

CRIMINAL JUSTICE AND GOVERNMENT AT A TIME OF AUSTERITY

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This paper considers the state of criminal justice as it has developed in England over the last 15 – 20 years; the assumptions and policies which have led to that situation; and the reductions in public expenditure which must now be expected in all areas of public expenditure. This should be a moment when radical changes will be needed, but may also be easier to achieve - in the style and scope of government, in what it expects from its public services, and perhaps in the nation's attitudes to social and political issues and the means of dealing with them.

The paper examines the issues which a government of any party will have to face in the next Parliament; and argues that the measures needed to deal with them should be considered in the context of the wider reforms which are now needed in the processes of policy making and in public management more generally. Assumptions which have previously been taken for granted should now be reconsidered, and policies previously thought politically unacceptable might now be taken more seriously. The connections between the government's political objectives and the policies, legislation, structures and management procedures needed to achieve them should be more effectively articulated, and the relationship between political, professional and managerial judgement should be more clearly understood and respected.

The paper suggests some approaches and some specific measures that might now be considered. Its main focus is on England: important differences are beginning to emerge between England and Scotland and to some extent between England and Wales, but they are not discussed in this paper.

I - The State of Crime and Criminal Justice in England

A Failing System?

Britain once claimed that it had a proud tradition of criminal justice. The rule of law, trial by jury, the presumption of innocence and the principle of equality before the law established a tradition which became respected, though not always copied, across the world. The qualities of mercy and compassion were valued, even if they were expressed more often in literature than in statute or jurisprudence – famously in Portia's speech on the quality of mercy in *The Merchant of Venice* and in Isabella's exchange with Angelo in *Measure for Measure*¹. As recently as the 1980s, Lord Denning

¹ Portia's speech on behalf of Antonio is in *The Merchant of Venice*, Act 4, Scene 1, 179-200. Isabella's plea to Angelo and their subsequent exchange are in *Measure for Measure*, Act 1, Scene 2, 99-123. Both Portia and Isabella challenge the idea that the process of justice must always take its course, regardless of its effect on individuals. Angelo responds to Isabella by claiming, in effect – as many would do today - that pity for future victims, and perhaps even regard for public opinion, takes precedence over any regard for the individual offender. Isabella replies that it is “good to have a giant's strength, but tyrannous to use it like a giant”; and expresses her contempt for “...man, proud man, Dressed in a little brief authority...”

could thrill an audience of students or magistrates with a speech about a glorious heritage which went back to Henry II and Magna Carta. And yet, only a few years later, the government came to regard criminal justice in England as a 'failing system', not capable of doing its job in a modern, globalised world. The Prime Minister Tony Blair saw it as unable to protect the public from crime or to give proper consideration to its victims, and declared that 'Of all the public services we inherited in 1997, the most unfit for purpose was the criminal justice system' (Blair, 2004).

The Labour government regarded the system as failing in several respects.

- Sentencing was inconsistent and too many sentences were inadequate to protect the public or satisfy public opinion.
- Sentences were administered ineffectively, with too little attention to punishment or to the enforcement of conditions and the prevention of re-offending.
- Too many crimes remained unsolved and too many people were escaping conviction.
- Juvenile crime in particular was out of control, and children needed to be brought more firmly within the scope of the criminal law and punished accordingly.
- Anti-social behaviour was a similarly serious problem and should be dealt with through the criminal rather than the civil justice system, using civil rather than criminal standards of proof to simplify the process and avoid the need for a formal conviction.

It saw society as polarised between a 'hardworking' and 'law-abiding' majority and a lazy or criminal minority². Like the previous Conservative government, it believed that much of the criminal justice system was infected by a dangerous 'liberal' or 'metropolitan' elite which put the system 'on the side' of the minority and against the victim and the public. The system had to be radically rebalanced 'in favour of the victim', with a much stronger emphasis on protecting the public (Blair, 2004). Like other public services, it was to be managed in accordance with the principles of modern public management based on targets, markets and contracts (Prime Minister's Strategy Unit, 2006).

Those criticisms do not for the most part reflect any actual deterioration in the performance of the criminal justice system, but higher expectations of what it can or should achieve.

What has been Achieved – Successes ...

Some success has been achieved. Prisons are on the whole safer and more secure than they were 15 years ago, they are more 'decent' as a result of the campaigns of successive Directors-General (HM Chief Inspector of Prisons, 2010), and their 'moral performance' has improved (Liebling, 2004). The police are more responsive and sensitive to the public, and neighbourhood policing has contributed to reductions in crime and improvements in public confidence. Racially motivated violence and discrimination against minorities are less common, although they are still a problem and racial or religious violence could again become a serious concern. The government has been more ready to consult and to reply to the consultation, although the impression remains that it has sometimes been

² The distinction has a long history, both in criminology and in social science more generally – for example between the 'deserving' and the 'undeserving' poor. It is sometimes politically convenient but does not stand up to close analysis, as Seebohm Rowntree (1901) demonstrated a hundred years ago. See below.

more ready to tell than to listen. The needs of victims are better understood and more often met, although there is more to be done especially for families affected by homicide or disabling injury and for children who have experienced sexual abuse. The volume of crime, whether uncovered by the British Crime Survey or recorded by the police, has fallen substantially since 1996³, although the facts and the explanation are open to argument (see below).

Some of the reforms of management and organisation can also be regarded as successful. Examples include the local structures for youth justice, the reforms of the Crown Prosecution Service and the Court Service, and the arrangements for strategic management at national and regional level including cross-departmental Public Service Agreements. The independent commission for judicial appointments, the Sentencing Guidelines Council and in future the Sentencing Commission are improvements on the arrangements which existed previously, and many people consider that the creation of the Supreme Court to have been long overdue. The formation of a Ministry of Justice had been argued for many years (Faulkner, 2006: 339-342), although the way in which it was announced, with no notice or consultation, caused confusion at the time, and the balance of power and influence between the Home Office and the Ministry of Justice may become an important issue.

... and Disappointments

There have however been failures and disappointments. Some of the reforms of structure and process, especially the creation of the National Offender Management Service, were badly managed and produced confusion and frustration (Hough, Allen and Padel, 2006). Targets and performance indicators provide an essential source of management and public information and are an important part of a service's accountability, but their use has sometimes had some perverse consequences. Those for the police have been replaced by a single target to 'improve public confidence in whether local crime and community safety priorities are being identified and addressed' (Home Office 2008).

Legislation included 60 or 70 criminal justice acts, some of them running to hundreds of sections, and created hundreds of new criminal offences. It caused confusion for the courts, and the previous Lord Chief Justice, Lord Phillips, criticised the sentencing structure which emerged in the Criminal Justice Act, 2003 as 'restrictive, complex and difficult for the courts to administer or the public to understand' (Phillips, 2009). Indeterminate sentences of imprisonment for public protection (IPP) have proved to be a special problem, both in the injustice that their application can cause to those who receive them, and in the demands they make on prison capacity (House of Commons Justice Committee 2008; HM Chief Inspectors of Prisons and Probation, 2008).

Successive governments' policies and the courts' greater sensitivity to criticism in the media have resulted in more severe sentencing by the courts, more recalls to prison for breaches of conditions and more restrictive use of parole, so that the prison population in England and Wales has doubled since 1992 and was approaching 85,000 in November 2009. The penal system is in a state of chronic overcrowding and pressure on its capacity which makes it hard to function at more than a minimum level of performance.

³ Crime reported to the the British Crime Survey fell by 42% overall between 1995 and 2006/07. The fall was greatest for burglary (59%) and vehicle thefts (61%) (Home Office 2007).

It is tempting to connect the fall in crime which has taken place since 1996 with the increase in imprisonment. The increase will have had some effect, but the greatest reductions have been in offences of burglary and vehicle theft (note 3 above), where considerable effort had been devoted to improving the security of premises and vehicles from the 1980s onwards. Rising prosperity during the 1990s and the loss of the market for stolen electrical equipment will also have helped. It is an open question how far the 'real' level of crime has actually fallen, and how far offences such as burglary have been displaced by newer forms of crime such as 'doorstep' or credit card fraud, much of which is not recorded.

Evidence that the public feels safer as a result of the government's measures is hard to find. Many people still believe that the problem of crime is still as serious as or even more serious than it was 15 years ago. Governments and politicians have so far seen no way of shifting that view, and have sometimes contributed to it through their own criticisms of the system and their sometimes hasty statements and reactions to events. Their only solution has been to go on finding new 'tough' measures which they think will appeal to the public and promote public confidence.

Unless there is some change in the 'direction of travel', the prospect is one of increasing investment in ineffective law enforcement further pressure and an indefinite need for new prison building. (Hough, Allen and Solomon, 2008). The House of Commons Justice Committee reached similar conclusions in its comprehensive and radical report *Cutting Crime: The case for justice re-investment* (Justice Committee, 2009b).

What Went Wrong?

Research over many years has shown that the reasons for which people commit crime are more complex than governments have been willing to admit. People react to different situations in different ways which cannot easily be predicted. Studies during the 1970s and 1980s showed that changes in criminal justice are by themselves unlikely to have more than a marginal effect on the general level of crime. Police resources and methods have only a tenuous relationship with levels of crime or clear-up rates (Clarke and Hough, 1984). Sentencing does not have much deterrent effect (Von Hirsch et al., 1999), and sending more people to prison has only a limited impact (a 15% increase in the prison population might reduce crime by 1% - Halliday 2001). A large proportion of the male population has criminal convictions or admits to having committed criminal offences, many victims are or have been offenders, and most offenders have been victims. It is perverse to make a contrast between the 'law-abiding majority' or the 'law-abiding majority' on the one hand and 'criminals' on the other.

The separation of crime from its wider social context, and the belief that problems of crime can be solved by criminal justice measures taken in isolation, have always been unrealistic, as the Home Office came to acknowledge 30 years ago (Home Office 1977). The Conservative Party manifesto for the 1987 general election saw a quite limited role for government, which was to give a lead

'by backing ... the police; by providing a tough legal framework for sentencing; by building prisons in which to take those who pose a threat to society – and by keeping out those who do not; and by encouraging local communities to prevent crime and help the police to detect it'. (quoted in Windlesham, 1993: 221)

Policies to reduce crime during the 1980s were focused more on improving security and on situational and social measures to reduce crime than on arrest, prosecution and punishment (Faulkner, 2006: 110-114). Legislation on sentencing such as the Criminal Justice Act 1991 was designed more to improve consistency, remove anomalies and reduce what was thought to be the unnecessary use of custody than to reduce crime (Windlesham, 1992: 215-224)⁴.

Michael Howard rejected that approach when he became Home Secretary in 1993 and other Home Secretaries, and Tony Blair as Prime Minister, have done the same⁵. Governments since then have implicitly shared the classical economist's view that most human behaviour is a matter of deliberate choice, based on a rational judgement of the risks, benefits and costs. They have supposed that government can influence that choice by providing incentives and deterrents, and in particular they have assumed that it can reduce crime by insisting on rigorous enforcement of the law, certainty and severity of punishment, the incapacitating effect of imprisonment, 'interventions' to prevent an offender from re-offending, and the use of the latest technology.

Those assumptions seem to many people to be no more than common sense. They have provided governments with a politically promising framework for policy and legislation which responded to public opinion and the public's increasing aversion to risks of all kinds which became prevalent since the 1980s. They give the impression of being 'tough' and realistic, and are hard for 'liberals' to challenge. They are however seriously flawed as foundation for a government's criminal justice policy.

All that is well known to those who work in or are familiar with the criminal justice system, but it is rarely acknowledged by government or the political parties and not well understood by the general public.

Creation of New Criminal Offences

Governments have continuously and for several years expanded both the number and types of activity or behaviour which it tries to control, and the mechanisms by which it does so. New criminal offences have been created at a rate of about 150 a year for almost 20 years, including regulatory offences in matters such as public order, road traffic and health and safety; and offences such as attempts, possession, taking photographs, or being in the wrong place in anticipation of acts which might never be intended or take place. Many are absolute offences for which there is no defence.

⁴ It has sometimes been thought surprising that Margaret Thatcher's Conservative government, with its commitment to 'law and order', should have pursued criminal justice policies which would now be regarded, and by some people condemned, as 'liberal'. Those policies could however be seen as part of a long-standing Conservative tradition of justice and humanity which went back through R. A. Butler and Winston Churchill (although a Liberal at the time when he was Home Secretary) to Robert Peel, to whom Douglas Hurd paid tribute in a speech delivered in Tamworth to celebrate the bicentenary of his birth on 5th February 1788. On that view the policies of Michael Howard could be seen as a departure from a long standing Conservative tradition. Whether a future Conservative government could return to it is an interesting question.

⁵ Commentators have speculated about the reasons. They may include the public reaction to the murder of Jamie Bulger in 1993; the fact that rising crime was having an increasing effect on the middle class so that it became a more sensitive political problem; changes in the way in which crime was reported in the media; and the fragmented state of the Conservative Party at the time.

The process has not followed any consistent principles, for example about when a new offence or a longer sentence is needed, what alternatives ought first to be considered, what tests should be applied, how an offence should be enforced, or what purposes it can be expected to achieve. Powers enacted for one purpose, for example to prevent terrorism, have been used for other purposes such as to control nuisances for which they were never intended. Often the government would admit that the purpose was to 'send a message', for example by changing the classification of cannabis; or to demonstrate action in response to events⁶.

Probation, Protecting the Public and Desistance from Offending

The transformation of the probation service from a local to a national structure, and from an agency for social support to one of law enforcement and public protection, has been described many times (McNeill, 2006). The original intention, of the government and of the leaders of the service if not always of the service as a whole, was to create a more effective and publicly accountable service, still with a social work base but with modern systems of management and able to play an increasingly active and influential role in what was coming to be recognised as a national criminal justice system. Supervision by the probation service, or 'punishment in the community', was to be seen as the natural first line in the treatment and punishment of offenders, with imprisonment being regarded as a genuine last resort.

The government's vision for probation changed in the 1990s with the change of direction that has already been described. Probation if it was to exist at all had to be 'tough', the social work base had to be abandoned, and the functions of 'advising, assisting and befriending' had to be replaced by punishment, enforcement and control. Responding to that situation, the service came to develop a new professional identity, based on the assessment of criminogenic and social needs and on meeting them through various types of programmes or interventions, systematic case management procedures, and rigorous enforcement of conditions. (Raynor and Vanstone, 1994; Underdown, 1998).

The promise offered by those programmes enabled the service to survive in a hostile political climate, but the personal relationship between the probation officer and the offender came to be seen as relatively unimportant, and it was more difficult to sustain as caseloads grew larger and practices such as visiting offenders in their homes and making contact with their families were discouraged (Burnett and McNeill, 2005). To the offender and their family, the probation officer could be remote and even threatening figure, more to be feared as someone who would have them sent or recalled to prison than respected as a source practical guidance and wise advice.

The government now presents its approach to 'managing offenders' (Ministry of Justice, 2008a) in the cold, managerial language of 'delivery' and 'value for money', and in the language of coercion and

⁶ The Better Government Initiative (BGI) argues that legislation should not normally be used for declaratory or symbolic purposes (BGI, 2009), although declaratory legislation featured prominently in The Queen's Speech in November 2009 – for example the Financial Responsibility Bill, The Equality Bill and the Child Poverty Bill. If the Bills are enacted, it will be interesting to see the consequences for future litigation and political argument.

control – of ‘gripping offenders’⁷. The generosity of spirit which spoke through the minutes and correspondence of the Borstal Association⁸ a century ago and which inspired the voluntary after-care movement was still reflected in government statements and parliamentary debates until the 1960s. It now has to struggle to make itself heard, and has almost entirely disappeared from government. There seems to be no place for mercy or compassion, and to suggest that there might be would be seen as a sign of weakness and provoke ridicule from government, much of the media and on the internet⁹.

There is however an important body of research which shows the importance of a ‘desistance’ model of probation work, or offender management, which focuses on relationships, motivation, social situations, communities and social and human capital. It brings important insights, including the realisation that change in behaviour or character is not an event where a person succeeds or fails, but a process which has to be supported over time; and the need to focus more on the person as an individual and their situation than on the programme and its content for their own sake. The arguments and the evidence are now well established in the literature (McNeill, 2005) and the practical implications for offender management and for probation’s organisation and training have been explored (McNeill et al, 2005; Robinson, 2005). They should now be taken more seriously and translated more effectively into practice.

II - Justice and Punishment

The Idea of Justice...

Ideas of justice have been debated since antiquity, with contrasting and some often conflicting theories about what it means and what it involves. It may be seen as an ideal, a set of principles to guide behaviour, a social contract or a social choice. Its relationship to other ideas such as fairness, equity, equality, the rule of law, human rights or democracy has been variously debated. Amartya Sen has brought many of the threads together in his book *The Idea of Justice* (Sen 2009), drawing attention to the ‘pervasive plurality’ of the ingredients of what people may regard as justice and the difficulty of reconciling them in some situations the comparative ease of doing so in others. He argues that the reconciliation has to be found through a democratic process which involves more than ballots - and he might also have said more than opinion polls and on-line petitions – and which includes public reasoning and government by discussion.

⁷ ‘Offender management ensures that we have a firm grip on offenders throughout their entire sentence, both in custody and in the community’.

⁸ Executive Committee of the Borstal Association: meetings 1-30, 1904 - 1910 and 31-47, 1910 – 1918. National Archives, HO 247/97 and 247 /98. Letters to Sir Evelyn Ruggles-Brise, 1897 – 1935, National Archives HO 247/103. Known re-offending seems to have been about 25 per cent, but records were less reliable and the populations were hardly comparable. About 25 per cent had gone to sea as merchant seamen (there was a system for them to sign on at Cardiff docks) or had emigrated to the colonies, and a similar proportion were in and reported to be doing well touch. There was no information about the remainder. The files contain letters from Edwardian grandees offering positions on their estates or enclosing donations, including one from Herbert Asquith.

⁹ There were however some signs of compassion when it was realised that a large number of men in prison had previously served in the armed forces (Napo, 2009).

That account has only a limited connection with justice, and especially criminal justice, as the terms are now used in government and politics. The word justice is there used as a factual description of processes or institutions, for example the 'criminal justice system'; or as the outcome of a process of trial, conviction and sentence where 'justice has been done' if the sentence satisfies the victim or public opinion or if it will be effective in protecting the public.

... and of Punishment

There is confusion, which governments have created, about the place of punishment in a modern society, its nature and purpose, the conditions which make it legitimate, and the responsibilities of those who have to be involved in its administration. The confusion was illustrated by the difficulty which people have found in understanding the sentences, and in some instances the verdict and decision to prosecute, in the recent (February, 2010) cases of mercy killing (Frances Inglis, life imprisonment and Kay Gilderdale, suspended sentence), defending one's home (Munir Hussain, two and a half years imprisonment suspended on appeal), and disturbed children (the Edlington boys, indefinite sentences with a minimum of five years). It has been compounded by the complexity of the legislation and of the arrangements for release, so that the sentence pronounced in court bears little resemblance to the time which the offender will spend in prison – one reason for the public's apparent lack of confidence in the sentencing process.

Most people have been brought up to believe that if the state is to punish a person, it should be for something they have been proved to have done; the punishment should be deserved; it should be proportionate to the seriousness of the offence and the culpability of the offender; and the rules of due process should have been followed in what can be seen as a fair trial. Once those requirements had been satisfied, the sentence or punishment could follow, with some room for mercy or compassion where possible. That could once have been said to be the 'British tradition' going back through Dicey (1885) and Blackstone (1765) to Magna Carta.

Within that tradition, the sentencing of persistent offenders has troubled governments and the courts for a long time – since Gladstone Committee (1895), or even since the stocks went out of use early in the nineteenth century. Preventive detention as a sentence was found unsatisfactory and was abolished by the Criminal Justice Act 1967. Judges in the 1970s and 1980s were on the whole reluctant to send persistent offenders to prison for longer terms each time they were reconvicted, and sometimes applied the principle of 'progressive loss of mitigation' – slightly longer sentences for the second or third offence, but no additional penalty for persistence after that. The Criminal Justice Act 1991 sought to consolidate that approach and to remove the inconsistencies and anomalies which resulted from the more or less haphazard practice which was being followed at that time., A recent study suggests that the public might be better protected by improving the arrangements for the offender's resettlement than by repeated sentences of imprisonment (Burnett, 2009).

The Labour government took a different view when it came into office in 1997. It saw sentencing as a means of protecting the public from bad people, so that they should be punished not for what they had done but for the people they were and for what they might do in future. All crime should be met with punishment and repeated offending should be punished more severely on each occasion ('progression in sentencing').

It now seems to be taken for granted that all crime should be met with punishment. The House of Commons Justice Committee expressed its concern that ‘an unthinking acceptance has evolved of punishment – for its own sake – as ... the only way of registering the seriousness with which society regards a crime’ (2009b, 5). The idea that courts might be able to make a probation order as an alternative to a sentence or punishment (as they could until the Criminal Justice Act 1991) now seems very old-fashioned, although the probation order worked well for most of the twentieth century. Restorative justice offers an alternative to the formal adversarial process and is widely used for children, but the government has shown little enthusiasm for it otherwise.

Purposes of Sentencing

The Criminal Justice Act 2003 set out five purposes of sentencing – punishment of offenders, reduction of crime, reform of offenders, protection of the public, and reparation to the victim or the community. Separate legislation (the Crime and Disorder Act 1998) stated that the youth justice system for children young people aged under 18 has a single main aim of preventing offending. The statutory recognition of the five purposes was generally welcomed, but it has never been made clear how sentencers were to choose or to resolve any conflicts between them, or how it might be possible to show whether the purposes have been achieved. Sentences are in practice decided in accordance with guidelines issued by the Sentencing Guidelines Council, or in future by the Sentencing Council. The guidelines cover subjects such as the offender’s culpability, the harm done, and any aggravating and mitigating factors, but they do not take say how the different statutory purposes should be applied.

The 2003 Act also enabled people to be kept in prison or recalled to prison, not only for a crime they have committed but also to protect the public if they were assessed as likely to re-offend in the future. The tests of culpability and proportionality do not then apply. No evaluation has been carried out, and it is hard to say what difference the Act has made except to the complicate sentencing, increase the number of people sent to prison and the time they spend there, and add to the pressures on the penal system. For persistent offenders, section 143(2) provides that ‘the court must treat each previous conviction as an aggravating factor’.

No evaluation has been made of the effect of the Act’s sentencing provisions, either in protecting the public or on sentencing practice and the prison population.

The different purposes of sentencing reflect different, often conflicting, attitudes to punishment and different positions about punishment’s place in society which can often conflict (Walker, 2009). The conflict can be especially difficult to resolve if the difference is between moral beliefs, but some resolution is necessary if sentencing and punishment are to have authority and legitimacy. Ian Loader (2009) has suggested that the basis of a resolution could be found in the concept of ‘penal moderation’. However that may be, more clarity and a stronger foundation of principle are needed if sentencing is to becoming more intelligible and coherent, and if confidence is to be restored. The situation is now engaging the concern of the Justice Committee and also of criminal lawyers and criminologists (Ashworth and Zedner, 2008; Loader, forthcoming, 2010; Zedner, forthcoming 2010); of magistrates, especially in respect of police cautions and on-the-spot fines; and of practitioners, especially in respect of IPP sentences. For punishment as for justice, the pervasive

plurality of ideas has to be managed through a process of public reasoning and government by discussion.

III - Government and Public Services More Generally

Reforms of Government and Public Services

The situation in criminal justice is part of a wider problem of the way in which government has functioned over the last 20 years. Several reports published during 2008 and 2009 have made proposals for improvement.

The Cabinet Office has published plans for localisation and a new professionalism and strategic leadership (Cabinet Office, 2008); and the Treasury has done so on the means of achieving better collaboration between local authorities, partners and front line professionals, including the Operational Efficiency Programme (HM Treasury, 2009). The National School for Government has made proposals for improving the relationships between policy making and front line professionals (Sunningdale Institute 2009), and for improving leadership across public services (Benington and Hartley 2009). The British Academy has proposed arrangements for improving the contribution which the humanities and social sciences can make to policy making (Wilson, 2008); and the Institute for Government has made proposals for improving performance management (Gash *et al*, 2009), and for strengthening departments' expertise in commissioning and using relevant research (Bichard, 2009).

The Economic and Social Research Council has promoted a Public Services Programme involving 100 researchers from 14 disciplines working in universities across the United Kingdom and beyond (www.publicservices.ac.uk). The Programme includes several studies and findings which are especially relevant to the coming period of austerity, for example on the relationship between public expectations and public confidence and the possible need to lower expectations if confidence is to be maintained; on the comparative effectiveness of different types of incentive (such as targets, competition or professional pride) in different situations; on the scope for choice and different kinds of choice in a situation of scarcity; on the implications for accepting and managing risk; on the consequences for local empowerment and control and the delegation of decision-making; and the implications for the voluntary and community sector.

One of the most comprehensive reviews is the report *Good Government: Reforming Parliament and the Executive* from the Better Government Initiative (BGI). It reviews the way in which successive governments have functioned over that period, and makes a range of recommendations which cover policy making and the processes of government; the role of the centre of government (Prime Minister's Office, Cabinet Office and Treasury) and its relationship with other governments; the implementation of policy and the delivery of services; relations between the executive and Parliament; and the civil service (BGI, 2009). Some of the discussion which follows reflects that report.

Policy, Legislation and Implementation

There is a broad agreement in those reports that the processes of policy formation, legislation, management and implementation need to be improved, and that there should be better connections

between them to ensure more effective delivery of services on the ground. There is also broad agreement that change cannot be successfully achieved by imposing standard models or processes without engaging the people who will have to carry it out. It needs the active engagement of the workforce, and the consent and if possible the support of those who will be affected by it. Communities should feel that not only schools and hospitals but also the police, the courts, prisons and probation, are 'their' institutions in which they can take some pride and towards which they have some responsibility.

The BGI argues that policy and legislation should be the outcome of open and responsive consultation which draws on experience and expertise from a range of relevant sources; and that those who will be directly affected, especially those on whom the department will rely for delivery, should feel that they have been part of the process by which the policy has been formed, even if they do not agree with the outcome. No-one should be excluded on the grounds that their views may be critical, that their general position is thought to be unfavourable to the government, or that their views are less valuable or legitimate than anyone else's.

The Labour government has been more active and more ambitious than any government in recent times in promoting new initiatives and driving up standards of performance and delivery. No-one should deny that the government achieved some success, but there remains in government and in the country more widely a sense of disappointment that more has not been achieved. Perhaps because of its lack of confidence in public services and public servants, the government adopted a hands-on, command and control approach which assumed that direct instrumental connections could be established between ministers and policy makers at the top, managers in the middle, and those on the ground. It left little space for local discretion or autonomy. Performance indicators are probably the best known of the instruments the government has used, but they can take different forms and be used in different ways. In one form, they are a necessary part of a service's management and accountability, and as a special target they can be effective for a particular purpose such as reducing hospitals' waiting times. Multiple targets, or league tables used to rank organisations in comparison with one another, can however be manipulated ('gaming') and distort individual or organisational behaviour (Hood, 2007).

A revealing paper (Smith et al, forthcoming) illustrates the difficulties of models of delivery which assume that direct instrumental connections can be made between what ministers decide and what happens on the ground. Drawing on studies of the Home Office street crime and anti-social behaviour initiatives, the authors show how pressures and experiences are different at each level, and change over time and from place to place. Government interventions and initiatives can make things happen and achieve some 'quick wins', but successful implementation over the long term needs longer term commitment and depend on personalities and relationships. They say

'The case studies illustrate that if actors at the centre pay sufficient attention to a particular and simple problem and provide adequate resources, goals can be achieved. However, when the problem is amorphous and there are multiple agencies involved in implementation, the ability to deliver can be severely limited... It is often the case that the policy that is being delivered and the impact that it is having is often removed from that originally intended by the policy makers.'

The BGI argues that departments should focus on developing policy and monitoring performance rather than day to day operations; they should limit the bureaucratic demands which they impose on service providers; keep to a minimum the number of staff involved in the process. There should be a stronger relationship of trust between ministers, public servants and the citizens they serve. Improvements in relationships and dynamics should be reflected in more orderly and less febrile processes of policy formation, consultation and implementation. The House of Commons Justice Committee has said that ‘means must be found for encouraging and informing sensible, thoughtful and rational public debate and policy development’(House of Commons Justice Committee, 2009b, 7).

All those recommendations imply changes not so much in process and structure as in style and attitude, and they apply to criminal justice as they do other areas of government and public service.

Ministers and Public Servants

Christopher Hood and Martin Lodge (Hood and Lodge, 2006) have described the relationship between ministers and public servants in terms of a ‘bargain’. The relationship may be one of broadly two kinds, although neither excludes the other. Public servants may be treated as trustees, constituting a self-managed or autonomous estate, or as agents who are servants of their political masters. The former view might now be seen as elitist and out of date and the latter might now seem more modern and democratic. The effect of the new public management and of successive governments’ policies has been to move public services in that direction, explicitly in the case of those organisations designated as agencies, implicitly elsewhere. The shift would seem at first sight to be entirely right and proper, but the situation is not straightforward. Public servants such as police, prison and probation officers and professionals in health, education and social care have duties and responsibilities to the public and to the law, and to those in their care or charge, which are independent of their duties to ministers and for which their accountability should not only be to a political authority. Accountability can take different forms and need not always involve central government: service providers have responsibilities and should in suitable ways be accountable to their users, partners and stakeholders and to their local and professional communities (Faulkner, 2006: 71-87). The subject needs more attention than it has received in the past, especially if there is to be a movement towards greater local control (see below).

The BGI’s report emphasises the need for civil servants to understand the subject matter of an individual government department and its broad policy area alongside generic skills in subjects such as policy making, analysis of evidence and management. Rapid movement of civil servants between jobs and subject areas has led to a serious weakening of corporate memory with the risk of failure in strategy, policy and delivery. Too few civil servants, especially at senior level, are familiar with the way Parliament works, which will be one of the reasons for the inadequate preparation of legislation which the BGI criticise elsewhere in the report. More effort is also needed to bring together the training and development of civil servants and of others with whom they work. Developments in leadership and management training for public service professionals has been too concentrated in individual compartments, with too few connections between departments, services, and different professional disciplines and backgrounds. An important recommendation is that much more attention is needed to career development and succession to make sure that departments have the necessary skills, experience and corporate memory.

Managing Risk

Assessments of risk are a necessary part of many of the functions which governments have to perform, in criminal justice as elsewhere. They can identify significant correlations, but they are of limited value in predicting future behaviour (Armstrong, 2004, quoted in Garside, 2009). Whether in protecting children from possible abuse or decisions to release a prisoner on parole, the statistical methods should still be combined with qualitative judgements. The application of a formula, or 'ticking the boxes', should not be a substitute for the informed exercise of responsible discretion. Risk assessments need to take account of a person's circumstances and prospects in their lives as a whole (McNeill and Weaver, 2007; McAra and McVie, 2007; Crighton and Towl, 2008), which are to a large extent outside the system's knowledge and certainly its control - as Phil Wheatley, as Director-General of the National Offender Management Service, has acknowledged (Wheatley, 2009). Rod Morgan has described the effect which the mechanisms of risk assessment have had on pre-sentence reports, case management and decisions about parole, arguing that they have added disproportionately to the work of the Prison and Probation Services while damaging offenders' prospects of rehabilitation and increasing rather than reducing their risk of re-offending (Morgan, 2008).

Government's task is not only to assess and reduce risk but also to manage uncertainty. It should do so in ways which are outward-looking, confident and properly informed. For understandable political reasons, governments are more reluctant to accept risk than the private sector, but absolute certainty is an illusory goal and protection may be bought at disproportionate cost – financially (Lambert, 2009), or in its interference in people's lives¹⁰. It is a basic function of government to maintain law and order and preserve The Queen's peace, but no government can guarantee its citizens absolute protection against crime, still less against bad behaviour. The attempt to do so can turn protection into oppression, or it can excuse people from their proper responsibilities as citizens. For a government to acknowledge the limitations of what the criminal justice process can or should do to prevent or reduce crime is not defeatist but realistic. What is defeatist is to fail to explore the more promising alternatives.

One of the consequences of a period of austerity may be a need to accept lower standards and a higher degree of risk than government or the public have demanded in the past. That may in turn imply a need to lower public expectations if public confidence is to be maintained (James 2009). It may be especially difficult to do that in areas such as policing, prisons and probation where government and opposition parties have for several years insisted on and promised greater safety and protection for the public, even though the degree of protection they have led the public to expect may sometimes have been unrealistic.

¹⁰ The 'precautionary principle' as a legal concept relating to the assessment and management of risk has not been applied to government in Great Britain to the extent that it has been in Australia or the United States, but the need for balanced judgement applies in Britain as it does elsewhere (Fisher, 2007; Spiegelhalter, 2009).

Promoting Innovation

A culture which gives priority to risk management – which in practice often means risk avoidance – will not be favourable to innovation, but the need for new ideas and new ways of doing things is likely to be even greater during a period of austerity. The government has regularly emphasised the importance of innovation in public services and in government, for example in its white paper *Innovation Nation* (Department for Innovation, Universities and Skills, 2008), and there is an extensive academic literature. The National Audit Office has carried out a survey and reviewed some specific initiatives; its report identified some success factors and made some useful but not especially penetrating recommendations (National Audit Office 2009). Other contributions to the debate have more critical (Maddock 2007; Bichard, 2009; and the review of the recent discourse in Osborne and Brown (forthcoming)).

Among the arguments put forward is the need for organisations to recruit and encourage staff who have the ability to innovate, but not to rely entirely on individuals. Innovation has to be supported by a favourable culture and climate in the organisation as a whole, and it needs to be recognised, valued and rewarded, although not necessarily financially. If imposed from the top down it will only be sustainable if it is fully accepted on the ground. Innovation from the bottom up may be more easily sustained, but it may be suppressed by lack of interest from senior managers, by pressure from competing priorities, or by the existing volume of work. It may be unsafe to assume that an innovation which has been carefully nurtured in one place will be equally successful in other places or different circumstances. Innovation may not always be what an organisation needs – persistence, patience and support with existing approaches may sometimes be more important. ‘Initiativitis’ – too many initiatives promoted for their political effect - can be demoralising, especially when the interest of ministers and senior managers moves on to another new scheme and another new priority. Osborne and Brown argue that

‘the recent discourse on innovation in public services currently found within public policy...is a flawed discourse that often flies in the face of the existing evidence and which lacks a genuine understanding of the nature of innovation and its distinctive policy and managerial changes’.

Research and Expert Advice

There is general agreement, not always observed in practice, that statistics and evidence from research should always be published and made publicly accessible, together with any expert advice that may be based on them. Ministers have to consider evidence and advice in their wider social, economic and political context, and they are entitled not to act on the evidence or the advice if they choose; but they may then be called on to justify their decision to Parliament and ultimately to the electorate. Good practice would also expect them to give a reasoned explanation to those who have provided it.

The nature and relevance of the evidence which is available or might be obtained to support a government policy varies according to the subject and the discipline involved. It is significantly stronger, more widely accepted and more likely to be conclusive in some areas (such as medicine) than in others. Government will sometimes be able to commission research which will settle an issue; sometimes the issues are too complex, or the study would be too expensive or take too long. Government may sometimes be able to rely on an expert committee to assemble evidence and give

advice which it will normally accept; sometimes, and especially where the evidence is likely to be inconclusive or disbelieved, it will have to make a political judgement which takes the relevant evidence into account but to which it would not be conclusive.

The relationship between evidence, policy and politics, and the role of scientific or other expert advice, became a major issues in the BSE crisis in 1996 (Phillips, 2000; Fisher 2007), and again in the disagreement between the government and the Advisory Council on the Misuse of Drugs over the classification of cannabis which led to the dismissal of Professor Nutt as chair of the Council in October 2009. The relationship can be especially difficult criminal justice, as became clear from the discussion earlier in this paper. The evidence is often counter-intuitive and often inconclusive, especially if is based on small samples or pilot schemes. Ministers ask 'What causes crime?' or 'Will this work?' and the answer is often 'We don't know' or 'It depends'. It may be 'We can find out', but sometimes - though neither ministers nor criminologists would willingly admit it – the honest answer is 'There is no way of knowing'.

The situation is frustrating for ministers and criminologists, and also for those policy advisers, practitioners and voluntary organisations who devise and want to promote what they believe to be promising ways to reduce crime or to support offenders or their families or victims. The results may 'feel' good but it is difficult and sometimes impossible to prove a direct causal link between the work they want to promote and a reduction in crime or re-offending. The usual and often correct answer is 'Try harder', but there comes a point where action has to be guided not by evidence of measurable results but by social values and a social conscience. The House of Commons Justice Committee (2009b: 134) has recommended that the government 'gives consideration to the most appropriate means of drawing together existing research with a view to devising a transparent and coherent model for directing resources more effectively to prevent further expansion of the criminal justice system and increases in costs'.

The complaint has been that in spite its declared commitment to evidence-based policy, the government has variously ignored or misused scientific evidence or research in order to maintain public confidence, limit public expenditure or, the critics would claim, to appease public opinion (see Hope, 2008, and Walters, 2008 for an especially critical view). Such complaints may or may not have been justified, but it is another area of 'pervasive plurality', and as Ian Loader has argued (forthcoming, 2010) honest disagreement should be accepted and respected as natural part of the relationship. A more realistic and perhaps more respectful understanding of the interactions between academic knowledge, government policy making and professional practice may be needed on all sides. That understanding should enable academics to become better equipped to assemble and present their knowledge and their research, and government and practitioners to make better use of the knowledge that can be made available.

The BGI has argued that the capacity of government departments to construct and review their policies through the use of structured consultation and expert research and analysis needs to be safeguarded and strengthened. They say that

'Departments should have a capability to keep in touch with intellectual and academic developments relevant to their responsibilities, or if necessary commission it....They should pay attention both to the lessons of past experience and to long term trends and developments which may be beyond the

political horizon of the government of the day. Where political assumptions ... affect the conclusions reached, they should be made explicit. The need for analysis and evaluation applies to existing policies and existing situations as well as to new developments.’ (page 13)

The government has published a set of principles on scientific advice to government ‘to ensure effective engagement between the Government and those who provide independent scientific or engineering advice’ (Department for Business Innovation and Skills, 2009). They cover trust, respect, independence, transparency and openness. Views on the principles, and on wider issues relating to the use of science and engineering advice, have been invited.

Local Discretion and Control

The government and both the main opposition parties seem committed to providing for more local control over public services and less interference from central government.

For the government, the programme of ‘civil renewal’ which David Blunkett promoted during his time as Home Secretary was mainly concerned to encourage volunteers and voluntary organisations to work in support of government policies (Blunkett, 2003). It was followed by the green paper on ‘Communities in Control’ which included potentially more far-reaching plans for better public information, opportunities for citizenships to have a greater influence over local councils’ policies and budgets and measures to ensure more effective local accountability (Department for Communities and Local Government, 2008). The Total Place Programme, part of the Operational Efficiency Programme already mentioned, promotes local incentives and empowerment for statutory agencies to improve their performance by working across boundaries.

The government’s proposals in *Putting the Frontline First: Smarter Government* (Byrne, 2009) are mostly for practical measures to improve efficiency and achieve economies, but the Prime Minister’s foreword states that they include a ‘radical dispersal of power [and] a new dialogue between people and public service professionals’; that they would ‘strengthen democratic deliberation and control in local communities’; and that they must be based on ‘our enduring beliefs in equality of opportunity and a fairer society’. The detail includes ‘more devolution of resources to local authorities and local delivery organisations’ and ‘a bigger role for groups of residents, parents and patients, and third sector providers’.

The Conservative Party speaks of citizens, local communities and voluntary organisations taking more responsibility, and of a ‘big society’ which would replace ‘big government’ (Cameron, 2009). It would give power to public sector workers to form ‘cooperatives’ to run their own services, within budgets and contracts set by government (Cameron 2010). There would be much greater local control of criminal justice, and elected commissioners to whom chief officers of police and the local heads of other services would be accountable (Conservative Party, 2008).

Liberal Democrats also favour strong communities, working together to run local services. None of those proposals has been presented in any specific terms, and it is so far hard to see what might be intended in terms of new structures funding, powers or relationships or the impact on individual citizens.

Within criminal justice, the government has allowed some local choice in the work to be done by offenders serving community sentences, in the projects to be supported by confiscated criminal assets, and in the priorities for neighbourhood policing teams. The green paper on policing (Home Office, 2008) described plans to give the public more chance to 'drive local priorities and to improve the visibility and effectiveness of police authorities, including arrangements to allow the public to elect a majority of their members directly from their communities'. The subsequent white paper (Home Office, 2009a) was more cautious and limited in its vision, concentrating on plans for 'smarter working'. The government decided not to pursue its proposal for elected members of police authorities, and has abandoned its plans for the wider development of community justice on the lines of the 'community court' which had been established in Liverpool.

Youth justice has become more locally based through the composition and work of youth offending teams and their links with local authorities and children's trusts and there has been a reduction of over 20 per cent in the number of young offenders entering the criminal justice system (Department for Children, Schools and Families, 2009). The Ministry of Justice and the Department for Children, Schools and Families (2009) have published a 'Framework' describing ways in which support for offenders, children and families can be improved through local partnership working and joint planning commissioning, but no new funding is available or any movement away from existing targets and priorities.

The main thrust of the present government's policies still seems to be towards using local cooperation and partnerships to achieve economies and greater efficiency in public services and to improve public confidence. There has been less discussion of enabling local communities to accept greater responsibility or to act collectively in setting priorities or allocating resources, especially in situations where conflicting local interests have to be reconciled, local priorities might not correspond with those of central government, or difficult judgements might be made about affordability. It is not clear what might be the substance of the Prime Minister's aspirations in the foreword to *Putting the Frontline First: Smarter Government*, but as individual choices become constrained in a situation of scarcity and austerity those are the kind of choices that will increasingly have to be made.

Government and the opposition parties now seem to accept that measures to deal with crime and its consequences cannot be left to government and the criminal justice services on their own; that local authorities also have an important part to play; and that communities and civil society have some responsibility for preventing crime, for trying to keep young people out of trouble and for helping those affected by crime – perpetrators, victims and their families – to repair or recover from the damage to themselves and to others. Wide local variations in law enforcement or sentencing would generally be unacceptable as 'post-code justice', and there must be some concern that greater local influence might lead to more aggressive or intrusive policing, to pressure for more severe sentences, or that unrepresentative local interests might have a disproportionate influence; but there is evidence that the public are more likely to be satisfied and less likely to be dissatisfied with services at a local than they are with the service at the national (Roberts and Hough, 2005).

Arguments for greater local influence and control were set out in the report of the Howard League's Commission (Commission on English Prisons Today, 2009: 37-48; see also Allen and Stern (eds) 2007). It supports a programme on the lines of 'justice reinvestment' by which funds for the penal system would be placed in the hands of local authorities who could deploy them to the purposes

which would be of most benefit to the community. The report also makes proposals for the structures and relationships that would need to be established, and a comparison with the Criminal Justice Authorities and the National Advisory Board that have been set up in Scotland. The Local Government Information Group/All Party Parliamentary Local Government Group (2009) has made somewhat similar proposals for 'primary justice' which would be 'local, community-based and focused on prevention'; it would be funded from a local budget drawn from 'the prison budget, the administration budget for magistrates' courts, local policing and probation' and would be about 'communities taking responsibility for meeting the needs of vulnerable people as part of delivering safety and justice for the whole community'.

Proposals on those lines should now be seriously consider, both as a means of increasing public confidence and in the hope of achieving alignment between capacity and demand. More work should be done on the structures and relationships, and on the mechanisms of accountability, that would be needed.

The Voluntary and Community Sector

There is an important and developing role for voluntary and community organisations in providing services for offenders, victims and their families, which the government has recognised (Ministry of Justice, 2008c). Whether the voluntary and community sector should be engaged in designing or running prisons, as distinct from providing particular services for prisoners and their families, is a matter of fierce argument. Whatever view is taken on that subject, there is without doubt a vital role for voluntary organisations in the support of offenders in the community and their families, of children who are vulnerable or in trouble. There is also a less clearly defined but no less important and potentially expanding role as advocates, enablers, mediators and facilitators, for which Thames Valley Partnership is an example (www.thamesvalleypartnership.org.uk).

Arguments for the voluntary and community sector's involvement, whether in criminal justice or in providing services more generally, are sometimes about the sector's resourcefulness and resilience and its flexibility and ability to innovate, or more generally that its involvement is intrinsically desirable because of the encouragement it gives to social responsibility and good citizenship. There is however evidence from the ESRC's programme that the sector's ability to innovate is contingent upon a policy framework which values innovation, and that there was a reduction in its ability between 1994 and 2006 as the emphasis moved away from innovation and towards providing a service in accordance with a fixed contract (Osborne, Chew and McLaughlin, 2008). The programme has shown a need to encourage and support a diversity of providers if the sector is to make an effective contribution. There is a danger that the sector might lose some of distinctive character and effectiveness if contracting has to take place in circumstances of extreme financial stringency; and that some smaller organisations providing specialised services to small groups of people with special needs might be forced to withdraw.

There are serious questions about the status of the voluntary and community sector, its relationship with government, its funding, and the balance between its independence and its accountability, which the government recognises (Ministry of Justice, 2008d) but which remain unresolved. (Etherington, 2007; Benson and Hedge, 2009). Whatever roles the voluntary and community sector should undertake, it should perform them as part of civil society and not as an agent of government.

IV - The Way Forward in Criminal Justice

Lessons from Experience

Some of the lessons to be learnt from recent experience and analysis are that

- The country cannot look to a centrally directed criminal justice system as its only or principal instrument for protecting the public and controlling crime and anti-social behaviour.
- Government's responsibility should be to provide the framework of legislation, funding and national priorities. It is not to find a solution for every problem or to manage the system in detail.
- Public servants, in the criminal justice system and elsewhere, should be allowed more freedom to use their judgement in accordance with the local situation, although still within a clear framework of public and professional accountability.
- Government and public services should place more value on innovation and reward it with appreciation and respect. Recognition of that kind might often have more effect on performance than personal financial incentives.
- Government should allow and encourage all public authorities and services, and also local communities and citizens, to accept a stronger sense of responsibility for tackling crime and its consequences. Local structures should be established for the management of offenders with the Scottish examples in mind.
- Government and the Probation Service should pay more attention to the influences on relationships and motivation in the management of offenders, and take more account of the evidence from studies of desistance.
- There should be a clearer understanding of the respective roles and responsibilities of the state – government and statutory services – on the one hand, and of civil society including the voluntary, community and faith sectors on the other. The independence of voluntary organisations needs to be protected and they should not be treated as if they were agencies of the state.
- The more crime and criminal justice are politicised along party lines, the more difficult the process of policy formation will be and the greater the risk of eventual failure or disappointment. Of course they are political issues and they must engage politicians, but a competition between parties to find the most popular measures is ultimately damaging (and very expensive).

Austerity – Opportunities and Implications

The most immediate concern will be the reductions in government expenditure that seem to be inevitable over the next few years. Criminal justice should not be exempt: the Centre for Crime and Justice Studies has claimed that that expenditure on criminal justice increased from £12.6bn in 1998/1999 to £17.4bn in 2004/2005 and £22.7bn in 2007/2008, representing 2.5 per cent of GDP compared with between 1.5 and 1.8 per cent in most other European countries (Solomon *et al* 2007). Comparative research across 16 European countries shows that the greater the proportional expenditure on public order and safety, the lower the level of public trust in the police (Kaariainen, 2007)¹, with the suggestion that investing in public safety leads to the public feeling less rather than

more secure, irrespective of what actually happens on the ground. For an important discussion, see the report of the seventh Oxford Policing Policy Forum (Longstaff, 2009).

The need to make savings should provide the opportunity for some necessary improvements to be made. It would be a tragedy if recovery enabled the system simply to revert to its default position of more criminalisation, more enforcement and more punishment.

The reductions should be made as part of a strategic view of the direction which criminal justice should take in the longer term, extending through the next Parliament and beyond. The usual method of making reductions has been for departments to be required to make percentage cuts in their budgets and achieve them through a combination of efficiency savings and reductions in programmes or services. That may be effective for its immediate purpose, but it can have damaging effects. There is a particular danger that ill-judged reductions in expenditure will reduce safety or damage the effectiveness of programmes to help prisoners' resettlement and reduce re-offending (HM Chief Inspector of Prisons, 2010). The withdrawal of a contribution to a shared service will affect others who then have to find other sources of funds or allow the service to collapse. Especially in the area of crime and criminal justice, activities which are important for reducing crime, helping victims or preventing re-offending may involve several departments, local authorities or voluntary organisations, but it may not be a high priority for any of them or contribute directly to their formal objectives.

Public service agreements already recognise that situation: decisions to reduce public expenditure should follow the same principle. Plans for reductions or a redistribution of expenditure and should be made with an appreciation of their wider implications and look beyond organisational and institutional boundaries to the outcomes that that are to be expected from them.

One area in which savings should be made is the central bureaucracy, with consequential savings in the operational services. The processes of devising, imposing and then monitoring standards, targets and pilot schemes, could be scaled down, and the Ministry of Justice should go further than the Simplification Plan which it produced in 2008 (Ministry of Justice, 2008b). Economies could be made in policing (Flanagan, 2008; Blair, 2009: 294 – 296, and the QUEST academy and training programme), notwithstanding the political difficulty of a situation where police pay is a large proportion of the cost and police numbers have for 40 years been treated as a measure of the government's performance.

The most serious decision to be made is whether and if so to limit the growth in and then reduce the use of punishment, and especially but not only of imprisonment. The then Conservative government faced a similar situation after the general election in 1987 and decided to do so (Faulkner, 2006:107-121). It achieved some success, but in a political and legislative context which could not be recreated today. The House of Commons Justice Committee (2009, 138) has however recommended that

'The prison population could be safely capped at current levels and then reduced over a specified period to a safe and manageable level likely to be about two thirds of the current population'.

That is a surprisingly radical recommendation to come from a cross-party committee of Members of Parliament, but many would argue that it is no less than the situation requires. The Committee has

put forward a range of important recommendations for putting it into effect, but the difficulties should not be underestimated. As the Committee recognised, it would need sustained political commitment, across party lines, extending over at least two Parliaments, and a determination by government and opposition to face down the inevitable criticism. The judiciary might broadly accept the desirability of a lower prison population, but they would fiercely resist measures to achieve it which set targets, 'rationed' the use of prison accommodation, or otherwise restricted their sentencing discretion in particular cases.

There is nevertheless a broad consensus among practitioners, interest groups and academics in favour of moderating the use of imprisonment, and a history of well researched and well written reports, including those already mentioned and also those of the Coulsfield Commission (Coulsfield, 2004); of the Esmee Fairbairn Foundation's programme on Re-thinking Crime and Punishment (Esmee Fairbairn Foundation, 2004) and and of Baroness Corston's review of the position of women (Home Office, 2007), as well as the reports from the Howard League's Commission and the Local Government Information Group/All Party Parliamentary Local Government Group already mentioned. Some politicians will accept them in private, but others continue to dismiss them in public as unrealistic, liberal and elitist.

A provocative commitment or the kind favoured by the Select Committee may not be the best way to begin. A reduction in the use of imprisonment might be better achieved not as an objective to be pursued for its own sake but as a consequence of other measures which are desirable on their own merits and as part of a broader approach to crime and the people who commit and suffer from it. A programme might be presented on these lines.

- Reduce the waste of lives and resources resulting both from crime and re-offending, and from the unnecessary use of imprisonment and its effects on offenders and their families.
- Dismantle bureaucracy and restrictive controls (as has been done, more or less, for the police).
- Let the police, courts, prisons and probation get on with the job, with appeals and remedies if they fail the people they are meant to serve but without detailed direction from government. Have more trust in judges and magistrates.
- Repeal most minimum, compulsory and presumptive sentences and section 143(2) of the Criminal Justice Act 2003 which automatically makes a previous conviction an aggravating factor.
- Introduce more steps which a court could take before deciding 'there is no alternative' to custody – attendance centres, restorative justice as 'specified activity', developments in unpaid work.
- Provide more effective support and encouragement for reducing re-offending – enabling courts to review an offender's progress (as in drug rehabilitation orders), more attention to influences on desistance, more accessible help for drugs, alcohol and mental health problems.

- Continued and greater emphasis on early-years prevention and diversion. Build on the success already achieved in reducing the number of children entering the criminal justice system and the number of under-18s in prison.
- Review and apply the lessons that can be learnt for the last 13 years' experience of risk assessment, innovation, the role of the voluntary and community sector.
- A narrative and a language emphasising
 - learning, not blaming
 - responsibility and opportunity, not exclusion and demonisation
 - trust, not fear or suspicion
 - hope and belief in the future.

A programme with that sense of direction should open the way for more rational and more effective ways of dealing with crime and its consequences. The new statutory duties in sections 118-136 of the Coroners and Justice Act, 2009 for the Sentencing Commission to publish a resource assessment on the consequences of its proposed guidelines, to monitor the guidelines' operation and effect, to promote public awareness of sentencing practice, and to report on the resources needed to give effect to the courts' existing sentencing practice or any proposals for new policies or legislation referred to it, could have a positive influence. The recently appointed Directors of Offender Management should be given the flexibility and the capacity to take a more locally focused approach that was possible in the past (although their positions might be abolished under some of the proposals already mentioned). Space might then be created for a Conservative government if elected to implement its commitment to introduce 'truth in sentencing' so that the time served in prison corresponds more closely with the sentence as pronounced in court.

Final Thoughts -Values and Ideals

Underlying questions for the longer term include the nature and purpose of punishment as it is administered by the state; the use of scientific research and analysis and the assessment of risk in the formation and delivery of public policy; the structures and relationships that should be developed at local level and the mechanisms that are needed for their accountability and legitimacy; and the role of the voluntary and community sector. They are not questions to which there can be final answers, to be settled by a commission or a review and then embodied in policy and legislation. But they are questions which need constant attention and vigilance, within a framework of principles and values which transcend party politics.

Public discussion of values and principles has been difficult for some time. It has often been dismissed as self-indulgence and an evasion of the more serious business of numbers, quantities and practical results. Words such as 'conservative' 'liberal', 'neo-liberal' 'progressive', 'modern', 'realistic' and 'idealistic', have been misappropriated for different purposes and often used as terms of abuse. 'Justice' has lost its sense of value and has come to mean either the process which leads to a conviction and sentence, or punishment which is severe enough to satisfy public opinion or the victim. Political parties no longer appeal to principles or a distinctive vision of the future, and base their claims for support on their managerial or financial competence or the protection they can provide from harm or damage. It

was a declared aim of New Labour and its 'third way' to treat political questions as if they were questions of fact and to present its policies as if they were value-free. Political parties now seem to realise that they should try to offer source of inspiration that is more than competence and material benefits, and public services need to be motivated by something more than efficiency and following the rules.

Public attitudes may reflect a generally optimistic view of human nature, a belief that there is some good in everyone and that people can change for the better and the country's condition can always be improved; or a view which is conscious of human imperfections, believes that there is potential for danger in everyone and risk in every situation, and sees a broken society and a country in decline. Both views will always be present among people, communities and institutions, and governments will have to respond to them. Policies responding to the former give recognition and reward; they value initiative and innovation; and for offenders they see a place for compassion, repentance and forgiveness. Policies responding to the latter seek to enforce conformity and control; they appeal to self-interest; and their instruments are the incentive of material gain or loss and the threat of punishment.

The second of those views seems on the whole to have had more influence on government and politics in recent years. Many of the concerns expressed earlier in this paper arise from the need which governments have felt to appease that view, even if they might not otherwise have given it their support. It is too soon to tell whether the changes indicated at the beginning of this paper, or other movements in public or political opinion, will affect the balance between them. The hope must however be that any future government's process of decision making will be more measured, more inclusive, more optimistic and better informed than it has sometimes been in the past; and that the country's response to the recession will provide the opportunity to correct some of the mistakes which have been made and remove some of the injustice which remains.

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