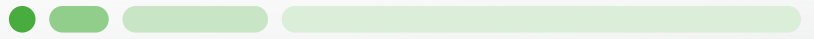


COMMISSION ON ENGLISH PRISONS TODAY



Lessons from America

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Terms of reference and background for the work of the Commission on English Prisons Today

Terms of reference

1. To investigate the purpose and proper extent of the use of prison in the 21st Century.
2. To consider how best to make use of the range of community sentences that currently exist, the principles that should guide them and to explore new ideas.
3. To consider the role of the media – both broadcast and print – in helping to re-shape the debate about the reform and proper use of imprisonment.
4. To investigate those issues which drive up the prison population in an age of globalisation.
5. To place any recommendations within the broader workings of the criminal justice system of England and Wales, giving due consideration to international development.

The Commission will look at the driving forces influencing change and practice including legislation, politics and the media.

The Commission will think radically about the purpose and limits of a penal system and how it should sit alongside other social policy strategies. We should not be constrained by 'starting from here' but create a vision for a different future.

Background and history

The prison population is now at an all-time high but it has not always been so. The Commission commemorates a period of significant decarceration.

Between 1908 and 1939 the prison population of England and Wales halved, from 22,029 prisoners to just over 11,000. As a result some 20 prisons had to close – despite the fact that the crime rate actually increased during this period. This is the longest period of decarceration in world history, but it has rarely featured in any discussion about the use of prison in our public policy.

How are we to explain this phenomenal drop in numbers? Naturally we could point to the impact of the First World War, but there is more going on here than the sad simple reality of conscription and the high numbers of young men who died in the trenches. Instead we could point to:

- a general scepticism about the use of prison that was widely shared, for example, by politicians such as Winston Churchill (who had been a prisoner-of-war during the Boer War), who set about reducing the numbers of people being sent to jail whilst he was Home Secretary between 1910 and 1911;
- the scepticism of conscientious objectors and suffragettes who had been imprisoned and who campaigned for change on their release;
- the existence of a credible alternative to prison in the shape of probation;
- the support given to penal reform from leading civil servants such as Alexander Paterson, who were prepared to advocate for change from within government; and

- the creation of the Howard League for Penal Reform which campaigned for changes to the prison estate, and provided a focus for the activities of the various reformers.

Two conscientious objectors, Stephen Hobhouse and Fenner Brockway, who had both been imprisoned, established an independent commission on the state of the penal estate, and published their book *English Prisons Today* in 1922. It had an immediate impact on popular and political thinking about what to do with offenders and the limited role that existed for prison in dealing with those who broke the law. Its impact lasted until the outbreak of the Second World War.

The Howard Association was founded in response to the first Royal Commission on Capital Punishment which brought to an end the practice of public executions.

The last Royal Commission (1993 under Lord Runciman) looked at the criminal justice system and concentrated on criminal justice processes, policing and the courts.

Commissioners

Cherie Booth QC (President)	Barrister; Crown Court Recorder
Oscar Campbell	Former prisoner
Baroness Jean Corston	Labour Peer and former MP; author of report on vulnerable women in the penal system
Professor Andrew Coyle CMG	Professor of Prison Studies, King's College London; former prison governor; founding Director of the International Centre for Prison Studies
Frances Crook	Director, the Howard League for Penal Reform
Dr Carolyn Hoyle	Reader in Criminology, Centre for Criminology; Fellow, Green College, University of Oxford
Professor Ian Loader	Professor of Criminology; Director of the Centre for Criminology, University of Oxford; Fellow, All Souls, University of Oxford
Kevin McGrath	Partner, Reit Asset Management

Paul Myners (until October 2008)	Former Chair, Guardian Media Group, Land Securities, Low Pay Commission and Board of Trustees of Tate; former Chair, Marks & Spencer
Stephen Nathan	Journalist and researcher, specialising in privatisation
Eddie Nestor	BBC Radio London
Professor Sir Duncan Nichol CBE (until June 2008)	Chairman, Courts Service Board; former Chief Executive of the NHS; Chairman of the Parole Board (until June 2008)
Dame Helen Reeves	Consultant on victim and witness issues; former Chief Executive, Victim Support
Professor Andrew Rutherford	Emeritus Professor of Law and Criminal Policy; member of the Parole Board; former prison governor
Clare Tickell	Chief Executive, Action for Children
Sue Wade	Chair, the Howard League for Penal Reform
Professor Martin Wasik	Professor of Law, Keele University; Crown Court Recorder; former Chair, Sentencing Advisory Panel
Dick Whitfield	Trustee, the Howard League for Penal Reform; former Chief Probation Officer, Kent; former independent member of the Parole Board
Professor David Wilson (Chair)	Professor of Criminology, Birmingham City University; Vice-Chair, the Howard League for Penal Reform; former prison governor
Ruth Wyner	Psychotherapist, Group Analyst, and former prisoner

The Academic Consultant for this report was Dr Mary Bosworth, University Lecturer in Criminology, Oxford University. The Administrative Secretary is Barbara Norris, the Howard League for Penal Reform.

Foreword

Michael Jacobson from the Vera Institute of Justice summed it up best of all – ‘in New York there is lower crime, safer communities and fewer people in prisons’. It was this seemingly impossible collection of public policy outcomes that had first drawn what had been happening in New York City to the attention of the Commission on English Prisons Today. After all, America does not appear to offer any hope to those who would like to see prison numbers fall. The United States has been in the grip of mass incarceration since 1970, and as a result is between five and ten times more likely to use imprisonment than similar Western-style democracies – a reality that falls disproportionately on the poor, and where, as a result, one in three adult African-Americans is now in some form of correctional supervision. More than 2.2 million Americans are currently in jail.

How could New York – a city that famously adopted ‘broken windows’ or zero tolerance policing, and then aggressively exported these concepts elsewhere, and which as a consequence had seen the number of people being sent to its collection of prisons on Rikers Island grow to over 23,000 – have achieved a reduction in its prison numbers, while still generating the support of New Yorkers who felt safer than they had ever felt before?

At the heart of the changing sensibility towards the use of prison in New York City is an attempt to reconcile two seemingly irreconcilable concepts – first, taking low-level, ‘quality of life’ crime seriously, but also, second, not over-relying on the use of prison as a means of combating those offenders who transgress in these ways. And, of course, convincing the community that not sending these offenders to jail but offering them other kinds of intervention is, in the long run, the best approach to adopt. As Greg Berman, Director of the Center for Court Innovation and formerly the lead planner for the Red Hook Community Justice Center puts it, this is not *‘jail or nothing’* but about *‘problem-solving justice that creates a space for punishment, help, services and accountability’*.

Allied to this desire to ‘reconcile the irreconcilable’ is also an attitude that seems to drive those people who we met. In short, they have a ‘can-do’ approach and a willingness to take on big issues; they are ‘success orientated’; they believe that they can make a difference and that no issue – not even mass incarceration – is so intractable that it can’t be overcome. They want to win your support and confidence, and are able and persuasive advocates of the organisations that they have created, represent or manage. Inevitably, these very qualities often meant that they saw themselves in competition with other organisations, and it was common-place for one group to claim that what successes there had been were theirs alone, or that another approach was merely ‘tinkering at the margins’.

There are essentially three competing and/or overlapping approaches that can explain the reconciling of the irreconcilable in New York City and that have filled the public policy gap between ‘jail or nothing’ that Berman described. These are **diverting offenders away from custody through ‘problem-solving courts’** such as the Red Hook Community Justice Center; **drugs courts**, which might be viewed as the more ‘scaled up’ version of Red Hook; and **justice reinvestment**, based on detailed mapping techniques of where released prisoners will ‘re-enter’ the community, and where, as a consequence, investment in community infra-structure can be viewed as a more effective means of combating recidivism. The concept of

justice reinvestment is further explored in the Commission's previous consultation paper on localism (Commission on English Prisons Today 2008).

These approaches are not necessarily new, and to some extent aspects of these approaches can be seen in England and Wales. For example, there are now drugs courts in this country and the principles that guide Red Hook have been incorporated into the North Liverpool Community Justice Centre. What is different, however, is the commitment to use these approaches to guide public policy, rather than to simply see them as 'pilots' or experiments. They have become embedded in the New York City justice system, or as one of our hosts described it, 'systematised'.

Part of this difference can be explained by the simple reality that the New York City approach(es) have garnered public and political support, and thus allowed them to guide, prompt and push public policy. One factor in all of this has been the development of a more 'technocratic' language to explain what is being done, or as Berman characterised it, 'a move away from the language of social justice'. Indeed, the most obvious example of this technocratic approach was the detailed maps of the Justice Mapping Center – an organisation that uses computer mapping and other graphical depictions of quantitative data 'to analyse and communicate social policy information'. In this way politicians from both the left and the right have been able to sign up to the approaches that have been outlined in this report.

Common to each of these approaches was a desire to promote and market what was being done – it was almost as if it was a form of salesmanship. We were offered glossy brochures, often containing newspaper stories about these approaches, wherever we went; we heard from 'graduates' in one project, and in another saw a specially commissioned video. Everyone had their own 'elevator pitch'. So, too, it was impressive how clearly these approaches had been reduced to soundbite, media-friendly gobbits such as 'million dollar blocks' and 'problem-solving courts'.

This terminology allowed a way in for the less well-informed reader or viewer to understand in a simple way what was being proposed, and I have already drawn attention to how the language used deliberately moved us away from the language of social justice to that which was more technical. This, in turn, seems to have allowed politicians from both the left and the right to sign up to these approaches, without the fear that they might be endorsing something which is ideologically inconsistent with their party, and which is not seen as being 'soft on crime'. This is no small matter and undoubtedly has helped to create the political and practical space to allow these approaches to flourish.

These simple, essentially marketing descriptions were also a way of creating a narrative to describe what was being done. When the Commission visited Scotland we saw that this narrative was linked to the Scottish character and a desire to do things 'differently' from England – and we also detected a sense of New York 'exceptionalism' – but in New York City the narrative they promoted was essentially about success. These approaches 'work'.

What lessons did we learn then? Our time in America showed us lessons to learn both in terms of the ideas and systems that we saw, and how they were promoted. Chief among these is that it is possible to reduce the prison population, create

a safer community and reduce crime. This has been done in New York City by diverting away from prison low-level, non-violent offenders and investing heavily in a range of treatment to overcome their mental health, addiction, housing or other social problems. It has been done at both an individual and a community level, and has, in particular, been driven by the courts. All of this is described in a variety of ways, but above all it has been about focusing on success, rather than failure.

There was a debate within the Commission as to the extent to which each of the various approaches found in New York City actually qualified as a success. The community court at Red Hook had seen a 'net widening' in relation to the number of offenders who had been drawn into the criminal justice system by 'problem-solving justice'. Equally, while Red Hook could be said to pathologise the individual, justice reinvestment and the approach of the Justice Mapping Center arguably ends up pathologising whole communities. This is a debate that we are still considering.

For all the reservations and provisos, however, we learnt from New York that ever-rising levels of mass incarceration are not inevitable – no matter what government has planned in the near future, and that we can influence the policy debate on these matters to reduce an over-reliance on prison. For the Commission, that is a significant lesson. Who would have believed that we could have learned it in the United States?

The Commission would like to thank Dr Mary Bosworth of the University of Oxford for writing this report.

Professor David Wilson
Chair, Commission on English Prisons Today

Introduction

The United States incarcerates more people per capita than any other nation whether industrialised, democratic, undemocratic or developing. It comes first in all published listings of incarceration rates, and has done so for some time. Currently more than one person per 100 of the population is behind bars (Pew Charitable Trusts 2008). In short, despite vast amounts of criticism leveled at them by academics, prisoners, lobby groups, inmate families, criminal justice practitioners, church members and even by some politicians, prisons are ubiquitous in 21st Century America.

Nonetheless, there is some evidence that the enthusiasm for the mass imprisonment of US citizens may be waning. Many states are finding the costs of incarceration crippling (Jacobson 2005). Concerns, too, have grown over the extent of violence in prison (Gibbons and Katzenbach 2005), the collateral impact of incarceration, particularly on minority communities (Loury 2007), and about the over-representation of parole violators, many of whom are returned for minor administrative matters (Clear 2007; Petersilia 2003).

In response to such issues, states all over the country have held public inquiries, set up commissions, passed legislation, and introduced a series of new justice initiatives. In October 2007, for example, one of the key federal committees, the Joint Economic Committee, held hearings in Washington DC into the 'Social, economic and political costs of mass incarceration in the U.S.', inviting academics and practitioners to discuss the racial dynamics of prison life and the impact of confinement on the African-American population in particular. States from Alabama to New York have published critical reports on their penal systems, pledging change. So too, Congress has passed legislation to improve life behind bars and assist those leaving prison. The Prison Rape Elimination Act 2003, for example, requires prisons and jails for the first time to record and report cases of sexual assault and to institute training for personnel and inmates to minimise the problem. Likewise, the Second Chance Act 2007 offers federal funding for programmes working with prisoners after release, in a bid to reduce their rates of recidivism. Finally, and with potentially the most far-reaching effect, the mandatory nature of the federal sentencing guidelines has been struck down and there are concerted moves to undo one of the main driving forces behind the prison population explosion in challenging the disparities in crack and powder cocaine sentencing.

In all of this activity, New York City has provided a powerful model, reducing, then holding stable, its annual admissions to jail, enabling the city to close a number of facilities, at least temporarily. Under the guidance of two main research institutes – the Center for Court Innovation and the Vera Institute of Justice – the city has also pioneered a whole raft of justice strategies that seek to divert offenders from incarceration and rebuild their communities. Though significant problems remain in the city jails and state prisons, the Commission on English Prisons Today decided to visit New York City to see what could be learned. This report describes what we saw.

Why America?

In many respects, the USA is a curious destination for the Commission. For a start, the United States operates with a number of different, co-existing, penal systems and jurisdictions at the federal, state and local level. Inmates from all three systems can be found in New York City, though the Commission concentrated almost exclusively on the treatment of low-level misdemeanants in the courts and at Rikers Island Correctional Facility. The prisons of New York State, where all those New York City detainees sentenced to more than 12 months would eventually be sent, are, with some exceptions, far north of the city, with a number clustered around the Canadian border. There are three federal institutions, two of which are administrative, serving largely as pre-trial detention facilities (that is, jails), and one of which is a community corrections centre. We did not visit any of these establishments.

New York City, and the USA in general, both differ from England in their cultural, and economic structures and sensibilities and, above all, in the extent of their racial segregation. Thus, while many in the US speak hopefully now of a decline in punitivism, the US continues to far outstrip England and Wales in its rate of imprisonment, as indeed does New York City and New York State. Racial disparities in the state and city are striking; with some prisons holding populations of whom three-quarters are African-American. On our visit to Rikers, we did not see any white inmates at all. Economically too, with only the barest of welfare systems, and medical care out of reach of many, the everyday poverty of victims and offenders is far more extreme than that of the vast majority of cases in England.

While such differences must be kept in mind, and shall form a theme in this report, there remain numerous important reasons for visiting the USA, but New York City specifically. Policy transfer is alive and well, with England and the rest of the world continuing to adopt criminal justice practices from America. A number of key initiatives have been drawn from New York City, such as the Red Hook Community Justice Center, and, more generally, policing practices from the New York City Police Department (NYPD). Also, though more marked, the racial disparities so vividly evident in the American justice system, are not unknown in England. Instead, such disparities here are all too often and easily sidelined or forgotten. Finally, given the apparently adverse environment for penal reform in America, due to the nation's lengthy commitment to a strategy of mass incarceration, the Commission sought to glean strategies from penal reformers and practitioners to help refine our ideas about penal moderation, localism and diversity.

Prison statistics

As ever, it is useful to have a sense of the statistical backdrop to the prison system. In the American case, such statistics need to be differentiated along a number of parameters, both geographic and jurisdictional. Such figures must also be considered in light of racial and gender disparities.

According to the most recent national statistics, the US is currently incarcerating more than 2.4 million men, women and children in just over 5,000 prisons and jails. Put more simply, more than one in 100 Americans is under some form of confinement. State, federal and local systems together account for an annual expenditure of over 60 billion dollars, a figure that jumped nearly 600% between 1982 and 2004 (Loury 2007, pp.1–2).

Since 1989, black men have accounted for more than half of the national prison population. The numbers of those from the Latino community has also risen sharply, as have, overall, the number of women. The so-called ‘adult’ prison population actually includes thousands of juveniles since states across the country have lowered their maximum age of juvenile court jurisdiction to 15 or 16 years. Almost everywhere, too, depending on their offence, juveniles can be waived to adult courts to be tried, and if found guilty, are sentenced to adult prison.

As already outlined above, New York State operates a series of local county jail systems, as well as a state prison system. Three federal facilities are also located in New York City, though anyone wishing to visit an actual federal prison (correctional institution) would have to cross the Hudson River to go to FCI Fairton in New Jersey, or travel further north to see the women’s facility, FCI Danbury in Connecticut.

Currently, just over 14,500 individuals are housed in a collection of nine separate jails on the Rikers Island jail complex in Queens, New York City.¹ Three detention complexes, in Brooklyn, the Bronx and Queens are, for the time being, closed, due to the population decline, though plans are apparently under way to expand the Brooklyn detention complex and reopen it. In addition to Rikers Island, the Manhattan Detention Complex and the Vernon C. Bain Center in the Bronx hold men awaiting trial. The Vernon C. Bain Center is actually an 800-bed barge moored across the river from Rikers Island. It can house up to 800 men of medium or maximum security, in 16 dormitories and 100 cells. Finally, those inmates requiring acute psychiatric or medical care are held in special units in the Bellevue Hospital Prison ward (men) or in the Elmhurst Hospital Prison ward (women).

As New York City’s Local Jail, Rikers Island Correctional Facility holds unconvicted detainees awaiting trial, convicted individuals awaiting sentence, and those who have been given sentences of less than one year. At any one time it also houses some state prisoners present, awaiting trial, or receiving medical treatment. Rikers can, at times, serve as overflow for crowded state prisons. The jail complex houses men, women and juveniles in separate institutions. For the most part, they also differentiate between, and separate, those who have been sentenced and those awaiting trial, though the sole women’s facility in the complex, the Rose M. Singer Correctional Institution houses juveniles, adults, those awaiting trial and those who have been sentenced, in the same building.

¹ **A tenth facility is currently closed while its replacement is being built. We saw the new building under construction.**

Since 2002, the annual inmate admission rate to Rikers has hovered around 108,000, down from 120,000 in 2000. Most people pass through the complex quickly, staying just a matter of days, though we heard accounts of some who had been held there for well over a year awaiting trial. Looking more broadly to the state, in a figure that remained more or less unchanged from the previous year, 63,304 people were imprisoned on 1 January 2007. More than half of this population (53.5%) were from New York City, and thus had been processed through Rikers. Most (95.5%) were male, had never been married, and had one or more living children. Over half (57.4%) of the population had been sentenced for a violent felony, and the average minimum sentence they were serving was 106.1 months, or 8.8 years.

The social consequences of such figures have been dire, particularly for the African-American and Latino communities of New York City from whom those incarcerated are disproportionately drawn. Around the country, about 14% of African-American men aged 20–45 years are locked up on any given day, and, if nothing changes, nearly one-third of African-American males born today will serve time in prison on a felony. The negative impact of imprisonment on minority communities has been particularly far-reaching, impacting the nature of family organisation, and leaving more than two million people of colour prohibited from voting due to felony convictions.

New York City innovations

Over their four-day visit to New York City, 8–11 July 2008, members of the Commission on English Prisons met with a range of criminal justice personnel, community activists, and academics. They visited Rikers Island Correctional Facility, The Red Hook Community Justice Court, the Brooklyn Drugs Court, Family Justice, and the Vera Institute. They also met with Michael Ferrell the Deputy Commissioner of the NYPD. Two members of the Commission visited the Bronx Integrated Domestic Violence Court.

Rikers Island Correctional Facility

In many ways, there is little positive to report on Rikers Island Correctional Facility. Commissioners were, for the most part, extremely concerned by what they saw in the jail. It was dirty, and, unlike the administrative offices for the management, extremely hot and smelly as it was not air-conditioned. Detainees had little or no privacy with many sleeping in open dormitories, where, they reported, security was unenforceable and their possessions were routinely stolen. Commissioners found the cells used to hold women awaiting trial or release particularly distressing. Inmates reported being hauled out of bed at 4am and left to languish without access to a toilet, bed or any form of entertainment for lengthy periods. The cells in the juvenile wing were also singularly gloomy. The paint on the walls was peeling off, and the floors and mattresses were filthy. As in all parts of the prison, the detainees were expressly forbidden to decorate their rooms in any fashion. Though the jail administrators would like to renovate, we were told, the numbers remain too high to do so.

It was not just the physical plant that was so different from (most) English prisons, but also what little we could see of the interactions between staff and inmates. When we walked around the facility, for example, detainees were told to face the wall rather than catch our eye. On one occasion when someone disobeyed and looked at us, clearly wondering who we were, a prison guard loudly admonished her. Though staff members were happy to talk to the Commissioners, they never bothered to introduce us or explain our presence to the detainees.

Yet, on one level, at any rate, Rikers Island does provide an intriguing example of good practice for the Commission, as it has, since 2001, seen a considerable reduction, and then stability, in its numbers. Whereas at its high point in the 1990s, it held as many as 23,000 individuals, overflowing into three barges moored alongside the Island and over in the Bronx, its population currently rests at around 14,500. Such a population decline has enabled the jail to develop a more systematic pre-release system, known as the RIDE programme, which links inmates with jobs, treatment and training programmes in the community. It has also left the jail operating with a staff-inmate ratio that is far higher than that in most English prisons.

Assistant Chief Frank Squillante, along with Mark Cranston the Deputy Chief of Staff to the Corrections Commissioner Martin Horn, spoke eloquently, and at some length, of the importance of pre-release planning, the problem of 'frequent-flyer' inmates, who return over and over again, drug addiction, and professionalism in the service. They articulated a desire to change institutional culture by shifting it 'away from the deficits towards strengths'. They took seriously staff training and salaries, identifying investment in staff as key.

Finally, our day at Rikers revealed the importance of individual leadership and institutional structure, both in driving the culture of the jail, but also in shaping city-wide penal policy. The Corrections Commissioner, currently Martin Horn, is also the New York City Probation Commissioner. He reports directly about both issues to the Mayor's Office, along with representatives from the other two pillars of criminal justice: the courts and the NYPD. Such 'joined-up' policy making is relatively new in New York City and is explicitly designed to promote dialogue and efficiency in the justice system. Even so, corrections is by far the weakest party, we were told, forced as they are 'to take what comes in the door'. In fact, in New York, it soon became clear that the courts, sentencing and, above all, the police, are absolutely fundamental in shaping the contours of the penal system.

New York City Police Department

In criminal justice terms, New York City is most famously associated with the NYPD and, specifically, with its adoption of so-called 'quality of life' policing methods. In the 1990s, first under the guidance of Democratic Mayor David Dinkins and, more famously, under the leadership of Republican Mayor Rudolph Giuliani and Commissioner William Bratton, the NYPD grew rapidly in size and transformed much of its daily practice. Through a combined emphasis on arresting low-level offences and mapping crime around the city via COMPSTAT, the police both broadened their gaze to include behaviours previously routinely ignored, like turnstile jumping and spitting, and targeted, with greater precision, certain hot spots of criminal activity throughout the city.

Though in criminological literature, the idea of 'quality of life' crimes and its accompanying theory of 'broken windows' and 'zero tolerance' are synonymous with the police, it was striking how frequently judges, attorneys and corrections employees deployed similar language and ideas to justify their institutional activities. New York City criminal justice practitioners en masse seemed convinced by the driving idea behind the 'broken windows' thesis, that it is not only appropriate, but also necessary, to stamp out low-level crimes, in order to tackle more serious behaviour. Thus, we saw at Red Hook Community Justice Center a number of people given six-month suspended sentences for drinking a beer in public. We also heard that cases come to court for such activities as taking up more than one seat on a subway as well as, of course, minor drug possession, spitting and graffiti.

Despite the apparent consensus among the practitioners on targeting such behaviour, the academic literature is far less sanguine. For a start, many have observed that arresting individuals for such minor offences has, rather than catching serious criminals, swept all sorts of poor and disenfranchised people into the justice system. Encouraging police to arrest nuisance behaviour has, in this view, contributed to an expansion of the justice system, as greater numbers of misdemeanor offenders are arrested each year. This view draws into question whether the prison and jail population alone are a sufficient measure of punitive sentiment or practice. To what extent, in other words, in a city where taking up two seats on a subway is an arrestable offence, might we speak sensibly of penal moderation?

Finally, and relatedly, there is considerable evidence, that the NYPD has over-policed minority men and under-policed minority victims (McArdle and Erzen 2001). Quality

of life crimes are, more or less by nature, minor crimes that occur in the public arena, on the subway and in the streets. Since the poor spend disproportionately more time in such insecure environments, they are far more likely to come to the attention of a policing mechanism that targets them (Fagan and Davies 2000).

Despite such criticism, New York now trails in most national accounts of crime, falling well behind other large cities and many smaller ones too. Indeed, while crime all over the US fell in the decade from 1990 to 2000, it dropped in New York City almost exactly twice that elsewhere in the country, with all crimes dropping by around 70% over this period. Moreover, it continued to go down, even as elsewhere numbers are creeping up again. The NYPD takes quite clear and unapologetic credit for this transformation, explaining it as a direct result of the quality of life policing strategy. Despite all sorts of changes to the city and to the management of the police at the top, and notwithstanding some trouble they are currently experiencing in recruiting and paying new staff, they are continuing to do what they have been doing since Dinkins; while arrest rates are down for felony offences, they continue to grow for misdemeanant offences. These are the people who end up in Red Hook or Rikers Island Correctional Facility.

According to Berkeley Professor Franklin Zimring (2007), there is no clear or singular explanation for the crime decline whether in New York or anywhere else in the US. Rather, he provocatively asserts, New York City stands 'as an example of dramatic changes in the rate and risk of violent crime without major social, economic, or ecological changes' (p.136). Not surprisingly, we did not find many who would have agreed with Zimring. Yet neither did we observe any consensus over the cause of the decline in crime. Instead, it seemed that each of the justice practitioners from the various institutions wished to take credit themselves for the drop.

The investment of each strand of the justice system in the crime drop was striking. They were all keen to talk about it and promote their activities relative to it. This is very different from England. The UK, after all, has also witnessed a significant crime reduction over the recent past. Yet, unlike New York City, which relishes and continually broadcasts its new-found status as one of the 'safest' cities in America, much of the British public seem unaware of the crime drop. Politicians seem far more likely to discuss problems of security in the nation's cities, while the media constantly bombard us with accounts of street violence. Academic studies suggest that fear of crime and punitive sentiment are closely correlated. This literature and the experience of New York suggest that one way to encourage penal moderation might be to contribute to, and to encourage, a more positive discussion of crime (and policing). A crime drop is an opportunity to recast expectations and services. So far this opportunity in Britain has not been seized.

Problem-solving courts

After the police, New York City is rapidly becoming known for the number of problem-solving courts that have sprung up over the past decade or so. Starting with the creation of the Midtown Manhattan Community Court in 1993, New York City now operates a range of specialised courts in each of the five Burroughs (Staten Island, Manhattan, the Bronx, Brooklyn and Queens). In the English context, the best known of these courts is the Red Hook Community Justice Center, which provided the model for the Liverpool Community Court. In addition to Red Hook,

Commissioners visited the Brooklyn Drug Court and the Bronx Domestic Violence Court, versions of both of which can be found in England.

Established in 2000, the Red Hook Community Justice Center was the first multi-jurisdictional court established in the US. As in Liverpool, a single judge – Hon. Alex Calabrese – hears neighborhood cases. He has an array of sanctions and services at his disposal, including community restitution projects, on-site educational workshops and GED classes, drug treatment and mental health counselling. In addition to providing such services to victims and defendants, the Red Hook Center also offers a series of other opportunities to local residents including mediation and community service projects. Most unusually, Red Hook runs what is called a ‘youth court’ where local teens resolve cases involving their peers aged 10–18 years, who have been cited for low-level offences, such as vandalism, fare evasion, assault and truancy. Those who agree to participate do not receive a criminal record.

According to Greg Berman the director of the Center for Court Innovations, which helped establish the Red Hook Community Justice Center, his organisation seeks to reform courts from within through deep partnerships and demonstration projects. They promote alternatives to incarceration and try to appeal to a large cross-section of the community through a deliberate use of what he referred to as ‘technocratic’ vocabulary as opposed to one rooted in ideas of ‘social justice’. While Red Hook is one of their most popular demonstration projects,² their work underpins 250 problem-solving courts across the 62 local counties in New York State. They are also working with justice professionals around the country to establish similar courts.

The Red Hook Center is clearly designed to engage the local community in crime prevention in order to devise local solutions. Reflecting the goals of problem-solving courts more generally, it is based on ideas of community engagement, collaboration, individualised justice and accountability. Such strategies are appealing and resonate with many of the emerging themes from the Commission. Nonetheless, and despite the enthusiasm of many of the Commissioners for such courts, there are some reasons to be cautious. In particular, there is a striking absence in the Court Innovation literature, of any ‘restorative’ goals, despite the professed individualised focus and commitment to jail alternatives. On the contrary, the Red Hook Court and its subsidiaries stress their ‘toughness’. Representative of part of the wave of ‘therapeutic jurisprudence’ sweeping the country, the court advocates a strategy of ‘benign coercion’ that looks remarkably familiar to previous welfarist models with all of their attendant problems of disproportionality and inequity. Justice Calabrese tries to force through personal transformation, using threats of enhanced jail terms, overnight stays on Rikers, therapeutic essays, and in-depth personal knowledge of the family and life of the individual before him. As at Rikers, much seemed to depend on the personality of the judge, raising some questions over whether such a court could be replicated, though of course, versions of it are being trialed in a number of locations, including in Liverpool.

The empirical research into both the effectiveness and the community’s views on the Red Hook Court is mixed. Despite a considerable drop in crime in Red Hook, as elsewhere in the city, endemic poverty, drug use and violence remains. It also

² **Indeed, there appears to have been a steady stream of visitors from the UK to Red Hook including the Minister for Justice, the Hon. Jack Straw and the members of the Scottish Prison Commission.**

cannot resolve the wider problems facing its community, like neglectful landlords or the substandard conditions in the local school. As with the jail at Rikers, notwithstanding the vision and dedication of the court staff, it remains entirely dependent on the police for those whom it may assist.

Professor Jeffrey Fagan, from Columbia University in New York, has written widely and critically on the Red Hook Court. In conjunction with Victoria Malkin (Fagan and Malkin 2003), who conducted a detailed two-year study of the court, he raises a series of concerns about the court, in particular the connections that lie between it and the 'broken windows' theory of policing. In particular, he points out the sharp departure of such courts from fundamental notions of justice and fairness. Not only are defendants sentenced to periods of treatment that would be far longer than any original jail sentence they might have attracted, but, if they fail to rehabilitate themselves, the threat of an enhanced jail sentence hangs over them. In any case, Fagan asks, why do such courts limit themselves to low-level crimes? Are not those who commit serious felonies also likely to be addicted to drugs, have housing problems, be victims of sexual assault etc.? By excluding such people, they seem merely to be the most recent manifestation of paternalism to strike the courts, enabling the state to micro-manage the lives of those poor, disorderly citizens who inhabit the city's ghettos.

Many of these questions apply equally to the Drugs Court in Brooklyn, which was one of the final places visited by the Commission on its trip. As at Red Hook, the justices in Downtown Brooklyn seek to divert offenders from detention. Unlike Red Hook, however, the Drugs Court can deal with some felony cases. Though each of the Burroughs runs a drugs court, they do not select defendants in the same way. At Brooklyn, each person who arrives at court on a drugs charge, or on a drugs-related offence is screened for the programme. All of those who are without violence on their record and who can demonstrate, via a urine test, that they are a drug user, are eligible. If they agree to plead guilty, they then appear before the judge who, working with a series of city-based agencies, places them in drug treatment and other activities. If they successfully complete their programmes, their record is wiped clean.

This is, as at Red Hook, a long process for the court and the defendant. Particularly when individuals are sentenced to residential treatment programmes, members of the Commission were concerned that a certain amount of 'transcarceration' is occurring. That is to say, individuals may be avoiding confinement in Rikers, or on occasion – if they faced a felony conviction – in a state prison, but they are being confined in any case, in a treatment programme.

Once again, the justices who met with the Commission demonstrated a strategic use of terminology, referring to public safety and cost-savings. In response to a question over whether the court was simply providing services that should otherwise be part of a health system, Judge Joseph Gubbay, who presided over the felony drugs court, admitted that the court's role in 'identifying the social services that the defendant needs' was 'very different to what courts have generally been about'. In the UK, it is less clear whether the courts would be necessarily the most optimal place to locate such services; in earlier public consultations with the police, for example, concerns have been raised over the reluctance of the NHS to treat low-level drug-addicted or mentally ill offenders. Is diversion from confinement on its own

a 'moderate' response to low-level offending, or might these courts further entrench expectations that social disorder and addiction ought to be criminalised?

For the Commission, one of the most positive aspects of the drugs court and the Red Hook Community Justice Center lay in the commitment of the judges and the other court officers to working with defendants who, at first, did not succeed. According to Gubbay, one of the crucial aspects of the court was that 'we're not in the business of setting them [defendants] up to fail. We're in the business of second, third, fourth chances. We're in the business of success'. Echoing Frank Squillante's desire to shift the correctional culture, Judge Gubbay spoke of the court's 'strength-based approach'. In practical terms, this meant supporting individuals through the treatment programme: 'the majority of people in the process have never had a nice thing said about them by anyone, let alone by a judge' he observed. Such people deserve a second chance.

Diversity, community and localism

Finally, the visit to New York somewhat predictably highlighted the importance of race and diversity in the penal system. As already stated, inmates of New York City jails and the state prisons are predominantly black and Hispanic drawn from a handful of specific, minority communities in Harlem, Brooklyn, Queens and the Bronx. Their gaolers, particularly in the upstate prisons, are almost all white.

These communities, whose men disappear, often for long stretches at a time, not only cost the state millions, but are typically plunged further into disorganisation, poverty and violence. The absence of many of the young men leaves holes in the economy, as well as, of course, children without fathers. Just as difficult, these same areas also see a constant trickle back of parolees, meaning that there is an ongoing turnover of renters and residents, that forever destabilises the daily rhythms of many places. As the subtitle of Todd Clear's (2007) recent book puts it best: 'mass imprisonment makes disadvantaged neighbourhoods worse'.

One of the emergent themes of the Commission on English Prisons Today is the significance of localism. Thus far, however, the Commission has not considered this idea in any socio-economic or demographic sense. The lesson from New York in this regard is clear: a local system will have to grapple carefully with economic disparities and, in some cases, with generations of disruption. In those circumstances, care and attention will have to be placed on matters well beyond the criminal justice system to address inadequate housing, schools, health services and to work with, and mend, families.

The ideas behind justice reinvestment rest on an implicit belief in community and, on a smaller scale, the family. Such tropes are appealing across the political divide. Thus, we spoke to Family Justice, a group that works with a primarily Latino community in the Lower East Side of New York City. Originally a service provider for the families of former or serving prisoners, Family Justice has, in recent years, shifted its focus to working with justice providers. According to its mission statement, Family Justice 'taps the natural resources of families, the collective wisdom of communities, and the expertise of government to make families healthier and neighborhoods safer'.

Yet, what happens when the family is violent? Who, in fact, is the 'family' in such rhetoric? Given the gendered nature of crime and punishment, those left behind are almost always women and often mothers and grandmothers. Is it right to place such responsibility on their shoulders to improve matters? Similarly, what is a community in any case? Are some areas so blighted by poverty, drugs, institutional racism and imprisonment that there is no collective that can be sensibly identified? In short, how can we avoid romanticising the local?

Opportunities and strategies within limits

The visit to New York, at the half-way point of the Commission on English Prisons Today, was simultaneously stimulating and chastening. Those working to reform the penal system, whether from corrections, the police, the courts, the community, or from think-tanks and research centres, were vigorous in their optimism and committed to their cause. Each met us, as they had met a steady stream of criminal justice visitors to the city, with informative marketing folders of information, power-point presentations, openness and charisma. Despite some variation in their focus and strategies, there was a number of common themes in their approach.

Some, like those at the Center for Court Innovation, stressed the need for a new language to move on from the impasse of arguments about 'getting tough' and 'nothing works'. The Center for Court Innovation seeks to change government policy from within, by setting up and then running court demonstration projects. Their projects are funded by a range of sources including the federal government. Through what their director termed 'action research' they constantly evaluate, feed back and examine the effectiveness of their projects. At present, they employ 16 PhD level researchers in this work, as well as in devising new technology that will enable justices to access out-of-system services. They view their task as a long-term project, tackling the issue from many different angles, including judicial training, publication, liaison and justice and community outreach.

Others, like Eric Cadora from the Justice Mapping Center, deployed with ease new technologies in 'justice mapping'. This strategy uses advanced statistical techniques to reveal the unequal geographical, economic and racial distribution of parole revokees and the many overlaps that exist within small communities between recipients of welfare and individuals going to prison. Though crime may be dispersed across a city, prisoners tend to concentrate in neighbourhood areas. Just one area of Brooklyn in New York City, for example, known as Brownsville, which has 3.5% of Brooklyn's population, accounts for 8.5% of its prison population. According to research conducted by the Justice Mapping Center in 2003, it cost \$11 million to incarcerate people from just 11 city blocks in 2003 (Cadora 2007; see also <http://www.justicemapping.org> (accessed 21 October 2008).

By generating 'maps', Cadora and his colleagues vividly demonstrate the local impact of state and federal imprisonment. They also amply reveal the inefficient use of criminal justice practitioners' time, showing the everyday illogical distribution of parole and probation caseloads. In conjunction with the research of academics like Todd Clear and Jeremy Travis, crime mapping, has become part of an influential set of ideas often referred to as 'justice reinvestment', which is of particular relevance for one of the Commission. At present, according to Cadora, the detailed information on the geographical distribution of offenders and parolees is not available in the UK. Thus, when he visited the UK and conducted a trial at Gateshead, he was not able to be as precise as he is in the US. However, even with the statistical data available, similar images can be produced; as in the US, offenders are typically concentrated in specific parts of certain towns.

The Vera Institute, like the Center for Court Innovation and the Justice Mapping Center, worked with local and state governments to come up with alternatives to incarceration. Begun in 1961 as an attempt to ameliorate the New York City justice system, the Institute is currently under the direction of Professor Michael Jacobsen, from John Jay College of Criminal Justice, and previously the City's Corrections and

Police Commissioner. Stressing, in particular, the economic costs of incarceration, Vera staff members liaise with criminal justice professionals and politicians to try to cause change from within.

Indeed, while the 'courts, cops and corrections' in New York City are the most obvious manifestation of its justice system, it became clear to the Commission that these kinds of research centres and think-tanks were driving (and on occasion critiquing) many of the justice initiatives. Such organisations exist independently of, yet are intimately connected to, the local universities. They also act in conjunction with, but are separate from, activist and reform groups. Such organisations have no precise counterpart in the UK, where, for the most part, evidence-based commentary on the penal system is dominated by academics and Home Office research.

Though New York City is large, the criminal justice community is relatively small, and each of these organisations seemed to know each other personally, along with the heads of the justice departments. This kind of personal connection may explain some of the consistency of views we heard. Everyone we consulted agreed, for example, that the best way forward would be to reduce the prison and jail population further. Likewise, they all asserted that in order to do so, it was necessary to work with, and train, government personnel, the judiciary and service providers. Even the differences, like the rehabilitative language of the courts and corrections personnel, or the faith in individual and general deterrence that was apparent in the NYPD did not jar unduly with the managerialism and business-like nature of the research centres. Instead, these otherwise awkward bedfellows became conjoined in the language of public safety and economic savings.

It was tempting to view the efficiency and outreach of the innovative courts as dominating the penal landscape and as marking out a dramatic new path. Yet, time and again, the centrality of the police was reaffirmed, as well as the familiar tropes of punishment and desert. That is to say, while the willingness of the judges to give defendants a number of 'chances' was impressive, and notwithstanding their commitment as individuals to helping those who came before them, their entire agenda was set from the outset by the police. Just like Rikers they also had to take who came in the door. As long as the police continue to target low-level public disorder for arrest, then it is hard to see how the courts can really challenge the logic of punishment. At best they can skim off or rescue certain individuals and offer them an alternative.

There were moments when some of the rhetoric was stripped away; such as when Hon. Juanita Bing remarked that reflective essays on problematic behaviour would, of course, only work for those who could read or write, reminding us, that, as in England, many offenders would be able to do neither. Or when Eric Cadora, from the Justice Mapping Center commented on the limits of the Red Hook Community Justice Center in a neighbourhood that is so impoverished that the toilets in the local schools do not function and nobody bothers to fix them. So too, we were told that when New York State wanted to close some of the upstate prisons, they were blocked by local communities which have become entirely economically dependent on the prison industry. Despite talk of reduction in the numbers at Rikers we must also be careful to recall how large their figures remain. In any case, though some of the city's alternative local jails are currently closed, they are undergoing renovation, and there are plans to reopen them soon.

Conclusion

Despite the undoubted improvements that we witnessed in New York City, there are several reasons for being cautious about looking to the US for guidance in reforming prisons in England. As Michael Jacobson pointed out, the US may simply have reached a tipping point; with 1 in 100 behind bars, perhaps the only way now is down. Such an observation offers cold comfort. How high could the population in the UK rise, before the public and the state grew tired of it?

Moreover, while overall prison populations declined in the early years of this decade, since 2005 they have started to grow once again. At the same time, prisons, in some form, have become further entrenched as a tool of border control and strategy in the so-called 'war on terror'. Immigration detention centres, Guantanamo Bay, military prisons on US soil and the, as yet unknown, number of secret CIA prisons holding alleged terrorists elsewhere, all suggest that incarceration per se retains its hold on the imagination of policy makers in the US across a range of areas. Nonetheless, the range of criminal justice initiatives outlined in this report suggest that, at minimum, the punitivism that seems to characterise so much of American penal discourse has its exceptions. The question for the Commission is whether there is any meaningful way in which such exceptions could be usefully applied in Britain.

References

- Berman, G. (1998) *Red Hook Diary: Planning a Community Court*, New York City: Center for Court Innovation. Available at: http://www.courtinnovation.org/_uploads/documents/Red%20Hook%20Diary.pdf (accessed 21 October 2008)
- Cadora, E. (2007) 'Open society', *Criminal Justice Matters*, 64.
- Clear, T. (2007) *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse*, New York: Oxford University Press.
- Commission on English Prisons Today (2008) *Localism: A Consultation Paper*, London: The Howard League for Penal Reform.
- Fagan, J. and Davies, G. (2000) 'Street stops and broken windows: Terry, race and disorder in New York City', *Fordham Urban Law Journal*, 28, 457–504.
- Fagan, J. and Malcolm, V. (2003) 'Problem solving courts and therapeutic jurisprudence: theorising community justice through community courts', *Fordham Urban Law Journal*, 30, 897–945.
- Gibbons, J.J. and Katzenbach, N. de B. (2006) *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*, New York: Vera Institute of Justice.
- Jacobson, M. (2005) *Downsizing Prisons*, New York: New York University Press.
- Loury, G. (2007) 'Mass incarceration and American values' (testimony before the Joint Economic Committee of the United States Congress, Washington, DC, 4 October 2007). Available at: <http://www.jec.senate.gov> (accessed 21 October 2008)
- McArdle, A. and Erzen, T. (Eds.) *Zero Tolerance Quality of Life and the New Police Brutality in New York City*, New York: New York University Press.
- Petersilia, J. (2003) *When Prisoners Come Home: Parole and Prisoner Re-entry*, New York: Oxford University Press.
- Pew Charitable Trusts (2008) *One in 100: Behind Bars in America 2008*. Washington, DC: The Pew Charitable Trusts. Available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/one_in_100.pdf (accessed 21 October 2008)
- Zimring, F. (2007) *The Great American Crime Decline*, New York: Oxford University Press.

barbed

Barbed is a social enterprise design studio, which was created and maintained by the Howard League for Penal Reform. The studio is based within Coldingley prison in Surrey.

Barbed employs five graphic designers from prisoners that are held in the prison. They are all paid a salary of the statutory minimum wage allowance. From this salary they pay taxes, national insurance, pension contributions, a 30% contribution to a fund that enhances the regime within Coldingley and they make a personal contribution to various charitable sources such as Victim Support. This scheme is the first of it's kind anywhere in the world.

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