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## Reform

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We believe that by reforming the public sector, increasing investment and extending choice, high quality services can be made available for everyone.

Our vision is of a Britain with 21st Century healthcare, high standards in schools, a modern and efficient transport system, safe streets, and a free, dynamic and competitive economy.

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# The lawful society

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## Executive summary

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The sterile debate on crime and police numbers has obscured a major shift in the public’s response to crime. Britons have become “passive bystanders”, uninformed about crime and punishment and less likely to participate in maintaining justice than people in other countries. Lacking the real facts, the public has demanded “something is done”, resulting in Robocop justice, ever more centralised and technocratic. This move has made Britain the most expensive country to police in the world and has rendered citizens incapable.

When violence has increased as a proportion of all recorded crime from 8 per cent in 1997 to 20 per cent in 2007-08, it is unsurprising that these “passive bystanders” call for action. Without the federal systems or alternative bulwarks of local power other countries have, crime has been nationalised and politicised with the Home Secretary and sometimes even the Prime Minister taking responsibility for every assault. The UK spends the largest amount on law and order as a proportion of total government spending, and as a percentage of GDP, of any country in the OECD, overtaking the US in the last decade.

The failings of Robocop have been recognised by the political parties who have all attempted to spell out a localist agenda. In practice though this approach is one of the “colouring book”, with national politicians dictating parameters and targets for local action with only a small amount of autonomy allowed. Radical decentralisation has been consistently blocked by politicians and police keen to maintain their national power base.

A new way forward is required to transform Britons from passive bystanders to active citizens. In order to do this there must be an information revolution with details on prosecution strategies, offenders and correctional programmes available to the public on a granular level, as well as a full extension of existing crime mapping programmes. There should be locally elected Justice Commissioners, whom people can hold accountable for the maintenance of order and pay for through local taxes. This must be balanced by the establishment of a National Bureau of Investigation. Maintaining lawfulness should be seen as part of the duty of every citizen, whose role should be to hold agents accountable and participate in the justice process.

These radical changes would unlock long overdue innovation. Experimentation could take place with vastly differing types of policing and enforcement, from low cost wardens and volunteer forces to specialist “hit squads” that could be brought in to deal with a pressing issue. Community police boxes could be installed so people could give confidential, early warnings of problems. Online offender databases giving full details of convicted criminals and correctional measures could be implemented. Court proceedings, prison activities and community service could be made visible through local TV and the internet. People could engage in debate about policing and correctional policies for their areas, leading to greater participation and allowing criminal justice policy to be subsumed within a wider quality of life and wellbeing agenda.

## 1

## The passive bystanders

Britain in the 21st century is a society where people feel increasingly incapable and unconfident to maintain the rule of law themselves, instead abdicating responsibility to a remote and technocratic criminal justice system. In a heavily regulated and protected society where low level aggression is less common than it was in the past, growing extreme violent crime strikes fear into the hearts of confidence-sapped citizens.

Information about the true nature of crime and the criminal justice process is limited by authorities who seek to increase the feeling of protection and reduce fear either for electoral advantage or to avoid scrutiny. The result is a public whose knowledge does not reflect the reality of crime or the criminal justice system.

Lacking the information or the capability to tackle outbreaks of crime themselves, people have become passive bystanders, looking for further protection from the authorities. They are less willing than citizens of other countries to intervene to stop criminal acts or to participate in the criminal justice system. They are more likely to think that maintaining law and order is the responsibility of the authorities rather than themselves. Other community figures such as teachers and priests have seen their authority challenged by social change and legislative measures. There are however signs that the public do want to be more engaged.

### A history of violence

Britain has become a society where low level violence is less tolerated than in the past and where more violence is defined as a criminal act, whether corporal punishment in the school or neighbourhood fights. In the Victorian period and the early years of the twentieth century, attitudes shifted from a tolerance of aggression towards a desire for self-discipline (particularly amongst men) and civility. Over the same period, extreme violence has worsened especially from around 1950 to around 1995. Thus we have a society where everyday violence is less commonplace (meaning people are not used to seeing it and dealing with it) but where violent crime when it does take place is more extreme.<sup>1</sup> This has contributed to a culture of fear about crime.

### Oliver Twist

While the evidence is difficult, criminologists generally believe that violent crime rose in the years between 1800 and 1850 and declined in the years between 1850 and around 1920. A large part of the cause of the decline in the Victorian period was a change in social attitudes to violence. The criminologist Martin Wiener described the change as follows:

“For one, as has been much discussed by historians of crime, the nineteenth- and early twentieth-century decline in recorded violence was part of a long-term social tendency for life-threatening violence to diminish, at least in public, under both the pressures of authority against such ‘disorderliness’ and the gradual rise in material standards of living and social standards of self-discipline and ‘civility’. The Victorian era greatly developed its inheritance from previous eras, racheting up the pressures of authority and, along with improving material conditions, raising the social standards of self-discipline.”<sup>2</sup>

Barry Godfrey and Paul Lawrence discuss a further explanation: that the period saw a change in attitudes towards masculinity. This matters because the overwhelming proportion of violence was (and still is) committed by men. They set out the idea that, in society, “masculine rituals of aggression were replaced with internal control of emotions such as anger”.<sup>3</sup>

1 The statistics on crime are notoriously difficult. In a recent summary, however, two academic authors suggested that serious crimes of violence had increased over the last decade, within an overall crime level that has fallen due to sharply reduced crimes against property. Newburn, T. and Reiner, R. (2007), “Crime and Penal Policy”, in Seldon, A. ed (2007), *Blair's Britain 1997-2007*. “Within the falling overall crime level, murder and other serious crimes of violence have increased. During the early 1990s there were around 650 homicides recorded per annum in England and Wales. Since 1997 this has increased to over 700, and in most years since the millennium, well over 800 (although the figures were inflated by specific cases such as the Harold Shipman victims recorded in 2003-04), declining to 765 in 2005-06 (including those who died in the July 2005 bombings). In 1997 8 per cent of all recorded offences were categorised by ‘violent’ (roughly similar proportions had characterised the crime statistics for decades), but by 2005-06 this had increased to 22 per cent. Recorded robberies have continued to rise, as have drug offences according to the latest statistics. So the trends are certainly not as rosy as the BCS suggests.”

2 Wiener, M. (2004), *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England*.

3 Godfrey, B. and Lawrence, P. (2005), *Crime and Justice 1750-1950*.

### Brighton Rock

In the early post war years, low level violent behaviour was a feature of mainstream society. Very rarely would low level assault be reported to the police – instead it would be dealt with by neighbours, family and schools. Films like *Brighton Rock*, *Saturday Night and Sunday Morning* and *Cathy Come Home* portrayed a society where violence was commonplace.

The police themselves were willing to commit violence as part of their normal working practice:

- > “The police fairly regularly used physical violence to control difficult situations or to informally punish people they felt deserved a beating rather than arrest. These cases of violence rarely appeared in the statistics of violence.”<sup>4</sup>
- > “There is much evidence from oral histories and memoirs that in the ‘Golden Age’ of consent to policing, the treatment of the ‘police property’ groups at the base of the social hierarchy was rough, ready and uninhibited by notions of legality or justice.”<sup>5</sup>

The official statistics indicate that recorded violent crime has risen since the 1950s.<sup>6</sup> But the above evidence suggests that the true levels of violence were higher in the early period. Sean McConville, Professor of Criminology at Queen Mary College, University of London suggests that levels of violence “would have been much the same in the 1950s” as today, only less likely to be reported.

Anecdotal evidence suggests there was widespread corporal punishment of children in schools and other public institutions and a greater public tolerance of domestic violence both by parents against children and by husbands against wives. “It took a long time for the police to take wifebeating seriously,” McConville says. “The most significant raising of awareness came with the publication of Erin Pizzey’s book *Scream Quietly or the Neighbours Will Hear* in 1974.”<sup>7</sup>

### Working nine to five

Attitudes to violence have hardened over the last sixty years as the UK has shifted towards a more white-collar society. Post-war growth in the services industries and a decline in manufacturing has seen the proportion of the workforce employed in the service sector grow from just under 50 per cent in 1951 to over 80 per cent by 2007.<sup>8</sup>

The increasing intolerance towards violence was reflected in other cultural changes, such as the social unacceptability of drink driving and the ban on corporal punishment in British state schools in 1986 (extended to private schools in 1998).

Academics have noted that the reporting of violence in the media has changed from a factual style in 1895 to a highly emotional style at the end of the twentieth century. This is consistent with the idea that society sees violence as unacceptable.<sup>9</sup>

### See no evil, hear no evil

The fear of violence and crime is exacerbated by poor information available about crime and the criminal justice system. The result is a perception of crime and justice that differs substantially from the reality.

### Information on crime and policing is poor

Information provided to the public is currently poor: the use of crime mapping by police forces and Crime and Disorder Reduction Partnerships is increasing, but a limited number of these make the results easily accessible to the public.<sup>10</sup> Those who do publish offences on online maps, such as the West Midlands Police and West Yorkshire Police Authority, do not make information available at a precise level.<sup>11</sup>

4 Ibid.

5 Newburn, T. and Reiner, R. (2007), “Policing and the police” in Maguire, M., Morgan, R. and Reiner, R. (2007), *The Oxford Handbook of Criminology*.

6 Levi, M., Maguire, M. and Brookman, F. (2007), “Violent crime”, in Maguire, M., Morgan, R. and Reiner, R. (2007), *The Oxford Handbook of Criminology*. “Over the medium term, however, the evidence points mainly in the other direction – though the picture has become very unclear in the past few years. According to the official crime statistics in England and Wales, there was a strong and sustained increase in violent offences, as in most other types of crime, between the mid-1950s and mid-1990s.”

7 The Guardian (2002), “Grime time”, 15 May.

8 Hall, S. et al (1996), *Modernity: An Introduction to Modern Societies. Labour market statistics, First Release*, August 2008.

9 Godfrey, B. and Lawrence, P. (2005), *Crime and Justice 1750-1950*.

10 Wier, R. and Bangs, M. (2007), *The use of Geographic Information Systems by crime analysts in England and Wales*. Home Office.

11 See West Midlands Police My Neighbourhood website at [www.myneighbourhood.info](http://www.myneighbourhood.info) and West Yorkshire Police Authority Beatcrime website at [www.beatcrime.info](http://www.beatcrime.info).

The website CrimeReports.com in the US, commissioned by law enforcement agencies, is able to provide clear street-by-street locations of offences.<sup>12</sup> Central annual publishing of statistics by the Home Office does not give a clear picture either. An online map reveals total offences per 1000 population for the year by local authority,<sup>13</sup> whilst the British Crime Survey and Police Recorded Crime figures give the number of offences in ten broad crime categories by police force and region as well as a breakdown of specific types of offences, but only at national level.<sup>14</sup> However, the Metropolitan Police have recently set up a promising test site that provides burglary, robbery and vehicle offences per month and yearly trends at subward level.<sup>15</sup> There is a much more open culture elsewhere, for example US prosecutors and their policies are openly discussed on blogs and by the electorate.<sup>16</sup>

The Cabinet Review *Engaging Communities in Fighting Crime* found that “the public don’t feel they get enough local information about crime”.<sup>17</sup> The review found six priorities for information: “Local information”; “Regular information”; “Straight facts – not just statistics, but reliable, clear and accessible ‘non-spun’ facts”; “Information about action – they want to know what the police and others are doing to tackle crime”; “Practical information” – such as contact details of local agencies, and instructions for reporting crimes; and “Information from a variety of sources” – from direct contact with police officers to public meetings to meeting online.

### Information on offenders and correction is virtually non-existent

There is very little available information about the process of conviction and correction available to the public in the UK. In comparison to the US Department of Justice which relays news of convictions on the front page of their website, the UK Home Office and Ministry of Justice do not obviously display information to the public on what is happening to offenders.<sup>18</sup> The US also provides information about individual offenders and their release dates whilst some prisons show what the activity and output is.<sup>19</sup>

The balance in the US is greatly more in favour of the public than offenders, allowing potential home owners to know about convicts in their area. There are free public record sites which can be accessed by businesses and residents, providing maps and sending emails warning people when an individual with a record moves into their neighbourhood. This is not without concerns, namely identity theft or inaccurate data and the ability to rehabilitate offenders, but the presumption is in favour of the ability of the public as adult decision makers to understand this, rather than for the information just to be held by the authorities.<sup>20</sup>

The screenshot shows the 'Inmate Locator' page of the Federal Bureau of Prisons website. It features a search bar and a table of inmate records. The table columns are Name, Register Number, Age, Race, Sex, Release Date (Actual / Projected), and Location. The records listed are for an individual named JOHN SMITH with various register numbers and release dates, some indicating they are released and others in custody.

Name	Register Number	Age	Race	Sex	Release Date Actual / Projected	Location
1. JOHN SMITH	19015-080	64	White	M	02-24-1983	RELEASED
2. JOHN SMITH	04482-061	35	Black	M	06-08-2015	BECKLEY FCI
3. JOHN SMITH	63253-066	38	Black	M	07-07-2008	RELEASED
4. JOHN SMITH	15304-097	30	White	M	02-18-2016	LA TUNA FCI
5. JOHN SMITH	23707-175	56	Black	M	08-13-1981	RELEASED
6. JOHN SMITH	19665-076	29	White	M	12-11-2010	BECKLEY FCI
7. JOHN SMITH	06159-067	42	White	M	04-29-1994	RELEASED
8. JOHN SMITH	22420-004	50	Black	M	06-14-1984	RELEASED
9. JOHN SMITH	18318-004	53	White	M	01-25-1985	RELEASED
10. JOHN SMITH	80558-020	68	White	M	UNKNOWN	NOT IN BOP CUSTODY
11. JOHN SMITH	11534-021	42	Black	M	06-15-2003	RELEASED
12. JOHN SMITH	13757-112	41	White	M	04-25-2007	RELEASED
13. JOHN SMITH	09334-071	108	White	M	07-03-1981	RELEASED
14. JOHN SMITH	02027-000	48	Black	M	09-26-2008	SCHUYLKILL FCI
15. JOHN SMITH	01924-000	54	White	M	UNKNOWN	NOT IN BOP CUSTODY

12 See CrimeReports website at <http://www.crimereports.com/>.  
 13 Home Office (2008), research development statistics, instant atlas.  
 14 Kershaw, C. et al (eds.) (2008), *Crime in England and Wales 2007-08 – Findings from the British Crime Survey and police recorded crime*. Home Office.  
 15 Metropolitan Police, *Met’s Crime Mapping Test*, see <http://maps.met.police.uk/>.  
 16 See examples on Michael Forbes Wilcox’s blog site at <http://www.mfw.us/hopeful-opposes-capeless-in-race>.  
 17 Cabinet Office (2008), *Engaging Communities in Fighting Crime – a review by Louise Casey*. Cabinet Office.  
 18 See the United States Department of Justice website at <http://www.usdoj.gov/>.  
 19 Federal Bureau of Prisons (2008), *Inmate locator*, [http://www.bop.gov/inmate\\_locator/index.jsp](http://www.bop.gov/inmate_locator/index.jsp).  
 20 Privacy Rights Clearinghouse (2006), *Public Records on the Internet: The Privacy Dilemma*; The New York Times (2008), “If You Run a Red Light, Will Everyone Know?”, 3 August; Kerr, T. and Shelton, R. (2001), *Privacy and the development of online criminal databases*.

Merely presenting the crime without the correction gives a very unbalanced view of UK criminal justice to the public. According to *Engaging Communities in Fighting Crime*, “the public see the criminal justice system as a distant, sealed-off entity, unaccountable and unanswerable to them or to Government. In part this distance is created by the fact that little information about what happens to those who commit crime is placed in the public domain.”<sup>21</sup>

Other countries such as Germany and the US have a “most wanted” list on state and federal websites. The UK appears to fare better with regards to this aspect of informing the public of wanted criminals. The Metropolitan Police have a breakdown of wanted cases by London borough<sup>22</sup> and several other police forces such as the West Midlands<sup>23</sup> and Avon and Somerset<sup>24</sup> also publish wanted lists. However whilst the public are aware that people are being sought in relation to crimes, they receive little information about whether the offenders are caught and how they are dealt with. This lack of awareness of the outcomes of criminal cases is one of the issues that can instil fear in the public.

### Misinformation breeds fear

The gap between actual levels of crime and perceptions of levels of crime are increasing according to a report by Ipsos MORI. Their study in 2007 reveals that over two in five British people think that crime and violence is one of the most worrying issues for them (43 per cent), double the level of Germany (21 per cent) and noticeably more than America (27 per cent).<sup>25</sup> There is also a gap between local and national perceptions of crime. A recent ComRes poll revealed that 82 per cent of people expect violent crime to increase over the next year.<sup>26</sup>

Overseas research has found that the public has a distorted view of the amount of crime that involves violence and that violence is central to people’s perception of crime. When asked to estimate the amount of violent crime, the Canadian, Australian and British public overestimated by a considerable margin the proportion of crime that involved violence.<sup>27</sup> Yet most crime, in most western countries, consists of offences against property. It is likely, therefore, that the media’s reporting of crime, in particular violent crime, has an impact on people’s perception of how much crime involves violence. In a study by New Zealand’s Ministry of Justice conducted of three daily newspapers during the data collection phase, they counted 419 crime stories – 91 related to crimes of murder.<sup>28</sup>

This inaccurate perception extends across the criminal justice system. The British Crime Survey found that most of the public in both the 1996 and 1998 surveys underestimated the use of imprisonment for mugging, burglary and rape.<sup>29</sup>

### Disempowered citizens

A fear of reprisal and lack of information has disempowered Britain’s citizens to deal with crime and participate in the criminal justice system. Survey evidence shows that, compared to other major European countries, UK residents are far less likely to challenge anti-social behaviour. They are also most likely to believe that public agencies rather than citizens are responsible for tackling anti-social behaviour.

### Reluctant heroes

The “have a go hero” is an increasing rarity in Britain. Research commissioned by the security firm ADT Alarms in 2006 studied public perceptions of anti-social behaviour in six European countries – France, Germany, Italy, the Netherlands, Spain and the UK. It found that six out of ten people would be unlikely to challenge a group of 14 year old boys vandalising a bus shelter in the UK, more than any other country surveyed. In Germany, six out of ten **would** challenge the group.<sup>30</sup>

21 Cabinet Office (2008), *Engaging Communities in Fighting Crime – a review by Louise Casey*. Cabinet Office, June 2008.  
 22 Metropolitan Police (2008), *Scotland Yard’s Wanted*, <http://www.met.police.uk/wanted/>.  
 23 West Midlands Police (2008), *Wanted*, <http://www.west-midlands.police.uk/wanted/index.asp>.  
 24 Avon and Somerset Police (2008), *Wanted on warrant*, [http://www.avonandsomerset.police.uk/operations\\_and\\_initiatives/relentless/WantedOnWarrant.aspx](http://www.avonandsomerset.police.uk/operations_and_initiatives/relentless/WantedOnWarrant.aspx).  
 25 Ipsos MORI (2007), *Closing the gaps: crime and public perceptions*.  
 26 ComRes (2008), *Daily Politics Crime Poll*, July.  
 27 Paulin, J. et al (2003), *Attitude To Crime and Punishment: A New Zealand Study*, Ministry of Justice.  
 28 Ibid.  
 29 Hough, M. and Roberts, J. (1998), *Attitudes to punishment: findings from the British Crime Survey*. Home Office; Mattinson, J. and Mirrlees-Black, C. (2000) *Attitudes to Crime and Criminal Justice: Findings from the 1998 British Crime Survey*. Home Office.  
 30 Laycock, G. (2008), *What’s new? Research for Practitioners*, Jill Dando Institute of Crime Science, University College London.

Yet Britons do want to act. In a survey carried out for the Cabinet Office's recent Crime and Communities Review, 66 per cent of respondents said that they "felt that they could play a role in tackling or preventing crime". Over the last fifteen years, there has been a great increase in expenditure on the defence of property, both through locks and alarms and through the employment of private security staff showing that where society is free from the risk of violence, it has shown that it is willing to act to maintain lawfulness. 78 per cent of main family cars in England and Wales in 2006-07 were protected by an immobiliser, compared to only 23 per cent in 1991.<sup>31</sup> The private security sector may now be worth £5 billion per year and employ over 300,000 people.<sup>32</sup>

This suggests that there is a gap between the current contribution of UK society to lawfulness and its potential, much greater contribution.<sup>33</sup>

### Abdication of responsibility

The evidence also suggests that people in the UK have passed responsibility for lawfulness to criminal justice agencies in a way that has not happened overseas. The ADT Alarms survey also asked, "Who is responsible for controlling anti-social behaviour?" In the UK the police and courts were held responsible by 76 per cent of people surveyed – the highest percentage of all countries in the survey. The equivalent figures were only around 45 per cent in France and Germany.

Professor Gloria Laycock of the UCL Jill Dando Institute of Crime Science has highlighted this research. As she has pointed out, why would people in the UK intervene when they think it is for the police and courts to control young people?

**Table 1: "Who do you think is responsible for controlling anti-social behaviour"**  
Source: ADT Alarms, 2006

% of respondents	France	Germany	Italy	Netherlands	Spain	UK
Parents	84	81	73	91	82	87
Police/courts	45	43	65	46	54	76
Schools/teachers	28	54	40	27	41	28
The community	27	51	34	39	19	28
Central/local government	44	21	30	25	40	30
Peer groups	20	16	10	27	16	19
Faith groups	9	3	3	6	2	2
Voluntary organisations	6	4	5	0	2	3
None of these/don't know	2	3	2	2	3	2

There is growing discontent of this abdication of responsibility. Following the recent debate on knife crime, some politicians and senior officers have called on society to do more. Speaking in July 2008, the Chief Constable of Northumbria, Michael Craik, commented that he would like to "get back to" the society of his youth in which adults told off youths whom they saw being unruly.<sup>34</sup> Others have sounded more cautious.

31 Kershaw, C. et al (eds) (2008), *Crime in England and Wales 2007-08 – Findings from the British Crime Survey and police recorded crime*. Home Office.  
32 Newburn, T. and Reiner, R. (2007), "Policing and the police" in Maguire, M, Morgan, R. and Reiner, R. (2007), *The Oxford Handbook of Criminology*.  
33 Cabinet Office (2008), *Engaging Communities in Fighting Crime – a review by Louise Casey*. Cabinet Office.  
34 Mr Craik was reported widely in the media as saying: "That scenario of kids misbehaving on the bus and all the adults not daring to say anything – that's the culture we need to change. And, I would advise people: yes, if you think you should and you think you can, then say something. I don't want to live in a world where only the police dare confront them. When I was a kid and you were misbehaving any adult could challenge you. I'd like to get back to that."

### Weakening pillars of the community

The ADT study also points towards a fall in the authority of other community figures. For example teachers have also found their room for manoeuvre restricted by a growth of a rights culture and an increase in direction from government about how they should behave in the classroom. Moves to redress this are being made. For example, Sir Alan Steer, the Government's behaviour adviser, made the proposal in a report to Ed Balls for teachers to be allowed by law to search children for drugs, alcohol and cigarettes in school.<sup>35</sup> Ed Balls has welcomed these proposals and set out his intention to legislate to this effect.<sup>36</sup>

### Lack of engagement in the criminal justice system

Engagement and participation in the criminal justice system is lower than in the past. Evidence suggests that this is even greater where the service has low visibility.

Lord Woolf, the former Lord Chief Justice of England and Wales, has made this point in relation to the law courts:

"The changes which have taken place since those days [when Lord Woolf was a young barrister] have brought many benefits, but have also resulted in the courts becoming less connected with the communities that they serve... A court's relationship with its local community today is still not as close as it was 40 years ago."<sup>37</sup>

The recent review by Louise Casey reported that the relationship between the public and the police has become more distant:

"Where 25 years ago it was predominantly the public getting in touch with the police fairly informally, contact now tends to be about more formal matters and it is more likely that the police will initiate contact with the public."<sup>38</sup>

Past surveys have indicated that the least visible parts of the justice system are the least popular. Polls have demonstrated that the public scores the performance of the police relatively highly and of the judiciary relatively poorly. In the 2004-05 British Crime Survey, 48 per cent rated the police positively as doing an excellent or good job, whereas only 26 per cent rated judges as doing an excellent or good job.<sup>39</sup>

**Table 2: Public perception of the performance of elements of the criminal justice system**  
Source: Home Office (2006), *The 2004-05 British Crime Survey*

	% Excellent/good
Police	48
Probation Officers	28
Magistrates	28
Crown Prosecution Service	27
Judges	26
Prison	26

There is evidence that people are now participating less in law making and enforcement. There are significant shortages of magistrates in London, Liverpool, Greater Manchester, Birmingham, Kent, Lancashire, Norfolk, Nottinghamshire and West Yorkshire.<sup>40</sup> They also do not reflect the make up of communities – there is a national shortage of young working magistrates with 80 per cent over 50 years old. Often only the retired or unemployed can afford to have long periods of unpaid work sitting as a magistrate.

35 Steer, A. (2008) *Behaviour Review Paper 3*.  
36 Balls, E. (2008), letter to Sir Alan Steer, Headteacher, Seven Kings High School, 14 July.  
37 Woolf, Lord (2003), *A Justice System that the Community Owns*, Criminal Justice Serving the Community Conference, QE II Conference Centre London, 7 July.  
38 Cabinet Office (2008), *Engaging Communities in Fighting Crime – a review by Louise Casey*. Cabinet Office.  
39 Allen, J. et al (2006), *Policing and the criminal justice system – public confidence and perceptions: findings from the 2004/05 British Crime Survey*, Home Office.  
40 Department for Constitutional Affairs (2005), *Employing Magistrates: The Call to Business*; BBC News (2003), "Magistrates court would-be JPs", 17 June.

# 2

## The building of “Robocop”

The preceding chapter explained how society has become more defensive and less willing to take responsibility for lawfulness. The evidence below shows how government and its agencies have stepped in to fill the gap. Criminal justice has become highly politicised over the last fifteen years and highly centralised over the last decade.

Throughout the period, government has also made some efforts to strengthen the accountability of criminal justice to local groups. But the structure of UK government – in particular local government – is not well suited to that transfer of power. And the great majority of decisions have countervailed those efforts and have strengthened accountability to the centre. Following the 2007 Comprehensive Spending Review, the apparatus at the centre of government for managing the criminal justice machine has become larger and more complex.

The crime debate has remained just as politicised. The debate follows a vicious circle: political leaders speak of the dangers of crime and of its pervasiveness throughout society; public fear of crime is heightened and there is a clamour for action; political leaders promise new resources to the criminal justice system, and the circle repeats.

The myth has arisen that the Home Secretary – and even the Prime Minister – is responsible for tackling crime. Leading politicians have themselves conspired in creating that myth. Aneurin Bevan’s comment that a bedpan falling in a hospital corridor would be heard in Whitehall now applies just as much to the criminal justice system. As noted below, one academic counted thirty-three “tough on crime” initiatives between June 2001 and May 2003 alone.<sup>41</sup>

The result is a criminal justice system without a human face – bureaucratic, technocratic and machine-like. If the face of British criminal justice was once George Dixon of Dock Green, the new face might be the Robocop of Detroit’s fictional future.

### Reporting into the centre

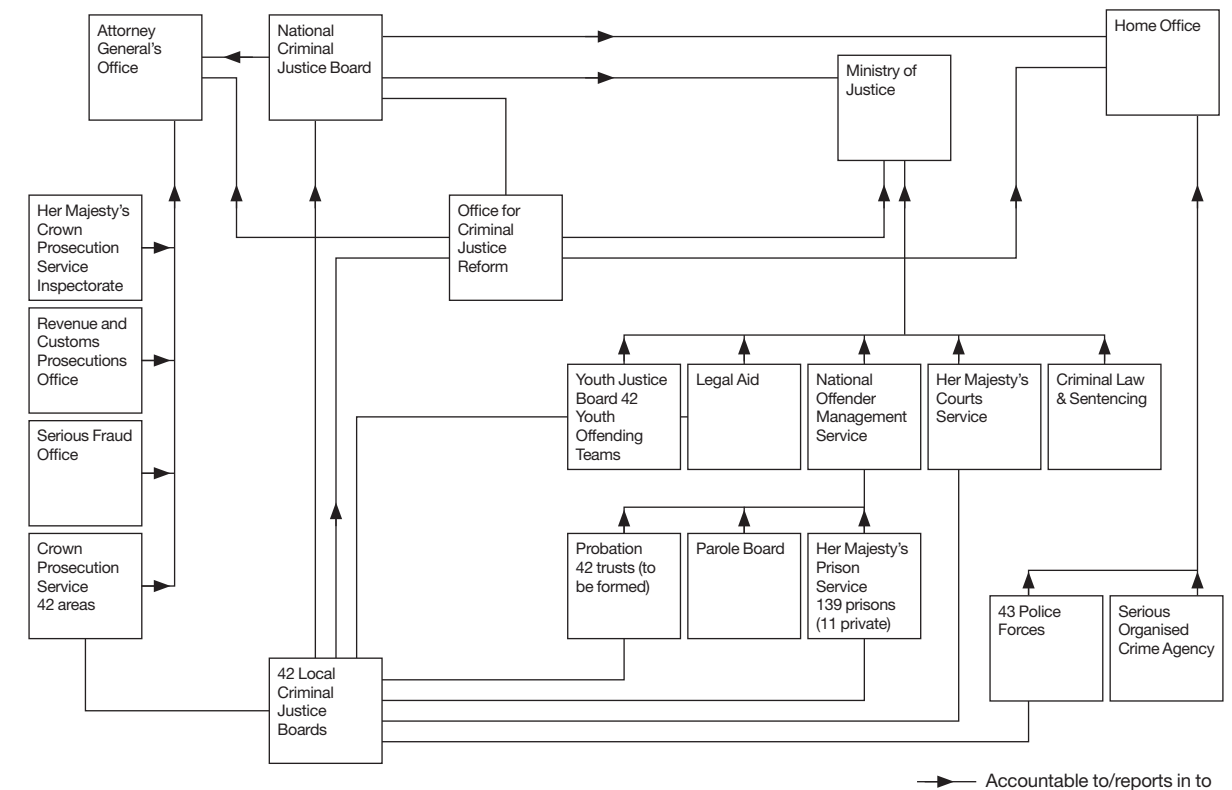
The diagram below shows the structure of the criminal justice system in England and Wales. The various agencies that make up the system are accountable upward to the tripartite governing structure of the Attorney General’s Office, the Ministry of Justice and the Home Office.

The Crown Prosecution Service was re-organised from 13 to 42 areas in 1998 after fears it was becoming “over-centralised and bureaucratic”. It is, however, headed by the Director of Public Prosecutions who is accountable nationally to the Attorney General for its work. The Serious Fraud Office, Revenue and Customs Prosecutions Office and Her Majesty’s Crown Prosecution Service Inspectorate are also accountable nationally to the Attorney General’s Office.

The Probation Service was centralised in 2000, and since 2004 has been answerable to the National Offender Management Service (NOMS). Her Majesty’s Prison Service was streamlined into NOMS in 2008, and NOMS also oversees the local probation trusts. The Ministry of Justice is responsible for the NOMS. Sentencing, Legal Aid, the Youth Justice Board and Her Majesty’s Court Service also fall under the jurisdiction of the Ministry of Justice.

The Police and Serious Organised Crime Agency are now the responsibility of the Home Office.

### The criminal justice system in England and Wales, 2008



### Public Service Agreements drive further centralisation

The Public Service Agreements (PSAs) launched with the 2007 Comprehensive Spending Review entrench the centralisation of criminal justice policy. There is a complex apparatus at the centre of government to direct national activity.

There are three relevant PSAs:

- “23. Make communities safer”
- “24. Deliver a more effective, transparent and responsive Criminal Justice System for victims and the public”
- “25. Reduce the harm caused by Alcohol and Drugs”

The delivery plan for each PSA makes clear that the criminal justice agencies will answer to the centre.

The Minister responsible for the delivery of PSA 23 is the Home Secretary. The Home Secretary chairs the National Crime Reduction Board (NCRB) which first met in October 2007. The Board brings together the government departments and local agencies responsible for crime reduction.<sup>42</sup> The Board is supported by a “PSA delivery board”, chaired by the Senior Responsible Officer for the PSA, the Director of the Home Office Police and Crime Standards Directorate.

41 Tonry, M. (2004), *Punishment and Politics*.

42 HM Treasury (2007), *PSA Delivery Agreement 23: Make communities safer*. “This PSA and Crime Strategy will be governed at a national level through a new cross-government National Crime Reduction Board (NCRB), chaired by the Home Secretary (the lead minister for the PSA). Membership will include Ministers from departments across Whitehall, as well as representatives from ACPO, the APA, the LGA, the third sector, and a victims’ representative. The relevant Cabinet Committee/s will drive performance by regularly monitoring progress, holding departments and programmes to account and resolving inter-departmental disputes where they arise.”

The Minister responsible for the delivery of PSA 24 is the Lord Chancellor and Secretary of State for Justice. Three central Boards support that Minister: the National Criminal Justice Board (chaired alternately by the Home Secretary and the Secretary of State for Justice), the Criminal Justice System Operational Board and the National Crime Reduction Board (NCRB). The Senior Responsible Officer for this PSA is the Chief Executive of the Office for Criminal Justice Reform.<sup>43</sup>

The Minister responsible for the delivery of PSA 25 is the Home Secretary. The Senior Responsible Officer within government for the PSA will be the Director of the Crime and Drugs Strategy Directorate, Home Office who will chair Senior Official PSA Delivery Boards on alcohol and drugs respectively, comprising all lead and supporting departments. The Boards will also monitor progress and review delivery regularly and report to the relevant Cabinet Committees. There are also a government-level Ministerial Alcohol Group, Alcohol Strategy Delivery Group and individual Drug Strategy programme boards.<sup>44</sup>

### The UK is uniquely centralised

The UK has one of the most centralised criminal justice systems in the world. Only the French have a system centralised to the same extent.<sup>45</sup>

The federal nations – the United States, Canada, Australia and Germany – have highly decentralised criminal justice systems. In the US, the existence of the FBI enables local police forces to carry out local police work, and local courts to administer punishment locally.<sup>46</sup> Furthermore, innovation is generally high as states are able to form crime policies suited to their locality. Chicago’s alternative policing strategy made local police accountable, held local crime meetings and moved the programme away from a “police programme” to a “city programme”.<sup>47</sup> In Connecticut a new probation strategy was devised which aimed at cutting parole violation rates by helping offenders to comply with the requirements of supervision.<sup>48</sup>

International comparisons show that criminal justice is most effective where it is close to the public and there is strong local accountability. In Japan, community policing exists in the form of Kobans, or police boxes, with two or three officers on hand 24 hours a day to deal with small crime and community problems.<sup>49</sup> The Dutch use City Wardens, or Stadswacht, to reduce crime through presence and community engagement, rather than formal police powers.<sup>50</sup>

Even unitary states similar to Britain have more decentralised criminal justice systems. The Japanese National Police Agency is an apolitical body responsible for policing in Japan.<sup>51</sup> In Singapore, the Neighbourhood Police Centre (NPC) system means a broader range of police services are provided at the community level. Decentralisation of command also enables local commanders to make better decisions, optimally deploy their resources and customise policing to meet local needs.<sup>52</sup>

These innovations are stifled in Britain. International experience suggests that Britain is lagging behind many of its competitors who see decentralisation as the way to provide more efficient and effective criminal justice.

43 HM Treasury (2007), *PSA Delivery Agreement 24: Deliver a more effective, transparent and responsive Criminal Justice System for victims and the public*. “The lead Minister for this PSA is the Lord Chancellor and Secretary of State for Justice. But successful delivery of this PSA will require shared ownership and effective joint working between all CJS departments and agencies. The Lord Chancellor and Secretary of State for Justice, the Home Secretary and the Attorney General therefore all share responsibility to deliver this PSA... The Senior Responsible Officer for this PSA is the Chief Executive of the Office for Criminal Justice Reform. The relevant Cabinet Committee/s will drive performance by regularly monitoring progress, holding departments and programmes to account and resolving inter-departmental disputes where they arise. Beyond this, the National Criminal Justice Board (NCJB) brings together CJS ministers, senior representatives of the three government departments, the key criminal justice agencies and representatives of the judiciary and the voluntary sector, to oversee aspects of criminal justice strategy and performance, including delivery of this PSA. The NCJB sets the strategic direction and agrees targets for Local Criminal Justice Boards (LCJBs).”

44 HM Treasury (2007), *PSA Delivery Agreement 25: Reduce the harm caused by Alcohol and Drugs*.

45 Based on *Reform* research on the criminal justice systems in France, Germany, the United States, Canada, the Netherlands and Japan.

46 Federal Bureau of Investigation (2008), <http://www.fbi.gov/>.

47 City of Chicago Police Department (2008), <http://egov.cityofchicago.org/city/webportal/portalEntityHomeAction.do?entityName=Police&entityNameEnumValue=33>.

48 Raynor, P. (2007), “Community penalties: probation, ‘what works’ and offender management” in Maguire, M., Morgan, R. and Reiner, R. (2007), *The Oxford Handbook of Criminology*.

49 Princeton University (2008), *Japanese Police Organization*, <http://www.princeton.edu/~tpeng/organization.html>.

50 Jacobson, J. and Saville, E. (1999), *Neighbourhood Warden Schemes: an overview*, Home Office.

51 Japanese National Police Agency (2007), <http://www.npa.go.jp/english/index.htm>.

52 Singapore Police Force (2008), <http://www.spf.gov.sg/>.

### The centralisation of criminal justice policy since the 1980s

Whilst there have been constant moves to centralise criminal justice in the UK, a step change can be noted in the 1980s. Under Margaret Thatcher’s premiership, reforms were designed to increase the efficiency and better management of the service through exhortation, financial controls and performance monitoring, although it was noted that reforms were not as extensive as in other public services. It was under the Conservative Home Secretary, Michael Howard that the focus shifted to the central objective of crime reduction and how the levers of the central state could be used to achieve this.<sup>53</sup> The pace of centralisation increased sharply again in 1997, when Tony Blair became Prime Minister. Recent reviews of the period have highlighted the following features of policy-making:

- > An extremely high volume of legislation. “In the last 10 years Labour has created more than 3,000 new criminal offences, passed 115,000 pages of legislation and introduced more than 50 Bills, including 24 criminal justice measures. Compare this with the 60 years between 1925 and 1985 when governments of different colours managed to get by with only six Criminal Justice Acts, an average of one every decade.”<sup>54</sup>
- > A trend of centralisation over policing, through the creation of new national agencies and a many-layered performance management regime.<sup>55</sup>
- > Efforts to define social problems as criminal justice problems, to be brought within the ambit of the criminal justice system. The introduction of the Anti-Social Behaviour Order (ASBO) is seen as crucial here. “Labour has not neglected its pledge to be tough on the causes of crime... Yet the overwhelming message from government on law and order has remained that tough crime-fighting policies are key. In its concern to jettison Old Labour’s tendency to ‘define deviancy down’, New Labour has swung inexorably in the other direction: redefining social ills as problems of crime and social order, and extending the reach of the criminal justice system into ever greater parts of community and family life.”<sup>56</sup>

### The “turbo-politicisation” of criminal justice

Both major parties have competed to talk up the extent of crime and to associate themselves with measures to tackle it. The politicisation of decision-making has given a powerful impetus to centralisation. One academic has noted thirty-three “tough on crime” initiatives between June 2001 and May 2003 alone.<sup>57</sup>

Newburn and Reiner (2007) use the phrase “turbo-politicisation” of the current criminal justice debate. They judge that Tony Blair set the template for this extremely high level of politicisation of policy:

“Blair’s role has been central. Seemingly ill at ease leaving home affairs to his Home Secretaries, Blair surrounded himself with policy teams and advisers, producing a stream of ideas and initiatives... In the years leading up to the 1997 election victory, crime worked well for Blair. His speech after the murder of James Bulger, and the ‘tough on crime’ soundbite, powerfully illustrated how effective crime stories could be in the positive presentation of self to the electorate.”<sup>58</sup>

53 James, A. and Raine, J. (1998), *The New Politics of Criminal Justice*.

54 *The Independent*, (2007), “Endless new criminal laws that lead to injustice”, 31 October.

55 New agencies included the Police Standards Unit, the National Policing Improvement Agency and the Serious Organised Crime Agency. See for example Herbert, N., “Policing in 2010 – a new reform agenda”, in Haldenby, A. (ed.) (2006), *Public service reform 2006-2010*, The Smith Institute.

56 Newburn, T. and Reiner, R. (2007), “Crime and Penal Policy”, in Seldon, A. (ed.) (2007), *Blair’s Britain 1997-2007*.

57 Tonry, M. (2004), *Punishment and Politics*.

58 Newburn, T. and Reiner, R. (2007), “Crime and Penal Policy”, in Seldon, A. (ed.) (2007), *Blair’s Britain 1997-2007*.

A memo written in April 2000 but leaked later revealed the Prime Minister’s strategy:

“On crime, we need to highlight the tough measures: compulsory tests for drugs before bail... the extra number of burglars jailed under ‘three strikes and you’re out’. Above all, we must deal now with street crime... When the figures are published... they will show a small – 4 per cent – rise in crime. But this will almost entirely be due to the rise in levels of street crime – mobile phones, bags being snatched. This will be worst in London. The Met Police are putting in place measures to deal with it; but as ever, we lack a tough public message along with the strategy. We should think now of an initiative e.g. locking up street muggers. Something tough, with immediate bite that sends a message through the system... But this should be done soon and I, personally, should be associated with it.”<sup>59</sup>

### Barriers to decentralisation

There is much in the Government’s policy-making that looks to decentralise. But as Sir Ian Blair explained in a recent speech, the desire for decentralisation is conflicting with the culture of centralisation. For example, Local Strategic Partnerships and Local Area Agreements are meant to push responsibility for delivery down to a more local level – but this cannot occur in practice while the police are still ultimately answerable to the Home Office.<sup>60</sup> Centrally-determined targets are out of touch with what people want, and what local politicians want to give them. Sir Ian points out that policing requires a uniquely varied approach specific to local areas – incompatible with a centrally driven target regime.

The police are meant to report to local police authorities, which set the local strategic direction and priorities of the force. However in reality these local authorities are tied to targets set by the Home Secretary with limited room for local manoeuvre. Similarly local probation trusts and the prison service are accountable nationally to NOMS; youth offending teams report to the Youth Justice Board which falls under the rule of the Ministry of Justice; while the Crown Prosecution Service is controlled by the Director of Public Prosecutions – superintended by the Attorney General at a national level.

This confusion in accountability is particularly acute for the Metropolitan Police. As they have both a national role and a local role, they are neither entirely accountable to the Mayor of London, nor to the Home Secretary. This has caused the recent spat between Boris Johnson and Ian Blair.

In keeping with the targets culture that has dominated the last decade of public services policy, the criminal justice system has become stifled by central targets. Despite the establishment of 42 Local Criminal Justice Boards (LCJBs) in 2003, overall targets and standards continue to be set at the national level. The Government’s *Strategic Plan for Criminal Justice 2008-11* confirmed that this centralised framework will continue in the near future.<sup>61</sup> While the report claims that LCJBs have “the freedom to drive forward innovative reforms to improve their services and respond to their communities”, in reality innovation and accountability are suffocated by the inability to determine targets locally.

59 Ibid  
60 Blair, I. (2008), “Accountability in Policing or ‘What’s this to do with Bromley?’”, the Colin Cramphorn Memorial Lecture, Policy Exchange, 18 June.  
61 Office for Criminal Justice Reform (2007), *Working Together to Cut Crime and Deliver Justice: A Strategic Plan for 2008-11*.

# 3

## The most expensive criminal justice system in the world

The UK spends the largest amount on law and order as a proportion of total government spending, and as a percent of GDP, than any other country in the OECD.<sup>62</sup> Not far above the US, which also has exceptionally high levels of spending on criminal justice, the UK’s public order and safety share of public spending is more than double that of Sweden, France and Denmark and around 50 per cent greater than that of Canada, Germany and Japan.

**Table 3: Government expenditure on public order and safety**

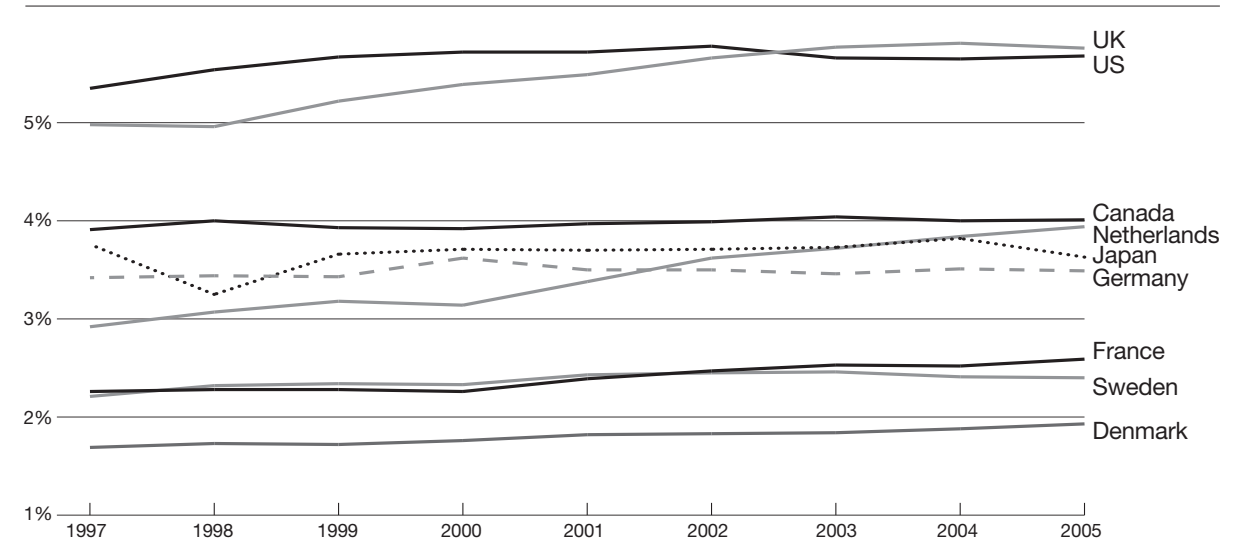
Source: OECD statistical database (2008), Dataset 11: Government expenditure by function; Dataset 1: Gross GDP; Reform calculations.

	1997		2001		2005	
	% total spending	% GDP	% total spending	% GDP	% total spending	% GDP
UK	5.0	2.1	5.5	2.2	5.8	2.6
US	5.3	1.9	5.7	2.0	5.7	2.1
Netherlands	2.9	1.4	3.4	1.5	3.9	1.8
Canada	3.9	1.7	4.0	1.7	4.0	1.6
Germany	3.4	1.7	3.5	1.7	3.5	1.6
Japan	3.8	1.3	3.7	1.4	3.6	1.4
France	2.3	1.2	2.4	1.2	2.6	1.4
Sweden	2.2	1.3	2.4	1.3	2.4	1.3
Denmark	1.7	1.0	1.8	1.0	1.9	1.0

With the exception of the Netherlands, spending in the UK has also increased far more substantially in the last decade than most OECD countries, both as a proportion of total government spending and as a percentage of GDP.

**Government expenditure on public order and safety as a percentage of total government spending, 1997-2005**

Source: OECD statistical database (2008), Dataset 11: Government expenditure by function; Dataset 1: Gross GDP; Reform calculations.



62 OECD statistical database (2008), Dataset 11: Government expenditure by function, Dataset 1: Gross GDP, Reform calculations. The expenditure category of ‘public order and safety’ used in this report is based on the UN Classification of the Functions of Government (COFOG) category, as used by HM Treasury and the OECD. It includes spending on fire services and immigration, although together they account for only around 15 per cent of total public order and safety expenditure in the UK. The other categories within this function are other police services, law courts, prisons, R&D public order and safety and public order and safety not elsewhere classified.

The UK also spends an extremely high amount on law and order per head. At \$829 per head annually, it is exceeded only by the US, is double that of France and Denmark and is a third greater than the Netherlands.<sup>63</sup> In real terms, spending in the UK per head has increased by almost 50 per cent in the last decade, a far greater increase than most other countries, most notably Canada, Germany and Japan which have managed to control spending increases to less than 8 per cent.

**Table 4: Government expenditure on public order and safety, per head, US \$, real terms (2006-07 prices)**

Source: OECD statistical database (2008), Dataset 11: Government expenditure by function; Dataset 1: Gross GDP, Reform calculations.

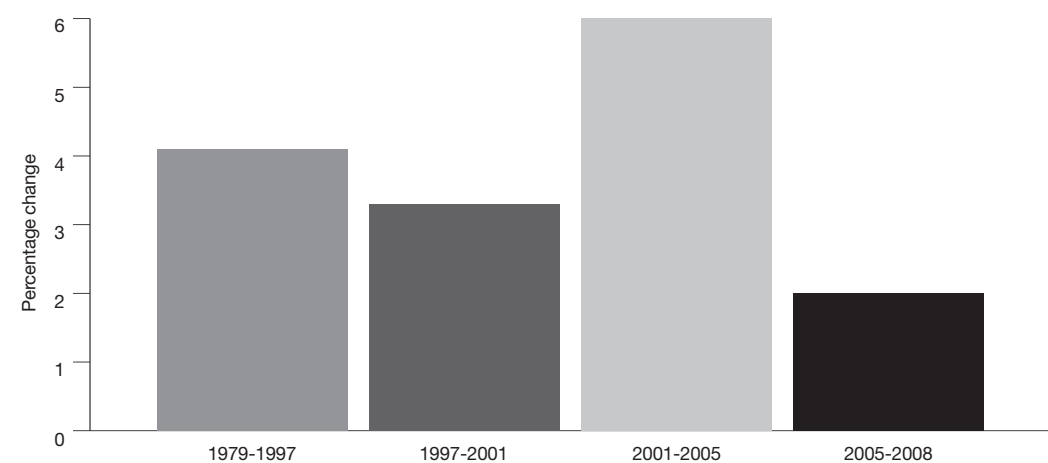
	1997	2001	2005	Increase 1997-2005, %
US	712	815	892	25.4
UK	564	690	829	47.0
Netherlands	417	540	634	52.2
Canada	527	559	567	7.5
Germany	485	511	513	5.8
Sweden	392	432	447	14.0
Japan	405	426	436	7.5
France	329	376	423	28.4
Denmark	301	333	351	16.7

### Spending since 1979

As illustrated above, government spending on public order and safety in the UK is substantial and has increased steadily in recent decades. Under the Conservatives, it was the fastest growing proportion of public services expenditure.<sup>64</sup> New Labour took office in 1997 on a pledge to be “tough on crime, tough on the causes of crime”.<sup>65</sup> A reform programme was initiated requiring an even greater rise in public spending – the average annual real increase in spending shot up to 6 per cent between 2001 and 2005.<sup>66</sup>

**Average annual real increases in government spending on public order and safety, 1979 – 2008**

Source: 1979-1997, IFS Public Spending, Election Briefing 2005; all other years HM Treasury (2008), Public Expenditure Statistical Analyses 2008, Reform calculations.



In 2006-07, £26 billion was spent on criminal justice – nearly 40 per cent greater in real terms than in 1997-98.<sup>67</sup>

<sup>63</sup> OECD statistical database (2008), Dataset 11: Government expenditure by function, Dataset 1: Gross GDP; Reform calculations.

<sup>64</sup> Emmerson, C. and Frayne, C. (2005), *Public Spending, Election Briefing 2005*, Institute for Fiscal Studies.

<sup>65</sup> Labour Party (1997), *Labour Party Election Manifesto: New Labour Because Britain Deserves Better*.

<sup>66</sup> HM Treasury (2008), *Public Expenditure Statistical Analyses 2008*, Reform calculations.

<sup>67</sup> *Ibid.* Expenditure on criminal justice includes police, law courts, probation, legal aid, prisons and rehabilitation, and other. It does not include fire services or immigration as included “public order and safety”. Real terms spending on criminal justice in 1997-98 was £18,695 (2006-07 prices).

### Police spending

The 2007 CSR budget settlements are perhaps unsurprising given that the police account for the largest portion by far – nearly two thirds – of spending on the criminal justice system, followed by the law courts (including probation and legal aid) and then prisons. Since 1993-94, the police service has received at least 56 per cent of total criminal justice funds.<sup>68</sup>

**Table 5: Government expenditure on criminal justice by function**

Source: HM Treasury (2008), *Public Expenditure Statistical Analyses 2008*; HM Treasury (2003), *Public Expenditure Statistical Analyses 2003*; Reform calculations

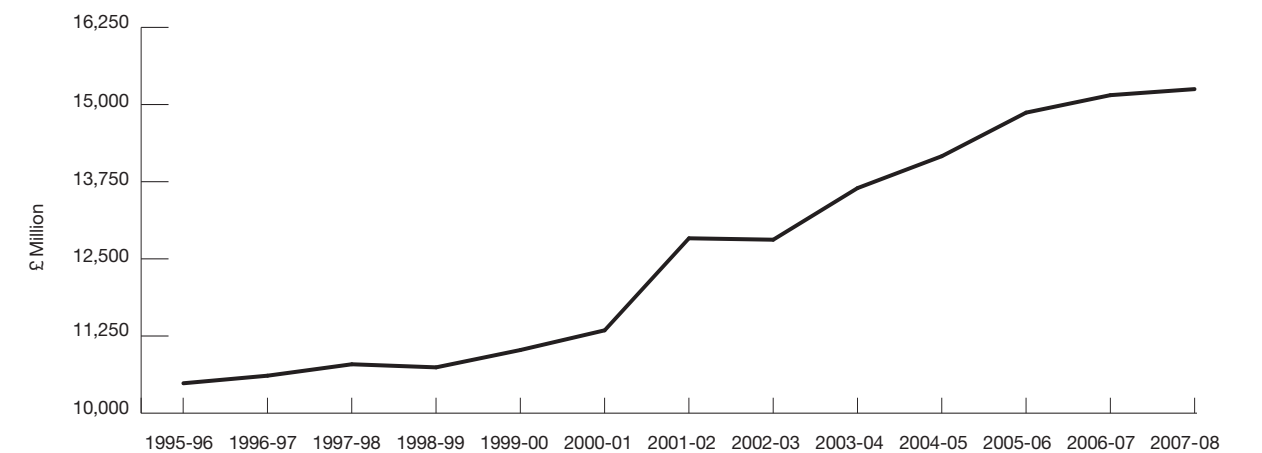
	1997-98		2006-07	
	Real terms, £ millions	Proportion of total, %	Real terms, £ millions	Proportion of total, %
Police services	10,792	57.7	15,152	58.5
Law courts (including probation and legal aid)	4,032	21.6	6,307	24.3
Prisons	3,153	16.9	3,934	15.2
Other public order and safety	718	3.8	516	2.0
Total	18,695	100	25,909	100

The US also spends the greatest portion of state and federal criminal justice budgets on the police. However, it takes a smaller percentage of the total at 46 per cent, with the courts receiving 22 per cent and prisons 32 per cent.<sup>69</sup>

Since 1997, the police force has benefited from a substantial and sustained increase in funding. Central police funding has risen by over £4.5 billion in real terms in the last ten years – a 43 per cent real increase.

**Government expenditure on police 1995-96 to 2007-08, £ millions, real prices**

Source: HM Treasury, *Public Expenditure Statistical Analyses*, 2003, 2005, 2008; Reform calculations; HM Treasury (2008), *Public Finances Databank*, April, table A4, GDP deflators 2006-07 prices.



The bulk of this increase in police funding has been absorbed by an expanding workforce.<sup>70</sup> Since 1997, the number of police officers has grown by 10 per cent, the number of civilian police staff has risen by 42 per cent and there are now close to 16,000 Police Community Support Officers.<sup>71</sup> Overall, the police workforce has increased by about 23 per cent in the last decade.

<sup>68</sup> HM Treasury, *Public Expenditure Statistical Analyses*, 1999, 2003, 2005, 2008, Reform calculations.

<sup>69</sup> Bureau of Justice (2004), *Expenditure and Employment Statistics*. In fiscal year 2005, total federal and state spending was: police \$94,437 million; judicial and legal \$44,607 million; prisons \$65,091 million.

<sup>70</sup> As Sir Ronnie Flanagan remarks in his Policing Review: “The increased public spending on policing in recent years has been largely manifest in increased numbers of those involved in policing.”

<sup>71</sup> Home Office (2008), *Statistical Bulletin 08/08*, 22 July.

As such, around 80 per cent of the total policing budget is spent on staff costs (including salaries, pensions and other employee costs).<sup>72</sup> In light of this Sir Ronnie Flanagan warned that “maintaining police numbers at their current level is not sustainable”.<sup>73</sup> Flanagan suggests that instead of a centralised approach focusing on more resources and staff, the system should be opened up to create the space for “entrepreneurial and innovative solutions from the leaders of the police service at all levels”.<sup>74</sup>

### Police funding

Government policing grants account for the bulk of police resources and have increased by 58 per cent (19 per cent in real terms) between 1997-98 and 2008-09.<sup>75</sup> The provisional police funding settlement for the three year period to March 2011 includes an overall rise in police funds of 2.7 per cent in each year.<sup>76</sup> This means that in 2008-09 total government grants will be £9.2 billion and that by 2010-11 police funding grants will have increased by over 60 per cent (more than £3.7 billion) since 1997.<sup>77</sup>

While police authorities generally have flexibility in using their budgets, funding for neighbourhood policing and counter-terrorism remain ring-fenced. These services will see a rise in funds in the next three years of 5 per cent and 22.6 per cent respectively.<sup>78</sup>

Additionally, while police authorities have the ability to raise additional funding locally through the council tax precept, this has been constrained by the 5 per cent cap on council tax increases.<sup>79</sup> The Flanagan review highlighted the level of variation in the funds raised by local police authorities over the last 10 years. At the bottom end of the spectrum Northumbria’s precept level has increased by less than 20 percent in the period 1997-98 to 2007-08, while Surrey’s has almost tripled.<sup>80</sup> Indeed, the greatest portion of Surrey Police Authority’s funds comes from council tax, which makes up around 46 per cent of total funds.<sup>81</sup> In contrast, the Northumbria police authority raises only around 12 per cent of funds locally.<sup>82</sup>

### The largest legal aid bill in the world

After 25 years of rapid growth, the UK now has the biggest legal aid bill in the world. The UK now spends £38 per head on all legal aid (criminal and civil), compared to between £3 and £4 per head in France and Germany, and around £8 per head in New Zealand and the Republic of Ireland.<sup>83</sup>

The total legal aid budget has escalated from £522 million in 1982 (in today’s prices) to £2 billion today.<sup>84</sup> But in recent years there has been a disproportionate growth in the criminal legal aid spend compared to legal advice and representation in civil and family matters. In the period 1997 to 2004-05, criminal legal aid increased by 37 per cent in real terms to around £1.2 billion, while civil legal aid decreased by 24 per cent to around £680 million.<sup>85</sup> Legal aid has become increasingly focused on criminal issues at the expense of civil matters as both strands are financed from the same spending pot.

A fully funded system providing legal support for defendants and litigants was established in 1949 as part of the social welfare policies of the post-war Labour governments. Lord Falconer’s 2005 report on the legal aid system finds that two major changes to the system in the 1960s sparked the rapid escalation of expenditure.<sup>86</sup> First, the move from a fixed-fee system to hourly rates and second, the move from a system paid for by local funds to a taxpayer funded system determined nationally.

72 Flanagan, R. (2008), *The Review of Policing, Final Report*.

73 Ibid.

74 Ibid.

75 Home Office (2008), *Policing Green Paper, From the Neighbourhood to the National: Policing our Communities Together*.

76 Home Office (2007), *Ministerial Statement on the Provisional Police and Community Safety Funding Settlement 2008-09 to 2010-11*, 6 December.

77 Ibid.

78 Ibid.

79 Darling, A. (2007), *2007 Pre-Budget Report and Comprehensive Spending Review statement to the House of Commons*. “We have provided sufficient resources to ensure local authorities can keep overall council tax rises substantially below 5 per cent”, 9 October.

80 Flanagan, R. (2008), *The Review of Policing, Final Report*.

81 Surrey Police Authority (2007), *Policing Surrey: Your council tax for policing services in 2007-08*. 2007-08 funds are made up as follows: council tax 46 per cent, government grants 35 per cent, business rates 16 per cent and revenue support grant 3 per cent.

82 Northumbria Police Authority (2008), *Budget Plan 2008-09*. 2007-08 funds are made up as follows: business rates 41 per cent, government grants 40 per cent, council tax 12 per cent and revenue support grant 7 per cent.

83 Straw, J. (2008), speech to the Law Society at the launch of their “markets, justice and legal ethics” campaign, 6 March.

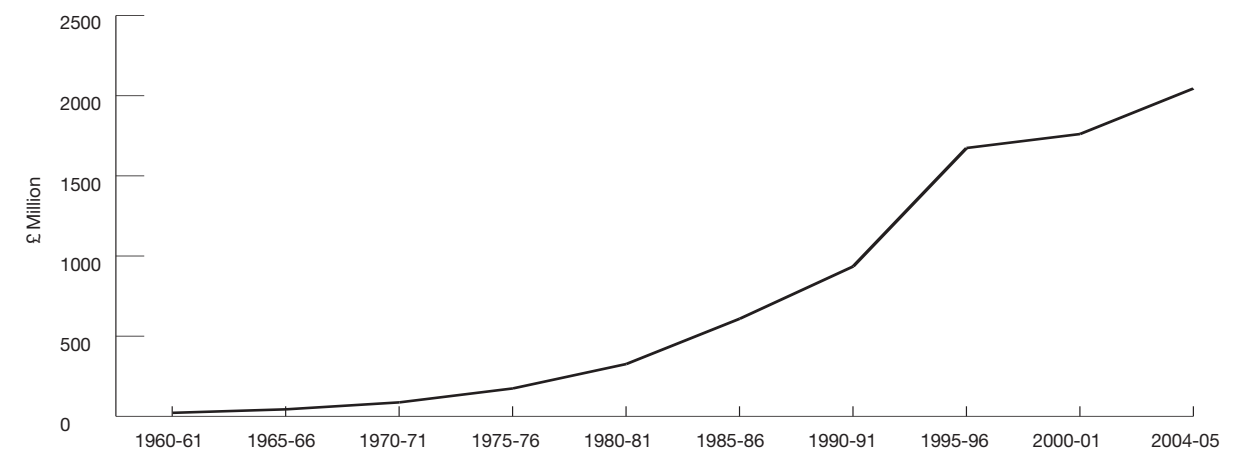
84 Ibid and Ministry of Justice (2006), *Judicial and Court Statistics 2006*.

85 Department for Constitutional Affairs (2005), *A Fairer Deal for Legal Aid*.

86 Ibid.

### Government expenditure on total legal aid, 1960-61 to 2004-05, 2005 prices

Source: Department for Constitutional Affairs (2005), *A Fairer Deal for Legal Aid*.



The consequence was that legal practitioners had an incentive to work more hours than to work efficiently, and the lack of accountability at the local level meant that they were not kept in check. While the number of lawyers has grown as a result of the rise in spending, legal aid funding has grown at twice the rate – suggesting that the additional money has been absorbed by growing incomes.<sup>87</sup> Average legal aid earnings for the top ten barristers in 2004-05 was £724,000 per annum.<sup>88</sup> However, of course not all barristers have benefited from the spending increase, and with so many competing for work, those in the area of criminal legal aid appear to have particular difficulty in securing enough work to be profitable at the beginning of their careers.<sup>89</sup>

### Probation

While the police force receives the lion’s share of criminal justice spending, probation services have had the greatest increase in funds over the last decade. Probation spending shot up from £398 million in 1998-99 to £1,037 million in 2003-02 (in real terms) – an increase of 160 per cent.<sup>90</sup> This was largely related to the establishment of the National Probation Service for England and Wales in 2001, comprising 42 local probation boards and the National Probation Directorate.

### The pressure for cost reduction

The last couple of years have seen some recognition that given the current economic circumstances, budgets cannot rise as much as they did. Since 2005, expenditure has expanded less rapidly, largely through a drive to reduce inefficiencies and improve value for money.<sup>91</sup>

The 2007 Comprehensive Spending Review set the departmental spending limits for the next three year period. The Home Office budget will receive inflation-only increases over the CSR07 period.<sup>92</sup> After an 8 per cent increase in 2007-08, the Ministry of Justice’s budget will fall by 1.7 per cent a year and the Law Officers’ Department will have a 3.2 per cent decrease over the three year period.<sup>93</sup>

Additionally, various other measures have been introduced by Government in a bid to reduce costs.

In respect of legal aid, the Government has recognised that the dramatic escalation of spending over the last 25 years is unsustainable and must be curbed. A reform programme has been initiated.<sup>94</sup> In a recent speech Jack Straw MP, Lord Chancellor and Secretary of State for Justice, again highlighted the problem warning that “such unprecedented growth could not continue unabated”.<sup>95</sup>

87 Straw, J. (2007), speech at Labour Party Conference 2007 fringe event, Bournemouth.

88 Department for Constitutional Affairs (2005), *A Fairer Deal for Legal Aid*.

89 Ibid.

90 Home Office (2003), *Home Office Annual Departmental Report 2003*; Home Office (2006), *Home Office Annual Departmental Report 2006*; Reform calculations.

91 HM Treasury (2007), *Meeting the aspirations of the British people*, 2007 Pre-Budget Report and Comprehensive Spending Review. Value for money programmes in the Home Office, Ministry of Justice and Law Officers’ Departments are expected to generate annual net cash-releasing savings of £2.5 billion by 2010-11.

92 Flanagan, R. (2008), *The Review of Policing, Final Report*.

93 HM Treasury (2007), *Meeting the aspirations of the British people*, 2007 Pre-Budget Report and Comprehensive Spending Review.

94 See the Legal Services Commission website for further on the Government’s transformation programme, including Department for Constitutional Affairs (2005), *A Fairer Deal for Legal Aid*; Department for Constitutional Affairs (2006), *Legal Aid Reforms: the Way Ahead*.

95 Straw, J. (2008), speech to the Law Society at the launch of their “markets, justice and legal ethics” campaign, 6 March.

## 4

## An unreformed machine

Britain's "Robocop" criminal justice system is a one size fits all system, where human judgement and engagement has been replaced by bureaucratic process and where the machine has gained a momentum of its own. The result has been a removal of autonomy from localities and the criminal justice profession, resulting in a "policing by numbers" approach with perverse incentives and poor results. Thus, the additional funds put in to the service have failed to deliver the improvements that they should have done.

### The Rolls Royce Machine

In his 2008 Policing Review, Sir Ronnie Flanagan describes the police service as "Rolls Royce", designed to fit the worst case scenario rather than to take a balanced view of risk. This has created a cumbersome service that is not flexible enough to deal with local distinctions, fails to consider strategic issues properly, is inefficient to run and sluggish. A "policing by numbers" approach has been adopted where officers are encouraged to tick boxes rather than use their own judgement.

### Local policing: a Rolls Royce where a Smart Car is needed

There are very different patterns of crime in different localities and there has been a ghettoisation of crime which is very likely to have become more acute over the last sixty years. Maguire et al report that people living in areas characterised as suffering high levels of "physical disorder" are twice as likely to fall victim to violence as those in "wealthy achiever" areas.<sup>96</sup> Private renters are three times more likely to be victims of crime than owner-occupiers.<sup>97</sup> The 2007-08 British Crime Survey found that most serious violence against the person is concentrated in a small number of geographical areas.<sup>98</sup>

However, there is a lack of local autonomy to deal with this and to enable local communities to place the focus of the criminal justice system in their area where their concerns lie. Some taxpayers may wish to spend less on criminal justice; others may prefer a focus on different types of crime. There is no current mechanism to deal with this.

The successful experiments with Police Community Support Officers (currently numbering nearly 16,000) demonstrate that less qualified, more visible policing is very helpful at a local level.<sup>99</sup> However, the need for forces to also deal with serious national crime has prevented the full testing of a more local, low cost model.

### Lack of focus on strategic issues: a Rolls Royce where a helicopter is needed

At the same time, the current police service struggles to build the public support or the capability to deal with serious organised crime and terrorism. The Serious Organised Crime Agency, dubbed the British FBI, was established in 2006 for this purpose. However, it is ineffective as it tied to national priorities set by the Home Secretary and does not have operational capability.<sup>100</sup> Within its first year of operation there were reports of low staff morale and inertia due to the top-down management of the agency.<sup>101</sup> In its second year it had its budget and consequently staff numbers cut.<sup>102</sup>

Sir Ronnie Flanagan's review highlighted the need for a national unit for serious crime. It found that police authorities do not have a strong grip on information on serious and organised crime, particularly in relation to its costs on the local community: "there does not seem to be much [information on the cost of serious organised crime] at the level of individuals and families. This kind of information would help police

96 Levi, M., Maguire, M. and Brookman, F. (2007), "Violent crime", in Maguire, M., Morgan, R. and Reiner, R. (2007), *The Oxford Handbook of Criminology*.

97 Ibid.

98 Kershaw, C. et al (eds.) (2008), *Crime in England and Wales 2007-08: Findings from the British Crime Survey and police recorded crime*, Home Office. "A comparison of local authority rates shows that the 21 authorities with crime rates more than twice the average for England and Wales represent ten per cent of the population but account for 26 per cent of offences of most serious violence against the person.

99 Home Office (2007), *Ministerial Statement on the Provisional Police and Community Safety Funding Settlement 2008-09 to 2010-11*, 6 December

100 Serious Organised Crime Agency (2006), *SOCA Annual Plan 2006-07*. SOCA was formed from the amalgamation of the National Crime Squad, the National Criminal Intelligence Service, those from HM Revenue and Customs dealing with drugs trafficking and associated finance, and some of those dealing with organised immigration crime in the UK Immigration Service.

101 For example, *The Telegraph* (2007), "Soca is paralysed by bureaucracy", 25 January; *The Guardian* (2007), "Crime agency seizes cocaine worth £3bn", 18 May; *The Times* (2008), "Soca abandons hunt for crime lords", 13 May.

102 Serious Organised Crime Agency (2006), *SOCA Annual Plan 2006-07*; Serious Organised Crime Agency (2007), *SOCA Annual Plan 2007-08*. SOCA was scaled down from 4,200 employees and resource funding of £416 million in 2006-07 to 4,000 employees and resource funding of £407 million in 2007-08.

authorities and chief constables to understand their role and set priorities, and also to explain decisions to communities about where resources have been allocated."<sup>103</sup>

Part of the problem in establishing a national squad to deal with high-level crime in the UK is that there is less pressure from the public and the media for organised crime to be dealt with to the same extent as more immediately visible issues such as vandalism and anti-social behaviour. Nevertheless, initial intelligence mapping has shown that "serious new effort" will be required to address the UK's organised crime problems.<sup>104</sup>

### "Policing by numbers"

In the police force, the growing layers of process are wasting large amounts of taxpayers' money, reducing professionalism and accountability and encouraging "policing by numbers". The sheets of paper an officer is required to complete within an average case file have more than doubled in the last 25 years.<sup>105</sup> Officers still spend 20 per cent of their time on paperwork, despite the implementation of 52 reforms recommended in the 2002 O'Dowd report on the presence of police in communities.<sup>106</sup>

The Home Office has found that this is because "Past attempts [to reduce bureaucracy] have focused primarily on selectively targeting individual systems and processes without viewing the problem as symptomatic of a wider systemic and cultural cause."<sup>107</sup> Flanagan similarly finds that there is an underlying cultural cause for the excessive bureaucracy in the police services – risk aversion. A modern culture in which error has become unacceptable, coupled with nationally driven standards and targets, has resulted in personnel who follow process, regardless of circumstance.<sup>108</sup> The result is a decrease in professional discretion and a lack of personal accountability.

The Government's 2008 policing green paper makes a number of recommendations in response to Flanagan's review, recognising the need to cut red-tape and encouraging the use of greater officer discretion.<sup>109</sup>

### Increase in bureaucracy and waste across the system

The problem of bureaucracy and waste is not just one of the police service's. As reported in *Reform's A lost decade*, when additional money falls on the fallow ground of an unreformed service, money drains off and is not used wisely.<sup>110</sup> There is evidence that a large amount of money is currently wasted in the criminal justice system where resources are being used inefficiently.

The criminal justice system is one of the major public services in the UK, now employing over 400,000 staff.<sup>111</sup> As such, administration costs for the criminal justice service as a whole have gone up by around 10 per cent since 2002-03 to £882 million, compared to a 7 per cent increase for frontline services.<sup>112</sup> The police service, which accounts for the largest share of criminal justice spending, is set to receive an average increase in pensions of 7 per cent a year until 2012-13.<sup>113</sup>

The 2006-07 Crown and County Court annual report shows insufficient resources and understaffing in many courts. There is also a high staff turnover, particularly in County Courts, with Surrey County Courts operating 20 per cent under-strength, and Wandsworth having a 60.6 per cent staff turnover. The report also highlighted chronic under-funding of building repair programmes, with a lack of adequate accommodation sometimes preventing court undertaking its necessary responsibilities and duties.<sup>114</sup>

103 Flanagan, R. (2008), *The Review of Policing, Final Report*.

104 Ibid.

105 Flanagan, R. (2008), *The Review of Policing, Final Report*; O'Dowd, D. (2002), *Change Proposals to Increase the Presence of Police in Communities*, Policing Bureaucracy Taskforce.

106 Flanagan, R. (2008), *The Review of Policing, Final Report*.

107 Home Office (2008), *Impact assessment of police green paper: Bureaucracy*.

108 Ibid.

109 Home Office (2008), *From the neighbourhood to the national: policing our communities together*.

110 Bosanquet, N. et al (2008), *A lost decade: Counting the opportunity cost of public spending 1999-2008, Reform*.

111 Criminal Justice System website. Current staff numbers include: The Home Office (2008), *Departmental Report 2008*: 76,126; Ministry of Justice (2008), *Departmental Report 2007/08*: 76,571; The Law Officers' Departments (2008), *Departmental Report 2008*: 10,532; The Home Office (2008), *Statistical Bulletin 08/08*, July: 140,230 frontline police officers England and Wales; The Northern Ireland Government (2007), *Quarterly Employment Survey*: 10,997 Police Service of Northern Ireland; The Scottish Government (2008), *Joint Staffing Watch Survey, Q1 2008*: 22,718 frontline police officers Scotland.

112 Home Office (2008), *Departmental Report 2008*; Ministry of Justice (2008), *Departmental Report 2007/08*; The Law Officers' Departments (2008), *Departmental Report 2008*. Total admin costs increased from £807 million in 2002-03 to £882 million in 2007-08, while the remainder of budgets increased from £17,753 million in 2002-03 to £18,899 million in 2007-08.

113 House of Commons (2007), Daily Hansard, written answers, 25 June, Column 320 W. Figures given by Mr McNulty based on CIPFA projections.

114 HM Courts Service (2007), *Crown, County and Family Court annual report 2006-07*.

Much money is spent on external consultants brought in as a way of obtaining skills and experience “which are not available in house”.<sup>115</sup> The Ministry of Justice and the Law Officers’ Departments spent a combined £20 million on consultancy fees last year.<sup>116</sup> This suggests that the criminal justice system has been unable to keep up with the changing capabilities needed to meet the current requirements of their roles.

### Slow justice

The centralised nature of the criminal system means that justice is slow in delivery. Sanctions are therefore not as immediate and hence not as effective as they could be. There has been a reduction in the number of ineffective trials – in 2006-07 the annual average number of ineffective trials was 11.5 per cent in Crown Courts and 18.9 per cent in Magistrates’ Courts.<sup>117</sup> In the Magistrates’ Courts, which deal with 95% of criminal cases, the time from charge to disposal currently averages 21 plus weeks.<sup>118</sup> The best performing of the Crown Courts, which considers more complex and serious cases, currently delivers an overall average waiting time of 10 weeks.<sup>119</sup>

Average waiting times in both the Magistrates and Crown Courts have risen considerably over the last few years.<sup>120</sup> The Department of Constitutional Affairs’ recent report found that this is partly due to greater process and bureaucracy and a culture in some areas “too accepting of inefficiency”. Similarly, a 2006 Law Society survey on family cases found the main reasons given for court delays were too few judges and court rooms, administrative errors and high turnover of court staff.<sup>121</sup>

But another major factor is the one size fits all nature of the courts. Low-level, non-victim cases such as television licensing and summary motoring offences currently take up a disproportionate amount of court time and resource as they are dealt with using the same process as offences such as burglary or assault.<sup>122</sup>

The Government has proposed looking at alternative ways of dealing with these high-volume, low-level crimes and its Criminal Justice System Strategic Plan 2008-2011 includes reforms to reduce delay and unnecessary adjournments at court and in youth courts.<sup>123</sup> The HM Courts Service Annual report 2005-06 sets out a PSA target to reduce delays in resolving legal disputes that need to be decided by the courts to 83.1 per cent.<sup>124</sup>

### Incentives are perverse

In an attempt to deliver consistency and better performance in each of the separately managed services, incentives have often conflicted. Rather than there being one common objective for the myriad of criminal justice operations, the different services within the system have often had their own incentives, sometimes operating in direct contradiction with each other.

As Harriet Sergeant sets out in her recent Civitas pamphlet on public dissatisfaction with the police, the police are currently rewarded on solving not preventing crime: performance is measured in “sanction detections”, with officers expected to meet a target each month of detecting or clearing cases by charging someone, issuing a penalty notice or giving a caution.<sup>125</sup> Where there are no targets – for example for drug offences – there is a further disincentive to tackle problems, as the more arrests a force makes the more it looks as though the area has a problem. It is also quicker and cheaper for drug offences to be dealt with by cautions and fixed-penalty fines than by taking a case to court even though both count equally on Government league tables. Commanders can receive pay-related bonuses of between £5,000 and £15,000 a year depending partly on whether they have met these targets for sanction detections.<sup>126</sup>

115 Ministry of Justice (2008), *Departmental Report 2007/08*.  
116 Ministry of Justice (2008), *Departmental Report 2007/08*; The Law Officers’ Departments (2008), *Departmental Report 2008*.  
117 HM Courts Service (2007), *Crown, County and Family Court annual report 2006-07*.  
118 Department of Constitutional Affairs (2006), *Delivering Simple, Speedy, Summary Justice*.  
119 Ibid.  
120 Ibid.  
121 The Law Society (2006), *Faster family justice in London*.  
122 Ibid. Television licensing evasion cases currently use approximately 5,800 hours of local court time and summary motoring offence cases represents nearly a quarter of all magistrates’ courts business.  
123 Criminal Justice System (2007), *Working Together to Cut Crime and Deliver Justice: A Strategic Plan for 2008-11*.  
124 HM Courts Service (2006), *Annual Report and Accounts 2005-06*.  
125 Sergeant, H. (2008), *The Public and the Police*, Civitas.  
126 Ibid.

The Crown Prosecution Service is incentivised on the number of crimes for which an offender is brought to justice (i.e. the number of offenders convicted, cautioned, issued with a penalty notice for disorder or given a formal warning).<sup>127</sup> This creates a danger of cases being dropped if the CPS is not certain they will be won.

Accurate information as to prison governors’ bonus payments is not held centrally<sup>128</sup>, nor is any specific allocation made to either HM Prison Service or individual prisons for use as performance related pay.<sup>129</sup> However, in 1994-95 only 14 prison governors were given special bonuses, related to “outstanding performance in particularly demanding tasks or situations which may arise during periods of exceptional pressure”.<sup>130</sup> The Prison Governors’ Association is unhappy with current PSA proposals for pay, warning that compared to their private sector comparators, governors are already paid below the market rate.<sup>131</sup>

The Home Office and Ministry of Justice have recently taken note of these contradictory incentives, removing the tension between a police service focused on sanction detections and a Crown Prosecution Service aiming to drive down “discontinued” cases. The latest policing green paper says both agencies will in future work together “to bring the most serious offences to justice”.<sup>132</sup>

### Lack of innovation

Both academic research and recent experience suggest that criminal justice should address the full length of offenders’ careers – from the risk factors that mark out potential criminals to their contact with courts, police, prisons and probation. But the current system prevents this kind of approach since it is divided into separate, vertical silos. The National Offender Management Service was a centralising solution which has made little progress.

Some positive ideas and innovative approaches do exist. Thirteen Community Justice Courts are now in operation, which bring together a team of dedicated local officials from the courts, police, Crown Prosecution Service and probation services, to tackle issues in a cross-cutting way, with a District Judge providing focal leadership in most cases.<sup>133</sup> The original North Liverpool Community Justice Centre established in 2005 by Judge David Fletcher provides a blueprint for community justice.

Yet despite the widely acknowledged success of the Liverpool centre, funding for the 11 follow up projects is likely to be much more restricted to less than £100,000 each (over £5 million was spent setting up the North Liverpool centre), hampering their powers.<sup>134</sup> Further, John Samuels QC has highlighted that the existence of these initiatives remains widely unknown among the full-time judiciary, at all levels.<sup>135</sup>

The default response by politicians to address crime has been tougher sentencing. Penalties are getting tougher – the average custodial sentence from a crown court has risen from 22.1 months in 1996 to 24.7 months in 2006.<sup>136</sup> The number of criminals sentenced to life imprisonment every year has also increased from 33 in 1996 to 547 in 2006, with England and Wales having the highest number of life sentenced prisoners in Europe as of September 2006.<sup>137</sup>

The New Community Order and suspended sentences introduced in April 2005 to offer more credible alternatives to short custodial sentences, are not available in youth courts or to under-18 year olds. A recent survey showed that sentencers perceive one of the main advantages of these as avoiding sentencing an offender to imprisonment and that judges see them as a credible alternative to custody.<sup>138</sup> Between 1996 and 2006 the number of people starting community sentences increased by nearly 58,200 – a rise of 44 per cent.<sup>139</sup>

127 Crown Prosecution Service (2008), *Annual Report and Resource Accounts 2007-08*.  
128 House of Commons (2006), Daily Hansard, written answers, 19 July. Statement made by Gerry Sutcliffe MP, then Parliamentary Under-Secretary of State for the Home Office.  
129 House of Commons (2007), Daily Hansard, written answers, 6 March. Statement made by Gerry Sutcliffe MP, then Parliamentary Under-Secretary of State for the Home Office.  
130 House of Commons (1995), Daily Hansard, written answers, 13 July. Statement made by Ann Widdecombe MP, then Minister of State at the Home Office.  
131 Prison Service Pay Review Body (2008), *Seventh Report on England and Wales*.  
132 Home Office (2008), *From the neighbourhood to the national: policing our communities together*.  
133 These are: North Liverpool, Salford, Middlesbrough, Nottingham, Devon and Cornwall, Bradford, Hull, Leicester, Wandsworth, Birmingham, Merthyr Tydfil, Haringey and Newham.  
134 Samuels, J. (2008), “Community Justice in England & Wales”, speech at West Dean, 25 January.  
135 Ibid.  
136 Ministry of Justice (2007), *Sentencing Statistics 2006*.  
137 Ibid.  
138 Mair, G. et al (2008), *The Community order and the suspended sentence order: the views and attitudes of sentencers*, Centre for Crime and Justice Studies.  
139 Ministry of Justice (2007), *Sentencing Statistics 2006*.

Given the problems of overcrowding in our prisons, more innovative approaches such as community courts and the new sentencing orders need to move from being marginal and poorly funded to central and sufficiently resourced.

### The results

Despite increasing penalties and greater spending on criminal justice it is unclear that results have been in line with expectations.

### Early criminalisation of young people

The number of young people who are being drawn into the criminal justice system and institutionalised at an early age is rising. The minimum age for consideration of conviction status in England and Wales is one of the lowest in the world at just ten years old.<sup>140</sup> Home Office and Ministry of Justice figures reveal a 25 per cent increase between 2003–2006 in 10–14 year olds who have received a reprimand, final warning or conviction for an indictable offence, compared to a 16 per cent rise for those aged 15–17.<sup>141</sup> Research by the IPPR has also shown that young people have been drawn into the criminal justice system at more than twice the rate of adults over the past six years, despite no increase in offending by young people during that period.<sup>142</sup> This suggests there is a greater use of formal responses to young people's behaviour.

### High re-offence rates

The UK has high re-offence rates. According to the Home Office, 57.6 per cent of prisoners from the 2003 cohort re-offended within two years of release.<sup>143</sup> In younger age bands this figure is over 60 per cent, and over 90 per cent for those with multiple previous convictions.<sup>144</sup> According to the International Centre for Prison Studies, Denmark has a rate of only 45 per cent, while three Australian states have achieved rates of only 38 per cent.<sup>145</sup> In his 2003 report *Managing offenders, reducing crime*, Lord Carter endorsed the view that re-offending can be reduced, citing research that found that “the best treatment programmes reduced recidivism by as much as 10 to 20 percentage points”.<sup>146</sup> Projects piloted abroad have been shown to work: examples from Queensland and the US provide encouraging precedents.

### Resources are not linked with results

The Government has claimed that crime has fallen by 38.3 per cent over the period 1997–98 to 2007–08, yet spending on public order and safety in this period has increased by 50 per cent in real terms.<sup>147</sup> Criminal justice spending has been free from normal expectations of value for money – given the current debate, it is impossible to imagine any political party advocating lower spending. This puts upwards pressure on overall public spending and taxation and increases the likelihood of inefficiency.

### Performance is mixed

While overall crime has certainly fallen, the contribution of criminal justice policy is less certain. The major fall in crime has occurred for crimes of property, but a key factor here is the tremendous increase in private spending on security noted in Chapter 2. Anti-social behaviour, in contrast, has barely fallen.<sup>148</sup> This suggests that the police have performed poorly in preserving order and preventing low-level crime.

140 Allen, R. (2006), *From punishment to problem-solving: A new approach to children in trouble*, Centre for Crime and Justice Studies.

141 Nacro (2008), “Some facts about children and young people who offend”, Youth Crime Factsheet, March.

142 Institute for Public Policy Research (2008), *Communities can hold youth to account and reduce re-offending*, press release, 23 June.

143 Home Office (2006), “Re-offending of adults: results from the 2003 cohort”, Statistical Bulletin, November.

144 Ibid.

145 Cited in The Conservative Party (2008), *Prisons with a purpose: Our sentencing and rehabilitation revolution to break the cycle of crime*.

146 Carter, P. (2003), *Managing Offenders, Reducing Crime – A New Approach*; Sherman, L. (1997), *Preventing Crime: What works, what doesn't, what's promising – a report to the United States Congress*, National Institute of Justice.

147 Mirrlees-Black, C. et al (eds.) (1998), *The 1998 British Crime Survey*, Home Office; Kershaw, C. et al (eds.) (2008), *Crime in England and Wales 2007–08: Findings from the British Crime Survey and police recorded crime*, Home Office; HM Treasury (2008), *Public Expenditure Statistical Analyses 2008*.

148 Ibid. The 2007–08 British Crime Survey found that 16 per cent of people perceived a high level of anti-social behaviour, compared to 19 per cent in 2001–02 (the earliest comparable data). 26 per cent of people reported “Vandalism, graffiti and other deliberate damage to property”, compared to 24 per cent in 1996.

# 5

## Tinkering with the machine

Attempts to reform the criminal justice system have served to further create targets and incremental policy, tinkering by adding extra components to the machine, rather than undertaking root and branch reform. Flanagan comments that “the service tends to adopt an ‘additive approach’ so that when an individual policy is reviewed, additional detail is added – rarely does the review lead to a complete re-think and a shorter policy”. He also notes that “41 new pieces of doctrine have been introduced in the past two years and a further 22 are currently under development”.<sup>149</sup> This necessarily increases the bureaucracy rather than reducing it and further undermines autonomy.

In order to achieve a wholesale change, three key factors need to be addressed: strong producer interests within the service, a lack of a local bulwark to resist centralisation and a reluctance of politicians to take on the public dependency on the criminal justice service.

### Dominant producer interests

The centralised nature of the crime service has contributed to producer capture with formal policy roles for vested interests. In his book *Crime control as industry*, Nils Christie warns that the crime control industry has a natural impetus for growth and “few natural enemies” to keep it in check. With an unlimited supply of the raw material – crime – it is an industry which creates its own profits, jobs and demand for further growth.<sup>150</sup> It is therefore in the industry's interests for the government to maintain and even increase expenditure on criminal justice.

Individual parts of the criminal justice machine have their own interests. The Association of Chief Police Officers was set up to develop policing strategies on behalf of the Service as a whole rather than separately in individual forces. ACPO “in equal and active partnership” with the Government and the Association of Police Authorities “leads and coordinates the direction and development of the police service in England, Wales and Northern Ireland”. In times of “national need” it coordinates the strategic policing response. ACPO has essentially nationalised operationally independent police forces with a committee and cabinet that give operational guidance on a variety of policing matters to supposedly independent constabularies.

The power of these interests can be seen in resistance to reform. The police response to the Sheehy Report of 1993 commissioned by Michael Howard, the then Home Secretary, effectively prevented significant sections of the report being implemented. Professor Eric Caines, a member of the Sheehy Inquiry, stated: “Reforming the police... is likely to be the toughest job of all. The police bodies are vocal and skilful operators and will mine every vein of public and political sympathy... [It] would be a foolish man who would gamble more than a very small amount on something emerging at the end which bore more than a passing resemblance to what has been proposed.”<sup>151</sup> There has also been strong opposition to Lord Carter's review of legal aid by the criminal justice industry: in November 2006 Lord Justice Wall, a senior family judge, called the plans “devastating”.<sup>152</sup>

### The relentless pull of centralisation

Both major parties have expressed a desire for more local autonomy and decision making, particularly in policing. However the British political system is heavily centralised with a lack of obvious mechanisms for more local control. There is a battle for control, which is being fought by the political establishment and the entrenched interests in the criminal justice system. Therefore often there are contradictory policy plans put in place.

The Government has made positive moves towards localisation – for example, the council tax precept which gives police authorities the ability to raise funds locally and hence strengthens accountability to local people. The Government has said it will make the police accountable to the local community with locally elected Crime and Policing Representatives.<sup>153</sup> Yet under these plans the Home Office would retain a broad

149 Flanagan, R. (2008), *The Review of Policing, Final Report*.

150 Christie, N. (2000), *Crime Control As Industry*.

151 Leishman, F., Cope, S., and Starie, P. (1995), “Reforming the police in Britain”, *International Journal of Public Sector Management*.

152 *The Guardian* (2007), “On the wrong side of the law”, 21 February.

153 Home Office (2008), *From the neighbourhood to the national: policing our communities together*.

strategic role, setting national standards and having strategic oversight. They talk positively about innovative community programmes developed locally, but they involve central budgets and prescribed measures and structures that must be followed.<sup>154</sup> It is likely this “colouring book” approach to decentralisation will not deliver the level of local autonomy required to change the nature of the service.

At the same time however centralisation is also occurring. After recommendations by Lord Carter, three super prisons each housing 2,500 offenders are to be built by 2014, costing an extra £1.2 billion on top of the £1.5 billion already committed to building extra prison places.<sup>155</sup> The Metropolitan Police Authority has published plans to provide single, one-site custody centres for most boroughs.<sup>156</sup> The Sentencing Guidelines Council is recommending more people should be jailed if convicted of causing death while driving.<sup>157</sup>

The Liberal Democrats also advocate decentralisation, as part of their wider localist agenda. They propose devolving power over policing to local communities and scrapping national policing targets and they plan to increase accountability over dealing with offenders through community courts and community sentencing.<sup>158</sup> But it is not entirely clear how the levels of local democracy will work.

The Conservatives seem to have the clearest sense of what a decentralised system would look like. They propose streamlining the police and making them accountable to directly elected local police commissioners and probation chiefs, who would in turn be accountable to locally elected politicians.<sup>159</sup> Although there is perhaps some further thinking to be done on fighting serious crime – current proposals suggest improving co-operation between forces for this purpose. On prisons, they propose devolving power to prison governors and reducing costs through fee-earning prison and rehabilitation trusts, as well as enhancing the sentencing powers of magistrates.<sup>160</sup>

Politicians in all the main parties are advocating localisation in the criminal justice system, but the urge to prescribe the details of how this would work remains strong, which would mitigate the impact of local autonomy. This reflects the real difficulty to be faced in decentralising the criminal justice system in the UK where there is no obvious authority to relinquish power to.

### The dependency culture

The third key issue which must be addressed is shifting the focus of the criminal justice system away from the police and politicians and back onto the public.

Politicians must resist the urge to form policy on the basis of winning votes. A tendency to “feed the fear” has been used in this way in recent years. This policy is tempting as it works by first frightening the electorate into believing that they need to be seriously scared about a national crime problem, and second convincing them that the politician with the toughest talk can make their country safe again. This is a negative way to engage people and confounds the trap that politicians find themselves in.

In all main parties politicians are talking about engagement. The Government has talked about empowering individuals through raising personal responsibility in dealing with local crime problems and through providing greater information on crime via websites and crime maps.<sup>161</sup> The Conservatives similarly advocate greater access to information on crime to strengthen transparency, through crime mapping and the publication of monthly crime statistics by the police. They also propose enforcing local meetings between the public and the police to raise engagement.<sup>162</sup> The Liberal Democrats’ focus is on people taking greater responsibility for preventative measures, through the development of local schemes bringing together those likely to offend with older role models and Community Justice Panels to enable local people to mete punishments.<sup>163</sup>

However, no party is advocating a wholesale opening up of information across the criminal justice system including offender details and correctional activities.

154 Ministry of Justice (2008), *Prison policy update – briefing paper*; Ministry of Justice (2008), *Community Sentencing. Reducing reoffending, changing lives: Cutting crime in our communities.*

155 Carter, P. (2007), *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales.*

156 Metropolitan Police Authority (2007), *Property for Policing: Providing the best estate for borough based policing.*

157 Sentencing Guidelines Council (2008), *Causing Death by Driving: Definitive Guideline.*

158 Liberal Democrat Justice & Home Affairs Team (2008), *A Life Away from Crime: A New Approach to Youth Justice.*

159 The Conservative Party (2007), *Policing for the People: Interim report of the Police Reform Taskforce.*

160 The Conservative Party (2008), *Prisons with a purpose: Our sentencing and rehabilitation revolution to break the cycle of crime.*

161 Home Office (2008), *From the neighbourhood to the national: policing our communities together.*

162 The Conservative Party (2008), *Giving the public a crime map: Using technology to fight crime.*

163 Liberal Democrat Justice & Home Affairs Team (2008), *A Life Away from Crime: A New Approach to Youth Justice.*

# 6

## From passive bystanders to active citizens

The criminal justice system in England and Wales has reached an unhappy equilibrium. Its basis is the disengagement of individuals from maintaining lawfulness. Without a greater commitment on the part of individuals to the task of maintaining lawfulness, the responsibility will inevitably default to government and its agencies.

For this reason, a cultural change – a new settlement between individuals and government – is the first key recommendation. It would mean a transformation in the kind of information provided to society about levels of crime and about criminal policy options. It would also mean a profound change in the character of the national political debate on crime.

The second is to make the criminal justice system properly accountable. This means a dismantling of the national machine and its replacement by organisations that are accountable locally. Such efforts may well see criminal justice becoming part of a wider “quality of life” agenda encompassing health, housing, regeneration, and aspects of education.

### An information revolution

Poor information is the key barrier to the active engagement of society in lawfulness. On the one hand, individuals do not understand the true level of crime in their area, increasing fear of crime. On the other, individuals are unaware of the activities of the criminal justice system, increasing their disassociation from it, and making them suspicious about whether perpetrators are dealt with.

In her recent review for the Cabinet Office, Louise Casey advocated a minimal level of information, including: monthly publication of local criminal justice statistics; contact details of local police teams; details of minimum standards of performance by police; details on crimes committed and sentences received. Expectations of information should be much higher than this. Modern technology allows much more frequent transmission of information, across a wider range of agencies.

Key recommendations include:

- > Maximum disclosure of information about local levels of crime. The Government is proposing to introduce crime mapping which is a positive step forward. Crime maps and information on a granular level will help citizens understand the real level of crime, making them able to hold the authorities to account and better able to protect themselves. It is likely that crime mapping will be introduced most successfully at the local level.
- > The televising of court proceedings on local television, with the necessary protection of witnesses.
- > National and local offender databases. The public should be able to track individual offenders online to receive daily information on their activity.
- > Publication of work and activity taking place in prisons, at the level of the individual prisoner.
- > Publication of information on community sentences, giving results and conditions, at the level of the individual offender.
- > Publication of information about the costs of policing, legal aid, prosecution and punishment, at a neighbourhood level.

Visible community punishments would themselves provide information to local people about the process of justice.<sup>164</sup>

164 Cabinet Office (2008), *Engaging Communities in Fighting Crime – a review by Louise Casey.*

### The local Justice Commissioner and the National Bureau of Investigation

Unlike services like health and education, criminal justice cannot be accountable to individuals through competition and choice. The right mechanism is through local democratic accountability.

The key reform is the creation of local Justice Commissioners responsible for end-to-end criminal justice services – crime prevention, policing (excepting serious organised crime and terrorism), prosecution and defence services and correctional services, including incarceration, community work and probation.

Commissioners would be elected with mandates to set the course of policy in each of these areas. The services themselves would remain operationally independent in order to prevent manipulation by commissioners:

- > **Crime prevention** services would take the lead in measuring local risk factors and social problems. They could build on programmes such as Sure Start and Every Child Matters.<sup>165</sup>
- > The head of **local policing** would be accountable to the local Justice Commissioner and responsible for running the local police budget. While local Justice Commissioners would be elected on specific policies for policing, to give them a mandate, police forces would be operationally independent. The expectation would be that local forces would develop different models of policing in response to local needs.<sup>166</sup>
- > **Local prosecution and defence services** would allow local communities to decide whether to pursue a “zero tolerance” style, with prosecution for minor crimes, or a more liberal approach. The localised Crown Prosecution Service would operate at arms length from the police, while having operational independence for individual prosecutions just as the police have with respect to individual investigations. A local prosecution service would allow innovative ideas to develop such as tendering for prosecution or defence contracts.
- > Justice Commissioners would also be responsible for **probation, youth offending teams and local prison services**. This should enable services to co-operate much more effectively in order to prevent re-offending.

### A national serious crime force – the National Bureau of Investigation

In order to sufficiently focus on national challenges there needs to be a national serious crime force which reports into the Home Office. This should cover a national police force and national prisons for the most serious offenders, such as Belmarsh.

This was one option proposed by the most recent Conservative policy document on policing. It would mean a new “Serious Crime Force” with operational capability, different to SOCA. As the Conservative document judged, “SOCA is currently an agency, not a force; its focus is on disruption and its attention is on internationally linked serious crime.”<sup>167</sup>

The creation of a national police force will mean an improvement in the accountability of the Metropolitan Police Force. At present it faces dual responsibility, to the Mayor of London for local policing and to the Home Secretary for national serious crime. In effect the force would be divided, with its responsibilities for national crime ceded to the national force.

There has been argumentation against this by the Metropolitan Police where much of the expertise currently lies.<sup>168</sup> This is understandable as the Metropolitan Police would lose much of its power.

<sup>165</sup> Farrington, D., “Childhood risk factors and risk-focused prevention”, in Maguire, M., Morgan, R. and Reiner, R. (2007), *The Oxford Handbook of Criminology*.

<sup>166</sup> In his recent remarks, Sir Ian Blair raised concerns that the decentralisation of policing would lead to a new focus on low-level crime and anti-social behaviour. In reality this would be a very positive development, as long as the priorities of national policing are handled by a national force. Blair, I. (2008), “Accountability in Policing or ‘What’s this to do with Bromley?’”, the Colin Cramphorn Memorial Lecture, Policy Exchange, 18 June.

<sup>167</sup> The Conservative Party (2007), *Policing for the People: Interim report of the Police Reform Taskforce*.

<sup>168</sup> Blair, I. (2008), “Accountability in Policing or ‘What’s this to do with Bromley?’”, the Colin Cramphorn Memorial Lecture, Policy Exchange, 18 June.

### Consequences of reform

#### Joined up criminal justice policy

Academic research and recent experience suggest that criminal justice agencies should intervene more intelligently to prevent offending. This means that the different agencies which bear on offenders’ lives – social services, courts, police, prisons and probation – need to work closely together. But the current system prevents this kind of approach since it is divided into separate, vertical silos. A radical decentralisation would enable local resources to be pooled.

#### A new role for the Home Secretary

This new settlement would free the Home Secretary (and the Prime Minister) from direct responsibility for all crime that takes place in Britain. The role of the Home Secretary should instead focus on the strategy needed to deal with the most serious organised crime and terrorism and national issues that cross county and city boundaries. This is more akin to what happens in Germany and the US, where the Home Secretary has a national and strategic function. For example, the German Minister of the Interior is responsible for policing in regard to security at the national borders and in rail and air transport (a force of 40,000 officers). The German Minister is also responsible for fighting terrorism and both right-wing and left-wing extremism.

Similarly the Justice Secretary’s role must be about ensuring that justice is done, that the judiciary is independent and that the constitution and laws provide a sound framework. They should not be responsible for the proportion of prisoners that are rehabilitated or an outbreak at a particular prison, with the exception of a small number of maximum security institutions.

#### A new funding settlement for local government

One of the reasons for the vast escalation in costs of the criminal justice system in the UK (as set out in Chapter 3) is the disintermediation of the payment and the benefit. If the local costs of extra criminal justice spending were transparent, people might be inclined to police their local community better themselves and reduce the costs of the police force.

The budgets for the different criminal justice agencies need to be brought together under the control of the locally elected Justice Commissioner. A much higher proportion of local spending should be raised locally, with some redistribution into deprived areas with high crime levels. In practice this means new thinking on the funding settlement for local government, which goes beyond the remit of this paper alone.

#### Innovation in policing

Local policing will give the opportunity for new types of policing in response to local needs. Relatively low crime areas could see much greater volunteering, as local residents give their time in order to reduce the costs of criminal justice. The recent Cabinet Office review reported that three in four adults would be willing to give up some spare time for activities that would help tackle crime.<sup>169</sup> Higher crime areas could see innovative means to increase visibility and public confidence, such as Japanese style kobans on high crime estates.

Local policing should also see the development of new types of police staff. Police officers have been resistant to changes to police employment, but in reality a wide range of staff types should have emerged to deal with different types of crime. Police forces could also be much more flexible in terms of buying in extra resources, such as specialised help for particular types of crime.

#### Innovation in offender management

Different areas will also take develop varying approaches to offender management. For example, areas with high youth crime could put resources towards highly visible community punishments, in order to deter the peer groups of offenders.

<sup>169</sup> Cabinet Office (2008), *Engaging Communities in Fighting Crime – a review by Louise Casey*.

### A new crime debate

The result would be a new local crime debate in which the identities and policies of key local officials would be known and understood by local residents. Local elections would provide opportunities to debate different types of policies.

The United States provides many examples of this rich local policy debate, for example:

- > The November 2007 election of the Mayor of Philadelphia turned on the issue of crime given high levels of homicides. The eventual winner of the race, Michael Nutter, campaigned on a number of innovative policies including the greater use of “stop and frisk” policies for those suspected of carrying firearms, curfews for adults and limits to gathering on sidewalks.
- > The 2005 election of the Major of Cincinnati addressed both the organisation and the content of crime policies. Candidates differed over plans to create a public safety director who would head a new city Office of Public Safety and Homeland Security. Candidates also differed over approaches to penal policy, with one candidate advocating greater use of prison and one greater use of “boot camps” and summer jobs and activities as alternatives to crime.
- > In the 2008 election of district attorney for Berkshire, Massachusetts, candidates differed over the sentencing of drug offenders, with one candidate advocating minimum two-year mandatory incarceration for selling drugs in a drug-free school or park zone, and another calling for early intervention and treatment rather than jail. The latter candidate, Judith Knight, said: “I’m against mandatory minimums”. “I think the judges give appropriate sentences, and they don’t need to have their hands tied.”<sup>170</sup>

### An end to criminal justice policy

The localisation of criminal justice also offers the chance for criminal justice to become part of a wider agenda which aims to improve wellbeing and quality of life. Both the Left and Right of politics now suggest that crime is associated with other deep-seated social problems such as housing, education and unemployment. The next stage of criminal justice reform would therefore be for local criminal justice spending to be co-ordinated with these other areas of spending.

The purpose of this change is not to suggest that greater co-ordination on the part of government is the key means to address the long-standing social problems of deprived areas. Rather, it would be to bring criminal justice out of its bunker and become something that is thought about in the context of social improvement as a whole and not a problem that should be left to someone else to deal with. It is about the transfer of responsibility to society which should be the moving principle of the new criminal justice debate.

<sup>170</sup> Berkshire Eagle (2008), “Hopeful opposes Capeless in race”, 29 March.

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