

2016 LONGFORD LECTURE

MICHAEL GOVE - WHAT'S REALLY CRIMINAL ABOUT OUR JUSTICE SYSTEM

INTRODUCTION

IN PRAISE OF AN ELITE LIBERAL

It's a great honour to be asked to deliver this lecture, in memory of Frank Longford and as a guest of the Trust which carries on such noble work in his name.

I am a huge admirer of the Trust's work, not least in providing opportunities for advanced scholarship for ex-prisoners. Education, as I shall go on to explain further, is central to the work our prisons should do. And thanks to the Sally Coates review of prison education – which the Trust did so much to support – there should be many more opportunities for prisoners to pursue aspirational courses and qualifications in the future.

I am also flattered to be invited to give an address specifically recognizing the unique achievements of Frank Longford – the invitation was extended when I was Justice Secretary and I was determined to honour it after leaving office because of my admiration for his work.

It is, as I know very well, not fashionable at the moment to praise members of the political class.

And in particular, it is positively dangerous to celebrate anyone who might be thought either metropolitan, liberal or even a member of an elite.

So to record my admiration for an Old Etonian intellectual who occupied a series of powerful political offices without ever being elected and who used his social and political eminence to argue for a more thorough-goingly liberal and humane approach to perhaps the least popular minority in our society - convicted criminals - is not exactly what you might call getting with the programme, or swimming with the zeitgeist.

But that is what I want to do tonight - to say how much I admire the example and record of Frank Longford.

Driven by his deep belief in the essential dignity of every human being, the value inherent in every one of us, he made it his life's work to rehabilitate and redeem those who had fallen furthest from grace.

At the risk of his reputation, and in the face of spiteful and shallow criticism from sections of the media, Frank persevered in supporting the outcast and overlooked.

He believed no-one was irredeemable. And in the face of the tabloid need to create monsters out of fallen men and flawed women he was determined to uphold the principle affirmed by another aristocratic liberal - Winston Churchill - there was a treasure in the heart of every man, if only we laboured to find it.

Frank Longford's deep humanity, essential decency and Christian charity are virtues much needed at this time.

THE NOBILITY IN THE MIDST OF MISERY

Before I go on to discuss some of the many problems afflicting our criminal justice system I want to affirm the good. Which means, above all, thanking the people whose vocation is justice and whose job is redemption.

We are fortunate still in Britain to have the world's most respected legal system, and that rests on the quality of our lawyers and, above all, on the unimpeachable integrity of our independent judiciary. London is where the world comes to settle its disputes, our courts set the global gold standard for fair dealing, due process, quality advocacy and just outcomes.

I came to the office of Lord Chancellor as a non-lawyer, only the second holder of the office in modern times not to have a legal education. And in some ways that was a handicap. But if there was a virtue in my legal ignorance I hope that it came in my admiration, free of any professional bias or pride, for our legal system. The seriousness with which almost every lawyer I met took the importance of access to justice and respecting the rule of law was deeply impressive.

And while I cannot claim the authority for any of my arguments that a legal training would provide I can say, as a politician, that the freedoms which make this country so envied abroad, and attractive to newcomers, are rooted firmly in our common law traditions.

From Magna Carta to Habeas Corpus, from Edward Coke's establishment of the principle of judicial review of executive action to Lord Mansfield's declaration that no one who breathed the air of the country could stay a slave without dishonouring our freedoms, the liberties of this land have been best established, protected and defended by lawyers.

But lawyers are very far from the only people whose sense of vocation I want to celebrate today. I also want to praise those who work in our prisons. Prison officers and Governors, probation officers and social workers, teachers and employers, visitors and chaplains - we are fortunate that so many people dedicate their lives to redeeming offenders.

Their work is genuinely noble. Prison officers risk assaults and insults, urine flung in their face or threats made to their families, in order to repair broken lives and all for wages which few Members of Parliament would accept for their work.

Prison officers' first duty, is of course, security. They are responsible for ensuring prisons are orderly and safe and offenders are no longer at liberty to harm others. But security is only ever a means to an end and prison officers in my experience see their work not just as maintaining order, difficult as that can often be, but, critically, as repairing lives.

Typical of the attitude of so many was one particular prison officer I met in HMP Manchester - the jail previously known as Strangeways - who had chosen to work in the segregation unit with the toughest and least tractable offenders. When I asked him why he'd volunteered for this particularly challenging role he explained that he'd grown up in an area of Manchester plagued by high crime and he'd joined the prison service because he wanted to reform the lives of those who had been drawn into criminality and he felt he could make the biggest difference for good by working with the most refractory offenders. And that is the spirit in which so many work in our prisons - a spirit to be admired and a vocation that deserves to be honoured.

Alongside prison officers, the educators and employers, probation officers and health workers who deliberately choose to work in prisons are putting themselves in potentially risky, and certainly materially unrewarding, situations to help others. Their work is unglamorous and very often unnoticed. But it is brave, vital and noble.

I should also like to place on record my gratitude for the commitment and dedication of the civil servants at the Ministry of Justice with whom I worked. Under their superb Permanent Secretary Richard Heaton, they showed real passion and idealism in the cause of reform.

Having - I hope - made clear how much I admire those who work in our justice system I want now to turn to its faults - to those aspects of how law is enforced which I consider to be practically criminal.

And in so doing I want deliberately to invite you, my audience, to exercise that human sympathy, that gift of empathy, that Frank Longford had. I want you to consider how, at different stages, you might feel if you were entangled in the operation of our criminal justice system.

THE VOCATION OF JUSTICE

It could happen to any of us. As the recent Henriques report into Scotland Yard's handling of child abuse allegations shows, eminence, indeed innocence, is no bar to being caught in the coils of the system. And miscarriages of justice have seen innocent people jailed for long and hopeless years, from the cases of the Guildford Four and Birmingham Six to the wrongful convictions of Stephen Downing, Stefan Kiszko, Sally Clark, Angela Cannings and Barri White.

If any of us were arrested and charged with a serious offence we would hope that a skilled advocate would be able to defend us, test the evidence produced against us in open court

and appeal to a jury for our acquittal. The two most precious things any of us have - our reputation - and our liberty - are at risk if we are convicted. So we should expect that the very best possible case should be made to preserve our good name and our freedom.

But, increasingly, that is becoming more and more difficult. Because of what is happening to the criminal bar.

Always the poor relation of the rest of the bar, criminal work is now in increasing danger through the slow strangulation of the supply of talent it needs to prosper.

Any gifted graduate now contemplating a career in the law will be aware that huge fees accrue to those who are successful in the commercial bar and salaries of hundreds of thousands of pounds a year are the norm for partners in top city law firms. It would require a particularly elevated commitment to serving the interests of justice to ignore those temptations and instead opt for the criminal bar, where remuneration is falling and annual earnings after fees and taxes for many are lower than almost any comparable professional.

A number of factors have conspired to undermine the position of the criminal bar. Many of them well-intentioned at the time.

Extended rights of audience which allow solicitor advocates to appear for defendants should have brought welcome competition which drove up standards and opened the profession of advocacy to new talent.

Broadening the number of individuals who could read for the bar, and increasing the number of institutions which could prepare them for that calling, should also have, through competition, raised standards and improved access for individuals hitherto excluded from the profession.

But I fear that, together, alongside some of the changes made to the operation of Legal Aid, these developments have not worked in the broader public interest.

More and more individuals have sought to qualify for the Bar, at the same time as crime has been falling. And while there has been a growing number of people who wish to act as advocates, the barristers' chambers who act as a quality filter cannot accommodate these numbers.

At the same time some solicitors' firms have built up in-house advocacy teams, often recruiting those who have not made it into barristers' chambers. For these firms it often makes economic sense to pocket both the fees due to solicitors and payable to advocates rather than instruct independent barristers.

There are, of course, some very fine solicitor advocates, but there is also no doubt that, individual for individual, barristers provide a better service. That was the judgement of the independent Jeffrey report into the quality of advocacy and it is certainly my view after observing the workings of our criminal courts. The training required to be a solicitor advocate is – at a minimum – a mere 22 hours, for a barrister it is 120 days.

With work siphoned off from barristers to solicitor advocates, with the development of an entirely new class of "plea-only" advocates who do not profess to have all the skills and competences of a qualified barrister and with legal aid payments not just cut, but structured in such a way as to facilitate solicitors' firms keeping business in-house, the criminal bar is being squeezed to the margins.

Of the total amount of criminal defence work available, the amount taken by solicitor advocates has increased from 6% in 2005/6 to 43% in 2014/5 and is continuing to increase.

This represents not just a shrinkage in the amount of work undertaken by the professionals best qualified to defend those whose reputations and liberty are at stake, it also indicates that access to the best representation is increasingly restricted to the wealthy.

More than that, the criminal bar has always been the principal pool from which our judiciary has been drawn.

Of course there are outstanding judges who have been either commercial lawyers - such as the Lord Chief Justice - or legal academics - like Baroness Hale - but as the supply of high quality criminal barristers shrinks so the talent pool which has sustained the best judiciary in the world is constrained.

Restoring the criminal bar to health is therefore a precondition of ensuring both that every citizen who finds themselves in court is represented effectively and that all our courts continue to benefit from a superb judiciary.

That is why I think we need to review how barristers are trained, review rights of access and review how legal aid is allocated with a view to ensuring we continue to have a pipeline of high quality criminal barristers. I think there is a case for saying that the defendant in all Crown Court cases and the more serious magistrates court cases should be represented by a barrister. High quality existing solicitor advocates could, of course, become barristers in appropriate circumstances. I also think there is a case for a higher quality filter being applied before people can read for the Bar in the first place and would like to see the Inns of Court play a significant part in establishing a higher quality threshold. And I think we should investigate how we can better regulate those solicitor firms who refer clients to in-house advocates or those with whom they have any sort of other commercial relationship.

It should also go without saying - but sometimes still needs restating - that jury trial is a critical guarantor of liberty. I opposed plans for restricting trial by jury in certain cases, such as complex fraud trials, because I trust the common sense and good judgement of our fellow citizens and believe that quality advocacy can make even the most complex cases intelligible to a jury.

THE JAILING OF THE INNOCENT

But of course - if any of us were charged with a serious offence - even before we went to trial and had our position put before a jury and had the case against us tested by our advocate - we could be remanded in custody.

There are currently thousands of men and women in prison - on remand - and by definition innocent at the time of their incarceration. Placing these men and women in an explicitly criminal environment, ordering their day and framing their surroundings in way often indistinguishable from the experience of very serious criminals, is often neither conducive to their welfare nor to our safety.

Of course, there will be some allegations so serious, some individuals either potentially so dangerous or at such risk of absconding or offending again, that custody is appropriate before guilt is proven and sentence passed. But is there not a case for ensuring prisoners on remand are kept in circumstances appropriate to their status? Should we not keep them out of the mixed local prisons in which so many are housed, where they are currently jailed alongside those serving life sentences? And should that not be part of a broader strategy of making sure that individual offenders are in prisons that are equipped to change their behaviour rather than reinforcing many of the factors that have driven criminality in the past?

Remand prisoners are not the only members of the prison population housed in institutions which aren't appropriate for their circumstances. The whole of our prison estate needs to be - and thankfully is being - fundamentally reconfigured.

A SYSTEM UNDER TOO MUCH STRAIN

The problem - in a nutshell - is that we have a system operating at practically full capacity with nowhere near enough flexibility to devote the time, care and attention needed to secure successful rehabilitation.

The leadership team at NOMS - the National Offender Management Service - need to ensure prisoners are properly assessed on entry to the prison estate, moved on through the system as their sentence is served and also, if necessary, moved as debts and threats, changing circumstances and new challenges emerge. In an estate with scarcely any headroom or slack in the system that has led to centralised control in order simply to ensure that every prisoner is - at the very least - housed in accordance with their security level.

Ideally, we should have prisons which cater for remand prisoners, some high security establishments for those who pose the very greatest threat, facilities within the high security estate for extremists and those intent on proselytisation and terrorist recruitment, prisons which specialise in dealing with sex offenders and - above all - community prisons with strong external links to education and employment providers who can prepare prisoners for effective re-entry into society.

To develop an estate like that - to make our prisons effective at rehabilitation - will require some clear thinking and resolute action on questions as varied as the treatment of young offenders, the place of women prisoners, the implementation of new technology and sentencing reform.

But before touching on those areas I think it's important that we step back and reflect on the individuals who make up our prison population.

The first thing to say is that they are all individuals, there are peers and priests who've been prisoners, consummate charmers and men even their mothers would be hard-pushed to love, dedicated career criminals and those who've made just one horrendous mistake.

But even though you find all sorts and conditions of men in prison there are some groups which have historically been over-represented, given their numbers overall in our society.

The most notable over-represented group is, of course, Members of Parliament. From Horatio Bottomley to the present day, the road from Westminster to Wormwood Scrubs is a well-travelled one...

But while that group is unlikely to elicit much public sympathy, we should certainly be much more sensitive to the way in which so many of those who come into contact with our criminal justice system are individuals from relatively disadvantaged groups.

I was pleased that we were able to set up a review under David Lammy to investigate the treatment of citizens from black and minority ethnic groups by the criminal justice system. And I look forward to the recommendations made by David and his team.

We already know, however, that a disproportionate number of all those of our fellow citizens who end up in prison have been abused or neglected as children. They will have witnessed domestic violence when growing up, have been failed by the education system and have been in foster or other residential care. They will often have been brought up by adults with addictions or other mental health problems. They will, in all too many cases, suffer from substance abuse and mental illness themselves.

They will have been harmed not just physically and psychologically, they will also have endured spiritual and moral deprivation.

Many of those in our jails never had someone who loved them enough when they were young to tell them the difference between right and wrong. They will have grown up in homes where affection was absent or fleeting, authority arbitrary or brutal. They will never have developed the habits of consideration towards others, deferred gratification and empathy which are the cement of civilisation.

Of course, the overwhelming majority of those who've faced such challenging childhoods make successes of their lives. But their achievements deserve all the more recognition because of the difficulties they've overcome. And those of us who've been fortunate enough to enjoy love, stability and carefully-policed boundaries when we've been growing up should make an extra effort to understand the lives of others who've lived with coldness, violence and chaos.

Then we might appreciate why children who've learned that showing weakness only invites abuse cover up the fact they can't read in class with shows of bravado and disruptive behaviour. These same boys, finding learning difficult and school alienating, increasingly play truant or invite expulsion.

They then find a deceptive warmth in the intimacy of gang culture, a fragile respect from out-doing their peers in violence or daring and an adrenalin-charged thrill from breaking the law. Being thought of as a player by others living the life provides a spurious sense of achievement for those who've never been valued in any other way.

So many of those in our prisons are damaged individuals, victims themselves, and we should be careful about the moral judgements we make about them.

Of course, when individuals cross the line and break the law there has to be punishment. The civic order depends on our policing the boundaries between right and wrong with determination.

But it's critical to appreciate that many of those who are in our prisons grew up without the social capital or moral reinforcement the rest of us have been fortunate enough to enjoy.

Their ability to resist temptation and to avoid acting impulsively will have been impaired by their upbringing and eroded by their circumstances.

That does not mean when they offend that we should suspend the operation of the law on which the social order depends. Law-breaking requires the imposition of sanctions. But the deprivation of liberty inherent in being sent to prison is punishment enough.

Offenders should not face further degradation or indignity when in custody. Quite the opposite. We should use that time to repair lives not further blight them. We need to ensure that prisons build up the resources of character and resilience which will mean prisoners are less likely to offend in future.

I believe, with Frank Longford, that such a mission is vital because every single human soul is precious and all of us can achieve something worthwhile if the circumstances are right.

But even if you're a hard-bitten cynic who regards such language as hopelessly naive nonsense and you believe the purpose of the justice system is not to help bad people but protect good people then you should want to ensure our prisons are more effective at rehabilitation. Because at the moment half of those sent to prison offend again within a year of their release. We spend hundreds of thousands keeping these individuals detained under state control. We govern who they see and what they do, what they learn and how they work, who leads and who follows, every minute of their life for months or perhaps years at a time. And after all that they go on to offend again, and again. Now that really is criminal

A PROGRAMME FOR REFORM

So, given the population we have, how do we ensure our prisons are places of redemption and rehabilitation?

The first step, as the Justice Secretary has rightly pointed out, is restoring order and purpose to establishments which have become far too violent recently. The additional investment the Justice Secretary has secured is hugely welcome and the recruitment of more prison officers absolutely necessary.

But security cannot be an end in itself. And good order in a prison rests not just on extra manpower, effective surveillance and swift responses to provocation. Good order also springs from ensuring prisoners are out of their cell as much as possible instead of being banged up for 23 hours at a time, that the activities on which they are engaged are purposeful and rewarding instead of poorly directed and repetitive, that good behaviour and a desire to progress are noticed and rewarded and grievances and complaints are promptly and fairly addressed.

Violence in prison is often related to drugs, either the psychotic effects of substances taken with the intention of dealing with boredom and frustration, i.e. “killing bird”, or the consequences of drug-related debts going unpaid. It can also be the consequence of frustration at indignities endured, injustices, real or perceived, which go unrecognised, sentence plans chaotically unfulfilled and privileges apparently arbitrarily withdrawn.

That is why it is so good to see that the Justice Secretary is developing the plans we launched to reform the Incentives and Earned Privileges scheme which governors deploy to encourage good behaviour, giving governors more discretion and greater autonomy. These reforms can only help governors make their own institutions more responsive to prisoners’ specific circumstances.

It is also why I am so encouraged to see the Justice Secretary make it clear that prisons will be judged in the future on criteria such as the amount of time prisoners spend out of their cells, the number of hours of purposeful activity, the improved educational attainment of prisoners and success in finding them meaningful work.

Public sector reform can’t succeed without effective measurement, useable data and a commitment to learn from the evidence and, if necessary, change course as a result of what the data shows. It is criminal that so much penal policy in the past, here and elsewhere, has not been driven by data and evidence as rigorously as it should have been.

But it’s also important to recognise that data and measurement need to be sensitive to specific circumstances.

In assessing how well prisons are performing I think we should consider 3 different types of measure. Criteria set by central government that reflect day-to-day performance, criteria agreed between the centre and governors on what long-term success in advancing rehabilitation will look like, and criteria set by governors themselves about the ambitions they have for their institution and its inmates.

DEVOLUTION, AUTONOMY AND DATA

Because I think we have to move away from the centralisation of the past if we're to get prisons operating successfully as institutions which can better reintegrate offenders back into society.

Prisoners should no longer be out of sight and out of mind.

We should build on the academy model and the foundation hospital initiative - both of which have had such a radically beneficial effect on our schools and healthcare system. We should seek to involve charities, social enterprises and wider civil society in the management and operation of our prison estate. We should develop management teams for prisons which involve outside educators and employers, local government figures and those with wider professional expertise. The success of our prisons should be a shared social priority - not just a matter for NOMS and the MoJ - we should all take responsibility for what happens to offenders.

Academies have benefited from business links - both in helping them to operate more effectively day-to-day and in opening up links to the wider world of work - which have served their students well. Foundation trusts have benefited not just from public-spirited professionals from diverse backgrounds contributing to improved governance but also from improved relationships with partners outside the NHS who help enhance delivery.

We should want prisons to have principals running local colleges, business people hiring apprentices, employers recruiting new colleagues, social work leaders involved in the supervision of those in care and volunteers who want to make a difference all involved in setting goals and providing opportunities for prisoners.

It's already the case that the first - pathfinder - early adopter - Reform Prisons are exploring how to establish such links and relationships. But I would argue that - over time - all prisons save perhaps for a few high-security establishments should go down this path.

I would certainly like to see the educational achievement and the employment success of prisoners become as much a matter of local concern - or pride - as school GCSE results or joblessness figures overall.

I applaud the efforts made by the MoJ to give governors more control over the relationships they currently have with education providers and employers. The centralisation of education provision in just a few colleges worked against quality and innovation. Which is why Sally Coates's review has

been wonderfully liberating. And the rules governing the jobs prisoners could do were limiting and counter-productive. Which is why Liz Truss is right to demand we do better.

But we should be insistent that the pressure for change and improvement never slackens. Far too many of the educational courses offered to prisoners are unambitious and uninspiring. We discovered in schools that setting higher expectations is a necessary precondition to achieving better results. Prison education, far more than any other area of the education system, still suffers from the soft bigotry of low expectations.

The situation is, if anything, worse when it comes to prison work. The prison with the highest number of inmates in productive employment - Coldingley in my constituency of Surrey Heath - still has fewer than half its prisoners doing useful, remunerative, work that enhances their skill level.

I believe we should allow governors to form commercial arrangements with employers where the profits made by prisoners' endeavours can be reinvested in both the prisoners' education and welfare and placed in an escrow account for the prisoners to access after a period out of jail without repeat offending.

As matters stand prisons are not allowed to operate enterprises that might, even marginally, have an adverse effect on other local businesses. These rules, along with a mountain of other bureaucracy, make it difficult for employers to operate effective commercial partnerships with prisons. I would sweep away all these rules and allow prisons to bid, compete and sell services in any way they can to give prisoners the chance to feel fully integrated into the nation's economic life and earn money they could enjoy if their rehabilitation has proven successful.

That is why it is right to extend the number of prisoners who can be released on temporary license – freed to work outside the prison estate during the day – reintegrating themselves into civil society and learning to become assets to society rather than liabilities

I also think we should open up prison management even further by recruiting as Governors individuals with different professional backgrounds. I'd like to see successful head teachers or college principals or senior social workers who've led outstanding Children's Services Departments or individuals with strong business records, particularly those with a successful track record in training new employees, given the chance - in due course - to run prisons. We need to do everything we can to emphasise that prison is not there to separate individuals any further from society than is necessary for security and justice – the real challenge should be successfully re-integrating offenders into society.

That is why, ultimately, I think more and more prisons should become independent legal entities – free-standing institutions like academy schools – with the potential for the very best to takeover under-performing institutions.

And it's not just the academy model we built on in education which I would like to see extended. I also think the devolution agenda driven so brilliantly by my friend George Osborne should play a progressively larger part in the delivery of criminal justice.

I think we should expect to see more and more prisons and courts, alongside youth justice provision, handed over to metro mayors for local leadership.

If we give local areas a specific police, crime and justice budget and allow them to divide it as appropriate between community policing, youth services, social work, youth offending teams, probation, community sentencing, courts and custody then we could see communities make mature decisions about spending more on effective crime prevention measures that would reduce the need for expensive provision of more and more prison places.

SOLVING PROBLEMS, NOT CREATING THEM

I would - in the same spirit - like to see an expansion of the number of problem-solving courts in the system.

Many of those who find themselves in the criminal justice system have, as I have already noted, troubled upbringings, mental health problems and serial addictions. The answer to their offending behaviour is far more likely to come from the voluntary embrace of therapy and treatment than the enforced imposition of incarceration.

That is why the idea of problem-solving courts - where the presiding judge takes a personal interest in the fate and future of the offender and is prepared to spare an individual from custody if they accept a course of treatment, submit to certain conditions or commit to particular conduct - is so promising.

It creates a culture - and a presumption - of remorse and rehabilitation without the need for expensive, and potentially brutalising, imprisonment. I welcome the Justice Secretary's commitment to trialling new problem-solving courts and hope they play an increasingly important part in our justice system.

Because - apart from their intrinsic merits - problem solving courts can also contribute to reducing the numbers of offenders who have to face prison.

And it is an inconvenient truth - which I swerved to an extent while in office - that we send too many people to prison. And of those who deserve to be in custody, many, but certainly not all, are sent there for too long.

I did make it a commitment while in office that we would determinedly reduce the number of women in prison. And I wanted to demonstrate through that cutting of the prison population that we could go further.

A significant number of those we imprison are individuals suffering from mental health problems. Whether they should be kept apart from the rest of society, for a short time or long, for their own protection or that of others, it is no answer to their illness, or its impact on society, to send them to the cacophonous, chaotic, violent and disordered environment which prevails in far too many of our prisons. They deserve care not custody.

Some of those who suffer from mental health problems, or personality disorders, will find themselves repeat offenders, incapable of managing their finances, or their impulses, stealing pints of milk to meet immediate needs or transgressing boundaries they did not recognise were there. In their exasperation at repeat offending, courts sometimes feel they have no option but custody. Which is a reflection not of their poor judgement but our inadequate provision of mental health care. We should be intervening in the lives of these individuals long before they end up in court to tackle the root – medical – causes of their offending behaviour.

But as well as improving mental health provision, we also need to be much more imaginative in providing alternatives to custody for all offenders.

Prison is expensive, anti-social, inefficient and often de-humanising.

But prison also has the potential to be redemptive and rehabilitative. And I have seen great work in our prisons – from Grendon to Brixton, Wandsworth to Bronzefield.

But rehabilitation will only be successful on the scale we need it to be if we either spend far more on our prisons or have significantly fewer offenders in them.

Because if we have more staff per prisoner, and if we deploy them more wisely, we can make a huge difference to the security and future prospects of prisoners. When an officer, for example, has the relationship and the time to sit on a cell bed reading a letter from home with a prisoner they are checking the cell for contraband, they are exercising dynamic authority, they are helping work out whether and how a literacy course would work for that man, they are finding out what the relationships at home are like and how to help bolster them.

But in overcrowded and underfunded prisons that doesn't happen enough. I should add that it also doesn't happen enough because the current centralized management structures don't incentivise

such behaviour. It's still the case that being on the wing is the least valued operational job, and Reform Prisons can help change that.

Especially if we match that with sentencing reform.

I think we need to work, over time and pragmatically, to reduce our prison population. We imprison a far higher percentage of our population than similar developed nations. And we have been sentencing individuals to significantly longer sentences over time in the last few years.

In pragmatic terms, it seems to me obvious that we can provide a more effective rehabilitation regime with fewer offenders in jail and more professional attention given to those who remain.

In terms of pure justice and fairness, there are far too many prisoners, who were sentenced under the IPP - Imprisonment for Public Protection - indeterminate sentence provisions who have served far longer than the gravity of their offence requires and who should be released.

I would recommend using the power of executive clemency for those 500 or so IPP prisoners who have been in jail for far longer than the tariff for their offence and have now – after multiple parole reviews – served even longer than the maximum determinate sentence for that index offence.

And I would also urge that the superb new Chairman of the Parole Board - Nick Hardwick - is given the resources and flexibility to ensure more IPP cases can be processed and more individuals released - ideally with the increased use of GPS tags in some cases.

In terms of effective state spending, we know that many, although not all, of those prisoners sentenced for terms of less than twelve months are scarcely in custody long enough to benefit from rehabilitation but are in a criminal environment easily long enough to encounter far greater temptations and corruption than life on the outside.

Thanks to technological breakthroughs, and sharper policy thinking, it's now possible to provide smart alternatives to custody.

EMBRACING CHANGE

Community sentences have been discredited in the past because of poor supervision and ineffective follow-up when offenders abscond or ignore the terms of their sentence. In the future they need to be

far better policed, with swift and certain sanctions for those who do not observe the terms of their community sentence. The smarter, and wider, use of electronic monitoring with tags for those on community sentences or early release would both improve public confidence in alternatives to custody and ensure we could keep more individuals in education or work rather than estranged from socialising and beneficial influences.

I'm not opposed to tougher sentencing in some areas - such as stalking or particularly child cruelty - but I am convinced that we cannot provide the effective level of rehabilitation we need for offenders without either increasing expenditure significantly or reducing prisoner numbers overall - and reducing prisoner numbers is not just better for taxpayers - it's better for all of us.

Because overcrowded prisons are more likely to be academies of crime, brutalisers of the innocent and incubators of addiction rather than engines of self-improvement.

And for those – and I was one – who fear that reducing the prison population must automatically lead – at the very least in the short term – to an upsurge in crime, I would point to the success, over successive Governments, in reducing the population of young offenders in custody - which has also been matched with a decrease in youth crime.

Of course there are still problems with youth justice – as great investigative journalism from the BBC and the Guardian's prisons correspondent Eric Allison has revealed. But these problems appear to be concentrated in the secure estate – not in the use of alternatives to custody. And the problems appear to spring from an overly punitive and coercive approach rather than an excess of laxity. Indeed the future of youth justice, I believe, lies in placing far more of an emphasis on care and education than control and coercion. The work done in this sphere by Charlie Taylor has been quite brilliant and I very much hope it can be built on.

Freeing up space in the prison estate would also allow us more easily to re-organise it in the way I've discussed above. And that would also help in another way – by making it easier to guarantee continuity of care for those in custody.

As things stand, if any of us were to be convicted of a criminal offence, we would have one probation officer prepare a report for the court about us which would help govern sentencing. Then, on arrival in custody someone else from the prison staff would be responsible for an initial assessment of our needs. Then a third individual might draw up a sentence plan – a series of objectives to fulfil in order to secure eventual release. Many of the components of the plan might be attendance at courses which are taught or supervised by yet other individuals who have little or no incentive to teach well or encourage progress and who if they do, do so out of the goodness of their hearts rather than any intrinsically effective supervision.

Another individual might be charged with monitoring simple compliance with the components of the plan, but as prisoners we might face difficulty after difficulty in securing access to all the courses required.

Indeed, at any point, sometimes because of the behaviour of other prisoners outside our control we might be moved from our prison, ostensibly for our welfare, and very probably for our security, but placing us once more under the supervision of new individuals.

As we neared release yet another professional, from the probation service, would seek to work with us through the gate. And on release, with less than fifty pounds in cash in our pocket and often no guarantee of housing or employment, we might find ourselves being supervised by yet another probation professional.

This whole process is not just the enemy of efficiency it also works against hope. I know that it is not what the senior leadership of NOMS want and they recognize the significant benefits that can come if offenders are managed in one institution for the vast majority of their sentence by one team with one individual responsible for the prisoner's whole journey towards rehabilitation. That is why the Justice Secretary is right to propose a new way of working with dedicated officers working with small groups of prisoners to advance their progress,

But that is hugely difficult to achieve in our currently over-crowded estate.

Which is – again – why we need to consider sentencing reform. And one particular enthusiasm of mine is linking the nature, and length, of a custodial sentence to achievement in custody.

One of the very best custodial establishments I visited when I was Justice Secretary was the Armed Forces' prison for enlisted men who had transgressed. Far from being a brutal glasshouse of the kind that a Victorian martinet would have approved of, it was a highly effective and very well managed engine of rehabilitation. Because the Commanding Officer could, every day, extend new privileges, including outside visits and earlier release, depending on the progress prisoners made in reaching educational goals, displaying genuine awareness of the need to change behaviour and showing consistent application to improve conduct.

I'd like to see it made possible to release prisoners before the current half-way point in their sentence at which release on license normally occurs – if they've demonstrated by their conduct and commitment to working and learning that they are ready for re-integration into society. Of course there are some offenders, and some sentences, not suitable for such a scheme. But the knowledge that offenders could earn early release through the right behaviour and attitudes would be a powerful tool in helping to inject hope into prisoners' lives, improving behaviour and security in jails, and in making sure that when they are released offenders have the right attitudes to succeed in society.

CONCLUSION – LET THE EVIDENCE SPEAK

I'm conscious I've ranged widely over the justice system. And there is more I could say.

More about the responsibility of the very wealthiest in the legal profession to do more to support the rule of law and access to justice, which we could deliver through a levy on the incomes of the most successful.

More about better integrating police, prosecutors and courts to avoid delays in justice and ineffective trials, which we can deliver by working on the progress made by the Criminal Justice Board.

More about reforming legal aid to remove schemes and stratagems used to scam the public, which we can do by harnessing the expertise of lawyers themselves angry at how the system is abused.

More about how family justice needs to be reformed, which we must do to ensure children are not left in abusive and neglectful homes for too long.

And more about how our care system also needs change to help save vulnerable young people.

But to trespass further on your patience really would be unjust.

So in conclusion I would like to say just one thing. I am sure that if all the reforms I've outlined were put in place then the benefits – to the taxpayer, to those who work in our justice system, to victims of crime and to offenders – would be significant.

But I am also sure that some things would go wrong. No reform ever lands perfectly, no new initiative ever lives up to every hope.

So I suspect that a new approach to regulating the quality of advocacy, or improving prison governance, or extending early release, would inevitably mean there would be examples of poor practice from some lazy barristers, errors from newly-liberated governors and crimes committed by those released before their time.

But the alternative to change is the status quo – a declining criminal bar, a worsening situation in our prisons, a recidivism rate that is indefensible. So – not to change – not to reform our system – when we know we can do better – that really would be criminal.

END

