

# A presumption against imprisonment

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On 3 July 2014, the British Academy launched a report entitled *A Presumption Against Imprisonment: Social Order and Social Values*. This article is taken from the report's Foreword, written by the Rt Hon. the Lord Woolf. Harry Woolf was formerly Lord Chief Justice of England, and is an Honorary Fellow of the British Academy.

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It was just over 24 years ago that a series of riots of unprecedented gravity erupted in English and Welsh prisons. They started on 1 April 1990. On 6 April 1990 I was appointed by the then Home Secretary, now Lord Waddington, to report on what happened during the six most serious riots, their causes and what should be done to prevent their repetition. Nine months later (in conjunction with Judge Stephen Tumim, the Chief Inspector of Prisons, for the second part) I delivered my report to the then Home Secretary, now Lord Baker.<sup>1</sup>

I have had a deep interest in what is happening in our prison system ever since writing my report. Like many others, I have discovered that the effect of being totally immersed in what is happening within our prisons system, even for a limited period of time, is that you became addicted to what is happening in our prisons.

Today I am still addicted, notwithstanding that, periodically, I find that this addiction causes me acute exasperation. My exasperation arises because, since I delivered my report, there have been very promising developments from time to time within the prison system. They suggested that the system could be about to fulfil its longstanding potential to make a substantial contribution to achieving progress in the criminal justice system. Such developments could have assisted the system to achieve its objective of protecting the public and to fulfil its role, which it summarised in its mission statement (in words that I paraphrase) as:

...serving the public by keeping in custody those committed by the courts, looking after them with humanity and helping them lead law-abiding and useful lives while they are in custody and after release.

1. *Prison Disturbances April 1990* (Cm 1456; London: HMSO, 1991).

My hopes were initially raised after the delivery of my report. In Parliament, both the government and the opposition were in favour of the recommendations that the report made. There was, however, one exception. The government rejected the admittedly contrived recommendation aimed at controlling the number of persons in custody at any particular time by requiring a report to be sent to Parliament if the size of the prison population exceeded the number of prisoners the prisons were intended to accommodate.

The recommendation was important because it was the only method I was able to devise for placing some restriction (not prohibition) on the future size of the prison population, by limiting it to the designated capacity of the prison estate. During the inquiry it was accepted on all sides that overcrowding had been a cancer destroying the ability of the prison system to give effect to its mandate. The reason for this is that overcrowding makes it extremely difficult to take the actions that ensure offenders will return to the community less, and not more, likely to commit further offences. It also interferes with providing offenders in custody with humane conditions. These problems are then exacerbated by the lack of resources caused by the rise in costs of keeping and increasing the numbers of prisoners in custody.

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While there were significant improvements in many aspects of the prison system following my report, this has not been the case with prisoner numbers. After an initial lull in the growth in numbers, the numbers have steadily climbed without any benefit to the safety of the public – apart, that is, from a most welcome reduction in the imprisonment of children and young people under the age of 18. At the date of the report, the size of the prison population was about 44,000 and falling, while by 7 March 2014 it had increased to 84,738.

From time to time there has been legislation which, if implemented successfully, could have at least limited the expansion or even reduced the numbers. But any progress made has been limited in its effect and short-lived.

There has been no sustained effort by either of the principal political parties to tackle the causes of this

growth; rather, supported by elements of the media, they have competed to demonstrate their toughness in response to crime rather than increasing their efforts to limit the numbers undergoing custodial sentences at any one time. One of the worst examples of the sort of inactivity I have in mind concerns those sentenced to indeterminate sentences. Some of those in custody in consequence of such sentences have been in prison much longer than was intended because the machinery to demonstrate that they should be released is so overstretched that it is incapable of dealing with their assessment in adequate time. This is a grave injustice that brings discredit to the justice system of this country.

It is sometimes said by politicians, in answer to criticism of the position of judges, that it is the judges who impose the sentences, not them. As the Chief Justice from 2000 to 2005 and the then Chairman of the Sentencing Guidance Council, I emphatically reject that criticism. The judges have to sentence the individual offender in accord with the framework set by Parliament. The framework has continuously been made more punitive. It is true that often the legislation deals only with a small number of offences, but the inflationary effect of an increase in a sentence, even as to a single offence, has an effect on the length of sentencing across the board. This is because, in deciding on a sentence for one offence, the judge has the task of finding the level of sentence which is just, both having regard to the facts of a particular offence and to sentencing for other offences as well.

Under my Chairmanship, the Council did try to counter these inflationary influences in the guidance we provided, but such efforts came under intense criticism from politicians, as well as the media, endangering the public's confidence in the Council. When devising guidance this reality had to be taken into account. The Council and the judiciary recognised that the public must have confidence in the level of sentencing and that to have failed to respond to the media as opposition could have resulted in damage. Though we appreciated that, it would be wrong to assume the public is in fact as punitive as some politicians and the press think.

Fortunately – and partly, I would like to think, due to the implementations of the recommendations contained in my report for security and control – the Prison Service's ability to deal with disturbances has greatly improved since the Strangeways riots. While there have been an increasing number of recent reports of ominous situations occurring in prisons, control has always been able to be restored without anything happening approaching the scale of the riots 24 years ago.

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What I have written so far describes the unfortunate background against which the value of the new British Academy report, *A Presumption against Imprisonment*, must be considered. Many voices have previously drawn attention to the failures in policy that have occurred and to what could be done to alleviate the situation. We are fortunate in this country in having bodies with the greatest expertise in penal reform of any jurisdiction of which I am aware. Examples of these bodies are the Prison Reform Trust, which I now have the privilege

of chairing, and the Howard League for Penal Reform. But their influence has not been as great as it should have been. What could produce improvements in the situation has been well known for years, but, regrettably, too little attention has been paid to this, and valuable opportunities to make the fundamental changes needed have been missed.

The tragedy is that the increase in the size of the prison population has not achieved an improvement in protection of the public, although in recent times there has been a pleasing reduction in the number of certain crimes. The cost of housing a population of prisoners of the present size is enormous, but, unfortunately, this has not resulted in the reduction in the use of imprisonment, even in the present stringent current financial climate.

The present government has recently proposed placing a new and much needed emphasis on the rehabilitation of offenders. The proposals are contained in the Offender Rehabilitation Act. If this proposal were to be implemented satisfactorily it could mark a significant change of direction, which would be a departure from past failures.

Rehabilitation of prisoners is critical because of the high percentage of offenders, particularly those who have shorter sentences and who, within a very short time of their release, are again before the courts, having committed further offences which are often graver than those that caused them to be imprisoned on a previous occasion.

However, the accepted wisdom is that it is extraordinarily difficult to produce anything positive from short periods in custody, and I am not alone in being concerned as to how this new emphasis on rehabilitation can be implemented successfully in the way proposed. Using short prison sentences as a gateway to rehabilitation may prove attractive to the courts, leading to further inflation of prison numbers as well as a surge in recalls to custody. While I applaud the motives of the Ministry of Justice in promoting their reforms, I fear the fundamental changes to probation involved could cause irretrievable damage to the Probation Service. In addition, I fear there is a danger that the benefits it could offer will be lost in the heightened political controversy, which, on previous form, will overwhelm the debate on tougher sentences in the run-up to the next general election.

Instead of that controversy, what is needed is a re-examination of our penal policies as a whole and the development of a fresh approach that is outside politics. This is an achievement that this exceptional new report could promote. All too often in the past, despite the best endeavours of the bodies committed to reform, their recommendations for change have been discounted as being the usual clamouring of the 'reformers'.

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The British Academy publication is different. It follows a joint forum of the British Academy and All Souls College, Oxford, in November 2012. It reflects a review of penal policy by a remarkably distinguished group of independent academics outside politics, looking at the subject afresh under the umbrella of the British Academy. It is the first comprehensive report from an

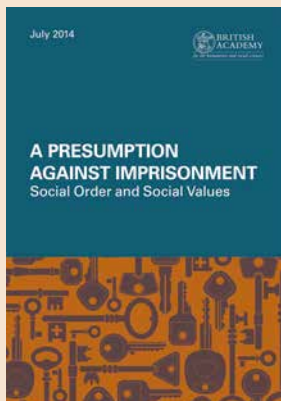
eminent, neutral, national organisation addressing the debate about why and how we imprison so many and for so long, and it highlights why it is vital in the national interest that we reduce their number.

By coincidence, it starts by re-examining the developments over the last 24 years since my report, on which I have already set out my personal reflections. It then gives its independent views, identifies where it considers we have gone wrong and proposes a possible prescription for a cure for the future. Bearing in mind the eminence of its authors, surely its findings and its conclusions should receive the respect they deserve?

The timing of its publication should be peculiarly appropriate: the next general election is approaching and the precedents set by similar periods in the past is that political debate could well descend once again into a competition of claims and counter-claims, designed to

demonstrate who can be toughest on crime, irrespective of the consequences in rising costs and an increase in offending.

Anything that can reduce the risks of this happening again, as an objective reading of this report should, deserves to be given a most sympathetic reception. While some readers may not regard all the recommendations it makes as amounting to a perfect antidote to all the present problems, I hope it will be agreed that it does provide an intelligent and objective assessment of what has gone wrong and the possible remedies; that it at least deserves to receive the widest possible attention and discussion. We cannot afford to continue to dissipate our resources in the present unconstructive manner. If anyone has any doubt about this, then this report should expel such doubts. The lessons it spells out have to be learnt and relearnt.



## A Presumption Against Imprisonment: Social Order and Social Values

A British Academy report, published 3 July 2014. The full report can be downloaded via [www.britishacademy.ac.uk/imprisonment](http://www.britishacademy.ac.uk/imprisonment)

*The following extract is from the beginning of the report's Executive Summary*

Imprisonment is a very expensive practice. The financial cost to the public purse can be easily quantified. Alongside this sits a complex mix of further interdependent costs to which it is much harder to attribute a monetary value. These are the human costs faced by those who are imprisoned during their sentence and after their release; the costs faced by their dependents, family and friends; the costs faced by those who work in an increasingly pressured prison system; and the costs to society as a whole.

Data show that, over the last two decades, the use of imprisonment as a form of criminal punishment in England, Wales and Scotland has risen sharply. What is more, our reliance on imprisonment today is acutely out of line with other comparable Western European countries. We have, in a relatively short space of time, come to rely far more heavily than do many other countries on the use of custodial sentences as a means of punishing convicted offenders for their offences.

The urgent question therefore raised by this Report is whether we need to rely so heavily on imprisonment as a form of punishment. Do we need to imprison so many people, and to do so for such long periods of time? The Report argues that the answer is no.

Instead, we should presume that in the majority of cases a custodial sentence will not be appropriate – or, in keeping with the title of the Report, that we should operate with a presumption against imprisonment. We do not deny that in some cases sending a person to prison will be the most appropriate response to, and punishment for, the crimes that they have committed. But we make the case throughout the Report that this is not true in the majority of cases. Imprisonment should not be the default sentence handed down. We should instead seek to develop a clear framework for identifying the kinds of case in which imprisonment will be the appropriate sentence.