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CRIME AND CRIMINAL JUSTICE

Ian Marsh,
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CONTENTS

List of Figures *vii*
List of Tables *ix*
List of Numbered Boxes *xi*
List of Case Study Boxes *xiii*
Preface *xv*

PART 1 EXPLORING AND EXPLAINING CRIME **1**

1 Crime – The Historical Context **3**

2 Biological Explanations for Criminal Behaviour **18**

3 Psychological Explanations for Criminal Behaviour **61**

4 Sociological Explanations for Criminal Behaviour **97**

5 Explaining the Criminal Behaviour of Women **149**

6 Explaining the Criminal Behaviour of Ethnic Minorities **184**

PART 2 EXPLORING AND EXPLAINING CRIMINAL JUSTICE **209**

7 Why Punish? Philosophies of Punishment **211**

8 Theories of Punishment **250**

9 The History of Crime and Justice **288**

10 Victimology **325**

11 Police and Policing **365**

12 The Courts, Sentencing and the Judiciary **401**

13 The Criminal Justice System: Prisons and Imprisonment **434**

References *470*
Index *498*

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CHAPTER 13

- Introduction
- The history of prisons
- Prisons and imprisonment: the current context
- Imprisonment: experiences and issues
- Community penalties

The Criminal Justice System: Prisons and Imprisonment

INTRODUCTION

When we examined the history of punishment (Chapter 9) a good deal of the focus was on the history of imprisonment. Essentially, this was because when considering history punishment is often used almost synonymously with imprisonment. For example, an examination of the history of the different approaches to punishment, such as retribution and deterrence, is typically based around changes in the forms and styles of incarceration. We will not, therefore, need to delve into the origins and history of imprisonment in great detail or catalogue the various pieces of legislation in this chapter. However a brief overview of the key periods in the development of the prison in the last 200 or so years will help provide the context for looking at the contemporary prison system and the major current issues that face it.

THE HISTORY OF PRISONS

Prison histories of the last 200-plus years generally highlight three major periods which were characterized by differing rationales for prison and imprisonment. In the late eighteenth and early nineteenth centuries the emphasis was on reform – of both prisons and prisoners – and this period saw what Foucault described as the 'birth of the modern prison'. In the mid-nineteenth century a much more repressive approach was adopted. Partly as reaction to this, by the end of the nineteenth century and into the twentieth century new notions of reform and rehabilitation emerged. Of course

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the history of imprisoning people goes back much further than the eighteenth century. Holding people before some form of trial, not necessarily in purpose built prisons but perhaps in castles, goes back centuries. Private gaols existed from at least 1166 (when Henry II tried to set up a gaol in every English county) through to the eighteenth century; these were often privately run, commercial undertakings with prisoners charged for food and other services (including the hammering on and off of leg irons) and conditions – for those with no money at least – dreadful.

Although our starting period here is the reforms of the late 1700s, there were examples of more humane, reformative approaches prior to this. While there are different interpretations for the emergence of the houses of correction and bridewells in the sixteenth century, such a development certainly suggests an early reformative interest and agenda (see p. 293). Bridewell was the name of the first house of correction established in 1553 in London. It lasted until 1700 and its name became a generic term for these early forms of prison.

Early reforms – the late eighteenth century

Throughout the eighteenth century conditions in prisons continued to be appalling, with no segregation of men, women or children, no classifying of offenders (even between tried and untried), the sale of alcohol, extortion by prison staff, among other things, commonplace. These sorts of conditions were described most graphically by John Howard (examples of whose writings on the state of prisons can be found in most texts covering the history of prisons). Howard made a detailed survey of the state of prisons in the 1770s and argued that prisons should operate as secure but healthy and efficient institutions. His inspections and writings did have an impact; the 1779 Penitentiary Act, for instance, promoted the view that prison should have both a punitive and reformative purpose (the very name penitentiary implies prisoners being sorry or repentant for their behaviour, and thinking about it while doing some penance). More specifically, prisoners were to be put to hard work with any profits earned from this work being used to improve prisons (with the notion of paying staff introduced). It was believed that the stress on hard physical work would be morally and physically helpful for offenders. Also, there was a move to start classifying prisoners into different categories. In highlighting the importance of the 1779 Act, Wilson (2002) commented that:

> [It] synthesised everything that was believed at that time about what should be done with prisoners, in that they were to be subjected to solitary confinement, have regular religious instruction, be required to work – but not for profit, would have to wear a uniform, and be subjected to a coarse diet.

Following on from Howard's account of prison regimes and the 1779 Act, there was a spate of prison building in the late 1700s and early 1800s. Another key factor behind the expansion of prisons at this time was the ending of transportation to America after the American Declaration of Independence in 1776. Transportation to Botany Bay, Australia did not begin until 1787 and as an estimated 30,000 people had been

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transported to America between 1718 and 1775, the authorities were left with a problem as to what they should do with law breakers who would not be executed (Wilson 2002). The use of prison as a punishment for criminals rather than just a holding place for vagrants was linked by Coyle (2005) to the decline in transportation in the early nineteenth century. The culmination of these developments was the opening in 1842 of Pentonville prison in London. This was seen as the 'model prison' and demonstrated the transformation from the small, privately run prisons of the past. It had 500 identical cells in which prisoners lived separately and in silence; they followed a detailed, meticulous routine, in line with that described by Foucault at the start of his famous account of the 'birth of the prison' in *Discipline and Punish*. Foucault examined prisons alongside the development of other institutions, such as the new factories of the industrial revolution period, workhouses for the poor and asylums for the insane, and saw them as making up what he termed the 'great confinement' (see pp. 274–282 for a fuller discussion of Foucault's account). The better regulated sort of prisons advocated by Howard can be compared to the sort of managerial changes going on in the mills and factories of the period, and often run by philanthropists with similar ideas to Howard, such as Arkwright (mills) and Wedgwood (pottery). The move away from public and localized punishments, including privately run local jails, to the 'reformed', state financed and managed penitentiaries of the nineteenth century was completed by the Prison Act of 1877 which placed the entire penal system under state control.

There are two main theoretical positions that have put forward explanations for this move to reform prisons in the late eighteenth century – a *humanitarian* model that saw idealism and philanthropy as the key factors and a *radical* model that emphasized the regulation of dangerous groups. The basic question posed by the 'debate' between these two positions was whether the new prisons indicate a humanitarian idealism or a more insidious regulation of the 'deviant', lower classes.

The humanitarian explanation makes the point that the eighteenth-century penal reformers (best illustrated by John Howard) were invariably motivated by a strong religious faith and believed that they were pursuing an idealistic mission. In addition to this a more general humanitarian mood was evidenced by the fact that there was also a good deal of public concern and even revulsion about the extent of capital and corporal punishments. This view of history is associated with the political position of the Whigs (a viewpoint which became almost synonymous with the Liberal Party after the early 1800s). Such an interpretation of history sees the ideas and visions of key individuals as being the major factor affecting social change and moving history along. Change and reform, then, are seen as motivated by benevolence and philanthropy and histories advocating this approach tend to highlight and glorify the role played by a few great individuals. As regards the history of punishment and prisons, the starting point tends to be Beccaria's condemnation of unjust penalties (and particularly the death penalty) in his treatise *Crime and Punishment* (1764), the seminal text in the application of classicist and utilitarian philosophy to punishment and justice. Beccaria's legacy was taken on and practically applied to the criminal justice process by Jeremy Bentham; while other key figures in this humanitarian history included John Howard and Elizabeth Fry (see pp. 298–299 for fuller discussion of the importance of these early penal reformers).

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The radical explanation and model for the emergence of prisons has been seen as part of a more critical 'revisionist' history (Mathews 1999) that has seen the humanitarianism of this period as being more rhetoric than reality. The emphasis here is on social control born out of class conflict and the attendant fears and the protecting of the vested interests of powerful groups in society. There are different variations of this broad approach, in particular an orthodox Marxist position, exemplified by Rusche and Kirchheimer's classic work (see pp. 274–280), whereby punishment is seen as helping to maintain a cheap and reliable workforce, and a position adopted by theorists such as Foucault and Ignatieff which focuses more on the ideological, and political elements involved in establishing and maintaining order (Muncie 1996). Both Foucault (1977) and Ignatieff (1978) described the move from punishments of the body to those of the mind. Ignatieff emphasized the ideological and symbolic functions of the new forms of punishment centred around imprisonment (such as the treadmill and crank) and considered their role in maintaining order. Foucault's attention was more on the power of ideas, knowledge and discourses and he interpreted the various reforms and penal developments as part of an emerging 'carceral society' (see p. 280).

The nineteenth century – (a return to) repressive measures

Following on from the pioneering work of John Howard and other early penal reformers, there were improvements to certain aspects of penal policy in the nineteenth century. However, although physical punishments, such as public whippings and corporal punishment in general, declined there was also a clear decline in the support for the reformation of prisons. This reaction to the early reforms described above occurred in tandem with a strong push toward a greater centralization of prisons, with a more uniform and rational prison regime introduced across the country. These developments were evidenced by the rigid application of strict rules and a strong emphasis on obedience, with the nineteenth-century prisons becoming impersonal and highly regimented institutions, characterized by an array of internal disciplinary procedures and punishments attached to all aspects of daily prison life (for example, prisoners only being allowed to eat after they had completed certain tasks, such as turning the crank a specified number of times). This repressive approach was well established and widely supported by the mid 1800s, helped by the panic over street crimes such as garrotting in the 1860s and given governmental backing by the Carnarvon report (1864) which highlighted an 'insufficiency of penal discipline'. The language of this report, while typical of the time, was indicative of this more repressive approach: 'the large majority of criminals were low and brutish, mainly swayed by self gratification and animal appetite' (quoted in Muncie 1996).

The mid nineteenth century also saw the establishment of the separate cell system. In general terms, then, prisons were extremely harsh and austere establishments up until the 1890s, and completely lacked the religious and moral overtones of the early 1800s. There was still a belief that imprisonment might allow for the reform of prisoners based on the notion of hard industrial work developed through the separate and the silent systems (Coyle 2005). In the separate system prisoners worked in large

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communal workshops but were not allowed to talk to one another; the silent system had prisoners doing work on their own in their individual cells. In each case then work might have had some use (such as sewing or mending) but often was just there to keep the prisoner busy and to encourage 'good work habits' (such as turning the crank or working the treadmill).

Of course, these comments only provide the overall picture and highlight the general tenor of the time. It is important to remember that even at the same time as an overall move to greater discipline and repression, there were still some reformist moves and developments, such as attempts to classify and categorize different groups of prisoners, reflecting a realization that not all fitted the 'brutish animal' stereotype.

QUESTION BREAK: HARD LABOUR IN VICTORIAN PRISONS

The extract below is taken from Priestley's study of Victorian prison lives and refers to one of the common forms of hard labour expected of prisoners – oakum picking (oakum was the old tarred ropes of ships' rigging, from an inch upwards in thickness).

> Three images dramatise Victorian prison work in the popular imagination: men climbing the endless staircase of the treadwheel; convicts breaking rocks; and the picking of Oakum. Oakum was picked by prisoners in cells and workhouses for the greater part of the nineteenth century . . .
>
> Oakum was extremely dirty: after working for an hour or so one's fingers would be covered with tar, and stick to everything you touched.
>
> To the dirt and the difficulty was added, under the threat of punishment, the daily 'task', that of picking 'three pounds per diem' . . . [and] every day several [were] reported just by way of keeping the discipline up to the recognised standard of severity . . .
>
> Oakum picking was a difficult and dirty and distressing occupation . . . But it went on being picked, because of its simplicity and its tediousness and because no one could think of any better way of keeping so many unskilled hands from idleness . . . Its great convenience, though, was as cell task for men in separate confinement, where it continued to keep afloat the leaky vessel of penal labour policy until into the twentieth century.
>
> (From P. Priestley 1985: 121–3)

- How might hard prison labour be seen to provide the potential to reform prisoners?
- What sort of theoretical explanations could be offered for forcing prisoners to engage in hard labour for no other purpose than to keep them busy?

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New approaches to reform and rehabilitation – the late nineteenth and early twentieth centuries

As mentioned above, at the same time as the imposition of harsh and repressive regimes within prisons, there was also the introduction of some reformative measures. In the latter part of the nineteenth century there were attempts to classify prisoners and, in particular, to focus on young offenders and to ensure that they were not subject to the same regimes as older prisoners. A key figure here is Mary Carpenter, who campaigned for young offenders to be placed in educational homes and who helped establish the 'reformatory school' as a separate penal institution, and one that developed into the approved schools at the start of the twentieth century. Apart from juveniles, there was little differentiation of prisoners, even between male and female regimes, up until the 1890s. However, by the end of the nineteenth century the harsh prison regime was being questioned, fuelled in part by the high cost of prisons and the continued high rates of recidivism. These concerns were clearly evident in the Gladstone Report of 1895. This report examined several issues including prison accommodation, prison labour and the treatment of juveniles; it emphasized reformation and rehabilitation and helped pave the way for a more scientific, treatment based model and regime to emerge. It led to the Prison Act of 1898 which limited the use of corporal punishment and introduced remission of sentences for prisoners.

Changes to the prison regime from 1900 included the replacement of unproductive labour for the sake of it with more useful work, with particular prison industries being developed, the phasing out of the separate system and an increase in association between prisoners. The Borstal system (named after the first custodial unit for young males opened in Borstal, Kent) based around indeterminate sentences (see p. 241) and the notion that juveniles should leave custody when they had demonstrated that they had been rehabilitated, was introduced for young offenders. As well as changes within the prison regime, the most significant developments in punishment and criminal justice in the early years of the twentieth century occurred outside of the prison, with the probation service established by the Probation of Offenders Act of 1907. Building on the work of police court missionaries, probation was made available for all offences except murder and treason, and involved the offender being supervised by a probation officer, whose basic duty, according to the act, was 'to advise, assist and befriend' the offender (see pp. 465–468 for more details).

The improvements in and liberalization of the treatment of prisoners continued in the first half of the twentieth century. In the 1920s, the shaving of prisoners' heads was abolished and the arrows on prisoners' uniforms were removed; prisoners were allowed to talk to each while working and were paid (a little) for their work (Coyle 2005).

This brief history of the emergence of the modern prison system should not necessarily be interpreted as an uninterrupted movement from harshness to greater humanitarianism. While being in a nineteenth-century prison might be considered preferable to the 'bloody codes' of the late 1700s when there were so many capital offences, whether the mid-Victorian prison regimes based around solitary confinement and hard unproductive labour was 'better' than the Houses of Correction of the 1600s (see p. 293) is perhaps debatable. Indeed this raises the general issue of

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whether punishment aimed at the mind is any more rational and humane that that aimed at the body.

BOX 13.1 PRIVATE PRISONS

Private prisons have existed in the UK since the twelfth century – and until the emergence of the 'modern' prison in the late eighteenth and early nineteenth century most prisons were privately managed. So the development of private prisons as part of the overall prison estate in the last 20 years is not a completely new phenomenon. As a way of managing the increased prison population the 1991 Criminal Justice Act allowed prisons to be contracted out to private companies. The first privately contracted prison was the Wolds in Yorkshire, which was run by the Group 4 security company and opened to prisoners in 1992. Currently there are 11 privately run prisons in England and Wales (out of an overall figure of 139 prisons), holding around 11 per cent of the overall prison population; this is higher than any other European country and even higher than the USA (which has just over 7 per cent of its prisoners in privately run prisons). While it is difficult to assess the success or not of these prisons, there have been some criticisms. According to data obtained by the *Independent* newspaper under the Freedom of Information Act, private prisons are 'performing worse than those run by the state', scoring lower on the Ministry of Justice's Performance Assessment ratings than state-run prisons. Furthermore, nearly twice as many complaints from prisoners are upheld in private prisons compared to state-run ones (*Independent*, 29 June 2009). None the less, private prisons are now an integral part of the prison system in the UK.

PRISONS AND IMPRISONMENT: THE CURRENT CONTEXT

Probably the most crucial current issue facing the prison service is the massive increase in the prison population in recent years. And there seems to be a general assumption and an acceptance of the fact that the number of prisoners will continue to rise. However, the continual, year on year, rise in these numbers is not inevitable. As recently as the 1980s the prison population remained relatively stable and it is only since 1993 and the hard-line policy promoted by the then Home Secretary, Michael Howard, that the prison population in England and Wales has risen at what can only be described as a phenomenal rate. This situation mirrors to some extent that of the United States and raises the question as to whether this country will follow the sort of 'mass incarceration' being experienced there. With that in mind it would be useful to say something about the United States' jail situation by way of comparison.

In terms of the major aims of punishment, it would seem that deterrence, reform and even retribution have become less important than just incarceration as a basic justification for imprisonment. The United States contains roughly 5 per cent of the world's population yet is responsible for about 25 per cent of the world's prisoners

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and has a higher proportion of its citizens in prison than any other country. In 2005 it had an incarceration rate of 714 prisoners per 100,000 of the population; the next highest rates were from Russia and South Africa (at 532 and 413 respectively), with England and Wales having a rate of 142 prisoners per 100,000 population and Canada 116 (figures cited in Newburn 2007). This type of mass imprisonment has been justified on a sort of cost-benefit basis. As crime rates in the United States have fallen in the last few years and with estimates of the cost of the average crime put at $300, with the average criminal committing 15 crimes a year, it can be seen how an 'economic argument' might be made for putting more offenders in prison. In addition, the fact that prisons in the United States are quite efficient (in terms of the cost per prisoner per year) adds another element to this utilitarian calculation and approach. However even within the United States there are significant differences in rates of imprisonment from state to state. The prison population of California, for instance, has increased massively in recent years from under 30,000 in the late 1970s to around 170,000 in 2009. As Abramsky (2009) comments, this is not because the crime rate has risen, indeed for most of the last 15 years it has gone down; rather it is because of 'laws like Three Strikes and You're Out and mandatory minimum sentences for categories of drug offenders'. An illustration of the hard-line approach adopted in California was the sentencing in March 2010 of a Californian man for up to eight years in prison for stealing a $3.99 bag of shredded cheese (other examples of the 'Three Strikes' legislation can be found in Chapter 4, p. 133).

This sort of mass containment strategy is very different from the 'traditional' aims of punishment and imprisonment. Deterrent, retributive and reformist justifications for imprisonment recognize the human nature of offenders and their capacity for choice. Containment and incapacitation require little acknowledgement of the human and moral nature of offenders; rather it is a sort of social hygiene approach that assumes it is not worth bothering to try to intervene or influence them.

Of course, it may be that indefinite containment is the only option for certain offenders from whom the wider public needs to be protected. However, on a widespread scale such an approach and policy is based on a pretty depressing picture of humanity and on the notion that people do not change much (and that even if they may change for the better it is impossible to know for sure that this has happened and so it is safer and easier to assume they cannot).

QUESTION BREAK: INCAPACITATION

There would appear to be a lot of public support for a hard-line, containment style policy both in the United States and Britain.

Why do you think a containment/incapacitation approach might be popular?

What arguments can you think of to suggest that people (a) can change and be reformed; and (b) are essentially unchangeable?

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To return to the British context, it is commonly held that the expansion of the prison population constitutes a 'penal crisis'. We will consider this notion of a crisis in relation to four main areas: numbers and cost; conditions; security and containment; and legitimacy. This will provide a structure for examining some of the major current issues that are faced by the prison service. Before looking at the prison population a brief comment on the notion of 'penal crisis' might be appropriate. For many years, commentators have described the British prison system as being in crisis. Over 20 years ago, for instance, Bottoms wrote a study entitled *The Coming Penal Crisis* (1980); and reference to our prison system as being in such a state would seem to be generally and widely accepted. This, though, does beg the question of what constitutes a crisis in the prison context. If a crisis is viewed as something that is relatively rare and takes place over a short period of time (Sparks 1996), it is perhaps debatable how useful it is to describe the current situation. As Cavadino (1992) put it, 'how long can a situation remain at crisis point before it is not a crisis?'. However accurate or appropriate the term crisis might be, it is clear that the British prison service has faced many problems throughout its existence and that as we move into the twenty-first century these problems are arguably greater than ever. And whether we use the dramatic term crisis or not, it is important to examine the current state of the prison system and how the different problems it faces relate to one another.

Numbers and cost

The size of the prison population is commented on regularly in the press and in recent years these figures have been setting new records on an almost weekly basis. Official figures can be found in Home Office publications such as the *Annual Abstract of Statistics and Social Trends*, as well as the HM Prison website and other official websites. Here we can only provide a snapshot picture of the current situation.

Despite different initiatives over the years, there has been little effect on the size of the prison population or on rates of re-offending, both of which have risen inexorably. Although there have been slight dips in the prison population from time to time, for instance in the late 1980s, the overall trend has been a regular and pretty continual rise. In April 2010, Alan Travis, *Guardian* Home Affairs editor, reported that the 'prison population has hit a record 85,000 after Labour's decision to end the 18-day early releases scheme just before the election campaign got under way' (*Guardian* 23 April 2010). On 30 April 2010 the Ministry of Justice Prison Population Briefing gave the total number of prisoners as 85,086, compared with 82,868 on the corresponding day a year before. While projecting the future prison population is a tricky task, recent estimates from the Ministry of Justice suggest it will rise to almost 96,000 by 2015. This sort of rise is likely because of the government's target of ensuring that more offenders are 'brought to book' (and if there are more convictions, there will inevitably be more people sent to prison). In terms of explaining these rises in the prison population, Newburn (2007) points out that there are three basic possibilities: more offenders being caught and sentenced, an increase in the seriousness of crimes prosecuted and an increase in severity of

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sentences. He suggests that there is no evidence of more offenders being caught but that there has been a general increase in sentence lengths.

These record numbers demonstrate quite a change from the situation just over 50 years ago when there were roughly 15,000 prisoners in 40 prisons. And before then at the end of the First World War (1918) the prison population stood at only just over 9,000. In terms of more recent comparisons, the number of prisoners in England and Wales has increased by over 25,000 in the last ten years; and when the Labour government took office in May 1997 the prison population was 60,131 (over 25,000 fewer than it is at the time of writing – in 2010). This growth in the prison population has necessitated a major prison building programme. Between 1985 and 2006, 25 new prisons have been opened. As well as new prisons, existing ones have been developed and extended so there are now 21 prisons holding more than 1,000 inmates.

However, following the general election of May 2010 and the forming of a coalition government, there are signs that the current Justice Secretary, Kenneth Clarke, is intent on reducing the prison population in England and Wales and has questioned why the prison population has virtually doubled since he was Home Secretary in the early 1990s. Whereas the previous government was planning for 96,000 prison places by 2014, Clarke has said that he aims to have only 82,000 people in jail by then. This shift will involve the shutting of prisons and the loss of jobs within the prison service as the present government implements huge budget reduction at the Ministry of Justice.

Within the overall prison population figures there are different categories of prisoner and one area of particular 'growth' has been in the number of women prisoners. Between 1992 and 2002 the female prison population rose from 1,577 to 4,408, an increase of 179 per cent. Since then the female prison population has remained relatively stable – indeed it fell to just over 4,300 in March 2010 (we will consider women prisoners as a separate group below, see pp. 456–460). Another growing part of the prison population is made up of foreign nationals. In March 2010 there were 11,400 foreign nationals in prison compared to 4,259 in 1996. The largest group of foreign nationals were Jamaican, followed by Nigeria, Republic of Ireland, Vietnam and Poland (Ministry of Justice Statistics bulletin, April 2010). These prisoners provide different concerns for the prison service, with issues of language and communication and cultural differences having to be addressed.

As regards the overall numbers, much of the recent rise can be explained by the increase in the numbers of long-term, including life sentence, prisoners.

Long-term and life sentence prisoners

Although most prison sentences are relatively short, with up to 80 per cent of prisoners being released within one year of being sentenced, the number of long-term prisoners has increased enormously over the last few years. In 1965, the year that the death penalty was abolished, 88 new prisoners were sentenced to 10 or more years; this figure had risen to 556 in 1995, 862 in 2000 and 979 in 2004 . As well as there being more long-term and life sentence prisoners, those who are sentenced to life serve

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longer in prison than they used to; the average time for a lifer in 1985 was just under 11 years, whereas in 2004 it was around 14 years (figures from Morgan and Liebling 2007). In an attempt to halt this upward drift in the number of years served by life sentence prisoners, in 2002 the Lord Chief Justice published guidelines cutting the minimum sentence for offenders convicted of murders to 12 years rather than 14. However, the effects of this were somewhat mitigated because adult murderers involved in the most serious cases will now serve a longer minimum term of 16 years and those convicted of the most serious murders would be given a minimum term with little or no hope of release – so serial killers, for instance, would serve a minimum of 30 years.

The Lord Chief Justice's guidelines were undermined by the then Home Secretary, David Blunkett, in May 2003 in an attack on 'inconsistent' judges in which he insisted that Parliament must have the right to lay down the principles of sentencing. The Home Secretary said that anyone who abducts and murders a child should die in jail, rather than face the current practice of a 20-year minimum sentence, with similar 'whole life' terms also to be imposed on terrorists or multiple murderers and on murderers who have killed before. Other serious crimes such as the murder of a police or prison officer or a race-motivated murder would lead to a minimum 30-year sentence, an increase of 10 years on current practice. His comments were opposed by leading figures from within the criminal justice system. The Bar Council said David Blunkett was trying to ensure the government tightened its grip around 'the neck of the judiciary', while the Howard League for Penal Reform said such measures would increase the present number of life-sentence prisoners by 50 per cent. The assistant general secretary of the probation officers' union, Harry Fletcher, commented that, 'The proposals suggest that there could never be room for redemption. Each case and release date must remain with the parole authorities to reflect remorse, change in the offender and the risk they may pose.'

As well as the fact that life sentence prisoners are serving longer, the number of life sentences has been extended, as a result of the Crime Sentences Act 1997, to include those convicted of a second serious violent or sexual offence. The introduction of the indeterminate sentence of Imprisonment for Public Protection (IPP) in the Criminal Justice Act of 2003 has also increased the number and proportion of long-term prisoners. Indeed the numbers serving indeterminate sentences (life sentences and IPPs) increased by 8 per cent (around 900) between March 2009 and March 2010 and it is worth saying a little about these new life and long-term sentences. Most prisoners serve a determinate sentence in that they have to be released at the end of that sentence. However, prisoners sentenced to life or to an IPP have no automatic right to be released – they have to serve a minimum period, known as the 'tariff', which is set by the judge at the trial. After the minimum period there is no automatic right to release; their release is dependent on the Parole Board being satisfied that the prisoner is ready for release (of course there are a small number of cases where life sentenced prisoners will never be released – where they serve a whole life order).

Different offences can lead to a sentence of life imprisonment. It is a mandatory sentence for murder committed by someone aged 21 or over and a discretionary maximum sentence for a number of other serious offences, including manslaughter, arson, robbery and rape. Also, as mentioned above, it is now a mandatory sentence

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under the 'two strikes' provision of the 1997 Act. This 'two strikes' legislation has attracted a good deal of concern and is worth commenting on briefly. It is based on the policy introduced in California in 1994 of giving a life sentence to any offender who committed three indictable offences of any severity. This led to some absurd cases where offenders were getting life sentences for committing minor thefts or burglaries. None the less the British government proposed an automatic life sentence for offenders convicted for the second time of a serious violent or sexual offence (unless there were very exceptional circumstances). As mentioned above, the 2003 Criminal Justice Act led to the replacement of the automatic life sentence by the Imprisonment for Public Protection sentence for offences committed after 4 April 2005.

As we have seen, a life or indeterminate sentence does not mean the prisoner will remain in prison for life; however, this legislation has undoubtedly increased the length of sentence for many offenders and so increased the prison population figures. As well as the resource implications of legislation that increases the prison population, such developments also raise issues of justice and fairness (see the extract from *The Times* in the question break below).

QUESTION BREAK: LONG-TERM PRISONERS

It is long-term prisoners who tend to dominate the routines of prisoner life rather than those who are only in prison for a few months. This creates a dilemma for the Prison Service which has to cater for most prisoners who have a brief, transitory experience of prison, while at the same time having to accommodate more and more prisoners who will be inside for many years.

List the main differences between the needs of long-term and shorter-term prisoners.

- What tensions might there be between the two groups?
- How might these factors affect the administration and management of prisons?

Read the extract below and suggest the advantages and disadvantages of the 'two strikes' policy. What ethical issues does it raise?

Robber gets life for his second serious offence

A robber has been jailed for life for stealing £520 under the 'two strikes and you're out' law.

It was Noel Boylan's second serious offence in four years: in 1994 he was jailed for four years for a robbery he committed with a pistol-shaped cigarette lighter.

Judge Jeremy Griggs told Truro Crown Court that there was no alternative to a mandatory life sentence for Boylan under the 1997 Crime Sentence Act.

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He would normally have jailed him for nine years, which, with good behaviour, would have entitled him to release after six years . . .

The 1997 Act . . . was inspired by the similar American 'three strikes and you're out' law which became notorious after a vagrant was jailed for life for stealing a pizza.

The sentence was condemned by civil liberties groups. Paul Cavadino of the National Association for the Care and Resettlement of Offenders said: This was a serious offence but we do not think it is right to require courts to pass a life sentence regardless of the circumstances. It is clear the offender deserved a severe sentence but the judge should have been able to decide its length.

There is a risk the new law will deter offenders from pleading guilty, which could lead to unnecessary trials and the possible acquittal of some dangerous offenders. It will also provide an incentive to plea-bargaining to avoid the automatic sentence.

(From S. De Bruxelles, 'Robber gets life for his second serious offence', *The Times*, 8 October 1998)

Cullen and Newell (1999), in their study *Murderers and Life Imprisonment,* consider the question of how many life sentence prisoners might be innocent. While it is impossible to ascertain the numbers, it is an important issue in that innocent life sentence prisoners are likely to serve longer than other lifers as they are seen as not admitting their guilt and demonstrating remorse. And the likelihood that such prisoners will protest their innocence often leads to them being seen as more awkward than other prisoners. The Criminal Cases Review Commission was set up in 1995 to investigate suspected miscarriages of justice and, according to Cullen and Newell, receives new cases at the rate of five a day. Although, again, it is impossible to establish how many who allege they are innocent are 'genuinely' innocent even the Prison Officers Association estimated in 1992 that there could be around 700 innocent convicted prisoners. Of course any estimates are liable to be on the low side as there are many reasons for prisoners not to maintain their innocence, with parole and transfer to other prisons possibly depending on a willingness to own up to crimes and admit guilt. As Cullen and Newell put it: 'It is quite clear that to get parole any sex offender would have to admit guilt, and participate in programmes to work on his offence and any cognitive distortions' (1999: 65). They also cite a comment from the former *Observer* journalist David Rose that, 'for the life sentenced prisoners, protesting innocence is a sure-fire way to remain in gaol forever'.

The various, high profile and infamous miscarriages of justice in recent years have illustrated the extent of this issue. However, it could be argued that the innocence or otherwise of prisoners is not really an area where the prison service can get involved, as it is the courts that convict and sentence offenders. Cullen and Newell argue that such a view is short-sighted in that prisons are an integral part of the criminal justice system; and prisoners who feel they are innocent are more likely to refuse to accept the realities of prison life and more likely to engage in protest about their conditions.

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There is an obvious link between the numbers of prisoners and the costs of running the prison service, and the massive rise in the prison population and consequent prison building programme is obviously costing a great deal. It is not cheap to keep someone in prison and it is difficult to estimate the actual costs. Morgan and Liebling (2007) estimate that it costs around £27,000 per prisoner per year, or about £510 a week, whereas the Prison Reform Trust suggest the figure is around £40,000 a year. On top of this there is the phenomenal cost of building new prisons to cope with the rising prison population; according to Prison Reform Trust figures, the average cost of each additional prison place built since 2000 has been just under £100,00, and the rise in places since then clearly illustrates the massive cost of running the prison estate.

Before turning to prison conditions, it is important to bear in mind when considering the prison numbers that the prison population is not determined by levels of crime; essentially it is politically determined and it could be considerably smaller, as it is in other European countries, or, presumably, larger, as it is in the United States. And if there is no clear political drive to restrain the current expansion then prison numbers will undoubtedly continue to rise. As a final point, in this section we have referred to different categories of prisoners, for instance lifers, but one area where there is potential to greatly reduce the prison population is with regard to the number of fine defaulters sent to prison each year. These offenders were not originally sentenced to prison (presumably because their crime did not merit it); when they default on their fines and end up in prison, the government does not get the money from the fine anyway and there is the additional (and as we saw above, heavy) cost of keeping the offender in prison. The number of people sent to prison for not paying fines is considerable, making up roughly a quarter of all people imprisoned per year.

Conditions

It is probably fair to say that the material conditions in which prisoners live are better nowadays, in terms of food and hygiene for instance, than they have ever been. Although the old Victorian prison buildings are still in use there are also many new, purpose-built prisons and daily life in prisons has changed with there no longer being rows of prisoners working in silence. However it is only in recent years that some very degrading practices have been eliminated. It was not until the Strangeways prison riot of 1990 and the subsequent Woolf Report that a target date was set for ending 'slopping out'; this daily ritual whereby prisoners were allowed out of their cells to empty the buckets which they had used for toilets the previous night was only finally ended in 1994. Slopping out will probably be looked back on as an archaic, even barbaric, relic – like the crank and treadmill of nineteenth century prisons, but one which lasted until the end of the twentieth century.

The recent improvements, though, do not mean that bad conditions and repressive regimes in prisons are a thing of the past. There is still a lack of constructive activities for most inmates and, due in large part to the massive increase in numbers, many prisoners spend longer periods alone in their cells and consequently less time working outside of them. Other pressures come from the longer periods served in prison and

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from the overcrowding consequent on rising numbers; while the much stricter and pervasive security and surveillance in prisons has led to a reduction in communal activities such as eating in dining halls (prisoners taking their food back to their cells is felt to pose a lesser security risk). So while many prison cells may be better equipped and more comfortable than in the past this is perhaps scant consolation if ever longer periods of time are spent in them. And it is also clear that poor conditions remain a major area of concern and dispute for prisoners and so work against the smooth running of prisons.

In terms of day-to-day prison life, fear is a prominent and pervasive feature. For instance, there are more and more drugs of all kinds in prisons and the consequent violence and intimidation that stems from them exacerbates this fear. The quality of prison life is also affected by pressure on prison staff and the extra demands on staff caused by ever increasing numbers can lead to cancellation of work and can limit the opportunities for inmates to engage in useful activities, such as educational programmes, and in leisure activities. Although it is easier to manage with fewer staff if prisoners are locked in their cells, again this will affect the quality of life for prisoners and thereby increase degrees of dissatisfaction. A report by the Chief Inspector of Prisons, Anne Owers, into Norwich prison published in January 2003 showed that more than 200 out of 250 inmates on one wing had no access to meaningful work or education, while on the prison's 'training wing' only eight out of 45 inmates were in education and none was undertaking what might be termed meaningful work (Travis 2003). More recently, in October 2007 another report on Norwich prison from environmental health inspectors was so damning that it led to the closure of one of the prison wings there. The report referred to a lack of heating due to vents being blocked by paint, to dampness and a risk of rodent infestation – indeed the particular wing of the prison (Gurney wing) had been declared 'unfit for animals' by a previous report in January 2007 but was reopened after three days because of overcrowding at the prison (Travis 2007).

It is difficult to assess the extent of prison overcrowding accurately because the data will fluctuate as offenders enter and leave prisons and as prisoners themselves are moved around the system. According to figures from the Penal Reform Trust in 2009 over two thirds of prisons in England and Wales were overcrowded; their report published a 'league table' of the most overcrowded prisons. Shrewsbury, with 316 inmates in its 177 spaces, came out as 'top', followed by Swansea (395 in 230 spaces) and Dorchester (229 in 137 spaces).

QUESTION BREAK: PRISON OVERCROWDING

The current level of overcrowding is undesirable but very limited. Only 20% of prisoners are currently having to double up in a cell designed for one. Regimes are still being delivered, and prisoners are still receiving education, purposeful activity, offending behaviour programmes, and getting exercise and time out of their cells . . . No prison is being required to take more than

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its operational capacity and we are committed to ensuring that overcrowding does not impact on safety in any way, and we recognise the pressures it creates for prisoners and staff.

(Hilary Benn, Prisons Minister, quoted in *The Times*, 29 August 2002)

Our prisons are becoming no more than warehouses once again . . . The consequences of overcrowding are jeopardising both the safe running of the prison system and the rehabilitation of individual offenders . . . Although 20% of inmates are 'doubling up' in cells designed for one the prison service does not collect data on overcrowding in other types of cells, such as when three inmates have to share facilities designed for two.

(Frances Crook, Director of The Howard League, quoted in *The Times*, 29 August 2002)

Compare the comments of the Prisons Minister and the Howard League with the report of the Chief Inspector of Prisons on Norwich prison (above) on the extent and impact of overcrowding, then answer the following questions:

- Which interpretation of the same data do you find most convincing? Why?
- What additional problems is overcrowding likely to lead to for (a) the management of prisons; (b) the rehabilitation of prisoners?

As well as affecting the day-to-day quality of life in prisons, poor conditions, exacerbated by overcrowding, have been linked with prison disturbances and with increased suicides within prisons. While perhaps not as spectacular as the prison riots of the early 1990s at Strangeways prison in Manchester and elsewhere, there have been a number of disturbances in British prisons in recent years. The prison service admitted to there being 'disturbances and acts of indiscipline' at four prisons in August 2002. Four days of disturbances at Holme House prison, Teesside led to 34 cells being damaged beyond use after about 60 inmates refused to return to their cells, and there were similar disturbances and damage at Swaleside prison in Kent, Pentonville, London and Ashfield in Bristol. The prison service acknowledged that overcrowding and staff shortages were at least partly to blame. The Deputy Head of the Prison Service, Phil Wheatley, referred to the record prison population as having 'increased instability and contributed to a small but significant number of incidents of mass disorder'; he went on to highlight the 'real risk that such incidents could escalate to involve large numbers of prisoners leading to a riot' (quoted in Travis, 'Crowding Fuels Prison Violence', *The Times*, 29 August 2002). Prior to these disturbances, in June 2002, the Lord Chief Justice, Lord Woolf, had warned that 'the intolerable conditions in Britain's overcrowded jails risk further prison riots like those that occurred in the early 1990s' (*Guardian*, 21 June 2002). These kinds of fears were realized in the full-scale riot that occurred at Lincoln prison in October 2002. Prisoners forced the 25 prison officers on duty (in a prison holding 571 inmates) to

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withdraw to the prison gates and effectively controlled the prison for three hours on October 24th. After a prison officer had been assaulted and his keys taken, hundreds of prisoners were unlocked and went on the rampage, smashing cells and furnishings and lighting fires in two of the prison's wings. The riot ended after 250 prison officers from 17 jails and equipped with riot gear took back control of the prison wing by wing. The General Secretary of the Prison Officers' Association, Brian Caton, said:

> We have been warning the Prison Service that unless they resourced us correctly for the very large increase in the prison population, that these kind of events would become more frequent. We believe that there are many overcrowded prisons now that are reaching crisis point.
>
> (*The Times*, 25 October 2002)

In a more recent comment, in October 2009 the president of the Prison Governors' Association, Paul Tidball, commented that the prison population was now so large that there was potential for a 'widespread disorder' by inmates and that there was a potential for prisons 'to blow' (*Guardian*, 5 October 2009). And in 2010 there was a major riot at Ford open prison.

Poor conditions and increased overcrowding have also been linked to the increased suicide rate within prisons. While the number of suicides in prison, and hence the suicide rate, varies from year to year it is much higher than the suicide rate amongst the wider population. The suicide rate in the prison population has varied from 72 to 133 for every 100,000 inmates between 2000 and 2009 (and from 60 to 95 actual suicides), with the highest rates in 2002, 2003 and 2004, while, as a snapshot comparison, in 2008 the general suicide rate across the whole country was 17.7 per 100,000 for males and 5.4 per 100,000 for females. So men in prison are five times more likely to commit suicide than those in the general population; and this is especially the case for young male prisoners aged between 15 and 17. The Chief Inspector of Prisons, Anne Owers, has regularly referred to prison suicides; in her first annual report she commented: 'Recently there were eight suicides in one week, five of them within 24 hours. These shocking statistics are, of course, directly connected to prison overcrowding and the consequential "churn" as prisoners continually move into and out of prisons throughout the estate' (quoted in *The Times*, 11 December 2002).

In a similar vein, five years later in the annual report of 2007, Ann Owers said:

> During the reporting year, the prison population went from one all time high to another . . . At the same time, there has been a dramatic rise in self-inflicted deaths in custody . . . Many were amongst some of the most vulnerable – foreign nationals, indeterminate-sentenced and unsentenced prisoners and women, at the most vulnerable times, in the early days in an establishment.
>
> (from www.prisonreformtrust.org.uk)

In commenting on this report, the director of the Prison Reform Trust, Juliet Lyons said: 'This massive increase in prison suicides of almost 40% on 2006 results is a result of the pressure of chronic overcrowding across the prison estate' (from www.prisonreformtrust.org.uk).

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In a more general consideration of how prisoners adapt to imprisonment, Mathews (1999) points to the tendency to explain suicides in prison 'as a function of the mental instability of some prisoners with histories of psychiatric disorder'. However, those who commit suicide in prison are less likely to have a history of psychiatric disorder than suicides among the general population, 'whereas some 90 per cent of the recorded suicides in the community have a history of psychiatric disorder, only a third of those who commit suicide in prison have similar histories' (Mathews 1999: 70). Mathews suggests that explaining suicides in prison in individualistic terms ignores the effects of the prison regimes and the control strategies in prisons, with little attention paid to the depersonalizing nature of prison life and the range of activities and social stimuli that are available to prisoners. He argues that 'those most likely to attempt suicide are those who are physically and socially isolated in prisons with few activities and with little contact with home and family' (ibid.).

Security and containment

Another aspect of prison life that is affected by increased numbers and poor conditions is prison security, with overcrowding leading to many inmates being held in unsuitable parts of prisons and in the wrong security conditions. Prison security and containment became a prominent issue in the 1960s with a number of spectacular escapes by high profile prisoners, including the Great Train Robbers, Ronnie Biggs and Charlie Wilson, in 1965 and the spy, George Blake, in 1966. Until then security considerations had been relatively low on the prison agenda, but these escapes led to the Mountbatten Report (*Inquiry into Prison Escapes and Security*, Home Office, 1966) which highlighted weaknesses in prison security and established a new categorization of all prisoners in terms of their security risk. This categorization, which determines where prisoners are allocated to serve their sentences, is still in place today in much the same form as suggested by Mountbatten.

As suggested, the escape of George Blake, in particular, was a key factor in these developments and is worth referring to briefly here. Blake was employed by MI6 after the Second World War and while serving in Berlin offered his services to the KGB; after twelve years of spying for the Soviet Union he was sentenced to 42 years' imprisonment in 1961, the longest ever determinate sentence passed in Britain. Essentially George Blake seems to have managed to escape from Wormwood Scrubs five years later without meeting any real obstacles – an accomplice threw a rope ladder over the prison wall and then drove Blake to a house a few minutes away from the prison. He was smuggled out of the country and to East Berlin in December 1966 and is still alive and living in Moscow with a Russian wife, son and grandson.

At the time of Blake's escape prisoners were classified as either 'stars' (first time prisoners) or 'ordinaries' (those who had served at least one previous sentence). The categorization system introduced by the Mountbatten Report included four categories of prisoner according to the level of security felt necessary to hold them in custody. These categories were defined as follows:

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- *Category A* – Prisoners who must in no circumstances be allowed to get out either because of security considerations affecting spies, or because their violent behaviour is such that members of the public or the police would be in danger of their lives if they were to get out.
- *Category B* – Prisoners for whom the very high expenditure on the most modern escape barriers may not be justified, but who ought to be kept in secure conditions.
- *Category C* – Prisoners who lack the resources and will to make escape attempts, (but) have not the stability to be kept in conditions where there is no barrier to escape.
- *Category D* – Prisoners who can reasonably be entrusted to serve their sentences in open conditions.

(Home Office, 1966)

As mentioned, this security categorization is still in place today and is perhaps the most important of the prison's internal procedures. In the HM Prison Service's published list of Performance Standards the key aspect of security is the categorization and allocation of prisoners. On reception, all prisoners are risk assessed to determine their security category on reception and then accommodated in accordance with the results of this assessment – they are allocated to a prison in line with their security category. As Price puts it:

> [I]t structures the use of the prison estate, acting as a first line of defence against escapes, determining living conditions and allocation possibilities for convicted prisoners. Almost every other internal procedure within the prison system is conditional on the results of this one decision.
>
> (Price 2000: 3)

However, it is a decision and a procedure that offers the prisoner little opportunity to question or appeal against.

One of the main issues addressed by the Mountbatten Inquiry was that of what to do with the category A prisoners. It recommended one, specially built maximum security prison, which was going to be known as 'Vectis'. However, this did not become policy. The Home Office was not in favour of one fortress-type prison for a number of reasons; in the wake of the Blake escape there was a concern about the consequences of a mass break-out and there were misgivings around issues of staffing and control in such a prison. Instead a further inquiry by the Advisory Council on the Penal System (1968) proposed that the most dangerous prisoners be spread around a number of high security prisoners most of whose inmates would be categories B or C. It is understandable that the prison service is particularly concerned about containing and controlling a small number of very dangerous prisoners and the advantages and disadvantages of either the concentration or dispersal of such prisoners has been an ongoing area of debate. Indeed, discussion of how a prisoner comes to be classified as a maximum security risk in the first place has been overshadowed by the debate about what to do with such prisoners (Price 2000).

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Problems of security and control in prison are not necessarily one and the same, for instance there will be prisoners who may well have the connections and capacity to organize an escape but who will pose few problems in terms of day-to-day control within prison and might be very compliant prisoners. This raises the question of how to distinguish between a prisoner who is a security risk and one who is a control risk and highlights a particular problem with the fourfold categorization of prisoners. The categories A and B relate to the risk and danger if a prisoner escapes while C and D refer to the likelihood of an escape. As Price (2000) points out, this leaves 'a large hole in the centre of the four categories', in that category B is defined as being almost but not quite A and category C as not quite the same as D but the distinction between categories B and C is much less clear. And how the categories are applied in practice often becomes rather subjective, even depending on which part of the country prisoners serve their sentence. In 1981, for instance, a Prison Department Working Party found that the Midland region placed over 22 per cent of its prison population in category D, open, conditions and just 11 per cent in category B, while the South-West had close to 30 per cent in category B conditions and 10 per cent in category D, open prisons. These differences were simply due to the different levels of prison accommodation available in the different regions.

Since the mid 1960s there have been few escapes by prisoners who pose a genuine danger, although many prisoners who are deemed lower risk do walk out of open prison conditions or abscond when working outside of prison. However, there were two exceptional and dramatic escapes from high security prisons in the 1990s. Six prisoners escaped from the secure unit of Whitemoor prison in Cambridgeshire in 1994, injuring a prison officer with one of two guns used in the escape. In 1995 three prisoners from Parkhurst prison, who were identified by the prison service as some of the most dangerous in the prison system, managed to make a master key and a ladder that could be dismantled into smaller parts in the prison workshops, to obtain wire cutters, pliers and a gun, to evade the CCTV cameras and dog patrols at the prison perimeter and to break through two fences without setting off any alarms. They were at large on the Isle of Wight for four days before being spotted by an off-duty prison officer and recaptured.

These escapes led to separate inquiries, the Woodcock report into the Whitemoor escape and the Learmont report into that at Parkhurst. Both recommended and have led to increases in prison security and surveillance and to more restrictions on long-term prisoners, with the Learmont report stressing that custody should be the primary purpose of the prison service. While it is clear that some prisoners are dangerous and need to be held securely at all time, the vast majority of prisoners are not; and there is a danger that in reacting to specific situations with harsher restrictions, opportunities that may help prisoners to settle into outside life after their release, such as pre-release home leaves, might well be missed.

There have been more recent escapes, more usually from prison escorts. In January 2009 Wayne Connor escaped from a prison van taking him to court after two armed accomplices held it up. He was recaptured within a few days. More spectacularly, in March 2009 Julien Chautard, a French-born arsonist who had been sentenced to seven years' imprisonment, escaped from Pentonville prison by clinging to the underside of the prison van that had brought him there from court. He handed himself

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in to the police after being on the run for a few days. However, such escapes are few and far between. One of the Key Performance Indicators used by the prison service is that the rate of escapes from prison and prison escorts should be no more than 0.05 per cent of the prison population (www.justice.gov.uk). The prison service easily meets this target. In 2006, for example, there were four such escapes from a prison population of getting on for 80,000 (roughly 0.005 per cent); while the 'prison escape' figures for 2007, 2008 and 2009 were three, one and three respectively (www.parliament.uk).

Legitimacy

The Woolf report (1991) highlighted the sense of injustice held by inmates as a key factor behind the Strangeways disturbances of 1990. This sense of injustice was related to internal prison practices and procedures. As Woolf put it, 'a recurring theme in the evidence from prisoners who . . . were involved in the riots was that their actions were a response to the manner in which they were treated by the prison system. Although they did not always use these terms, they felt a lack of justice.' The report argued that the prison service should seek to achieve and maintain a balance between justice, security and control. This justice should not be seen as some sort of privilege or award for good behaviour; rather it should be a basic requirement that prisoners would receive humane treatment, be subject to fair procedures and be provided with reasoned explanations for decisions made that affected their situation.

Although not explicitly referring to the term 'legitimacy', the Woolf report advocated what could be seen as a 'theory of legitimacy' (Cavadino and Dignan 2007):

> The evidence is that prisoners will not join in disturbances in any numbers if they feel conditions are reasonable and relationships are satisfactory. These are matters which the prison service must address more closely. They are fundamental to maintaining a stable prison system which is able to withstand and reject the depradations of disruptive and violent prisoners. These are matters which must be resolved if we are to have peace in our prisons.

As regards the balance between justice and security and control, the emphasis since the Woolf report has been on implementing the security recommendations, such as installing metal detectors and X-ray machines. This emphasis has been sharpened by the Woodcock and Learmont Inquiries into the prison escapes of the mid 1990s (see above) and has led to some incredibly detailed monitoring of inmates' possessions. The *Prisons Handbook* (Leech and Cheney 1999) illustrates the detailed control over prisoners' property: 'The basic rule is that the standard limit, for all prisoners, for all property held in possession is that which fits into two volumetric control boxes. The volumetric control box measures 0.7m × 0.55m × 0.25m and has a volume of 0.9625 cubic metres' (p. 242). In contrast, there has been much slower progress made on other recommendations of the Woolf report, such as on action to end overcrowding and to improve prison officer and inmates' relationships. It would seem that

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security has become the top priority and that another detailed and thoughtful inquiry, with some useful recommendations, has become another missed opportunity.

Woolf found that the standard response when dealing with prison disorders was to identify the 'trouble makers' and to subject them to some form of punishment, such as solitary confinement, or to ship them out to another prison. There was little attempt to investigate the grievances that the inmates had. This sort of approach illustrates a general concern of prisoners that the grievance procedures within prisons are inadequate. In addition, the internal prison disciplinary system is felt to operate in a manner that works against the interests of prisoners. As regards internal disciplinary offences, prison governors carry out the initial investigation and deal with the vast majority of cases themselves – a procedure which is perhaps unlikely to be viewed very positively by prisoners. More serious offences can be referred to the police if they also constitute a crime (cases of assault or possession of drugs for example). Until 1992 the prison Board of Visitors used to be involved with more serious disciplinary cases. This was felt by the Woolf report to compromise the impartiality of the Board of Visitors and their main role now is to find out about and draw attention to any abuse of prisoners. Boards of Visitors were established by the prison Act of 1895; they changed their name to Independent Monitoring Boards in April 2003 with each Board being responsible for a particular prison. They are meant to act as independent watchdogs, safeguarding the well-being and rights of prisoners. However, although they are meant to be independent of the prison service, members are appointed by the Home Office and tend to be local dignitaries (including magistrates) who do not inspire a great deal of confidence in prisoners themselves.

Justice within prison does not just refer to how grievances or disciplinary offences are dealt with. The emphasis on prisoners' having to 'earn' privileges and, in particular, to earn remission from their sentences raises further concerns about justice in prison. The Crime Sentences Act 1997 proposed that prisoners would have to 'earn' their early release, rather than it being a right. However, it is difficult to apply such a policy with justice (and in a way that is felt legitimate by prisoners) as such decisions will almost inevitably involve the day-to-day appraisal of prison officers; and these decisions about early release or not are bound to cause all sorts of ill feelings. They might result in many extra months of a sentence being served by some prisoners but not by others.

QUESTION BREAK: RELEASE FROM PRISON

While the idea of prisoners having to earn remission from a sentence is not new – it is similar to the indeterminate sentence idea that has been used in the past (see p. 240), it can increase tension among inmates and raises awkward questions.

What do you think should determine a prisoner's release from prison?

List the arguments for and against linking the release date for prisoners to their behaviour while in prison.

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IMPRISONMENT: EXPERIENCES AND ISSUES

Now that we have considered the current situation in British prisons in relation to numbers, conditions, security and legitimacy, the focus of this next section is on the 'experiences of prison life'. This is obviously a vast area and here we will focus on two particular areas: the experiences of female prisoners and the question of whether prison can 'work' in terms of rehabilitating those convicted for serious offences.

Women and prison

According to data from the Ministry of Justice (from their website and statistics bulletins 2010), out of a prison population of just over 85,000 on 30 April 2010, just under 4,400 (slightly over 5 per cent) were female. So with around 95 per cent of prisoners being male it is perhaps not surprising that the prison system has been dominated by the needs of male rather than female prisoners. Although a figure of 5 per cent may seem very low given that just over half the total population of England and Wales is female, the female prison population grew at a much faster rate than the male prison population around the turn of the twenty-first century. Between 1995 and 2005 there was a 150 per cent increase in the number of female prisoners compared to a 40 per cent increase for men (Morgan and Liebling 2007). More recently the female prison population has stabilized – indeed between March 2009 and March 2010 it fell slightly (albeit by just 6), following a small decrease the year before also.

However, the massive rise in the late 1990s has affected the experiences of women prisoners. In a report from the Prison Reform Trust (2003) into Newton Hall prison, Durham, overcrowding was highlighted as a real cause for concern, with the report finding almost half of the female prisons in England and Wales suffering from overcrowding. It made the point that few women offenders are a 'real risk' to the public, with director of the Prison Reform Trust, Juliet Lyon, commenting that, 'for all but the most serious and violent offenders, support and supervision centres in local communities offer the best chance for women offenders to get out of trouble'. However, as we have seen in looking at prison numbers generally, attempts to reduce the prison population do not seem to have much success. The Youth Justice Board, for instance, has recommended that all girls aged 16 and younger should be removed from prisons but has said that these plans have been frustrated by an increase in the number of teenagers being jailed.

As regards the make-up of the female prison population there are some differences from male prisoners. A higher proportion of female prisoners are on remand awaiting trial (in March 2010, 18 per cent compared to 15 per cent for males); while sentenced female prisoners are usually older and serving shorter sentences and are substantially less likely to be reconvicted (Morgan and Liebling 2007). Another development that has affected the female prison population has been the increase in foreign nationals held in British prisons, many for drug-related offences, including drug smuggling, which tend to carry relatively long sentences (Mathews 1999). Ministry of Justice figures from March 2009 showed that 27 per cent of female prisoners were held for

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drug offences and 18 per cent were classed as foreign nationals (compared to 13 per cent of male prisoners).

The increase in the number of women in prison and the fact that the prison service tries to place women in female only institutions affects the experience of female prisoners. As Morgan and Liebling (2007) point out, with only 19 out of the 142 prison establishments accommodating women it is difficult to place female prisoners near to their homes. And as almost two thirds of female prisoners have at least one child below the age of 18, being in a prison close to their home is the highest priority for most of these prisoners. These sorts of practical issues are likely to intensify the tensions that occur in women's prisons.

Although the female prison population has risen dramatically in recent years, the proportion of female prisoners has not always been as low as it is now. During the Victorian era women made up around one in five of those sent to local prisons and between 1860 and 1890 the average daily population of women in local prisons increased from 4,567 to 4,840 – higher numbers than today and in relation to a male prison population of less than 20,000 at the end of the nineteenth century (Zedner 1991). The female prison population was declining at the end of the nineteenth century and continued to do so into the twentieth, partly due to a decline in the number of women prosecuted for public order offences such as prostitution and because of a growing emphasis on explaining female offending in terms of 'feeblemindedness' alongside a policy of sending those prosecuted for drunkenness to reformatories rather than prisons. Between 1898 and 1914 a number of inebriate reformatories for female drunkards were founded (Zedner 1991). The female prison population continued to fall in the first half of the twentieth century and was less than 2000 by the 1960s. As mentioned above, the figures have increased from that low in recent years.

However, it was during the Victorian era that approaches to female imprisonment (as well as female offending) that are still in vogue today were introduced: for instance, the notion that women should be held separately from men and that women prisoners would benefit from the sort of personal attention that was best provided by prison officers of their own sex (Mathews 1999). There was also a different approach to prison labour for female prisoners; while it was agreed that all prisoners should engage in some form of work to aid their reform the following contemporary comment indicates the different regime advocated for women prisoners:

> The work done by the women prisoners is, of course, of different character to that performed (at) the hulks . . . the hard labour of prisoners working in the arsenal and dockyard is here replaced by the more feminine occupation of the laundry.
>
> (Mayhew and Binny, 1860, in Mathews 1999)

While there will clearly be common aspects and some overlap between the experiences of and responses to imprisonment for both male and female prisoners, there are some issues which relate more strongly to female prisoners. And, as Heidensohn (2002) points out, while there may be some debate as to how 'gendered' women's experience of imprisonment is, there is a general consensus that women offenders should be treated differently. She refers to the Prison Reform Trust inquiry led by Dorothy Wedderburn which pointed to the prison system not providing for the particular

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needs of women and highlighted four distinctive characteristics of women prisoners. These were: different patterns of offending from men and lower risk to the public; their role as mothers and primary carers; their history of psychiatric illness; and the effects of the proportionately low numbers of women prisoners ('Justice for Women: The Need for Reform', Prison Reform Trust, 2000, in Heidensohn 2002).

The point about the small proportion of the prison population was referred to earlier as leading to female prisoners typically being held some distance from their homes, with consequent difficulties for arranging visits and so maintaining family contact. A further implication of this is that women's prisons have to cope with a wider range of offenders than men's prisons; and that the range of work, training and educational opportunities are likely to be more limited (Mathews 1999). These sorts of 'structural' factors attendant on numbers and space will also affect the 'culture' within women's prisons. The fact that the majority of female prisoners are mothers affects the nature of and culture within women's prisons. As mentioned above, roughly two thirds of female prisoners are mothers and according to estimates from the Prison Reform Trust each year up to 20,000 children are affected by the imprisonment of their mother. Only around 5 per cent of women prisoners' children remain in their own home once their mother is sent to prison, with most being looked after by their grandmothers, other family members or friends. The question break below considers how women respond to their imprisonment.

QUESTION BREAK: WOMEN BEHIND BARS

The first extract below is taken from the section of Mary Eaton's study *Women After Prison*, which considers how women responded to their imprisonment. The second and third refer to more recent reports and comments on the experiences of women prisoners.

The women described ways of coping with the regimes in which they were held . . .

1 Withdrawal

To preserve something of the sense of self with which one entered prison it is necessary to withhold that self from engagement with the world of the prison. In withdrawing from the situation, women may feel that they are keeping the institution at a distance; however, they are actively conforming to the regime which defines docility as an appropriate characteristic for women . . .

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2 Retaliation

I used to get into every kind of skulduggery that was going – like making drink – alcohol . . . That was the way I did my prison sentence – messing around and getting them back all the time . . .

For some women, confrontation with the prison authorities was one way of preserving a sense of self-dignity . . .

3 Incorporation

. . . Women may play an active part in maintaining the hierarchy that characterizes prison life, and so endorse the relative positions within that hierarchy. Experiencing exclusion themselves they practise exclusion on others. Being subject to power, they wield a limited power. 'What I hated more than anything was that there was so much bad feeling and aggression between the women' . . . Prison life does not encourage the creation of community . . . In such a situation many women felt that they changed in response to perceived aggression from others. If there was to be a hierarchy to be reinforced then they determined not to be at the bottom, not to be victims . . . 'I abhor physical violence, but in prison I was totally different . . . It was more like being in care where if you didn't physically stand up to someone who you thought could possibly bully you then you were going to be in trouble.'

(From M. Eaton, 1993, *Women After Prison*, Open University Press, pp. 41–47)

Women Prisoners Need Life Support

There are more than 4,400 women prisoners in England. Four out of five women prisoners have mental health problems, most commonly depression and anxiety. Almost half have been subject to abuse during their lives. One in three has a child under five. For many women, even a short spell in prison can achieve nothing positive but create havoc with their family life and further damage their mental health.

With only 17 women's prisons in England and none in Wales, many women are imprisoned long distance from their families. For some, a spell in prison is just long enough for them to lose their children and their home.

The Corston report, published in March 2007 following a major inquiry led by Baroness Corston, made far-reaching recommendations about the future of women's prisons. It called for a more 'distinctive approach' to women in the criminal justice system, replacing women's prisons with a network of smaller, urban units for women in custody and for far greater use of community alternatives to prison . . . The report also made specific recommendations for the health of women in the criminal justice system,

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including improved arrangements for psychiatric assessments and for diverting women in courts and police stations towards mental health services.

The government published its response in December 2007, accepting many of the report's recommendations . . . (it) stopped short, however, of committing to develop the small, local centres Corston proposed to replace existing women's prisons . . .

Very few women prisoners actually need to be in custody. Most need a package of support that spans several public service: from health and social care to housing and employment support.

(From A. Greatly, 'Women Prisoners Need Life Support', *Guardian*, 29 January 2008)

Female Ex-inmates Talk About Prison Abuse

Sexual abuse is 'part and parcel' of prison life, with staff harassing female inmates in exchange for drugs, cigarettes and even early release, according to former prisoners. Here, they tell their tales . . .

Jade Thompson, 32, is a former drug addict who served several prison sentences for drug-related crimes. Last released in 2003, she has turned her life around, training and working as a drugs abuse support worker. She served time in four prisons – Holloway, Highpoint, Cookham Wood and Foston Hall – and says she witnessed and experienced sexual approaches from staff, male and female, in every jail. 'It was part and parcel of prison life, and very intimidating. If you are not going to buy into the approaches made by staff, you will not progress, you will not get the good jobs, or get on to the courses that will help you get early release' . . .

Susan May, 64, served 12 years of a life sentence for the murder of her aunt in 1992 . . . She has always maintained her innocence . . . She has been imprisoned in six different jails. May agrees with Jade Thompson that Holloway contained a number of predatory female staff. In every jail she was in, she says, there were illicit relationships between staff and inmates. 'Some inmates complied, in return for cigarettes and other treats . . .' May says many women prisoners felt lonely and were more susceptible to the illicit approaches.

(From E. Allison, 'Female Ex-inmates Talk About Prison Abuse', *Guardian,* 18 July 2009)

- What do you think are the major differences and similarities between the responses of the women interviewed by Eaton and those of male prisoners?
- In what other ways might prisoners, and particularly female prisoners, respond to imprisonment?
- Why do you think women 'react more adversely to custody than men'? Assess the arguments, put forward by the Corston Report, that very few women prisoners should be in custody.

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Can prison work?

This sub-section will consider some examples of treatment programmes designed to rehabilitate long-term, dangerous prisoners. David Rose (2002) studied the effects of a year-long Cognitive Self-Change Programme (CSCP) run at Channings Wood prison, Devon. Seven of the eight prisoners on the programme that he examined were serving life sentences and all were judged by psychologists as at risk of offending again. The programme aims to reduce those risks and is one example of rehabilitative programmes that are in place across the majority of prisons in the United Kingdom. The existence of these programmes is seen by Rose as part of 'radical transformation in philosophy and practice now sweeping the British prison system'. In 2001, over 6,000 prisoners completed offending behaviour programmes, more than 11 times as many as in 1994, with the figure set to rise substantially in the next few years. This new rehabilitative emphasis was strongly supported by the then director-general of the Prison Service, Martin Narey: 'Like many who work in the service, I've never seen my job as being about just locking people up . . . If we can get people off drugs, on to offending behaviour programmes and into education, then we're going to reduce crime' (quoted in Rose 2002). Not all the prisoners were so enthusiastic about the CSCP programme and expressed a degree of scepticism, as illustrated by the comment from one of the participants: 'The psychology department have to put you through a stringent risk assessment. It's a year on a microscope slide. If you get your rubberstamp at the end of it, you're OK for D cat (open prison). If not . . .' However, most of the prisoners were positive. As one of the lifers said:

> I didn't want to do this course, but it has given me a lot of insights: why I killed the person I killed and why I've committed violent offences through my life. It's given me a lot of tools that I'm already using, to assess my own and other people's actions.

As well as programmes for serious offenders there are also less intensive courses for prisoners serving shorter sentences. The Enhanced Thinking Skills (ETS) course, for instance, is used in 79 jails. Rose refers to research by prison psychologist Caroline Friendship which demonstrated the relative success of such courses. Offenders who had followed a rehabilitation programme were found to be significantly less likely to be reconvicted within two years compared to offenders matched in terms of offence and social background but who hadn't followed any programme.

However, these positive developments are threatened by the ever increasing prison population and the consequent overcrowding, with many prisoners disappearing from courses just as they get going on them. As well as affecting the living standards within prisons, large rises in the prison population make it more difficult for prison staff to supervise and work with prisoners in tackling re-offending. Indeed this situation has been made worse with the continued rise in the prison population over the last few years, which has had a particular impact on the efforts to rehabilitate short-term prisoners. According to a report published by the National Audit Office in March 2010 the failure to do anything about the criminality of 60,000 prisoners who serve sentences of less than twelve months is costing the country between

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£7 billion and £10 billion annually in reoffending (Travis 2010). The report found that more than half of such offenders spend all day in their cells because they have no work or educational courses. Overcrowding is compounded by the long waiting lists for courses that tackle offending behaviour. As the report states: 'Only a small proportion of prison budgets is spent on activity intended to reduce reoffending by prisoners on short sentences, despite the fact that 60 per cent of such prisoners are reconvicted within a year of release.'

Commenting on the Audit Office report, Edward Leigh, chairman of the House of Commons public accounts committee, said: 'The uncomfortable truth is they are not working, studying or doing almost anything constructive with their time. Indeed, half of them spend all day, every day sitting in their cells.'

Grendon is Britain's only therapeutic prison. It opened in 1962 and is a category B prison taking only the most difficult and dangerous offenders who it is felt might benefit from the psychological treatment offered. The therapeutic process at Grendon is based around group therapy sessions in which prisoners confront their crimes and learn to take responsibility for their actions and the effects those actions have on others. According to Weale (2001) it is proof that prison can be 'humane, constructive and life-changing' and can work. Mark Leech, now an author (he is editor of the *Prisons Handbook* for instance) and campaigner for penal reform, served 20 years in prison and is an ex-Grendon prisoner. He agrees with Weale, saying, 'It certainly worked for me . . . Grendon made me realise there were other options I could choose.'

Certainly reconviction rates from Grendon inmates are encouraging. The 24 per cent re-offending rate for life prisoners in general contrasts with an 8 per cent rate at Grendon, while for non-lifers the re-offending rate is 10 per cent lower at Grendon than elsewhere. Grendon is run as a democratic community that sets its own rules based around three policies that everyone is expected to follow – no drugs, no sex and no violence. Such a regime does not suit all prisoners and the comparative freedom within the prison comes as a culture shock to many; prison cells are open all day from 8 in the morning until lock up at 9 p.m., allowing prisoners to eat and talk together freely. While this relative freedom might seem like a soft option to some prisoners, staff and inmates regularly refer to it being the toughest way to 'do your bird', with the therapy being intensive and gruelling. However, not all prisoners respond positively to Grendon's regime. Convicted sex offender Gary Watkins volunteered for Grendon but within a month of his release kidnapped and sexually assaulted a 17-year-old girl, saying at his trial that he had maintained fantasies of assaulting and killing a young girl throughout his treatment. As Grendon's director of research and development, John Shine, commented, 'Some people here make enormous changes. Other people we have to be extremely cautious about . . . We don't know what goes on in their head.' In concluding her examination of the Grendon regime, Weale (2001) makes the point that while Grendon could certainly be seen as a success it should not distract from the bigger issue of why we keep expanding our prison system when we know it creates more problems than it solves.

To some extent, examples such as Grendon and other offending behaviour programmes could be seen as merely papering over the cracks of our prison system.

In responding to David Rose's positive review of rehabilitation programmes, director of the Prison Reform Trust, Juliet Lyon (2002) argues that while prison

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regimes have improved over recent years, it is misleading to claim that 'prison works' on the basis of a review of therapeutic programmes for long-term prisoners when the 'immense pressure of prison overcrowding' means that 'purposeful activity has increased for each prisoner by just ten minutes a day in ten years' and 'prisons are being turned back into human warehouses'. In concluding her article, Lyon comments that: 'the debate on whether prison works or not is futile. What matters is that prison is allowed to take its proper place in the criminal justice system, one of excellent last resort, properly equipped and able to cope with those who really need to be there.'

QUESTION BREAK: PRISON INSPECTIONS

The following extracts are taken from reviews of reports into prison between 1996 and 2006.

> An unannounced short inspection at Aldington prison revealed that it was 'not operating successfully as a resettlement prison and is providing a "poor" standard of throughcare' . . . Too few prisoners received any meaningful training and the prison did not fulfil any of the criteria necessary for resettling prisoners into the community at the end of their sentences. It was remote from any external employment, education and training facilities and there was little purposeful activity for inmates within the prison. The accommodation was 'flimsy', grubby and failed security standards. There had been little improvement since the 1992 inspection.
>
> (*The Howard Journal of Criminal Justice*, 1996, 35: 3, 274)

> The inspection at HMP Chelmsford disclosed 'a collective failure over a period of time of a number of senior members of the Prison Service to recognise and eliminate too many unacceptable practices and deficiencies in the running of the prison'. Among elements making Chelmsford 'dreadful' were 'the appalling and 19th century attitude to the treatment of young offenders' which the chief inspector felt may breach the UN convention on children's rights, and finance/staffing problems. Adult and young offenders were freely mixing in the same accommodation and 'it was not difficult to find young men of 17 clearly lost and often afraid within the prison'.
>
> (*The Howard Journal of Criminal Justice*, 1998, 37: 1, 105)

> The jail overcrowding crisis, poor industrial relations, and a lack of a clear purpose have led to an 'unacceptable regime' at Liverpool prison, the largest in Britain, according to the chief inspector of prisons.
>
> The report by Anne Owers published today said conditions for new inmates were among the worst her inspectors had seen – with cockroaches, broken windows and dirty cells and toilets . . . Prisoners were able to shower and change their underwear once a week and in some cases not even that frequently, according to the report . . .

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There were fewer opportunities for work and education despite criticism in the 1999 inspector's report. 'Only 18% of prisoners had access to education, though the prison's own statistics showed that 95% needed help with basic literacy and numeracy. No national vocational qualifications were being offered', Ms Owers said.

The inspectors also found that, like many local prisons, Liverpool suffered severely from overcrowding.

'Many single cells held two prisoners with an unscreened toilet, and there was considerable difficulty in safely managing the large number of prisoners coming through reception every day.'

(From A. Travis, 'Regime at Biggest Jail Found Wanting', *Guardian*, 28 May 2003)

One of the UK's biggest Victorian jails is a dirty, vermin-infested institution where 40% of inmates have been assaulted or insulted by staff, according to an official inspection report published today.

Pentonville prison, where 14 staff were last month suspended on corruption allegations, is so poorly run that new prisoners were told on arrival not to expect to be given a pillow or a toothbrush, says the chief inspector of prisons, Anne Owers. One evening during the inspection there was not enough food to go round at the only cooked meal of the day. She says the basic operations at the prison are at best patchy, at worst non-existent. Her follow-up inspection carried out in July found that while external areas of the north London prison were better cared for, many internal areas remained dirty and vermin-infested, and overcrowding was so acute that it held 1,125 prisoners when it was only built for 897.

(From A. Travis, 'Inspector Lists Basic Failures at Prison in Corruption Inquiry', *Guardian*, 28 September 2006)

- In spite of numerous critical reports, why do you think prison conditions are still found to be of such poor standards?
- Suggest the possible long-term effects on prisoners and prison officers of experiences and institutions such as those illustrated above.
- How might those who favour (a) retribution and (b) rehabilitation respond to these extracts?

COMMUNITY PENALTIES

In the final part of this chapter we will look briefly at non-custodial, community penalties, often referred to as 'alternatives to prison'. Imprisonment is the most severe penalty available within our criminal justice system and has tended therefore to attract much greater interest than 'less severe' penalties. There is a vast amount of literature

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on prisons yet relatively little on non-custodial punishments. As Worrall (1997) puts it in the introduction to her study on community punishment, 'there is no market for the autobiographies of offenders' experiences of community service'. She suggests that academic and political debate 'tends to assume that penalty is synonymous with prison'. However, it is important to remember that the vast majority of offenders will never be given a custodial sentence.

Although non-custodial, including community, penalties might be thought of as a relatively recent addition to our criminal justice system, they are by no means new and in this section we will briefly trace their history. Before the twentieth century fines and release on recognisances were the only sentences apart from imprisonment that were regularly used by the courts, although non-payment of fines led to many people being imprisoned anyway. A recognisance was a bond by which the offender agreed to do, or refrain from doing, something; often it involved the offender being required simply to 'keep the peace'. By the mid nineteenth century release on recognisance normally involved some form of surety guaranteeing the future behaviour of the offender; these guarantees were often given by Police Court Missioniaries, who were founded in 1876 and seen as the forerunners of the modern probation service (Worrall 1997). The Probation of First Offenders Act in 1887 recognized the role of these missionaries in helping the courts identify suitable offenders for probation (Brownlee 1998).

So probation has its origins in the nineteenth century when minor offenders could be bound over if a suitable person could be found to supervise their future conduct. This sort of supervision in place of another punishment was seen as providing the offender with an opportunity to 'prove' themselves, hence the term 'probation'.

A system of supervision based around missionary work was developed in the USA in the mid nineteenth century and was followed by penal reformers in Britain, and can be seen in the 1907 Probation of Offenders Act, which spelt out the role of the probation officer as being 'to advise, assist and befriend [the person under supervision] and, when necessary, to endeavour to find him suitable employment' (from Brownlee 1998). However, it took many more years before a system of paid, full-time probation officers was in place.

The first half of the twentieth century saw a move away from the missionary aspect of probation to a 'treatment model', based around therapeutic work related to the offender's needs and motivations. This reflected developments in criminology and the notion that crime was something which might be 'cured' through treating the social and psychological conditions and needs of offenders. The probation service itself became a more bureaucratic and professional organization based around therapeutic treatment of offenders. Although religious and philanthropic elements of the nineteenth century continued to influence both the recruitment to and organization of the probation service in the first decades of the twentieth century, the move to professionalism led to a gradual abandonment of the old view of the probation officer being someone who saw the job as a religious calling. This trend continued through the twentieth century. The development of the welfare state after the Second World War ensured that the principles of diagnosing and treating individuals were firmly established as basic probation practice in the 1950s and 1960s. During this post-war

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period the probation service expanded enormously. The number of probation officers increased from 1,006 in 1950 to 5,033 in 1976, while the number of offenders supervised rose from just over 55,000 in 1951 to more than 120,000 by 1971 (Brownlee 1998).

By the end of the 1970s the treatment model was being criticized on both empirical and ethical grounds (Raynor 2007). Studies into the effectiveness of punishments in general provided disappointing results and the 'nothing works' philosophy came to the fore. The 'treatment' model was also criticized on ethical grounds as dehumanizing individuals. This encouraged a move back to a more retributivist approach. Although the term 'nothing works' is associated with an American writer Martinson and his 1974 article 'What works? Questions and answers about prison reform', the notion was more widely applied and accepted in Britain. By the 1980s there was, according to Raynor, greater emphasis on avoiding unnecessary harm to offenders through imprisonment, with probation seen essentially as a means of reducing imprisonment, reflecting a move away from the earlier emphasis on 'doing good' through treatment.

Greater optimism about rehabilitation began to occur in the late 1980s and into the 1990s, with moves to avoid what had become almost a competition between community sentences and prisons – illustrated by the phrase 'alternatives to prison'. As Raynor puts it, cooperation across criminal justice agencies 'would not be helped if one service continued to define its mission as saving people from the other'. These changes were reflected in the 1991 Criminal Justice Act which advocated a key role for the Probation Service.

The new developments are characterized by a shift in focus to 'what works' rather than the 'nothing works' philosophy. These rehabilitative-based approaches have been centred largely around the work of psychological criminologists. In his overview, Raynor (2007) highlights Andrews and Bonta's theory of offending which relates social disadvantage to personality traits in developing a model of how offending occurs and develops. Social disadvantages such as poverty are seen as making it difficult for families to provide a supportive environment for children; while personality characteristics such as impulsiveness can be reinforced by peer pressure, which may provide access to illegitimate opportunities and delinquent activities and may work against succeeding in formal education. This sort of approach, bringing in both social and psychological factors, has encouraged intervention strategies based on trying to reduce the 'risk' factors faced by potential offenders.

As the 'what works' approach of the 1990s developed, examples of community penalty programmes which seemed to have a positive effect in reducing re-offending came to the fore. As Raynor puts it, 'rather than being the focus of interest for only a few researchers and practitioners [by the end of the 1990s there was] an officially recognized and endorsed strategy . . . prompting a considerable reorganization of the process of supervising offenders' (2002: 1192).

Brownlee summarizes the changing role of the probation service as proceeding,

> from its earliest days as a branch of the Church's missionary work among the alcoholic and destitute, through its quasi-medical diagnostic and normalising phase, to its current position as an integral part of a systematised criminal justice

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> apparatus, having special responsibility for the supervision of punishment in the community
>
> (1998: 98)

The probation service does not just supervise offenders who are 'on probation', but also oversees a number of other community penalties. The current range of community penalties are detailed in Chapter 12 (pp. 414–415). The 1991 Criminal Justice Act attempted to clarify the concept of community penalty through defining six 'community orders' – probation order, community service order, combination order, curfew order, supervision order and an attendance centre order. While this framework provides the basis for the current situation, there have been various changes both to the types and the management of community penalties. As regards changes to the actual form or type of community penalty, as a result of the Criminal Justice Act of 2000, the well-established term 'probation order' was replaced by 'community rehabilitation order' and the community service order became a 'community punishment order'. These orders were, in turn, replaced by a single, general community order under the 2003 Criminal Justice Act. Judges and magistrates now consider the crime committed and the likelihood of re-offending and decide on the specific sort of community sentence an offender should get. The order can last up to three years and has a number of requirements attached to it. The requirements might involve unpaid work, completing training programmes or curfews (see p. 415 for the full list of 12 possible requirements). That act also introduced a Suspended Sentence Order which is essentially meant to provide an alternative to a custodial sentence.

In terms of how the probation service and community penalties are 'managed', the National Probation Service became part of the newly created NOMS (National Offender Management Service) in 2004. NOMS brought the prison service and probation service together under a single organizational structure in an attempt to provide what was termed 'end-to-end offender management', with a named offender manager having responsibility for an offender throughout his or her sentence, whether in custody, the community or both. NOMS itself became part of the Ministry of Justice in 2007 – it now consists of nine regional offices in England and one in Wales that aim to deliver and co-ordinate both the prison and probation services. It is difficult to assess the effect on the probation service of these changes – as Whitehead (2009) suggests, they may well have been introduced with the laudable aim of reducing costs, as well as to encourage multi-agency partnerships within the criminal justice system. However, he makes the point that the management changes are liable to weaken the autonomy of the probation service; and so work against a strong probation service 'which has a distinctive and separate voice within NOMS and which is allowed to promote its ideals, can help to ensure prisons are used as a last resort for more serious offenders'.

The continued growth of community penalties is shown in figures provided by Raynor (2007). At the end of 2004, the probation service was responsible for supervising over 220,000 offenders on various community penalty orders, including 7,000 on drug treatment and training orders. In addition it supervises all people released from prison and other custodial institutions and on a statutory supervision order (over

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81,000 at end of 2004) – for instance all young offenders who received custodial sentences are supervised after their release and although such supervision is not a community penalty it involves the probation service.

Community penalties are an established and important part of our sentencing system and clearly have a future; however there will always be need to deal with the 'high-risk' offenders and this may lead to an increase in 'bifurcation', providing very different types of services according to (a risk analysis of) the dangerousness of the offender. Of course any changes and developments are dependent on the political climate of the day and there is always a danger that notions of community penalty are not perceived as grabbing the popular imagination (or vote!) as much as hard-line rhetoric and approaches.

This 'danger' highlights the difficulties for establishing and developing community penalties. Worrall (1997) suggests that there are four 'obstacles to community punishment. First, as suggested above, is the public and media perception that community penalties are 'soft' and that prison is the only appropriate punishment. Second, there is the problem of unfair or inconsistent sentencing. Community sentences tend to be given to those who are socially advantaged (and deemed by probation officers to be able to 'benefit' from supervision), whereas less advantaged groups seem to be over-represented in prison. Third, there is a danger that an increase in 'alternatives to custody' will lead to more and more people being drawn into the 'net' of the criminal justice system, so that rather than keeping people out of prison, community penalties will increase the numbers of people with criminal records. Finally, Worrall highlights problems with enforcing community penalties. Probation and community orders are fine if followed by the offenders but if not then such penalties have to be 'backed up' with prison, which can lead to the use of such penalties actually increasing the prison population (although Worrall does point out that probation officers do not lightly institute proceedings against offenders who don't comply with community penalties and are reluctant to return offenders to court if they can possibly avoid it).

In his overview of community penalties, Raynor (2007) suggests that a way forward is to including reparative elements in a wider range of community sentences, so as to emphasize (to the general population and the government) that rehabilitation is basically restorative and that it benefits the community as well as the offender – in other words to try to change public perceptions of rehabilitation as being 'soft' and only 'offender focused'. As he puts it:

> [P]robation services should try to present rehabilitation as work that offenders undertake as a consequence of a crime: work which is directed toward changing their own behaviour and attitudes in a more pro-social direction, to the advantage of the communities in which they live.
>
> (Raynor 2007: 1088)

FURTHER READING

Coyle, A. (2005) *Understanding Prisons: Key Issues in Policy and Practice.* Andrew Coyle was a prison governor before becoming a professor at the University of

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London and this introductory text benefits from his first-hand as well as his academic knowledge of the prison service. The book considers how prisons function, what they achieve and their historical and political context.

Leech, M. and Cheney, D. (2009) *The Prisons Handbook 2009.* This is an annual guide to the prison service in England and Wales. Supported by the Prison Service (and published by www.prisons.org.uk) it offers practical information and advice for prisoners and those who work with them. It provides a brief description of every penal establishment and is a mine of useful information.

Liebling, A. and Price, D. (2010) *The Prison Officer* (2nd edn) The focus of the discussion in this chapter has been on prison and prisoners and, as its title implies, this text looks at the role of the prison officer – although a vitally important role for the running of our prison system, an area which is often ignored in studies of prison and imprisonment. This text provides an accessible guide to the work of prison officers.

Mathews, R. (1999) *Doing Time: An Introduction to the Sociology of Imprisonment.* This text provides a clear introduction to the main sociological debates surrounding imprisonment. After examining the history of and current practices within prisons, it examines the impact of imprisonment on different social groups, including young people, women and ethnic minorities.

Rawlings, P. (1999) *Crime and Power: A History of Criminal Justice 1688-1998.* Chapters 4 and 6 of this general historical text provide detail on the early prisons of the eighteenth and nineteenth centuries.

Raynor, P. (2007) *Community Penalties: Probation, 'What Works' and Offender Management,* in Maguire, M., Morgan, R. and Reiner, R. (eds) *The Oxford Handbook of Criminology* (4th edn). An up-to-date review of the history and contemporary practice of community punishment. It details recent changes in the structure and management of community penalties and highlights the obstacles faced in trying to provide rehabilitative punishments.

WEBSITES

Useful websites that focus specifically on prisons include:

www.hmprisonservice.gov.uk the official site of the HM Prison Service – this provides operational details of the prison service in general and of specific prisons.

www.guardian.co.uk/prisons which provides a range of journalistic and critical articles on prisons and life in them.

www.prisonreformtrust.org.uk provides a more critical perspective, focusing on issues of justice within prisons.

www.cjsonline.gov.uk under the section on offenders, this site includes a very useful and informative 'prison walkthrough' which looks at the prison experience from the prisoner's point of views; it includes issues such as arrival in prison, accommodation and the routines of daily life.

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