

**A Critical Analysis of the Justifications of Imprisonment as Punishment and  
the Culture of Punitiveness in Comparison to the Realities of Prison Life  
within England and Wales**

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## **Abstract**

This project will aim to identify why imprisonment is considered to be the primary and most preferable form of punishment within England and Wales. To do this, historical and traditional notions of the penal system will be considered in depth before it is ascertained if such values are outdated, unjustifiable or ineffective in modern society. The penal system will be largely deconstructed in an attempt to remove normative and familiar assumptions and rhetoric that may taint objectivity of judgements. Essentially, this means that the penal system will be stripped of societal connotations (in so far as is possible given the arguable subjectivity of all human debate), in an attempt to reach a non-prejudiced, non-perverted conclusion about the justifiability of imprisonment as punishment, and the subsequent consequences that has for offenders.

To begin with then, the basic notion of “imprisonment” as understood by society will be explored; in a similar vein, the origins of these understandings will be debated. Following on from this, the levels of punitiveness, as expressed by the public, will be assessed. Specifically in terms of this project, a conscious attempt will be made to address and include understandings from multiple social gazes. This means that references to academic thought will not comprise the entirety of the project; rather, the prison as an institution, a penalty and an environment will be considered also at the micro level. Accounts from individual prisoners/ex-prisoners and prison officers will therefore be considered as equally valuable in the dissertation and will also be used as a comparative tool against academic work, official stances, public attitudes and the law. When referring to the penal system, it should be understood that only adult institutions will be considered and that both public and private prisons are in discussion.

The basic intention of this dissertation is to attempt to consider and challenge widespread beliefs about the penal system and consequently to both penetrate and expose the realities of what it truly means to be incarcerated. In conjunction with this, and as a necessary precondition of this, media portrayals of the penal system and prisoners as a group will be disputed. Having accomplished this, this project will focus on imprisonment as a viable penalty for offenders and consequently will challenge traditional justifications that have for so long been left unchallenged. Ultimately, it is hoped that this project will underscore in basic terminology the aspects of the penal system that fail to address or help individual offenders, and on a greater scale therefore, society at large.

## **Introduction**

*“That jailes should be, there is law, sense and reason,  
To punish bawdry, cheating, theft and treason,  
Though some against them have invective bin,  
And call’d Jaile a magasin of sin,  
An Universitie of villany,  
An Academy of faule blasphemy,  
A sinke of drunkenesse, a den to Thieves,  
A treasury for Sergeants and for Shrieves,  
A mint for Baylifes, Marshals men and Jailers,  
Who live by losses of captiv’d bewailers:  
A nurse of Roguery, and an earthly hell,  
Where Dev’ls or Jaylers in mens shapes doe dwell”*

(John Taylor, “The Praise of Vertue of a Jayle and Jaylers”, 1630, cited in Morris and Rothman, 1998, pg 266)

Punishment and specifically, imprisonment has been for a very long time an issue in which the public seems to express an intense fascination with. As expounded by McConville, “questions of crime and punishment are rarely (perhaps never) absent from public discourse” (2003, pg149). It has arguably become so very present in dialogue between British peoples and consequently therefore British culture, that it is now an arena in which we all feel entitled, if not compelled to express a strong opinion on. In the above poem, dating from 1630, the numberless and contentious perceptions revolving around prison are explored. Functions, aims and the nature of prisons are contested and are exposed as potentially multipurpose. Notions revolving around communities of prisoners and communities of “jaylers” as separate and adversarial bodies are scrutinised. Even if it is conceded that such considerations of prisons were minimal or more readily overlooked in previous generations, it therefore appears that rhetoric has long questioned the justifications and exact realities of imprisonment as an acceptable form of offender management.

Today, nearly 400 years since the poem is dated, prisons are very much a hot topic. It is a, “sacred cow” of British society (Maruna and King, cited in Bottoms et al, pg 84, 2004), an institution that is powerful, feared, loathed, revered and celebrated. Interestingly then, understandings of it are arguably minimal. It pervades dialogue routinely and can be found being discussed in the British media on a daily basis. Society and at the micro level, individuals, are actively encouraged to think about prisons. It is a major and well-discussed institution of British society.

In reality then, considering the manner in which the penal system so greatly infiltrates ideologies, discourse and theories of British citizens, it is vital to assess the origins of understandings of the penal system and their consequences thoroughly. This is crucial in order to ensure that a fair system is in place; after all, the existence, aims, practices and justifications of prisons are so arguably influenced by public opinion that it is without doubt imperative to expose misguided notions that may threaten or undermine justice.

In Chapter 1, the penal system, as seen through the public eye, will be assessed. This chapter will attempt to account for the contrasting and often controversial assumptions that are formulated and shared through England and Wales about the penal system, and seek to identify methods in which these ideologies are circulated. A particular emphasis will be placed on the media as a powerfully influential agent and also as a potential manipulator of information distributed to the public. In this way, public notions about both justice and the penal system will be explored. Consequential levels of punitiveness with regards to the penal system and as expressed by the public, will be scrutinised. This chapter will therefore penetrate the roots of public opinions and attempt to indicate why certain ideologies prevail over others.

Chapter 2 will continue this theme in expounding the potential injustices that may arise from misinformed or misguided rhetoric. This chapter will focus primarily on the penal system as a contentiously justifiable institution and debate whether the prison is justified both in theory and in practice. It will critically assess the supposed purposes of imprisonment and proposals put forward for its viability. In turn, each of these proposals will be contested on the grounds of justifiability and fairness. Imprisonment as a response to crime will be explored from a moral point of view and ideologies that conflict with the prevalence of justice will be explored and deconstructed.

Chapter 3, the final instalment in this publication, will focus on the realities of prison life and attempt to forgo all preconceived perceptions about the penal system. The prison will be considered in isolation and an attempt to understand the impact of the consequences of prison sentences will be offered. A particular focus will be on micro considerations of the penal system and specifically therefore, inmate’s personal experiences. Furthermore, in a final section, Chapter 3 will consider the usefulness of alternatives to custody and explore the extent of reluctance as expressed by the public, in utilising these penalties.

## **Chapter 1 – The rise of punitiveness; prison as seen through the public eye**

It is perhaps reasonable to assert that prisons resonate in society's collective mind as the dungeons in our fairy-tales and legends (Smith, 1989). They are commonly thought of as the dumping grounds for the dregs and unsuitables found within society, a place for those individuals who are undesirable or unworthy of functioning in wider society to go. Fundamentally then, prisons are routinely portrayed as a solution to society's problem people and consequently, as stated by Roberts and Hough, prison is, "simply the most familiar punishment in the public mind" (2002, p5). That being said, it does not necessarily follow that prisons are well understood or that imprisonment itself is a justified response to crime. It is vital therefore, that the prison system is scrutinised in meticulous detail and that those people sentenced to incarceration are not subject to an entirely unjustifiable, outdated or inhumane experience.

The first point of call in doing this is to address in what ways exactly general assumptions about and of prisons and prisoners themselves are formulated and shared throughout England and Wales. It then needs to be ascertained, or rather debated, as to how, why and if those assumptions are generally accepted as true. Following on from this, the extent of common public conceptions or indeed, misconceptions will be explored. In this way, it will be better understood what British society thinks the prison system stands for and consequently, what society deems to constitute a justifiable system. In keeping with this then, Coyle, 2005, eloquently states that a major source of societal assumptions about prisons is derived from the media. He concisely argues that:

*"the media generally paints two contrasting pictures of prison life... one is of a dangerous environment where there is an ever-present threat of violence and brutality, coming sometimes from prisoners and on occasion from staff... the other picture is of the prison as a holiday camp, in which prisoners can lie in bed all day if they so choose, are well fed and provided for and are given occasional days out to further relax with family and friends" (p104-105)*

Putting aside for the time being that this binary can be thought to have been created, it is arguable that what is known about prisons, or rather what is thought to be known and established as factual, is in fact the result of a hyped up media frenzy or what may sociologically be referred to as an example of media amplification. This is when media channels exacerbate a category of behaviour, in this case, offending behaviour, and report incessantly, disproportionately and unfavourably. This then leads to a moral panic, as coined by Stan Cohen in his seminal 1972 work, "Folk Devils and Moral Panics". A moral panic simply put is when a population is lead to believe that a particular issue is threatening the current social order or existing social norms. In this case, the moral panic could be that prisons are scary, dangerous places and that violence is unbridled or alternatively, that prisons are ineffective and therefore that the entire system is of no use. The result of a moral panic is a disproportionate concern amongst the population.

The media is a powerful institution. It must not be forgotten that it operates in much the same way as businesses do; it makes assessments and releases what is predicted to be popular, or more appropriately in this case, what will sell (Indermaur and Hough, cited in Roberts and Hough, 2008). Moreover, in order to do this, Indermaur and Hough argue that, “the most fundamental strategy involves providing succinct, accessible information on crime to journalists” (cited in Roberts and Hough, 2008, p206). Applying this notion without limiting it to only printed media, it is therefore conceivable that information relayed to the public is perhaps misguided, taken out of context or lacking in explanation purely on the basis that it is a profitable business plan. As Matthews asserts, mass media tends to, “conveniently divide” (2009, p115) the population into good people or bad, moral or immoral, respectable or deviant. In this way then, the media can be accused of exposing the public to a very narrow and contrived pool of information about prisons, offenders and prisoners.

A further problem arises in that the public can be thought to remain as mere recipients of this information without questioning the origins or intentions of it. As Indermaur and Hough explain, neglecting to challenge media claims can be powerfully detrimental in that the media can then be thought to represent public opinion (cited in Roberts and Hough, 2008). The media can then, as Sparks asserts, retain and elicit the, “power to inform common sense” (cited in McConville, 2008, p161). Considering that time spent watching television is the third most popular activity in England and Wales, just behind working and sleeping (Jewkes, 2002), this could most certainly be regarded as a dangerous and inadvisable means of communicating the realities of imprisonment.

However, this speculation is all based on the premise that the population is a mere recipient of medium, that every notion proposed by the media is accepted without question. In essence then, this theory can be accused of being deterministic; that people lack the ability or competence to make reasoned opinions of, in this case, media portrayals of prisons, given the material they are exposed to. It is surely arguable that individuals are aware of the media’s manipulation of information and that consequently, such information is received with scepticism. Jewkes claims that individuals can be, “extremely selective in what they take from a vast range of media messages available” (Jewkes, 2002, p23) and that much of this information can be, “disregarded or rejected by audiences” (Jewkes, 2002, p23). Moreover, it is surely possible that individuals draw on sources outside of the media, including perhaps rhetoric relayed by friends, families and communities, to form their individual opinions of the prison system.

This is not entirely unfeasible. It could well be argued that other sources do have an impact on a person’s conception of prisons and that the media is not an entirely monolithic institution. However, certain research suggests that an ability or willingness to question media information as entirely reliable may well depend on an individual’s social characteristics. Maruna and King indicate that men, older people, citizens with lower levels of educational attainment and readers of tabloid newspapers seem to accept media representations more readily than the rest of the population and that consequently, may hold more punitive views regarding prisons and the ways in which prisoners should be punished

(cited in Bottoms et al, 2004). Regardless of the levels of face value acceptance of media portrayals of prisons, it is undeniable that the media forms a great source of information relayed to the public about prisons. The next point to address is precisely why the media takes and circulates certain ideologies about prisons and chooses not to circulate others.

It has already been suggested that the media constructs and distributes information about prisoners based on how well it will be received, or in other words, how well it will sell. Sparks however furthers this notion and is particularly vocal in asserting that, “political process and media discourse can hardly meaningfully be separated” (cited in McConville, 2003, p164). By this, it is meant that the media is consistently and inevitably intertwined and imbibed with political agendas. In other words, what is portrayed has been carefully construed to benefit a certain pool of people or school of thought. A great example of this is further expounded by Richard Sparks when stating that there is a;

*“frequent irruption through the media of certain powerfully emotive themes and images associated with crime and punishment into political culture, and the tactical uses to which they can then be put, works powerfully to the advantage of certain political positions and the detriment of others” (cited in McConville, 2003, p163)*

As a “sacred cow” of British culture, discourse relating to prisons can be used as a vehicle for political manoeuvring. Frequently, politicians attempt to, “out tough each other” (Jewkes and Johnston, 2006, p289) by declaring policies or asserting stances that they perceive will appease the public and therefore aid in achieving electoral success. Such policies and stances can be thought to be nothing more than mere reactions to whatever information is currently being peddled by the media. However, it could also be suggested that politicians and the media work together at times, in order to persuade or influence the public to the greatest extent possible. Given this, all information relayed by the media about prisons and prisoners could be denounced as manipulated, contrived or simply falsified. Without exaggeration, this could be deemed as propaganda. As Richard Sparks articulately states, “demagogues and dictators have long understood the heady thrill of circuses, lynchings and show-trials” (cited in McConville, 2003, p152).

As asserted by Roberts and Hough, often tough talk on crime is seen as a prerequisite of electoral success by politicians of all parties (2002). The public is after all, the majority stake-holder in such campaigns and crime and punishment is viewed as one of the major institutions to address. Politicians have increasingly been giving public opinion more formal considerations in shaping sentencing policies as policy-makers have been increasingly embracing public opinion polls as a reliable (and as their only) indication of public opinion (Roberts and Hough, 2002). There are obvious objections to this. As it stands, numerous Criminologists dispute the usage of public opinion polls as useful tools in which to shape penal policy. It is argued that the public largely remain as mere recipients of contrived media information, that they are rarely consulted and frequently dissuaded from questioning the origins or intentions of media

claims (Roberts and Hough, 2002; Sparks, 2003, Matthews 2009). It has therefore been suggested that public opinion polls are simply the offspring of a manipulated, or indeed even fabricated pool of media information and that consequently, merely exist “to provide legitimation for policies that have already been decided” (Matthews, 2009, p115).

The media and policy makers therefore can be accused of having nursed the population to believe in ideals that are convenient to their plights for the sole purposes of furthering their own causes. In this way then the extent of punitiveness towards prisons and prisoners expressed by the population can be proclaimed as merely a mechanism, a byproduct of politics and the media.

The next issue to address then is that of the public and their actual levels of punitiveness. It has been expressed thus far that the public is exposed to information that is perhaps inaccurate regarding prisoners and the prison system in England and Wales. It could also be proposed that the population is reliant on a narrow pool of sources and as such, form opinions corrupted by a foundation of concocted information. Ken Smith, an ex-prisoner who wrote of his experiences, indicates that there are two oppositional portrayals of prisons as a result of this. This corroborates Coyle’s assertion explored earlier on in the chapter. Smith 1989, indicates that via the media (and perhaps in conjunction with policy-makers), two different “schools” have been created within the population. One school believes that prison is typified by violence, drugs and “evil” offenders who can’t be reformed. Such thought is arguably exacerbated by exaggerated media portrayals of prisons such as in the TV drama “Bad Girls” and the more modern “Alcatraz” in which prison is a volatile “beehive” of activity (Smith, 1989, p26). It is, according to Smith, no coincidence that children are warned that bad behaviour results in confinement to prison; a scary place defined by misery and punishment. The second school of thought believes that modern prisons are “soft” and is consequently punitive with demands for harsher and/or longer sentencing than current practice allows (Matthews, 2009); Smith refers to this body of people as the “roast-them-in-hell school” (1989, p15). This second train of thought is arguably expanding rapidly throughout England and Wales. It is commonly known as penal populism and is characterised by its condemnatory and punitive ideologies.

It is all too easy to think of offenders as bad people who deserve little if no consideration for their welfare, wellbeing or living standards. Newspaper headlines are particularly culpable of exacerbating such crude notions as demonstrated by the following examples:

**“The quality of hot chocolate is poor and my tracksuit was stolen from the laundry’: The incredible list of complaints made by PRISONERS at medium-security jail” (Chris Brooke for the Daily Mail, 2012)**

**and,**

**“Lag demands compo for confiscated sunglasses” (Neil Syson for The Sun, 2011)**

It is perhaps little wonder that a proportion of the public, albeit an unknown proportion, are satiated with the childish conclusion that prisons are crammed with immoral, unsavoury people and that prison conditions are too “soft” or indeed lenient on such people. Jewkes and Johnston assert that, “*of all the likely contenders for society’s fear and loathing, prisoners are viewed as detritus by large segments of the British press’s readership and thus frequently induce a lazy contempt amongst journalists*” (2006, p290). It could well be that we are content to box prisoners off as “good-for-nothings” without much persuasion or evidence. Erwin James, another ex-prisoner, states that prisoners are, “not seen as individuals, but as a collective, with the same crude standards, values and culture – a sub-race” (2004, p73). It is discouraging to think that society has formulated largely inflexible opinions of prisoners and that as such, the media is dissuaded from investigating and reporting on the realities of prison life with any real rigour, but instead focus on perpetuating assumptions that benefit their businesses. With this in mind, a highly antagonistic system can be thought to have been created; prisons are seen to deal with the misfits, those who are not like everyone else. It actively encourages the process of “othering” whereby main society, those deemed as “normal” or “acceptable”, distance themselves both physically and mentally from those that are referred to as offenders (Matthews, 2009).

To understand this more thoroughly, the concept of “othering” must be explored. “Othering” can be thought of as ostracising and lamenting people who are deemed as socially unacceptable or undesirable. In this way, a body of “others” are created, a body which is routinely marginalised and excluded from wider society. Individuals may be perceived as an “other” for a variety of reasons but for the purposes of this essay, only relevant aspects will be explored. Offenders are most certainly considered as “others” and are excluded in the highest form.

An ‘other’ is labelled with pejorative connotations and therefore, the stigmatisation itself is consequently argued as a powerfully detrimental force. Certain Criminologists have been particularly vocal about this in relation to the penal system and indicate that there is a direct link between “others” and the prison population. Stern for example asserts that prisons are simply warehouses of sort for undesirable characters, or rather, “others”. She indicates that prisons are a direct reflection of the “inequities and injustices of wider society” (1998, p105) and consequently eloquently states that unfortunately, “for many prisoners, prison is not unexpected” (1998, p105). In this way, a dispiriting cyclical relationship can be thought to exist between those deemed as “others” and the penal system; “others” are sent to prison for their deviances and those released from prison are still viewed as “others”, perhaps more so, because of their very public segregation. In other words, prisons can be thought of as both the depository and the factory for what Ramsbotham terms as “society’s flotsam” (2005, p72).

In no uncertain terms then, the prison system has been accused of exacerbating such problems that culminated in the individual being sent there in the first place.

Cheney, cited in Hale et al, draws on the findings of the Social Exclusion Unit's research (2002) in indicating that often, prior to sentencing, offenders have;

*“low educational levels and a history of truanting or exclusion from school... with some two-thirds not having the basic literacy skills of an average fourteen-year old. Males and females alike have a background of mental health and drug and alcohol problems, with 80 percent of women prisoners entering prison with a drug dependency...20 per cent of men and 40 per cent of women have attempted suicide prior to reception into the system... poor standards of health are common throughout the population... and social and economic deprivation is a standard background amongst all prisoners. The majority of prisoners are parents, with an estimated 125,000 children having a parent in custody, and by far the majority of women prisoners have suffered physical and sexual abuse” (2005, p552)*

There is therefore a very strong argument that indicates that prisons simply aggravate issues experienced by particularly vulnerable members of society (Mathews 2009; Scott, 2008). Cavadino and Dignan claim that on these grounds alone, prisons are, “morally indefensible, or at least defective” (2007, pg36). Questions therefore arise as to the justifiability of the current prison system and moreover, the appropriateness of punitive proposals.

Interestingly, research would suggest that the public is not as punitive as it is commonly perceived. Maruna and King claim that considerable research suggests that there is an assumption that the public is, at its core, fundamentally punitive when in fact, this is not the case (cited in Bottoms et al, 2004). This is corroborated by Matthews who claims that the public are at best, “ambivalent” (2009, p115) and Roberts and Hough who relay that the public in fact respond to crime with a “rich array of reactions” (2002, p7). It is perhaps therefore unwise to infer that individuals lack agency or free will to determine their own convictions. Nevertheless, this does detract from the issue at large here; an undetermined proportion of the population holds unfounded punitive views that impact in a very real way on prisoners. This is made even more unsettling when it is acknowledged that the realities of prison life and everything it encompasses is in fact largely a mystery to society (James, 2003).

It is this phenomenon; that of penal populism, that is particularly worrisome. Having been exposed only to what can be described as selective material and considering that public opinion is arguably increasingly powerful in terms of policy making, there is a genuine concern that, as Indermaur and Hough assert, there could be a resultant of unfair or ineffective responses to offenders and their management within prisons (cited in Roberts and Hough, 2002). Prisoners are then arguably sentenced to receive punishment as directed by those who “have no idea what it is like” (James, 2003, p73). The concern therefore is that prisoners have become mythologized and that the public have forgotten that at stake are human lives, dignities and rights. James poignantly states that the reason a person is in prison, “no matter what the crime, is but one small element of that person” (2003, p187) and that, “only somebody who has never been to prison would believe that jails are ‘soft’ places” (2003, p75). It is the extent of this claim that will be explored in the next chapter; the realities of prison life.

## **Chapter 2 – Penetrating the perceptions; the penal system and its supposed justifiability on trial**

As explored in Chapter 1, it could with some conviction be asserted that the public is only exposed to a very narrow understanding of prisons and the manner in which prisoners are treated. It has been argued throughout the previous chapter that the result of this is, as Bottoms et al indicate, “widespread public ignorance about crime and justice” (2004, p86). With arguably such “little effort... directed to informing or consulting the public in any rational way” (Roberts and Hough, 2002, p1), it is therefore also logical that the public may be unable to reach a fairly informed opinion on imprisonment as a punishment.

Imprisonment is a penalty that the state can ascribed to an individual who has broken the law by committing a crime. In simple terms, it results in an individual being physically confined away from the rest of the population and usually also deprived of certain personal liberties and freedoms, all which are debatable and not necessarily imposed. In its various forms, prison has been a feature of British society for hundreds of years. Dungeons and other rooms of confinement of sort have been used as punishment for centuries; it only necessitates a look at ruins of castles throughout the land to find this. It was also a practice to send convicted criminals to penal colonies in the British Empire, Australia and America. However, it is since the 19<sup>th</sup> century that prisons as they are now known were becoming commonplace. Local county prisons, traditionally known as “jails” were amalgamated with houses of correction (a type of establishment that housed those deemed as “unwilling to work”, normally therefore, vagrants) in 1865 and it is from then that prisons became increasingly nationalised and standardised (Morris and Rothman, 1998). Influenced by Jeremy Bentham, a utilitarianist, the modern prison system was born in London. It was revolutionary in that it was proposed that being held, or rather incarcerated, was actually part of an offender’s punishment; previously, prisons were primarily holding sites whilst a suitable punishment was being decided upon. In this respect, Britain set the blueprint for the modern prison system.

Imprisonment became a more frequently used punishment. It eventually overtook the usage of more physically formidable penalties including, but not limited to executions, extradition, hanging, branding, flogging and hard labour. During this fascinating epoch in history, that of the 19<sup>th</sup> and 20<sup>th</sup> centuries, punishment gradually receded from being a public spectacle, a form of entertainment, to a private affair shielded from the public eye. This reflected a symbolic and significant shift in attitudes about how prisoners should be dealt with, which punishments were most effective and arguably, a greater consideration for human rights and dignities. The increase in the use of imprisonment specifically reflected the notion that the certainty of punishment rather than the horrific spectacle of public punishment must be sufficient to discourage crime (Foucault, 1977). Foucault indicates that there was a distinct, “slackening of the hold of the body” (1977, p10) and importantly, that it was no longer the body that was targeted for punishment, but the soul (Foucault, 1977).

For imprisonment to have become the most dominant form of punishment, it must follow that punishment of the soul must therefore be considered as a more ghastly penalty than “bodily punishment”. In this way then, prisons can be thought to represent the state’s almighty hold over individuals and every aspect of their being, as prisons arguably control aspects of the body by confining individuals and restricting liberties whilst also, and arguably primarily, punishing the soul. As Crewe asserts then, prisons can be regarded as, “potent symbols of the state’s power to punish” (cited in Jewkes, 2007, pg123). Nonetheless, having disregarded the traditionally punitive methods of bodily punishments, the prison system within England and Wales can be thought of as appropriately responsive. Indeed, it could even be attested that the modern prison system is a humane, justified and respectable response to crime and deviance and that considerations of human rights are always at the forefront of practice.

However, it could equally be suggested, as explored in Chapter 1, that the system is overly lenient and therefore too merciful. The overriding theme is well articulated by Sykes; “the modern pains of imprisonment are often defined by society as a humane alternative to the physical brutality and the neglect which constituted the major meaning of imprisonment in the past” (1958, p64). This may well be true; in comparison to previous methods of punishment and specifically imprisonment, the modern prison system could be regarded as a carefully constructed, considered and justified institution. Nevertheless, the extent of justifiability in both imprisonment and the ways in which prisoners are treated could be challenged. Some academics including Honderich, assert that prisons are simply not justified as a whole and that drawing comparisons with the past merely serves as a way to eclipse objections against imprisonment in the present day (2006). This is a concept that needs further exploration. As Sparks expounds, “the proposition that we now live in a late modern world does not imply that everything has become ‘even more modern’, if by ‘modern’ we mean what the leading figures of an earlier generation tended to mean – humane, pragmatic, rational, undemonstrative” (cited in McConville, 2003, p153). It is therefore necessary that the modern prison system is considered in isolation without reference to the past. It is even more vital that it is addressed thoroughly and with scrutiny as human lives lie in the balance. As Cavadino and Dignan argue, the prison system needs a justification “since it is almost always something that is harmful, painful or unpleasant to the recipient” (2007, p36).

Further reasons exist as to why it is so crucial to examine the prison system in such detail. The prison population within England and Wales has been proportionately rising since 1945 and has the 7<sup>th</sup> highest rate of imprisonment within the EU (at 153 people imprisoned out of every 100,000 compared to the average for Western Europe at 96 per 100,000) (Walmsley The International Centre for Prison Studies online publication, 2011). That translates to 87, 760 inmates at the time of writing (HM Prison Service online publication, 2012) That being said, a simple consideration of the prison population is not sufficient enough to decide if England and Wales is overly punitive and that imprisonment is not, or at least not always, justified (Jewkes and Johnston, 2006). For the remainder of this chapter then, a simple concept with complex intricacies will be debated; if and how prisons are justified.

Under the Criminal Justice Act, 2003 Part 12, Chapter 1.142, the purposes of sentencing an individual to imprisonment were set out for the first time; punishment; reduction of crime (including by deterrence); reform and rehabilitation; protection of the public; and the making of reparation. It is these principles that will guide the debate that is to ensue. It will not however, be limited to them. One of the most commonly cited reasons for imprisonment is simply punishment or revenge; more formally, this is more often referred to as retributivism. This is the simple notion that wrongdoers should be punished because they deserve it and that it is, as Cavadino and Dignan articulate, “in some way morally right to return evil for evil, that two wrongs can somehow make a right” (2007, p44). It is one of the more popular types of justifications within England and Wales, perhaps because it satiates a thirst for revenge that is so aggressively fuelled by media manipulation. Society could be thought of as founded on the premise of retributivism. Originally found in the Hebrew Bible and later interpreted as part of Christian scripture, “lex talionis” instructs that as compensation for an injury, retribution must ensue. It literally means, “an eye for an eye” and traditionally governs the laws of punishment. It has proved to be a, “remarkably resilient idea” (Cavadino and Dignan, 2007, p45) and it is perhaps therefore little wonder that retributivism still fits in so well with common sense intuitions that deviance begets punishment. It is deeply ingrained that such methodology is justified. As Cavadigno and Dignan observe, a failure to comply with the lex talionis principle is construed as morally wrong in that, “failure to punish law-breakers... would be unfair to the law-abiding” (2007, p45). If an individual deliberately means to break the criminal law and behaves very badly, it is then proposed that he or she should suffer equally. In modern society, imprisonment is regarded as the most severe punishment imposed; this therefore means, in the eyes of a retributivist at least, that very bad behaviour should automatically beget imprisonment.

However, certain academic thought insists that the original meaning of “lex talionis” has arguably been lost somewhere over the millennia. Scott voices that;

*“We often hear the argument of the ‘eye for an eye’, yet such principles were developed as a means of ensuring that, if a conflict existed between two Jewish tribes and lives were lost, the lex talionis was invoked to ensure that one tribe would not be destroyed. Contrary to current understandings, this did not mean that a life was taken for a life lost, but rather that a life was given from one tribe to another to ensure parity. The principle is not one of harm escalation or retribution, but one of the restoration of balance”* (2008, p26)

If this is true, this therefore means that age old notions of vengefulness have been misunderstood and misguided and that over time, millions of people have been imprisoned on the basis of a warped ideology. Arguably, having been wrongfully dealt with, the process of “othering” has been exaggerated and offenders feel less of an obligation to society and society’s rules (James, 2003). In this way, it could be argued that prisoners feeling remorseful may well direct their pity on themselves rather than the victim or victims and society at large, and that the original misdemeanour may be dismissed (Smith, 1989).

If an “eye for an eye” is to be understood in the most simple of terms, this then means that a murderer should be murdered and a rapist, raped. Considering that the European Union has an official policy to actively promote abolition of the death penalty around the world (Kury et al, cited in Roberts and Hough, 2002, p109), the concept of “an eye for an eye” is evidently an out-dated one. Knee-jerk retributivism is an absurd proposal. It would mean that abhorrent acts would be indisputably criminal in one case (that being when the perpetrator commits them), yet reclassified by the state as legally sanctioned in another (when the original perpetrator is punished). An act would be only considered as criminal depending on the context in which it is judged and the perceptions of a small number of powerful individuals enabled to cast sentences (Morrall, 2006). A further difficulty therefore arises in discerning how badly a person must behave in order to receive imprisonment as part of the “eye for an eye” premise. Each individual case of offending fosters subjective reactions and arguably the law is unable to make fair decisions despite its rigid and depersonalised state, as individual judges and juries ultimately make the final decisions. It would be impossible to even begin to repair harm caused by crime if it spiralled into a very adult, very serious game of tit-for-tat under the “eye for an eye” principle. Moreover, it would be impossible to justify and impose the interpretation of “an eye for an eye” because distinctions between acceptable and unacceptable behaviour would be so very blurred. If a criminal act has been committed, it is the state’s responsibility to express symbolic public condemnation for the wrongdoing. The ability to do this under the “eye for an eye” principle would be completely obliterated by a hypocritical and therefore unjustifiable, response.

It could well be proposed then that imprisonment is nothing more than “legitimized vengefulness” (Feinburg cited in Duff and Garland, 1994, p76), typified by vindictive emotions. Cavadino and Dignan therefore reason that morally speaking, society ought not to indulge but rather, curb reactions that could be considered as akin to spite (2007). Scott is particularly convinced that imprisonment in no way addresses, repairs or reduces the pain brought about by the original criminal act and that imprisonment is therefore redundant (2008). A strong consideration of retributivism then is well summed up by Cavadino and Dignan when stating that; “despite its resilience and its various attractions, retributivism remains an implausible justification for our actual practices of punishment” (2007, p46).

A second justification for imprisonment is thought to be deterrence. The simple idea is that the “incidence of crime is reduced because of people’s fear or apprehension of the punishment they may receive if they offend” (Cavadino and Dignan, 2007, p37). The logic behind deterrence is startlingly basic. It is claimed that individuals, aware of the perils of prison and the stigmatisation that is attached to prisoners, do not commit crime or indeed refrain from committing crime as readily. Deterrence therefore is also thought of as a crime reduction strategy. Again, such ideology is profoundly flawed. To begin with, deterrence has been massively undermined by the abolition of punitive bodily punishments of the past. Individuals may no longer be subject to physically painful punishments within England and Wales. As physical pain is greatly feared, the fear of imprisonment has therefore been reduced. Moreover, deterrence cannot successfully be cited as a justification for imprisonment given that rhetoric

surrounding prisons claims, as explored in Chapter 1, that prisons are “soft” places and that therefore, imprisonment is hardly taxing. It is nonsensical to suggest that society fears prisons and at the same time suggest that prisons are “soft”. Furthermore, it has been vastly overlooked that the majority of people obey the law most of the time out of moral considerations, rather than to avoid imprisonment for selfish instrumental reasons (Cavadino and Dignan, 2007). Deterrence is therefore an unnerving justification for imprisonment as it seems to suggest that individuals are incapable of restraining immoral, perhaps violent behaviours unless there is a sanction looming over them.

Nonetheless, deterrence as a justification might well form the basis for a general justification for imprisonment. As Stalans notes, “research indicates that the public hold stereotypical conceptions of offenders” (cited in Roberts and Hough, 2002, p21) and given that such conceptions often singularly portray offenders as nothing more than, “dissidents, deviants, criminals, psychopaths, even the insane” (Smith, 1989, p75), it could reasonably be suggested that deterrence is in some ways, a plausible justification, as the public are perhaps eager to avoid both physical and symbolical associations with offenders. Furthermore, just because certain rhetoric denounces prisons as “soft”, this does not necessarily mean that all rhetoric follows suit. There is certainly a body of thought in society, as explored in Chapter 1, that the prison environment should be feared as it is debilitating and dehumanising (Scott, 2008, p21). This corroborates Foucault’s notions that prison punishes the soul of a person. It is unfortunate then, that a large proportion of society arguably underestimate the perils of prison. As a whole, deterrence could perhaps be argued as a possible justification. However, is it more difficult to justify the amount of imprisonment and subsequent punishment imposed by our system under this guise (Cavadino and Dignan, 2007).

Another crime reduction justification for imprisonment is that of incapacitation. This is the simple assertion that if an offender is in prison, they then cannot commit further offences. In this way, the public are thought to be better protected; if an individual is prevented, physically incapacitated from committing further crime, then reoffending and consequently crime rates will decrease. Certainly, it is arguable that offenders would be prevented from committing certain types of crime, for example burglary. However, incapacitation as a justification for imprisonment is riddled with objections that collude to negate its usefulness. The first objection is that incapacitation simply does not prevent offenders from committing further offences (Cheney, cited in Hale et al, 2005, p560). Crimes can, and are, committed within the confines of prison. As a brief indicator of this, official statistics indicate that in 2010 in England and Wales, there were 14,356 assaults that occurred in prisons, with 2,856 assaults on staff members (Safety in Custody Bulletin, online publication, 2011). However, official statistics cannot indicate the full level of crime that occurs in prison and can instead merely be thought to reflect a small percentage of the true extent of crime that occurs. In simply “locking up” offenders, the origins of individuals’ offending behaviours are not addressed and thus, it is arguably inevitable that convicts will reoffend both within the prison walls, and out. The second point to make is that incapacitation does not take into account that offenders carrying out a sentence in prison will more than likely be replaced

by a “new generation of criminals” (Cavadino and Dignan, 2007, p41). Imprisonment can then be regarded as merely displacing offenders if it operates under the principle of incapacitation. If reoffending is to be prevented, it is the state’s responsibility to tackle reasons behind why criminals have committed offences and guide individuals towards leading a more lawful life. A further objection to incapacitation is an ethical one. In essence, the mentality behind the concept of incapacitation is that society should punish in advance. This means that people may well be being punished, “not for what they have done, but for what they might do in the future” (Cavadino and Dignan, 2007, p41). To base a justification on an anticipatory methodology such as this is an “abuse of freedom” (Spark, cited in McConville, 2003, p156). Finally, considering the financial strain that the prison system within England and Wales is currently under, incapacitation is a preposterous solution. It is ludicrous that misinformed rhetoric about prisons combined with questionable justifications, could result in the overlooking of financial considerations to the extent that society is struggling to support the prison system financially (Matthews, 2009). For all of these reasons, incapacitation is a massively flawed justification for imprisonment. Keeping prisoners in a beehive of activity, in a place where crime is bred (Smith, 1989) and individuals are reminded daily that they must be kept apart from “decent” people on the basis that they might reoffend, is an unquestionably non-justified response.

A further justification for imprisonment is that of denunciation. Similar to retributivism in that it aims to instil a degree of fear into the public, it differs in that its main purpose is to, “demonstrate society’s abhorrence” (Cavadino and Dignan, 2007, p46) of offending behaviours rather than to inflict punishment or revenge. Through denunciation, it is hoped that the collective conscience of society is addressed when an offender is sent to prison and that it is understood, through symbolic interactions, that the offender’s actions were socially unacceptable, and therefore wrong. It is a way in which “good” and “bad” behaviours are defined. As Roberts and Hough assert, denunciation aims to perpetuate the “deep-seated attachment to punishment as a response to wrongdoing” (2002, pg5) and therefore indicate that such behaviour will ultimately always result in punishment, the most severe being that of imprisonment. Feinberg celebrates the use of denunciation within the prison system and claims that, “the condemnatory aspect of punishment does serve a socially useful purpose: it is precisely the element in punishment that makes possible the performance of such symbolic functions as disapproval, non-acquiescence, vindication and absolution” (cited in Duff and Garland, 1994, p87). This is a point worth making; if denunciation addresses the entirety of society and conveys a message relating to acceptable and unacceptable behaviours, this is surely a valid justification for imprisonment. Nonetheless, Garland notes that denunciation is simply an exaggerated form of offender stigmatisation and that it is unsettling that such methodology would be incorporated as part of official penal policy (2001). There is a distinct difference between the denunciation of individuals and the denunciation of behaviours; whilst behaviours are arguably chosen, adaptable and can be refrained from, the targeting of an offender, therefore someone who is likely to have already suffered from social wariness because of, for example, their class, state of employment, mental health or lack of educational attainment, is a direct attack

on the core of a person and therefore is unlikely to help resolve issues that instigated the original offending behaviours. Denunciation arguably attacks both the offending behaviours and the offending individual. Moreover, a further objection to denunciation is forwarded by Cavadino and Dignan when claiming that, “research suggests that the public are not influenced in their moral attitudes towards offences by the punishments that are imposed (or which they believe are imposed)” (2007, p47). If this is correct, it would therefore mean that denunciation as a reason for imprisonment is moot, as it would be ineffective in its main aim, to rally the public against certain offending behaviours. Nevertheless, denunciation is thought to pave the way for a communicative dialogue in which moral issues are raised and contrition is sought from offenders. It may not provide a general justification for the penal system, but it is arguable that denunciation is justified simply because it may go some way to, as Cavadino and Dignan articulate, “educating the public conscience and therefore reducing the amount of crime” (2007, p47). Even if it is only limited in the assistance of crime reduction, it helps to refine societal notions of unacceptable behaviour, without causing an unjustifiably disproportionate level of harm to offenders, victims or society at large whilst doing so.

The final justification of imprisonment that will be addressed incorporates rehabilitation, reparation and reform. Rehabilitation is lexically a combination of French and Latin. It literally translates as, ‘re-competent’ (Mathieson, 2006). It is therefore most concerned with the welfare of offenders in the present and future, rather than inflicting punitive aspects for actions in the past. Ultimately, it aims to reform the offender to prevent further reoffending. Often, this means that the origins and underlying issues that may have instigated or contributed towards offending behaviours are addressed. Examples of rehabilitative initiatives within prisons can be found as part of Accredited Offender Behaviour Programmes. Typically, programmes include the likes of Aggression Replacement Training, Cognitive Skills Awareness, Focus on Resettlement and Addressing Substance Related Offending (Justice online publication, 2012). The physical aspect of imprisonment therefore merely serves as a reminder that the original behaviours were wrongful; the individual himself is not condemned as irreparable. Rehabilitative measures are often portrayed as the antithesis of retributive ones in that they seek to repair harm rather than escalate it. However, rehabilitation does not necessarily infer that punishment is or should be minimal; there is in fact a school of thought that supports rehabilitation in conjunction with harsh and severe punishments (Maruna and King cited in Bottoms et al, 2004). Again, this can be regarded as an extension of Foucault’s notion that it is the soul that should be, and is, punished in modern prisons. The body remains as an instrument whilst, under rehabilitative mechanisms, the soul is assessed, the mind is emotionally stretched and ultimately, the individual is re-educated (Foucault, 1977). Rehabilitation however, is an arguably misunderstood and therefore ill-received proposal. Given the misaligned reporting that the public may routinely be exposed to, as explored in Chapter 1, rehabilitation is often dismissed as ineffective, overly accommodating and overly indulgent. Nevertheless, it would be, “arbitrary, if not elitist” (Maruna and King cited in Bottoms et al, 2004, p86) to devalue the public’s ability to reach reasoned judgements on, in this case, rehabilitation. As Sparks commands, “public sensibilities... are not simply politicians’ modelling clay” (cited in McConville,

2003, p169). In fact, according to Maruna and King, public opinion research appears to indicate that the general public support both hard punishments for serious offences and also rehabilitative mechanisms (2004). It is therefore vital to dispel the myth that rehabilitative initiatives diametrically oppose harsh punishments and that the two cannot work in conjunction to reduce reoffending rates. Certain criminologists, including Thomas Mathieson, would even indicate that the balance between the two is so off kilter that rehabilitative methods are unable to produce any results at the present time. He claims that because of the overly eager call for punitive measures and as he deems them, “appalling prison conditions” (2006, p14), rehabilitation cannot work. He claims that, “the prison does not rehabilitate... it in fact dehabilitates” (2006, p53) as prisoners are reminded of their worthlessness and rejection from society on a daily basis. Goffman substantiates this by asserting that prisons beget a “series of abasements, degradations, humiliations and profanations of self” (Goffman, 1961, p24). If this is the case, rehabilitation as a justification for imprisonment cannot be valid. Sparks reveals a degree of dismay when noting that, “it is difficult to argue that the conception of punishment as answering to clinical or welfare assistance is the dominant one” (cited in McConville, 2003, p154). Despite its supposed popularity and appeal as a humane, reparative methodology, rehabilitation cannot with conviction be described as a justification for the penal system until it is able to function with propriety.

It is with great despondency, having considered a variety of justifications for imprisonment, that the penal system seems to operate on immoral and ineffective proposals. It is difficult to resist the implication that our penal system is “morally unjustifiable” as Cavadino and Dignan articulate (2007, p61). The reality is that too many offenders are sent to prisons on an unjustifiable basis and that any plights, any endeavours to reform, may be undermined by a morally bankrupt system. Prison should be reserved only for offenders who present a serious threat to others and need to be incapacitated somewhat, or for brief periods, for those offenders who refuse to cooperate with non-custodial measures. David Garland is exact is noting that prisons are so used because;

*“penal solutions are immediate, easy to implement, and can claim to “work” as a punitive end in themselves even when they fail in all other respects... because they have few political opponents, comparatively low costs, and they accord with common sense ideas about the sources of social disorder and the proper allocation of blame... because they rely upon existing systems of regulation, and leave the fundamental social and economic arrangements untouched... above all, because they allow controls and condemnation to be focused on low-status markets, and corporations and the affluent social classes relatively free of regulation and censure” (2001, p200).*

It is essential, in the name of justice, that the condemnatory aspect of any punishment should suit the crime and that the crime should be truly worthy of reprobation. Furthermore, it is also essential that all prisons should work towards a positive regime where the treatment of prisoners is not compromised by misguided rhetoric (James, 2003). It is disheartening that the public is so fundamentally ill-informed about alternatives to prison. In the current punitive climate, it is unusual for policy-makers to propose and therefore illustrate the

potential usefulness of alternative sentences, as these do not generally generate a great deal of support, and therefore votes from the public (Kury et al cited in Roberts and Hough, 2002). Fundamentally then, sentencers are also dissuaded from utilising alternative penalties, regardless of their effectiveness, because of the assumption that the public would disapprove. In the next chapter, alternative penalties will be explored alongside further indications that prisons are ultimately unjustifiable.

### **Chapter 3- Prisoners as people; the realities of imprisonment and the reluctance to utilise alternative penalties**

In this, the final chapter, two areas will be explored. The first, and main area, pertains to the treatment of offenders. It is perhaps all too easy to dismiss individuals as “prisoners” without actually considering what this word means and what implications it should or does have. Consequently, this chapter will attempt to explore what it actually means to be incarcerated on a micro level, and the realities that prisoners may face on a day to day basis. The second area of interest regards non-custodial sentences, their worth and their levels of, or more accurately, lack of, implementation.

Despite the comparatively high imprisonment rate that England and Wales has within Western Europe, the reality is that only a small percentage of British citizens will experience first-hand what exactly imprisonment entails. Perhaps disproportionately then, issues of crime and punishment have in recent years assumed a “higher, more insistent and more fevered public profile” ( Sparks cited in McConville, 2003, p155). This development is intrinsically paradoxical in that the issue of imprisonment is so frequently voiced, yet so little understood. The information that is available for the public to access is questionable to say the least and has, as explored in Chapter 1, ultimately lead to distorted views of imprisonment. It is often rare for the public to access official statistics of prisons but even then official data, including bulletins released from the Ministry of Justice, cannot be considered as completely impartial but more as, “at best, only partial accounts of prison life” (Scott, 2008, p45). This is because official publications can be accused of, as Scott asserts, reflecting the “interests, goals and objectives of the gatekeepers of state institutions” (2008, p45) and therefore existing merely to support custodians, prison officers and other powerful groups in their aims. Given that many of the people in these powerful positions may have ulterior motives, such as the acquisition of political support, it is therefore unnerving but likely that offenders are condemned to a punishment that fundamentally, is poorly researched, portrayed and therefore, understood. Even if this is overly critical, the likelihood that all statistics are recorded accurately without exception, including those pertaining to incidences of violence, substance abuse and reoffending rates, is very low. This may partially be due to the secretive nature that offenders have arguably developed as part of the “othering” process they may have been subjected to. It is human nature to reject one’s rejectors; staff of the penal system are arguably pitted against offenders

and portrayed as “guardians of the awful” (Smith, 1989, p69). In this way, it is not difficult to estimate that there is a distinct division between staff and inmates and that trust, and consequently divulgence, is lacking. Ultimately, this would mean that the true experience of prison, as comprehended by the prisoner, is not well publicised or indeed, understood.

Certain academics would certainly corroborate this. Garland for example, claims that, “the interests of the offender and even his or her legal rights, are routinely disregarded” (2001, p180) whilst Scott articulates that, “often, the accounts of prisoners are seen as neither credible nor reliable, and so it is penal authorities that exclusively shape the agenda, leading to the reinforcement of dominant values and common-sense assumptions on prison life” (2008, p47). James, an ex-prisoner himself vocalises that, “despite being under almost constant observation, people in prison rarely get the chance to show their true colours” (2003, p99). As it is desired to form a rounded, well-researched understanding of the penal system in order to ensure that it is entirely justified in its conduct, it is therefore vital that more thorough attempts are made to address offenders directly and that their understandings of prisons, taken from their own vantage points, are considered as useful tools when reviewing the penal system as a whole. Unfortunately, there is a considerable lack of written accounts by prisoners or ex-prisoners and therefore, the pool of readily available information is relatively small. Even more despondently, the sources that are available may be atypical in that the author does not generally represent the prison population. Often, those who have produced accounts of prison life differ in that, for example, they may be more educated than the typical offender, hold more qualifications or hail from a respectable background. The bottom line is that resources available as written by offenders, are often skewed by such variables. Sources can then be thought of as unrepresentative and unreliable of the entire prison population. Nonetheless, that does not permit the dismissal of such literature in favour of the total consumption of accounts given by non-offenders, academics, the government, policy-makers and custodians.

Currently, there are four main bodies that inspect and regulate the penal system. These are: Her Majesty’s Inspectorate of Prisons (HMIP), Independent Monitoring Boards, the Prisons Ombudsman and the Council of Europe, specifically the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). All of these bodies are committed to ensuring that prisoners are not disproportionately or unjustifiably treated, or rather, mistreated. Importantly however, in most cases, these bodies cannot, “ ‘insist’ on something being done” but can merely recommend that certain actions are taken (Cheney, cited in Hale et al, 2005, p549). Observations and consequent recommendations then, are enforced sporadically and are subject to the will of disparate and competing pressures including financial, political and public will. Moreover, despite the obvious and admiral intentions of these bodies, it has been questioned whether their accessibility to female prisoners and young offenders in particular is lacking due to a disproportionate lack of complaints from these groups (Cheney, cited in Hale et al, 2005, p551). Therefore, officially sanctioned channels appear to be failing in representing prison populations adequately and also in successfully responding to inmates’ needs.

There are also a number of important international standards and human rights treaties affecting the regulation of imprisonment and standards of incarceration. These include the Universal Declaration of Human Rights (1948), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Conventions on the Elimination of all Forms of Racial Discrimination (1966). Fundamental rights are at the core of such legislation and considerations of inmate's basic and legal rights drive inspections. In 1991, the Woolf Report was compiled following riots at Strangeways prison in 1990. The riots sparked a series of similar disturbances in prisons throughout Britain and were thought to have occurred as a reaction to the inmates' complaints and grievances routinely being ignored. The Woolf report was seminal in attempting to understand the day-to-day realities of life behind bars and in seeking to ensure that prisoners were incarcerated as punishment rather than for punishment (Newburn, 2007; Jewkes and Johnston, 2006). It insisted that the moral and practical complaints of prisoners should be both heard and addressed. Public institutions generally have systems in place so that "customers" or "clients" have ways in which to air their grievances. The basic conditions of incarceration however require that this normative assumption is wavered. There has undoubtedly been progressively more considered practice to ensure that prisoners have outlets to make complaints however, obstacles prevent prisoners from fully acquiring the attentions of prisoner officers, custodians, the law itself and of equal significance, the public. The penal system is both so large and so intrinsically complex that there is a fragmentation of responsibility for offenders, meaning that no one in particular is held accountable for ignoring prisoners' complaints and even that no one in particular assumes direct responsibility for offenders' welfare in the first place. Moreover, it could be argued that some of the key individuals in criminal justice administration have an inadequate comprehensive training and therefore do not fully understand the implications of sentencing an individual to prison. Indeed, some of the individuals involved are trained in law, for example lawyers and judges, but many are laypersons, members of the public or civil servants. They are not then trained in the consequences of the law's application and fail to acknowledge the extent to which the repercussions of incarceration reverberate (Roberts, cited in Player and Jenkins, 2002, p229).

An overarching question arises then as to who exactly is responsible for ensuring inmates are managed in a justified manner. Richardson proposes an interesting theory in asserting that, "society, for whatever reasons, has deprived prisoners of their liberty and in doing so has increased their dependence... society thus has a duty to protect prisoners and to provide them with certain essential facilities" (cited in Player and Jenkins, 2002, p79). In this way, offender management can be considered as requiring a collective effort and perhaps most controversially, compassion. Cheney is supportive of this line of argument and claims that prisoners are, "a needy group who have been failed time and again by the system prior to entering a prison establishment" (cited in Hale et al, 2005, p562). It is possible then to consider prisoners as vulnerable persons who have been failed by society and whom consequently, are owed extra and more attentive support than is required for other citizens. As James expertly articulates, most prisoners are just, "ordinary men with extraordinary failings" (2003, p8) and therefore are deserving of well considered and justified

practices of offender management. It is for this reason primarily, that demonization of offenders must be avoided, as should indifference, apathy or passive responses to offenders' wellbeing.

There are a number of groups within prisons that arguably are given the least attentive considerations despite perhaps requiring the most. Research indicates that certain groups, including ethnic minorities, foreign nationals and young offenders may have particular difficulties in understanding prison procedures and rules and that access to basic information is fundamentally limited (Newburn, 2007). Also, in terms of gender, the penal system has been argued as having been devised, "largely with the needs of male prisoners in mind" (Newburn, 2007, p703). The female prison population is rising and therefore female prisoners deserve equally attentive considerations. Even if this was not the case, that the female prison population is rising, it is fundamentally wrong to overlook the requirements of a group of people merely because they do not constitute the majority. Women arguably have very different needs to men and deserve more than being subject to a "one size fits all" system. Remand prisoners, those who are being held in prison without yet having been convicted, are a particularly worrisome group. In the first place, and to reiterate the previous sentence, these offenders are deprived of their liberty *without having being convicted of a crime*. This is arguably unjustifiable in itself. Furthermore, the remand section of prison has often been reported as having, "some of the worst overcrowding and poorest conditions" coupled with, "limited access to legal advisors, very restricted access to training and other facilities and particularly long periods of time locked up" (Newburn, 2007, p703). It cannot be acceptable to disregard the rights and wellbeing of individuals on the basis that they have at one point or another, committed or have been suspected of committing, a crime. This can essentially be described as passive retributivism and cannot be justified considering that the penal system officially declares that it is bound to care for prisoners, "with humanity" (Ministry of Justice online, 2012). If passive retributivism defines the management of offenders, it follows that prison conditions will inevitably be poor and consequently that prisoners will be routinely degraded, whilst professionalism, tolerance and considerations of human rights are eroded (Casale, cited in Player and Jenkins, 2002, p66-67). In contrast to dominant perceptions of the penal system then, conditions within prison can be expounded as potentially both detrimental and debilitating to individual offenders and therefore, arguably can hinder chances of positive changes of reduction of reoffending, reform and rehabilitation.

To explore this in further detail, a micro level approach will be adopted. Goffman poignantly asserts that upon entrance to an institution, in this case the prison, an individual is subject to a series of, "mortifications of the self" (1961, p25). Stern expounds this theory, that individuals are stripped of their personal identities, in claiming that the sole universal feature of imprisonment is that it, "snatches its participants from everyday life and places them in an abnormal environment, divorced from their routines, and exposed to quite different pressures and imperatives" (1998, p105). The initial confusion surrounding imprisonment and its unfamiliar routines can be considered to be disorientating at the very least. Goffman indicates that this series of degradations inevitably has a profound effect on inmates and specifically indicates that the, "loss of

one's name can be a great curtailment of the self" (1961, p28). Smith also expresses concerns about the depersonalisation of prisoners and laments the lack of voice that inmates ultimately have. He indicates that the penal system actively represses inmates' concerns and complaints and that prisoners are thus reduced to mere "names and numbers and paperwork" (1989, p21) rather than as living, feeling individuals.

In contrast to media portrayals that would have society believe that prisons are hospitable places in which to live, there is therefore a substantial concern regarding the management of prisoners, the actual conditions of prisons and perhaps as a direct result, suicide and self-harm rates within prisons. Violence is prevalent in prisons, but contrary to popular belief, violence is overwhelmingly directed at the self rather than at others. Harming oneself is also considerably more prevalent in prisons than society in general and is perhaps therefore indicative of the particular vulnerabilities of many who are imprisoned (Newburn, 2007). In 2010, there were 58 deaths in custody in England and Wales that were deemed to be self-inflicted and 26,983 recorded cases of self-inflicted harm (MoJ, "Safety in Custody" online publication, 2011). It must however, for legitimacy's sake, be acknowledged that in terms of self-harm, a certain number of inmates are prolific and may account for a large proportion of the statistics. Moreover, there has admittedly been a proportionate decline in recorded self-inflicted injuries and deaths in recent years. Ultimately however, this does not negate the seriousness of the issue and may be easily explained by skewed recording techniques and improved medical attention and warning systems. The origins of such self-inflicted violence is really the key issue and could arguably be traced back to the depersonalisation process of the penal system coupled with the likelihood of existing social disadvantages prior to entrance in prison. The lack of outlets in which to express concerns and thoughts is potentially another.

It is arguably vital that offenders are able to maintain links with wider society and in particular, close friends or family. In doing so, offenders may be able express their personalised experiences of prison and consequently alleviate thoughts and emotions that otherwise may be disregarded. A prisoner may also more successfully attempt to maintain a personal identity by receiving support and confirmation from those who know him or her best. Unfortunately, in sentencing an offender to prison, the most severe form of punishment in England and Wales, prisoners are often deprived of this opportunity and links with wider society are often negotiated. Although imprisonment can be argued as having "moved a long way from isolating the 'penitent'" (Cheney, cited in Hale et al, 2005, p558), prison undoubtedly compromises the links that a prisoner has with wider society; his or her identity and social standing is therefore also compromised. Face to face visits are limited, as are telephone conversations. Written correspondence may be monitored. Contact with the outside world is considered a privilege and therefore can also be withheld from prisoners as punishment for misdemeanours. Of vast importance, it is also often difficult for individuals to maintain regular contact with an inmate as the requirements of everyday life outside of the prison make insistent demands. Therefore, it is not an uncommon state for prisoners to feel isolated, forgotten or uncared for. Ultimately, this could be argued to perpetuate the depersonalisation process of

offenders and therefore widen binaries between prisoners and the rest of society. These uneasy tensions aroused between wider society and the institutional world of the prison can provide leverage in which to manage offenders; it could be suggested that the penal system plays on the disunity and uses it to suppress and indeed dismiss prisoners' complaints, experiences and critiques of the system in general.

With arguably such little support ascribed to the inmate population, it is a recurrent problem to ensure that prisoner complaints are both heard and responded to routinely, fairly and without presupposed judgements. Jim Dawkins, an ex-prison officer, offers rare insight into the workings of the penal system in his memoirs. He despairs that, staff often, "perceived their jobs as one big game" (2005, p127) and treated prisoners accordingly despite the fact that most often, the majority of inmates, "never asked for anything unreasonable" (2005, p127). Hulley et al add yet more weight to the debate in articulating that respect towards prisoners is distinctly lacking. The criminologists attest that relations between staff and inmates are, "inherently unequal" and that the power differential can be, "brutal and 'toxic'" (2011, p2). Moreover, Hulley et al claim that prisoners are deprived of facets of respect on multiple levels, citing emotional respect, practical respect and interpersonal respect as but a few essential needs that are routinely neglected (2011). In this way, there is a strong line of argument that suggests that prisons fail to adequately respond to inmates' needs and therefore a further objection is created against imprisonment as a justified response to crime. There are of course arguments that insist that certain individuals, namely staff members, do recognise the powerlessness of inmates and respond appropriately to requests and complaints (Roberts cited in Player and Jenkins, 2002; Dawkins, 2005). Nevertheless, having explored this contentious area, serious allegations could be made against the penal system in general as having failed to meet basic requirements, both physically and emotionally, of inmates. Even the slightest of inferences that injustice prevails in prisons should be considered sincerely especially given the fragility of many of the prisoners. Perhaps therefore, given the obvious shortcomings of the penal system, it is wise to consider alternative punishments more seriously.

There is not an agreement on a collective name for penalties that do not involve imprisonment (Worrall, cited in Hale et al, 2005, p529). Similarly, there is no collective agreement on the usefulness of such penalties. As it stands however, the public and the indeed the powers that govern appear to be reluctant to utilise such methods of punishment; this is largely because non-custodial punishments such as community punishments, referral orders, financial penalties, curfews and supervisory orders are regarded as "soft options" and as, "poor substitutes for imprisonment" (Worrall, cited in Hale et al, 2005, p542). Non-custodial sentences arguably do face a plethora of objections. Worrall and Hoy concisely indicate some as follows:

- 1) Persistent and widespread dislike of its utilisation
- 2) Arguably primarily benefit those who are , "relatively advantaged socially" (2005, p12) and that conversely, prison simply houses those who are not; a concern therefore that such penalties are discriminatory

- 3) Potential “net-widening” effect; draws more and more people into the criminal justice system
- 4) Difficulties in enforcement  
(2005, p11-12)

Given this list, the disinclination towards non-custodial sentences is perhaps more understandable; they are perceived as an ineffective approach towards tackling crime and are therefore currently sparingly imposed. There is a pool of rhetoric that indicates that in modern society, only prison is a suitable punishment and even then, that that system is relatively lenient.

Unfortunately, the worth and usefulness of non-custodial sentences is rarely explored seriously. With the prison population rising as it is and the financial strain ever-increasing, it is however at this point that due consideration should be given. Contrary to popular belief, non-custodial punishments do punish. The reluctance to seriously consider alternative penalties is largely because the proposed methodologies of punishment so very greatly deviate from the traditional concept of the familiar prison system. In this way then, non-custodial sentences face hostility because of general and long-standing scepticism. In terms of proposing and mobilising these penalties, the government is tasked with overcoming such deep-seated resentment. Taking a well-used political route, the state has therefore in recent years been attempting to portray a concept of “toughening up” community sentences and has at the same time been trying to foster connotations of credibility, robustness and earnestness (BBC News UK Online, 2012; Worrall cited in Hale et al, 2005). This therefore means that the durability of public scepticism is tested. It appears however that currently such attempts are generally unconvincing and hailed as further examples of the state’s persistent leniency towards offenders. As Mair suggests, this is perhaps indicative of the punitive climate that typifies other areas of the criminal justice system as well, including that of the penal system (cited in Hucklesby and Wahidin, 2009). It could therefore be claimed that the overarching problem of the criminal justice system then is not of practice or policy proposals but simply that of a pessimistic and inflexible attitude that calls for ever more punitive measures; the problem is that there is a refusal to acknowledge the worth of other approaches.

Non-custodial penalties certainly could be argued to offer reasonable solutions to crime. In terms of rehabilitation and reparation, alternatives to prison could be thought to allow greater opportunities for both personal development and community integration. Mobilising punishments within the community, minus the debilitating stigmatisation and ostracising that prison so often entails, means that offenders may be better equipped to improve relations with individuals harmed and the community in general and therefore, re-earn traces of dignity, respect and confidences that are so vital to preventing reoffending. Offenders may also be able to maintain links with family and friends which again, given the support this would provide, may enable a more progressive and proactive approach to reducing reoffending rates. Above all, and from a practical point of view, non-custodial sentences offer a less expensive way to manage offenders

and as previously expounded, this is an ever-increasing problem that needs addressing.

Little is celebrated about non-custodial penalties but in reality, successful diversions from the penal system are achievable and this is surely desirable given the dubiety of the prisons as well functioning bodies. In recent years, community sentences have been overshadowed by, “the need to respond to populist punitiveness” (Worrall cited in Hale et al, 2005, p542) and due consideration, especially given the financial strain and practical issue of overcrowding, has been lacking. If the unmanageable size of the prison population is to be tackled, non-custodial penalties need to be given more recognition as viable tools in dealing with lower-level, petty criminals. The punitive disposition of the public needs to alter.

## **Conclusion**

The job of the penal system is a taxing one and it has in no way been the intention of this dissertation to ignore or forget the challenges that it faces in housing, meeting the requirements of, and attempting to reduce the reoffending rates of prisoners. As part of a single institution, the penal system is tasked with dealing with some of the most needy individuals that present specific and often competing demands. It is bound to assist each individual prisoner with equality despite polar extremes of age, gender, health, class and ethnicity complicating matters. It is perhaps therefore inevitable that the prison system can be thought to fail in so many ways. It could be suggested then that targeting the penal system from behind a desk is a cynical and superficial attack on a system that manages the most problematic offenders as efficiently as possible. The real intention of this dissertation however was not simply just to criticise the inner workings of the penal system, but to assess it from an ideological and academic vantage point. Besides from investigating whether or not the penal system is able to respond adequately to prisoners’ needs, this body of work has attempted to evaluate whether or not the penal system is justified in and of itself.

There is an unfortunate tendency within Britain to bewail every aspect of the penal system in turn and to express routine dissatisfaction. It is therefore perhaps necessary to invoke society to realise that there is no “quick-fix” to prevent crime and that consequently there is no one way in which offender management is completely infallible (Worrall and Hoy, 2005). Similarly, it is important to regard the penal system in a broad context; in terms of European comparisons and certainly, worldwide comparisons, England and Wales have a relatively humane, professional, refined and accountable system. Nevertheless, comparative insight does not negate the fact that imprisonment in England and Wales can be accused of injustice on many different levels. This state is a punitive one, despite rhetoric that may suggest otherwise. Drawing comparisons

with other states is unhelpful in that it diminishes England and Wales' responsibility to its own citizens.

It is disheartening that a society that is forward-thinking in so many ways panders to the punitive, yet ill-informed whims of a vocal section of the public, and even more disheartening that this often comes at the expense of justice. The disproportionate and undeserving reviling that the penal system is subject to and the punitive ideologies that spring from this play a huge part in the management of the penal system and indeed non-custodial sentences too, and therefore it is this that needs to be addressed. The media is highly responsible for igniting unmerited assaults on the penal system and for rarely relaying helpful and informative discourse. It is for this reason that the media must be held accountable in creating an overly punitive climate that has warped the perceptions and consequentially, the management of offenders.

This dissertation has explored the attitudes that have developed in regards to the penal system and the extent to which they may be misguided. It has also questioned the justifiability of imprisonment as both a viable and useful response to crime and offenders. For this author, the underlying resolution is that the penal system has many misgivings and that consequently, it should be reserved only for the most serious and prolific offenders.

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