all, entirely in keeping with the New Labour ethos to develop partnerships wherever possible. The National Grid company, for example, has pioneered business involvement in the rehabilitation of young offenders. It has built up relationships with 15 prisons, and has trained over 200 former offenders, leading to careers with the company or its contractors. According to the company's analysis, the reoffending rate is of those taken on is only 7% (National Grid, 2005). If substantial numbers of major companies were to become involved in similar offender programmes, then significant improvements in the rehabilitation of both young and adult offenders could be achieved along with a reduction in the numbers returning to prison after reoffending.

Professor Wilson has produced an impressive road map in an attempt to stop the apparently inexorable growth in prison numbers. It is to be hoped that many others, both inside and outside of government, will join him on the journey. ■

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The Case for Penal Abolition in England and Wales

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Those who persist in believing that 'prison works' should be locked up! Shame on me, a magistrate, for even thinking such a thing; but, from what David Wilson tells us, the thought has about the same level of logic and common sense as most justifications for prison. His view is that, 'these justifications are at best aspirational and, at worst, simply lies'.

In his PMPA lecture, David Wilson expanded on an 2005 PMPA *Review* article, 'Prisons—are you thinking what I'm thinking?'. He admits to being emotional, partisan and passionate in his tireless campaigning to engage others in the case for prison contraction and abolition. He contends that we forget about 'evidence-led practice' in relation to public policy development when prisons are discussed. Perhaps this is at the heart of the problem. Those in the best position to change or influence public opinion want to believe that 'prison works' because the alternative rational response requires some radical, unpopular—possibly vote-losing—changes in policy and practice.

So, as a magistrate, am I thinking what David Wilson is thinking? Yes! Am I putting (or able to put) that thinking into practice? No, not always. The latest guidance to magistrates and judges is clear enough: 'the court must not pass a custodial sentence unless it is of the opinion that the offence...was so serious that neither a fine alone nor a community sentence can be justified'

(Section 152(2), Criminal Justice Act 2003).

The Criminal Justice Act 2003 gave rise to 12 distinct requirements that might be used in any number or combination to provide suitable and appropriate community sentences. At least the scope for alternatives to prison has widened – so far, so good. Magistrates also have sentencing guidelines for virtually all offences. Depending on their relative seriousness, each offence has a recommended ‘entry point’ (or threshold) sentence associated with it: e.g. a fine, a community sentence, custody. The circumstances of each case are then assessed in terms of aggravating or mitigating factors to determine whether the entry point is too high or too low. Most importantly, for the more serious offences, magistrates will rely heavily on the conclusions and recommendations of a probation officer’s report on the offender. However, magistrates are nevertheless working from this baseline of sentencing guidelines and follow a structured decision-making process in order to try to maintain consistency. If these base guidelines are considered outmoded in terms of custody thresholds, then—unless they are changed—prison will remain a logical and consistent option, not necessarily a preferred one for many magistrates and judges.

There are some practical issues too. What do magistrates and judges do when all obvious and reasonable community sentence requirements have been tried, but have failed to work and/or the offender consistently breaches those requirements? Suspended prison sentences will provide an effective threat for some, but not for all. Adding to the cocktail of community sentence requirements and perhaps extending their duration will work for some, but not for all. Indeed, it may set offenders up to fail and increase the likelihood of breaches occurring.

As if this was not enough, there will doubtless be some magistrates

and judges who consciously or subconsciously take into account what they perceive the victim, or public opinion, considers to be an appropriate sentence. For many victims and onlookers, a community sentence—however demanding its component parts might be—is still regarded as a soft option. Who is going to be brave and committed enough to begin the journey to change that generally held view?

David Wilson is quite clear. There has to be a shared responsibility involving all those able to exercise influence over the political process. He talks from a position of considerable knowledge and experience. Prior to taking up an academic appointment as Professor of Criminology at the Centre for Criminal Justice Policy and Research at the University of Central England, he was a prison governor. He challenges fellow criminologists for remaining silent about the effectiveness of custodial sentences and what really goes on behind the prison walls. As he concluded, ‘the truth can never be revealed through silence...all that will happen is that our prison numbers will grow and grow again’.

Perhaps there are signs of some key people being prepared to speak out. The new president of the Magistrates’ Association is the recently-appointed Lord Chief Justice, Lord Phillips of Worth Matravers. He has already made his views on prison sentences well known to magistrates. In a recent open letter he said:

I suspect that in some cases prison sentences are imposed because magistrates do not believe that a community sentence will be properly implemented or result in meaningful punishment. In the past, they may have sometimes been right. Equally, fines have gone out of fashion because there is no belief that they will be enforced. But steps are now being taken to enforce fines and make non custodial alternatives more effective and I would urge [magistrates] to investigate the efficacy of

community sentencing...and consider carefully before deciding that there is no alternative to a prison sentence.

Maybe, just maybe, the journey has really begun.

Acknowledgement

The views in this article are personal opinions and are not intended to represent the views of magistrates or the Magistrates’ Association.

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