

# A Glimpse of the Blindingly Obvious

By Mick Humphreys  
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|   |    |
|---|----|
| <i>INTRODUCTION</i> .....                                   | 4  |
| <i>Chapter 1 PUNISHMENT?</i> .....                          | 9  |
| <b>DIRECT EFFECTS</b> .....                                 | 9  |
| <i>Chapter 2 CONSEQUENTIAL EFFECTS</i> .....                | 11 |
| The United Nations Conventions. ....                        | 11 |
| Curtailmnt of Freedom and Rights. ....                      | 11 |
| Voting.....   | 12 |
| Long Term Effects. ....                                     | 12 |
| <i>Chapter 3 PUNISHMENT</i> .....                           | 13 |
| <i>Chapter 4 DETERRENCE</i> .....                           | 14 |
| <i>Chapter 5 SOME FACTS</i> .....                           | 16 |
| <i>Chapter 6 SOME EXAMPLES</i> .....                        | 19 |
| <i>Chapter 7 PRISON</i> .....                               | 24 |
| <i>Chapter 8 JUSTICE</i> .....                              | 32 |
| <i>Chapter 9 THE CRIMINAL JUSTICE SYSTEM</i> .....          | 32 |
| <i>Chapter 10 THE COMMON MAN</i> .....                      | 35 |
| <i>Chapter 11 THE INDIVIDUAL</i> .....                      | 37 |
| <i>Chapter 12 ROMAN AND OTHER LAW</i> .....                 | 39 |
| <i>Chapter 13 BANNING THINGS</i> .....                      | 43 |
| <i>Chapter 14 REHABILITATION</i> .....                      | 46 |
| <i>Chapter 15 DRUGS</i> .....                               | 49 |
| <i>Chapter 16 Chapter 15 IMPROVEMENTS AND REFORMS</i> ..... | 53 |
| <b>THE PRINCIPLE OF IMPRISONMENT.</b> ....                  | 54 |
| <b>THE PRINCIPLE OF RESTORATION FIRST</b> .....             | 54 |
| <b>DETERRENCE</b> .....                                     | 54 |
| <b>PUNISHMENT</b> .....                                     | 55 |
| <b>RESTRAINT</b> .....                                      | 56 |
| <b>INCORRIGIBLE DELINQUENTS</b> .....                       | 56 |
| <b>THE ROLE OF THE COURT</b> .....                          | 57 |
| <b>RESTORATION</b> .....                                    | 57 |
| <b>EDUCATIVE WAYS</b> .....                                 | 59 |
| <b>AGE</b> .....  | 60 |
| <b>COSTS</b> .....  | 61 |
| <b>BAD LAWS</b> .....                                       | 62 |
| <b>POLICE</b> .....   | 63 |

|  |           |
|--|-----------|
| <b>LEGAL PROCESS.....</b>  | <b>64</b> |
| <b>REMAND .....</b>  | <b>64</b> |
| <b>PRISONS.....</b>  | <b>65</b> |
| <b>BANS .....</b>  | <b>65</b> |
| <b>PROBATION SERVICE .....</b>   | <b>65</b> |
| <b>VOLUNTARY AGENCIES &amp; ADVISORY COMMITTEES .....</b>                                | <b>66</b> |
| <b>REHABILITATION .....</b>  | <b>68</b> |
| <i>Chapter 17 Chapter 15 CONCLUSION .....</i>  | <i>68</i> |
| <i>We should take a peep under the blindfold and see what is staring us in the face.</i> | <i>69</i> |
| <i>I would welcome constructive comments on this paper either by letter or E Mail.</i>   | <i>69</i> |
| <i>Mick Humphreys.....</i>   | <i>70</i> |

## INTRODUCTION

This paper was first written in May 1998. It is updated from time to time.

Our Criminal Justice System is constantly evolving. However it does so cautiously, because it is based on precedent. It is constantly looking backwards to see what was done before. This is good, but it does mean that it scarcely ever looks outside this introverting blindfold. Outside, the error of its ways is blindingly obvious to the common man. I invite the system to lift a corner of its blindfold and take a quick peek outside at criminal sentencing.

It must always be borne in mind that it is Parliament that creates crimes. People do not create crimes; they commit them. Once some activity is made into a crime it simply creates the opportunity for someone to commit it. Common law crimes are different: activities such as theft and murder have always been proscribed and always will be. But statute crimes are created to fit the times. All statute laws are more or less defective and it takes many years for the courts to fine-tune them. All this is perfectly obvious, but it is seldom realised. On 11 March 2001, in the Prisons Debate in the House of Lords, Lord Dholakia said: “Since 1st May 1997, in an Answer from the noble Lord, Lord Bassam, to me the Government have confirmed that 139 new offences have been created in legislation during 1999-2000.”<sup>1</sup> The

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<sup>1</sup> Hansard 11 Jul 2002, Col 1143

distinction is vital, because the best way of reducing crime is to reduce the number of laws that create them. The best way of reducing prison the population is to reduce the number of unnecessary imprisonable offences. Supreme examples of this are the Misuse of Drugs Act (1971) that created a whole range of offences that makes criminals of people caught up in the current demand for using drugs. Another is the banning of hunting with dogs which now creates criminals of people in England and Scotland who have enjoyed an activity carried out by hunters since time immemorial. On the other hand we sometimes repeal laws: we no longer make criminals of male homosexuals in the way that we recently did.

There appears to be no imperative for the system to review whether or not penalties are either effective or appropriate, or whether advantage should be taken of the resources that become available as time goes on. Essentially, judges still only have three options: imprisonment, community service or fines. The ability to award a suspended sentence was removed by the Criminal Justice Act (1991) and may now only be used in exceptional circumstances, usually unrelated to the offence.

Since 2001 the intensive support and surveillance programme (ISSP) was introduced. In March 2004 3.2% of the prison population was under ISSP<sup>2</sup>. It is an early parole during which the offenders are placed on a curfew and their movements are tracked electronically by the Probation Service. This system costs £17,000 per

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<sup>2</sup> Home Office Statistics at <http://www.hmprisonservice.gov.uk/statistics/dynpage.asp?Page=18>

prisoner per annum as opposed to £42,000 in a Young Offenders' Institution or £37,000 in an adult prison<sup>3</sup>. However an ISSP is not awarded by the judge as a punishment it is granted by the Prison Governor to those recommended to him by the parole authorities. ISSPs are really nothing more than a cost-saving measure introduced to reduce prison overcrowding.

The purpose of the criminal law is to set out standards by which society lives. These standards are generally kept and every time a crime is committed there has been a failure in the system. This failure is usually the responsibility of the criminal, but not always. Sometimes it is a failure in the system that fails to accommodate the real needs of society.

Outside the courts and abroad, new schemes are tried and some of them work. In the USA judges enter into conditional dialogue with drugs users and have become reformers. In the UK, the judge only steps in with the ultimate solution, punishment, often before anything else has been tried at all. This is not a solution; it is an acceptance of another failure. This is why the prison population is rising out of control, whilst the incidence of reported crime is falling.<sup>4</sup>

The Restorative Justice scheme, run by Thames Valley Police and others, claims that recidivism was reduced to an eighth of its previous level - down from around 40 per cent to 4 per cent.<sup>5</sup> Young juveniles face the

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<sup>3</sup> Polly Toynbee Guardian 10 Mar 04 "Why Blair won't admit that prison doesn't work?"

<sup>4</sup> Home Office Crime Survey published 16 Oct 97

<sup>5</sup> Independent 18 Oct 97

people they have hurt and are encouraged to provide services that then compensate their victims. Both parties then have the opportunity to reach an understanding and sympathy. This is very significant, since 25% of all crime is committed by the under 17s and 50% by the under 21s<sup>6</sup>.

Imprisonment is a relatively new penalty. Before the Napoleonic wars there were no prisons except those used for political prisoners, traitors and debtors and those awaiting trial and punishment. It was the function of the assizes to empty the local gaols, in which only those on remand were kept. The courts did not fill gaols. They emptied them. Punishment was achieved by: death, some degradation, transportation or fine.

Prisoners of war had always been confined, and the Napoleonic wars saw thousands of enemy prisoners confined in the hulks. When these fell to bits large, modern prisons, like Dartmoor were built. So when the wars ended, this country had an abundance of prison accommodation that became available for a new form of punishment for criminals. Later, transportation ceased to be an option and, by then, no one was put in the stocks. Prison was a convenient solution because it appeared to satisfy all the penal requirements. It became universal, and now no one seems to consider whether or not it is either fair or effective.

At this point it worth pointing out an elementary distinction between Parliament and Government.

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<sup>6</sup> Independent 18 Oct 97

Parliament has two houses: one filled with members whose principal function is to represent their constituents and the other is filled with the eminent appointees of past and present governments or their descendants. The Government is not elected. It is comprised of men and women appointed by the House of Commons, whose sole function is to administer (hence the term “Minister”) the executive offices of Government. Parliament gives the Government certain powers as tools to carry out this service. These ministers may not make laws or deviate from them. They may, like any other subject, propose new laws, and they are in a very good position to do so. But, only Parliament can make or change statute law. This point was underlined by the Lord Chief Justice who said: “the recent growth in the prison population has been caused by the pronouncements of "influential public figures about the effectiveness of sending criminals to prison, and not because of new laws. “<sup>7</sup>

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<sup>7</sup> Speech to National Probation Convention 12 Nov 97 Source Independent 13 Nov 97

## Chapter 1 PUNISHMENT?

It seems self-evident that criminals should be dealt with. We call it “Punishment”. But what do we mean by punishment? There are certain distinct and unconnected Effects. Firstly there are the Direct Effects and secondly there are the Consequential Effects. Consequential Effects are those that arise, unavoidably, from the Direct Effects. They can be listed as follows:

### DIRECT EFFECTS

Restraint. This is necessary when a convicted criminal is unreformed, incorrigible, or incurable, and will repeat his offence. Some examples are: the irredeemable, the criminally deranged, irrepressible juvenile delinquents, terrorists, and incurable sex offenders. The presumption should be that Restraint should not be allowed in any other circumstances. It is never necessary for the Restraint, per se, to be disproportionate or oppressive, uncomfortable or harsh.

Restitution. If someone steals your silver teapot, then you would like it back. This is restitution. If the teapot has been melted down you would like the convicted man to repay you its full value so you can buy a replacement. This is compensation. Restitution is only possible for property offences. If someone rapes your daughter restitution is impossible and compensation is usually completely inadequate.

Retribution. No one who sees the distraught mother of a raped child, or hears of a child killed after taking ecstasy can deny that the elemental desire for revenge by the aggrieved should be ignored. But, revenge is a purely subjective consideration. In time it may be possible for those who suffer to become reconciled to their hurt. One reason why the State takes over the process of dealing with criminal cases is precisely so that the option to take revenge is not available.

Rehabilitation. Rehabilitation should not be confused with reform. Reform is the changed state which an individual either achieves or does not. Rehabilitation is the process by which that person is accepted by the society which he or she has decided to re-join as a law-abiding citizen. A reformed person needs a great deal of help from society if he ever going to be rehabilitated. Because 98% of all prisoners are released at some time, rehabilitation is in society's interests because it is the ultimate objective (if not the sole purpose) of the Criminal Justice System.<sup>8</sup>

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<sup>8</sup> Review of the Rehabilitation of Offenders' Act [www.somersite.co.uk/roa.htm](http://www.somersite.co.uk/roa.htm)

## Chapter 2 CONSEQUENTIAL EFFECTS

### The United Nations Conventions.

All countries, including the UK, have signed the UN conventions that state that the sole penalty that imprisonment may impose is “loss of freedom”. No mandate is provided for imprisonment to provide any further penalty, or to deny any human rights.<sup>9</sup> This means that prisons cannot cause any effect other than loss of freedom. It is illegal to do any more than this. UK prisons apply penalties that go far beyond this mandate and every time they do so they commit grave offences under international law.

### Curtailment of Freedom and Rights.

At the moment both freedom and human rights are curtailed when someone is in prison. Loss of freedom means that a man cannot go home to his wife and family; he loses conjugal rights; he cannot go out to the pub or cinema, nor do most of the things he would otherwise do. These curtailments constitute the principal suffering of imprisonment. The effect is deliberately indiscriminate and affects all prisoners equally. However these curtailments can also be applied to a greater or lesser degree without imprisonment. It may be more difficult to apply them outside prison, but

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<sup>9</sup> BBC 2 “Prison” 12 Nov 97

here they can be applied selectively, so that this tool can be used with some precise effect in mind.

Voting.

Prisoners may not vote. This restriction is probably illegal under the terms of the UN conventions.

Long Term Effects.

Conviction always generates long lasting consequential effects<sup>10</sup>. These also affect the convicted person's family and friends. A convicted man may lose his job; he will be separated from his family, who may have to travel miles to see him. "Prisons shatter families. This in turn sets in motion a pattern of neglect leading to crime and further incarceration. Despite all the political talk nothing seems to bring society any closer to reversing the pattern of prisons, not deterring crime, but destroying lives in a way that ensures their continued existence."<sup>11</sup> A prisoner may be unable to resume his former employment, status or career and may lose his status in the community. He will be branded by his record for life and may not be allowed to enter other countries or emigrate. Prejudice and generalisations may attach, for instance all sex offenders may be regarded as paedophiles, whereas a man's offence might have arisen with a 15 ½ year old Lolita, whom he subsequently marries. The list is endless. The effects may be permanent and affect many other people. They are usually quite out of proportion to the gravity of his

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<sup>10</sup> "Comments for the Review of the Rehabilitation of Offenders Act" dated 16 Jul 01  
[www.somersite.co.uk/roa/htm](http://www.somersite.co.uk/roa/htm)

<sup>11</sup> Howard League for Penal Reform's Criminal Justice Vol. 15 No. 4 Nov 97 page 18

offence. It is possible to argue that these long-term effects are outside the scope of the UN conventions and therefore illegal under international law.

### Chapter 3 PUNISHMENT

Punishment is nearly always used as the generic term to describe all these Effects and Consequences. In fact, punishment is a profoundly subjective concept. Perhaps it has something to do with suffering. "You must suffer this punishment". The State, being an inanimate concept, is incapable of reacting to a subjective concept. Only a human being can do this. For instance: Oscar Wilde may have suffered by imprisonment far more than another man convicted of the same offence; a mother separated from her baby by imprisonment may suffer more than some flash young man separated from his motor cycle. Who really knows?

We have reached the point in the UK where, fortunately, we do not put people to death or deliberately make them suffer cruel or degrading punishments. Nonetheless many people are inadvertently treated cruelly and degraded. Transportation is not an option any more, and fines can only be levied on those who can pay them. We mess about with half-hearted attempts at community service, but insufficient funds or expertise are dedicated to this and it is prone to being treated with derision by the criminals and the law abiding public. Every now and then, curious, ill-fated experiments are attempted with hybrid punishments such as releasing prisoners with

electronic tags, or making paedophiles join registers; but these stem more from short term desperation or a desire to economise.

For these reasons it is impossible to say that Punishment is either an Effect or a Consequence. Punishment is a generality, which cannot be broken down and, in the end, has no meaning at all.

## Chapter 4 DETERRENCE

The criminal justice system claims that, once convicted, a criminal is deterred from committing another crime. It also claims that the penalties the law imposes deter other potential criminals. The reality is that individuals, who reform, do so because of a conscious, personal decision arrived at through many factors and influences.

No English criminal law requires any person to do anything. All criminal laws say: “if you do this thing you risk suffering this penalty”. None says: “you must do this thing, otherwise you will ...”.<sup>12</sup> The principal objective of all criminal laws is to deter crime. This becomes ineffective if offenders are not seen to suffer the stipulated penalty. The problem is that deterrent effects are not measured.

Judges simply do not keep track of what happens to the people they sentence. They have no idea whether their convicts ever reform or whether the sentence has had any deterrent effect on the wider community. No one is

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<sup>12</sup> There is one exception that relates to failure to complete census forms.

following this up. No one is taking measurements although, occasionally misleading surveys are done. No one knows any facts at all. Sometimes some old lag will constantly reappear before the same judge. He will know then that deterrence is not working for that man; but this is the only feedback a judge ever gets. He may imagine that sentencing has a deterrent effect; but he does not know. Effects are easily inferred incorrectly from statistical comparisons and the criminal justice system is constantly deceiving itself by these inferences. But these statistics do not tell the judge how each particular criminal responded to his sentence. At the trial the judge learned a great deal about the accused personal circumstances and he awarded a punishment, which fitted all these. Statistics about recidivism in general tell him nothing about the success of his own sentencing. This leads to real injustice, because a Judge may well award too harsh a penalty, because he is trying to make an example out of the person before him, without having the faintest idea if he will succeed.

Now New Home Office research shows that community-based sentences, such as graffiti cleaning, litter collecting, graveyard repairs, ground clearance for the Olympic Games site and anger management courses, cut re-offending more effectively. In February 2006 the Home Secretary announced that these community sentences should be increased.<sup>13</sup> However this announcement was probably more motivated by the fact that the prison population had risen to 76,000 and was unaffordable.

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<sup>13</sup> HOC announcement 9 Feb 06 Charles Clarke

An example of misplaced faith in prison sentencing occurred when a drug smuggler was jailed for 26 years on 8 March 2002 for leading a bungled operation to bring a record £90 million consignment of cocaine into Britain by yacht. The Judge said: "The clear message I send out today to other traffickers of drugs and addictive substances is one of zero tolerance."<sup>14</sup> The Judge imagines that his "message" is being received and heeded. In fact, another delighted criminal has merely stepped into this smuggler's shoes and is meeting the demand. The price of cocaine per gram reduced from £82 in 1995 to £50 in 2002.<sup>15</sup> Since then this pattern has been constantly repeated and by 2006 this price had reduced to £10 or less. This repressive sentence for these criminal opportunists sends no "message" at all, except to remind us that we are obliged by the Misuse of Drugs and Trafficking Acts to have our demand for drugs met by criminals rather than some safe, controlled and legal supply system.

## Chapter 5 SOME FACTS

So we are left with the duty and dilemma of thinking clearly about what should be done with our criminals. It cost an average £37,305 to keep one prisoner for a year in 2005<sup>16</sup>. This gives an annual bill of more than £2.89 billion. With this the System could pay the salary of more than one probation officer for each prisoner and still have change left over.

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<sup>14</sup> Snaresbrook Crown Court, London, 8 March 2002

<sup>15</sup> Independent 7 March 2002

<sup>16</sup> Prison Reform Trust Bromley Briefings Oct 2005

We have a rising prison population. The prison population in England and Wales was 42,000 in 1993. This rise is inexorable. In October 2005 it was 77,373<sup>17</sup>. The number of women in prison has increased even more. In 1995 there were 1,198; in October 2005 there were 4,636.<sup>18</sup> The Home Office estimates that it may rise to 110,000 by 2009<sup>19</sup>. All our prisons are overcrowded and this prevents proper re-education, rehabilitation and care.

The UK imprisons more people than any other country in Europe. The rate of prisoners per 100,000 is now 130. The European average is 88. There were 42,000 prisoners in 1993 and 65,000 in March 1998.<sup>20</sup>

Britain now has a higher proportion of people in prison than any other European country.

The average cost for building each prison place since 2000 has been £99,839<sup>21</sup>.

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<sup>17</sup> Prison Reform Trust Bromley Briefings Oct 2005

<sup>18</sup> Prison Reform Trust Bromley Briefings Oct 2005

<sup>19</sup> Home Office Website <http://www.homeoffice.gov.uk/rds/pdfs2/hosb1402.pdf>

<sup>20</sup> Sir David Ramsbotham Select Committee 17 Mar 98

<sup>21</sup> Hansard HOC 16 Mar 2005 Col 1669W

“In 1981, there were less than 120 prisons, containing approximately 40,000 prisoners, whose conditions and treatment it is HM Chief Inspector of Prison’s responsibility to monitor, and on which to report. In 2005 there were 142 prisons,”<sup>22</sup>.

95 people killed themselves in prisons in England and Wales in 2004. This was an increase of 30% on 1997 levels and represents the highest ever annual figure.<sup>23</sup>

However this is nothing like as bad as the USA that has more than 2 million people incarcerated<sup>24</sup>. The USA has five percent of the world’s population and over 20 percent of with world’s prisoners. This compares with the USSR in Stalin’s time.

Figures to be released to Parliament by the Home Office minister Hilary Benn on 3 Feb 2003 showed that 44 per cent of criminals who are given community penalties are reconvicted within two years, compared with 56 per cent of those sent to jail.<sup>25</sup>

The present Government has built 20 more by 2005. These vast financial resources could have be redirected. Finance is not a problem. We can be bold and imaginative.

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<sup>22</sup> Sir David Ramsbotham Select Committee 17 Mar 98

<sup>23</sup> PRT Bromley Briefings Oct 2005

<sup>24</sup> 1 Department of Justice, Bureau of Justice Statistics, “Prison and Jail Inmates at Midyear 2002,” April 6, 2003, available at: <http://www.ojp.usdoj.gov/bjs/abstract/pjim02.htm>.

<sup>25</sup> Ian Burrell, Independent 4 Jan 03

## Chapter 6 SOME EXAMPLES

Having set out the parameters, it may be helpful to examine a couple of real examples and apply some tests.

Example 1 A young woman<sup>26</sup> gave her friend once ecstasy tablet for her 21<sup>st</sup> birthday. The friend took this pill at a party along with some amphetamines and a lot of unaccustomed alcohol. She suffered a severe reaction from the mixture, but recovered. The supplying girl was charged under the Misuse of Drugs Act (1971) with supplying a Class “A” Drug and risked life imprisonment. The Appeal Court Guidelines require a sentence of between 3 and 5 years in prison<sup>27</sup>. There were no exceptional circumstances. This was her first offence. The shock of what happened to her friend made her completely remorseful and she had demonstrated that she had forsaken taking illegal drugs before her case came to trial. Her friend felt as guilty as she and hoped she would be let off lightly. Let’s look at the Effects:

- Restraint: none of the criteria were met, so imprisonment should not have been an option.
- Restitution. No restitution and compensation was sought or was appropriate.
- Retribution. No one sought revenge.

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<sup>26</sup> Joanna Maplethorpe 1997

<sup>27</sup> Letter from the PS to the Lord Chief Justice to the author Ref: 006814, 19 Feb 97

- Rehabilitation. This had been achieved by the scare she got from her friend's reaction. No further action was required.
- Consequences. It was vital that the consequences should be minimised. The young woman did not deserve or need to suffer unduly; after all there were no victims.
- Deterrence. None was required for her. The Judge felt it was necessary for others.

We are left here with an offender the Effects of whose case had already been dealt with by the anxiety caused when her best friend nearly died. However the law needed to be upheld by a penalty that could cause others to think twice before doing the same thing. But Judge Mercer did none of this, he put on his blindfold and fell back on his Appeal Court Guidelines; he added a dash of mercy (after all it was only one pill) and sends her to prison for 9 months.

The Judge did what he was brought up to do. It was, if you like a purely introverted reaction. The result was that the young woman suffered too much and the consequences of his ill-considered judgement were damaging and negative in the extreme. I have corresponded with the girl's mother and know this is true.

What needed be done was to ask, objectively, whether this sentence would have had any positive effect at all.

The answer, in this case, must be no. No one else is going to take any notice of what this silly, fun loving girl did.

Two and a half months into her sentence the Court of Appeal halved her sentence. She was released immediately. During her time in Holloway she had made two suicide attempts and suffered from depression. Her counsel said: "It is clear she has suffered very seriously. There is no question of her ever taking drugs again or of becoming involved in drugs. The full realisation and impact of what has occurred has had a very sobering effect".<sup>28</sup> When she was questioned on her release she said: "It's a lot to go through, too much."

It is clear that her punishment was far too severe and this is why Lord Justice Evans of the Appeal Courts released her. But he also said " "We cannot think that there will be any other than the most exceptional circumstances where a custodial sentence for the supply of ecstasy should not be imposed." <sup>29</sup> Perhaps, instead, he should have quashed her sentence and apologised for the actions of Judge Mercer. Surely he must have realised that any young woman put through this barbarity would say anything to ensure her release. Surely he must have realised that this woman's reform had been achieved when she saw her friend suffer? Could he not bring himself to admit that the Criminal Justice System's harsh and unnecessary punishment merely caused crude and cruel suffering? Was he not man enough to

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<sup>28</sup> Daily Telegraph 28 Oct 97

<sup>29</sup> Daily Telegraph 28 Oct 97

recognise this, take the responsibility and for once say – the buck stops here?

There is a certain ugly, insecure smugness that impels the Judiciary into a self-defensive gang. This undermines them.

Let's look at another example to redress the balance.

Example 2. A paedophile<sup>30</sup> was convicted of the manslaughter of a boy. He was sentenced to 15 years in prison where he was kept apart from other prisoners and given counselling and treatment. This was completely ineffective. After 10 years he was released under license, but because he was convicted before the Criminal Justice Act (1991) there was no restraining order and he could come and go as he pleased. He went to a large town and signed onto the register. Since he was unreformed, the police told every one he was there; there was outrage. He was hounded out of 5 towns and went to another. The same thing continued in each and continues ad infinitum. The criminal justice system has merely launched a paedophiliac Flying Dutchman and it cost the State £100,000 for 5 months' (Oct 97 to Mar 98) supervision.<sup>31</sup> The same muddled thinking is currently being applied to Sidney Cooke who was due to be released without compulsory restraint on 6 Apr 98.<sup>32</sup>

There is no need for me to go through all the Effects. I will stop at Restraint. This clearly is a case where this man should have been kept apart in a safe place until he

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<sup>30</sup> Robert Oliver 17 Oct 97

<sup>31</sup> Telegraph 13 Mar 98

<sup>32</sup> Telegraph 6 Apr 98

reformed. The impossibility of his reform simply means that his Restraint was likely to have been interminable. But there was never any need to lock him in a prison; it should have been a better place with the proper resources available for his treatment and research into his treatment. The system is quite incapable of seeing this simple issue clearly and this is why we hear of "urgent measures being taken by the Home Office" every time a paedophile is released and the authorities are faced with another crisis. The measures they take are always expensive and ineffective. Meanwhile the released prisoner is as much at risk from vigilantes as the children he will prey on.

What other effective options are there to prison? What is that "something else" that so eluded the Judges in these cases? In truth, this question could be asked of nearly every case. Conventional prisons are probably nearly always inappropriate

From the outset I believe that we must discard the death penalty and all cruel and unusual penalties. I regard these as uncivilised in all circumstances.

## Chapter 7 PRISON

It is impossible to accept my premises unless it is accepted that our whole criminal justice system needs to steer itself away from using conventional imprisonment as the standard punishment. Sentencing Guidelines require judges to use imprisonment as a means of first resort in far too many cases. The young woman who supplied the ecstasy pill is a prime example. The Judge's guidelines gave him no choice in the matter. The same is true when it comes to murder. The Lord Chief Justice has sensibly challenged mandatory life sentencing for murder.<sup>33</sup> The Crime Sentences Act (1997), in defiance of all precedent, obliges judges to award minimum sentences of imprisonment for many other repeated crimes. The Crime and Disorder Act introduced legislation that will imprison huge numbers of juvenile offenders. The outline of proposed reforms by the Home Secretary in His "New Approaches to Crime and Punishment" at the launch of the International Centre for Prison Studies<sup>34</sup> does little to recognise the real problem. It tries to improve a failed system and the reforms will do nothing to help.

Judges also use imprisonment when all else fails; for example a judge, who orders an impoverished woman to pay her television license, will imprison her if she defaults, not for failing to pay her license but for her contempt. Prison is always the fallback for the law, even when it knows that an impossible option has been

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<sup>33</sup> Lecture to Police College Bramshill by Lord Bingham of Cornhill 1998

<sup>34</sup> 7 Oct 1997

offered to the offender. If the law is held in contempt the law should first ask itself if it is contemptuous.

Imprisonment is a degrading and awful experience which is deliberately indiscriminate in its consequential effects. No distinction is made between prisoners, because of their crime. Privileges are earned through conforming to the rules of the prison. These rules have no purpose other than making the administration of the prison possible. Prisoners have no duty or inclination to assist jailers, so this behaviour is given unwillingly. Nothing is allowed to break the prisoners' code of not grassing on the next man and so the whole context of the trusted status is maintained in an uneasy imbalance of mistrust. Thus a stropky person who committed a minor offence may be treated more harshly than a violent and wicked man who has learned the skills of not offending the warders and so earned a trusted status. This is particularly so in the case of juveniles and women, many of whom are imprisoned for defaulting on fines they cannot pay. HM Inspector of prisons reported in March 98 that most of these should not be imprisoned at all.<sup>35</sup> He said that 2000 of the 3000 women prisoners should be "dealt with by other means". He also said "I believe prisons are for adults, and the Prison Service should be an adult service, and it divides it to have to look after children".

One of the ways easing objective discussion is to change the terminology. This is why I do not use the word "prison" in my list of Effects. "Restraint" is another

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<sup>35</sup> Sir David Ramsbotham Select Committee 17 Mar 98

word and it has another meaning altogether. By restraint I simply mean keeping someone away from a possible or likely victim. This can be done using physical, geographical or other means. It does not, necessarily mean “locking up”.

There are many ways of doing this. In Arizona they have the Phoenix Lifetime Probation Initiative.<sup>36</sup> Its mentor Laurie Scott claims that less than 20 % of paedophiles that take part in the scheme re-offend. In this country almost 100% of released paedophiles re-offend. In Arizona sex offenders enter into a contract with the courts to submit to a lifetime of regular treatment, counselling and surveillance that is checked by examination using polygraphs (lie detectors). The threat of imprisonment hangs over all those who fail to maintain standards. Meanwhile the offenders enjoy this limited freedom in the community. The scheme costs much less than imprisonment and, whilst few cures are claimed the scheme does reduce repeat offending and is accepted by the community. There are other schemes. One was cited by HM Inspector of Prisons: “I had seen happening in Boston in Massachusetts, where there was a director of youth services who was responsible for co-ordinating all the activities of all the people who had particular responsibilities for that age group.”

A paedophile’s only victims are children. Dr Michele Elliot a child psychologist was reported as saying “ All they are interested in is children. There is none in prison, so the paedophiles just stick together under Rule 43 and fantasise with Mothercare catalogues.” On

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<sup>36</sup> BBC Radio 4 Today 20 Oct 97 report

average a paedophile of pre-pubescent children will have 380 encounters in his lifetime.<sup>37</sup> On the same day the Lord Chief Justice said, as he increased the sentence on another paedophile: "It is necessary to mark the public condemnation of such offences by a sentence of immediate imprisonment, both to punish the offender and deter others. Sentences must have a clear punitive Effect."<sup>38</sup> Something is very wrong here.

Our senior judge is saying one thing, but the psychologist immediately shows he has not faced reality. The scales of Justice need lifting from his eyes. A Paedophile only needs to be restrained from contact with children. He may not have to be locked up. He never needs to be treated harshly. He can be in contact with adults as much as he likes. However the worst place to put him is a place where he can conspire with other paedophiles. And where can we find the greatest concentration of paedophiles? Yes, in the Rule 43 wings of prisons, fantasising over Mothercare catalogues, and plotting new perversions. It is hard to imagine a place where anyone can be excluded from children. It is hard to know where to restrain paedophiles separately. But we should search in this direction.

Many people who commit offences, contrary to the Misuse of Drugs Act (1971), have done something that affects no one but themselves or a few friends, who already use the drugs. If someone is sent to prison for possession he will certainly encounter cheap and plentiful supplies of drugs, particularly addictive opiates.

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<sup>37</sup> 17 Oct 97 Daily Telegraph

<sup>38</sup> The Times 17 Oct 97

With nothing at all to do, but spend time, he will be strongly inclined to spend as much of this as possible in a drugged state. This may well suit a lazy prison warder, who simply wants a quiet life. If he had never taken addictive drugs, he is very likely to try opiates, because traces of these are expelled from the blood in three days, whereas cannabis traces remain for three weeks.<sup>39</sup> Random drug testing actually encourages cannabis users to switch to the dangerous and addictive opiates and so prisons are very largely responsible for directly promoting this dangerous and damaging conversion. It has recently been reported that less emphasis is to be placed on punishing those who only take cannabis in prison. Mr Howarth, a Home Office Minister said: "We do still accept that prisoners who use cannabis are breaking the law and they will be treated accordingly. However, we are reflecting the way the world is outside prisons. The law outside prisons recognises that cannabis is a less serious problem than, for instance, heroin and cocaine and we are simply reflecting that."<sup>40</sup> This may help to reduce this trend towards conversion to opiates, but it will not stop it. Each prison has about 10 smack-head pushers according to HM Inspector of prisons. These businessmen operate by encouraging dependence not only on opiates but by putting their victims in thrall by debt. "There are drug barons in prison and they intimidate others. They drive people into debt. They dominate the life of the prisons really in a way which I think is totally unacceptable."<sup>41</sup>

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<sup>39</sup> Sir David Ramsbotham Select Committee 17 Mar 98 para 85

<sup>40</sup> Report Daily Telegraph 13 May 98

<sup>41</sup> Sir David Ramsbotham Select Committee 17 Mar 98 para 86

Prisons are places where criminals learn new criminal skills. Many prisoners only have criminal skills. Some only have a few. They have nothing to do, but swap yarns all day long; often for years at a time. They network, increase their range of contacts, and form strong bonds and dream up new crimes. They teach each other things; so the man who has qualified in get-away van driving, learns how to bust safes as well. They are inventive and learn how things are done in other parts of the country. So the Manchester method is exchanged for the London method. They are greenhouses for conspiracy. I can imagine no more perfect environment for encouraging crime. Not only this, but they are nurseries for crime. Some poor little drug user, who did nothing but mind his own business, suddenly finds whole new horizons opening up. Anyone who has attended boarding school will know that the real experience and learning comes from other pupils and the culture of a closed environment. It would be interesting to carry out a management study of prisons' effectiveness at this. I doubt whether any MBA or Military Staff College (they use strikingly similar training systems) could even begin to approach the success rates that prisons achieve in their training.

All this has a bearing on deterrence. Many criminals are re-convicted. What no one knows is how many criminals become so cunning in prison that, when they are released and resume their criminal careers, their new crimes, are never detected. So the judge, who fondly imagines that, he has deterred the offender, has actually merely provided him with a free training course that enables him to continue his career unencumbered by the

interference of the law. Many, many criminals make appallingly ingenuous blunders and get caught, once. After a bit of prison training, they don't make the same mistakes again. So, far from deterring, imprisonment encourages crime.

Many prisons are old and every week or so the Chief Inspector of Prisons, reports disgust at conditions<sup>42</sup>. They are extremely expensive to build, operate and maintain and are breeding grounds for crime, drug addiction and perversion. Recidivism rates are quite disgraceful. They do nothing but add to the burden of crime and their only real utility is as a temporary dustbin where the rejected of this world can be cast out of sight and mind for a while. Here they fulminate and hone their anti-social and criminal skills. They are disgraceful and discredited institutions of which we should be thoroughly ashamed.

Despite all this the Government has no effective plans to deal with offenders other than putting more people into prison. To achieve this they are prepared to spend obscene amounts of public money on infrastructure improvements to existing prisons and in constructing new prisons. This profligate expenditure is done in desperation, simply because no one stops to think, except about short-term, palliative measures. These improvements may improve the security of the prisons and the comfort of the prisoners, but the purpose, rationale, regime and function of the prisons will be unchanged. Imprisonment rates have increased in huge, accelerating amounts in the last decade. The Crime and

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<sup>42</sup> E.g.: Lincon Prison 16 Oct 97, Glen Parva 98, Wormwood Scrubs 98

Disorder bill<sup>43</sup> will not reduce this increase. Nor will the Anti Drugs Co-ordinator's Strategy<sup>44</sup>. Both these measures will, if anything, increase imprisonment rates, because imprisonment still remains the main option for punishment. Recently<sup>45</sup> Lord Woolf, the Lord Chief Justice ruled that certain sentences for burglary should not attract custodial sentences. Misunderstanding his ruling the gutter press derided his judgement. However this does show that, at last, the System is being reluctantly forced to consider alternatives to prison. It is a shame that economic and pragmatic factors, rather than reason, are obliging it to do so.

The time has come to lift the blinding scales from our eyes; to stop and think.

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<sup>43</sup> Introduced in the House of Lords 2 Dec 97

<sup>44</sup> White Paper Cmnd 3949, 27 Apr 98

<sup>45</sup> Jan 2003

## Chapter 8 JUSTICE

The law does not achieve justice any more than this or that Church finds God. The law and the church are merely human kind's inept and defective institutions that try to approach these ineffable concepts. Our laws comprise statute and common law. Statute laws are rules enacted in parliament, whereas common laws are laws that have evolved in the courts alone. All laws are more or less defective; these defects are adapted over time by being tested in the courts. Everything is a state of flux and outdated laws that have never been repealed burden the whole system.

## Chapter 9 THE CRIMINAL JUSTICE SYSTEM

When Mae West was arraigned in court the judge said to her "Miss West, are you deliberately showing contempt for this court?" She replied: "On the contrary, your Honor, I am doing my best to conceal it."

"The word 'system' in the expression 'criminal justice system' is misleading.

There is no 'system' worthy of the name, only a criminal justice process to which a number of different Government departments, agencies and others make separate and sometimes conflicting contributions."

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<sup>46</sup> Lord Justice Auld's Report Chapter 8 The Criminal Justice System

Statute laws start in Parliament as Bills. They are proposed and debated by Members of the House of Commons. MPs' principal function is to represent the views of common people who sent them there. These bills are then checked over by experienced appointees of the State, who provide a kind of collective longstop in the House of Lords. They are amended as necessary and then enacted. Later they are brought into force. When this is done they become laws.

The Police are state employees whose duty is to prevent crime. When they are unsuccessful at this, they arrest people after they have committed crimes, collect evidence and deliver them as a package to lawyers.

Lawyers are self-employed consultants who study the complexities of the law and then give their opinions on the matter. Solicitors do the donkeywork and then brief barristers. The barristers then argue the toss in court.

Courts are places where these opinions are expressed. Everyone dresses up in costumes designed to intimidate the accused and the layout is designed to enhance this effect, with everyone in pew-like stalls set in dominating or subservient positions.

Common men, who are formed into teams called juries, take decisions on the truth of the matter. They should be the peers of the accused, but often they are not. They listen to all the evidence and arguing and the directions of the judge before they decide.

If a jury decides that accused is guilty, another employee of the State who is called a judge sentences him. Judges are experienced lawyers, because they also have to act as referees during the proceedings.

More state employees administer the sentence: in prisons they are warders, in community service cases they are probationary officers, whilst clerks and bailiffs collect fines.

All these people belong to different professions. The whole system is disconnected. The police make arrests and present evidence; the courts convict; the judges sentence; other state servants ensure the sentence is carried out. None takes responsibility for the other's action. So the judge never takes responsibility for the prison warden's actions. Each professional has shoulders with an almost perpendicular slope.

There are only two points at which society can help adjust this Orwellian shredding machine, which would otherwise just go on processing whatever weeds or flowers the police threw into its maw. The first is the common man who can issue instructions to his MP in Parliament; the second is the common man in the jury box. All the rest are just parts of the Crime Machine, which we call the Criminal Justice System. This Crime Machine simply shreds whatever it gets. The shreds are then left to rot into compost and are then chucked out onto the fields again. Thus enriched, the fields are encouraged to produce vigorous new growth.

No wonder that the Chief Commissioner of the Metropolitan Police made critical speeches about the “System” and its failings in March 2002. Nor should we have been surprised when, in the same month the Lord Chief Justice, Lord Woolf, supported by the Home Secretary, called for a halt on minor prison sentences by Magistrates and courts because they saw the prison population spiralling out of control.

## Chapter 10 THE COMMON MAN

"Jurors should acquit, even against the judge's instruction . . . if exercising their judgment with discretion and honesty they have a clear conviction the charge of the court is wrong."<sup>47</sup> Jury nullification, or the jury's ability to acquit the defendant if the jurors have no sympathy for the government's position, is a right afforded to all juries, firmly grounded in the Sixth Amendment of the U.S. Constitution and deeply ingrained in American history. It is, in short, an expression of the "conscience of the community". The same principles apply in UK law.

The common man gets his chance when he sits on a Jury. He is sworn to try the case according to the evidence. But really his duty is to try the case justly. If these aims are incompatible, and they often are, because most laws are so very bad, the juror has a duty to choose justice. Every now and again juries act in defiance of the law, because they feel that the penalties that will be imposed, if they convict, will be unfair. Lawyers call

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<sup>47</sup> Alexander Hamilton, 1804

this “perverse justice”. Actually, it usually shows that the law is perverse.

In Lancashire a group of protestors entered an aircraft factory where they proceeded to damage the avionics of some Hawk aeroplanes made for the Indonesians. The protestors believed that the Indonesians would use these aircraft to oppress the people of East Timor. They took photos of themselves doing this and left strong clues. At their trial they pleaded not guilty and their defence consisted of incontrovertible evidence that they had done the damage. Under the law they should have been convicted; but the jury knew that the System would treat them unjustly if they were convicted. They acquitted the accused.

In another case a young man was found at a Kentish port with thousands of ecstasy tablets concealed in his car. He pleaded not guilty and his defence was that he did not know they were there. Overwhelming evidence was given to show that he was lying. The Judge prepared himself to send the man to prison for seven years. But he was a nice young man, whose life would have been blighted by a prison sentence, so the jury acquitted him. The same things happened with a man who had been growing and supplying cannabis for his wife, whose MS symptoms were effectively relieved with this drug. The Judge told the jury "the defence of duress of circumstance in relation to the charge of cultivation could not be used." Nonetheless the jury acquitted the man because they knew that the law was unjust.<sup>48</sup>

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<sup>48</sup> Mr Blythe 3 Apr 98

In both these cases justice triumphed over the law. In the first case the Jury perhaps felt that that the protestors were simply right to do what they did and perhaps their judgement was clouded by politics, but in the second, the jury clearly felt that the guidelines for sentencing were simply wrong. They felt that it was incorrect for the Criminal Justice System to treat the man in the way that it had evolved purely for itself and that this was unacceptable.

Some might say that this means that the Jury System is defective. But it shows that the Jury System has and should have the duty of being supreme. It can see that the Emperor has no new clothes: it sometimes takes a simple person to see what is in front of his nose.

So, if the common man has this duty as a juror, he also has a duty as a constituent. As such he is also supreme. He has access to his MP who can change the law. Society should, after all, be governed by the Rule of Law; but The Law is always defective and needs to be constantly adjusted by the consensus of those who live by it. Above all Society must not be controlled by “Systems”.

## Chapter 11 THE INDIVIDUAL

Courts are preoccupied with being consistent. Because we have courts up and down the land and each court acts independently, it is quite rightly felt that the justice they dispense should be similar. So a man who commits a crime in Manchester is dealt with in the same way as the

man who does the same thing in London. This is why judges have guidelines. Judges can look up a tariff and apply it. All crimes have maximum sentences and none, except murder, has minimum sentences (set aside Crime (Sentences) Act 1997). The tariff is a sliding scale. In the case of the Class 'A' drug, ecstasy, the tariff dictates that possession with intent to supply 50,000 or more tablets should get 14 or more years, 5,000 or more tablets 10 years and small scale supplier 3 to 5 years. A person who brought one tablet for a friend at a party might expect a still lower penalty. But all have to go to prison<sup>49</sup>.

Remember the case of the young woman sent to prison for 9 months for giving her friend one ecstasy pill on her birthday.

It is an abomination that any judge should have his hands tied by a tariff that says "he has to go to prison". Why employ a wise and experienced judge if he is prevented from making a judgement? Only the judge can know the circumstances in which a crime was committed. Only that judge can treat that person as an individual who is separate and distinct from all other individuals. These matters cannot be preconceived.

This feeling was echoed in a related way by the Lord Chief Justice who spoke in the Lords' debate criticising the imposition of mandatory, minimum sentences for repeat offenders by statute. He said: "It is a cardinal principle of just sentencing that the penalty should be fashioned to match the gravity of the offence and to take

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<sup>49</sup> PS to the Lord Chief Justice Ref: 006814 dated 19 Feb 97

account of the circumstances in which it was committed. Any blanket or scatter-gun approach inevitably leads to injustice in individual cases.”<sup>50</sup>. In this debate others spoke in the same vein, including the Master of the Rolls. It was later repeated in the Prisons Service Debate on 25 March 1998 when Lord Carlisle said:<sup>51</sup> “I do not advocate anarchy or anything but the rule of law. I simply believe our laws need to be changed to encompass a better ethos of justice.”

## Chapter 12 ROMAN AND OTHER LAW

In England we may not have the continental Roman law. But we do have the same top-down attitudes that the Romans introduced. This attitude is anathema to the Celtic and Anglo-Saxon in us. But the Romans never invaded Ireland, which explains why, so often, the English and Irish start from different ends of the philosophical spectrum, when they are in conflict. Other countries have their differing traditions. Many Moslem countries adhere to Sharia laws, which have concepts of injury to the person rather than injury to the state. The Maoris too use different methods. The Australians and New Zealanders and the Thames Valley Police, in Aylesbury, have tried their methods successfully with juveniles. The Romans believed that the State was all-important. When they conquered a new country they had to repress the local traditions and culture from the top. They replaced these by imposing their own laws from the top. The only way this could be done was by

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<sup>50</sup> Hansard Lords 27 Jan 97 Col' 986 Crime (Sentences Bill) debate Lord Bingham of Cornhill

<sup>51</sup> Hansard 25 Mar 98 Col 1259

inventing absolutes. All our criminal laws create offences, which are crimes against the State. The Crown, never a plaintiff, prosecutes the accused.

None of this takes account of the personality or character of the accused or any surrounding circumstance. He either did it or he did not. These other factors are taken into account as mitigation after conviction and before sentence. This mitigation is then applied to the tariff, and either increases or decreases the norm. So a man of bad character, with a string of previous offences should get more than the norm; a first offender with an excellent character should get less than the norm.

This is as it should be. But latterly our Governments have become confused. The imposition of mandatory minimum sentences in the Crime (Sentences) Act 1997 cuts across the whole basis of mitigation and allows no consideration of the individual at all. And all these war cries such as “Zero tolerance” require the same thing. Here it is even worse, because the State is saying: no matter what the circumstances of the individual, we are going to treat you as harshly as we possibly can. This is pure dictatorship by the State. It is a sign of desperation and weakness. It is the tactic of the bullyboy, who lacks self-confidence. It is reprehensible and must always be resisted.

Perhaps we could modify our Romanesque principles just a little. Setting aside the nastier aspects of Sharia law that demand horrible things like amputating heads and hands and floggings, it is worth considering

adopting the concept of personal offence. In the case of the nurse murdered in Saudi Arabia, Yvonne Gifford, her sole, sane relative was regarded as the injured party, not the State. He was compensated with cash and once this was done the murderer was sentenced to only five years in prison. The five years was for protocol, not punishment. Perhaps we should look far more to Restoration and impose penalties on offenders that compensate the injured party not the State. After all the State is an inanimate concept, which is incapable of being compensated. It can be sacrificed too, like an Aztec Stone God, but it receives no benefit at all.

The State has a duty to prevent crime. In the UK there is far too much emphasis placed on the deterrent effect of sentencing. The Police and criminals are constantly saying that sentencing has little or no effect in deterrence. Deterrence is achieved by the real fear of being caught. Most violent crimes, particularly murders, are done in the heat of the moment. The mens rea comes in an uncontrollable state. No one thinks about the consequences of his action in this state. Those, who plot and plan violent crimes, are relatively few and far between and it is doubtful that much will be said to mitigate their offences. But there is no need to confuse the two types of crime. The Lord Chief Justice, Lord Bingham, emphasised this in a speech at the Police Staff College. Once the importance of deterrence is reduced from our confused logic, we must tend to the conclusion that sentencing has got very little at all to do with the State and everything to do with the individual.

The Maoris' idea, known here as Restorative Cautioning, has been tried by the Chief Constable of the Thames Valley Force, Charles Pollard <sup>52</sup>. It has worked very well with juveniles. Recidivism in his area has reduced from 40% to 4% and costs have reduced. The offending juvenile is asked 4 questions in front of his victims: what happened? What were you thinking at the time? Who have you hurt? How have you hurt them? Shaming and loss of face is important. It helps the victim reconcile himself to the injuries he suffered and it makes the offender face the consequences of his actions and then reintegrate with society. The process is no soft option and most offenders find the process very hard. The result is that the offender offers to make reparation and realises the error of his ways, whilst his victims' needs for retribution are satisfied. The system is also being tried in Hampshire and Kent. In Hackney juveniles who are given community service are paid £2 (YTS rates) an hour for working on community projects. Half this salary is then given to the victims. This has proved very successful.

In the USA special drugs courts negotiate contracts between the judge and the offender. They agree between them that the offender will attend drug rehabilitation. The judge constantly checks that the bargain is being kept and, only if it is not, does he impose a sentence of imprisonment. This works very well. Here we immediately imprison Class 'A' drug offenders for first offences. As Lord Hurd said on 25 March 1988: "We should study what happens in America, but not follow it. More than 10 million

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<sup>52</sup> BBC 2 22 Oct 97

Americans will see the inside of a gaol or prison cell in any one-year. America has three times as many prisoners as it did in 1996."<sup>53</sup> But, sadly, the USA is no model to follow. Five percent of the world's population lives in the USA, yet they have twenty percent of the world's prisoners.

There are very few offences that can be committed against the state. I can think of only treachery and tax-evasion. In all other cases an individual or individuals are victims. Sometimes there is no victim, as in the case of possessing illegal drugs. We in Britain should think carefully about this and angle our penalties as far as possible towards Restoration. In victimless crimes we should ask whether these so called offences are crimes at all.

We all think that English Law is the best in the world. Perhaps it is not. Justice should always be blind, but only so that it can be impartial. It should not be blind to its own, obvious faults.

## Chapter 13 BANNING THINGS

There is an awful, almost inevitable fashion in this country to ban Things and Activities like drugs, knives, guns and hunting. It is as though the Thing causes the crime. This is nonsense. The Thing is merely an instrument and proscribing its possession or appropriate use does little or nothing to prevent crime. The Duke of Edinburgh made us glimpse at the obvious when he

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<sup>53</sup> Lords Debate 25 Mar 98 Hansard Col 1236

pointed out that murder could still be carried out with a cricket bat once handguns were banned and not available. The Misuse of Drugs Act, 1971, contains a misnomer in its title, because it assumes that all proscribed drugs are misused when they are used. Misuse occurs if the drugs are taken inappropriately or in excess. It is not the drug that is misused; it is the person who takes it. It is said that pushing drugs on children is “misuse of drugs”. It is not. It is misuse of children. Taking excessive drugs oneself is not misuse of drugs. It is self-abuse. This is not semantics. Misuse of the word “misuse” is dangerously tendentious.

Sometimes HMG gets supremely muddled and confused. One of the very daftest measures, introduced on 29 Jan 2004, was the downgrading of cannabis from Class B to C. At the same time another act increased the maximum sentence for supplying class C drugs to the Class B level of 14 years from 5 years. However cannabis is now the only class C drug which cannot be supplied legally. Thus those meet the demand for it face still 14 years’ imprisonment, whereas the Doctor who prescribes its sister Class C benzodiazepine does not, even though the benzodiazepine is far more harmful when it someone abuses himself with it.

Laws already exist to deal with the real crimes. Take hunting with hounds. The Wild Mammals Act exists to deal with people who are cruel to wild animals. There was no need to ban hunting; all that was needed is a lifting on the exception under this act that applies to hunting. If a huntsman was cruel he could be prosecuted for cruelty, and not for hunting, which is a blameless

pursuit. If a man, licensed to have a handgun for target practice, slips the pistol in his pocket when he goes out on the town, he can be prosecuted for breaching the strict terms of his license. If a mugger threatens an old lady with his mother's kitchen knife, he can be prosecuted for assault.

We already control potentially risky activities by licensing. People who pass driving tests are given licenses to drive cars. Tobacconists, publicans and off licenses have licenses to sell tobacco and alcohol. Chemists have licenses to sell drugs. All sorts of people have licenses to do all sorts of things. The Thing or the Activity is not licensed. The person is licensed to use the Thing or carry out the Activity. Control is achieved and parameters are set out to ensure correct use of the Thing. Some things, such as knives, are so commonplace that the potential for their misuse is very difficult to control.

Control by license is not completely effective. But it is much more effective than banning. Banning merely drives the Thing or Activity under ground. Things, which are banned, which are still in demand, are never controlled effectively. Drugs are banned, but are still in demand, and so, a black market evolves to meet the demand. Criminals, who are obliged, by the law, to commit crimes in order to trade, run this black market. Thus the Misuse of Drugs Act fosters and encourages other crimes and so makes everything much worse. The world trade in drugs is now estimated to be much more than \$500 billion per year. This equates to one half of the British gross domestic product and exceeds the

money that HMG collect in all revenues and taxes each year. It is the third largest trade in the world. The trade could be controlled and taxed much more efficiently if the trade were licensed, rather than banned. Things cannot be banned.

Every time Parliament feels the urge to ban some Thing or some Activity it should remember this simple principle.

## Chapter 14 REHABILITATION

Our 1974 Rehabilitation of Offenders Act introduced measures designed to enable those, who had reformed, to rehabilitate them selves by concealing their criminal records. It became a criminal offence for any keeper of these records to reveal the existence of these “Spent” sentences. Sentences became spent after differing periods depending on the length of sentences. Sentences of more than 30 months could not become spent, but for 30 months or less it was 10 years from the date of conviction, reducing, in very minor cases to 6 months. This meant that the reformed person could obtain a certificate from official record keepers that showed he had a clean sheet. This would enable him to get a job or emigrate to another country without fear of his record being made available in any way to anyone but himself. However his record would remain “on the record” so that if he was ever convicted again it could be revealed to a UK court when it came to determining his sentence.

As time went by various “exceptions” were introduced so that people, who had committed certain types of offences against “vulnerable people” could not conceal their record if they wanted to work with “Vulnerable people” again. Initially this meant working as a teacher of children. But the exceptions increased until, absurdly, it even covered job applications for traffic wardens! The list became enormous, so much so that almost everyone became “vulnerable”.

The whole matter was reviewed in 2002 and the report<sup>54</sup> recommended very sensible changes, which included reducing the normal 10 years wait to 2. It was accepted in its entirety by HMG, but nothing was done to change the 1974 Act. Meanwhile various highly publicised crimes against children were committed<sup>55</sup> and more reports written<sup>56</sup> and the government, over-influenced by this tiny proportion of repulsive crimes, delayed implementation of the reforms so needed by the huge majority of reformed criminals.

Simultaneously the task of keeping and disclosing records was farmed out to a new agency called the Criminal Records Bureau, whose computers and systems did not work properly. After 3 years they are still unable in 2006 to produce Normal Disclosures to people whose sentences are Spent and they barely deal promptly with the demand for Enhanced Disclosures required by all those who want to work with “vulnerable people”. Furthermore they only issue disclosures to “Registered Authorities” after inordinate delays and fees are paid,

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<sup>54</sup> Breaking the Circle”

<sup>55</sup> The Soham murders

<sup>56</sup> The Bishard enquiry

whereas they should issue them, instantly on demand for nothing. The bureaucracy and incompetence is quite beyond belief.

Meanwhile the Police somehow became unable to produce any Disclosures at all that concealed Spent sentences. They only produce the whole unexpurgated record (Subject Access Request) if asked for by the applicant himself. Again they charge a fee and the delay can be 40 days.

By 2006 it became impossible for anyone, who had reformed and Spent his sentences to obtain any form of Certificate of Disclosure and the whole purpose of the Act had been negated. Thus the Law's delays actually encouraged reformed criminals to return to crime. They cannot conceal their past and are being actively discouraged from finding legal employment either here or abroad. This matter is a heinous scandal and a supreme example of despicable negligence and incompetence by successive Governments.

## Chapter 15 DRUGS

By far the largest single cause of crime is the dependence of an increasing demand for “illegal” drugs on a supply system monopolised entirely by criminals. No one knows how many crimes are drug-related because records are not kept by the police or Home Office<sup>57</sup> of the motives for committing acquisitive crimes by those who do so to fund their drugs habits or addictions. A person convicted of mugging is charged with assault and theft and his record shows this alone. Surveys are conducted which give an indication; from these it is estimated that over 60 percent of all crime is drug-related. It is further estimated that about 68% of all those in prisons are incarcerated for offences against the Misuse of Drugs Act, Trafficking Acts, or for drug-related crime. A total of 105,570 “drug offences” were dealt with by the courts in 2004<sup>58</sup>.

It is estimated that there were fewer than 1000 drug users in 1971. By 2001 this had increased at least one hundred-fold.

The inexorable rise in “drug offences” started immediately the Misuse of Drugs Act (1971) came into force. This was not because drugs possession and supply had not been offences before this, it was because the supply system was immediately taken over by criminals, who were far more efficient at meeting the demand, than rather inefficient chemist shops around the

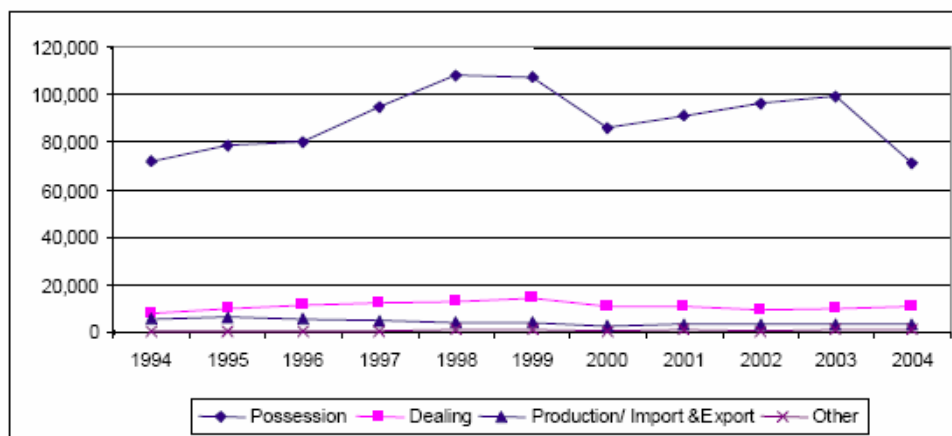
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<sup>57</sup> Home Office Crime Survey Section (RDS - CRCSG) 29 Nov 05

<sup>58</sup> Home Office Statistical Bulletin 2004. <http://www.homeoffice.gov.uk/rds/pdfs05/hosb2305.pdf>

few honey-pot areas, like Piccadilly Circus, who had done so before. This efficient supply-system, fuelled the demand and illegal drug-use rose exponentially from 1971 to the late 1998 when it began to plateau. There is no record of drug-use, because most people, who use drugs, do so without causing themselves or anyone else any harm whatsoever and do not come to the attention of the authorities. However, the figures for drug offenders produced by the Home Office in Dec 2006<sup>59</sup> show:

Figure 1: Number of known drug offenders by offence type, England and Wales, 1994-2004



The ethos of banning drugs by making them illegal has been spectacularly unsuccessful. Drugs seizures have no effect whatsoever, because the demand is there and as soon as one “drugs-baron” is arrested his competitors step in to fill the demand after learning from the mistakes their colleague made. The criminals’ system is constantly improving and, as demand increases, prices drop. There are no taxes, and no controls so the overheads, which would be imposed by health and

<sup>59</sup> Home Office Statistical Bulletin Dec 2004 - <http://www.homeoffice.gov.uk/rds/pdfs05/hosb2305.pdf>

safety regulations, are not applied. It is possible to obtain a bag of heroin faster and without inconvenience on the pavement outside any Crown Court than it is to buy a packet of cigarettes.

Attempts are made to reduce demand by drugs-users, but this is severely hampered because drugs users, not only have to contend with the threats and dangers of depending on criminals, they have to face the far worse risk of being prosecuted by the Law and so shy away from coming forward for help.

The only solution to this problem is to bring the supply of all drugs under a rigorously controlled, legal supply system. Such a system would have to compete successfully with the well established criminal system at the outset. But if this was done sensibly the criminal system would soon fail to compete and fade away. Drugs-related crime would stop, and then effective demand-reduction measures would begin to have real effect. This reform need not, as some wrongly suppose, be hampered by any of the 3 United Nations Conventions on drugs<sup>60</sup>, and can and should be instituted immediately in the UK. The rest of the world will then follow.

Of course the consequence of doing this would be to “legalise” all drug use, but this is of very minor importance compared with the benefits that would be gained for society and health. This reform would be the best reform ever achieved in the last 150 years, Crime

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<sup>60</sup> Single Convention 1961, Convention on Psychotropic substances 1971, Convention on Traffic 1988

would reduce by the largest amount ever achieved and all those wretched, feckless, drug-users, who harm no one but themselves, would cease being persecuted by unjust laws and be able to seek and find help.

## Chapter 16 Chapter 15 IMPROVEMENTS AND REFORMS

I have hinted at several ways in which improvements could be made: the American systems, the Maoris system, but I suggest that we go much further. We need to reform the underlying philosophy of our penology. This should be founded on finding constructive alternatives to imprisonment. Some work has been done on this that is encouraging. Lord Justice Auld's Review of the Criminal Courts<sup>61</sup> delved deep into the intricacies of the courts systems, but came up with nothing really radical. His terms of reference, "*the practices and procedures of, and the rules of evidence applied by, the criminal courts at every level, with a view to ensuring that they deliver justice fairly, by streamlining all their processes, increasing their efficiency and strengthening the effectiveness of their relationships with others across the whole of the criminal justice system, and having regard to the interests of all parties including victims and witnesses, thereby promoting public confidence in the rule of law.*" gave no scope for radical reform. Maintenance and lubricious measures are simply not enough. This chapter makes proposals that I hope will generate a serious debate that will lead to fundamental reform of our criminal law.

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<sup>61</sup> Foreword of the Auld Report dated 2001

## THE PRINCIPLE OF IMPRISONMENT.

Conventional prisons should only be used as places of last resort. Such restraint is only necessary for incorrigible or incurable criminals who need to be confined in very secure places to protect potential victims (including themselves). This test should be absolute and, if it does not apply, then another penalty must be imposed.

## THE PRINCIPLE OF RESTORATION FIRST

The principal purpose of every single penalty should be restorative. That is to say, recognising that the individuals, who are victims of the crime, should have their property restored and, or, be compensated, and be helped to accept their misfortune as best they can. If possible they should be helped to forgive. It should be accepted that the State couldn't benefit, because it is an inanimate concept, which is incapable appreciating benefit. It should be recognised that when there is no victim there is probably no crime. Parliament should review victimless crimes and repeal all the acts that created them.

## DETERRENCE

It should be recognised that potential criminals are rarely deterred by the penalties that the courts impose. The pernicious phrase "it sends the wrong or right message"

should be excised. Messages may be sent, but they are rarely received. The greatest deterrent is the fear of being caught; so deterrence is achieved best by crime prevention or by increasing detection efficiency. Nonetheless potential criminals need to know that crime does not pay and penalties should always demonstrate that the risks of crime outweigh the benefits. Thus a thief or a fraud must always end up financially worse off after conviction than before. This should be done by restitution and compensation. However, most people do not commit crimes because they agree that those things that the laws proscribe should not be done. Most people do not steal, because they know it is wrong to do so. Criminals are people who deviate from this norm. Their deviance is corrected, in the end, by rehabilitation.

## PUNISHMENT

Punishment should never be an objective. The objective of all penalties should be to restrain the convicted man until restoration and rehabilitation is achieved. This might take minutes or it might be interminable. Where rehabilitation is impossible it should be accepted that restraint has to be interminable. However, there is an important note of caution. Some life sentences are not paroled because the convict denies the offence. Where this applies the Criminal Sentencing Review Board must take very prompt action to review the case, because it is completely unacceptable to restrain a person who still claims his innocence in defiance of conviction by a court, as his very claim is a valid reason for doubt.

## RESTRAINT

Restraint simply means the separation of a convicted person from his likely victim. It should never be hard or oppressive. It should always be proportionate to the risk of escape. It should always be tailored to the needs of each case and can usually be achieved by striking a contract of some sort between the restrainer and the restrained. It therefore follows that all sentences, which involve restraint, should be for indefinite, conditional periods. Here it must be strongly emphasised that restraint must always be for a minimum period. In cases of arrest for instance, restraint may only be necessary for minutes or even seconds.

## INCORRIGIBLE DELINQUENTS

The Metropolitan Police Commissioner and Lord Chief Justice agree<sup>62</sup> with many that incorrigible juvenile offenders should not be allowed to get away with bail, warnings and cautions so that they are free to resume their unacceptable behaviour. They are perfectly right. A whole politically correct farrago of nonsense protects these little monsters. They need to be taken in hand swiftly and effectively, placed under controls and re-educated. Their whingeing and hopelessly useless parents may also need to be taken in hand. In these cases our laws have somehow turned themselves inside out and upside down. Very occasionally Councils will apply exclusion orders on these children and bedeck them with “cool” electronic tags, But these do little

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<sup>62</sup> Press reports March 2002

except prevent them operating in specific zones. If they can go and stay with their over-indulgent Granny, outside the prohibited zone, they merely begin operations there. We do nothing effective to protect the public or correct the offenders when we should; yet we are perfectly happy to imprison blameless students, who take ecstasy, for 3 years at a time and hurt no one. Never mind if it costs £42,000 a year to place each child, there is plenty of money to be diverted from the £18.8 billion a year wasted on persecuting drug-users.<sup>63</sup> The officers of the law, and the law itself, are made here into Asses.<sup>64</sup>

## THE ROLE OF THE COURT

Crown courts should not simply try cases. They should be forums in which contracts are struck between the convicted and the State, with the aim of achieving: restoration, compensation, reform and then rehabilitation. These duties can be delegated to lesser or specialist courts so long as the absolute right to trial by jury is never denied before conviction. It is important that the judge, who strikes the bargain, personally sees the matter through to its conclusion.

## RESTORATION

Restoration is the key element. It must be considered the principal element in any penalty. It supersedes the traditional, Romanesque idea of punishment. The

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<sup>63</sup> York University Study published Feb 2002

<sup>64</sup> Conrade. Dogberry, Shakespeare "Much Ado about Nothing" Act IV Scene 2

objective is to make the convicted man suffer sufficiently to deter him and others and to restore or repay the injured parties as much as possible. The State never needs to be repaid, so this means that fines should be abolished completely. Where an institution is the victim, such as the crime of illegal parking, then compensation is paid to the owner of the land, perhaps a Town Council. In most cases it will be impossible for the criminal to give back as much or more than he took from the victims, but he should be obliged to give back as much as he possibly can. This might put a convicted man under a lifetime's obligation.

In some cases it will be necessary to confiscate all the ill-gotten gains from a criminal and then make him start the process from scratch. Otherwise the rich criminal will never be deterred and crime will still be seen as a profitable occupation. Say a man has accumulated £10 million pounds worth of assets from his crime and it can be shown, beyond doubt that these assets came from the crime, but he needs to restore only £20,000 to his victims. The £10 million should be sequestered and then, starting from nothing, he should be put to work to re-pay the £20,000. It is important that the sequestered millions are not returned to the Treasury, this money should be put into a fund, which should be used to provide compensation to victims whose oppressors prove incapable of providing enough. This fund will be responsible for providing the means for just restoration, not the criminals. The criminals will merely contribute. By this means we will avoid the worst excess of

American litigation culture in which victims seek to profit from crimes against themselves.

The restorative process, should, where appropriate, be negotiated within the Maoris –model forum. The criminal and the victim should face each other and achieve a solution through mediation. It has been shown that this process helps to satisfy the victim's need for retribution. It makes the criminal face the person who has suffered and this helps him see the consequences of his crime. This helps him towards rehabilitation. Although this process has only been proved in cases of juvenile crime in this country there is no reason why similar systems could not be adopted for some older criminals.

## EDUCATIVE WAYS

In her article on 8 March 2002 the columnist Deborah Orr challenged the adversarial basis of the courts. She maintained that society has more to gain by helping the convicted to mend their ways, than by punishment. If such outcomes were in prospect for the accused, they would admit their crimes more readily, instead of fighting them expensively in the courts. It would then become easier to convict and we would stop wasting resources by filling our prisons with malefactors whose behaviour only then get worse. She made some imaginative proposals for these disposals: she said: *“Why not tell the junkie insisting that he is innocent of snatching the bag – he just found it in the hedge and loads of people have jackets and trousers like his – that*

*an admission of guilt will secure him a place on a drug rehab programme instead of a prison sentence? Why not tell the young man accused of actual bodily harm that an admission of guilt will bring anger management therapy, while a guilty verdict in court will result in further charges and a prison sentence? Why not tell the woman accused of theft that an admission of guilt will secure skills training, while a guilty verdict in court will result in further charges and a prison sentence?*

*Why not reward those who do not compound their guilt by denying it, instead of throwing the book at them when the gamble is lost? At the moment, too many people opt for trial by jury, and too many end up in jail as well. Surely we can tackle both difficulties by admitting that they may just be part of the same problem.”<sup>65</sup>*

She undoubtedly has a point.

## AGE

At the moment there are arbitrary age limits. A man aged 21 or over is sent to an adult prison even if he committed the crime when he was 19. Children under the age of 10 are deemed incapable of crime (*doli incapax*). These age limits are constantly being adjusted up and down and conflict with other national age limits. Thus the parents of a man released from prison at the age of 22, who then returns to University, are still means tested when he applies for his University grants. At the

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<sup>65</sup> Deborah Orr *The Independent Review* 8 March 2002

trial of their son their status as a parent was completely ignored. The whole system is a complete nonsense. Each person should be treated on his own merits and so, a streetwise 9 year old, who has committed crimes knowing he has done so, should have his mens rea tested by the court he faces. Each person is a separate individual.

## COSTS

The State must still maintain a Criminal Compensation Fund. In the USA they have an "Asset Forfeiture Fund" which is funded by the legal sale of ill-gotten gains and which is used fund crime prevention measures.<sup>66</sup> So there is no reason why we should not do the same. However I suggest that our fund be used to compensate victims rather than fund crime prevention. In many cases the criminal will never be able to repay all the compensation. Or, it may take him too long to do so. The State Fund should make immediate payments to victims and suffer the consequences of any shortfall or delay. The State has a duty to do this. It is a primary function of any State, to make laws for the regulation of society. Once it has made laws it must take the full responsibility for administering these laws. If it can't afford the consequential costs, it should change the law. It is the principal reason for the collection and disbursement of tax in any society. As such these costs must take absolute priority above all other costs. The State must pay the entire cost of running every part of the Criminal Justice System. Every crime is a failure by the State in: deterrence, crime prevention or the law

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<sup>66</sup> Independent 6 Apr 98 " Christie's to sell drug-smuggler's \$1m jewels"

itself. All failure must be paid for. There is plenty of public funding for this; to start with huge savings will arise from the £2Bn per annum spent on prisons. York University calculated in March 2002 that the totals cost of drug-prohibition in this country costs £18.8 billion a year. These are nearly all wasted on useless anti-drugs measures.

## BAD LAWS

All crimes are committed because a law has been broken. It follows that if a law does not exist, then no crime can be committed. Parliament must constantly examine whether existing laws are appropriate and new laws are necessary. Some laws are so bad that they actually encourage crime, by creating irresistible opportunities. The smuggling of gold, beer and tobacco from continental EU countries into the UK is a good example. Parliament really should comply with its own aims on harmonising duties and VAT<sup>67</sup>. If it did then the opportunity and crime would simply vanish.

The same applies to many offences under the Misuse of Drugs Act 1971. There is no scientific evidence to show that ecstasy needs be a Class A drug under the United Nations Conventions on drugs. There is overwhelming empirical evidence to show that it does not qualify. A commission should examine the facts and put ecstasy into the correct category. Meanwhile cannabis is placed in Category C in this country because it is in Schedules I and IV of the UN Single Convention on Narcotic

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<sup>67</sup> Article 5 Treaty of Rome

Drugs.<sup>68</sup> It is in these schedules only because the UN and WHO say that cannabis has “no therapeutic use whatsoever”. And yet our Government is supporting medical trials with GW Pharmaceuticals that show that it has many therapeutic uses. It has been licensed for such use in Canada. There are hundreds of examples where crimes are created unnecessarily. A large percentage of crime could be removed altogether by this means. Priority must always be given by Parliament to the repeal and amendment of defective criminal laws. All other parliamentary business should come a very long way in second place to this duty. This activity is probably the most effective way of reducing crime.

## POLICE

All police swear to uphold the Queen's Peace. This is their primary function. Every arrest should be regarded as a failure of a system of which the police are a part. And although policemen should not actually be reprimanded for making arrests they should not necessarily be congratulated either. Their superiors should in every case immediately seek out why their officers had failed to prevent this crime being committed in the first place. High calibre people should undertake this almost super-human responsibility. It necessitates a philosophical about face. Policemen need to be seen on their feet in the community and they should stop measuring their success rates by "clear ups", "arrests", "successful prosecutions". The Chief Constable who gets his CBE should be the Chief Constable who

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<sup>68</sup> UN Single Convention on Narcotic Drugs 1961

achieves the lowest of these figures, not the highest. The whole system of measuring success by the Police should be inverted.

## LEGAL PROCESS

This should be speeded up. Courts should dispense with their absurd and intimidating sartorial and theatrical trappings. The target time between arrest and sentence should be drastically reduced, except in cases of the most unusual complexity, such as fraud. This already happens in Scotland: "In Scotland there is the 110 day rule, which is the time by which cases, except in exceptional circumstances, are to come to court."<sup>69</sup>

## REMAND

Although the subject of remand falls outside the scope of this paper, an obvious conclusion falls out from the rest. People charged with offences should only be restrained where it is clear that they will either re-offend or abscond before arraignment. The assumption should be that this does not apply unless it can be shown. If delays do occur, then the Criminal Justice System must account for their delay, not him. The restraint in remand should always be proportionate to the risk of re-offence. The Scottish 110 day rule seems excessive. I suggest that our 8-day rule should apply and Magistrates should take a very dim view of ordinary run-of-the-mill legal process that exceeds this limit. Very few people should be remanded in Prison or cells.

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<sup>69</sup> Lord Hurd Hansard 25 March 1998 Col 1236

## PRISONS

The need for conventional prisons should, perhaps, reduce by about 90% in the UK. Yes 90%. The massive savings that result from closing most of these discredited institutions can be spent on providing systems for the restraint and rehabilitation of offenders. How this should be done goes beyond the scope of this paper, but there are many experts and many other systems being tried out in this world (e.g.: Sweden, and Finland where most prisons have now been closed completely) to take our choices from. Conversion to the system will take time, but it should be achieved within 5 years.

## BANS

Licensing the people who are permitted to use them or carry them out should on the whole, control things and Activities, whose use is risky. Things cannot be banned effectively, but they can be controlled quite well once their use is controlled. Revenues can also be collected from licensed activities.

## PROBATION SERVICE

A vast burden should descend on this service. It needs a better status. Officers need a wide variety of training and

they need to be better rewarded. Their functions will, like the police have, become constructive and crucial. They will no longer be mere shutters stable doors. Their responsibilities will become as important as lawyers. In some respects they will be more important, because they will have a constructive rather than a purely reactive task. The Probation Service will have the tasks of: matching expectations for retribution with reality, teasing out compensatory payments and achieving rehabilitation and re-education and assessing when people placed under indefinite restraint should be released. This will require recruits from the most caring, able, and intelligent sectors in the land. They will require vast resources, respect and support from the population and the government. Judges will need to heed rather than disregard their advice. They will be honourable men and women. There is no need for probation officers to be civil servants. The task can be contracted to agencies. However every part of their cost must be paid from taxation.

## VOLUNTARY AGENCIES & ADVISORY COMMITTEES

A number of agencies already exist up and down the country. They already partially fill the wide gaping hole in our System that this paper reveals. Caring, intelligent and honourable men and women, who often give their time voluntarily, man them. There are many examples: Transform Drugs Policy Foundation<sup>70</sup>, Release, Lifeline, and Howard League for Penal reform etc. These

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<sup>70</sup> TDPF Website <http://www.tdpf.org.uk/>

organisations have already assumed a part of the mantle that I envisage for the revised Probation Service. Many are locally based and understand their clients, despite current laws, which largely prevent them from getting the results, they wish to achieve, and they succeed. The new Probation Service needs to learn from these people and co-operate with them, rather than subsume their role. They should also receive financial support from the Treasury and yet remain independent. Independence will enable them to experiment and stay at the cutting edge. This will help to counter the inevitable caution and stultification that may inhibit the Probation Service, whose performance will remain under a withering and constant public scrutiny.

A large number of advisory committees also exist, some with statutory responsibilities such as the Advisory Committee on the Misuse of Drugs<sup>71</sup>. Many more exist to advise the Government and courts and another one was proposed when the Lords voted for an amendment to the Crime and Disorder Bill on 31 March 1998<sup>72</sup>. The problem with these is that they contain experts and experts spend all their time disputing with each other. They may be necessary for some very complex laws, but if a law is so complex that only an expert can understand it, the common man cannot reasonably be expected to obey it. Laws should be simple and clear and the formation of these committees and quangos should be discouraged.

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<sup>71</sup> Misuse of Drugs Act Section 1

<sup>72</sup> Hansard [HL] Crime and Disorder Bill 31 Mar 98 Col 154

However, one word of caution: the agencies, which help prisoners, constantly improve conditions; in doing so they make imprisonment a more acceptable option. Prison is never an acceptable option except for the incorrigible. It is only for them that conditions in prisons need to be improved.

## DRUGS

The supply of all drugs should be brought under rigorous, legal control immediately.

## REHABILITATION

This is being actively discouraged by the deliberate failure of the Government to introduce the reforms to the Rehabilitation of Offenders Act (1974) made in their Report “Breaking the Circle” in 2002. This is an act of criminal negligence by the Government.

## Chapter 17 Chapter 15 CONCLUSION

This paper raises some radical ideas all of which I hope are either present or lying dormant in the mind of the common man. Only the common man has the right or the ability to change things. In this country this is done by importuning the MPs, whose primary function, is to represent the common man in Parliament. The United Kingdom lives by the rule of law. This is as it should be, but we should not be blind to the law’s defects or assume that, because we have muddled along, in a more

or less civilised fashion for a very long time, that we have got everything right.

The Lord Chief Justice said to a Select Committee: “our tradition is an extremely punitive one. As compared with continental Europe for example we have always imposed much tougher sentences than most other countries. You can say they are tougher in the United States and one could think of one or two other countries in the Middle East but on the whole our tradition is a very, very punitive one.”<sup>73</sup> This is nothing to be proud of. He went on to say: “There is simply a need for a change in the public approach to these matters. A decade ago all the pressure was the other way: do not send people to prison, whatever term you have in mind halve it, the second half of the sentence will do them no more good than the first half and so on. The pendulum has gone much too far the other way.”

We should take a peep under the blindfold and see what is staring us in the face.

I would welcome constructive comments on this paper either by letter or E Mail.

“{That} ill deserves the name of confinement which hedges us in only from the bogs and precipices. So that, however it may be mistaken, the end of the law is not to abolish or restrain, but to preserve and enlarge freedom”

John Locke (1632 - 1704)

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<sup>73</sup> Lord Bingham of Cornhill Select Committee 17 Mar 98

Second Teatise on Civil Government (1690) Ch 6. sect.  
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Mick Humphreys  
Creechbarn  
Creech St Michael  
Taunton  
Somerset TA3 5PP  
UK  
Tel: 01823 443955  
[mick@somersite.co.uk](mailto:mick@somersite.co.uk)

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