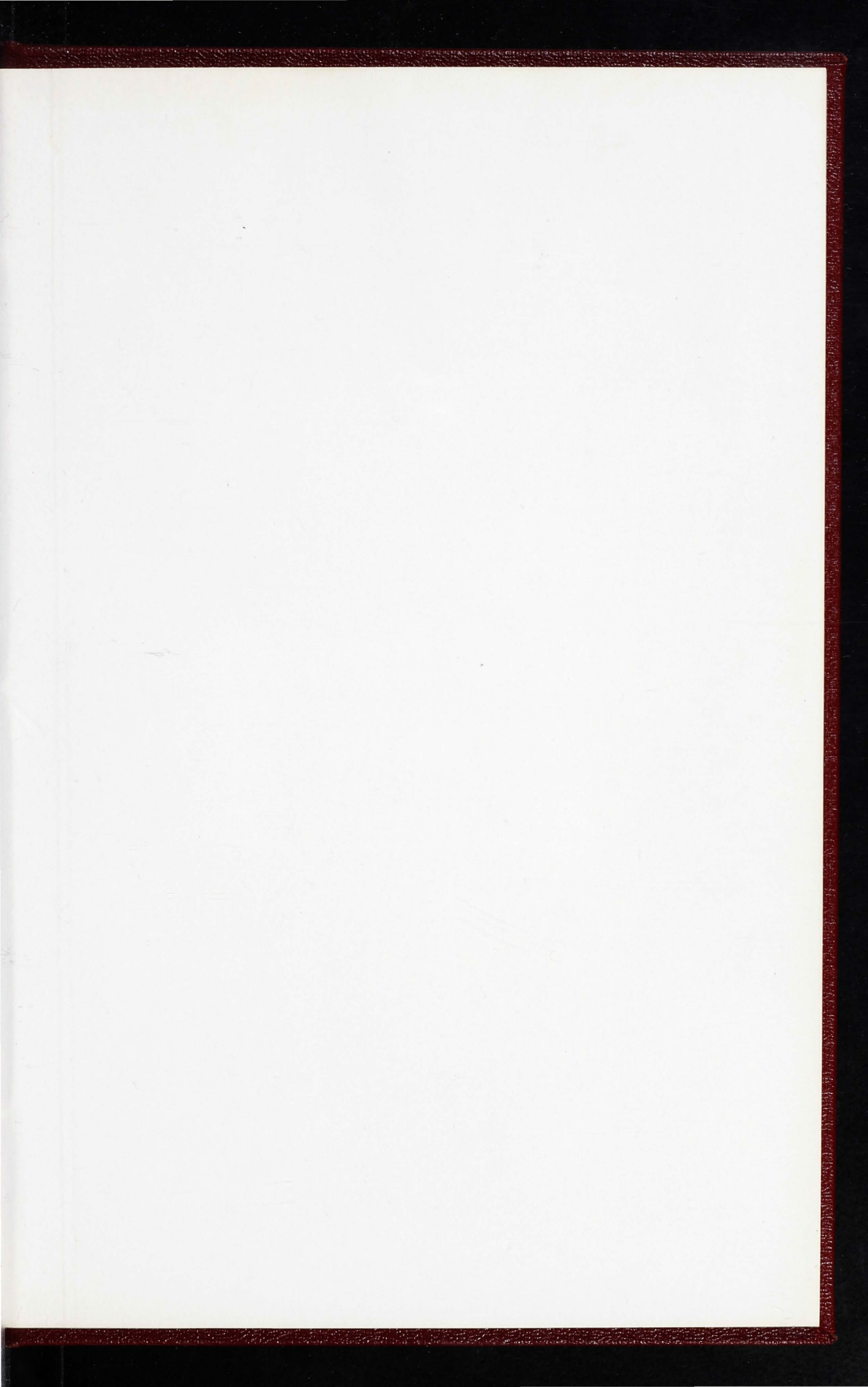


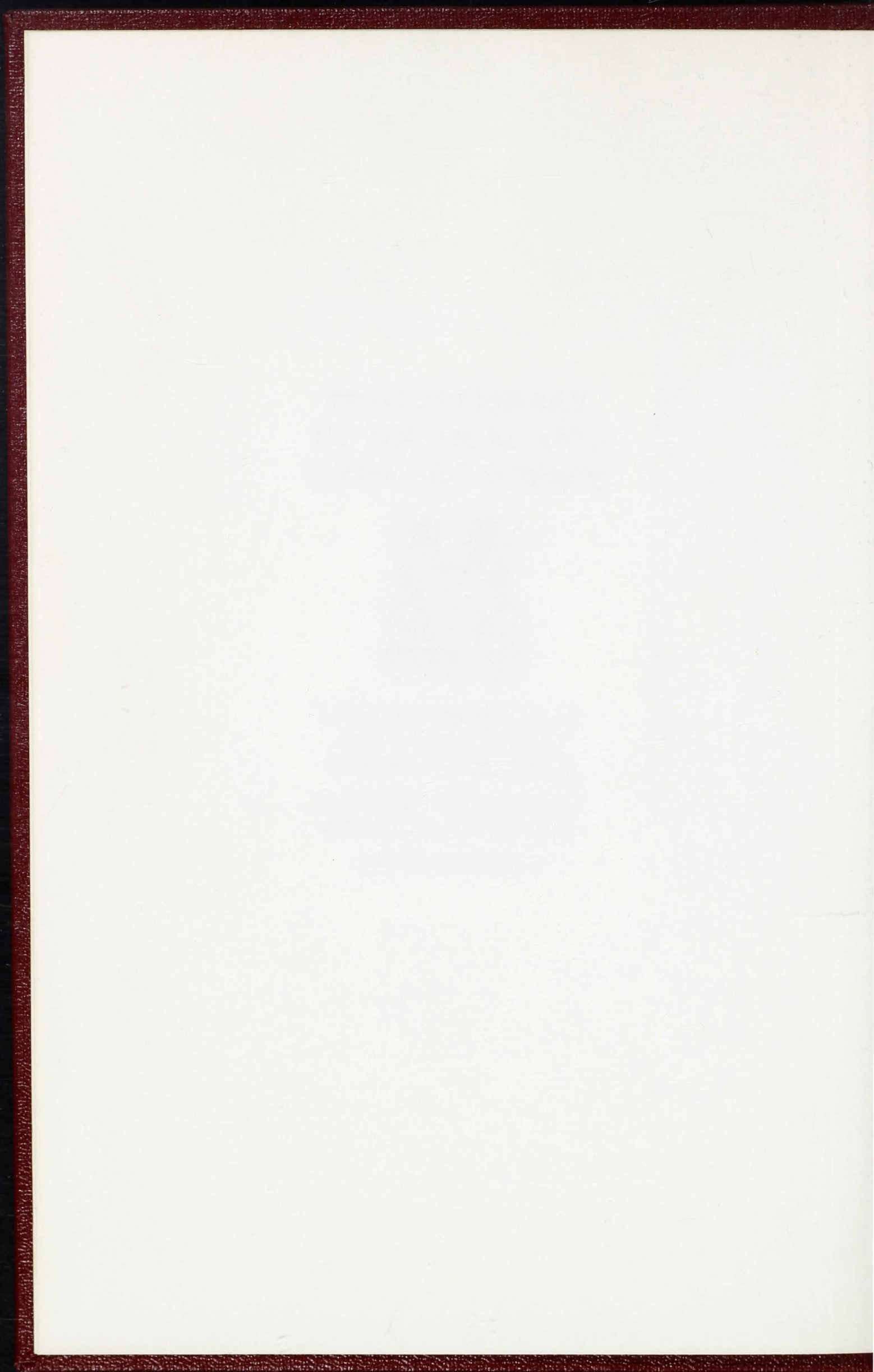
BRITISH LIBRARY  
OF POLITICAL AND  
ECONOMIC SCIENCE



LONDON SCHOOL OF  
ECONOMICS AND  
POLITICAL SCIENCE  
10, PORTUGAL STREET,  
LONDON WC2A 2HD

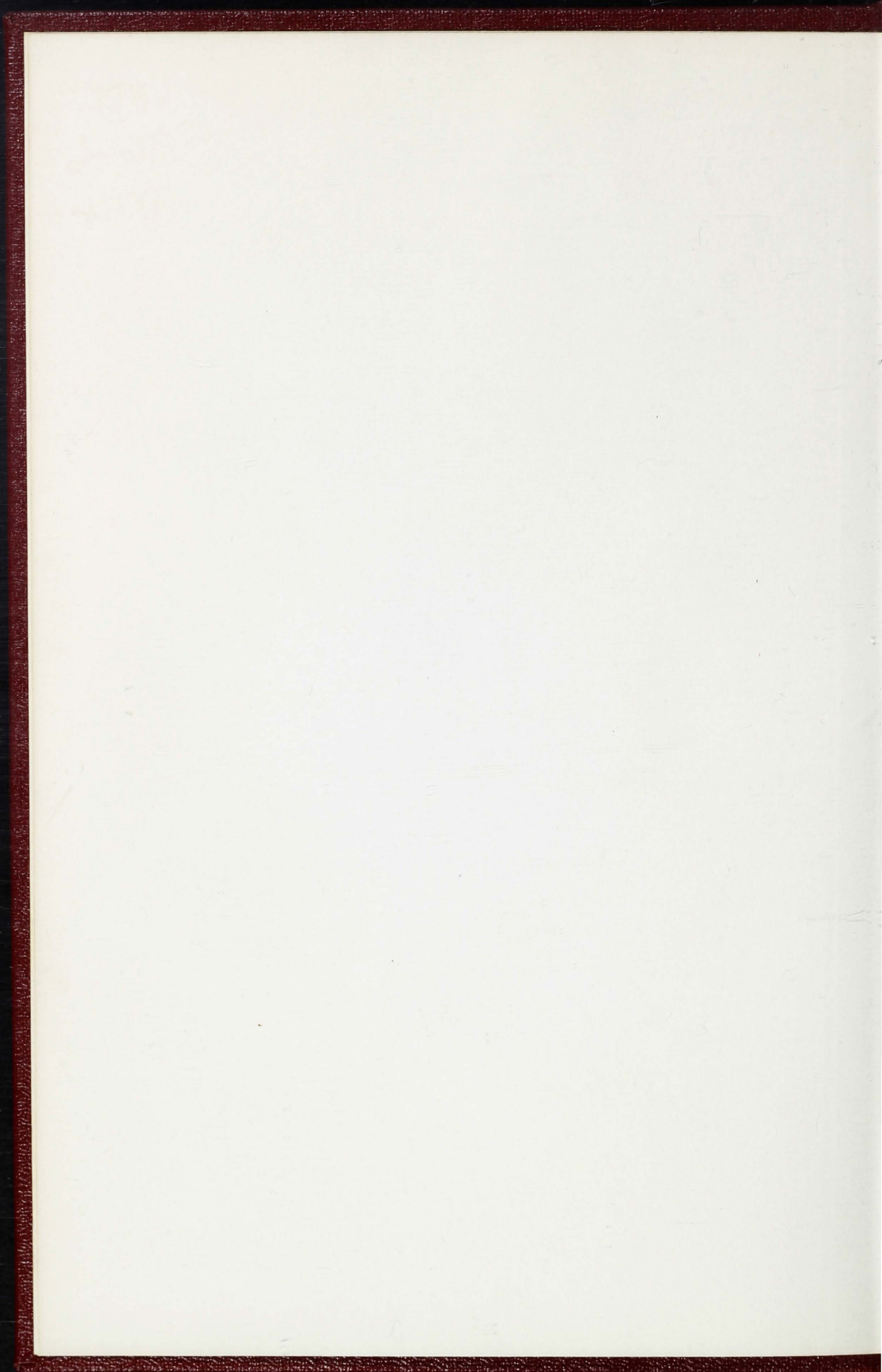
Tel. 01-405 7686

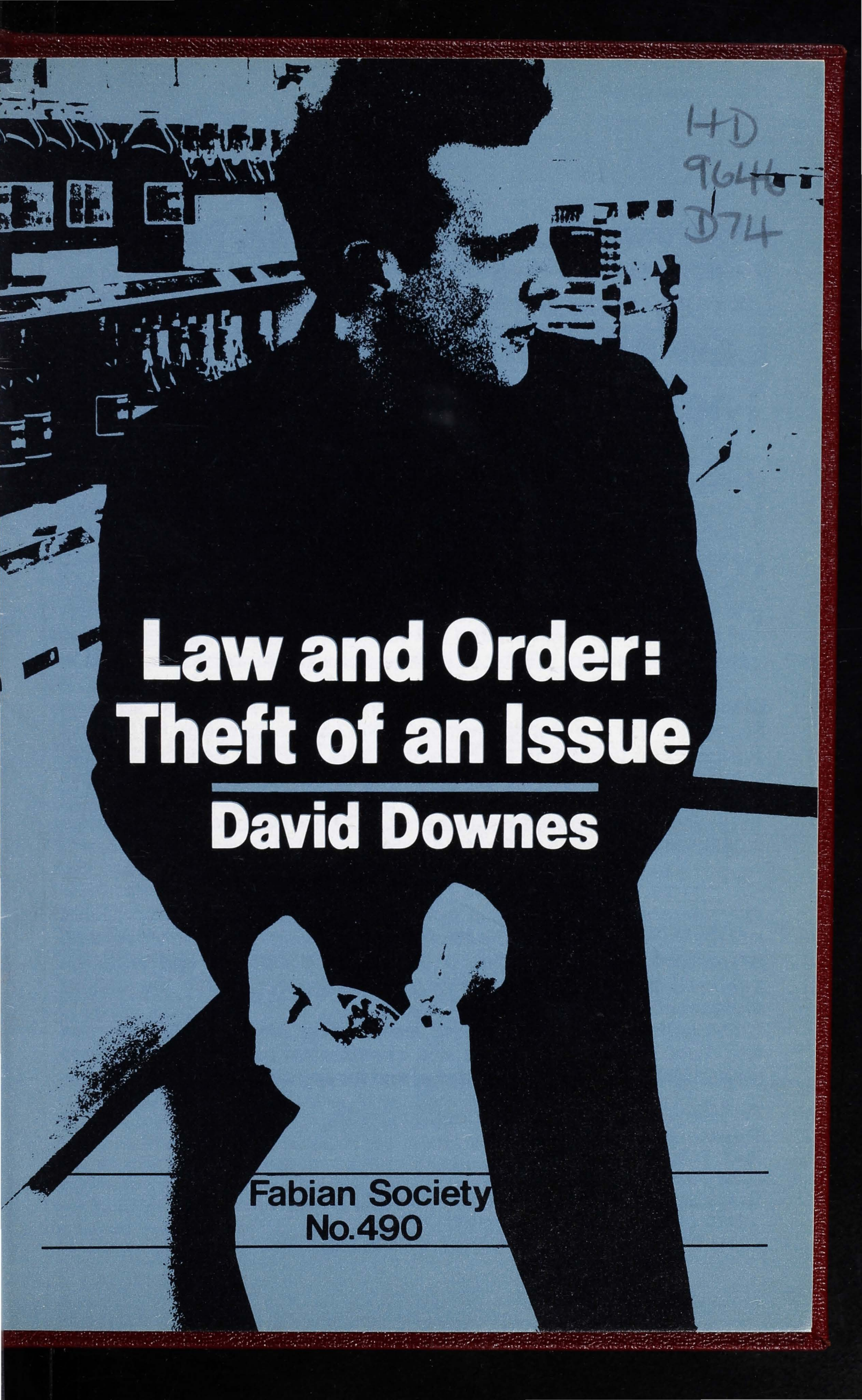




Law and Order:  
The Trial of an Issue

1964





**Law and Order:  
Theft of an Issue**

**David Downes**

---

Fabian Society  
No.490

---

**fabian tract 490**  
**published in association with the**  
**Labour Campaign for Criminal Justice**

# **Law and Order: Theft of an Issue**

---

**chapter**

<b>1</b>	<b>Theft of an issue</b>	<b>1</b>
<b>2</b>	<b>Socialism, crime and the Labour Party</b>	<b>10</b>
<b>3</b>	<b>Policing</b>	<b>12</b>
<b>4</b>	<b>Sentencing</b>	<b>16</b>
<b>5</b>	<b>Prisons</b>	<b>22</b>
<b>6</b>	<b>Conclusions</b>	<b>31</b>

---

**David Downes** is Reader in Social Administration at the London School of Economics. He is a founder member of the Labour Campaign for Criminal Justice and a member of the Howard League for Penal Reform. He is co-author of the Fabian Tract *Educating for Uncertainty* (1965), and his books include *The Delinquent Solution* (1966), *Gambling, Work & Leisure* (co-author 1976), *Deviant Interpretations* (co-author, 1979) and *Understanding Deviance* (1982). He is Associate Editor of the British Journal of Criminology.

***This pamphlet, like all the publications of the Fabian Society, represents not the collective view of the Society but only view of the individual who prepared it. The responsibility of the Society is limited to approving the publications it issues as worthy of consideration within the Labour movement.***

***The author would like to thank Jason Ditton, Alex Lyon, Rod Morgan and Paul Rock for generous and constructive criticism. He remains responsible for the views expressed and for any errors.***

© Fabian Society

September 1983

ISBN 7163 0490 2

ISSN 0307 7535

Designed and printed by Blackrose Press (TU)

Typeset by Range Left Photosetters (TU)

Fabian Society, 11 Dartmouth Street, London SW1H 9BN





MSS

HD

9646

D74

# 1. *Theft of an Issue*

30/11/83

**“We are now in the middle of a deep and decisive movement towards a more disciplinary, authoritarian kind of society. This shift has been in progress since the 1960s; but it has gathered pace through the 1970’s and is heading, given the spate of disciplinary legislation now on the parliamentary agenda, towards some sort of interim climax.”** Stuart Hall’s “interim climax”, invoked in his 1979 Cobden Trust Human Rights Lecture, has been and gone. It occurred on the streets of Brixton, Toxteth, Manchester and other urban centres in 1981. It produced a humane interim response in the form of the Scarman Report of that year. But its more durable legacy lies in the extended police powers, and lack of concession in the realm of citizen defence against those powers, of the 1983 Police and Criminal Evidence Bill. Although that Bill lapsed with the calling of the General Election, the indications are that it is to be re-introduced substantially unchanged. The “drift” towards a ‘Law and Order Society’ has gathered pace since Hall’s coining of the phrase four years ago.

One decisive step had already been taken before that point: the success with which the Conservative Party had appropriated the ‘law and order’ issue in the General Election campaign of 1979. Before the 1979 election, Labour and Conservative Parties alike had not chosen to contest their records and policies on that particular ground (Morgan, 1981). Indeed, some of the build-up to the situation analysed by Hall had taken place under Labour Governments. Despite policy clashes over specific pieces of legislation, in particular the 1969 Children and Young Persons Act, which the Tories implemented only in small part, a bi-partisanship prevailed in relation to the ‘law and order’ issue.

As the 1970’s wore on, however, that bi-partisanship came under strain: it evidently occurred to the Tories, at the time of the Grunwick dispute, if not before, that Labour were vulnerable to attack on the ‘law and order’ flank of their industrial relations record. From that point, it was a short step to the association

of Labour with rising crime rates and falling moral standards. Thus, Margaret Thatcher could assert in March 1979: “*A trade union leader had advised his members to carry on picketing because they would act in such numbers that the authorities would need to use football stadiums as detention centres. That is the rule of the mob and not of the law, and ought to be condemned by every institution and minister in the land. The demand in the country will be for two things: less tax and more law and order*” (Daily Telegraph, 29 March 1979, quoted in Ian Taylor, 1981).

This passage contrives to link several positives – law and order, national institutions and government, and the rule of law – with the Conservatives and ‘less tax’; and several negatives – mob rule, detention centres, defiance of the law – with picketing, trade unions and Labour.

The strategy appears to have played a crucial role in the return of a Conservative Government in 1979. An Independent Television News research survey, reported

---

**An Independent Television News research survey, reported on election night after the closure of the polls, indicated that 23% of voters who had switched allegiance to the Tories did so on law and order.**

---

on election night after the closure of the polls, indicated that 23% of voters who had switched allegiance to the Tories did so on law and order, compared with 22% who switched on trade unions, 26% on prices and 13% on taxation. If these and similar findings (see Taylor, 1981) can be relied upon at all, then a significant, if not decisive, number of voters were swayed to support the Tories by the belief that they could be relied on to maintain law and order, while Labour could not.

## *The Post-war Record*

Since the 'law and order' issue has been thrust by the Conservatives into the centre of political debate, the question naturally arises: do the Tories have a 'better' record on crime control than Labour? The answer is simply 'No'. There is no warrant for the view that the Conservatives have dealt with crime more effectively than Labour. Though the official criminal statistics are a most unsatisfactory way of charting crime trends (see Bottomley and Coleman, 1981, Walker 1971, Box 1971) it is the only conceivable basis for the Conservative claim to superiority in the field of criminal policy. No other trend data exist. When we come to examine the post-war trends in crime, there is no discernible connection between the party in government and crime rates:

---

### **'Serious' Crimes Known to the Police**

<b>Rate per 100,000</b>		<b>Per cent annual change</b>	<b>Party in Govt.</b>
<b>1945/50</b>	1,134/1,094	-1	Labour
<b>1950/1</b>	1,094/1,255	+15	Labour
<b>1951/55</b>	1,255/1,040	-4	Conservative
<b>1955/59</b>	1,040/1,586	+13	Conservative
<b>1959/64</b>	1,586/2,463	+11	Conservative
<b>1964/70</b>	2,463/3,221	+5	Labour
<b>1970/74</b>	3,221/3,994	+6	Conservative
<b>1974/79</b>	3,994/4,833	+4	Labour
<b>1979/82</b>	4,833/6,227*	+10	Conservative

(\* = estimate from number of offences)

---

One obvious point to emerge from these crude totals is that the first three full years of Mrs. Thatcher's Government have been accompanied by a steeper rise in crime than the five preceding years of Labour Government. Nor does the picture change at all greatly if trends in the number of offenders found guilty are considered, or specific crimes, such as the more serious crimes of violence. Theorising about *why* these trends have occurred is too complex a question to be entered into here. We can speculate that the trends mirror in some broad sense changes in *expectations*, on the one hand, and *social reality* on the other. When these relate to each other in some semblance of equilibrium, crime changes only negligibly, as in the immediate post-war period of 'austerity' under Labour. When social reality actually exceeds expectations, a fairly rare occurrence, as in the lifting of post-war restrictions by the Tories, crime actually falls. With the era of the 'revolution of rising expectations', roughly from 1955-70, crime rises sharply as social reality fails to match hopes. The era of the 'revolution of falling expectations' of the 1970's sees the rise in crime slowing down somewhat. The recent sharper rise does not fit this pattern, since expectations have fallen even lower and crime has risen faster, but it makes nonsense of the view that the Tories have any claims over Labour in the realm of crime prevention and control. Indeed, so many factors affect these figures, not least the number of police employed, which one major study (Carr-Hill and Stern, 1979) found to be the major correlate with crime rates, that it would be fatuous for any Party to claim superiority in crime control.

### *Crime in Perspective*

The paradox about crime trends is that they are both better and worse than the picture that emerges from the official stati-

stics. First, the good news: the rise in crime over the past decade may have been much less steep than the official figures indicate. Using a different indicator, answers to questions about burglary and theft from dwellings included in the General Household Surveys of 1972, 1973, 1979 and 1980, Home Office researchers concluded that such offences had increased between 1972-80 at an average rate of only 1% a year, compared to the rise of 4% a year recorded by the police. "The larger increase in those offences recorded appeared to have been due mainly to an increase in the *proportion* of such offences which were recorded." (*Criminal Statistics*, 1981.) Among the reasons which might account for the difference are a greater tendency to recorded." (*Criminal Statistics*, 1981) Among the reasons which might account spread of property insurance.

The bad news is part of the same picture. By definition, only a proportion of crimes committed come to be notified to the police: the so-called 'dark figure' of crime. The size of this figure varies greatly by type of offence, social attitudes towards offences, the settings in which they occur, and so on. The Home Office estimate burglaries to be 1½-2 times greater in number than are officially recorded. What occurred over the past decade is an apparently greater rise in recorded burglaries than in actual burglaries. The 'dark figure' shrank, so that the official trend appeared more serious than the actual trend. But the 'dark figure' is far greater in general the less serious the offence. Victim surveys indicate that the actual volume of crime is some 4 times greater than recorded crime. The first *British Crime Survey*, conducted in 1981, (HMSO, 1983) concluded that "hidden crime was generally less serious than that which appeared in *Criminal Statistics*, though some relatively serious offences were not recorded and many fairly trivial ones were." (p.32) Victim surveys are a useful supplement and corrective to the

*Criminal Statistics*, but they too have their limitations: shoplifting, employee and corporate offences, and institutional victims, for example school vandalism, are not tapped by this approach.

The main point about the 'hidden' crime picture is that it is nothing new. Without trend data, we have no way of establishing how far rises in 'hidden' crime mirror those in the *Criminal Statistics* (with the exception of the burglary example). We are now alerted to the way in which 'crime waves' can be 'manufactured' by even quite negligible increases in public reporting and police recording of offences that were formerly 'hidden'. The bulk of even quite 'serious' crimes has been shown to be trivial: for example, over half the burglaries disclosed by the Victim Survey were attempts (39%) or involved losses of under £5 in value (16%). Financial loss is not of course the sole effect of crime. For victims of violence, social and emotional adverse effects were longer-lasting and more serious than financial loss, in general (Shapland, 1983). By any reckoning, serious crimes *have* risen markedly over the post-war period, and there are correspondingly more people whose lives have been significantly damaged in some way as a result. Within this overall picture, however, there are some features which have been unduly exaggerated, and others relatively obscured. It is to these we now turn.

---

**Crime and its control amount to a regressive tax on the community.**

---

### *Crime and Social Class*

Crime and its control amount to a regressive tax on the community. The defining characteristic of a regressive tax is that it falls disproportionately heavily on the

poor. Our knowledge about the social distribution of criminality has of late had to be revised. The traditional association of crime with 'rough' working-class neighbourhoods can be sustained only if attention is focussed almost entirely on certain crimes against property and 'street-crimes'. These are the offences that bulk largest in the *Criminal Statistics* and the media. In the case of robbery, they dramatise crime in its most immediately threatening and predatory form. But once the focus is broadened to take in less sensational offences, the correlation between class and crime practically disappears. 'Fiddling' at work is a major pre-occupation of many who regard themselves as upright citizens (Ditton, 1977). The 'hidden economy', now estimated to be "only" 7% of the Gross National Product, represents tax evasion on a scale so massive that it dwarfs all but the most sensational standard crimes against property (Ditton, 1983). Frauds, corporate crimes and economic offences concerning currency and share transactions combine with these somewhat shadowy forms of deviance to cast profound doubt on what was previously assumed to be, on the whole, a direct connection between crime and 'deprivation'. 'Crime in the suites' is emerging as just as formidable a problem as 'crime on the streets' (Henry, 1979; Mars 1982; Clarke, 1981).

The costs of victimisation do not, however, fall evenly on all citizens alike. From victim surveys, it would appear that 'the poor pay more' in this as in other respects. They are just as likely to be victims, more so in some cases, than the better off. But in addition the costs of crime prevention and losses in such cases as shoplifting, where higher prices result, are regressive in their effects. While the less well-off may benefit from the 'hidden' economy, the better-off arguably benefit more. And the cutbacks in public services that result in part from this sort of insular tax-haven affect the poor most directly.

---

**'Street-crime' is therefore more rigorously monitored than occupational deviance or corporate crimes.**

---

But it is in the realm of control that the poor arguably suffer most. First of all, police powers are at their maximum on the streets, at their minimum in the suites. 'Street-crime' is therefore more rigorously monitored than occupational deviance or corporate crimes. Secondly, the courts tend to deal more severely with 'working-class' than with 'middle-class' offences. For example, in 1979, 404 people were sentenced to immediate imprisonment for Social Security offences, compared with 5 for offences against Revenue laws. Yet the scale of tax evasion far exceeds that of Social Security fraud – some £4,000m. a year compared with £200m. a year. This is not to say that courts deal inequitably with working-class and middle-class offenders, once guilt is proven. But, thirdly, differences are likely to occur in the extent to which defendants from different social backgrounds can mobilise legal services of high quality and cost on their own behalf. The operation of Legal Aid for poorer defendants is notoriously varied from court to court and area to area (Hansen, 1982).

The Tory Government response to these issues since 1979 has been to tighten the screw on Social Security offenders (losses of £4 million and 576 prosecutions a week) and tone down measures against Revenue offenders (losses of £80 million and 2 prosecutions a week) (1981 figures). The size of the Social Security inspectorate has been increased (an extra 1,000 investigators hired at an extra annual salary cost of £3 million) while the size of the tax inspectorate has been reduced. The scale of the sums involved in tax evasion can hardly be accounted for by odd-job

'Moon-lighting' – the so-called 'Black and Decker' brigade who perform useful services for reward in cash or kind. When the Inland Revenue ran checks on 0.25% of companies in 1979, 82% were found to have understated their profits. Nor was this a fluke: "The 87% of cases examined which disclosed under-statement of profits represented a slight increase over 1980, but more serious cases – involving penalties and interest – had increased from 17% in 1980 to 24% in 1981. The Department told us that they had no evidence that the increasing coverage of their selective examination was bringing into play the law of diminishing returns: the results suggest that this point was still a long way off." (22nd. *Report of the Committee of Public Accounts*, 1982, Cmnd. 339, p.v, para. 3, emphasis added.) The Conservatives clearly intend it to remain 'a long way off'. It would be difficult to conceive a more regressive form of crime control than that which emerges from these trends.

### ***Crime and Unemployment***

A recent review of the problem concluded: "*There is extensive evidence, mainly from research in the United States but also from research in Britain, that unemployment is a factor contributing significantly to crime and delinquency, so that high levels of unemployment can be expected to contribute to higher levels of crime and delinquency and to an increase in the prison population.*" (Hakim, 1982, also Tarling, 1982).

A study drawing on evidence from a variety of countries concluded that unemployment combined with urbanism (taken together with indicators of GNP and the comprehensiveness of data collection) "achieved the highest levels of explanation" of rates of ordinary crime-sanctions. (McDonald, 1976). The character of the links between unemploy-

ment and crime are by no means direct, however, and one study would deny *any* connection (Carr-Hill and Stern, 1979). It is a mistake to argue from such findings that higher crime rates are directly attributable to the unemployed themselves. What *can* be asserted on balance is that any government which precipitates increasing unemployment also risks associated increases in crime, particularly crimes against property. Endemic unemployment in the inner-city seems integral to the worst gang delinquency in the United States (Miller, 1976).

---

**The links between unemployment and imprisonment are much more pronounced than those between crime and unemployment.**

---

The links between unemployment and imprisonment are much more pronounced than those between crime and unemployment. One American study concluded: "*The results showed that the unemployed rate alone explains 54% of the variation in the prison population sentenced during the years 1952-74...After considering sentencing practices, one per cent increase in male unemployment results in 1,395 additional prisoners in Federal penal institutions.*" (Yeager, 1979)

There is strong agreement that the link between unemployment and imprisonment exceeds that which can be ascribed to changes in the crime rate. The connection remains an open question, but studies of sentencing suggest that employment is a crucial mitigating factor which judges and magistrates take into account in deciding upon a sentence of imprisonment. Those who have "nothing to lose" are on this basis more likely to be im-

prisoned than those who have a stake in employment. Given that rates of unemployment are significantly higher among young males, particularly from working-class or minority group backgrounds, the main increase in the use of imprisonment would predictably affect these groups most: and this trend is clearly in evidence over the past ten years in Britain (Baldock, 1980).

The connection between imprisonment and unemployment may be strengthened in two other respects. Firstly, historically and now, sentencers have displaced imprisonment mostly by fines. However, persons considered *ineligible* for fines are more likely to be imprisoned, which may explain in part why the proportion of persons fined fell, and those imprisoned rose, during periods like the 1970's when unemployment rose (Softley, 1978). Secondly, this will continue to be the case until fines are more closely related to means (Morgan and Bowles, 1981).

Given the nature of Tory rhetoric about law and order, it is clearly a major problem for the Government to dissociate itself from responsibility for generating the very conditions most strongly associated with crime and disorder, let alone the prison conditions which the former Home Secretary William Whitelaw has himself described as "an affront to a civilised society". Commenting on the Brixton riots, Mrs Thatcher said: "Nothing can justify this kind of violence" (Emphasis added). She chose her words carefully. In one sense, nothing can. But the substitution of the word "explain" for "justify" would have brought to the surface those very connections between crime, unemployment, racism and inner-city decay from which she most wishes to distance herself and her government.

Unemployment is not the sole or even the major cause of crime, nor crime the major consequence of unemployment. Other effects attributable to unemployment, such as physical and mental illness,

apathy, impoverisation and marital breakdown are just as, if not more serious than crime and delinquency. (Hakim; Tarling; and Sinfield, 1981). Two phenomena are often cited by those sceptical of, or who wish to deny outright, any link between crime and unemployment: the lower rates of crime and civil disorder that accompanied the depression of the 1920's and 30's; and the rise in crime during the period of full employment in the 1950's and 60's. In considering these questions, it is worth remembering that employment and unemployment are not utterly distinct situations, but end-points of a continuum. At one pole, a minority enjoy secure, life-long, diverse, well-rewarded and rewarding full employment; at the other pole, a minority endure chronic, long-term unemployment unalleviated by part-time jobs or casual work. In between, the majority vary immensely in their experience of an array of different work situations. Even in times of 'full' employment, the jobs of most semi- and unskilled young manual workers are 'dead-end', routine and unrewarding secondary labour market jobs. It was in that job context that delinquency rose in the 1960's. As for the 1930's, comparisons between then and now generally ignore the extent to which unemployment then was experienced in many communities as a shared class experience, affecting all generations in a way that at least left working-class institutions intact (Bakke, 1933). In the 1980's, that is arguably much less the case: unemployment, especially in the inner cities, is taking place in more fragmented communities, is hitting the young especially heavily, and is complicated by institutionalised racism. The return to the full-blown pursuit of 'private affluence and public squalor' has weakened the controls that working-class communities could themselves exert against crime and delinquency, even in times of high unemployment.

## *The Fear of Crime*

It is often said that the fear of crime is worse than crime itself, that more people imprison themselves in their homes for fear of crime than are imprisoned for actually committing offences. The 'fear of crime' may affect the quality of life adversely: and may make crime more likely by turning cities at night into empty, forbidding places. The 1981 Crime Survey sensibly distinguished between 'fear of crime' and 'concern about crime', the first being equated with people's fears of victimisation, the second with a more general anxiety about crime that does not necessarily have to do with personal risk. The authors also point out that 'fear of crime' embraces worry on behalf of family or friends becoming victims of crime, and is not limited to fears solely on their own behalf. Nor need the 'fear of crime' be strictly rational, in that people may not worry at all despite a relatively high risk of victimisation; others may become pre-occupied with becoming a victim of a very rare crime in the full knowledge of its rarity.

---

**The risk of actually being victimised is far greater (7%) among young men than among elderly women (1%).**

---

The 'fear of crime' is far more prevalent among women, the elderly and those in inner cities than among other groups. For example, among those surveyed, only 1% of men in areas other than the inner city felt anxiety for their personal safety, compared with 60% of women aged over 60 in inner city areas. Yet the risk of actually being victimised is far greater (7%) among young men than among

elderly women (1%). Part of the difference is due to the greater exposure to the risk of crime of young men. But "victimisation among the elderly was low even for those who lead an active life: taking only those who went out four or more evenings a week, the rate of 'street crime' victimisation for those aged 60 or under was three times that of older people". Clearly, it would be wrong to jump to the conclusion that where 'fear of crime' exceeds the actual risk, such fear is irrational. Age, physical vulnerability, and other factors, such as whether or not one lives alone, can influence the meanings different victims attach to the 'same' offence. "Nevertheless, in some areas fear of crime appears to be a serious problem which needs to be tackled separately from the incidence of crime itself."

Perhaps the best way to reduce the fear of crime is to improve the quality of information generally available. It may not necessarily allay all anxieties to be told that, in 1981 terms, the 'average' person over 16 can expect to be robbed only once every five centuries, assaulted with at least slight injury only once a century, have their car stolen only once every 60 years, and their house burgled once every 40 years: but it does provide a framework within which to place the more lurid crime profile that emerges from the media. Such 'averages' can mislead, and depending on circumstances, risks can be higher or lower. But at least it is good to have the *right* average, instead of one that exaggerates the risks of crime to the point where myths take over completely. A recent BBC programme on penal policy showed a magistrate at a training session on sentencing justifying a prison sentence for a first offence of burglary because "...there's a rather horrific statistic I've heard recently that if in the Metropolitan area you're standing in a crowd of sixteen people, waiting to go home at night, one of those sixteen will find when they get home that their house has been burgled."

(*Panorama*, 22.2.82). The daily chance of being burgled in London is not one in sixteen but one in eleven thousand.

There are many quite specific findings from such surveys that suggest how crime can be prevented in rather more mundane ways than imprisonment which, it is argued below, has only a marginal role in crime prevention at best, and at worst operates to aggravate the problem. Much crime is trivial and opportunistic, and can be prevented by relatively trivial technical means: better home security, car steering locks, entry-phones and the like. Some would generate employment: rates of vandalism on one-man operated buses are several times greater than on those with a conductor. Free telephone installations for the elderly who are unable to afford them would allay some of their worst anxieties about intruders. More caretakers on large housing estates would stem much petty vandalism. Such measures are naturally unattractive to a Government and to Conservative Councils which are dedicated to cutting public expenditure: they prefer to spend far larger sums on increased prison building programmes.

---

**The Tory party has by now developed a very considerable stake in the law and order issue.**

---

### *Crime as an Issue*

*"People ask me whether I am going to make crime an issue at the next election. The answer is no. It is the people of Britain who are going to make it an issue."*

Mrs Thatcher, Conservative Party Annual Conference, 1977).

The Tory party has by now developed a very considerable stake in the law and



order issue. It helped to put them in power in 1979 and, though dispensed with as an issue by the Manifesto in 1983, many local candidates gave it prominence. It trades on a sense that people have quite understandable fears about crime, and that a sizeable majority believe it can only be dealt with by tougher measures of policing and imprisonment. A rhetoric of 'law and order' has been orchestrated by the Government to capitalise on those fears and beliefs. But that rhetoric is a double-edged weapon. Should the Conservatives fail to deliver the goods, should crime continue to rise, and tougher measures fail to stem that rise, then the problem of accounting for that failure will have to be addressed. Experience suggests that this will be accomplished by the 'breastplate of righteousness' technique. Despite our best efforts, crime continues to rise. Crime must be dealt with by even tougher measures. The police must have even stronger powers. The prisons must be expanded. Civil liberties will be further eroded. The constituent elements of a 'police state', which have already been assembled, will be further consolidated.

---

**Most crime is probably fiscal and occupational: it is almost invariably dealt with informally or by negotiation rather than by the police and the courts.**

---

The reality of crime is more complex and less sensational. It merits an informed rather than an inflamed response. Most crime is probably fiscal and occupational: it is almost invariably dealt with informally or by negotiation rather than by the police and the courts. We choose to ignore it and to concentrate almost exclusively on a relatively narrow band of offences whose predatory character is more visible. The perpetrators and victims of these offences tend to be working-class rather than not, and to be in certain localities associated with ethnic minorities. The rise in these crimes has been exaggerated, and the police and the media have chosen a dangerous course in so heavily over-emphasising one crime – robbery, in one area – Lambeth, in which one ethnic minority is heavily implicated – young blacks. At the same time, every effort is made to deny any possible connection between that one form of deviance and the very social and economic conditions that, in several societies, have been shown to be strongly associated with it: high unemployment in the context of racial discrimination. As Scarman showed, such distorted stereotyping leads to false diagnoses of the problem; and thus to seriously flawed solutions in the form of punitive policing and severe sentencing. The result is the scapegoating of one particularly vulnerable section of the community to allay the genuine concern about crime, the character of which is far more widespread and pervasive.

## 2. Socialism, Crime and the Labour Party

Labour's record as a party of radical legal reform has not been matched by its record on law and order in general. For a party with major reforms to its credit in the 1960's (notably the abolition of capital punishment, and homosexual and abortion law reform) its thinking on crime control has been largely orthodox. The governing assumption has been that long-term social and economic changes are needed to diminish crime, and that until such changes 'pay off', crime and delinquency must be dealt with along largely traditional lines. The major exception to this rule was the acceptance of rehabilitation as a principal alternative strategy, especially in connection with delinquency. But as the evidence for the success of rehabilitative strategies failed to materialise, a policy vacuum developed, fresh alternatives were not evolved, and the drift to more authoritarian measures enhanced. Labour thus got the worst of both worlds: a 'soft' image combined with a 'hard' policy.

The ultimate justification for the 'hard line' is that people *want* law and order, and that any Government which fails to seek to promote it is not only failing in its duty towards them, but also courting electoral suicide. 'Law and Order' as a slogan implies that there are simple recipes for the delivery of law and order in reality. It is a political commonplace to refer to the myth of 'law and order'; that if only we were not so squeamish, and got really tough with offenders, the problem would at least be curbed, if not resolved. No amount of evidence to the contrary seems to weaken this belief. Yet there are signs that 'public opinion' is not so wedded to a policy of massive retribution as is usually implied by politicians and policy-makers. It may be that 'public opinion' is not such a major obstacle to reform, but is used as a resource by those who wish to justify the extension of 'hard-line' policies. The evidence gathered by the Prison Reform Trust (1982) indicated that people's views on appropriate penalties are far more

diverse, and equivocal, even in connection with more serious offences, such as burglary, than had been assumed. It is no longer permissible, therefore, to dodge the issue on the grounds that 'law and order' at all costs is what the public want and so, reluctantly, we have to go along with that (see also Maguire, 1982).

The hostile reactions of many professional groups to the subsequently withdrawn clause in the (1983) Police and Criminal Evidence Bill which would have permitted police scrutiny of confidential files is a sign of dawning awareness that the requirements of 'order' exist in considerable tension with those of 'law' and 'liberty'. Our aversion to the 'Police State' is that it buys 'order' at the expense of 'law'. Compliance is exacted from the people at the cost of basic freedoms. Civil liberties are set aside to promote greater efficiency in crime control. In principle and practice, once the goal of 'order' is taken to be the over-riding priority, nothing is sacred. It then becomes 'obvious'

that the police should be armed, the jails expanded, regimes toughened, in short, the repressive arm of the State apparatus extended, and the scope of civil liberties contracted. 'Law' under such conditions quickly becomes a mere counterfeit of justice and 'order' a forced regimentation.

---

**Britain has arguably the sternest sentencing policy in Europe.**

---

A socialist policy towards criminal justice should be based on a realistic acknowledgement of these tensions, as well as of people's desire for civil peace and protection from criminal victimisation. How might the traditional socialist ideals – of equality, liberty and fraternity – best be translated into criminal justice terms? Even a fairly narrow interpretation yields some strong policy leads. Equality as an ideal applied to the administration of justice shows a glaring discrepancy between social class, gender and ethnicity on the one hand, and an almost exclusively upper- or upper-middle-class white, male judiciary on the other. Immense obstacles stand between the formal principle of 'equality of opportunity' and equality in practice in terms of recruitment to both the judiciary, the legal profession, and the magistracy (Labour Campaign for Criminal Justice, 1983). Liberty as an ideal spells the minimum use of liberty-depriving penalties, when in reality Britain has arguably the sternest sentencing policy in Europe. And fraternity connotes a degree of participation in criminal justice, and of democratic controls, which we are only now beginning to explore in relation to police accountability. In the very running of prisons, borstals and detention centres, the only mention of the term is ironical: 'criminal fraternity.'

The larger sense in which a humane socialism can operate in criminal justice terms must be sought in a re-thinking of restitutive rather than retributive principles. Paradoxically, these operate at their fullest in the realm of economic and fiscal offences most associated with occupational deviance. In cases of tax evasion, infringements of health and safety legislation, both in industry and public health fields, social control is very largely a matter of negotiation and protracted settlement, rather than prosecution and retribution. (Carson, 1971, 1982; Paulus; Chapman, 1963) In part, this may stem from the implication of productive activity in the enterprises concerned. But the major reason seems to lie in the consequences for society of too stringent a tightening-up and formalisation of the controls. For example, a major crackdown on tax evasion would alone swell the prison population even further. Socialists face a dilemma on this score. Do we think prison wrong for the bulk of those who are currently inside only because others (tax evaders, motoring offenders, currency speculators) should take their place, or because it is wrong in itself? If we reject the latter choice, then we merely reproduce the penal crisis under a different ideology. But if we reject the former, it is then consistent to demand a policy which extends to the bulk of those currently imprisoned for largely non-violent property offences the same concern for the avoidance of stigma, excessive damage to their personal and economic prospects and care for their eventual re-entry into society that we now reserve for those committing a better class of crime. To leave things as they are is to reinforce the widely held view that there is 'one law for the rich, another for the poor'.

In other words, it is more consistent with humane socialism to redress the balance by extending restitutive principles of justice to the great majority of cases now handled retributively. The most

serious offences – murder, rape, armed robbery, major frauds – would still be dealt with severely. But in all cases, the principles framing the operation of due process should incline towards the restitutive rather than to the retributive. As we

examine the implications of such a shift for the major control agencies in turn, it should be clear that such an approach would enhance, rather than detract from, the social processes most germane to law and order.

---

### 3. Policing

**More effective policing was one of the principal ways in which the Conservatives claimed 'law and order' could be improved. In the past five years, the police have been singled out by the Tories as a relatively favoured group in the general toll of public sector cutbacks, both in terms of pay and personnel. On the face of it, this strategy seems perfectly sensible: the police are, after all, the major agency responsible for crime control.**

But the simplicity of the objective is largely illusory, and in many ways does the police a dis-service. It begs the question of methods, of just *how* the police could best improve their effectiveness; and it over-emphasises the role of the police as 'crime-fighters' holding the line against a rising tide of lawlessness. Inflated expectations have been aroused which the police have found it impossible to fulfil. The danger now is that they ascribe that failure to inadequate powers, personnel, technological resources and crime-fighting hardware, instead of to an unrealistic set of expectations of the role of the police in a complex and all too conflict-ridden society.

#### *The Limits to Policing*

Policing emerges from recent research as surprisingly limited in relation to crime control (Clarke and Hough, 1980; Heal and Morris, 1981). It has been established by victim surveys that at least 80% of

crime goes unreported, and this figure is almost certainly a gross under-estimate, since the surveys do not tap such realms as occupational deviance. Of the 20% of the total volume of crime that, for the sake of argument, *does* become classified as 'crimes known to the police', some 60% or more (over 80% in the Metropolitan area) is not 'cleared up': that is, at most, 8% of the total *is* 'cleared up'. Of that 8%, around 75% is solved relatively routinely and very quickly or not at all, on the basis of victim reportage and suspect identification, or as crimes 'taken into consideration' in connection with a principal offence. In other words, in at most only 2% of crime control work are police skills of any developed order called for. This is not to denigrate the skills in so-called 'routine' police work, but to point out the limits within which they are exercised. It is glaringly obvious, and certainly well-known to the police themselves, that significant short-term improvements in their effectiveness could flow only either from a spectacular increase in public

reportage (which would send the crime rate soaring) or the most draconian extension of police powers and presence to hitherto private realms of social and economic life.

Both strategies would, if put into practice, prove hopelessly counter-productive. The first would increase the 'fear of crime' and swamp the police with a mass of largely minor offences. The second would not only debase civil liberties, but would also lead to a spiral of deviousness that would poison social and economic life, and bog the police down in a morass of secondary conflicts with the custodians of institutional and corporate interests. The way to tackle corporate deviance is by changing the distribution of power, not by blanket extension of police powers.

## Community Policing

The police have long known that formal social control is largely bluff. Social order is overwhelmingly the outcome of *informal* social work by people in families, schools, work and leisure. Policing, at least in a democratic society, has to be by consent, and has to be based on a shrewd acknowledgement of its limitations. It is ironical that the police are being encouraged, by the exploitation of the 'law and order' issue, to over-step these limits just when researchers are exposing them in some detail.

Yet the best possible hope for crime control flows from building grounds for more confidence in the police, and co-operation with them, by the public. More serious crime might be reported, but more importantly, more information leading to clear-up would be given. Greater police powers lead to those very conflicts which undermine public willingness to co-operate. At the end of that road lies Northern Ireland.

In introducing a recent review of some

20 years' study of the police in Britain and the USA, John Croft, former Head of the Home Office Research Unit, wrote: "First, the authors suggest that the police exercise a limited control over crime. Second, although the police may be less effective in controlling crime than traditionally supposed, they have a range of other important tasks to fulfil, including the education of the public in how to avoid crime, the reduction of fear in the community, and the support of those who have recently become victims" (1981). In a similar review of the evidence on police effectiveness, Michael Zander wrote: "*The evidence so far suggests that adding police does not have the expected pay-off in terms of more good arrests, let alone any reduction in the total level of crime. One reason is that so small a proportion of a policeman's time is spent in the pursuit of criminals. "Service" functions such as traffic duties, attending to accidents and fires, crowd control, tracing missing persons, intervention in domestic disputes, and the like, accounts for the bulk of police time. When police numbers are increased, the service functions go up in proportion*" (Zander, 13/12/79).

This distinction, between "crime control" and "service" policing, is at the heart of debates about the role of the police. The police are practically the only public service (along with hospital emergency departments) available 24 hours a day, seven days a week, every week of the year. People turn to the police for aid and advice on a host of matters, some not strictly to do with crime control or prevention at all (Manning, 1977). Two distinct philosophies of policing have emerged, one the "crime-fighting", the other the "peace-keeping", which bestow very different priorities on the two kinds of activity. The 'fire-brigade' conception would strip away the servicing aspects and intensify the core crime control aspects of policing. The 'community policing' conception views the two as inseparable,

since the 'service' aspects of the job provide the basis for the consent without which the public become alienated from the police.

The evidence suggests that the 'community policing' view is the more correct. There is some evidence that concentrating police resources on specific targets pays off to a limited extent, but the effect is temporary, some crime is 'displaced' to adjacent areas, and "such a strategy may incur costs in the form of public alienation from the police, or rivalry between one group of officers and the next". (Heal and Morris, 1981.) At worst, more convictions are bought at the cost of heavy casualties, as in the notorious Detroit 'decoy' plan to combat street robberies, in which "eight offenders were killed by police officers and 38 police officers were wounded, one fatally". The 'Swamp '81' strategy in Brixton came perilously close to reproducing this state of affairs in Britain. (Scarman, 1981). Even with major manhunts, 'high tech' policing fails to pay off – the 'Ripper' was caught by 'plain coppering' in the words of the Sheffield PC who arrested Peter Sutcliffe. Back at headquarters, detectives were swamped by computer print-outs.

## **Police Accountability**

'Brixton also brought to the fore the issue of police accountability: "*Accountability is... the key to successful consultation and socially responsive policing. Exclusive reliance on 'voluntary' consultative machinery will not do, as the Brixton story illustrates. It must be backed by law*" (Scarman, 1981).

At present, and especially in London, which lacks a Police Authority other than the office of the Home Secretary, the system of police accountability is a recipe for mutual paranoia to flourish in police-public relations. As with much paranoia, there is a grain of truth in both points of view. The police view civil libertarian

'watchdog' groups as excessively anti-police, eager for any instance of 'police brutality' on which they can pounce. The 'watchdog' groups, such as the National Council for Civil Liberties, the GLC Police Committee, and the Lambeth Working Party into Community/Police Relations tend to view the police as authoritarian, closed to alternative views, often racist and hostile to informed criticism. Mutual paranoia will continue to flourish until the issues of complaints against the police, and a democratic framework for police accountability, are settled.

It is vital they are settled in a framework that prevents too close a link between local politicians, professional criminals and senior police, the formula for the successful emergence of organised crime in the USA. Similarly, it is important to avoid too rosy a view of community policing: "*At the simplest level, where the police work for a greater degree of collaboration between themselves and local authority agencies, they are in danger of being criticised for stepping beyond their conventional role and usurping the role of others; while on those occasions when the police urge the public to recognise, accept and act upon those aspects of crime to which they may be contributing, a position may arise in which the public find themselves accountable to the police.*" (Heal and Morris, 1981).

There is no one system of policing which will fit all problems and all communities. Too bureaucratized a form of community policing would fit only too well the Poujadism of Mrs Thatcher's Government. There are forms of specialist crime which simply cannot be tackled by community policing methods. But the bulk of minor offences are local, often opportunist and best dealt with by police who have local knowledge and some sensitivity to the diverse groups who compose the community. The 'no stone unturned, no orifice unexplored' brand of policing should be consigned to perdition.

The question of democratic control of

the police has been brought into sharp focus in recent years by increased specialisation and use of technology; by the increased arming of the police; by the growth in size, and reduction in number of local authorities appointing Police Authority Councillors; by disquiet over certain deaths in police custody; by the lack of any independent machinery for investigating complaints; by tactics in policing political demonstrations (in particular, the course of events surrounding the death of Blair Peach); and the increasingly overt nature of political campaigning by police organisations (which recently included the call by the Police Federation for the re-introduction of capital punishment).

The feebleness of existing democratic controls is summarised by Stuart Hall's remark that he searched the pages of Hansard in vain for the days when the "momentous move" to create the Special Patrol Groups "was debated by those to whom senior policemen insist they are ultimately accountable." Yet Police Authorities, mainly composed of elected councillors, do have power to monitor and take part in formulating police policy, (Regan, 1983) if only by pressing for more detailed information and regular meetings. Even so, "the evidence suggests that many local police authorities have a most unsatisfactory approach to their responsibilities. They display a tentativeness which in some cases amounts almost to passivity" (Regan). Flicking over the pages of the Complaints Book at the end of the quarterly meeting, and rubber-stamping increases in establishment and equipment, are hardly rigorous forms of monitoring. How can a more active form of ensuring accountability, let alone control over policing, be accomplished?

There are already certain developments in train which would improve the situation. Mandatory consultation via police-community liaison committees, outside the police committee of the local authority, was one positive feature of the Police

---

**England and Wales are among the few countries in the world where the police not only investigate a crime but also prosecute the suspect.**

---

and Criminal Evidence Bill. Lay visitors to police stations with access to the books and interviews are no mere sop to ward off full democratic control, but a valuable way of exercising such control. Other reforms are clearly called for: in particular, the elimination of Justices of the Peace from Police Authorities, and the creation of a Greater London Police Authority. However, before we can contemplate the full control of policing by such reconstituted Police Authorities, we must be clear about the character of the independence that must be left to the Chief Constables; reserved issues over which they would have authority without recourse to the elected Authority. At a minimum, these should include the investigations of individuals; appointments and promotions below the rank of Superintendent; and the discipline and disposition of particular officers. Appointment and dismissal should still be subject to Home Office ratification.

### ***Prosecution***

England and Wales are among the few countries in the world where the police not only investigate a crime but also prosecute the suspect. The case for separating these two processes has been amply made by the Royal Commission on Criminal Procedure, which has recommended the establishment of a public prosecutor system for England and Wales. There is no particular merit, however, in the Commission's view that the prosecutor should be accountable to the local police authority committee. The latter should determine

the policing policy for the area and should not be involved in individual prosecutions. The general lines of the Scottish system offer a better model, and would put the prosecutors under the ultimate control of the Attorney General. Prosecutors should have sole control over the decision to prosecute in individual cases, leaving the Attorney to establish the general guidelines. In England, about a third of the cases tried at the Crown Court are currently dismissed before they go to the jury. Independent prosecution should lead to fewer miscarriages of justice, less time spent awaiting trial, less expense and more public confidence in the criminal justice

system. Prosecutors should also have the power to inquire into the content of particular investigations.

The police should support such reforms, for they have a stronger stake than they might realise in the success of democratic community policing. For when 'fire-brigade' policing fails, as it must, to deliver the goods, the next Tory policy option is privatisation. The model is already familiar: guard dogs and armoured transit vans, for those who can afford them. 'Securicor' strategies will be hailed as the solution to 'law and order' problems which other parties cannot reach.

---

## 4. *Sentencing*

**Apart from strengthening the police force, the other main theme of Conservative policy on 'law and order' has been to reassert the value of punishment as a means of deterring criminals. The much-heralded and now enacted intention to experiment with more rigorous detention centres set the tone of recent penal policy. However, on assuming office, the former Home Secretary, William Whitelaw, to his credit, was quick to express his view that conditions in too many of our prisons are "an affront to a civilised society". He sought to persuade sentencers to be more sparing in their use of custodial sentences, and in 1981-2 was on the point of acting to reduce the appalling over-crowding in our prisons by introducing a supervised release scheme for short-term prisoners. The hostile reaction of both the senior judges, and his own Party at Conference, led him to abandon the proposal.**

The 1982 Criminal Justice Act as a result was a much watered-down version of earlier liberal proposals, and a re-assertion of a basically punitive philosophy. The sentence of imprisonment was finally abolished for soliciting and vagrancy, but against this liberal measure, a form of curfew was introduced for young offenders on supervision, and the partially

suspended sentence for adult offenders. Both are likely to aggravate the numbers entering custody, the first by responses to a breach of curfew, the other by sentencers using partially suspended sentences instead of non-custodial sentences. But the main point about the Act is its massive irrelevance to the fundamental need for sentencing reform.



---

**Sentencers continue to make far too extensive use of imprisonment.**

---

## ***The Case for Sentencing Reform***

Why is sentencing reform needed? The principal reason is that sentencers continue to make far too extensive use of imprisonment at a time when it has become increasingly clear that this measure is not only largely futile and costly, but also tends to deform rather than reform offenders. (Ashworth, 1982) Throughout the 1970's, a string of reports rammed this message home. The Advisory Council on the Penal System reported "*Neither practical experience nor the results of research in recent years have established the superiority of custodial over non-custodial methods in their effect upon renewed recidivism*" and the Home Office itself said "*No evidence has been found that longer sentences or longer periods of incarceration produce better results than short sentences*" (Sentence of the Court, 1978).

These conclusions stem from sources which are hardly associated with rash or radical statements. And there are signs that sentencers, especially magistrates, are making some attempt to be more sparing in the use of custody as a result. But their efforts are too little and too late, and the conditions in prison, especially local prisons, continue to deteriorate.

A basic problem is that crime continues to rise and, as long as sentencers resist a fundamental re-thinking of the traditional responses to it, the prison population is bound to rise also, despite parole, suspended and partially suspended sentences. It can of course be argued that, if people knowingly commit crimes, they

*deserve* the punishment of imprisonment even if it *is* futile, costly and deforming. But it then becomes difficult to establish just how much prison is deserved, and *for whom*? Why do we single out not only murderers, rapists and armed robbers (who amount to less than 10% of the prison population) but also petty persistent offenders against property of certain kinds – mostly burglars and those guilty of minor larcenies – and avoid almost altogether the use of imprisonment, and even prosecution, for tax evaders, violators of health and safety legislation and the like? Why is a sentence of 9 months imprisonment appropriate for an incompetent shop-breaker with one distant previous conviction? Why not 6 months, or 3 months? Why prison at all? As long as this degree of incoherence reigns in sentencing philosophy and practice, the sentencing process will remain "a disgrace to the common law tradition" (Ashworth).

There remains the argument for the sheer incapacitation of offenders – locking them up longer prevents them from committing offences while they are inside (forgetting, for the sake of argument, those they may commit inside). But the impact on the total level of crime is marginal, since there are so many others who remain free. We should have to imprison far more people for far longer to make a difference of even a few per cent to the crime rate in general, though for highly specialist professional crimes, the impact is slightly greater (Brody and Tarling). The acid test of that proposition is what happens in other societies with a higher prison population than our own. Here we are moving towards wonderful penal company. The only comparable societies with higher prison populations than the United Kingdom are the USA, the USSR, South Africa and Austria West Germany. The first is notorious for its problems of organised crime and high levels of violence; the second for its 'darkness at noon' re-

pression of political and intellectual dissent; the third for its appalling institutionalised racism; in the fifth there are trends to reduce the prison population below our own. Countries with far lower prison populations include Japan, Holland, the Scandinavian countries and Australia: in none do crime trends compare adversely with ours, though their prison populations are *per capita* between 25% to 400% lower:

---

**Daily Prison Population in 1979 (per 100,000)**

Holland	22
Norway	43
Sweden	52
Denmark	58
Australia	68
England and Wales	86
West Germany	89
U.S.A.	250
South Africa	320

---

**The policy of punishment and its variations have no effective influence on the rate of crime.**

---

It would appear from comparative crime and prison population trends that prison has a far more peripheral impact on crime levels than traditionally imagined. This conclusion was reached nearly half a century ago in one of the most celebrated analyses of the data then available for several European countries: "The policy of punishment and its variations have no effective influence on the rate of crime. Changes in penal praxis cannot seriously interfere with the operation of the social causes for delinquency" (Rusche and Kirchheimer 1939). Current research has

strengthened rather than weakened the force of this contention.

Why, then, do sentencers remain so attached to the sentence of imprisonment? To answer this question is difficult, since judges in Britain have blocked attempts to inquire into their working philosophy. To say that they simply interpret the law is nonsense: the law does little more than prescribe a (usually very high) maximum penalty for broadly defined offences. But it helps to understand how judges and magistrates become locked into a custodial frame of mind if we examine the practical difficulties they face in their job.

The most formidable difficulty is that, as Ashworth stresses, "society is expecting sentencers to perform daily what even the great moral philosophers cannot achieve in a lifetime, that is, to reconcile satisfactorily the diverse factors of varying strength in each case, and to express the result in the form of a sentence which is regarded as fair." Does a first offence involving violence merit sterner measures than the fifteenth routine offence against property? What are the mitigating, and what the aggravating, factors? How should they be weighed? In this morass, sentencers rely heavily on two principal guidelines: *seriousness* (the extent of the injury, the amount stolen *etcetera*), and *consistency* (keeping sentences in line with similar cases in the past (Van Dijk, 1981). One problem is that sentencers tend to be informed only about what they and their immediate colleagues have done in the past: sentencing practices vary widely from area to area. Even Court of Appeal judgments make a limited and probably increasingly inconsistent impact (Thomas, 1982). So, if consistency and seriousness are the overriding guidelines, the prison population is bound to rise roughly in line with the crime rate. Only the most searching review of sentencing principles and practices could change things widely enough for the effects to be felt in terms of a *reduction* in the prison population.

It tends to be axiomatic for sentencers to accept the need for custody to be treated as the "last resort", especially as wide publicity has been given to prison over-crowding (though judges reject the view that this factor should be allowed to influence their sentences). Despite this widely shared assumption, certain competing assumptions routinely over-ride it. Once a prison sentence has been given, it is most unlikely for a non-custodial sentence to be passed if a person re-offends. So the factors governing *first* custodial sentences start people off on what is likely, given the high rates of recidivism among ex-prisoners, to be a penal career ended only in old age after several spells inside. Here the move to a shorter sentence, rather than to no custody at all, can be counter-productive. On the assumption that a short, sharp shock will "nip in the bud" a burgeoning criminal career, or that the "clang" of the gates will produce a momentous deterrent effect, many could be sentenced to short spells in custody who should have received a fine or supervisory sentence such as probation.

### ***Persistent Offenders***

Ashworth sees the nub of the prison problem as the petty, persistent offender: "thus in 1981 about half of the sentenced custodial population were persons convicted of burglary, theft, fraud or forgery who had three or more previous convictions". In these cases, it is persistence rather than seriousness which leads to a clustering of sentences around the '18 months to 3 years' range. There is no evidence that the stepping-up of sentence lengths to punish persistence has any deterrent effect, either on the individual concerned or generally. A modest theft, break-in or car-theft should not entail a custodial sentence even if persisted in for "the fifth, tenth or fifteenth time". There are non-custodial measures available, and

those of a restitutive character could actually benefit the victim far more than custody (where the only conceivable benefit to the victim is vicarious pleasure at the offender's pain) (Wright, 1982). The only alternative to grasping this nettle is to accept a tariff for persistence which doles out swingeing penalties for petty crimes to such cases as *Gilbertson* (1981) - 12 months' imprisonment for two crimes of theft from shops, to a total value of under £10, by a woman with 14 previous convictions for similar offences; or *Harrison* (1979), 3 years imprisonment for a single failed burglary in a dwelling-house by an offender with a long record of previous offences (Ashworth). In Holland, such offenders may well have received a prison sentence, but its length would have not exceeded one or two months.

The moral issue is clear: do we choose to continue sentencing such offenders to years of custody in prisons at least half of whose inmates live in conditions recently described as "cattle-pens" by John McCarthy, who resigned as Governor of Wormwood Scrubs having expressed his disgust at the situation in which staff and prisoners had to work and live? Or do we live with the fractionally increased risk of the petty crimes that those we do not incarcerate for so long might commit if left free? For the basic issue is moral rather than environmental. Even if a sum of Falklands War proportions were spent on prison-building, it would still be wrong to deprive people of their liberty for relatively minor offences, albeit in clean, well-lighted places. If custody really is to be the "last resort", it should be treated as a last resort even if over-crowding, squalor, clogged sewerage and staff shortages were eliminated. It is for this reason that many penal reformers regard the ambitious Home Office plans for new prison building with keen anxiety: more capacity tends to spell more prisoners. What we need are fewer, refurbished prisons for a much reduced prison population rather than more,

'purpose-built' prisons for a much greater number.

## *Obstacles to Reform*

The major obstacles to this objective are not only those to do with sentencers' acceptance of a logic that penalties should escalate for persistence as well as seriousness. This logic is girded about by other assumptions, and myths, which are invoked to justify its perpetuation. Firstly, there is the standard reference to 'public opinion' as "calling for" harsher penalties. 'Public opinion', however, tends to be tapped in only the crudest way, by broad opinion poll questions about 'crime' or 'violence'. More searching questions yield more subtle and flexible responses. Maguire's study (1982) of 300 burglary victims found that only 29% thought that the person who had committed "their" offence should receive a custodial sentence. Yet when the same people were asked about the sentencing of burglars in general, they gave far more punitive answers. The most likely explanation is that in the latter case people are drawing on stereotypes of burglary, of a kind that are heavily influenced by media presentations. For example, it is widely believed that many burglaries are accompanied by major damage and even soiling of domestic property. In fact, such damage occurs in only a few per cent of burglaries, and the British Crime Survey did not find one such case. Reliance on 'public opinion', therefore, undermines the very basis on which sentencing should rest: an informed consideration of the case in as impartial a manner as possible, freed from the kinds of hearsay and opinion which the law is constructed to exclude.

A second major obstacle is the myth that sentencing policy should be exclusively the preserve of the judiciary. "There is no constitutional rule or convention which prevents the legislature from re-

---

**The judiciary seems to believe that it has the right to determine sentencing policy, and for that there is neither constitutional nor pragmatic justification.**

---

stricting or removing judicial discretion in sentencing: the simple fact is that Parliament has taken little interest in the matter and has rarely legislated so as to impinge on the discretion of the courts to impose any sentence beneath the statutory maximum. The judiciary has acquired a central role by default...The Court of Appeal has, it is true, striven hard to develop principles to guide sentencers in the exercise of their discretion, but the senior judiciary has no constitutional claim to this policy-making role and seems to lack both that understanding of sentencing practice at all levels and that appreciation of broader issues of penal policy which are necessary in order to fashion realistic guidance for sentencers in lower courts. The judiciary seems to believe that it has the right to determine sentencing policy, and for that there is neither constitutional nor pragmatic justification." (Ashworth).

The third obstacle is the form that arguments against the use of custody have taken, both by reformers and the Home Office, whose advocacy of a greater use of non-custodial measures tends to be resented by the judiciary, particularly when such arguments are cast in mainly economic terms. Judges in particular have stoutly maintained that sentencing should not be influenced by such matters as prison overcrowding. The moral arguments against prison tend to be undermined by this kind of economism, for it can then be argued that we should spend our way out of penal crisis. The main arguments against custody are basically moral: that deprivation of liberty should be used as sparingly as possible, as it constitutes the strongest claim that authority can make

over the freedom of the individual; that no evidence exists for its effectiveness as either a special or general deterrent; that most other comparable societies make far less use of imprisonment without discernible adverse effects on their crime rates; that conditions in prison have now deteriorated to the point where it amounts to a more severe sentence than in the recent past; that it deforms rather than reforms an offender's character; and that by stigmatising offenders it aggravates rather than ameliorates the problems they face on release.

---

**Because sentencing is the key to the whole character of criminal justice and the penal system, it is of the utmost importance that a framework is devised to reform sentencing with the above considerations in mind.**

---

### *The Case for a Sentencing Council*

Because sentencing is the key to the whole character of criminal justice and the penal system, it is of the utmost importance that a framework is devised to reform sentencing with the above considerations in mind. The immense difficulties involved in formulating guidance and stimulating research into sentencing rule out any attempt at a complete system of highly specific sentencing guidelines: sentencing by computer, as it were. At the same time, the Court of Appeal is rightly too concerned with the purely juridical element in sentencing to take on the task of comprehensive sentencing reform. The best proposal is that of Ashworth, for a "middle way which builds upon the best of existing principles and practices, whilst

improving the system so as to provide sentencers in the Crown Court and in magistrates' courts with a fuller and more consistent guidance". He proposes a Sentencing Council, chaired by the Lord Chief Justice himself and producing recommendations which would be issued as Practice Directions. Its membership should draw on persons with considerable experience of the penal system, from magistrates, to a Circuit Judge sitting in second and third tier centres, to a Probation Officer, a Prison Governor, a Home Office official, an academic, and – it should be added – a serving police officer and Prison Officer, an ex-prisoner, a victim and a citizen or two with no claims to specialist knowledge. Such a body would represent expertise from all levels of the criminal justice system with the sentencers as 'primus inter pares' but no group excluded. The work of the Sentencing Council would be to prescribe maximum sentencing levels for common types of offence, and to "tackle the more urgent issues of general principle, notably the proper approach to sentencing persistent offenders". Much as some sentencers distrust central direction of any kind, if they recognise that the Sentencing Council is fully conversant with their problems, respect for its recommendations should be increased both by sentencers and the public. To ensure that its recommendations are translated into practice is still problematic, however, and the only weak link in Ashworth's case is what measures might be needed to guarantee that they are not simply shelved. He avoids the explicit mention of legislation, but this must surely be essential at some stage if the Practice Directions are widely ignored. However, "at best, and with proper support from the judiciary, the introduction of a Sentencing Council should provide the basis for a system in the 1980's and beyond which is properly sparing in its use of custody".

## 5. Prisons

There are several crises, not just one, afflicting the British prison system (Fitzgerald and Sim). There are crises of numbers (too many), conditions (too squalid), objectives (what should prisons be for?), authority (among staff as well as prisoners), and secrecy (what goes on, how is it monitored, why so much censorship?). By comparison with most other Western societies, imprisonment in Britain is nasty, brutish and long. But the crises do not afflict all sectors of the prison system equally. There are major respects in which the experience of prison is far worse in the local adult prisons than in the training and juvenile prisons. The solutions to these problems have been reiterated time after time, and in a cost-effective way: what is lacking is the political will to put things right.

Even if the best scenario prevails, and custodial sentences are reduced to produce in the medium to long-term a prison population of roughly half the present size (which would still be relatively twice as high as that in Holland), we would still have about 20,-25,000 prisoners in the jails, and in youth custody. That would relieve the pressures of overcrowding, and allow for more humane containment. But what kind of regime should be followed? How should resources be allocated? Most crucially, what should happen in the short-term when numbers remain as high as they now are? (Even this is an optimistic scenario: Home Office plans now assume a prison population of 53,000 by 1990).

---

**Security was tightened at the expense, both financially and socially, of all other objectives.**

---

### *Minimum Use of Security*

The case for the minimum use of custody has been made above. For those who are imprisoned, two further policies

should be implemented: the minimum use of security; and the normalisation of the prison (King and Morgan, 1981). The first refers to the extent to which, following the Mountbatten Report of 1966, security was tightened at the expense, both financially and socially, of all other objectives. The cure proved worse than the disease, for since then our prisons have been plagued by riots, lockdowns (prisoners being cell-bound for 23 hours a day), staff discontents boiling over into strike action, work-to-rule and task refusals, and several worrying cases of non-accidental deaths. Was it really worth it? Were all our lives suddenly more grievously at risk because of the escape of George Blake to Russia and Ronald Biggs to Brazil? Heavy sentences again are implicated: would either have bothered if they had faced 5 or even 10 years instead of 30? Would, for that matter, the use of firearms in robberies have risen so greatly if sentencers had not imposed so long a set of sentences for the Great Train Robbery, in which firearms were not used? Compare Blake's sentence with that of Anthony Blunt, to the Keepership of the Queen's Pictures.

Mountbatten was a man of immense practical wisdom who certainly cannot be

blamed for what followed his *Report* (1966, HMSO). He advocated a policy of *concentration* (a perhaps unfortunate term for its connotations) of high security risk prisoners, some 1% of the prison population, in one or possibly two maximum security prisons. He argued that all of our jails were under-secure for this tiny proportion of prisoners. Concentrating them in one or two maximum-security prisons would enable the rest to maintain relatively relaxed custodial regimes. Unfortunately, as it has turned out, the Home Office then appointed a Committee, headed by Sir Leon Radzinowicz, to enquire into the feasibility of this proposal. The Radzinowicz Committee (1968, HMSO) rejected the policy of concentration in favour of one of *dispersal*. They feared an Alcatraz effect, in which a pressure-cooker atmosphere would be created in a prison housing the criminal elite, to which staff would be difficult to attract, and which would heighten the risk of a mass 'springing' of prisoners by well-financed outsiders. Dispersal was reckoned to be both safer and more humane, since several jails, and not just one, could take the worst security-risks, and mix them with the more manageable prisoners. The arguments were convincing at the time, and accepted by the Prison Department of the Home Office.

Events since then have done much to undermine the force of the arguments for dispersal. We now have 4,000 prisoners under conditions of maximum security, instead of the 400 for whom it would be appropriate. The classification system proposed by Mountbatten of Category A, B, C and D has tended to silt up, with long delays in re-categorisation condemning prisoners to maximum security for far longer than necessary. The dispersal prisons have tightened their regimes, and reduced the mixing of Categories C and D with A and B to such a point that, in effect, we have 7 concentration prisons instead of just one or two (with one more already

built). Dispersal prisons such as Albany, Hull, Wormwood Scrubs, Gartree and Parkhurst were the settings for major disturbances in the 1970s. Only Long Lartin and Wakefield have so far avoided them, partly because major control changes were made in the light of the disturbances elsewhere, partly because of unusually enlightened Governorship. But these pressure-cooker establishments cannot always rely on 'scenting the wind' and talented administrators. If the system is badly conceived, the pressure will blow in time.

The tragedy is that we now have a model of how a concentration principle *could* work, and it is not Alcatraz, but Glasgow's Barlinnie (Boyle, 1977). The Special Unit at Barlinnie, generously staffed, democratically run, open to a more generous flow of visitors than elsewhere – though there are signs that this is now under threat – and with an enviably violence-free record by contrast with units and wings for long-termers elsewhere, could be the basis for similar developments throughout maximum-security prisons. It is expensive, but its costs have never been adequately compared with equivalent contexts. And in a scaled-down, more efficiently run prison system, its costs would bring tangible benefits. Boyle is one prisoner who has rehabilitated himself, but that would not have been likely in an authoritarian setting, without staff whose finest and most humane attributes were given free rein in the right atmosphere. There may be limits and problems to extending the Barlinnie model. But these cannot be known until the right initiatives are taken.

The main arguments against concentration, which could begin tomorrow by the rolling back of the spread of the dispersal system, are that high-risk prisoners could not be moved on if at risk from other prisoners; that terrorists would be grouped together; that 'en masse' springing could occur; and that too many Category B prisoners also present formidable security

risks for them to be taken out of maximum security. The first two points can be met by the same facilities that now exist for most terrorists, who are in Special Wings outside the dispersal prisons; the third applies to the dispersal prisons just as strongly; and the fourth, apart from making a nonsense of categorisation, makes it difficult to explain why the ratio of category B's to all inmates varies so extensively in the different regions.

As Morgan has argued (1982), such variations as that between Midland Region (11.6% of prisoners in security category B in 1981) and South West Region (29.3%) owed far more to the type of accommodation available than to objective security needs. With no adverse security risks, a general lowering of security categorisation to Midland Region level would alone save the Prison Department £25 million in staffing costs, a sum that could be spent on redeploying staff resources to guarantee minimum standards of work, recreation and education elsewhere in the system.

The second major aspect of prison organisation which is increasingly difficult to defend is the distinction between local and training prisons. This rests intellectually on the idea that distinctive training regimes have been established to which medium- and long-term prisoners can be directed after classification and evaluation. But the training is largely either standard – and should in principle be available for all prisoners – or illusory – and should be exposed as such. The distinction has immense resource implications, however, for the training prisons are shielded from the worst effects of the prison crises by the maintenance of higher standards of cell allocation and amenities. The worst overcrowding in the local prisons, 2 or 3 to a cell, is to some degree preventable by spreading the prison population more evenly between the two sectors. A comprehensive network of local prisons is in principle superior to the local/training

dichotomy, since training should be available to all prisoners, and many local prisoners never see the inside of a training prison anyway, despite classification-allocation, due to shortage of space and staff under the present rules.

## *Normalisation*

“People are sent to prison *as* punishment, not *for* punishment” (Alexander Paterson).

Paterson's meaning should be clear enough: deprivation of liberty is *the* punishment, not simply the pre-condition for a series of extra punishments to be inflicted on prisoners. Yet prisons in Britain mock Paterson's words. No senior administrator, Governor, judge or criminologist would be likely to disagree with him. Indeed, the new strategy for warding off hostile criticism of the prisons is to agree with every word. William Whitelaw agreed that many of our prisons are “an affront to a civilised society”. The former Director-General of the Prison Department has reiterated that view. Representatives of prison staff concur, as do prisoners. Why, then, do prisons continue to be run like “cattle-pens”? The answer is only partly to do with resources. It is far more to do with the heavy load carried by the term ‘security’.

To ‘normalise’ the prisons would be to make them, as far as possible, resemble life on the outside. The standards of life inside, the amenities, facilities, services, rights and standards that prisoners should experience should be linked to the standards that prevail in the outside community. Otherwise, people are sent to prison for far more punishment than the deprivation of liberty.

The obsession with security, however, blocks this clear and simple precept at every point. Because of ‘security’, for example, it is argued that prisons must have their own medical staff. Independent



medical advice is difficult for prisoners to obtain.

Despite some notable and well-publicised successes, such as prisoners gaining Open University degrees, work and educational opportunities in prison are severely limited, and among the first casualties of staff shortages and disciplinary action. Prison wages remain an insult, and education accounts for a tiny proportion of the total prison budget. For example, in 1981, education, training and recreation accounted for only £20 million in a total expenditure of £455 million in England and Wales. In recent years, a welcome liberalisation has produced some excellent television exposure of life inside to the public gaze. Yet journalists and researchers entering prisons for reporting purposes are likely to find themselves severely restricted in terms of what they can see and who they can meet. Researchers face the additional strait-jacket of the Official Secrets Act, as do all those who work in prisons. Censorship of letters and restriction on their numbers are still practiced. Prisoners cannot vote. They are denied heterosexual relations – and any other kind will hardly be approved of by the authorities. Prisons are constructed and administered in Britain to design out normality. It does not have to be so, as other countries in Western Europe have shown.

In May 1981, about 4,900 prisoners were living three, and 11,000 were living two to cells certified as suitable for one man: *“If any reader unfamiliar with the prison system finds it difficult to picture the squalor in which many inmates of local prisons are expected to spend their sentence, let him imagine himself obliged to stay in an hotel so overbooked that he has to share his room with two complete strangers. The room itself is so cramped that there is little space for his clothes or personal possessions, and if he wants to walk up and down, the other occupants must first lie on their beds. Worse, the hotel*

*management insists that guests remain in their rooms for all but an hour or so each day and must take their meals there. As a result, the atmosphere rapidly becomes fetid, especially since neither the reader or his room mates have been able to take a bath for some days. But not only is there no basin or bath available, there is no lavatory either, and the reader and his companions are faced with the prospect of relying for the foreseeable future upon chamberpots thoughtfully provided by the management. If the reader does not conclude that such an experience lasting several days would be degrading and brutalising, he is being less than honest with himself: how much worse would it be after several weeks?”* (Report 1981).

Or, HM's Inspector of Prisons might have added, for several months, or even years. In many ways, the prison staff also experience much of the squalor of the prisoners' lot. Their facilities and conditions of work are often appalling. The danger is that they and the prisoners become brutalised and apathetic. Now that the public have seen several reasonably accurate and pointed documentaries about prison life, the danger is that they too become acquiescent about the system. After all, if those actually running the system can throw up their hands in civilised horror at the degradation of it all, what can be done by the rest of us?

The least we can do is reject the hypocrisy that there is nothing to be done. Quite a lot of money is spent on the prisons: £500 million in 1982-3. Apart from basic manpower costs, quite a lot of it goes on refurbishing worn out buildings, building new prisons, feeding guard dogs (at a greater cost than feeding prisoners, per capita), endless escort duties (popular with staff, since they break the monotony and pile up overtime): all in all, expenditure on the penal estate has risen at a faster rate than that on health services or education over the post-war period. Much of it is mis-directed, since a great

deal goes on forms of security that are unnecessary, eroding that very capacity for responsibility on the part of prisoners that they will need if they are to survive socially on release. We still tend to forget that prisoners re-enter the world, usually significantly worse off, in every respect, than when they left it.

### *A Prisoners' Charter of Rights*

What we *can* do is legislate a Prisoners' Charter of Rights guaranteeing to each prisoner:

- access to all rules and regulations dealing with prison life, except those relating explicitly to security;
- a statement of specified standards relating to food, drink, cell-space, recreation, clothing, laundry, sanitation, visits, earnings, work, possessions, and the like, which are the minimum a prisoner should have the right, admissible in law, to expect;
- access to all files, dossiers, case records and other information about him, except those explicitly relating to security, with the right to appeal to an independent body if they are withheld.

Normalisation of prison life could begin to be built piecemeal on such a foundation. Some prisons already exceed many of the minimum standards that would be entailed in such a charter (Cohen and Taylor, 1978).

Four other reforms demand urgent passage. They are:

- the enactment of the 1975 Jellicoe Report recommendations that Boards of Visitors be re-constituted along genuinely independent lines as a body to deal with prisoners' requests and complaints. A separate independent body should be established to deal with all adjudications.
- the lifting of restrictions on the numbers of letters written or received by prisoners, and the abolition of all censorship of letters, unless for reasons of

security that should be subject to appeal to the Board of Visitors.

- prisoners should be granted the vote in both national and local elections (a provision important in itself, and one that should encourage more politicians to visit their local prisons) and

- rapid use of the funds already provided for the regional secure psychiatric units recommended as an urgent priority by the Butler Committee on Mentally Abnormal Offenders in 1974 (Kilroy-Silk, 1983).

Such a programme by no means exhausts the catalogue of reforms that are needed to begin to ensure some congruence between standards of life on the inside, and those in the outside world. As things stand, there will be few voices raised in protest if Mrs Thatcher decides to privatise the prisons, 'hiving off' their more profitable industries to the private sector, to which all that cheap labour should prove attractive. After all, a government which has retraced its steps to the mid-nineteenth century for its economic ideas should find no difficulty in returning to the middle of the eighteenth century for its penal policy.

### *Juvenile Justice*

Juvenile justice is in many ways the saddest area to survey after the high hopes of radical change invested in the 1969 Children and Young Persons Act. The intention of that Act was to divert young offenders as far as possible from custodial regimes. For the Act to have had a chance of working as intended, extra resources had to be made available to local authority Social Service Departments, borstal and detention centres abolished for the under 17's, and the age of criminal responsibility raised to 14. The difficulties involved in implementing the Act were greatly compounded when the Conservative Government of 1970 chose not to activate the last two provisions, and by the time of the

return of a Labour Government in 1974, the rehabilitative philosophy on which the Act rested was increasingly under fire. The

policy remained one of drift throughout the 1970's, with the following results:

### Young Offenders aged 14-16

	Guilty or cautioned			Receptions under sentence		
	<i>male</i>	<i>female</i>	<i>total</i>	<i>male</i>	<i>female</i>	<i>total</i>
<b>1971</b>	69,000	11,100	<b>80,700</b>	3,032	34	<b>3,066</b>
<b>1981</b>	94,900	18,800	<b>113,700</b>	7,535	52	<b>7,587</b>
<b>% change</b>	+36	+69	+41	+149	+53	+147

(Crime figs. slightly reduced for 1981 due to changes in counting rules in 1978; indictable offs. only; sources, CS 1981 p.107; PS 1981 p.61)

Even taking bare numbers (the rise in the crime *rate* for this age-group being markedly lower) custodial sentences for 14-16 year old boys (who make most impact on the figures) rose by **over 4 times the rate** at which the number of offences rose, a rise that is almost entirely due to a tripling of the numbers sentenced to detention centres, whose failure rate, in terms of recidivism is over 70%. That for borstal is on average over 80% for this age-group. The moral and practical bankruptcy of this policy should be by now abundantly clear.

Custodial sentences for juvenile offenders were boosted in the 1970's by the uneasy jostling of welfare and custodial ideas (Taylor, Lacey and Bracken, 1979). 'Care' orders have been shown to have played a major role in the unexpectedly large jump in custodial measures for this age-group, since the breach of a 'care' order leads in many cases to Detention Centre or Borstal, and 'care' orders were made too readily too low down the tariff (Thorp, 1981). The three criteria used for research into 'care' orders – danger to self or others; no home; and special educational or psychological requirements – were shown in a study of 6 areas to be applicable in only 14% of 537 cases (that is by any *one* of the criteria). In other words, well-intentioned legislation, confusingly implemented, has had a net-widening

effect which quickly fed through to the custodial end of the system.

The 1982 Criminal Justice Act has replaced Borstals by the idea of Youth Custody, and clearly is aiming to reduce the reformatory element in such regimes. Their nature is not yet apparent, since so much emphasis is being placed on the new, shorter, tougher Detention Centre Orders. But a swing back to custody of a punitive nature is hardly likely to improve on the past.

A Labour Government must make one of its first priorities a thorough and critical examination of what has happened in the realm of Juvenile Justice since the 1969 Act. As a start, it could do much by implementing the proposals made by Taylor, Lacey and Bracken:

- Extension of the use of the caution, which has not increased proportionately since the early 1970's, to cases which at present lead to court appearances; the reduction of the present differences between police authorities in cautioning.
- The abolition of re-labelling of assessment centres in recognition of their actual functions as 'containment' centres.
- A halt to the construction of 'secure units', which DHSS studies have shown to be taking increasingly less serious

offenders, and the immediate examination of their current role and impact on children (Cawson, 1975).

- An immediate inquiry into the use of medication for control purposes in juvenile institutions.
- The establishment of a Care and Control Test for all children subject to 7(7) care orders, that is that (a) the child should present a danger to himself or the community; (b) should be literally homeless; (c) have medical, educational or psychological needs that can only be met in an institution.
- The establishment of a National Children's Legal Centre.

In other respects, the arguments put forward in connection with sentencing adults to imprisonment should be equally applicable to children: custodial sentences for the under 17's are even more out of alignment with practice elsewhere in Western Europe than is the case with adults.

## *Parole*

The argument for parole is that it has an important role in reducing the amount of time served by medium- and long-term prisoners. The working of the Parole Boards has been fruitful in linking the judiciary in at least one respect to the

broader penal framework. However, the case against parole is now well made in several respects: that parole played a role in the lengthening of certain forms of sentence; that it is a form of 're-sentencing'; that it introduces an element of executive discretion, and rehabilitative thinking, which is unaccountable; that prisoners are granted no right of Appeal, and are not informed of reasons for the withholding of parole; that it exerts unwarranted strain on prisoners; and that for these and other reasons, some 5-10% of prisoners never apply for parole (thus failing to benefit from any notional extra element in their sentence length due to the existence of parole in the first place (Hood, 1974; West and Thomas, 1974; Morris 1981). Parole cannot be reformed to take account of these criticisms without secondary conflicts arising within prisons, since staff opinions are crucial to parole outcomes. Parole should therefore be abolished, at a phase when the Practice Directions for sentencing are established.

## *Alternatives to Prison*

It is widely believed that the existence of various alternative measures to imprisonment has had a significant effect in limiting the use of custodial sentences. The official figures on sentencing show that this has not been so:

### Percentage of indictable offenders who received various sentences

	1971	1981	% change
Absolute/Conditional discharge	13	12	-1
Probation	8	7	-1
Supervision order	5	3	-2
Fine	48	45	-3
Community Serv. Order	*	5	+5
Attendance Centre Order	2	3	+1
Detention Centre Order	2	3	+1
Care order	2	1	-1
Borstal	2	2	0
Suspended prison	7	7	0
Immediate prison	9	10	+1
Other	1	1	0

Source: *Criminal Statistics*, 1981

\* = not available

The overall impression left by these figures is of consistency and continuity, rather than any sharp break with the established pattern of custodial sentencing. Room has been made for the major new alternative to custody of the 1970's, the Community Service Order, not so much by a reduction of the use of custody, which has actually increased, but by a reduction in the use of other alternatives to custody. The adumbration of yet more alternatives to prison is unlikely to break this pattern: they are more likely to be alternatives to alternatives than to prison itself.

All very frustrating, since waiting in the wings are fresh ideas for alternatives to prison, not least that of *restitution*, the case for which has been most convincingly put by Martin Wright (1982). He argues that the current system of criminal justice is singularly punitive towards the offender and notably useless to the victim. By

agreeing to make restitution to the victim, and by the victim agreeing to accept such restitution, the offender is arguably brought to a sharper realisation of the harm done, and given an opportunity to expiate his guilt more fully than by feeling himself victimised by imprisonment. There is also scope for victim and offender *reconciliation*. There are obviously many cases to which restitution could not apply, but in the USA in particular some experience has been gained, in both crimes against property and the person, that suggest such schemes can be surprisingly successful. There are obvious ways in which the idea could be explored further, by comparative research, and we could begin by making restitution permissible in, for example, minor cases of theft.

The drawback to such a scheme, as to other alternatives to prison, is in their breach:

---

**Offenders Breaching Orders as a % of Offenders Sentenced (1981)**

Suspended sentence	27
Community service	19
Probation order	14
Cond. discharge	10

---

*Source: Criminal Statistics, 1981*

---

In the case of suspended sentences, a further conviction brings not only a fresh penalty, but the activation of the suspended sentence – in some 80% of breaches in 1981. Whilst the use of imprisonment for the breaching of other non-custodial penalties is much more sparing, clearly there is a risk that the use of alternatives instead of the fine (whose rate of reception into prison for non-payment is just over 1%) will increase the prison population unduly by default.

This question is of the utmost importance to people on low incomes, especially those on Social Security, who are most at risk of imprisonment due to the sentencing assumption that they cannot by definition be eligible for fines, since a subsistence income excludes that option. Yet Department of Health and Social Security (DHSS) norms have been set up to enable arrears of rates, fuel bills *etcetera* to be paid by those on Social Security which involve low payments spread over time. Similarly low maxima could be devised for fines. Such re-thinking of the structure of fines, which are imposed in almost half of serious, and the great majority of non-serious cases, is urgently required. The day-fine system, which takes capacity to pay into account far more systematically than is currently the case, provides the most suitable basis for removing from the poor the unwarranted risk of imprisonment for poverty rather than criminality. (Morgan & Bowles 1981).

The simplest answer is to make breaches non-imprisonable. That, however, may

lead sentencers to desert the use of such alternatives even more than now. The idea is worth exploring, however. In Holland, the recommendation to probation is, at the insistence of the probation service, entirely voluntary. If an offender does not keep up links with the probation officer, the fact is noted should he be re-convicted for a further offence; but there is no penalty for the breach itself. To detach these alternatives from prison altogether would at least make them more authentic alternatives, though it would rob social work students of the staple essay theme of 'punitive' versus 'welfare' roles in the client relationship.

---

**Probation could be more widely used without any risk of increased crime or recidivism.**

---

Brody (1976) concluded his review of the 'effectiveness of sentencing' by stating: "two studies, one in Britain and one in America, arrived at the same conclusion – that probation could be more widely used without any risk of increased crime or recidivism." We may not have much idea what to do to cope with the crime problem, but at least that leaves us with every incentive to adopt the most humane options.

The Home Office have chosen this moment to reduce the Community Services share of their Budget from a derisory 0.68% in 1981-2 to 0.60% in 1983-4 (£23 million out of a total 'Law and Order' Budget of £4,013 million). So much for hostels, Intermediate Treatment schemes and the like. A major saving has, however, been made by lopping £300,000 (0.007% of the same) off the salaries of trainee Probation Officers.

We could also do much more, relatively

cheaply, to *prevent* crime. Like the medical profession, we seem to prefer expensive and highly technological cures (though in the case of crime, they don't work) to cheap and labour-intensive prevention. The authors of the British Crime Survey suggest that "in a sense it is the motor car which is the 'villain of the piece' when it comes to explaining the growth and prevalence of crime... Though opportunities do not *have* to be acted upon, a number of researchers have demonstrated that increases in crime often go hand in hand with increases in opportunity... Methods of making cars more difficult to get into, drive away and vandalise seem urgently needed..." As things stand, "somewhere in excess of one quarter of households who kept their vehicles on the streets of the inner city suffered some sort of theft of or from them annually." (pp. 19, 34-5). More manpower on buses, transport, in parks, on housing estates, would reduce unemployment and curb opportunistic crime, as well as provide community services.

Victim compensation is the other major way of curbing the 'fear' and ameliorating the effects of crime. At present, compensation schemes exist for victims of crimes of violence: these schemes could be extended, and made more generous. Victims also seek something more than the purely passive role they play in the criminal justice system. (Shapland, 1983) It is in these kinds of ways that we should seek to deal with crime and its aftermath, rather than pursuing the will o' the wisp custodial cure-all. In the process, however, we must avoid permeating society with a network of surveillance and monitoring that makes a prison of society itself Cohen (1979). Nor must we blur the line between freedom and control by *ad hoc* alternatives to custody that widen the net to those allegedly 'at risk' of delinquency, or technically 'free' but perpetually and indefinitely liable to 'recall', as is the case with 'lifers' released from prison. The Labour Party should regard such forms of open-ended control as an affront to natural justice.

---

## 6. *Conclusions*

**Law and order, in the narrow sense of a preoccupation with rates of crime, is a Pandora's Box of an issue, traditionally and wisely avoided by politicians as a partisan problem. Ironically, for the myth is patriarchal, it is Mrs Thatcher who has chosen to open it. Exploiting people's fear of crime, which is real enough, and claiming that the appropriate answer to it lies in stronger policing and sterner punishments, which they are not, she has ignored the paradox at the heart of the law and order issue.**

That paradox is the ease with which the law can be subverted to counterfeit justice, and be wrenched into the shape required by 'order'. The Police and Criminal Evidence Bill was the beginning

of that process. The 'order' that results is a regimented and repressive variety, not what people have in mind when they demand law and order, by which they generally mean what Orwell meant when

he talked about the English people's belief in 'common decency'. The more honest approach is by no means to fob people off, to claim that crime is actually falling, or no worse than it was.

It is to acknowledge that the problem has worsened, but to provide the fullest information to enable people to put crime into perspective, and to counteract media sensationalism and bias, whilst encouraging the media to do what they do best – investigative, critical reportage. That means the abolition of the Official Secrets Act and its replacement by a Freedom of

Information Act. In the end, however, we need a yardstick against which to measure the quality of reforms, since so many well-intentioned measures have back-fired or proved unexpectedly coercive. That yardstick can only be 'natural justice', which demands fairness, openness, and reasoned decision-making on grounds and evidence that are publicly available. A humane socialism, which means the practice of such principles in social and economic terms, holds out the only hope of reducing both crime and punishment.

### Appendix – References

- Ashworth A: "Reducing the Prison Population in the 1980's: The Need for Sentencing Reform," Noel Buxton lecture, NACRO, 1982.
- Bakke E W: *The Unemployed Man: A Social Study*, 1933.
- Baldock, J C; "Why the Prison Population has Grown Larger and Younger", *Howard Journal* 19, 1980.
- BBC: 'Panorama', 22.2.82, transmission recording transcript.
- Biles D: "Crime and Imprisonment: A Two-Decade Comparison between England and Wales and Australia," *British Journal of Criminology.*, April 1983.
- Bottomley K and Coleman C: "Understanding Crime Rates," in Clarke, R V G and Hough, J M (eds.) *The Effectiveness of Policing*, 1980.
- Box S: *Deviance, Reality and Society*, 1971 (rev., 1982).
- Brody S and Tarling R: *Taking Offenders Out of Circulation*, Home Office Research Study No 64, 1980.
- Brody S: *The Effectiveness of Sentencing*, Home Office Research Study No 35, 1976.
- Carr-Hill R and Stern N: *Crime, The Police and Criminal Statistics*, 1979.
- Carson W G: "White-Collar Crime and the Enforcement of Factory Legislation," in his (co-ed) *Crime and Delinquency in Britain*, 1971.
- Carson W G: *The Other Price of Britain's Oil*, 1982.
- Cawson P: *Referrals to the Units and Behaviour Prior to Referral*, DHSS, Research Division, 1975.
- Cawson P and Martell, M: *Children Referred to Closed Units*, DHSS 1979.
- Chapman D: *Sociology and the Stereotype of the Criminal*, 1963.
- Clarke M: *Fallen Idols: Elites and the Search for the Acceptable Face of Capitalism*, 1981.
- Clarke R V G and Hough J M (eds.): *The Effectiveness of Policing*, 1980.
- Cohen S: "The Punitive City", *Contemporary Crises*, 1979.
- Cohen S and Taylor L: *Prison Secrets*, 1978.
- Cox B, Shirley J and Short M: *The Fall of Scotland Yard*, 1977.
- Ditton J: *Part-time Crime*, 1977.
- Ditton J: "How did the black economy do in 1982?" *Assessment: Newspaper of the Inland Revenue Staff Federation*, Feb. 1983.
- Ditton J: *Controlology*, 1979.
- Downes D M: "Origins and Consequences of Dutch Penal Policy", *British Journal of Criminology.*, October 1982.
- Fitzgerald M and Sim J: *British Prisons*, 1979.
- Hakim, C: "The Social Consequences of High Unemployment", *Journal of Social Policy.*, October 1982.
- Hall S: *Drifting into a Law and Order Society*, 1979.
- Henry S: *The Hidden Economy*, 1978.
- Hood R: *Tolerance and the Tariff*, 1974.
- Hough M and Mayhew R: *The British Crime Survey*, Home Office Research Study No 76, 1983.



- HMSO: Criminal Statistics, England and Wales, 1947, 1962, 1979 and 1981.
- Prison Statistics, England and Wales, 1981.
- Report on the Work of the Prison Dept., 1981.
- Public Expenditure Estimates, 1983-4/85-6, Cmnd. 8789, 2.
- Report of H.M. Chief Inspector for England and Wales, 1981.
- Report of the Inquiry into Prison Escapes and Security, (*Mountbatten Report*), 1966, Cmnd. 3175.
- The Regime for Long-Term Prisoners in Conditions of Maximum Security, (*Radzinowicz Report*), Advisory Council on the Penal System, 1968.
- Kilroy-Silk R: "Scandal of the Missing Millions", *Sunday Times*, 1 May 1983.
- King R and Morgan R: *The Future of the Prison System*, 1980.
- Labour Campaign for Criminal Justice: *A Survey of the Recruitment of Labour Party Members to the Magistracy* 1983.
- Levenson H: *Democracy and the Police*, Labour Campaign for Criminal Justice, 1980.
- Maguire M: *Burglary in a Dwelling*, 1982.
- Manning P: *Police Work*, 1977.
- Mars G: *Cheats at Work*, 1983.
- McDonald L: *The Sociology of Law and Order*, 1976.
- Miller W B: "Youth Gangs in the Urban Crisis Era" in Short JF (ed), *Delinquency Crime and Society*, 1976.
- Morgan R and Bowles R: "Fines: the Case for Review", *Criminal Law Review* April 1981.
- Morris P and Heal K: *Crime Control and the Police*, Home Office Research Study No 67, 1981.
- Morris T P: "The Parole System: 'Executive' Justice", in *Criminal Welfare on Trial*, Social Affairs IUnit, No. 1, 1981.
- Paulus I: *The Search for Pure Food*, 1975.
- Prison Reform Trust: *The People's Justice*, 1982.
- Regan D: *Are the Police Under Control?* Social Affairs Unit, Research Paper 1, 1983.
- Rusche G and Kirchheimer O: *Punishment and Social Structure*, 1939.
- Scarman Report: *The Brixton Disorders, 10-12 April 1981*, Penguin 1982.
- Shapland J: "Victim assistance in the criminal justice system", forthcoming, 1983.
- Sinfield A: *What Unemployment Means*, 1981.
- Softley P: *Fines in Magistrates' Courts*, Home Office Research Study No 46, 1978.
- South Africa: Annual Report of the Commissioners for Prisons, 1978-9.
- Tarling R: "Unemployment and Crime", *Research Bulletin No 14, Home Office Research and Planning Unit*, 1982.
- Smith D E: "Strategies for diversion and de-carceration", paper given at International Conference on Psychology and Law, British Psychological Society, Swansea, 1982.
- Taylor I: *Law and Order: Arguments for Socialism*, 1981.
- Taylor L, Lacey R and Bracken D: *In Whose Best Interests?: The Unjust Treatment of Children in Courts and Institutions*, 1979.
- Thomas D A: "Appellate review and sentencing decisions," paper given at Kings College, London, 4 Dec. 1982.
- Thomas D A and West D J (Eds.) *Parole*, 1974.
- Thorp D and others: *Out of Care*, 1981.
- Thorp D: "The Making of a Delinquent", *Community Care*, 26/4/79.
- Van Dijk J: *Sentencing Process*, Ministry of Justice, The Hague, 1981.
- Wright M: *Making Good*, 1982.
- Wright M: "Reparation", *Abolitionist*, 1982 (3).
- Yeager M G: "Unemployment and Imprisonment," *Journal of Criminal Law and Criminology*, 70, 1979.
- Zander M: "What is the evidence on law and order?" *New Society*, 13 Dec. 1979.
- Yeager M G: "Unemployment and Imprisonment," *Journal of Criminal Law and Criminology*, 70, 1979.

### **Law and Order: Theft of an Issue**

As in so many other areas of policy, a bipartisan approach between Tories and Labour over 'Law and Order' has ended. A movement, encouraged and supported by the Conservative Government, towards a more authoritarian society is taking place. David Downes argues that the basis for such a shift in policy does not exist either in trends in crime or the relative records of Labour and Conservative governments: the Tories have stolen an issue because Labour's thinking on crime control has too often been orthodox rather than radical.

The author believes a comprehensive response is needed by Labour and he puts forward in this pamphlet a socialist agenda for discussion based on restitution rather than retribution and encompassing reforms in police practice, the prosecution service, sentencing policy, parole and prisons.

### **Fabian Society**

The Fabian Society exists to further socialist education and research. Since 1884 it has enrolled thoughtful socialists who wish to discuss the essential questions of democratic socialism and relate them to practical plans for building socialism in a changing world. Beyond this the Society has no collective policy. It is affiliated to the Labour Party. Anyone who is not ineligible for membership of the Labour Party is eligible for full membership; others may become associate members. For membership and publications details, write to: Ian Martin, General Secretary, Fabian Society, 11 Dartmouth Street, London SW1H 9BN.

### **Labour Campaign for Criminal Justice**

The LCCJ was established in 1978 under the chairmanship of Alex Lyon. It seeks to interest members of the Labour Party in law and order issues and future socialist strategy, and to formulate policies to go forward to Labour Party Conferences. It has already done work on police authorities and the democratic accountability of the police, community policing, boards of prison visitors, juvenile justice, victim support schemes, the magistracy and independent public prosecution systems. Current work includes the politics of the judiciary and a national legal service. For membership details, write to Bron Roberts, Secretary LCCJ, 103A Archel Road, London W14.

**£1.50**



