

IMPRISONMENT: THE FOUR BLAIR PRINCIPLES

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Perrie lecture 2005

I was delighted to accept the invitation of the organising committee to deliver one of the Perrie lectures for 2005, a series of lectures which honours the memory of one of the most distinguished prison governors of his generation, a Scotsman, like myself, who came to work in the Prison Service of England and Wales. This is the second occasion in which I have been invited to contribute to this series. The first was in 1993 when I was Governor of Brixton Prison and, as happened every year until his death, we were then honoured to have Bill Perrie as a member of the audience.

On that occasion there were two other lecturers¹. One was Andrew Rutherford of Southampton University. His theme was 'Penal Policy and Prison Management' and in his lecture he contrasted the two competing ideologies of what he described as 'the humanity credo' and 'expedient managerialism'. Rutherford suggested that the 'humanity credo' embraced "an optimism that constructive work can be done; an adherence to the rule of law; and an insistence upon open and accountable procedures". He pointed out that this credo stretched back many years into the history of the Prison Service. In more recent years he traced it from Ian Dunbar's 'A Sense of Direction', through the Scottish report 'Opportunity and Responsibility', to the Woolf Report and on to the Eve Saville Memorial lecture delivered in 1992 by Joe Pilling, then Director General, in which he focussed on the need for values in the service which were grounded on the five concepts of respect, fairness, individuality, care and openness. Andrew Rutherford went on to warn that this humanity credo was going through a particularly vulnerable period, threatened by 'expedient managerialism', which he said was characterised by giving priority to "narrowly defined performance measures and to short term trouble-shooting".

The third lecturer that year was the recently appointed Home Affairs spokesman for the Labour Party. In a wide ranging and thoughtful speech Tony Blair insisted that it was not necessary to choose between what he called 'a liberal agenda' and 'a hard agenda'. He warned against "a series of policy initiatives that are reflex responses to particular events occurring in our Society" and instead advocated "a thought out policy, a strategy, if you like, that deals with all the various aspects of the problems that we face". He went on to propose that any such strategy should include four basic principles. The first was the need for 'a coherent sentencing framework'. He pointed out that it had long been Labour Party policy that there should be a Sentencing Council. The second was that the way to implement the Woolf Report was to develop prison regimes that would make it more likely that when people came out of prison they would do so as law abiding members of society. The third principle was "that people who are sentenced by the state to imprisonment should be deprived of their liberty, kept under lock and key by those who are accountable primarily and solely to the state". Mr Blair acknowledged that there were some commercial firms "with very good motives who want to assist in the prison service and the running of prisons in the

¹ The 1993 Perrie lectures were published in the Prison Service Journal, Issue No. 90, 1993

private sector” but he went on to voice two particular objections to prison privatisation. Firstly, he said, “there is a danger that if you build up an industrial vested interest into the penal system... there is a risk that that distorts the penal policy that otherwise you would introduce”. Secondly, he said, “I believe that privatisation is a diversion of our energies from where those energies should be properly set”. Mr Blair’s fourth principle was that the proposal to build new institutions for young offenders was “re-living the past”. “The reason why I believe it to be so fundamentally wrong,” said Mr Blair, “is that the last thing you want to do with those persistent young offenders is to put them alongside 40 or 50 other persistent young offenders and lock them up for a considerable period of time”. He described it as “insane to set up these new centres at the same time as the local authorities are having to close some of their facilities for disturbed young people in communities throughout the country”.

Well, what was left for me, a simple prison governor, to add? I did my best. I suggested that having just come out of a period of unprecedented violence in the prison systems north and south of the border, we had reasons, in the aftermath of the Woolf report, for limited optimism. Great progress had been made in the speedy installation of sanitation in cells, although I suggested that those who came after us might wonder why on earth we had been so keen to install toilets in sleeping accommodation. I talked about the key to stability in any prison being the relationship between the prisoner and the prison officer and how a start was being made in giving prison officers real authority to deal with the daily matters that were important to prisoners ‘rather than simply acting as postboxes for probation officers, chaplains or governors’. I also made reference to what still needed to be done: the problems of appalling conditions in inner city Victorian prisons, the large number of prisoners with mental disorders and the dangers of over-categorisation of prisoners. I discussed the need for an agreed set of minimum standards, for a method of independent consideration of complaints, the need to improve arrangements for prisoners to develop and maintain links with their families and to develop better links between prisons and their local communities, what at the time were described in the language of the Woolf report as community prisons. Finally, I cautioned against expecting too much of our prisons. I pointed out that the central task of the prison was to protect the public from violent criminals and from those who had committed the most serious offences; that by definition personal rehabilitation, putting on again the garb of citizenship, would be best achieved in the community rather than in prison. I ended with a vision that “prisons will become places of justice; where custody and care can be exercised with humanity and decency; where prisoners will no longer be outcasts but will be encouraged to take their places as responsible members of the community”.

So, there we are, it was all said in 1993. What is there left to be said in 2005? Sadly, quite a lot. In the short time that is available to me and given the knowledge of this audience, I will not talk about issues of detail, about matters which have improved over the last 12 years or those which have become more difficult. Instead, I would like to examine what has happened to the four principles which Mr Blair presented in this auditorium in 1993.

A coherent sentencing framework

The Sentencing Guidelines Council, chaired by the Lord Chief Justice, was established in 2004, subsequent to the Criminal Justice Act 2003. It receives advice from the Sentencing Advisory Panel, which was set up under the Crime and Disorder Act 1998. Mr Blair's main argument for the Council in 1993 was the need to introduce a degree of coherency into sentencing practices to deal with the fact that a Crown Court in one part of the country had a rate of imprisonment of 72% for a particular offence, while one in another part of the country had a rate of 37% for the same offence. Mr Blair was quite clear why such a Council needed to be set up: "The prospects of reforming offenders are usually better if they stay in the community, provided that the public is properly protected."

In his Perrie lecture Mr Blair reported that on 31 December 2002 there had been 40,000 people in prison. On 3 June 2005 there were 75,873 people in prison, an increase of 90% in little more than 12 years. Whatever measurements one uses, this increase cannot be attributed to an increase in crime, nor to an increase in detection rates. The main reason for the increase is that the courts are sending more people to prison than they did before and they are sending them there for longer periods. Martin Narey chose to refer to this in one of his first interviews after being appointed head of the National Offender Management Service in January 2004. Speaking on BBC's Breakfast with Frost programme, he said, "The Prison Service is being overrun with very many short-term prisoners - lots of people who are in prison now who would not have been in prison ten years ago". Pointing to the fact that the number of people jailed for motoring offences had doubled in the previous decade, he went on to say that "courts need to realise the value of community penalties".

It is not easy to find a rational explanation as to why the rate of imprisonment in England and Wales should be 142 per 100,000 of the population, whereas that in France is 91, that in Germany is 96 and that in Denmark is 70. Some commentators who are uneasy at the suggestion that the rate of imprisonment in this country is so high have argued that, instead of quoting imprisonment rates per head of the total population, it would be fairer to quote them per incidence of recorded crime. One reason for not doing so is that it is notoriously difficult to produce accurate international comparisons because of the different methods of recording crime and different definitions of crime in each country. The number of people in prison and the total population of each country are relatively simple and uncontroversial figures.

Every two years or so the heads of prison administrations in the 46 countries of the Council of Europe meet. At their meeting in Strasbourg in November 2002 they considered the issue of increasing prison populations and consequent problems of prison overcrowding. In their final report they commented that

levels of imprisonment in each country are usually influenced much more by political decisions than by levels of crime or rates of detection of crime. A society can choose to have a high or low rate of imprisonment and this choice is reflected in the sentencing patterns adopted by individual judges. In recent years a number of European countries, especially in the West, have decided, either consciously or by default, to have higher rates of imprisonment. They have done this through the introduction of more punitive legislation or as a result of politicians and the media encouraging judicial authorities to send more people to prison for longer periods of time.

The Home Office recognised this political dimension in its response to the Carter report in January 2004, when it accepted the recommendation that the projected increase in the number of people in prison should be checked at 80,000 by 2009. This would be achieved “with a substantial revitalisation in the use of fines, a range of community sentences, some of which are significantly more demanding than at present, and a step change in sentencing practice”.

One is left with the question as to why it was decided to check the prison population at 80,000. Why not check it when it was at 65,000 in 1998 or in 2002 when Martin Narey talked about “the insanity of a prison population that may hit 70,000 this summer”?

The development of prison regimes

That leads me to the second of Mr Blair’s principles, the need to develop prison regimes in a way would make it more likely that when people came out of prison they would do so as law abiding members of society. In many respects the Prison Service has achieved a great deal since 1993. Members of this audience will know the details much better than I do. In 1993 the Service had just been designated as an Agency of the Home Office and was in the early stages of developing its vision, values, corporate objectives and performance measurements. According to my reading of the latest Business Plan, the Service now has 14 key performance indicators or targets, which are reinforced by 45 key actions and outcomes. In moving in this direction, the prison service was being required to adopt a much more managerial approach to running prisons and to apply many of the principles which had long been adopted in the business world, even though some of them did not represent best modern practice.

One can understand that the prison service should be required to account for the way it spends public money and should be measured by how it meets the objectives which have been set for it by government. In respect of these matters, the Service has much to be proud of and the annual report for 2003-2004 makes impressive reading: an escape rate of 0.02%; 9,169 offending behaviour programmes completed; a measurable increase in the proportion of minority ethnic staff; 43,731 educational skills awards and 103,583 key work skill awards; 32,592 employment, training and education place outcomes².

However, one disadvantage of this way of working has been an increasing emphasis on what has become known as managerialism, that is, a concentration on process, on how things are done, rather than on outcome, that is, what is being achieved. There is a crucial difference between good management, which is necessary in prisons, and managerialism, which can make good management more difficult. In a managerial environment there is a danger of falling into the trap of knowing what the sub-title of this year’s Perrie lectures describes as ‘the price of everything and the value of nothing’. The service itself has recognised this by embarking on what it has called the decency agenda. The Prison Service Business Plan 2005-2006 defines in some detail what decency in the prison environment involves. The final sentence in the Business

² It might be worth noting in passing that in the course of its recent inquiry into prison education, the House of Commons Select Committee on Education and Skills was surprised to learn that an “employment, training and education place outcome” does not necessarily mean that a person has actually secured a place in employment, training or education.

Plan is the most telling of all: “And the overall test remains, Would I be content for my son or daughter to be locked up and treated in the way that prisoners are treated in this prison?”.

The Prison Service Board would no doubt be the first to acknowledge that, despite the changes since 1993, a lot remains to be done. Many of the obstacles to improvement lie outside the Service rather than inside it. The principal one over the last decade has been the incessant rise in prison numbers and the relentless strain which this has put on the organisation. It seems to me that there was a period in the near past when the Prison Service did neither itself nor society any favours by reassuring government of its ability to cope with whatever pressures it faced. In the early 1990s, for example, it coped with overcrowding by redefining its capacity. Overnight, cells which had been built to hold one prisoner were said to be capable of holding two prisoners. A new classification of ‘operational capacity’ was introduced, defined as ‘a safe level of overcrowding’. Those who introduced this new definition did so in an attempt to place some cap on the population of hard pressed prisons. However, this has now become the norm and the term ‘certified normal accommodation’ appears to have disappeared, at least from the Prison Service website. The consequent pressure results in what the Director General has graphically described as the ‘churn’ in prisons, leading to a situation where a young man from the East End of London might be sentenced in Middlesex Crown Court in the centre of London, be sent to Feltham in Middlesex and then, because of shortage of bed space, onwards to Castington near the Scottish border.

This pressure also led to some of the negative results listed in the annual report: that on average prisoners spent only 23.2 hours a week (that is, 3.3 hours a day) on some kind of purposeful activity; that 21.7% of prisoners had to share a cell designed for single occupancy; and that there were 135.9 self-inflicted deaths per 100,000 of the average prison population.

So, we are still a long way away from Mr Blair’s vision of prison regimes which will make it more likely that when people come out of prison they will do so as law abiding members of society

Minimum use of custody for juvenile and young offenders

Let me jump now to his fourth principle, that the Prison Service should not be expanding its accommodation for juveniles and young offenders. Here, I am afraid, the Mr Blair of 1993 would be somewhat disappointed. By coincidence, on 8 June, two days ago, the Council of Europe’s Commissioner for Human Rights published a report following his visit to the United Kingdom in November 2004. In respect of juvenile justice, the Commissioner noted the wide raft of positive reforms introduced by the government, particularly the establishment of the Youth Justice Board in 1998 and the creation of Youth Offending Teams. He also noted that recent reforms had recognised the need to reduce the numbers of juveniles and young offenders in detention, with the introduction of a range of alternative community sentences. Despite these initiatives, however, the Commissioner recorded that these policies had made little dent on the numbers of juveniles and young offenders detained. He commented that the United Kingdom has amongst the highest rates of juvenile detention in Western Europe. Although in line with the European average during the

early 1990s, the situation has since changed. The number of 15 to 17 years olds detained in prisons on 30 June 1995 was 1,675 and had risen to 2,479 on the same date in 1997. On 31 December 2004 the figure stood at 2,169. In respect of young offenders between the ages of 18 and 20, the figure on 30 June 1995 was 5,872, rising to 7,684 on the same date in 1997 and standing at 8,073 on 31 December 2004. The Commissioner expressed concern at these figures.

This latest criticism from the person appointed by the Council of Europe to oversee the observation of human rights in all member states mirrors that of the UN Committee on the Rights of the Child. Speaking in November 2004, the chairman of the committee asked why Britain tolerated the unnecessary jailing of juveniles. He said, "My committee recommended in 2002 that detention should only be used as a last resort, yet the UK still locks up more children than most other industrialised countries. Why," he asked, "is this tolerated?" Our own parliamentarians have joined this chorus of concern. In 2003 the Parliamentary Joint Committee on Human Rights commented adversely on the government's rejection of previous criticism from the United Nations about the need to incarcerate between 2000 and 3000 children at any one time and the appropriateness of holding them in prison service custody.

In his latest report the European Commissioner for Human Rights concluded his comment on juveniles on a very critical note:

Juvenile and young offenders will often have endured troubled and disrupted childhoods. Special attention to their educational and psychological needs is consequently required if their detention, at such a critical time in their development, is to contribute to their rehabilitation and reinsertion into society. All those I spoke to within the prison system were naturally sensitive to these imperatives, but it is difficult to conclude that they are entirely being satisfied. Indeed the overall impression I obtained was of a detention system that placed too much emphasis on punishment and control and not enough on rehabilitation.

It is hardly surprising, under such conditions, though extremely worrying, that 19 children should have hung themselves in YOI's over the last decade. One can only conclude that the prison service is failing in its duty of care towards juvenile inmates.

Imprisonment 'primarily and solely' by the State

I now turn to Mr Blair's third principle, "that people who are sentenced by the state to imprisonment should be deprived of their liberty, kept under lock and key by those who are accountable primarily and solely to the state". In his lecture in 1993 Mr Blair said, "I'll leave aside for the moment any ideological predisposition that anyone may have towards the public and private sectors." I wish to do the same since this is not a lecture about privatisation. However, I do want to say a bit about the two particular objections that Mr Blair voiced to prison privatisation in 1993. The first, if you remember, was that "there is a danger that if you build up an industrial vested interest into the penal system... there is a risk that that distorts the penal policy that otherwise you would introduce".

Many of you in this audience will be aware of the two reports which have been produced by the National Audit Office on PFI prisons. The first, in 2001, was generally positive. A more recent report, in 2003, was much more cautious and made three major points. First, the performance of private prisons in delivering what is in their contracts “has been mixed”. Some private prisons have delivered and others have not. Secondly, private prisons “span the range of prison performance”. The best are better than many of the public prisons. The worst are at the bottom, amongst the least well performing public prisons. Third, private prisons have brought some innovation in the use of technology and the way they recruit and use their employees but “little difference in terms of the daily routine of prisons”. The report concludes that the use of private prisons “is neither a guarantee of success nor the cause of inevitable failure”.

Picking up Mr Blair’s point, I would like to suggest that the real issue is not about whether private prisons are managed more effectively and efficiently than public ones, or vice versa. The fundamental change which has come about with the introduction of privatisation is the concept of prison as a marketplace and a business which will inevitably expand. This is epitomised in the press release issued by GEO Group Inc on 1 December 2004. It was headed, “GEO intensifies efforts to re-establish business presence in the United Kingdom” and announced that GEO had “established a Head Office in the United Kingdom to vigorously pursue new business opportunities in England, Scotland and Wales, which currently represent the second largest private correctional market in the world.” George C. Zoley, Chairman of the Board and Chief Executive Officer of GEO, stated: “We welcome the opportunity to re-establish our business presence in this very important marketplace”.

The last public sector prison to be opened was Woodhill in 1992. Since then 14 private prisons have been built, although two of them were subsequently taken into Prison Service management. I also recognise that a significant number of additional places have been provided in existing public prisons. Nevertheless, the requirement that all new prisons should be provided by the private sector has meant that the financial and social costs of an increasing use of imprisonment have not been subject to public scrutiny. Many of the costs of increased imprisonment are hidden in the short term. In fiscal terms, high capital expenditure can be converted into long term revenue expenditure, which reduces current financial costs while increasing future costs to the public purse. Importantly, in social terms the government has not encouraged public debate about why so many additional prison places are needed, being content to argue that it will provide as many places as are necessary to protect the public. This, I assume, is exactly what Mr Blair had in mind when he pointed out that the introduction of private prisons would distort penal policy. That is why, as I suggested earlier, it has taken until now for the government to acknowledge that it cannot continue to let the ‘market’ expand infinitely and that it must put a cap on prison places.

The second concern expressed by Mr Blair was that ‘privatisation is a diversion of our energies from where those energies should be properly set’. I would like to suggest that this is exactly what has happened in terms of the organisation of the Prison Service. Re-organisation is not a new experience for the Prison Service. Over the last 40 years it has moved from the Prison Commission to the Prison Department and the Prison Service, then to an Agency and now to the National Offender Management

Service, at each stage trying to improve the system, like Diocletian with his continual re-organisation of the Roman Empire into four vicariates and then 12 dioceses, but always failing to ask the fundamental question as to whether the system itself was flawed.

It appears to me that many people, both inside and outside the Prison and Probation Services, including those who are well disposed to NOMS and, it would now seem, some at a senior level in government, are finding difficulty in understanding exactly what NOMS is meant to be. Its intellectual foundation is not easy to fathom and some people have concluded that this may not even exist. Nor is there any international comparator. In organisational terms, it is a 'first'. This absence of context means that it is very difficult to discuss the potential strengths or weaknesses of the NOMS model. It has no reference point to the sort of wider society we are striving for in this country. It regards the people with whom it is concerned only as offenders. Their only identifying feature is that they have committed an offence. This is emphasised by the tactic of observing every other feature of their humanity through the prism of their offending. These include family relationships, accommodation needs, employment, social links, health and use of alcohol or drugs. Instead of being features of human existence these become, in the quasi-professional terminology used in some quarters 'criminogenic needs', although thankfully that pejorative term is heard less frequently nowadays. As a result of a conviction, people are transmogrified into 'offenders' and all their relations with other people are henceforth to be identified solely in terms of offending. They are no longer fathers, mothers, brothers, sisters, sons or daughters. They become 'the other', people to be dealt with, people to be 'managed in a seamless way, end to end', although it is not quite clear what this end might be.

The future

In the few moments left to me I would like to take up Mr Blair's challenge of 12 years ago and to suggest a way of diverting our energies, in his words, where they "should be properly set". If we are serious about prison reform we must begin to plan for a more parsimonious use of imprisonment. The evidence from other comparable European countries is that the number of people in prison in this country could be significantly reduced without increasing any risk to the safety of society.

Secondly, prisons in future should have much stronger local connections. There is a long tradition in some prisons of working with local groups. The benefit of such work would become even more real to all involved if those helping and those being helped came from the same community. This could be the beginning of a process through which ordinary members of the community, educated by reports in the local media, could begin to understand that the people who are in the local prison are from their communities, will return to their communities and that it is in everyone's interest that they should be integrated into those communities when they are released.

Thirdly, we should consider a new infrastructure to support this new model of prison. The prison system is virtually the only major organisation in this country which is totally under central government control. If prisons are to have stronger links with the communities in which they are located, there is a strong argument for making them more locally accountable. One way of achieving this would be by dismembering the current national prison system and replacing it with a more locally based structure.

There are a variety of possible models as to how local prison systems might be structured and time does not allow me to examine them in detail. The National Offender Management Service is unlikely to be a good model, since this will remain a national service, as its name indicates, albeit with more regional management.

Re-organisation of prisons on a local basis would also provide an opportunity to re-define the nature of imprisonment. The original concept of imprisonment as a place of exile has not changed a great deal in reality over the last 200 years, despite a number of changes in rhetoric. Offenders who are sent to prison are still taken away from their own communities in the hope that the experience they undergo in the closed world of the prison will somehow change their behaviour and attitude to life, making it more likely that they will become honest citizens. The fact that 56% of them are reconvicted within two years of being released is regarded as a failure of the prison system to engineer change. Perhaps it would be more honest to acknowledge that it is a failure of the concept of imprisonment as a vehicle for personal change. Rather than responding to this problem by doing more of the same and doing it more efficiently, the future may lie in a more rigorous examination of what the model of imprisonment which was conceived in the 19th century and flowered in the 20th century should look like in the 21st century.