

On accepting the 2021 BSC Outstanding Achievement Award

Professor Mike Hough

I really am delighted to accept this award. I am very grateful indeed to Loraine for nominating me and I just about recognise the criminological Stakhanovite that she has portrayed.

When I first started going to conferences in the late 1970s as a young cynic, I was bemused and amused by the rituals of awards and prizes – especially the American variants. All those self-important old duffers engaging in mutual admiration. Somehow or other, I have changed my mind with the passage of time! But this is not just because I now find myself on the receiving end of the award system.

There is a serious point to be made systems of professional recognition. Only a fool or a genius would never doubt the value of their own work. I don't think I am a fool, and I am certain that I am not a genius. In common, I suspect, with most academics, I have periods of pessimism about the value of my contribution, and occasional bouts of full-blown impostor syndrome. Recognition by others – especially towards the end of a career – can be an enormous personal boost. Rituals and ceremonies of recognition are really valuable, and we should not hesitate to engage in them. Mutual support within our discipline is a virtue we should practice.

What I'd like to do in the twenty or so minutes given to me this afternoon is to reflect on changes in the relationships between criminological research and policy that I have observed over the years. I want to start with the 1991 Criminal Justice Act and end with the Police, Crime, Courts and Sentencing Bill currently going through Parliament. The 1991 Act was, in hindsight, a heroic failure; the current bill looks like a car crash; and the key Acts in the intervening period have not been especially heartening. So my outlook on the linkages between research and politicians is pretty jaundiced. But offsetting this, I think that criminological research has made really significant contributions to crime measurement, to policing, to sentencing and to the treatment of offenders in prison and on probation – and I think it can continue to do so.

The Criminal Justice Act 1991

I was actually on secondment to a Home Office policy division from 1988-1991, working closely with those working on the Act. It was enormously rewarding. I had a great boss, Philippa Drew, and great colleagues. David Faulkner headed up the Criminal Department, and was steering an ambitious set of decarceral policies through the Home Office. Douglas Hurd as Home Secretary and John Patten, his Minister of State, were fully behind the principles of decarceration and of 'doing good by stealth', making the courts less reliant of imprisonment, and making them more prepared to use 'punishment in the community'. Policy officials developed the detail of the provisions in a White Paper in consultation with the Research and Planning Unit, and with academics in the Cambridge Institute and elsewhere. There was a strong sense of a shared enterprise where Ministers and policy

officials, supported by government researchers and academics, aimed to wean the courts off the over-use of imprisonment. My own work involved laying some of the groundwork within the probation service for more 'punishment in the community' and I drafted much of the 1990 Green Paper, *Supervision and Punishment in the Community*. I was proud to be part of this policy enterprise, and proud enough of the Home Office in a way that I cannot imagine people feeling today. The Act was not without its critics, especially of those provisions designed to make probation more explicitly punitive. But in hindsight, I look back fondly at what was – in many but not all respects – an excellent case-study in rational policy making, in a tradition that was thoughtful and research-informed stretching back into the 1950s.

The 1991 CJA was duly passed, key elements being imposing restrictions on the use of custodial sentences, placing less weight on previous convictions, encouraging the greater use of probation and simpler arrangements for release from prison and supervision thereafter. It was implemented in 1992, and we were encouraged by the fact that the previously upward trend in prison numbers was reversing. We quietly congratulated ourselves on a job well done.

However, things started to unravel badly in early 1993. There were two tragic murders: a young teenager, Benji Stanley, was shot dead in Moss Side and shortly afterwards there was an even more appalling murder by two ten-year-olds of a child, James Bulger. Provisions for a new system of unit fines – unrelated to the main decarceral objectives of the Act – were poorly implemented, resulting in grossly excessive fines for littering. The judiciary began to criticise the provisions on previous convictions. It did not help that crime statistics were rising rapidly, and the then Shadow Home Secretary, Tony Blair, was promising to be '*tough on crime, tough on the causes of crime*'. The media began to portray crime as out of control, and criminal policy as soft and incompetent. Douglas Hurd had moved on, to become Foreign Secretary in 1989, and his successors had no appetite to defend the Act. It was rhetorically defenestrated. Ken Clarke used the 1993 Criminal Justice Act to dismantle key parts of the 91 Act. but what was really lost in the process was not so much the specific provisions, but the underlying philosophy, that parsimony in the use of custody should be a central plank of penal policy. Michael Howard took over as Home Secretary later in 1993, and soon discovered that "*prison works*", in competition with Tony Blair's tough mantra. Sentencers responded to what they took to be the new public mood, and the prison population rocketed.

With hindsight the 1991 Act was partly a victim of bad luck and bad timing, but equally important, Ministers and their Home Office officials had been found out in the project of 'doing good by stealth', and were punished for it. I think that this has shaped the last three decades of penal policy. Politicians on both sides began to calculate the political advantages in offering a much more populist set of penal policies. To my knowledge no front-bench politician has seriously questioned the need for the relentless growth of the prison population – except for Ken Clarke when Justice Secretary in the coalition government. (He was re-shuffled out of the Ministry of Justice shortly afterwards, of course.) Perhaps the limits on penal greed are only really imposed when the cost to the public purse becomes painful, as appears to be happening now in the US.

Over the following two decades we have seen continuing penal populism from governments of all hues. In 2003, Julian Roberts and I defined penal populism as follows: *Penal populists*

allow the electoral advantage of a policy to take precedence over its penal effectiveness.

High-spots – or low points – in the subsequent history of British penal populism include:

- **1997** automatic life sentences for second serious violent and sexual offences and mandatory minimum terms for third-time drug traffickers and burglars.
- **1998** Anti-Social Behaviour Orders; and executive recall to custody for offenders on medium-term sentences.
- **2003** Tony Blair and David Blunkett launch the Anti-Social Behaviour Action Plan.
- **2003** Criminal Justice Act introduces: indeterminate sentence of Imprisonment for Public Protection (IPP), extended tariffs for life sentences (Schedule 21), mandatory minimum terms for possessing an illegal firearm; tougher provisions on post-custody licence and recall; harsher sentences for offences motivated by hostility towards disability or sexual orientation; and doubling of the maximum sentence for causing death by dangerous driving and related offences.
- **2003** Sexual Offences Act reforms the law on sexual offences and strengthens public protection measures.
- **2006** Violent Crime Reduction Act includes provisions relating to alcohol-related crime and disorder and offensive weapons
- **2006** Road Safety Act introduces offence of causing death by careless driving and related offences.
- **2008** Emphasis on deterrent sentencing for possession of knives through landmark case of *R v Povey & others* and Sentencing Guidelines Council guidance for magistrates' courts on *Possession of bladed article/offensive weapon*
- **2010** Prison population shows 85% increase on 1990.

I wouldn't want to suggest that penal populism was the sole driver of penal policy over this period. Other concerns coexisted, such as improving offender rehabilitation – but neither of the two main parties were prepared to come second in any contests of penal toughmindedness. In the decade from 2010 things quietened down for penal politics, partly because people were beginning to notice the steep falls in crime, and partly because the global financial crash and then Brexit overshadowed all other policy concerns. A notable low point – unrelated to penal populism – was Chris Grayling's disastrous part-privatisation of probation carried out in the face of well-informed warnings about the risks of this enterprise.

The Police, Crime, Sentencing and Courts Bill, 2021

Which brings us to the Police, Crime, Sentencing and Courts Bill. This is an extensive piece of legislation. Many provisions can be thought of simply as good housekeeping, and other parts look like sensible, progressive moves – for example, reducing custodial remands of young people and strengthening safeguarding protections for young people. However, those provisions on custodial sentences look like a collection of ill-thought-through crowd pleasers that will achieve very little at considerable cost.

The provisions relating to custodial sentences

Key provisions are to:

- extend the scope of whole life orders.
- extend the length of time spent in prison for offenders given discretionary life sentences.
- Increase the starting point for release of some young offenders convicted of murder,

- Enable longer sentences for damaging public memorials.
- Reducing judges' discretion to sentence below the minimum for those crimes that carry mandatory minimum sentences.
- extending the proportion of time served for serious sexual and violent offenders from a half of the nominal sentence to two thirds.

The Government consulted over these provisions. Many organisations drew attention to a range of problems, though the proposals re-appeared largely unchanged in the Bill. Key objections have been that the Bill's proposals will fail to reduce crime; like previous Government reforms, they will lead to 'sentence inflation by the back door', and will lead to very complex release arrangements, with the same nominal sentence leading to different amounts of time served for different crimes. Whether the levels of sentence inflation are good value for money is totally ducked in paragraph 77 of the Government's [impact assessment](#):

"The PCSC Bill measures could together affect levels of overall crime through deterrence, incapacitation and rehabilitation. There is, however, limited evidence that the combined set of measures will deter offenders long term or reduce overall crime."

This is a surprising – if accurate – statement of the relevant evidence to find in a Government document justifying its legislation. Given this lack of evidence, the Impact assessment has offered an alternative justification – that the public believes that judges are too soft on crime, and that judges need to toughen up if they are not to lose their legitimacy.

Julian Roberts and I produced a [British Crime Survey](#) report for the Home Office almost 25 years ago showing that most people did indeed believe that in general the courts were too soft; however, when asked to 'pass sentence' on specific cases, their average sentencing preferences were broadly in line with then-current practice. After marked sentence inflation since our report was published, the [Crime Survey](#) still shows that people in general think that the courts are too soft. This is no surprise. We know that most people are ill-informed about sentencing practice, getting information mainly from media reports of newsworthy – and thus atypical – cases. This is why public opinion has changed very little over a quarter of a century in the face of very substantial uplifts in sentence severity, which went unnoticed by the public. My best guess is that investing in increasing sentence severity – whether by increasing sentence length or time served – is very unlikely either to reduce crime or to lead the public to confer greater legitimacy on the courts.

I am totally baffled by the apparent fact that Ministers ignored the now substantial evidence about public opinion on sentencing. I can only conclude that they hope to bank some short-run electoral dividend from these changes, and choose to ignore the evidence that toughening up sentencing goes largely unnoticed in the long-run by the public.

Over the three decades that I have summarised, politicians have, if anything, moved further away from the research evidence rather than embraced it. This is depressing enough, but I find it doubly depressing when one also takes into account the multiple signs that the

current administration has a number of strategies for obstructing challenge, protest or debate about its policies and decision-making. I have in mind its intention to curtail the scope of judicial review, its planned review of the Human Rights Act and by implication the European Convention on Human Rights, the measures to limit protest in the current Bill, and its clear hostility to public broadcast institutions like the BBC.

Is this trend – of devaluing objective evidence and careful debate – a temporary blip? I fear the latter. The Johnson administration's style of operation appears to me to be part of a trend towards - largely – right wing populist politics in many Western countries as well as others in the Global South. More traditional politicians look dull and worthy in their careful pursuit of evidence and argument. I would be astonished if they were prepared to risk the sorts of decarceral policies that formed the basis of the 1991 Criminal Justice Act, even by stealth. Perhaps the only limiting factor is when the cost of mass incarceration simply becomes unsupportable.

But all is not lost for policy research

Despite this prognosis, I remain quite optimistic about the contribution that criminological research can make to policy and practice. Criminal justice agencies are hungry for research, and the bodies that hold these agencies to account or support them are also important consumers of research. My centre has worked closely with several bodies at the heart of the criminal justice system: the College of Policing, for example, several police forces, the Independent Police Complaints Commission (now IOPC), the National Audit Office, the Police Inspectorate and the Sentencing Council. The Prison and Probation services have long been research-friendly – even if the latter will take time to recover from the mess created by Grayling's part-privatisation. Our sentencing work has been facilitated by four successive Lord Chief Justices, and the senior judiciary have become keen consumers of research. It is still possible to speak truth to power, even if the range of audiences changes over time. And I should add that many of the criminal justice NGOs serve as excellent partners in mounting effective policy research.

It is time I stopped talking. I hope my pessimism about politicians is misplaced, and I hope my optimism about the needs felt for research within the criminal justice system is well-founded. I hope that academic criminology will continue to embrace policy research. And finally, I should reiterate my thanks to the Society for conferring this award on me. I really do appreciate it.