



Gove must bang judges' heads together

Reforms will stall unless we send fewer criminals to prison

Denis MacShane and Jonathan Aitken
Last updated at 12:01AM, December 12 2015

As ex-ministers and ex-prisoners, we are rare birds in the aviary of criminal justice commentators. Despite coming from opposite ends of the political spectrum we are united in our praise for Michael Gove's determination to reform our penal system. He knows, as we know from experience, that the clichés of yesterday's politics such as "prison works"; "lock 'em up and throw away the key" and "tough on crime" are discredited slogans.

Mr Gove's agenda deserves applause, with one caveat. For we well know that a systemic weakness in senior politicians is the delusion that once they have made a speech on a problem, they have solved it. Not so in the inertia-prone, risk-averse, legalistic and bureaucratic quagmires of the criminal justice system. A bright idea floated at a Westminster think-tank can take light years before it changes bad old habits on prison wings.

Mr Gove needs to be a mover, shaker and banger of political, administrative and judicial heads if his reforms are going to work.

We particularly liked the aspiration he outlined at the Howard League for Penal Reform last month for a substantial reduction in the prison population, which stands at 86,500, of whom 3,900 are women. But how? We suggest that two groups should be targeted by Mr Gove — legislators and sentencers. In the first four years of the coalition, 1,073 new criminal offences were created, on top of 4,300 new crimes dreamed up in the 13 years of the Labour government. Yet despite this inflation, today's crime rate of 67 offences per 1,000 head of population has remained virtually unchanged since 1982. We might get somewhere in reducing our prison population if our MPs would declare a moratorium on creating crimes.

Our sentencers have become serial jail overcrowders too. They have failed to heed the advice of the President of the Supreme Court, Lord Neuberger, who in 2013 said that there was no point in sending people to prison for fewer than six months.

Judges and magistrates have ignored their boss and fill the prisons with more than 37,000 short-term prisoners each year. German judges impose half the number of custodial sentences as British judges, and French judges only two thirds of our number. Yet there are no discernible differences in the crime patterns of leading European countries. So changing the mindset of the judiciary should be one of Mr Gove's priorities. One suggestion for doing this would be to introduce a practice known in other jurisdictions as "judicial monitoring" or "sentence supervision".

The leading UK champion of this concept is retired judge and parole board member John Samuel. In a recent lecture to Nottingham Law School he reminded us that in many countries judges regularly review the sentences of those they have imprisoned. These reviews, in effect a continuing dialogue between sentencers and sentenced, often result in jail terms being commuted because the prisoners are showing contrition, stopping their drug use, or tangibly changing their attitudes.

The leading Watergate defendants such as Charles Colson, G Gordon Liddy and John Dean all had their original multi-year sentences commuted to terms of a few months as a result of judicial monitoring.

We believe there can be no rehabilitation revolution without a sentencing revolution. Mr Gove's other proposed reforms, such as more work and better education in prisons, are admirable but will achieve little unless prison numbers can be reduced. If the toughest US incarcerators such as Judge "Maximum John" Sirica were reviewing and shortening sentences in the 1970s, why 40 years on do our judges resist judicial monitoring?

The most striking omission in the reform agenda is the failure to involve the sentencer, whether Crown Court or magistrates' court, in the supervision of those whom they have sentenced. Legislators and judges cling to the restrictive practice that once a sentence has been passed the sentencer need take no further interest in a prisoner's progress. This is a profound mistake. Sentence reviewing is an inexpensive and effective route to better justice and lower prison numbers.

As long as judges refuse to do this they will be an obstacle to Mr Gove's reforms, exacerbators of the problem rather than contributors to a solution.

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Mr D J Noble

16 hours ago

Criminals are sent to jail because the law believes that that is where they should go. Some may be there because they are too dangerous to be allowed out. Some may be there because they have committed serious offences and deserve severe punishment. Some may be there because they have been penalised several times with non custodial sentences and are still breaking the law.

It may be that you believe that some prisoners should not have been sent to jail and the law should be changed. That is a view which, whether you agree with it or not, is understandable.

However if the prisons are overcrowded the answer is not to let criminals out before their sentence is up. The answer is to build more prisons.

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Ross

2 days ago

Nobody who is sent to prison for any length of time should be allowed out until they have learned to read and write. And it wouldn't hurt to teach them what a light year is.

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Mr B Rayden

4 days ago

Crime will soar unless we send * more * criminals to prison!

...for longer..

... To more unpleasant prisons..

...without letting them out early.

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Peter Macnab

4 days ago

'A bright idea floated at a Westminster think-tank can take light years before it changes bad old habits on prison wings'

I know what the authors mean but a light-year, nearly 6 trillion miles, is a measure of distance.

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Orleigh Wragg

4 days ago

Judges and magistrates follow the Sentencing Guidelines when sentencing people. These lay out in extensive detail a range of sentences that should be applied to any particular crime, with examples of aggravating or mitigating features. The defence advocates can also give further mitigating circumstances about the defendant. To move outside the guidelines, usually to impose a sentence that is less severe, the magistrates must explain their reasons why this is in the interest of justice to do so.

It would be a totally unsatisfactory situation if all judges and magistrates were able to sentence without reference to a common national standard. If change is required it must be to the Guidelines, and the judiciary will follow.

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David Charnley

4 days ago

@Orleigh Wragg If only those being sentenced also complied to a common national standard the system would work. Magistrates are so worried about going outside the guidelines they stick to them, sometimes in defiance of reason. The whole point of local justice, imposed by local people, used to be to be sympathetic to