

“The reduction of prohibited conduct must be the main aim of any penal system, but must be tempered by both economic considerations and humanity if the system is to be practicable and tolerable”. So argued Nigel Walker in his book *Sentencing in a Rational Society* 50 years ago. James Crabbe FRSA asks how far we have really moved since. In his influential book published in 1968 the British criminologist, Nigel Walker, set out what he believed should be the aims of a penal system: to protect offenders and suspected offenders against unofficial retaliation; and to reduce the frequency of the types of behaviour prohibited by criminal law. In seeking to meet these aims, Walker adds that the penal system should seek to cause the minimum of suffering (whether to offenders or to others) and be designed to ensure that it would not increase the incidence of offences. Reviewing Walker's now seminal book in 1968, *The Law Society's Gazette* concluded: " This is the best book on penology that I have read. Its style is so lucid that for anyone thinking in terms of communication it is a tour de force'.

So how far has our society moved in 50 years in terms of the penal system? Walker was keen on a 'sentencing authority to "control" of sentencing decisions. The Sentencing Advisory Panel created in 1999 and the Sentencing Guidelines Council of 2003 led, in 2010, to what is now the Sentencing Council. This now affords some of the consistency and regularity in sentencing that Walker encouraged. He felt that sentences of less than six months were undesirable and while less progress has been made in this respect, it is encouraging that the current Lord Chancellor and Secretary of State for Justice, David Gauke, has made a plea more community sentences and a reduction in the number of short custodial sentences. However, Gauke stopped short of suggesting that he would be addressing sentencing or setting out a strategy for reducing the prison population.

In other ways it is difficult to see much progress; rather the opposite. In 1968 the prison population was 34,056 whereas in July 2018 it was 82,961. Her Majesty's Inspectorate of Prisons' Annual Report documented some of the most disturbing jail conditions it had ever seen. Inspectors at the rat-infested HMP Liverpool could not remember worse conditions, and the tragic toll of self-inflicted deaths at HMP Nottingham led the Chief Inspector of Prisons, Peter Clarke to describe the jail as "fundamentally unsafe." Wormwood Scrubs in London suffered from appalling living conditions, violence, poor safety and seemingly intractable problems over repeated inspections.

A recurrent theme was: 'The disappointing failure of many prisons to act on our previous recommendations, which are intended to help save lives, keep prisoners safe, ensure they are treated respectfully and to give them a chance of returning to the community less likely to reoffend.' Mr. Clarke summarises: "Some prisons, in very difficult circumstances, have made valiant efforts to improve. Others, sadly, have failed to tackle the basic problems of violence, drugs and disgraceful living conditions that have beset so many jails in recent years. I have seen instances where both staff and prisoners alike seem to have become inured to conditions that should not be accepted in 21st century Britain.." Apart from some signal efforts in prisoner welfare and rehabilitation, the overall picture goes against the four aims of a penal system that Walker put forward in his book 50 years ago.

As I have argued elsewhere, as a society we need to grasp the nettle of ignorance, develop education for those both in and out of prison. As Rachel O'Brien wrote for the RSA earlier this year: "productivity in relation to prisons is hugely dependent on how one group of human beings interact with others. We need a service that enables these connections to flourish." It is time to put the aims that Walker envisaged into effect. The Lord Chancellor needs not only to implement all the recommendations of both the Coates and Taylor Reviews into adult and

youth criminal justice, but also to address sentencing by ensuring that rehabilitation, not punishment in prison, is at the heart of the criminal justice system. There need to be changes in sentencing practices to encourage the judiciary to sentence more creatively. This, together with reductions in recalls to prison, as well as to those in remand who have little likelihood of a custodial sentence, should result in a welcome reduction in the prison population, and help to put us at the forefront of societies with a rational and humane criminal justice system.

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