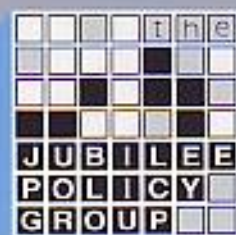


# RELATIONAL JUSTICE

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A reform dynamic  
for criminal justice



# RELATIONAL JUSTICE:

## A Reform Dynamic For Criminal Justice

*In the light of widespread disillusionment with current measures to tackle crime, Relational Justice takes up a neglected theme at the heart of justice: the need to repair relationships, particularly that between victim and offender.*



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# THE JUBILEE POLICY GROUP

*The Jubilee Policy Group* is an independent charitable research body concerned to develop new approaches to current political, social and economic issues. Its distinctive approach to public policy analysis stems from a Christian perspective which takes seriously the ethical and moral questions raised by contemporary problems. The Policy Group is the research arm of the Jubilee Centre in Cambridge and, as reflected in the council of Reference given below, has support from all three main political parties. It is not affiliated to any church denomination and is dependent on funding from charitable trusts.

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*Jonathan Burnside* read law at Trinity College, Cambridge and took an MPhil. At the Cambridge Institute of Criminology. He has been the principal researcher with the Jubilee Policy Group on the Relational Justice project since 1992 with particular interest in developing the theoretical basis of Relational Justice in association with a group of advisors.

Together, the authors have also edited a new series of papers on the theme of relationships as a reform dynamic for criminal justice, 'Relational Justice: repairing the Breach'. Contributors include Professor Tony Bottoms, Director of the Cambridge Institute of Criminology, Dr Andrew Coyle, Governor of HM Prison Brixton and David Faulkner CB, Senior Research Associate of the Oxford Centre for Criminological Research and Fellow of St John's College, Oxford. This has been published by Waterside Press in November 1994.

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## RELATIONAL JUSTICE: REPAIRING THE BREACH

*Copies are available from bookshops or can be ordered from the Jubilee Policy Group, 3 Hooper Street, Cambridge CB1 2NZ. Cheques for £10 plus £1 P&P should be made payable to The Relationships Foundation (registered charity No: 327610).*

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# FOREWORD

Three years ago, the Jubilee Policy Group began its study on 'Relational Justice'. During this period crime and concern about the consequences of crime have never been far from our TV screens and newspapers. In the political reaction to crime, there has been a significant sea-change over the period with a renewed emphasis on punishment as a deterrent.

The pendulum has swung from one apparent extreme to another in an effort to be seen to be tackling the cancer of crime. An emphasis on treatment of offenders and addressing underlying causes of crime has been superseded again by increased use of imprisonment and 'tougher' sentences. Today, prison population figures are again rising rapidly. They are even higher now than at the time of the Strangeways Riots in 1990.

What have we learnt since then? We have built more prisons and paved the way for 12-year-olds to be held in secure training units. We have extended considerably the range of responses open to the courts and the police. But I believe we have failed to learn a deeper lesson. Crime is about the breakdown of relationships. Public policy can contribute to reducing crime by helping to create the conditions necessary for repairing relationships damaged by crime. It is time to ask again the fundamental questions: what is the purpose of punishment and how is justice to be achieved?

The interpretation of 'justice' depends on the values and context within which it is applied. 'Relational Justice' grew out of a concern to re-examine the meaning of justice in the light of biblical teaching, and to identify the relevance of Christian principles to our criminal justice system in the 1990s. By viewing crime as primarily an offence by one person against another, and only secondarily as an offence against the state, Relational Justice highlights many neglected aspects of justice. It contends that a central goal of the criminal justice system should be to make every effort to repair the relationship between offender and victim.

But Relational Justice cannot be pursued in isolation. It rests on a more fundamental analysis of current social and political trends which maintains that material and economic values alone cannot give society direction for the future. Rather, they need to be balanced with the Christian and relational values of responsibility, self-restraint and forgiveness. This has wide-ranging implications not merely for the criminal justice system but for all spheres of our public and private lives.

Our hope in presenting here some specific implications of a relational approach to criminal justice is that fresh initiatives based on a greater commitment to both victims and offenders and also their families, will develop as a result of widening the public debate.

Michael Schluter  
Director, Jubilee Policy Group November 1994

Cambridge

# ACKNOWLEDGEMENTS

It has certainly been true that a project which reviews the relational implications of criminal justice has involved the development of many relationships.

As relative newcomers to the field of penal reform, one of our immediate impressions was that few opportunities exist which encourage the different parts of the criminal justice process to come together on a common platform. Our intention has been that this book, and the Relational Justice project as a whole, should provide one such opportunity.

It has been our concern throughout to balance theory with practice and policy with principle. Thus, a range of disciplines and expertise has been brought to bear on this project. From the outset, the Jubilee Policy Group has benefited significantly from its proximity to the University of Cambridge Institute of Criminology. Without the personal encouragement and constructive criticism from a number of its members, we should not have had the courage to launch into the choppy waters of penology.

In the early stages of our thinking, we were particularly indebted to Joe Pilling, then Director General, HM Prison Service, for his interest and assistance. We were also greatly helped by the Prison Service Chaplaincy and volunteers from Prison Fellowship in conducting our own survey of prisoners' attitudes on the impact of imprisonment on their family and community ties.

Justice issues inevitably raise questions of philosophy and indeed of theology. Our thinking has been guided and inspired by many conversations with those who have charted this course ahead of us. In particular, we are grateful to the Rev Dr Nicholas Sagovsky, Dean of Clare College, Cambridge.

A considerable debt of gratitude is due to the members of the project's steering group who have been willing to lend their professional and personal insights towards assessing the practical and policy implications of the Relational Justice approach. Participating on the steering group were Kimmitt Edgar, NACRO; Abi Griffin, Youth Crime Officer; Mark Halsey, barrister; the Rev Michael Hensman, former HM Assistant Chief Inspector of Probation; Guy Hordern JP; David Jones OBE, former Magistrates' Courts Advisor, Lord Chancellor's Department; David Neal, HM Prison Service; Mike Rees, Surrey Probation Service; Peter Walker, Prison fellowship England and Wales and Mgr Peter Wilkinson, HM Prison Service Chaplaincy.

A number of colleagues, past and present, have made significant contributions to developing the theory and practice of Relational Justice. Foremost is Dr Michael Schluter, Director of the Jubilee Policy Group, who takes credit for coining the term 'Relational Justice' drawing on the foundational thinking contained in his book *The R-Factor*. Helen Powell prepared much of the groundwork, and Christopher Townsend and John Ashcroft have both provided many helpful insights over three years.

We also acknowledge with thanks the financial support of The Relationships Foundation, together with a number of individual private donors, without whose commitment this project would not have been possible.

Nicola Baker  
Jonathan Burnside      November 1994

# SUMMARY

## What is Relational Justice?

Relationships are at the centre of human existence. It is through relating to other human beings that we grow in maturity, self-awareness and in the capacity to balance self-interest against the interests of others.

Relational justice is a fresh vision of what doing justice means in a society where relationships are being undermined and undervalued. It turns the spotlight on one of the goals of justice which is to restore and repair human relationships damaged by crime.

The Relational justice theme highlights neglected area of criminal justice theory and practice such as the involvement of victims of crime. It also brings into sharper focus aspects of the current debate about crime such as the parental role in tackling juvenile delinquency.

Relational justice has major implications for public policy in the areas of crime prevention, sentencing policy and in particular the place of community-based penalties and in the way we run our prisons.

Relational justice has four goals for public policy:

### A. Rebuild Relationships to Prevent Crime

The commission of a crime breaks the relationship of trust which is the basis of a civilised society. Crime may itself be both a symptom and a product of a breakdown in relationships. Criminologists agree that many characteristics of anti-social behaviour can be traced back to relational dysfunction in families such as emotional coldness or erratic discipline. To succeed, crime prevention strategies must, therefore, aim to bolster relationships within families and neighbourhoods.

Similarly, opportunities for crime are increased by the fragmentation of local communities and the anonymity of neighbourhoods where people no longer feel either responsible for or accountable to each other.

### B. Sentence Offenders so as to Repair Relationships

Relational Justice questions the underlying assumption that crime should be seen as first and foremost an offence against the state.

Rather, it sees crime primarily as an offence against the victim and the victim's family and suggests that punishment should aim also to repair relationships, particularly that between victim and offender.

### C. Punishment in the Community

As far as possible, punishment should take place within the community either in which the offence was committed or where the offender lives and involve continued membership of the community rather than 'exile' to prison. Punishment should be seen in the context of the relationships affected, not as an isolated event.

Punishment should involve a shaming process to bring home to the offender a sense of wrongdoing. Its ultimate goal is reintegration of the offender back into the community. Therefore, the criminal justice process must also address the factors underlying criminal behaviour, including the need for better relationship-skills such as communication and anger management.

### D. Make Prisons More Relational

Imprisonment should be seen as a sanction of last resort for those offenders who are a danger to the public and to themselves. However, punishment should not become synonymous with imprisonment and there is a real danger that, as the prison population in England and Wales rises again, prisons will be less able to deliver regimes which are both humane and secure.

Imprisonment not only involves the deprivation of liberty but also a serious relational cost as spouses and children are left to serve the 'second sentence' often living on low incomes and with little neighbourhood support. Prison institutionalises offenders making the transition to a responsible law-abiding existence on release very demanding. They allow offenders few opportunities to offer reparation to their victims. These relational costs borne by prisoners should be quantified and efforts made to minimise them.

## Policy Recommendations

Relational justice has ten major implications for public policy:



## Support Parenting

Crime prevention strategies should take seriously the influence of family and relationship dysfunction as an underlying cause of crime. There are many strong reasons for advocating more support for parenting and better parenting education: crime prevention is but one such reason.

Public policy should address the relatively low status accorded to parenting and the isolation of many family units struggling to rear children. Local parent link-ups with neighbouring couples should be encouraged. Close co-operation is required between different agencies to work towards prevention, not merely containing existing 'problem' families.

Provision of pre-school education, including intellectual enrichment programmes should be made more widely available following the success of schemes such as the Head Start nursery programme in the US.

In the triangle of influence on behavioural development between home, school and child, the role of schools in instilling basic values such as honesty, citizenship and service should be re-emphasised and made a central component in teacher training courses. Parental involvement in their child's education must be encouraged and the responsibility of the parent in cases of truancy, for example, should be clearly communicated.

## Rebuild a Sense of Community

Community is both a psychological and social concept as well as physical and geographic. Rebuilding communities involves both material and relational aspects and cannot be achieved without individuals and neighbourhoods taking on some responsibility

Building safer neighbourhoods should be a goal shared between private interests and public authorities involved in urban planning, housing policy and economic regeneration together with law enforcement agencies and local community leaders.

Similarly, recognising the economic factors such as debt and unemployment which can contribute to criminal motivation and opportunity, must be a multi-agency responsibility. Since unemployment is a significant factor in the lack of a 'stake in conformity', a job creation strategy also becomes a crime prevention strategy.

More fundamental are the moral issues associated with maintaining respect for the

rule of law in a free society which relies on a consensus that individual liberty should be constrained in the interests of the common good. Moral values such as honesty, self-restraint and mutual respect, essential to any civic society, are not the exclusive responsibility of the church or indeed of politicians to model and uphold. The media increasingly play an all too influential role in moulding values.

Articulating a moral consensus in a pluralist society is problematic. However, the relational approach which puts a concern for good relationships foremost can provide a basis for those of different beliefs to work together.

## Initiate local Partnerships

Co-operation between the different criminal justice agencies and welfare bodies (both statutory and independent) is a vital element in preventing crime and dealing with offenders. Where agencies are seen to work together on the basis of common goals, the sense of common purpose can generate a commitment to tackle problems at a local level in a way which uniquely reflects local concerns and factors. Centrally imposed solutions are unlikely to create the same sense of local commitment. An important outcome of local police, courts and probation services working more closely together should be a more consistent treatment of offenders which will enhance the legitimacy of the criminal justice system.

## Involve Victims

Ensuring that the interests of victims are addressed will also promote confidence in the criminal justice system. Justice must be seen to be done and responsible media reporting is an important element in helping the public understand the sentencing process. Research shows that the public are frequently not as punitive as some newspapers suppose.
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Where possible, sentences should include an element of reparation to the victim of crime. This will ensure that the central relationship which crime 'creates', that between offender and victim, is not sidelined and underlines the fact that the goal of justice requires the restoration of community balance. Victim/offender mediation has been an effective means of agreeing reparation as well as other benefits to both victim and offender and should be expanded.

Other innovative approaches which involve victims are gaining ground in other

countries. There should be a wide-ranging Government consultation to explore the application of schemes such as the New Zealand system of Family Group Conferences, an alternative model for conflict resolution, as well as victim impact statements to give victims more participation in the court process. Such a consultation exercise could also look at extending the role of Victim Support to allow them to provide witness support during court sessions.

### Defend Local Justice

Every attempt should be made to preserve the local character of the magistrates' bench and the local accountability and accessibility of the courts. Local justice should not be rationalised into 'regional' justice. Local knowledge will enhance the appropriateness of sentencing to the particular circumstances of that community. Locally-based initiatives to provide alternative penalties to custody should be developed with the judiciary working in conjunction with other criminal justice agencies. The judiciary should be actively concerned to be familiar with local employment and housing conditions as well as the range of local non-custodial disposal options

Sentencers should ensure that the reverberations of a particular sentence on the wider web of an offender's relationships are properly weighed, in particular on the spouse and dependent children who must serve the 'second sentence'.

### Punish in the Community

Punishment should be seen in the context of the relationships affected, not as an isolated event and, wherever possible, punishment should involve continued membership of the community rather than 'exile' from the community to prison.

Community penalties need to be seen as both appropriate and effective means of punishment. This involves addressing public fears that penalties such as community service orders are 'soft-options' and demonstrating that, especially for offenders who lead chaotic lives, the demands of complying with a structured probation order and facing up to the harm caused to their victims can be very exacting - potentially both punitive as well as rehabilitative.

Community punishments including community service orders should, wherever possible, include both an element of reparation - direct or indirect - to the victims of crime and address underlying problems

affecting inter-personal relationships which contributed to the offending behaviour. Punishment should in this sense 'fit' the crime. For example, some 26 per cent of prison receptions in 1993 were committed to prison for non-payment of fines, many of whom could have been far better helped by way of a money payment supervision order to include the offer of debt counselling and money management education.

It is particularly important that the flexibility of the judiciary and the probation service to respond to local crime situations should be preserved. Innovative projects should continue to be encouraged, particularly those which can build up an offender's "stake in conformity" such as schemes with a crime prevention or employment experience element.

### Maintain the 'Relational' Focus of Probation

At the heart of the probation service from its earliest days has been a concern to rebuild offenders' relationships. However, this relational focus, previously enshrined in terms of their role to 'advise, assist and befriend' is in danger of being undermined with increased caseload demands, the pressure of limited resources and is being replaced by a new mission statement to 'challenge, confront and control'. Where resources are over-stretched the use of trained volunteers can supplement professional personnel to set up additional support services for offenders, ex-offenders and their families such as mediation, advocacy or debt counselling.

### Build Community Prisons

Prison should be seen as a sanction of last resort for those offenders who are a danger to the public or to themselves. But imprisonment should not mean exile from the community. It is usually said that offenders are sent to prison as punishment rather than for punishment and intrinsic to its punitive face is the deprivation of liberty. Yet spouses and children are left to serve the 'second sentence' living on low incomes and with little neighbourhood support. Prisoners suffer a high probability of marriage and relationship breakdown during their sentence. Supportive family ties are crucial to surviving the prison experience and successful reintegration within the community upon release and thus to reducing reoffending rates. Priority should continue to be given to improving prison visiting arrangements. Factors which currently inhibit children from visiting their

imprisoned parents should be addressed. Schemes allowing families extended time together, 'family days', should be more widely encouraged across the system following the beneficial experience at establishments such as HNIP Holloway and YOI Feltham. Private facilities should also be available for family visits where there is a special need. 'Community prisons' as advocated by Lord Woolf are an important element in the strategy of, firstly, maintaining prisoner family ties, secondly, enabling local groups and voluntary organisations access to the prison, and, thirdly, allowing prisoners the opportunity to contribute back into the community via volunteer involvement and employment. We support efforts being made to achieve community prisons via the clustering of establishments and creating smaller units within the existing infrastructure. The particular needs of the small population of women prisoners should not be overlooked and we support moves to increase the number of women's units in or near existing men's prisons.

The provision of home leave should be attached to the start of the sentence, as it is a lifeline for families and improves the chances of real communication between the prisoner and his family. There are, however, real concerns about absconding and public safety should be the first consideration.

More voluntary workers could be trained to be visitors of the families of prisoners to complement the role of social workers and probation officers and fulfil the function of 'go-between', identified as a real area of need. Much can be achieved by non-professionals if they are adequately supported and trained by professionals.

### Develop Constructive Prison Regimes

A lower prison population will enable more resources to be spent on education, training and the development of regimes which effectively address the root causes of offending behaviour and underlying relational dysfunction.

Prison regimes should act as a 'good pre-release course' from the outset. Opportunities for education and training should not be restricted to those serving longer sentences. Prisoners should have the chance to earn a decent wage from which they could contribute to the upkeep of their dependants and pay back in tax something towards the cost of imprisonment.

Sentence planning involving both prisoner and prison staff should become an

indispensable part of all decision-making about the details of prisoners everyday lives wherever practical. Staff should be recruited who have an aptitude for positive interaction with prisoners. Training should include equipping staff with counselling and other relational skills to enable them to become more involved in the personal welfare of inmates.

### Commission Further Research

The Relational Justice theme has highlighted several areas requiring further research and evaluation. Relational as well as economic factors should be used to measure the effectiveness of prisons to deliver regimes which are both humane and secure. Relational justice Prison Audits could be used to measure the extent to which prisons are fostering the kinds of relationships, particularly between prisoners and staff, which would result in individual responsible behaviour. More research is needed to clarify the extent to which a prisoner's family and community ties contribute to maintaining a law-abiding life on release. At present, no one knows how many children have parents in prison. Prison records do not include numbers of children. Nor does the prison service's database allow information on prisoners to be analysed with reference to their distance from home. Public concern about crime, the escalating costs of crime and personal safety build a case for pre-emptive crime prevention policy initiatives to tackle problems in particular localities and to identify potential 'career offenders' and others at risk of developing antisocial tendencies. Schemes which give potential offenders a 'stake in conformity' are critical. Further evaluation is needed to quantify the benefits of existing mediation and reparation schemes involving individuals and groups of offenders and victims. Comparing the effectiveness of particular penalties is problematic but surely not impossible. Professionals from across the relevant agencies to include police, prison, probation and social services should be given adequate resources to co-operate on research projects to assess the impact of different criminal justice responses on particular groups of offenders. Control groups of non-offenders are needed as are clearer statements of objectives and priorities for the system as a whole. Both qualitative and quantitative measures should be applied to assess the relational as well as efficiency benefits of particular penalties.

# WHAT IS RELATIONAL JUSTICE?

Relational Justice is a new approach to the reform of the criminal justice system that highlights a neglected theme in penal theory and practice: the importance of interpersonal relationships. Like a stone falling through a spider's web, crime destroys the intricate nexus of human relationships which hold society together. Since crime damages relationships, justice and the process of punishing offenders must involve repair of the damage and a restoration of relationship.

Relational Justice places in creative tension the concept of justice, often considered a static 'cold' or 'antiseptic' construct with the 'warm' personal and dynamic notion of human beings in relationship. Both qualify the other. Justice gives content to the nature of relationship. The relational dimension gives to justice a sense of purpose and a vision for the values and behaviours which should characterise a just society.

## Justice and Relationships

It is within relationships that an individual learns to balance his or her own interests against those of the group. Relationships mediate between choice (my freedom to do as I wish) and obligation (my responsibility towards others).

Good relationships make us willing to fulfil our obligations. Where the quality of relationships within a society or community is in decline, a weakened sense of duty towards others follows. Healthy relationships are vital to human development and well-being. Right relationships which express respect, acceptance and compassion not only hold individuals together but give our institutions financial, political, legal - their legitimacy.

Relationships are not only central to what it means to be human; they are also central to our understanding of justice. That this is not more widely recognised is perhaps because our mental picture of justice is still that of the Greek goddess, Justitia. Blindfold, atop the Old Bailey with the scales of justice in one hand and a sword in the other, she symbolises impartiality, the thoroughness of a fair trial and the certainty of punishment. It is an image which captures much but also misses much. She symbolises the objective, procedural aspects of justice which are rightly present in our use of the word, but is quite blind to the dynamic of justice as an instrument for the restoration of right

relationships. Philip Allott, has put it in these terms, "love in all its forms is so similar to justice in its effect that it is hypothetically tempting to suppose that each is the other, that justice is love, love is justice".<sup>1</sup>

This holistic vision of justice was better understood by ancient communities. Early Jewish law, for example, saw the goal of justice as shalom: the dynamic peace of the community. But this holistic view is not given much emphasis today. Instead, we tend to compartmentalise justice, speaking of criminal' justice, 'social' justice and economic' justice as though each were independent of the other. But they are not. Justice is above all about right relationships which ought to exist between individuals and institutions. To the extent that these relationships are out of kilter with one another, the task of securing justice in a given sphere of the community, such as the courts, is made more difficult.

In recent years our concern to secure criminal justice has led us to focus increasingly upon procedural matters, as though the machinery of justice alone could guarantee a just result. We have tended to overlook the human dynamics which need to be addressed if there is to be a just settlement: one which truly holds the offender accountable and which meets the needs of the victim, insofar as these can be satisfied.

Whilst we rightly emphasise the role of The state in acting as the standard-bearer of justice, we must take care that this does not encourage an abdication of responsibility on the part of local communities. This is because justice is not merely a product to be delivered by the state to its consumers, nor is it simply a word which can be objectively defined and implemented through the mechanical application of rules. Instead, justice is relational in the sense that it is part of what it means to be human. It subsists in the arena of relationships and finds its expression in just behaviour. As such, it is a delusion to suppose there can be justice in a community where the people themselves are not behaving justly.<sup>2</sup> G K Chesterton, invited to respond to prolonged discussion in the newspapers about what was the root cause of society's ills, wrote to the editor with the simple lines: "Dear Sir, I am, Yours sincerely..."

Justice is a community responsibility and it brings with it community obligations. Justice

is holistic and therefore criminal justice depends on social justice and social justice on economic justice. Justice is not merely about punishing people: it is about putting things right.

## Relational Justice: A Reform Dynamic

It is the central contention of Relational justice that the present system focuses too much on the relationship between the state and the offender to the neglect of the wider web of relationships affected by crime. They include the victim, the victim's family, the offender's family and the community in which the crime took place.

The need is not merely to punish, but to try to restore where possible relationships damaged by crime. Doing justice requires that we take an active concern with all the parties involved in a crime, not just the state and the offender. Relational justice offers, firstly, a critique of the present system from an alternative perspective of relational rather than material concerns. Relational values such as respect, mutual support and commonality stand as counter weights in the balance, opposite but also complementary to material values such as economic efficiency.

By examining how justice is practised through the lens of Relational justice, particular aspects are thrown into sharp relief: the marginal role played by victims in the court process; the isolation of prisoners from family and community; the denial of opportunity for offenders to assume responsibility to make amends where possible with their victims; the quality of prison visiting arrangements; the potential of the probation officer's relationship with a probationer to build self-worth.

Secondly, Relational justice provides a much needed theoretical underpinning to criminal justice policy and practice. You need not be a philosopher or academic criminologist to observe that penal policy suffers from a pendulum syndrome at the hands of politicians. 'Short, sharp shocks' are followed by intermediate treatment

programmes which, as the pendulum springs back, are substituted by secure training units as panaceas for curing the cancer of crime.

Critics of the system have drawn attention to the deeper issues of the values and principles which should underlie a criminal justice system. David Faulkner, former Deputy Secretary at the Home Office and an architect of the Criminal Justice Act 1991 believes that now

*"there is a serious void at the centre of the criminal justice system. There is no clearly understood set of purposes which it is meant to achieve or principles which it is meant to observe and no effective and acceptable system of accountability for its operation".<sup>3</sup>*

Our hope is that Relational Justice may come to fill part of that void. In its theory of punishment, Relational justice holds in tension both just deserts and rehabilitation by putting the emphasis on restoration of relationships as a goal for criminal justice. Punishment and prevention, retribution and reformation are not seen as polar opposites. They each have significance and are held in balance by the over-arching concern to resolve broken relationships. Punishment is not therefore to be viewed as an end in itself, rather as a means to repair relational damage. This is not a 'soft' option: some of the hardest words to say to another human being are "I'm sorry".

Finally, Relational justice dictates an agenda for reforming the present system. By applying the dynamic which makes the repair of damaged relationships a central tenant of the justice process, a number of priorities emerge for the future direction of criminal justice.

This document sets out the implications of adopting those priorities under four main guiding goals:

1. Rebuild Relationships to Prevent Crime.
2. Sentence Offenders so as to Repair Relationships.
3. Punish in the Community.
4. Make Prisons More Relational.

# A. RELATIONAL JUSTICE AND CRIME

## Nature of Crime

The current system turns lawbreaking into an issue almost solely between the state and the offender. Crime, therefore, becomes primarily an offence against the state and its laws and only secondarily an offence against a person or persons.

A relational view of justice turns this around and views crime as primarily an offence against a person - the victim, the victim's family, even the offender's family, and the wider community, and then secondarily as an offence against the state. In the words of one offender sentenced to prison: "my greatest crime was to deprive my two-year old daughter of my company".

Relational justice therefore requires the criminal justice system to take an active concern for all parties involved in a crime, not merely the state and the offender, and to seek ways of mending those relationships which have been damaged by crime.

## Costs of Crime

Seeing crime in relational terms means taking seriously the effects of crime on human relationships. Crime destroys relationships of trust between individuals and the wider community. It creates human misery: for the victim, loss and violation; for the offender, loss of autonomy and control. It also fuels an all-pervading fear which causes formerly peaceable relationships to degenerate into an oppressive chain of hostility and distrust.

While emotional and psychological costs cannot be quantified, the financial costs of crime can. The costs of white-collar crime to companies is huge, £4 billion a year in London alone.<sup>4</sup> The British Retail Consortium put the total cost of crime in lost goods and security precautions at £2 billion in 1993.

The costs of running the criminal justice system amounted to more than £9 billion in 1992/3, double the figure in 1986/87 of £4,624 million. This includes the cost of building 21 new prisons at a capital cost of £1,100 million.

The actual cost of all crimes committed, cannot be quantified as the vast majority go unsolved or unreported. Only 3 per cent of offences result in a prosecution or caution. A true picture of the costs of crime should also

include that borne by individuals in stolen and damaged property, insurance premiums (an extra £114 per household per annum), medical care and injuries compensation. As Simon Jenkin observed "[criminal justice] is one area of spending which the Treasury does not validate by any test of performance".<sup>5</sup> On the contrary, attempts to set ceilings on the prison population (the present cost of which is £22,000 per prisoner p.a.) have been overturned by the current Home Secretary.

These are costs which we all bear. In that respect, all of us are victims of crime.

**Table: Cost of Persistent Offending**

Costs associated with one young offender over a career which involved 270 offences:

<b>COSTS</b>	<b>(£)</b>
Administration	2,126
Victim loss	45,946
Insurance loss	77,000
Police	5,200
Duty solicitor	147
Social worker	143
CPS	3,325
Magistrates	7,595
Legal Aid	11,900
Total	153,382

Source: Nottinghamshire Police Report, April 1993

## Causes of Crime

Relational justice takes seriously the complexity and inter-connectedness of the causes of crime. Theories about the factors influencing anti-social and criminal behaviour are as many and diverse as are the experts themselves. Even when it is possible to demonstrate linkages between certain variables and criminality, it does not always mean that offending behaviour can be intercepted, much less 'cured'.

There is, however, a large body of criminological research which suggests that anti-social and criminal behaviour is associated with dysfunction within families and other personal relationships.

Six indices pointing to family deprivation were identified in the Newcastle 1,000 Family

Study.<sup>6</sup> These were marital disruption; parental illness; poor domestic care of the child and home; dependence on social services; overcrowding and poor mothering. Farrington and West, co-authors of the Cambridge Study in Delinquent Development identified four factors that predicted later offending. Two directly involved family relationships, namely family criminality and parental mishandling; the other two were economic deprivation and school failure. Particular elements of relational crime dysfunction in families which may influence criminal behaviour include inadequate supervision and inconsistent discipline; parental indifference and neglect; conflict between parents; and parents who are or have been criminal themselves.<sup>7</sup>

*"It is clear from our research that problem children tend to grow into problem adults, and that problem adults tend to reproduce problem children. Sooner or later, serious efforts, firmly grounded on empirical research results, must be made to break this cycle."*

**(David Farrington and Donald West, The Cambridge Study in Delinquent Development, 1990)**

Not only may these relational factors help to explain anti-social tendency within individuals but they can also be influential in translating anti-social tendency into actual offending behaviour.

The loss of relational 'proximity' in many of our cities and even our towns and villages has led to greater anonymity, reduces the deterrent effect of not offending against neighbours and friends and removes much of the stigma against breaking community trust. To the extent that our society is materialistic and prizes the status associated with expensive possessions, there will continue to be value in stealing cars and VCRs.

The relational perspective, with its overriding concern for healthy relationships between individuals and communities, draws together many of the factors associated with anti-social behaviour and highlights the significance of loss of relational proximity to both criminal behaviour and offending opportunities. Above all, it recognises that individuals must have a stake in the society to which they belong if they are to have any interest in conforming to its laws.

Therefore, any crime prevention strategy must address the need to enable young people to rebuild or to develop and maintain their 'stake in conformity'.

## Rebuild Relationships to Prevent Crime

The failure of our present criminal justice system to contain criminal behaviour evidenced by the pitiful figure of 3 per cent of crimes 'solved' and the high re-offending 9 rate point to the urgent task of re-evaluating the strategies being adopted to prevent crime.

*"Only two in a hundred offences leads to a conviction. Even if we double that, we would still only be four out of a hundred. You need to stop people committing crimes in the first place."*

**(Steven Burke, Crime Concern)<sup>9</sup>**

Any crime prevention strategy must start by recognising the complexity of the factors behind offending behaviour. Crime prevention schemes require a long-term view, commitment to working for change and an accurate understanding of local conditions.

Crime prevention involves many different elements: increasing the risks of getting caught; deterrent punishments; reducing opportunities for offending, culminating in less motivation to offend.

Relational Justice highlights the need to:

- Support Parenting
- Enhance Schooling
- Recognise Economic Factors
- Rebuild a Sense of Community
- Reinstate the Moral Sense
- Encourage Local Partnerships in Prevention
- Increase the Scope for Intervention

## Support Parenting

Poor parenting is clearly identified by criminologists, probation and social services as one of the significant factors present in 9 delinquent behaviour in young people. Training in parenting might therefore reduce offending in children. There must first be a recognition that naturally-occurring parent education has become increasingly less likely for many parents as traditional, informal sources of advice and support, particularly from other family members and friends are no longer so readily at hand.

Parenting education is of course a controversial issue because it inevitably raises difficult questions about parental authority and discipline methods and increasingly, family structure and the role of fathers. But these questions should not provide an excuse for shelving the issue of parenting support.

Better child-rearing need not only be

learned from previous generations; it can also be taught. Utting et al identify three levels of support.<sup>10</sup>

- i) 'universal support services' which could be made available to every family,
- ii) 'neighbourhood services' targeted on high crime and socially disadvantaged areas, and
- iii) 'family preservation services' designed for individual families of children who risk abuse or whose behaviour is seriously disturbed.

The three tiers are an attempt to strike the balance between, on the one hand, the need for economy and, on the other, the danger of labelling children below the age of criminal responsibility as potential offenders in need of treatment

Universal support services get around the latter problem by being available to all. Examples might include the provision of parent-education through a national voluntary organisation such as Parent Network. This runs a basic training programme in listening and disciplining skills as well as building up the self-esteem of parents coping with demanding infants. It is important that these services are available for the community as a whole. It casts the preventative net wide and avoids the tendency of social services to concentrate only on 'problem' families.

Other forms of support are needed by families in particular difficulty, such as the 'Home-Start' scheme, which recruits volunteer parents to provide anything from practical help in tidying up the house to practical advice on parenting. Such help "is made acceptable by being offered as an act of friendship" and "families can be coaxed into coping without being made to feel inadequate or 'de-skilled'".<sup>11</sup>

## Enhance Schooling

"Family factors never operate in a vacuum, but take place against a backdrop of other influences such as those exercised by children's peers, their school and society in general".<sup>12</sup>

Low achievement levels at school were identified by Farrington and West as a causal and modifiable predictor of offending. They therefore recommend the offer of free high quality, pre-school intellectual enrichment programmes as highly desirable to children at risk<sup>13</sup>. Currently in Britain only 46 per cent of 3 to 5 year olds attend nursery or infant schools for any part

of the week compared with between 88-95 per cent in France, Belgium and Italy.

Research evidence suggests that stimulating pre-school experiences give children an educational 'head start'. The success of Project Head Start in the United States and the Perry Pre-school Programme indicate that delinquency prevention benefits can be linked to the child-initiated learning approach where children learn to make their own decisions and think ahead. Cost-benefit analysis of the Perry Pre-School Programme estimated that such classes could provide excellent long term savings to the tax-payer in that for every US\$1 invested it was reckoned that US\$7 would be saved in reduced public expenditure on special education, criminal justice costs and lost tax revenue.<sup>14</sup>

However, much of the success of school programmes has been shown to depend on how far families are acknowledged as partners in the educative process and how willing and able they are to get involved. Preventing anti-social behaviour developing requires the acknowledgement of a triangle of influence between the home environment, the school and the child himself. For many young people, school provides a real opportunity to learn values of mutual respect, honesty and service to others. The most effective pre-school programmes are those where school and home values are consistent and mutually reinforcing. Parental involvement and aspiration are the key to reducing truancy and school failure.

In February 1994, the Government announced a £14 million strategy to combat truancy which included funding welfare officers in schools and Truancy Watch Schemes involving local police, retailers and others reporting on children. It is hoped that the public policy response to the recognition of the link between truancy and juvenile crime will also involve addressing underlying causes in the home situations of many children.

The Jubilee Policy Group prisoners' survey<sup>15</sup> confirmed other research data which showed the strong link between offending behaviour and the experience of being in care as a child. Where parents have been unable to cope and their children have been removed into care or foster homes, the great concern from a relational perspective is that the role of loving 'parent' is not denied them. This is the great danger of institutional care which can inhibit a young person's ability to then achieve responsible independence on release from care.



The grave concern about the use of secure training units is that the children may become too far removed (potentially by some two hundred miles in some cases) from their home community that they are unable to develop the necessary breadth of socialisation skills to cope on release back into the community.

Modelling institutional care on the extended family and in small units which are integrated wherever possible into the local community could counter some of the adverse effects of institutionalisation.

## Recognise Economic Factors

Teaching parents better child-rearing methods will not of itself constitute an effective intervention if the external pressures which contribute towards family stress remain. Parents face problems other than those presented by their children. Sometimes it is these external factors, (which may include unemployment, mental depression, debt or inadequate housing) that militate against good parenting.

Economic deprivation is a critical area which Farrington and West claim would benefit from social prevention experiments. They discovered that of all the factors measured in the Cambridge Study between the ages of 8-10, low family income was the best predictor of general social failure at age 32<sup>16</sup>. Therefore they recommended that more economic resources should be targeted selectively on the poorest families to try to improve their economic circumstances in comparison with other families. Key elements here are avenues into better paid employment and the wider availability of affordable and accessible child care, in the form of community nurseries and family centres, to make it worthwhile for parents to raise their income beyond the floor level of state benefits.

It cost £14.5 million, excluding court and administration costs, to imprison fine-defaulters - 22,754 of which were gaoled

in 1993, 26 per cent of all prison receptions.<sup>17</sup> The majority of these are committed to prison because of 'culpable neglect' of their finances. How many of these are not so much criminal as inadequately skilled at budgeting on a low income? Here money payment supervision orders with the aim of offering money management advice and debt counselling should be used much more frequently.

Unemployment may well prove to be the most invidious factor. In a society where so much self worth, identity and personal fulfilment, particularly for men, is linked to the world of work, it is no surprise that lack of work breeds deep insecurities and frustration. The decline in the manufacturing sector has reduced the number of manual jobs and with it the traditional respect for 'an honest day's hard work'. It has also deprived many less-skilled men and women of positive role models. Despite the statistical difficulties associated with studies which have sought to prove a causal link between unemployment and crime, there is sufficient evidence particularly among young males to draw a connection with incidence levels of burglary.<sup>18</sup>

As many as 23 per cent of school leavers aged 16 and 17 are not in work, training or further education according to a recent study by the University of Cardiff.<sup>19</sup> A majority were experiencing a sense of low self-esteem, uncertainty about the future and disorientation. Not only may such young people be more predisposed to criminal behaviour but may also have more opportunity than those occupied in study or work.

A consumer culture which puts emphasis on material success, choice and image can undermine those less tangible relational values such as self-restraint, obligation and self-sacrifice. At a basic level many of today's young people with few job prospects see crime not only as a means of gaining credibility and worth in the eyes of their peers but also as a short cut into the consumer

### Pre-School Enrichment

*"The emphasis placed on getting children to plan their play and take responsibility for their activities is typical of High/Scope's approach to "child-initiated learning". So, too, is the pupil-teacher ratio (less than ten to one) and the insistence on a close working relationship between the teachers and parents. Research demonstrates that children who take part in pre-school programmes of this quality receive an educational advantage that makes them more receptive learners once they embark on compulsory schooling. But evaluation of the work done by High/Scope does much more than that. It suggests that the influence of preschool education in disadvantaged children extends into adolescence and beyond, improving their chances of employment success and decreasing the risks of delinquency."*

**(David Utting, Crime and the Family, Family Policy Studies Centre, June 1993)**

society. Improved living standards combined with consumerism has enabled many to afford and even expect to own items which, thirty years ago would have been regarded as luxuries. The expectation of a certain life-style at a time of high unemployment has created a greater polarisation between the poor and the well-off, an association which some studies have shown can be correlated.<sup>20</sup>

## Rebuild a Sense of Community

Anonymous urban landscapes encourage crime and the fear of crime. Rediscovering identity of place and association lost through increased social mobility and bad urban planning must be part of any crime prevention strategy. Building and developing safer neighbourhoods is particularly important in view of the impact that neighbourhood design and management can have on the ability of families to socialise and supervise their children.

Jon Bright has provided a thorough overview of the ways in which neighbourhood intervention initiatives can reduce the risk of delinquency.<sup>21</sup> The ideal type of residential neighbourhood seems to consist of traditional streetscapes with families living in conventional houses with gardens. Improvements to non-traditional design might include better lighting, the removal of walkways connecting blocks and open space, and in the number of a reduction in the amount of undesignated open space, and in the number of households using each access point. New designs should aim to maximise natural surveillance, restrict access to residents and create 'defensible space' around individual houses and blocks so that unwelcome non residents are deterred from entering.

Not only is the physical environment a factor which can influence criminal behaviour, but how it is managed. A policy which allocates housing of 'problem' families into certain 'sink' estates or houses a high density of families with children in high-rise blocks may have a perceived benefit of confining problems but automatically condemns many innocent families to criminal influence, victimisation and labelling by association.

Policing strategies are an essential factor practice which have effectively reduced opportunities for offending. Community policing offers a more relational model which encourages the whole community to take responsibility for crime prevention and to enforce certain 'rules' of behaviour.

Recent dramatic improvements in the level of recorded crime in Strathclyde has been attributed to a combination of measures including returning more police officers back onto the streets, new technology to reduce paperwork and imaginative crime prevention schemes. Not only has car crime and burglary fallen significantly, but the police force acknowledge much greater co operation by the public as both a consequence and a contributory factor.<sup>22</sup>

The police play a major role as a community resource in empowering local people to take responsibility for themselves and their safety, for example setting up Neighbourhood Watch Schemes and Neighbourhood Action Groups to improve facilities such as street lighting on housing estates. The rebuilding of communities in these ways is a major aim of the Relational Justice approach.

Initiatives taken across twelve London boroughs include changing the physical layout in medium and high rise residential areas with 24-hour concierge service and creating a wider social mix in vulnerable areas. In Hammersmith, an estate community safety office has been opened, backed by outreach activities for young people and, in Hackney, a multi-pronged community development trust has recently been set up. In Islington, nearly £10 million of improvements are underway which includes demolishing walkways, whilst in Lambeth 'ambush' points used by muggers have been eliminated. Meanwhile, in Lewisham, a homeless persons' unit has been set up for people facing domestic violence; in Newham an infra-red lighting system has been installed and in Southwark a safety forum has been set up where tenants can discuss problems with council officials. Boroughs are also seeking closer liaison between the police and incoming business people encouraging security guards on estates, and local people joining training seminars with local police.

## Reinstate the Moral Sense

Many observers believe that our society's struggle against crime is a symptom of a much deeper malaise than can be explained by social, psychological or environmental factors. The murder of a two year old boy by two ten-year olds brought home forcibly the and there are many examples of good fact that human beings are not born with a fully developed sense of right and wrong. We need to remember that we are moral beings,

accountable for our actions, and that this morality is acquired and needs fostering.

Traditionally, the nation's moral sense has been fostered by the Church from earliest years. The link between a rise in criminal behaviour and the decline in church attendance, and in particular, Sunday school attendance, has been made by Professor Christie Davies.<sup>23</sup> He concludes that Sunday schools were "successful moral agents" which, in conjunction with parental guidance, constituted ---a common moral authority providing consistent morality based on personal responsibility."

The early years are most vital in the development of behaviour which enables the healthy and happy growth of children into mature adults. Experiences occurring in the first five years can build confidence, self-esteem, the ability to accept and respect others, to control emotions such as anger, to develop a sense of property, personal space and gender identity. These are essential parameters for the growth of a moral sense throughout childhood which are learned from those we are close to and respect.

Therefore, a society which can no longer rely on parents and close family to instil moral values and which no longer turns to the Church for guidance, will need to seriously re-examine how the norms of 'civilised' behaviour can be transmitted to up-coming generations.

In a society where the moral consensus is no longer so evident, it may be necessary to find different ways of expressing values which, perhaps because of their 'traditional' Christian basis, cannot now be assumed to command full assent yet are still largely held intuitively. This may mean developing a new or modified language of values which can provide an alternative basis for social cohesion. This is one of the contentions of the Relational approach, that a concern for sound relationships which exhibit respect, compassion, commitment and restraint can provide a platform on which those who do not share Christian presuppositions can join with those who do.

## Encourage Local Partnerships in Prevention

Responsibility for crime prevention crosses several areas of Government, central and local, and therefore co-operation and partnership are necessary features of any strategy for long term prevention.

At the local level, any comprehensive strategy for preventing and containing crime will concern many agencies, not only statutory bodies such as police and probation but also voluntary groups, community and ethnic group leaders as well as commercial interests. The task cannot simply be seen as solely a police responsibility.

The Government's Safer Cities programme and now the City Challenges have emphasized the added value of the partnership approach to crime prevention and has enabled particular communities to establish schemes appropriate to local circumstances. It would be a great shame if finance and personnel could not continue to be found to maintain and replicate successful schemes in other urban areas.

A major relational concern is the potential for polarisation between agencies and a fragmentation in the services being provided because of the severe strains on the system at present. This is keenly felt by offenders who are subject to different treatment at the hands of the various parts of the system, often communicating contradictory messages.

There is an important role to be played by mediating structures in local communities to facilitate co-operation and good communication and provide a forum where social services, housing officers, police, probation, prison staff, the judiciary, solicitors, child care agencies, family support agencies, youth workers, the churches and many other community leaders can work more closely together.

A relational perspective highlights the tremendous value of locally-based initiatives which are born out of and reflect the particular needs and characteristics of an area. Churches can set a major example by providing role models as 'accepting' communities for ex-offenders and others needing support to start again. Many inner city churches run youth and holiday clubs which keep in touch with young people in the area and demonstrate a commitment to serving the locality in the long term. Examples of good practice such as anti-car crime schemes, taxi services for women in unsafe urban areas, youth clubs such as the Hartlepool 'Crimebusters' group for 7 to 11 year olds and parents, and the Tower Hamlets Safe Line Befriending Scheme offering friendship to juvenile offenders should be publicised and replicated elsewhere.

## Increase the Scope for Intervention

Public concern about crime levels, personal safety and the costs of crime is an argument for further intervention aimed at preventing crime. This poses no moral dilemma where consent is given. However, there is genuine concern about whether there is a legitimate way to intervene in the 'private' realm of family life in order to reach 'high-risk' families that may have identifiable 'career offenders'. Intervention badly handled is potentially dangerous and counter productive. The problem is that intervention, by definition, seeks to avoid something that has not yet happened. In the debate on the limits of state intervention in families, prompted by the Children Act 1989, 'the welfare of the child' was upheld as the prior concern and justification for limiting parental responsibility. Reasonable suspicion based on evidence is all that is required under the Children Act 1989 to make a child a ward of court.

Justifying parents' enforced participation in special programmes aimed at crime prevention is more problematic. The only evidence may be the presence within the home of predictive factors which forecast future delinquency. However, these remain predictions. A system based on relational values could not justify forcible intervention in inappropriately diagnosed cases, because of its profound respect for the integrity of the person. Likewise, a crime prevention strategy which relied on technologies such as electronic tagging raises profound questions about the legitimate scope of intervention.

The irony is that only better predictive techniques could more closely define the limits of intervention. This requires considerably more detailed research into the efficacy of certain forms of intervention.

Such research, however, depends on the willingness to try out novel, and potentially controversial, intervention techniques.

An example of this process comes from the Home Office's own study into car crime based on interviews with car thieves.<sup>24</sup> This found that a common characteristic of self-acclaimed car crime 'specialists' was their early passionate interest in cars and early desire to have a car-related job. A potentially effective preventative approach could be to channel this enthusiasm for cars at an early age.

*"Each year vast sums are committed to researching the cause of different diseases and in support of experimental interventions designed to prevent them. If only comparable resources could be devoted to preventing the social cancer caused by crime, the savings in public health as well as wealth would surely more than justify the cost."*

**(David Farrington, 1992)**

Intervention can also have dramatic results when addressing the problem of reducing opportunities to offend. The Kirkholt Burglary Prevention Project based on a crime-prone estate in Rochdale, saw the risk of burglary fall from 1 in 4 houses during 1986 to less than 1 in 8.<sup>25</sup> This occurred during a period when several interrelated measures were put in force to uprate household security, post-code property, and remove gas and electricity cash meters (found to be a major theft target). In addition, a special 'cocoon' neighbourhood watch scheme was started involving close neighbours to support victims of burglary and reduce the risk of repeat victimisation (another feature of crime in that area). At the end of four years, in 1990, the level of burglaries was down to one quarter of the level at the start of the project in 1986.

### Headlanders Against Crime

*"Residents of the Headland area of Hartlepool have joined forces with Safer Cities, the police, and the local authority to initiate a range of anti-crime measures. With £30,000 funding from Safer Cities, they decided to tackle the problem on three fronts, setting up groups to look at Security, Community Action and Youth.*

*Over a three month period the homes of over 240 elderly and disabled people were fitted with extra security. This was followed by a visit from a member of the Community Action Group who provided crime prevention advice. The initial impact has been very good in that house burglaries in the area have decreased by 17% during this period in 1993, compared with the same period in 1992.*

*The Youth Group developed "Crimebusters", a club for 7 to 11 year old children and their parents. The aim is to raise awareness of crime and its effects on the local community. This will be achieved by involving the children and their families in constructive and enjoyable crime prevention and leisure activities.*

*Future planned activities include the development of Neighbourhood Watch schemes, and the promotion of Vehicle Watch and security etching of cars".*

**(Home Office, Safer Cities Progress Report 1992/3, December 1993)**

# Policy Recommendations

## 1. Support Parenting

- i) Preparation for parenting should be regarded as just as important as sex education. Parent link-ups with local couples to prevent isolation of the nuclear family unit should be encouraged along the lines of the Parent Network and Home-Start schemes. This will require greater partnership between local authority social services and health care and the voluntary sector to refer families and set up appropriate links.
- ii) Resources should be concentrated on parents of pre-adolescent children as the earliest years are those when parents can exert most influence in forming behaviour patterns and attitudes.
- iii) The vital status of parenthood has been in danger of being undervalued. Parenting supports, while taking seriously the ability of many lone parents to bring up children successfully, should also affirm that parenting is best embarked on within a committed long term relationship where both parents are willing to undertake the sacrifice required to see their children grow to adulthood.
- iv) Given the well-documented links between parental criminality and juvenile delinquency, it is common sense to expand parent education programmes in prison and to increase the level of support given to prisoners' partners and wives.

## 2. Enhance Schooling

- i) Pre-school intellectual enrichment programmes such as the 'Head Start' and 'High/Scope' nursery education programmes in the US should be made available for all children at risk of delinquency to offer the stimulus and challenge which would not be available to them in their families.
- ii) Parental involvement in schooling should continue to be encouraged to provide a mutually reinforcing positive cycle of encouragement between parent and teacher. In seeking to reduce truancy, the role of the parent should be clearly understood and problems related to teacher/pupil ratios and teaching techniques appropriate for difficult children identified.
- iii) The role of the school in instilling values such as mutual respect, honesty,

citizenship and service should be restated. The Education Act 1992, which stipulates that schools set out their core values, needs to be reviewed on a regular basis. Teaching values should be made a basic component of teacher training courses.

- iv) Access to drugs in schools is a growing problem. Because drug addiction is closely related to offending, schools based drug prevention schemes should be regarded as a matter of urgency.

## 3. Recognise Economic Factors

- i) External financial pressures on families clearly contribute to stress in families. In particular, male unemployment is a significant factor in the lack of a 'stake in conformity' which can act as a brake on anti-social behaviour. The lack of 'marriageable males' in certain areas can reduce the prospects for stable parenting. Therefore, a job creation strategy is also a crime prevention strategy.
- ii) Debt and money management problems are frequently a factor in the lives of offenders and their families, not to mention the thousands committed to prison every year specifically for fine defaulting. Responsible money management and home budgeting skills should be made part of money payment supervision orders as a constructive alternative to prison which actually tackles a problem underlying criminal behaviour. Here is an opening for voluntary organisations to help.

## 4. Rebuild a Sense of Community

- i) Improved design for housing estates, street lighting, etc should all contribute to the goal of building safer neighbourhoods.
- ii) Local authority and housing association managers should reassess allocation policies which confine so-called problem families into 'sink'-estates. Relational concerns argue for much smaller housing units to counteract the anonymity of large-scale estates where ironically many families feel most isolated.
- iii) Housing policy should involve not merely the allocation of units and management of the physical estate but a more holistic approach to meeting the needs of their tenants. Family support networks and family centres could be established on estates to be 'owned' by the residents, to help share costs of laundry, child care

and so on and to foster a sense of mutual support.

- iv) Community policing initiatives should not be subject to Government cut-backs. Examples of good practice where Neighbourhood and Home Watch schemes have succeeded in empowering local people to take responsibility for their own safety should be widely replicated.

## 5. Reinstate the Moral Sense

Policy prescriptions in this area are fraught with problems as has been well illustrated by the ambiguity of the Prime Minister's 'Back to Basics' campaign. However, it should be clear that no-one in our society is in a position to 'cast the first stone' on account of their sinlessness and that all share a responsibility to help build a safer and less selfish society.

There is a need to review the core values which dictate our priorities as a society. If a consumer attitude dominates, relational concerns such as mutual support and self-sacrifice will be harder to instil in young people who have expectations raised for instant gratification. The factors which influence core values are complex and profound. Those who would be leaders in our society should set examples.

## 6. Encourage local Partnerships in Prevention

- i) Regular co-operation between different criminal justice and welfare agencies within the community should be extended along the model of the local Safer Cities and City Challenge Steering Committees.
- ii) Local initiatives reflect the needs of particular communities and offer greater choice of provision. Examples of good practice should be publicised and replicated in other parts of the country.

## 7. Increase the Scope for Intervention

More research is required into developing effective intervention strategies with particular groups and localities which minimise the negative labelling associated with targeted programmes.

The costs of crime should be quantified against the cost of intervention. Current expenditure on crime prevention may look inadequate against the billions required to run our police, courts and prison service.

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## B. RELATIONAL JUSTICE AND SENTENCING POLICY

The exercise of justice does not exist in a vacuum. Justice is not a purely abstract concept; it exists within the arena of interpersonal relationships. Thus sentencing is a human process and important to Relational Justice.

### Current Issues of Concern

The judiciary has come under a barrage of criticism in recent years which may in part reflect public concern at how justice is being administered. Apart from the highly publicised cases of miscarriages of justice, concern has regularly focused on apparent inconsistencies in sentencing practice both between various offences and between similar offences across judicial districts. This has led to calls for greater conformity.

The increased complexity of cases as well as the hugely expanded caseload have put many court operations under severe strain. The number of cases committed for trial in the Crown Court rose 50 per cent in a decade from some 68,000 in 1982 to 101,000 in 1992. The average length of a criminal trial is longer than previously because of greater procedural safeguards and because of the length of time it takes to assemble the case. Recent pressure on resources may have added to the view of some judges that they are more preoccupied with meeting efficiency targets and avoiding technical errors than with doing justice.

Finally, in common with many figures of authority this century, judges have found themselves commanding less and less respect. Public opinion polls suggest that fewer members of the public accord sentencers the traditional judicial virtue of impartiality than they once did and questions continue to be asked about the social representation of the judiciary.

A *People's Justice* poll carried out in 1982 found that only 12 per cent thought the courts treated everyone equally.<sup>26</sup> Generally they believed the poor were treated more harshly than the rich and black people more harshly than white people. Around two-thirds of people thought that judges and magistrates were out of touch with the views and problems of ordinary people, usually because of their age and social background.

### Public Perceptions

At a time when public confidence in the criminal justice system has been dented, the call to 'get tough on crime' has much appeal. Many have been victims of crime or affected in some adverse way by the fear of crime. Hysteria can easily be fuelled by a media which knows that sensational murders and rapes sell newspapers. The public can be forgiven for believing that crime is escalating when politicians give more credence to police statistics (which are not always collated on a comparable basis across districts), than to more analytic studies such as the British Crime Survey (BCS).

*"Police statistics are an unreliable guide to the extent Of crime. They can also be misleading about trends, as readiness to report crimes to the police varies over time."*

**(British Crime Survey 1992)**

But is the general public becoming more punitive in their attitudes? The evidence for this is hard to find. If people are asked at a general level whether court sentences are adequate, a great majority answer that they fare not. But if they are asked - as in the BCS - about a specific incident involving themselves, and thus have a concrete example upon which to base their judgements, they are less punitive.<sup>27</sup>

Ignorance of actual sentences is another factor evident from BCS findings. Its second sweep in 1984 investigated whether British people knew what sorts of sentence were typically passed by the courts. Taking burglary as an example, respondents were asked whether a third, a half or two-thirds of persistent burglars aged 21 and over get sent to prison. Only 19 per cent selected the right answer - a half - most over-estimated the leniency of the courts towards burglars.

In terms of actual court practice, the survey also indicated that the courts are in fact marginally more punitive than the public. The survey also found that victims were no more punitive than others in responses to hypothetical cases. But it does appear from studies that people with little experience of being victims of crime imagine the worst.

Such dissatisfaction as exists with sentencing policy may, therefore, reflect a lack of understanding of actual sentencing

practice, rather than a desire to see more punitive sentences. Satisfying public feeling might be more a matter of public education than changing sentencing practices. This is important for the case in support of Relational justice because, in advocating the use of non-custodial penalties, it may be thought of as more lenient. But it may not be too out of step with popular feeling.

However, the findings are a reminder that support for apparently more lenient sentences is unlikely to be forthcoming unless the public are better informed about current practice. If it is the case that people believe the courts to be more lenient than they actually are, they may well feel that heavier sentences are called for, and this may make proposals for lighter sentences unacceptable.

## Sentencing Procedure

Court procedures reflect the present paradigm which sees crime as first and foremost an issue between the state and the offender. It is the contention of Relational Justice that this paradigm wrongly excludes other significant parties and that insufficient attention is paid to the role of the victim, the victim's family, the offender's family and the local community.

*"Many victims of crime suffer severely. Their subsequent unavoidable involvement with the criminal justice system may add to the trauma. It is essential that every possible step is taken to minimise the upset and even hardship which may be caused."*

**(Victim's Charter, Home Office, 1990)**

Victims of crime have had a much more central role at earlier times in our history. Their neglect is being recognised and statements such as the 1990 Victim's Charter have sought to shift the spotlight back on to the needs of those most adversely affected by crime. This is part of a discernible trend in other criminal justice systems around the world and has been prompted by a number of factors. In recent years, pressure groups have sprung up to defend the interests of victims such as Victim Support and Women Against Rape. The link between victim satisfaction and confidence in the system as a whole has been recognised.

Examples of indigenous systems of justice such as the New Zealand model have shown the value of making the restoration of community balance a legitimate goal of the system.<sup>28</sup> Their experience of the Family Group Conference as an alternative conflict resolution model anticipates the potential

strengths and weaknesses of a more relational criminal justice system. Its distinctly local flavour is consistent with the recognition by Relational justice that justice is not to be sought in conformity but in the application of similar approaches which allow particular communities to respond to crime in ways which reflect their own values and priorities, within a given range of penalties.

The principle of victim involvement may well have been re-established in Britain; the practice of victim participation is more problematic and, it has been argued, could require a radical shift in sentencing procedures.

So too would the recognition of the involvement of other innocent parties such as the offender's family and the wider community.

## Absence of Theoretical Underpinning

Critics of the present situation have drawn attention to deeper philosophical concerns about the principles and values underlying recent attempts to formulate criminal justice policy. The repudiation of some of the central tenets of the Criminal Justice Act 1991 has left, according to David Faulkner,

*"a serious void at the centre of the criminal justice system. There is no clearly understood set of purposes which it is meant to achieve or principles which it is meant to observe, and no effective and acceptable system of accountability for its operation".<sup>29</sup>*

The concept of seriousness of offence was central to the Criminal Justice Act 1991, forming one of only three grounds for imposing a custodial sentence. However, the Act nowhere attempted to define the concept of seriousness leaving the question open as to how seriousness should be weighed against the severity of the harm, the duration of the harm, the vulnerability of the victim or the culpability inherent in a criminal act.

The failure to define the concept of seriousness in the Criminal Justice Act 1991 may have arisen partly from the realisation that gut responses are hard to enshrine in statute and partly that politicians are wary of trespassing on judicial functions. But it may also reflect a loss of confidence in articulating the values on which the present system is based. Deciding what counts as a serious offence cannot be carried on in a moral vacuum. Seriousness assumes, by definition, that some things have greater significance than others. It requires that we make choices and judge some things more important than



others. Such decisions are made on the basis of values: a value being an idea which serves as a ground for choosing between possibilities.

The inability to define what counts as a serious offence may also reflect the lack of consensus that is the product of a pluralist society. This has deep implications for criminal justice policy.

Our hope is that Relational Justice may come to supply a coherent theoretical basis for future reforms. In its theory of punishment, Relational Justice holds in tension both just deserts and rehabilitation by putting the emphasis on restoration of relationships as a goal for criminal justice. Punishment and prevention, retribution and reformation are not seen as polar opposites. They each have significance and are held in balance by the over-arching concern to resolve broken relationships.

## Sentence Offenders so as to Repair Relationships

Punishment is not to be viewed as an end in itself, rather as a means to repair relationships which have been damaged by crime.

Relational Justice highlights the need to:

- Involve Victims
- Defend Local justice
- Review Sentencing Criteria
- Address Public Perceptions

### Involve Victims

Relational justice draws attention to the importance of relationships and the need to respect all the parties affected by crime. It does not in itself lean towards either victim or offender; it is relationship-centred and desires to see a proper balance struck between the interests of all the different parties affected by crime. At present this means emphasising the role of the victim because that is what is presently neglected.

Research has shown that relatively few victims are being awarded compensation from the offender; that victims are rarely kept in touch with the progress of the case; and that many are unaware of the criminal injuries compensation scheme. The way in which some victims are treated in court also leaves much to be desired, leaving many with the feeling of being victimised twice, once by the perpetrator of the offence and secondly by the criminal justice system.

Further efforts are required to put into

practice the rights of access to information and involvement set out in the Victim's Charter. One neglected area has been the provision of support for victims who are called as witnesses, especially in cases involving violence, where victims can find giving evidence extremely traumatic. There is a case for extending Victim Support's role into the court room.

Certain principles should govern the involvement of victims. Involvement should always be voluntary; it should be in the context of understanding the victim's vulnerability and desire to be listened to. The system should reflect a balance of concern between victim and offender and ensure standards of confidentiality and integrity are extended to victims.

There are two major ways of giving victims a greater say in the sentencing process. Firstly, to provide the courts with more information about the effects of the crime upon them, which might involve giving the victim the opportunity to express an opinion about what sentence should be imposed on the offender, and secondly participation by victims and offenders in mediation and reparation schemes. Finding alternative models for conflict resolution would be another strategy which, operating both within and outside the existing criminal justice system, could enhance the role of crime victims.

### a) Victim Impact Statements

Victim impact statements are used in many English-speaking jurisdictions as a means of giving the victim a role in the sentencing process. There are two kinds of victim impact statements. The first is a statement of the harm or losses suffered by the victim which, according to the Victims of Offences Act 1987 in New Zealand, is read out in court to inform the sentencer of "any physical or emotional harm, or any loss of or damage to property suffered by the victim through or by means of the offence and any other effects on the victim".

The second more controversial type of victim impact statement allows the victim to express an opinion about what might be an appropriate sentence for the offender. This can merely require the court to consider oral or written statements from the victim before passing sentence but some U.S. states go further and stipulate that the court must have regard to the victim's views on the sentence. Many states also give the victim a right to

address the court on sentencing matters.

Clearly, giving victims a voice in the court process raises major questions and strong arguments exist both in favour and against.<sup>30</sup> While victims deserve to be given greater attention and enabled to participate more, this should not be at the cost of prejudicing the defendant or interfering with the proper process of the criminal trial.

A Relational Justice approach would welcome moves to include a statement of harm done to the victim in the required Pre-Sentence Report, read out in court, as a first step in this direction of giving victims a voice. However, this cannot replace hearing the victim's story in their own words.

*"Healing is a matter of time but it is sometimes also a matter of opportunity."*

**(Hippocrates)<sup>31</sup>**

## b) Mediation and Reparation

Relational Justice provides a theoretical justification for increased victim-offender mediation and reparation. We believe this approach not only has the potential to integrate victims more fully in the criminal justice process, but also to confront offenders with the consequences of their behaviour and to act as a catalyst for amending offending behaviour.

The critical question is whether it should be linked in some way to the sentencing process or be altogether separate from it. By offering to mediate between conviction and

sentence the implication is that mediation is intended to act as mitigation. This offers a potentially powerful incentive for offenders to participate in these schemes and an equally powerful reason for victims to be dubious about an offender's motives in wishing to see them.

Where an offender has shown a readiness to meet his victim and/or make reparation, it is reasonable that some recognition for this should be made by the court when a sentence is imposed.<sup>32</sup> The impact on an offender of meeting face-to-face the real person against whom he has offended should not be underestimated. Extending an apology and receiving forgiveness are very powerful motivators for changing perceptions, especially the offender's tendency to 'neutralise' his actions by stereotyping his victim.

The Government has stated its interest in the use of reparation as a central part of its approach in dealing with non-violent offenders:

*"Imprisonment restricts offenders' liberty but it also reduces their responsibility; they are not required to face up to what they have done and to the effect on their victim or to make any recompense to the victim or the public the Government considers that compensation to individuals and reparation to the public should be an important element of punishing offenders in the community."*<sup>33</sup>

### Reparation in the Community

*Two men aged 18 years were caught siphoning petrol. They admitted numerous cases over the previous 18 months and cleared up a number of reported siphonings in a small village where they lived. Feelings were running very high in the village as the victims included the parish minister, the mini-bus for the School for the Blind, a builder who had given both men casual employment, "and treated them well" and a range of neighbours.*

*Initially the men maintained that they only stole the petrol in order to travel around the countryside to try and obtain permanent work. Initially the victims wanted vengeance – "punishment, compensation, community service 240 hours, front page news and photos of them, prison and a good hiding". After consulting with all parties, agreement was reached that face-to-face mediation should occur in the parish meeting room, "as it's a community matter that is the best place to meet".*

*Representatives of the school, parish council and neighbours, plus their former employer met in the hall (a total of four victims) with the two young men. The early part of the meeting was tense. The victims tried to contain their anger, which was rising as the young offenders stuck to their reasons for offending. After half an hour, however, they changed positions and explained they had used the petrol to have a "good time, gallivanting around the countryside with our girlfriends". This honesty opened up the proceedings and all listened to each others views, feelings and ideas for putting things right. Eventually, a figure of 20 hours work on the village war memorial and in some overgrown gardens was negotiated as a form of "public atonement". Apologies were sincere and accepted. The men were told by their former employer that "they now wouldn't get a hiding from the lads", and were reintegrated back into the village as a result of being offered fresh work. They completed their community work, kept out of trouble and have continued to contribute to the village. Immediately after the mediation meeting their ex-employer strode over to them, shook their hands and said "I thought you were a pair of wasters but tonight, because of your honesty and facing us you have become men."*

## (Case history supplied by Kettering Reparation Bureau, 1986-1993)

Reparation is taken to mean the making of amends by an offender to his victim, or to victims of crime generally, and may take the form of compensation, the performance of some service or the return of stolen property. Less intangible outcomes are where an offender makes an apology to a victim and provides some reassurance that the offence will not be repeated, aiming to repair the psychological harm suffered by the victim as a result of the crime. Reparation and/or mediation take seriously the full extent of the harm done to the victim - social, psychological as well as material or physical.

Reparation in whatever form is an important reminder that the offender 'owes' something to the victim for the harm he has caused. Where the state fails to impose a penalty which recognises this damaged relationship, it is denying the two people most involved an opportunity to be reconciled. The onus should lie with the courts to show where reparation was not considered appropriate, since, if reparation were the rule rather than the exception, its potential as an unfair mitigating factor is reduced.

The involvement of victims in sentencing has one major drawback: the vast majority of victims never know who their offender is because the vast majority of perpetrators are never identified. Therefore the number of victims who might potentially be compensated is extremely small as a proportion of overall victims of crime. Nevertheless, some victims can benefit from participation in mediation schemes which operate on a group basis involving offenders of crimes other than their own. This has been demonstrated by the Plymouth Victim-Burglar Group Scheme which enables victims of burglary to meet those guilty of committing other burglaries in a group setting facilitated by a professional mediator. Similar opportunities for expressing emotions of anger, resentment and fear are provided in a structured environment which can have a powerful impact on all parties in breaking down stereotypical attitudes in both victim and offender.

### c) Family Group Conferences

Empirical research affirms the value of sorting out the offender's behavioural problems within the context of his or her family and the need to draw on the wider support and involvement of the extended family. This is especially appropriate for

young offenders. It is often more appropriate for wider family networks to assume responsibility for their kin as an alternative to foster care and institutions. It is also consistent with the ideals of Relational justice that families should participate more in the processes of decision-making and take responsibility for their own young people.

The New Zealand system of Family Group Conferences for young offenders, set up by the Children, Young Persons and their Families Act 1989 provides a radically different model of justice, the philosophy and goals of which are close to the heart of Relational justice. It demonstrates that it is possible for a modern Western criminal justice system to move significantly down the road towards a more traditional method of dispute resolution, with the support, and in many cases, approval of criminal justice agencies and the various parties affected by crime.

The system of Family Group Conferences can be seen as "offering a new model or paradigm of justice which turns the old model on its head".<sup>34</sup> Listing the participants in order of importance under the two models (excluding the young offender who is central to both) Judge McElrea, a District Court Judge in Auckland, New Zealand, saw the order for the old model as: Court (Judge), Police, social welfare experts, Victim, Offender's Family. The new order reads Family, Victim, Youth Justice Co-ordinator (a new creature of statute), Police, Court (Judge).

Family Group Conferences are particularly appropriate for young offenders where the involvement of family and friends can offer a context of relationships meaningful to the offender resulting in effective shaming as offenders are held accountable for their offences. They have reduced the state's reliance on indeterminate institutional placements on the grounds of welfare needs while at the same time encouraged both tougher and more imaginative outcomes than court-imposed sentences. A lesser role for the state has given way to a greater role for local communities and the prospect of fiscal savings for reduction of courts and prisons.

### Defend local Justice

Since Relational Justice sees the restoration of relationships damaged by crime as a goal of punishment, it argues for greater variation in disposal consequences. Thus sentencers should feel free to respond to the gravity of

the offence as it is perceived in their locality. Vandalising the only public phone box in a country village could have more serious consequences than one in the city centre. Stealing a lobster from a fisherman's pot in Cornwall is not the same crime as stealing a lobster from the frozen food department of Harrods.<sup>35</sup> The latter would be treated as a case of shoplifting whilst the former might be regarded as a more serious form of theft because it strikes at the heart of the trust which governs the way in which a certain group of individuals deal with one another.

However, it would be very dangerous and supremely unjust if such 'local differences' were merely synonymous with 'local views' that stem perhaps from a bench tradition, clerk or chairman, about how common offences should be dealt with. The value of 'local justice' should lie in the wise exercise of judicial discretion which takes full account of local, relational factors alongside the principle of proportionality. This is still a relevant concept in a highly mobile society, given that the majority of crimes are still committed close to where offenders live.

Relational justice would support the idea of guided discretion as the means to strike the necessary balance between accountability (keeping sentencers' decision-making within bounds) and judicial independence (leaving the ultimate decision to the judge). Relational justice, therefore, argues against sentencing matrices, 'penalty points' systems or the imposition of certain mandatory sentences. As Lord Taylor recently asked. "How can it be just to impose the same sentence on a prisoner who slowly and deliberately kills his victim for her money ... and the caring husband whose wife is suffering agony with cancer and he puts her out of her pain?"<sup>36</sup>

In this sense, Relational Justice might seem to favour greater inconsistency. However, consistency should be measured by approach,

not by outcome. Consistency must never be equated with conformity. Indeed, given the unique factors that are attendant in every case, it would not be going too far to suggest that true equality is found in apparent inequality. The aim should be, not consistency per se, but "parochial consistency"<sup>37</sup> where variations can be justified insofar as they reflect local perceptions of the seriousness of the offence and the assault which a particular crime makes upon the values of that community. Nonetheless, greater consistency of sentencing within parishes is plainly desirable.

Local justice, it is argued, has two key pro-relational attributes: closeness to the community and responsibility to the community.

The second attribute is that of responsibility to the community. This includes the importance of judgement by one's peers and of making offenders feel accountable to the community in which the crime took place. The effect should be to enhance legitimacy and engage greater community respect where sentencing can be seen to 'fit the local crime'. It could make the court process more informal and accountable in undertaking its responsibilities.

Recently, concern has been expressed that these fundamental principles underpinning local justice are under threat from centralising political and bureaucratic forces. It would appear that 'local' justice is in danger of being reduced to 'regional' justice.

It remains a major concern that the Police and Magistrates' Courts Act 1994 may undermine local justice by insisting on the closure of several courts and combining administrative areas driven by a concern to modernise a 'fragmented' and 'parochial' service.<sup>38</sup> While these measures might well have been motivated by a proper concern for greater efficiency, it would be important to

### **Responsible Reconciliation**

*"The distinctive elements of this Youth Court model are threefold: (a) The transfer of power from the state, principally the Courts' power, to the community. (b) The Family Group Conference as a mechanism for producing a negotiated, community response. (c) The involvement of victims as key participants, making possible a healing process for both offender and victim.*

*Taken together these elements have produced an approach to justice which is centred around right relationships. The prevailing spirit I would characterise as responsible reconciliation. The term 'reconciliation' connotes a positive, growing process where strength is derived from the interaction of victim, offender and family in a supportive environment. It is a 'responsible' process in that those most directly affected take responsibility for what has happened, and for what is to happen. Indeed it is an environment in which co-responsibility can be fostered, recognising that fault does not usually lie entirely with the offender and encouraging others who share that responsibility to shoulder it. It can be a moving experience to hear from a grandmother who has been working closely with a wayward grandson and in the process has let her own son know how he has let the youngster down."*

**(Judge F W M McElrea, justice in the Community: the New Zealand Experience, 1994)**

demonstrate that the principle of local accountability has not been undermined.

Earlier proposals to enable the Lord Chancellor's Department to appoint magistrates' courts committees and clerks to justices being subject to fixed term contracts were rejected by Parliament. However, budgetary constraints imposed nationally by the Lord Chancellor and centrally prescribed performance standards may well restrict the ability of the magistracy to truly reflect local variations.

*"... the Government has decided that the arrangements for the management of the courts should continue to be locally based but that there is a need to modernise the management structure to improve performance and accountability."*

**(A New Framework for Local justice, HMSO, February 1992)**

Local justice ought not be perceived as inherently inefficient. Where there is a loss of respect for centrally imposed measures of justice, a strong community-based judicial system to enforce the law could be seen as increasingly important. Much will depend on the mindset of individual magistrates; while many often emphasise the importance of their community base, others in practice prefer to follow standard formulas and avoid controversy.

The contention of Relational Justice is that movement in this direction is feasible and would meet with public support. Other fields of public service have shown growing interest in the value of strengthening local units, as an antidote to the problems of remoteness and excessive generality. There also appears to be some hankering, at a grass-roots level, for a more community-oriented structure to society and nowhere, it seems, is this more integral, or more needed, than in regard to the provision of justice.

### Review Sentencing Criteria

From the standpoint of Relational justice, crime should be weighed on the basis of actual harm - social, economic and psychological. Harm to relationships is therefore significant in measuring seriousness though an objective measure is probably impossible to invent.

#### a) Seriousness of Offence

Concerning seriousness of offence, the Relational Justice approach challenges the present criteria used to weigh property versus

personal crimes. There is an intuitive recognition that personal crimes are more serious than property crimes. In the *People's Justice*<sup>39</sup> survey, respondents were asked which punishments they thought would, in general, be most appropriate for burglary, shoplifting, vandalism, cruelty to children, mugging, serious assault or rape. Respondents were offered a wide range of options. A minority favoured imprisonment for property offences (8 per cent favoured it for shoplifting, 35 per cent for vandalism and 47 per cent for burglary). By contrast, a clear majority favoured prison, often for long terms, for offences against the person.

This recognition that offences against the person should be treated more seriously than offences against property is not always reflected in the criminal justice system. This may be partly explained by reference to the legal framework within which sentencing occurs. Cases of disparity can reflect the fact that personal crimes are more likely to be provoked than property crimes. Fraud, for example, is largely unprovoked by the victim and thus to that extent one could expect there to be higher sentences for property as opposed to personal crimes. The fact that fraud cases also take years to complete is another relevant factor.

Therefore, it is questionable whether crimes can be divided into these two neat categories of property and personal offences. Property crime, for instance, always involves a relational dimension. Stealing is treated as serious because it occurs within the context of relationships, in this case usurping ownership. The theft of an engagement ring, for example, is serious, as much for its sentimental as for its material value.

#### b) Impact on Offender and Offender's Family

It is revealing that sentencers are encouraged to take into account the financial costs of imprisonment but not the human or relational costs of imprisonment in the form of the damage it causes to the offender's marital, family and community ties. A relational approach to sentencing would seek to give higher priority to relational factors within the framework of variables which a sentencer must consider when meting out punishment.

Taking mitigating factors into account is part of the normal process of sentencing. These typically include the character and history of the offender, the pressures which

led to the commission of the offence and the consequences of the conviction and sentence for him.

Of all mitigating factors, it is the indirect effect of the conviction or sentence and the likely experience of additional hardships in prison which, from a relational point of view, have been most neglected. These should include the effect of isolation from family and friends, the impact on the marriage relationship and on the children.

There are strong arguments from research into the impact of imprisonment on family ties to suggest that the deprivation of normal contact with family puts many marriages at risk and breaks contact between father and child.<sup>40</sup>

Judges are understandably wary of taking into account hardship likely to be suffered by an offender's spouse and children. A typical reaction might be:

*"They ought to have thought about the difficulties their wives and children would face before they ever started out on this kind of criminal enterprise."*

Nonetheless, to exclude the family by denying that an offender's prison sentence will have a detrimental impact (where this can be clearly substantiated) is to compound the problem not to solve it.

Relational factors are allowed some weight in a small number of cases (for example, an informer held in solitary confinement) but their general effect is uncertain. However, in our view there are three circumstances which, from the standpoint of Relational justice, should be given weight as valid mitigating factors:

- i) where the degree of family hardship is exceptionally more severe than the deprivation suffered by a family in normal circumstances as a result of the imprisonment;
- ii) where the offender is the mother of young children, the welfare of the children is a due consideration in relation to less serious offences; and
- iii) where both parents are in prison simultaneously, or when imprisonment of one parent effectively deprives the children of any parental care.

Considering the offender as part of a family unit cuts two ways. It may result in mitigation, but it also treats the distress and hardship which sentences necessarily bring upon the family, friends and relations of convicted persons as one of the penalties which convicted persons must pay. It

highlights the fact that we exist in relationship and because of that offenders are under a duty to consider the effect of their actions on others. Rightly it represents on the one hand a ground of clemency in some cases and, on the other, affirms that families stand or fall together.

One way of highlighting the relational consequences of imprisonment would be to measure the length of a sentence of imprisonment by the number of Christmases spent away from the family or by the number of permitted visits within the sentence period.

## Address Public Perceptions

The Lord Chief justice, Lord Taylor, recently declared that

*"the sentence imposed must take account of public opinion and aim to leave all concerned with a feeling that justice has been done. It is of prime importance that the sentences passed should not be so far out of touch with the expectation of ordinary law-abiding citizens as to create discontent"*.

Public perceptions of sentencing practice must be addressed for three important reasons: i) to ensure that society feels its views are truly reflected in the criminal law; ii) to increase confidence in the criminal justice system and iii) to demonstrate that sentences adequately reflect the wishes of most victims.

Media attitudes play a significant part in shaping public perceptions. Reporters and programme makers share a responsibility to help bridge the gap between perceptions of sentencing (as revealed in the British Crime Survey mentioned above) and the actual practice of sentencing.

*'Terrifying crimes are sensationally presented in a glamorous production, out of context for maximum effect and, sadly, unwittingly, for maximum fear.'*

**(Michael Grade, Chief Executive, Channel 4)<sup>41</sup>**

Increasing public confidence is an urgent task. Central to achieving this, in our view, is a shift in the 'mix' of sentencing criteria to give greater weight to the concerns of the victims of crime. This involves enabling, wherever appropriate, the victim to participate in the process and, equally important, ensuring that some form of reparation or compensation is offered by the offender. Recent moves to introduce a tariff system for compensating victims of violent crime, while speeding up the process of providing financial compensation, may

introduce injustice where the individual circumstances of the victim (including those of the wider family) are not thoroughly understood and reflected in the level of award.

## Policy Recommendations

### 1. Involve Victims

- i) The Government should set up a wide-ranging consultation on the involvement of victims within the criminal justice process. This would assess how to improve victim satisfaction in their contact with all agencies. It would include examining the place of victim impact statements and the inclusion in Pre-Sentence Reports of an assessment of harm caused to victims.
- ii) Reparation should be included wherever practical in sentences both for personal and property offences to reinforce the fact that the offender owes something to the victim for the harm caused. Greater use should be made of victim/offender mediation and reparation schemes. Further research and statistical evaluation is needed to assess the benefits of existing schemes against alternatives.
- iii) The New Zealand system of Family Group Conferences demonstrates an alternative conflict resolution model which enables victims and families to participate in the sentencing process. Consideration should be given to applying this model within the UK context, initially piloted with young or first-time offenders.
- iv) Victim Support's role should be extended to allow helpers to accompany victims when required to give evidence in court, especially in cases of violence.

### 2. Defend Local Justice

- i) Every effort should be made to ensure that the local Bench continues to adequately reflect the character of its locality. Moves to centralise standard-setting and rationalise the magistrates' courts committees should be closely monitored to assess the impact on local accountability and access. Local justice should not be reduced to regional justice.
- ii) Greater co-ordination of sentencing decisions within the same locality should be sought. Some understanding of 'local justice' should be built into sentencers' training days. Sentencers within the same catchment area should also be

strenuously encouraged to meet regularly to discuss common problems to improve communication between magistrates and judges within a bench.

- iii) Closer liaison is needed between the different parts of the system in order that greater opportunities for taking new initiatives based on local experience could be pursued. The development of real and effective alternatives to custody owes much to the pioneering efforts of a few Benches, working in conjunction with the local Probation Service.

### 3. Review Sentencing Criteria

- i) Further efforts are needed to clarify a 'ladder' of seriousness to accompany criminal justice legislation which would involve removing any rigid distinction between crimes against person or property. Drawing up scales to reflect local criteria should be included.
- ii) Effects of sentences on the offender's wider family (particularly spouse and children) should be taken in the sentencer's mental 'mixer'. By registering the length of a sentence by the number of months away from spouse, number of Christmases/children's birthdays or the number of permitted visits within that period of imprisonment would underwrite the seriousness of the punishment being meted and highlight the relational consequences.
- iii) Mitigation should be considered in cases where an offender's dependants are likely to suffer genuine hardship, particularly where a prison sentence is being considered.
- iv) Magistrates and judges should be strenuously encouraged throughout their term of office to regularly liaise with other criminal justice agencies in their area.
- v) Training for the judiciary should include building an awareness of the potential psychological impact of a sentence on an offender. This may allow for a lower tariff in particular cases.

### 4. Address Public Perceptions

- i) Increased understanding of the sentencing process is vital for instilling more public confidence in the current system, especially for those parties affected in a court case.
- ii) Ensuring that the needs of victims of crime are seen to be fairly met will

increase the possibility that justice will be seen to be done. Reparation or compensation for victims should form part of the sentence as the rule rather than the exception. The onus should lie with the courts to declare where reparation is not considered appropriate.

- iii) The independent monitoring of press reporting of court cases must be maintained. Clear guidelines should be given to court reporters, and adequate complaints procedure for, victims, their families and offenders and their families instituted.

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- 39 Cited in NACRO (1986) *Public Opinion and Sentencing*, London: NACRO.
- 40 Shaw, R., (1992) *Children of Imprisoned Fathers*. London: Hodder and Stoughton, and others quoted in Jubilee Policy Group (1992).
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## C. COMMUNITY-BASED PUNISHMENT

Today, the view that punishment should preferably take place within the community is being seriously challenged. Punishment is again being seen as synonymous with imprisonment and non-custodial penalties are derided as soft-options.

### Why Punish?

Each generation needs to ask itself this question. Punishment involves the infliction of pain or undesirable consequences upon another and so its practice needs to be justified. Previous generations have defined the purpose of punishment in different ways giving varying emphasis to the prevailing themes of retribution and 'just deserts', utilitarianism and deterrence or reformation and rehabilitation.

It has been well observed that ideologies are really anthropologies -different ways of looking at human beings. Each theory reflects a different set of values or underlying beliefs about what it means to be human. Some of those values are in tension with one another; the desire for retribution versus the hope of rehabilitation, for example.

Relational justice seeks to find a way of holding in tension the different purposes of punishment.<sup>42</sup> It affirms that crime is always the product of individual moral choice, whilst recognising that social and constitutional factors influence the likelihood that particular moral choices are made. It claims to be based on a fuller view of what it means to be human: that is, someone who subsists in relationships. Relationships are bounded by rules, both written and unwritten, and punishment maintains the vitality of rules and therefore of healthy relationships. After all, the absence of a sanction upon the breaking of a rule is fair evidence that the rule itself is invalid.

A relational approach to punishment bears some of the hallmarks of the traditional theories but is not identified with any one in particular. By drawing attention to the centrality of right relationships, it aims to offer a fuller account of the role of punishment in society. Its challenge goes far beyond the operation of the criminal justice system and calls for relational values to be given priority in all areas of social, economic and political life.

A relational approach to punishment takes a 'Janus-faced' approach: It is

backward-looking in the sense that it looks back at the offence committed, and its seriousness, and hence stays rooted in a concept of desert; it is forward-looking in the sense that it anticipates how the offender may be reintegrated into society and allows such determinations to influence the punishment meted out. By viewing crime as a breach in relationship, punishment becomes a means of righting that relationship while at the same time a means of affirming societal values. For Relational justice, these values ought to be premised on the primacy of maintaining right relationships.

### Community: Does it Exist?

Many argue that punishment in the community is anachronistic in a society which venerates individual freedom of choice over social obligation. The word 'Community' has been devalued and is much-abused in political rhetoric where it carries vaguely warm and pleasant associations about belonging and acceptance. But it is a welcoming word to those who feel alienated both from the state and from their family.

*"Community: organised political, municipal, or social body; body of people living in the same locality; body of people having religion, profession, etc., in common; the public; monastic, socialistic, etc., body practising community of goods; body of nations united by common interests."*

**(Oxford English Dictionary)**

How then can it be associated with the harsh function of punishment which is supposed to involve inflicting pain and shame on an offender who has breached the rules of community and thereby violated community peace and trust? Surely punishment must involve exile from that community not integration?

The ultimate aim of the relational approach is to prevent people from falling out of community wherever possible, because community identity, whether based on geography or shared interest, is an outcome of human relationships. It argues that sending offenders to prison, that is to a place of exile, does not address the aspect of justice which requires a restoration of relationship between victim and offender, based on the premise that both are 'citizens' of the same community. Imprisonment may provide opportunities for an offender to address his/her relational deficit but this is not the

purpose of imprisonment - in contrast to that of probation.

Imprisonment, as opposed to community-based penalties, should be viewed as a sanction of last resort to register the seriousness of a particular offence or the dangerousness of a particular offender. Wherever possible, a sanction should be imposed which allows an offender to maintain his 'membership' of the community, provides opportunities to make amends to those fellow members who have been wronged and opens up possibilities for integration or reintegration, while at the same time expressing the community's anger at the breach of its trust resulting from the crime.

## Punish in the Community

The arguments in favour of punishment in the community rest both on the efficacy of community-based penalties as well as on the harmful effects of custody.

Relational Justice highlights the need to:

- Maintain the 'Relational' Focus of Probation
- Address Public Concerns
- Improve Assessment of Particular Penalties
- Continue to Seek Local Solutions

## Maintain the 'Relational' Focus of Probation

At the heart of the probation service's work from its early days has been a concern to rebuild offender's relationships. One hundred years ago, this might have meant ensuring that an offender signed and kept the 'pledge' to 'abstain from the use of intoxicating liquors of every kind for one year from this date'...and to 'further promise not to frequent public-houses, drinking clubs and other undesirable places'.<sup>43</sup>

This role was until recently enshrined in the mission statement: 'advise, assist and befriend'. Establishing a relationship of trust between the offender and the probation officer was seen as the necessary precondition for addressing the offender's behaviour. Although the concept of the 'casework relationship' was considered over-paternalistic by some probation officers, the essence of their role was still to work towards improving behavioural and attitudinal deficiencies which invariably concern the way an offender relates to other people around him or her.

Today however, the notion of 'advise,

assist and befriend' has been replaced by 'challenge, confront and control'. Different priorities dictate the time a probation officer can spend with a client. For example, frequently a probation officer will not have time to visit the home of a client or contact the wider web of his client's relations.

It is important that the public's concerns about appearing to get tough on crime are met, not simply by tougher penalties which are evidently 'punitive', but also by strategies which actually result in lower rates of offending.

Building relationships of trust takes time and this fundamental aspect of probation's task is in danger of being given lower priority than meeting certain performance targets measured against value-for-money criteria. It is important that the 'relational' dimension is also used as a measure of performance.

### Address Public Concerns

Public concerns about community punishment should not be dismissed lightly. But there is considerable ignorance about how crime is being tackled in our local areas and about the particular roles played by the different agencies.

Community-based sentences are the most effective and efficient way of dealing with offenders who are not a danger to the public. In a Commons written reply in January 1994, the Home Office Minister acknowledged that 81 per cent of probation orders and 72 per cent of community services orders were successfully completed in 1992. A probation order costs £98 a month and community service costs £95 a month, compared to imprisonment which costs an average £1,915 a month.

Of course, the protection of the public remains paramount. But provided that in-depth knowledge of the offender can be obtained, the trigger factors of violence and destructive behaviour can be recognised at an early stage.

The view that community-based penalties operated by probation must be a 'soft-option' also needs to be addressed. The punitive elements of probation orders were given more emphasis in the Criminal Justice Act 1991 with a clear statement that restrictions on liberty, having to comply with a structured programme under continual supervision and under threat of further sanctions if not completed satisfactorily, were 'punitive'. Community service orders are punitive in that they involve the deprivation of liberty and require work without remuneration;

sanctions which hit personal pride hard. But they are also rehabilitative because of the reparative element. This enables the offender to make a constructive contribution towards the society he has harmed and which, in many cases, has led to individual probationers acquiring new interests and skills.

The case will need to be made more cogently that probation requirements such as regular attendance, prompt time-keeping and satisfactory work performance, while accepted by the general public as ordinary behaviour, is, particularly for those offenders who lead chaotic lives, very demanding and punitive. If more probation orders involved a reparative element or some other means of confronting the offender with the harm caused to his victim, there would be far less cause to talk of soft-options.

## Improve Assessment of Particular Penalties

There is no shortage of data available on offenders. Plentiful records are required to be kept by police, probation and social service etc. However, there continues to be a lack of agreement among professionals about how to measure the effectiveness of different responses by the criminal justice system and how to draw general conclusions from the myriad of individual cases. This area is notoriously difficult to analyse because it is concerned with all the unpredictability of human behaviour. One penalty which 'worked' for one 16-year-old car thief may not have the same effect on another. Success in one case would be defined as no further offences and finding employment; in another success would mean a reduction in offences from five to two per month and reporting in on time to their probation officer.

More research and analysis is needed, especially following the introduction of new orders in the recent Criminal Justice Acts. Further consideration should be given to finding ways to monitor results and measure effectiveness. The formulation of clear statements of objectives, targets and priorities should provide a consistent basis from which to measure results. In particular, comparative research should address the effectiveness of certain penalties to

- i) reduce offending rates;
- ii) improve cost-effectiveness comparison with custodial options;
- iii) succeed in maintaining supportive family ties; and

iv) succeed in offering satisfactory compensation to the victim and/or the wider community through reparation or community service.

Improving assessments will involve closer co-operation between different probation services and between different agencies within the same probation area. Setting up "control" groups of non-offenders, for example, will be required in many cases to isolate relevant factors.

In seeking to measure effectiveness, other types of measurement of a qualitative nature may be more revealing than analysis of purely quantitative data. The potential of "relational" audits which aim to measure the quality of relationships should be seriously considered by probation services (see p. 37 Prison Regimes).

## Continue to Seek local Solutions

One of the strengths of the probation service in this country is its flexibility and ability to address local problems with local solutions. Historically, the service grew up around individual courts in order to provide welfare support to those potentially at risk of further offending.

Local knowledge enables offenders to be treated in a manner appropriate to their individual circumstances. Schemes which reflect local concerns are more likely to be 'owned' and supported by local people whose acceptance of the location of rehabilitation projects in their midst is critical to their long term success. The West Midlands Probation Service has recently set up a Unit for Community Safety which has a primary objective of promoting crime prevention but also involves working with offenders on the same site with the intention of breaking down stereotypical views on the part of both offender and the local people. Similarly, another scheme arranges for offenders to give advice on crime prevention to local people, especially concerning house burglaries.

Enhancing the local accountability and flavour of punishment in the community will involve greater emphasis on a) developing appropriate penalties, b) encouraging local agencies, and c) expanding the use of volunteers.

### a) Locally Appropriate Penalties

Punishment should in some sense 'fit' the crime. To take the example of fine-defaulters, it may well be expedient to send defaulters to

prison for its undoubted deterrent effect. However, if the situation underlying the non-payment of the fine concerned the offender's household budgeting ability, a week's imprisonment is unlikely to address the offender's lack of skill. It may only exacerbate the family or relationship tensions which frequently accompany debt problems. A probation order and/or a money payment supervision order which includes the offer of debt counselling and money management education would be more appropriate to tackle the offence, could be supervised in the community, and includes the possibility of combining the order with a reparative element of socially useful activity or employment as a means to repay in part or in kind.

## b) Local Partnerships Between Agencies

The probation service's National Standards now stipulate that some five percent of funds should now be directed to supporting schemes in partnership with other agencies.

A multi-agency approach is required to tackle certain problems such as drug trafficking to involve both statutory and voluntary bodies. More frequently, probation services are drawing on the capacity of other bodies to provide accommodation, employment training, special needs care work with mentally disordered offenders and help with running motor or literacy projects etc on

a contracted-out basis. For example, Surrey Probation Service is funding 'Children in Surrey', a voluntary organisation, providing consultancy services to secondary schools in high juvenile crime areas to develop after school activities and also the Surrey Business Enterprise Agency to run seminars for offenders introducing them to self-employment.

Co-operation, while very 'relational' in its objectives, can be problematic as people from different working environments learn to trust one another and work towards common goals and willingly exercise flexibility over areas of responsibility and lines of authority.

## c) Train local Volunteers

Where resources are limited greater use could be made of trained volunteers who have the relationship skills to get alongside offenders.

One major area of probation which is also being relegated down the list of priorities is community work where contacts are maintained with offenders' families, victims and the wider web of people caught up in a particular offender's situation. Here volunteers could be trained to provide specific support, advice and friendship. This could also include specific training in mediation skills to run community dispute resolution or mediation centres or give advocacy support to offenders.

### Rebuilding Lives

*"The Trafford project .... is a joint venture between Trafford Borough Council, Adullam and Greater Manchester Probation Service. The council provides the properties, Adullam the housing management and Probation Service the three PSO's who are seconded to the Association as project workers. As project workers, this can cause a "split personality" as one tries to reconcile the different priorities of each agency.*

*The initial task of the project worker is to help the new resident settle into one of our three-bed shared houses, to sort out DSS and housing benefit payments. This is an important time for establishing open, trusting relationships that can be built upon as the resident begins to explore both where he is at now and where he wants his life to go in the future. During this time a resident may start a training scheme or college course. He may try to find a job. He will probably apply for his own tenancy with the council or another association. This period can be frustrating for both the project worker and the client as an individual may lack confidence or motivation. Boredom can easily set in and this can lead in turn to re-offending.*

*However, this job is about supporting people - going at their pace rather than on one's own perceived timetable. As problems occur, the worker patiently tries to help the resident pick up the pieces and move on. For the Christian project worker, real change and progress in anyone's life is effected through the grace of God. Thus prayer becomes an important aspect of the worker's commitment to her clients.*

*Ultimately, this commitment to see real change effected in every individual's life is the aim of the project worker. Both the areas in which change takes place and the extent of change remain very much the responsibility and achievement of each individual in the project. But the worker is there to support, hopefully on to independence."*

*Adullam Homes Housing Association supplies specialist housing for ex-offenders, homeless people and those involved in substance abuse in need of a supportive home environment.*

**(Life Building, Adullam Homes Housing Association 1972-1993, 1993)**

# Policy Recommendations

## 1. Maintain the 'Relational' Focus of Probation

As the role of the probation service develops to include both a welfare and enforcement function, it is important that the traditional mission to 'advise, assist and befriend' is not lost among the paper work. There is no substitute for the time taken to win over the confidence of an offender who, from the strength of the probation relationship is able to start taking personal responsibility for his offending behaviour.

Relational criteria should be used, alongside efficiency measures, to assess effectiveness.

Relationship-building skills such as anger management may already feature in probation orders. Similarly, community service orders should include wherever appropriate inter-personal skills development so that the opportunity for constructive social exchange is given alongside socially 'useful' activities.

## 2. Address Public Concerns

The case in favour of community punishment as both an appropriate and effective means of punishment needs to be more clearly stated. This involves addressing public fears that penalties such as community service are 'soft-options' and demonstrating that, especially for offenders who lead chaotic lives, the demands of complying with a structured probation order can be very exacting potentially both punitive as well as rehabilitative. Facing up to the harm caused to their victim or having to provide some element of reparation will reinforce the seriousness of their offence.

The media has a significant role to play in educating the public about the benefits of community punishments by reporting some of the success stories rather than only the spectacular failures of the criminal justice system.

## 3. Improve Assessment of Particular Penalties

i) Before new penalties are developed, further resources should be committed to proper research on the effectiveness of existing penalties with particular types of offender. Areas for research include effect on reoffending rates, cost-effectiveness against custodial options, maintaining family ties and making satisfactory compensation or reparation to the victim.

ii) Greater co-operation between agencies to include police, probation and social services is needed on research projects to assess the impact of different penalties on particular groups of offenders. Both qualitative and quantitative measures should be applied.

## 4. Continue to seek local solutions

i) The flexibility of probation services to respond to local crime situations should be preserved. Innovative projects should continue to be encouraged, particularly those which can build up an offender's 'stake in conformity' such as schemes with a crime prevention or employment experience element.

ii) Penalties appropriate to the crime and to the availability of local schemes and courses should be sought rather than the apparently more obviously expedient option of imprisonment. Fine-defaulters, representing a quarter of all prison receptions, could be far better handled by imposing a money payment supervision order to include an element of reparation to the community in part payment or in kind.

iii) A multi-agency approach to tackling crime prevention and offending is clearly needed in order to maximise the local knowledge and resources. The probation service play a pivotal role in representing the needs of both offender and community and should be given additional, not substitutionary, resources in order to play a full part in developing local partnerships.

iv) The use of trained volunteers or associates should supplement professional personnel where resources are over-stretched. Volunteers as well as retired professionals could be used to set up additional support services to offenders, ex-offenders and their families such as mediation, advocacy or debt counselling. It is, however, important that volunteers add to and do not replace or drain existing resources.

42 Burnside, J. and Baker N., (1994) op. cit.

43 Reigate Borough Police Court, pledge under the Probation of Offenders Act 1907.

## D. PRISON REGIMES

Punishment today has become synonymous with imprisonment. For offenders who pose a real threat to public safety, prison or secure custody is the right response.

In a society where fear of crime has taken a grip, those responsible for seeing that the criminal justice system maintains public confidence have vowed to 'get tough on crime'. In effect, this has meant increasing the use of imprisonment. Britain has the highest detention rate per head of the population in Europe after Hungary.<sup>44</sup> Numbers in prison have taken a significant rise over the last year to the figure of over 50,000 in October 1994 and have been rising at the rate of 100 a week.

**Table: Prison Population for England and Wales**

1990	45,553
1991	47,220
1992	43,905
1993	46,886
1994	50,099

Populations as at end October 1994.

Source: HM Prison Service

Intrinsic to the punitive force of imprisonment is the pain of loss of contact with family and friends and the deprivation of liberty. For many people in our prisons, the loss of contact with close family is not such a hardship where the quality of relationship is poor or where that relationship is abusive or detrimental. For many others, however, incarceration means placing an intolerable burden on a marriage relationship or that between a parent and child. The probability that contact may never be restored may significantly reduce their chances of reintegration and building a better life back in the community after release.

The traditional view is that an offender is sent to prison as punishment, not for punishment.

*Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and to help them lead law abiding and useful lives in custody and after release."*

**(HM Prison Service)**

The prison service's mission statement (see box) places emphasis on the value of service,

humanity and constructive activity, all of which depend on the existence of supportive relationships between those involved in providing and receiving services. These are rightly high ideals and place tremendous expectations on all concerned. Placed against the average recidivism rate of 70 per cent, it becomes clear that our prisons are doing an impossible job.

The questions which Relational justice then raises are: Which offenders and for which offences is imprisonment with its attendant 'relational deficit' a justifiable sanction? How can the prison experience be made to address relationship problems where these significantly impact the offender's chances of successful reintegration on release?

Relational Justice brings two major aspects of imprisonment into the spotlight: Firstly, the concern that prison regimes should be constructive and that prisons should be communities of mutual support and places for addressing relationship problems. Secondly, the Relational justice perspective focuses on those serving the 'second sentence', the families of those inside prison, who in many cases but not in all suffer punishment along side their imprisoned relative or partner.

### Relational Values: A Key Performance Indicator

The prison service in England and Wales has set out the values which should underpin its mission. These are stated as 'integrity, commitment, care for prisoners, equality of opportunity, and innovation and improvement'. While these are important, they reflect the service delivery mentality of how prisons should treat prisoners. By way of contrast, the Scottish Prison Service had developed a strategy around the concept of the 'responsible prisoner'.<sup>45</sup>

Relational values provide an alternative set of criteria by which to measure the effectiveness of imprisonment. They lay emphasis on the interactions between prisoners and staff, between different tiers of authority in the prison and between prisoners and the outside world.

Relational justice Prison Audits have been developed to provide a measuring tool which can be used in an establishment. The key

concept is of 'relational proximity', that is the measuring of the conditions which facilitate humane and trusted relationships between parties according to certain dimensions such as the extent to which communication between parties is direct and face-to-face, the existence of an agreed common purpose and the duration of the relationship. Information gained can be fed into the sentence planning process and into staff job descriptions.

*"..relations between staff and prisoners are at the heart of the whole prison system and... control and security flow from getting that relationship right. Prisons cannot be run by coercion: they depend on staff having a firm, confident and humane approach that enables them to maintain close contact with prisoners without abrasive confrontation."*

**(Home Office, 1984, para 16)<sup>46</sup>**

## Aspects of Relationships in Prison

Prisons become communities in themselves. Prisons comprise a complex web of relationships, of codes of behaviour, of ways of relating.

The key relationship on which the whole basis of security, humanity and purpose rests that between the prisoner and the prison officer. The litmus test of the quality of a prison regime is the nature of the relationship between the prison officer and the prisoners in his or her care. Its 'relational' dynamics are problematic; it is not a relationship of parity but necessitates mutual respect and trust if the delicate balance between security and humanity is to be maintained. Regimes can either undermine or enhance this pivotal relationship. The more time prisoners spend in their cells, the fewer opportunities exist for relational growth.

A similar balance should ideally exist between inmates but these are rarely relationships of parity because of the subculture within establishments. Relationships between prisoners, if based solely on a shared criminal identity, are more likely to reinforce than lessen that identity as criminals.

The prison service is responsible for providing a constructive regime which will enable inmates to address their offending behaviour and lay foundations for a law abiding life on release. It is not responsible for ensuring that an inmate has the opportunity to build on those foundations, but the prison regime nevertheless impinges directly on the ability of an inmate to maintain relationships with those outside the

prison who may be essential in facilitating opportunities. This makes the arrangements offered for visits, correspondence, telephoning, and home leave highly significant to the rehabilitative prospects of a prisoner, leaving aside the humanitarian value of contact with the outside world and with close family and friends. It makes the location of a prison very important if contacts are to be made regularly.

Prisoners suffer a high incidence of marriage breakdown during their sentence. More than 4 in 10 of male prisoners surveyed by the Jubilee Policy Group lost their partner since the start of their sentence.<sup>47</sup> Many lose touch with their children since visiting arrangements can make it very difficult and sometimes inappropriate for children to visit a parent in prison.

*"The effects of prison can be severe. It breaks up families."*

**(Home Office, 'Custody, Care and Justice', September 1991)**

Prisons are said to be as much for keeping the community out as keeping inmates in. Most people have never been inside a prison and have little opportunity to reassess stereotypical attitudes to prison and prisoners. In recent years, the value of increasing contact with the community by allowing voluntary agencies in and allowing prisoners out on day-release, or for employment or visits has been recognised.

## Make Prisons More Relational

A relational prison would exhibit characteristics which are consistent with positive interactions between staff and inmates and would seek a prison culture where both individual personal development and relationship-building were given equal emphasis. The aim of a relational prison regime would be to enable prisoners to maintain supportive relationships and address relationship issues where these were factors behind their offending and, secondly, to prevent the fracture of relationships outside the prison where these are supportive and constructive, in particular family and community links.

## Build Community Prisons

Despite policy statements accepting the importance of family ties, prisoners continue to be sent to prisons which have vacant places, almost regardless of locality. Many of these prisons verge on being inaccessible by public transport. Due to their financial

situation, and the low priority given to keeping family members close together, many families find it virtually impossible to maintain regular contact.

In recent months, some progress has been made to create 'clusters' of prison establishments, such as in Kent, able to offer within one administrative area the range of security categories and regimes for a prisoner's typical career. These efforts should be re-doubled to cover the whole network. Whereas some £1.6 billion has been allocated to develop the concept of market testing within the prison system, no additional, no additional funds have been given to implement the Government's stated acceptance of the benefits of 'community prisons'.

Community prisons were strongly advocated by Lord Woolf in his Report into the Strangeways riots.<sup>48</sup> These would be 'sited within reasonable proximity to, and having close connections with, the community with which the prisoners they hold have their closest links.' He states

*"There is a very real advantage to prisoners in being in a local prison. The location of the prison enables them to receive regular visits from their families. Transport into urban centres, where the local prisons are located, is also usually satisfactory. Even if the prisoner's home is some distance away, visits can still be reasonably practical. This explains why, although the conditions within many local prisons are far from satisfactory and in some cases appalling, prisoners are still anxious to remain in those prisons and are unwilling to accept a transfer to a prison which offers better conditions, but which is more remote... The fact that the prison is within reasonable proximity to the prisoner's home has further advantages. It assists in preparing a prisoner for release and when he is released from prison. Arrangements can be made more easily to ensure that, as far as is practical, he will receive support when he returns to the community. Accommodation or jobs will be more easily found. The probation officer or the prison officer involved in a pre-release scheme will be in a much better position to assist. Medical treatment, education and training can be more effective. There is a greater chance of maintaining continuity of a person's treatment or training course between the prison and his home base. Parole should work better."*

It should be noted that all of the advantages seen by Lord Woolf in community prisons were connected, by the nature and circumstances of his Report, to matters of security and control within prisons. The

weight of evidence discussed throughout his report merely serves to build the case for such establishments, by pointing to the advantages and benefits for families, communities and for prisoners themselves which would flow from such provision.

These are also arguments which impinge on more recent moves to establish Secure Training Units for 12 to 16 year olds, some of which may be sited two hundred miles away from the children's home base.

They continue to provide powerful arguments in favour of building special units for women prisoners alongside existing male establishments. At present, there are nearly 2000 places for women but concentrated in only 12 locations, 4 of which are in the south east and only one covering the Midlands and Wales.

## Maintain Supportive Family Ties

### a) Pre-and Post-Sentence

For many families, when a relative is arrested, this is their first contact with the criminal justice system. If bail is not allowed and the person is taken into custody, there is an immediate separation. Frequently, spouses have difficulty simply finding immediate financial problems in addition to where their partner is being held. There are the shock of arrest especially if a family is receiving state benefits in the name of the person taken into custody.

The circumstances of arrest appear to influence the ability of families to cope with the immediate situation. In 67 per cent of McDerinott and King's cases,<sup>49</sup> the arrest was policemen, either armed or with alsatians; made at home, and 70 per cent of these involved two or more of: arrest by several ransacking of the house; partners being a lever to 'get a result' against the arrested taken into custody; and threats being used as person.

Consideration needs to be given to the sentence and sentencing process. This consequences to the family during the pre-sentence and sentencing process. This impacts on both police practice and on court practice.

### i) Police Practice

Police officers should be routinely required to find out whether the person arrested has responsibility for children. If so, they should instigate emergency arrangements and make necessary contacts. At this point, some form of documentary advice on emergency matters



should be given: addresses of sources of further help, advice regarding circumstances under the DSS or other bodies and so on. It is important that this be given in a simple written, as well as verbal, form as information is not easily absorbed at this stage.

## ii) Court Practice

At present, families are only allowed to spend time together after a sentence of custody has been passed if accommodation is available. Contact at this critical point gives at the very least a symbolic opportunity for the family to begin to sort out important issues, reassure each other, and get over the initial shock together. This contact should not be restricted: even quarter of an hour together in a police or court cell would be a valuable resource.

In theory, a probation officer or member of the court duty team is available at the courts to assist families immediately after any sentence of custody has been passed with information on prison visiting arrangements (as given in the Prisoners' Information Pack). This service should be given greater priority because proper advice at this initial stage can save much heartache and inconvenience later. Vital for many women at this stage would be advice on money matters, so that they can avoid some of the debt problems discussed earlier. Counsellors, if volunteers, should receive some training in principles of money management, and these should be made available either in a simple written format or via weekly informal seminars to all women who want to take advantage of them.

## b) Prison Visits

The only real time for extended communication between a prisoner and their close relatives and friends is during visits. Currently, a convicted prisoner is entitled to receive two visits per month of at least thirty minutes each. However, visiting arrangements often militate against any benefits of visits for maintaining good relationships. Visits often still take place in crowded and antiquated facilities and within the hearing of prison officers and other visitors. There is a strong tendency for visitors to feel that they should not spoil the visit or upset the inmate by broaching a problem which they may not have time to resolve, so that both sides tend to say as little as possible, in the hope of having a 'good visit'.

Staffing levels are a major constraint both to the length and atmosphere of visits. As prisons try to cut down on costs, it is

frequently this area which suffers. At present, there is no incentive for prison Governors to make building purpose-built visitor centres a priority. Only one third of prisons actually have separate visitor centres.

*"Marriages will always break down inside, for the simple reason that for prisoners the visits are their lifeline, but they forget the wife is struggling to pay the bills and feed the children. Prisoners are very selfish, you are the one that is inside, and that is all you think about".*

**(a prisoner)**

Priority should be given to increasing the length of the visits, even more than their frequency. Woolf states that 'some prisoners came near to telling us that short visits were often worse than no visit at all'. In the Jubilee Policy Group's study, there was evidence of considerable trauma surrounding visits, both before and after they took place, that to increase the length of time allowed would help towards more normal open communication between prisoner and visitor.

Children should not be hindered from visiting their imprisoned parents where this is in their best interests. This provision should be as plentiful as possible, and should never be suspended as a disciplinary measure against the inmate but should be seen as the right of the child. Some evening visits should be allowed so that children at school do not always need to visit at weekends at the busiest times. 'Family days' have been successful in prisons like Holloway and Feltham, allowing the family some 'normal' time together over several hours.

The inmate's prison record should always include up-to-date details of his home circumstances, not simply as a contact address in cases of emergency, but as a guide to the human situation left behind. This information should then be considered very carefully if the prisoner is to be transferred, and priority given to warning the family of the move.

## c) Home and Temporary leave

One of the declared purposes of home leave is to give prisoners the opportunity to maintain links with family and friends. A significant part of a sentence must have been served before home leave is allowed, so it would be more accurate to say that it is an opportunity for 'renewal' of family links. It is recognised as a crucial factor in the process of integrating offenders back into their families and local community, although prisoners without supportive homes and

families can suffer for lack of an appropriate context for home leave.

Lord Justice Woolf noted:

*“Home leave; perhaps more than anything else, are likely to break down the detrimental effect of long periods of incarceration. They can bring a greater sense of normality and of the outside world into the life of the prisoner. A substantial programme of home leave would also, as the Prison Service Union pointed out, ease the tensions and staffing pressures over weekends”.*

However, for home leave to have any real impact on the maintenance of family relationships, it should be available as soon as sensible after the start of the sentence, and at regular intervals thereafter, as for example in Sweden. Such visits have obvious advantages over visits to prisons, although staff have to cope with the departures and receptions entailed.

There are real concerns about absconding on home leave and clearly the main consideration should be the protection of the public. However, recent figures show that 94 per cent of inmates allowed home leave return without problems and most of the other 6 per cent are late in returning to prison.<sup>50</sup> Where efforts are made to prepare inmates for taking home leave by giving attention to relationship-building skills, then absconding rates have been reduced.<sup>51</sup>

Extending opportunities for home and temporary leave should reflect a prisoners' success in addressing their offending behaviour.

#### d) Telephones

Telephones are now a normal facility for most prisoners, the installation programme having been completed in early 1993.

The telephone can be a means for prisoners to be:

*“restored to their role within the family unit, they can give timely advice or support, and help to make arrangements. In this way feelings of familial inadequacy can be reduced and inmates are able to take greater responsibility for their own affairs”.*<sup>52</sup>

From a relational perspective, these are great gains and go some way to counteracting the relational deficit of imprisonment. However, telephones in prison are not without attendant problems and abuses. They can be the cause of increasing tension between family members trying to communicate important issues with a queue of other inmates in earshot awaiting their turn and can also lead to feelings of paranoia on the part

of inmates who ring only to discover that their partner is not able to answer. Expectations about regular phone calls can also cause disappointments because of over demand and put pressure on family members to provide cash to pay for phone cards.

Many prisoners we talked to felt it unjust that inmates living far from their families got so much less time to talk to them than those living closer to home.

#### e) Professional Family Supporters

Work with families is not part of the mandatory duty of the probation service, although it is well within their field of concern. The service is, however, already stretched to its limits and more resources need to be found if care of the family is to be brought onto their agenda in a meaningful way. The resources left for work with families are almost non-existent. Some probation teams have developed specific facilities to assist families, such as women's groups, holiday schemes and transport to prisons. Smith<sup>53</sup> found that less than 19 per cent of her sample of families had even been contacted by a probation officer.

Linked to this, we have noted schemes such as that at Swansea prison, where suitable volunteers are trained in listening and advising by the Samaritans, and are then available at all times in the prison to be a listener to the problems or worries of anyone who wants to talk. This is a valuable service which eases the situation within the prison, and helps inmates to deal more efficiently with their problems.

Throughcare is vital not only in terms of assessing the ex-prisoner's ongoing progress, but also in helping him, and the family, get used to life together again. As seen above, there are intense pressures at this time which may have been entirely unforeseen in the anticipation of the inmate's return. Obviously, the extent to which contact was maintained during the sentence, the provision of pre-release home leave, and domestic circumstances at the time of release, will all be very important factors.

#### f) Voluntary Family Supporters

Volunteers properly trained and supported greatly help take the pressure off prison and probation officers. At the new Manchester Prison Visitors Centre, the probation service, WRVS, NACRO and Save the Children Fund are co-operating to provide a comprehensive source of advice (from social services, and the Citizens' Advice Bureau once a week),

information and healthcare (a health visitor, special focus days and video events on aspects of health). There is a creche run by a qualified child care worker and many activities laid on; volunteers are available to talk to those visiting prisoners as required.

Many prisoners in our survey stressed the desire for a go-between to facilitate the relationship between themselves and their family, and to help them to communicate, resolve tensions and provide practical advice on specifics such as family finance. In an ideal world, probation officers would provide this support, but since their time and resources are limited, it seems logical to enlist sympathetic volunteers to help carry the burden.

'RELATE', the Marriage Guidance counsellors, has a long tradition of working in prisons with small groups of prisoners, and outside prisons with small groups of prisoners' partners. This has, however, always been dependent on the policies and resources of particular prisons and probation services, on their ability not merely to institute policies, but to sustain them consistently. Resources should be attached to this work if the theory of the importance of family ties is to be borne out in practice. Further, the work should not be carried out with wives and husbands separately, but with both parties together as would be the case with any other couple.

Volunteers with home visiting schemes such as the Leicester Prison Visits Centre scheme come alongside the family as a friend and helping hand, rather than as an authority figure. Volunteers can be briefed on local and national services, so that they can refer families (and prisoners) on to other sources of help.

This type of help is most valuable from those who have been in a similar situation themselves: greater support and publicity should be given to prisoners' families' support groups, and the National Federation network should be strengthened, as the Victim Support network has been.

## Encourage the 'Responsible' Prisoner

A more relational prison would place a very high value on improving relationships particularly that between prisoner and staff and that between prisoner and prisoner.

The notion of a responsible prisoner has been pivotal to the Scottish Prison Service's attempt to balance the tension between security and humanity in prison regimes. If

the prison service is under an obligation to deliver regimes which are both humane and secure, some reciprocity is required from the prisoner. In relational language, this is about preserving the delicate balance between choice and obligation which can only fully materialise in the context of relating autonomously with other people. Relationships mediate between choice (my freedom to do as I want) and obligation (my duties towards others). Indeed, it is usually in the context of relationships (normally close family relationships) that a person learns how to balance his self-interest against that of the group. A more relational prison regime would provide a framework within which inmates can be helped to make choices and to be more willing to accept (possibly irksome) obligations.

*"In the control of prisoners, officers shall seek to influence them through their own example and leadership, and to enlist their willing co-operation."*

**(HM Prison Service, Prison Rule 2(2))**

Responsibility cannot be understood apart from relationships, and this is as true inside prison as outside it. As Dietrich Bonhoeffer observed from his prison cell, "other people constitute both the origins and limits of my responsibility". If a prisoner has been responsible before entering prison why take that away from him? If he has not been responsible, then why not encourage him to become more responsible by providing suitable opportunities?

The concept of the 'responsible prisoner' represents an important movement away from the prison as a coercive organisation that exercises an unreasonable degree of power over the minutiae of individual prisoners' lives. It recognises the need to counterbalance the dangers of becoming institutionalised. Instead, the object is that of facilitating behavioural change on the part of offenders, and so increasing their relational competence through the medium of staff who are recruited, trained and promoted with a view to fostering interpersonal skills. Prisons run the risk of being more concerned with economic efficiency than with individuality and with people. The concept of the responsible prisoner can challenge this by increasing awareness and prevalence of the language of obligation among prisoners.

In practical terms, this involves finding ways of increasing prisoners' opportunities to make decisions affecting their life in prison. For example, committees of inmates and staff operate in some Scottish prisons to decide on

policy concerning food, employment, meal times, entertainments, criteria for permitting home leave etc. This can create a sense of common purpose and obligation to live within the constraints of their own decisions. It could also be said to further the goal of 'normalisation' by allowing prisoners the opportunity to have as normal lives as may be consistent with the requirements of security and good order.

More importantly, it gives added significance to the process of sentence planning which does currently involve both the prison - preferably via an assigned personal officer - and the prisoner discussing together and agreeing his or her 'career' through the prison system. The responsibility of the prisoner to take seriously the opportunities provided is then set against the obligation on the prison service to provide constructive activities and avenues for personal development. This 'exchange' should not be restricted to those serving 12 months or more as at present, but be available to all those serving more than 3 months.

## Provide Constructive Regimes

The nature of the prison regime impinges greatly on an inmate's options for making constructive use of his imprisonment to develop new skills or acquire qualifications which will help him find useful and law-abiding employment on release.

One of the most serious hindrances to making prison life constructive is the current practice of frequent transfers between establishments. High priority should be given to reducing prisoner movements and enabling the spread of training and treatment programmes to be provided across the prison system.

### a) Education

Education and training within prison represent one of the best prospects for reducing crime. If a prisoner can be given the skills to take up gainful employment on release, he or she will have acquired the best passage into a law-abiding life. Given the illiteracy rate among prisoners, it is not surprising that many turn to crime as a livelihood.

Many of those in prison had difficulties holding down employment and will only be

### **The Responsible Prisoner**

*"The May Committee had already noted the tensions inherent in the objectives of security and deterrence on the one hand, and reform on the other. They were stated most convincingly by those who asserted that the notion of "treatment" or a "coerced cure" was a contradiction in terms and that a much more achievable goal was that of "facilitative change". In other words, the prison system should aim to offer prisoners a full range of programmes which presented opportunities for personal development or the resolution of personal problems, but should do so in the recognition that such programmes were only likely to be successful to the extent that they engaged the co-operation of the prisoner. It was argued that if the prisoner was not treated as a responsible person whilst in custody, and if he was not given the opportunity, whilst in prison, to exercise some choice over his daily life, then it was difficult to see how he was being assisted to exercise responsible choice on discharge.*

*Two consequences result from the view of the prisoner as a responsible person. Firstly, it focuses on the role of prison staff as facilitators in the process of change and personal development. Secondly, it alters the relationship between prisoners on the one hand and staff and specialists on the other, from a situation where the staff and specialists have complete knowledge and authority over prisoners, to one where staff and specialists exercise only such authority and knowledge as are necessary for security and control, but then respond to prisoners, in relation to the aspects of their personal time and sentence, in a facilitating role in which prisoners exercise greater control over their own lives.*

*In conclusion, we think it necessary to emphasise the mutual responsibilities of the Prison Service to prisoners, but also of the prisoners to the prison communities within which they find themselves for the duration of their sentence. Whilst we believe that the primary responsibility of the Scottish Prison Service is to maintain secure custody and promote internal order, we also believe that the Service has a duty to provide for the prisoner a humane environment, within which he has an opportunity to take decisions about the progress of his sentence. The corollary is that the prisoner should find himself in a situation in which, in exercising choice, he is expected to face the consequences of his decisions."*

**(Scottish Prison Service, Opportunity and Responsibility: Developing new approaches to the Management of the Long Term Prison System in Scotland, May 1990)**

in a worse situation after a period of years out of the job market and with a criminal record. For many inmates, it is only the vocational qualifications which are obtainable within prison that enable them to break with crime and successfully reintegrate back into society.

## b) Therapeutic

Despite popular preconceptions, there is no need for the punitive and welfare functions of a prison to be seen as incompatible. There are successful examples of whole prisons and special units which are run as 'therapeutic communities'. For example, at HMP Grendon, prisoners are selected to go through an intensive programme of group work designed to tackle offending behaviour, to confront relationship issues and overcome underlying factors such as abuse and aggression.

In recent years, there has been growing recognition of the benefits of using art and drama to encourage prisoners into constructive expression and team work, etc. Inevitably, this involves taking risks and making demands on people beyond what they think they can meet. But it is in this process of risk-taking and experimentation that opportunities for behaviour change are created.

Similarly, the idea of prisons as a community resource is gaining ground. Schemes such as that operating in Wormwood Scrubs where handicapped men from day centres in the neighbouring/surrounding borough of Brent come into the prison and are taught gymnastics and keep fit by a group of selected lifers. Inmates at Holloway women's prison teach swimming to local disabled groups.

## c) Pre-Release Preparation

Many prisoners in the Jubilee Policy Group survey<sup>55</sup> spoke of the need for more emphasis on pre-release training. Opportunities abound for imaginative resources to be supplied and for contact to be developed with volunteers and organisations outside the prison, which would aid the transition from prison back into the community.

*"For almost all prisoners, the good prison is a pre-release course from the very first day."*

**(Judge Stephen Tumim)<sup>54</sup>**

Courses in Inmate Development and Pre-Release training are now being run in many establishments. They cover a wide range of subjects from drugs, gambling, finding housing, and money management through to

legal rights and how to cope with spare time if unemployed. Here there is a recognition that if a prisoner can develop better relationship skills, job interview techniques, learn how to avoid getting into debt, his chances of leading a law-abiding life after release are enhanced.

However, the availability of such courses depends on prison staff being allocated to this task, given time for training and resources for equipment. Some prisons are still not properly equipped to run courses although a target has been set by the prison service that all establishments should be running pre-release courses by April 1996.

A more important concern is whether such courses, run over only 10-12 days, merely scratch the surface of need and fail to effectively resolve entrenched problems with inter-personal relationships, debt, etc. Rather than run at the end of a prisoner's sentence, they should be made part of the induction process for those serving longer sentences to raise awareness of potential problems.

One optimistic development has been the formation of Resettlement Units, open prisons where prisoners are employed in 'real' jobs in the community while serving the final stage of their sentence. They provide a secure environment for the process of 'de-institutionalising' prisoners and enabling them to take responsibility for themselves. Given the number of ex-prisoners who re-offend and/or have severe difficulties finding and keeping accommodation and/or employment, greater use of these 'half-way' houses should be sought within the public and voluntary sectors along the lines of NACRO hostels, etc.

Another worthwhile scheme is the Prison Service funded NACRO Prisons Link Unit to train prison officers in housing and employment so that officers have the necessary information and expertise they need to advise prisoners. From the start the project had two aims. One was to provide prisoners with a service which would help resettlement; the other was to involve prison officers in the welfare side of the regime and enhance their role, adding interest to their daily work and helping to foster better relationships between officers and prisoners. However, this scheme is still not operating in every prison, nor have its benefits been properly quantified.

## d) Employment and Prisoners' Pay

Providing work in prisons promotes attitudinal change on the part of prisoners

and staff, helping to create more constructive prison regimes. Realistic levels of prisoners' pay could enable them to contribute to the cost of being imprisoned, pay National Insurance and tax and make a financial contribution towards their families' expenses. Some payment could also be made to victims and the remaining earnings could be saved for their release. Continental prisons such as at Straubing, Bavaria, demonstrate the potential of using prison labour. However, in England and Wales all profits from prisoners' work go straight to the Treasury leaving no incentive for the prison to develop real job opportunities for inmates. These rules could be loosened and revenue might even increase.

*"It came as something of a shock to members of the delegation to find, in 1990, grown men sitting in ancient wooden chairs sewing mail bags by hand with crude metal instruments."*

**(Council of Europe torture committee report on British prison system 1991)**

In addition, charitable openings could be further encouraged such as the craft shop, Time, in York which sells articles made in prisons and the profits go to charity, another example of a form of reparation being made to the community.

## Commission Further Research

Further research is needed to refine tools for measuring the impact of particular regimes on relationships inside and outside prison. This is the aim of the Relational Justice Prison Audit. As well as research, a prisons climate which is open to new ideas and prepared to adopt proven schemes is needed.

Studies explaining the impact of prison on prisoners' families are conspicuous by their rarity. Roger Shaw's investigation of prisoners' children is one of the few and includes the only attempt at estimating the numbers of children with fathers in prison: 100,000 in England and Wales.<sup>56</sup> The number of children with mothers in prison is not known and may not be able to be accurately calculated.<sup>57</sup> The Home Office's own study on the impact of imprisonment on family ties, started in 1992, is still to be made public.

No official statistics are maintained on the numbers of women or children affected by the loss of a partner or parent into custody. Jill Matthews<sup>58</sup> has commented that the lack of accurate statistics is an indication that this group is of low status, 'socially invisible', receiving little public recognition or understanding. In part, this is due to their

own wish for lack of publicity because of the nature of their situation, and the stigma they fear: a vicious circle. It has been said that:

*"the dearth of public information about the children [and partners] of prisoners is not accidental but convenient and necessary because those who uphold the prevailing legal and penal ideology cannot afford to consider what happens to prisoners' children [and partners], as any recognition of their plight strikes at the very notions of 'justice', 'innocence' and 'guilt' upon which the ideology is founded."*<sup>59</sup>

There is no social agency with any statutory responsibility for their welfare, nor any comprehensive source of information on the penal and welfare systems to help them carry that burden. In theory, field probation officers will be in touch with the family, but in reality the channelling of resources and the burden of other work they carry mean that support of the family usually comes low down on the priority list. Neither is there a specific support structure for the family, either before or after the trial, in contrast to the imprisoned partner, to whom many forms of access to advice and support are available.

## Policy Recommendations

### I. Build Community Prisons

- i) Different priorities should be set for the system so that where prison is the only viable option, the separation from the family context is so far as possible minimised.
- ii) A new commitment to locating prisoners closer to home is needed to establish the principle that movements between different security categories should all be achieved within one prison service administrative area. The process of 'clustering' establishments should be extended across the whole network. Alternatively, creating smaller units within the existing infrastructure could achieve similar benefits.
- iii) Special units for women prisoners should be set up in existing establishments to ensure that women are not disadvantaged by being imprisoned further away from home ties.

### 2, Maintain Supportive Family Ties

- i) At the point of making an arrest, police officers should be required, as a routine, to find out whether the person arrested has responsibility for children, and provide an opportunity for emergency

arrangements to be made. After a sentence of custody has been passed, families should be allowed time together. This would provide at least a token opportunity to begin making important domestic arrangements especially concerning children.

- ii) Purpose-built visitor centres should be seen as an important responsibility of each establishment and an adequate budget to build, staff and maintain visitor centres should be allocated from central funds.
- iii) Visits by prisoners' children should be encouraged where possible as so many children lose contact with their imprisoned parent. Some simple measures would improve prison visits immediately: separate smoking and non-smoking areas and the provision of plants, toys and books for the children.
- iv) The provision of home leave should be attached to the start of the sentence, and become a focal point from Day One, as in the Swedish system. This would be a lifeline for families to reach towards in their initial confusion, and would infinitely improve the chances of real communication between the prisoner and his family.
- v) In addition, much greater use of the option of temporary leave and 'town visits' could be applied, to enable prisoners to spend a limited period of private time outside prison with their families in a 'normal' setting.
- vi) The role of the probation service in the area of professional family support requires thorough review in order to define clearly the expectations placed on probation officers for work among prisoners' families both during a prison sentence and on release.
- vii) The welfare role of the prison chaplain is often underestimated or overlooked. Given that such a high percentage of prisoners in the Jubilee Policy Group's Study60 stated their preference for talking to a member of the chaplaincy team over other people in the prison, adequate time and resources should be allowed by the chaplaincy for this pivotal role to be properly fulfilled
- viii) More voluntary workers should be trained to visit family members of prisoners to complement the role of social workers and probation and fulfil the 'go-between' function which has been

identified as a real area of need. Much can be achieved by non-professionals if they are adequately supported by professionals and given adequate training.

### 3. Encourage the 'Responsible' Prisoner

Prisoners should be allowed the opportunity to take responsibility for as many aspects of prison life as are consistent with the requirements of security and discipline.

Sentence planning between prison officer and prisoner should be re-emphasised as a tool to encourage prisoners to take responsibility for making constructive use of their sentence. Planning a 'career' inside should be available to all prisoners serving 3 months or more.

### 4. Provide Constructive Regimes

- i) Educational and training opportunities should be made available across the prison system so that prisoner transfers can be minimised.
- ii) The punitive and welfare functions of prison should not be seen as incompatible. Therapeutic regimes and programmes which are seen to address offending behaviour effectively should continue to be encouraged.
- iii) Pre-release preparation is a vital element in countering the difficulties to be faced in the transition from a prison institution to a responsible law-abiding life back in the community. Inmate Development and Pre-Release courses should not be side-lined because of prison staffing pressures but given a high priority to ensure staff are properly trained and that prisoners are given sufficient time and attention to help them overcome obstacles to finding a job or housing, avoid getting into debt, etc.
- iv) More realistic opportunities for employment and higher levels of prison pay would enable a prisoner to contribute something towards his family's expenses, compensate victims and pay back something towards a cost of imprisonment via the tax system. Treasury rules should be loosened to allow prisons to retain some trading profits. More rewarding employment opportunities in prison could have a beneficial impact on attitudes, increase productivity, and help families shoulder part of the burden they carry.

## 5. Commission Further Research

- i) Prisons should not simply be assessed according to economic performance indicators. Relational factors should be used to measure the effectiveness of prisons to deliver a humane and secure regime. Relational Justice Prison Audits are a means to assess the extent to which a penal establishment is fostering the kinds of relationships, particularly between prisoners and prison staff, which would result in individually responsible behaviour by prisoners.
- ii) At present, no one knows how many children have parents in prison. Statistical records should be maintained on a regular basis to determine the number of spouses, partners and children affected by imprisonment (whether during remand or sentence). These could then be set against information on distances between prisoners and their families and qualitative information from interviews with prisoners and their families to assess the impact of imprisonment on family ties
- iii) The prison service database should be upgraded to enable comparative information to be made available on the location of prisoners in relation to their home base in order to facilitate the sentence planning priority of placing offenders close to their families.
- iv) Little published research exists on the extent to which a prisoner's family and community ties are a contributory factor in successful rehabilitation. This would assist in determining the relational costs of prison and provide a basis for minimising such costs to particular prisoners.

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