

TRACING THE GORDIAN KNOT: INDETERMINATE-SENTENCED PRISONERS AND THE PATHOLOGIES OF ENGLISH PENAL POLITICSⁱ

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This article explores some of the key pathologies of English penal politics, by applying an interpretive political analysis perspective to the specific issue of the plight of the ‘prisoners left behind’, the thousands of indeterminate-sentenced IPP (imprisonment for public protection) prisoners who remain incarcerated notwithstanding the abolition of this sentencing option targeted at ‘dangerous offenders’ in 2012. This article draws on research findings from an ESRC-funded study of penal policymaking to examine why the Gordian knot of the prisoners left behind has proved to be so hard to untangle. The broader lessons of this specific story are then set out. In particular, it is argued that the public and political debate around criminal justice has become damagingly narrow over recent years.

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The English and Welsh criminal justice system is in crisis. The prison population of England and Wales continues to rise, while staff numbers and available resources remain heavily constrained following dramatic cuts. Self-harm, assaults and suicides are worryingly high and increasing. ‘Disturbances’ and ‘incidents’ in prisons (what might previously have been referred to as riots) are increasingly frequent. In the community, probation services are still reeling from the reckless marketization imposed by the 2010-15 Conservative-Liberal Democrat coalition government.

Within this troubling context exist 3,100 indeterminate-sentenced prisoners, serving sentences of imprisonment for public protection (IPP). The vast majority of IPP prisoners are male (98%). One-third of IPP prisoners are aged 30-39; four-fifths are aged 18-49. As of March 2016 there were 110 unreleased prisoners serving Detention for Public Protection (DPP) – the IPP equivalent for children aged under 18. Over two-thirds of unreleased prisoners received an IPP for offences of violence against the person or sexual offences.

These individuals will only be released from prison when the Parole Board is ‘satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined’. This typically requires an IPP prisoner to progress through the penal estate towards open conditions, along the way completing various offender behaviour programmes (OBPs) deemed to be required in order for them to ‘address their risk’. Working in prison, maintaining family relations and having a supportive structure in place for (eventual) release all tend to be of assistance to the prisoner.

However, the general problems facing the penal system are felt particularly acutely by this group. The historic under-resourcing of the Parole Board has led to significant delays in parole hearings; six months is not uncommon. This is compounded by the delays encountered in accessing offending behaviour programmes (OBPs), other interventions, and movement through the penal estate towards open conditions.

The justifiable grievances felt by this group of prisoners is exacerbated by the fact that this sentence was abolished over five years ago. Since 2012, no further IPP sentences could be imposed. Over 3,100 prisoners are therefore serving indeterminate sentences, notwithstanding their repudiation on the basis that they were unjust and impractical. Further, from 2008 an IPP sentence could only be imposed if the tariff was at least two years (equivalent to a four-year determinate sentence). 470 prisoners (15% of the total) therefore

find themselves still in prison, at least eight years beyond their tariff, serving a de facto life sentence due to the date on which they committed the relevant offence.

Drawing on findings from empirical study of these developments, I will briefly set out the history of the IPP story, before exploring the post-abolition landscape and its broader lessons regarding the penal politics of England and Wales. The research project involved the reconstruction of the IPP story, from the initial sightings in 2001 through to its abolition in 2012, and beyond. The research involved more than 60 in-depth interviews with a wide range of senior, national-level policy participants. I sought to understand what happened; what actors thought they were doing (not necessarily the same thing); and the lessons for broader penal theory that could be drawn from this study in interpretive political analysis.

In this article, I will consider in particular why the Gordian knot of the prisoners left behind has proved to be so hard to unravel. I will trace the ‘threads’ of this particular Gordian knot, of which there are many, often relating to the political dynamics in play. There are also deeper, what we might term cultural, factors. I will focus in particular on two such issues. First, the impact of the ‘othering’ of these individuals as ‘dangerous offenders’, excluded by definition from making moral demands on society or, indeed, policymakers. Second, the ongoing grip of a public protection paradigm on penal policy, and indeed the narrow boundaries of this perspective (not least that continued, lengthy imprisonment necessarily equals increased public safety). I will suggest that the intersections of these two dynamics pose considerable difficulties for remaining IPP prisoners. They also point to the broader lessons provided by a sentence that, while abolished, continues to have significant effects.

The Imprisonment for Public Protection Story

In 2003, an indeterminate sentence targeted at dangerous offenders – the IPP (Imprisonment for Public Protection) – was introduced by the Labour government’s Criminal Justice Act

2003. To simplify a more complex tale,ⁱⁱ this was driven primarily by Home Secretary David Blunkett's concern with several high profile cases at the time, where determinate-sentenced prisoners went on to commit high profile serious crimes on release; offences which it was considered, in hindsight, could have been prevented. In a context of rising media and professional attention being trained on issues of risk and public protection, and with a fusion of ideological preferences and electoral concerns, policies targeted at 'dangerous offenders' were highly appealing to the then Labour government.

The dangerous offender envisaged by the IPP sentence is a repeat offender, one who has and is likely to commit serious violent or sexual offences. It stands apart from other preventive measures targeted at, for example, terrorism suspects or those (potentially) engaging in 'anti-social behaviour'. It was targeted at offenders who, at the point of sentencing for one of the 153 'specified offences', were considered by the sentencing judge to pose 'a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences'. The sentence as originally enacted did not provide for a minimum tariff: while the average tariff length for a 'standard' lifer was at that time approximately 13 years, the tariff period of an IPP prisoner could be measured in months, if not weeks (and indeed sometimes this was the case).

The structure of the IPP sentence mirrored that of a life sentence: the trial judge states the minimum term commensurate with the seriousness of the offence (the 'tariff'). After expiry of the tariff, the offender is released on licence only if the Parole Board is satisfied that he no longer poses a risk to the public. A particularly controversial element of the sentence was the lack of judicial discretion. If the requirements of the sentence were met, then an IPP sentence had to be imposed.

An IPP prisoner's first opportunity for a parole hearing comes, in theory, at the end of their tariff period. In practice, they must rely on the smooth working of the penal system is

affording them the opportunity to engage in appropriate courses, move to lower security category prisons at appropriate intervals, and for the probation service, prison service and Parole Board to be in a position to enable a swift and meaningful parole hearing.

The wording of the IPP sentence – coupled with the febrile ‘tough on crime’ political climate of the time – led to the imposition of over 8,000 IPP sentences in total. The average tariff length was three years and five months (it was two years six months, before the amendments of 2008: on which, see below). When ‘standard’ life sentences are taken into account, by 2010 the number of indeterminate-sentenced prisoners in England and Wales had tripled from 1998 (4,000 to 13,000) and doubled as a proportion of the overall prison population from 1995 (9% to 18%) Nearly 1,000 people were going in to prison every year on IPP sentences (as predicted by the Home Office’s own internal projections); very few were coming out.

In 2008, the IPP sentence was amended so as to introduce a minimum tariff of two years (ie 4 year determinate sentence equivalent), while the number of eligible ‘specified offences’ was reduced. Most importantly for many, the limits on judicial discretion were removed. This reduced the number of IPP sentences being imposed, but by no means to a sustainable level.

In 2012, the IPP sentence was abolished by Justice Secretary Kenneth Clarke. The rhetoric surrounding the sentence, previously cast by the Labour government as a crucial means of protecting the public from dangerous offenders, changed dramatically. It was derided as an unjust and illiberal tool of oppression, based on the flawed assumption that criminal justice practitioners – relying on the various risk technologies that have proliferated over recent years – could effectively predict the future.

The 2012 (and 2008) legislative measures were prospective; they had no effect on this existing population. Therefore while the IPP population has reduced (from approximately 6,000 in 2012), we have seen that a considerable number of prisoners remain. Over 80% of these prisoners are beyond their tariff expiry date.

Under the legislation as it now stands, all those sentenced to IPP remain on licence for the rest of their life once released from prison (prisoners can apply for the licence to be ended after 10 years, post-release). By June 2017, over 760 of the approximately 3,300 IPP prisoners released from custody had been recalled to prison. This represents over 20 per cent of all released IPP prisoners, a rate which the Prisons Inspectorate recently described as ‘concerning’ and which ‘could not have been the intention when the sentences were passed’.

The IPP sentence has been forcefully criticised – in principle and on the basis of its practical effects – since its inception, and calls for reform have become ever more pressing. Concerns include the under-resourcing of the systems intended to help prisoners to progress towards release; the flawed assumptions underpinning the sentence itself; the stigma attaching to the ‘dangerous’ label; the difficulties of proving a reduction in risk to the parole board through participation in offending behaviour programmes; and the iatrogenic – the harmful and counter-productive – effects of indeterminate detention.

A recent thematic report by the Chief Inspector of Prisons (HM Chief Inspector of Prisons, 2016b) has joined two earlier thematic reports and publications by many reform groups and researchers in pointing to the problems at the heart of the sentence. Some limited progress is being made, but this is uneven and painfully slow.

Notwithstanding the increasing release rate for IPP prisoners, many prisoners and their family members continue to feel considerable despair. Many prisoners have found themselves imprisoned years beyond their tariff (the average is four years, but 5-10 years is

not uncommon). They have found themselves trapped in a Kafka-esque system of delays, setbacks, rules, requirements and, fundamentally, the requirement to prove a negative: that it is no longer necessary for the protection of the public that they should be confined. In 2015, the Prison Reform Trust reported that the incidence of self-harm per 1,000 IPP prisoners had perhaps unsurprisingly risen to 550, almost three times that of prisoners serving a life sentence.

This situation is occurring within, and starkly highlights, the broader prisons crisis in England and Wales. Though an over-used term, it is hard to describe the present situation otherwise. Two thirds of prisons are overcrowded. Safety in prisons is declining rapidly. Serious assaults in prison have more than doubled in the last three years, rates of self-harm are at the highest levels ever recorded, and self-inflicted deaths are rising to near-record levels. Between 2010-2015, the budget for prisons and probation was reduced by a quarter. Sustained staff cuts have seen the number of operational frontline staff also fall by a quarter: 6,500 fewer staff without a reduction (indeed a small increase) in prisoner numbers. While some limited improvements in numbers are now being achieved, the ongoing departures of long-serving prison officers (at a rate of nearly 10% per year) means that the service is becoming increasingly inexperienced.

It is also clear that rather than sparking a ‘rehabilitation revolution’, then-Justice Secretary Chris Grayling’s part-privatization of probation services – and the organisational fissures that this was deemed to require – has led to a serious deterioration in the supervisory and rehabilitative work carried out by probation staff. With sentencers losing faith in community sentences, their use has halved since 2006. Over-stretched probation staff are struggling to fulfil their duties, including producing offender manager reports for parole hearings, developing adequate release plans and providing supervision upon release. The very

high rate of recalls of IPP prisoners to custody for technical breaches of licence requirements raises serious questions about current practice.

A small chink of light is provided by the successful efforts of the Parole Board to grasp the problems that had bedevilled it for years. Approximately 100 additional Parole Board panel members have been recruited; processes are being simplified with a view to favouring release wherever possible; other criminal justice agencies are being encouraged to play their part in resolving the delays and challenges facing indeterminate-sentenced prisoners. Visible, consistent leadership is being provided.

However this visible leadership stands as something of an exception; senior individuals in other relevant organisations – including ministers in the department – are notable for their low profile. Part of this may be explained by the fact that the current Parole Board chair was previously Chief Inspector of Prisons, adding a heft to his comments – and efforts to engage with other elements of the system – that may otherwise be absent.

The Prisoners Left Behind

The abolition of the IPP sentence was a significant achievement. But this is of little comfort to the IPP prisoners left behind; worse, it only accentuates their sense of injustice. The situation at present is stark.

Under-resourcing and delays

Parole board hearings for IPP prisoners have often been significantly delayed. This is compounded by the delays encountered in accessing offending behaviour programmes (OBPs), other interventions, and movement through the penal estate towards open conditions. These delays have been subject to judicial review, in a series of cases that reached the European Court of Human Rights. Successive governments have faced severe criticism by

the senior judiciary for their failings in relation to the IPP; albeit while the practical failings have resulted in successful claims for damages, any challenges to the lawfulness of the sentence itself have been swiftly rebuffed.

It appears that the tide is finally turning and the Parole Board is successfully addressing the long-standing backlog of hearings that have particularly affected IPP prisoners. The Parole Board is strengthened by the addition of over 100 new members and changes to their rules should allow for greater flexibility and speed, especially in relation to recalls. The number of outstanding cases stood at over 2,500 in 2014-15, but has now fallen significantly, to under 1,300. In 2010-11, 11.5% of IPP cases reviewed resulted in prisoner release; in 2015-16 35% of the cases reviewed led to release. Given these changes, the Parole Board hopes to reduce the number of IPP prisoners in prison to 1,500-2,000 by 2020.

However, significant problems remain. Notwithstanding the clear identification by multiple bodies – including the Ministry of Justice itself – of the need for substantial additional resourcing for over a decade now, the recent Prisons Inspectorate Thematic Report reported that the funding of systems and staff still does not suffice.ⁱⁱⁱ In fact, they are ‘being stretched increasingly thinly and there are risks that prisoners will struggle to access the support they need and that delays will increase still further.’ It is therefore perhaps not surprising that despite years of ‘action’, the Inspectorate found that:

Many prisons did not provide good quality offender management to support IPP prisoners in their progression, including timely assessment and ongoing contact with their offender supervisors.

Resulting injustice

A loose coalition of campaigners – including penal reform groups, members of the House of Lords, a small number of MPs, and families of IPP prisoners – have argued since 2012 that a deep injustice was being perpetuated by the continued detention of the post-tariff population

notwithstanding the abolition of the sentence. This was particularly the case for those who had received tariffs of less than two years, before the amendments of 2008 were introduced. A number of senior judges, and retired judges in the House of Lords, have criticised the IPP sentence in strident terms on this basis.

More prosaically, the Prison Governors' Association (PGA) has argued that the post-LASPO situation is causing 'resentment and frustration among both IPP and other prisoners', that the 'perceived unfairness resulted in increased discipline problems and security threats' and there was 'frequently...a negative impact on the health and wellbeing of those serving the sentence.'^{iv}

Resulting Harms

Confronted with a '99 year' sentence upon arrival from court into prison (a workaround for systems that were not designed for indeterminate sentences), little information was provided to IPP prisoners to explain the nature and implications of the sentence. Notwithstanding the centrality of offending behaviour programmes (OBPs) to progress through, and release from, an IPP sentence, there were severe shortages in such programmes and reports of basic administrative failings were commonplace. Prisoners would find themselves sent to prisons to complete a programme that was, in fact, no longer provided at that establishment. They would find themselves required to complete courses for which they were not suitable (due to disability, or maintaining innocence, for example). Remarkably these issues, which were apparent within months of the sentence's implementation, continue to undermine the IPP system over a decade after its introduction.

IPP prisoners have found themselves assailed on both sides: determinate-sentenced prisoners are perceived to behave as they pleased in prison, including being able to goad, bully or implicate in unlawful activity IPP prisoners, safe in the knowledge of their own

definite release. On the other side, life sentence prisoners blamed IPP prisoners for their own difficulties in making progression towards release (with IPP prisoners perceived to be taking ‘their courses’).^v

It was envisaged by those driving the creation of the IPP sentence that its indeterminate nature would motivate ‘dangerous’ prisoners, supported by appropriate mechanisms, to turn their lives around. However, the sentence has proved rather to engender uncertainty, anxiety and a loss of hope among serving prisoners and their families. The lack of a release date eroded any sense of hope that IPP prisoners had attempted to foster and was damaging relationships with family and friends. In light of the recent Farmer review into the importance of strengthening prisoners’ family ties, warmly welcomed by the Ministry of Justice, this concern becomes only more acute.

The effects on family members

Research I am currently conducting with Rachel Condry (Oxford University) explores the secondary pains of imprisonment experienced by family members of IPP prisoners. Our emerging findings, based on interviews and surveys of family members, suggest that family members find themselves suffering an open-ended bereavement. One family member movingly described how her experience of her prisoner’s indeterminate imprisonment was more painful than the earlier death of one of a young family member; any level of closure was impossible to achieve. The emotional and practical burdens placed on family members are considerable, required not only to provide ongoing emotional support but also to act as amateur lawyers and advocates for their imprisoned relative.

These burdens, coupled with the usual difficulties experienced by prisoner family members generally – long travel to prisons and associated costs, opaque and unhelpful prison rules, stigmatisation, and so on – grind IPP family members down. Births, marriages and

deaths occur; life goes on. Release (where it comes) brings only added uncertainty, with fear of a knock on the door signalling recall to prison always in the back of the mind.

We have further been informed of the dramatic negative health impacts on relatives and others supporting IPP prisoners. Accounts of chronic insomnia and an array of stress-related illnesses were commonplace. The pain caused by the uncertainty of the indeterminate sentence is exacerbated for many by exasperation at the inaction by policymakers. Relatives cannot understand how apparently full agreement amongst policymakers that the IPP is a discredited sentence with unacceptable practical effects does not translate to substantive policy change.

Addressing the Problem of the Prisoners Left Behind

A number of proposals to address the problems of the IPP prisoners left behind, that go beyond existing legislative structures, have been made. These include:

1. Conversion of IPP sentences to determinate sentences (likely extended periods with an additional licence period). This could be effected through a system of re-sentencing prisoners against current available sentencing provisions.
2. Introduction of a 'sunset clause'. This would ensure that IPP prisoners cannot be imprisoned for longer than the maximum possible sentence length for the offence committed. This proposal provides little assistance to those sentenced for offences whose maximum sentence is life imprisonment (robbery is a pertinent example). In such cases alternative principles would be required in order to establish the appropriate maximum length of imprisonment.
3. Reversal of the risk test. Section 128 of LASPO enables the Justice Secretary to alter the release test for indeterminately-sentenced prisoners, but has not currently been utilised. This could be used to 'reverse the test', placing the burden on the Secretary of State to demonstrate that IPP prisoners remain dangerous and require to remain incarcerated.
4. Executive release of some IPP prisoners. Most obviously this could be applied to short tariff prisoners; ie those serving tariffs of less than two years, who could not have received IPP sentences after the 2008 amendments. This could be effected utilising the compassionate release provisions of the Crime (Sentences) Act 1997, as interpreted recently by the cases of

Newell and McLaughlin and Hutchinson v UK in relation to whole life tariffs.

5. Shorten licence periods. There is a growing consensus that the automatic life licence for released IPP prisoners is inappropriate in principle and undesirable in practice. It has been suggested that licence periods of 2-5 years would be more appropriate.
6. End the IPP on release. Parole Board chair Nick Hardwick has suggested that breaches of licence conditions, or further offending, should be dealt with on their merits and not result in a return to prison on the indeterminate sentence.

Views reasonably differ on which of these options should be taken up. The fifth and sixth proposals are rightly gaining increasing traction amongst parliamentarians. And while the first proposal appears implausible, any of the remaining proposals should be considered by a responsible government that takes seriously its responsibilities to those detained in its prisons (and on licence). However, since the abolition of the sentence in 2012 successive Justice Secretaries have resisted calls to take action. They have depicted as inappropriate the notion of ‘retrospectively altering lawfully imposed IPP sentences’, notwithstanding senior judges’ assurances that they would be comfortable with such a course of action. The emphasis has repeatedly been placed on administrative efforts to hasten release, notwithstanding the very poor track record of such efforts over the decade since they were first initiated.

We may be reaching a better place with current Justice Secretary David Lidington, but there have at time of writing been no signs of concrete action. The lack of a parliamentary majority and the domination by Brexit of the legislative agenda puts considerable barriers in the department’s path. In any case, the course taken by penal policy since the return of Conservative Justice secretaries in 2010 would lead observers rightly to remain sceptical until clear, substantive action is observed.

Tracing the Gordian Knot: The persistence of indeterminate sentences and the pathologies of English penal politics

We can now consider why there has been such resistance to addressing more swiftly the ethical and practical problems faced by the ‘prisoners left behind’. Why has this become such a knotty problem? And what threads make up this particular Gordian knot? And finally, what insights does it provide into the broader dynamics underpinning British penal policy?

First, as Nicola Lacey and others have observed, UK politicians generally remain trapped within a ‘prisoners’ dilemma’ where they feel compelled, for electoral considerations, to argue for ever-tougher measures on crime and criminal justice.^{vi} While there are indications that the ratcheting up of rhetoric and policy has reached its zenith, not least given the financial considerations in play – there is no sign of a significant re-orientation of public debates on criminal justice.

Second, the IPP story is a tale of continued and substantial influence on penal policymaking of a very small number of tabloid newspaper editors. While such secretive interventions are by definition obscured, the sustained campaign by the *News of the World* on the issue of sexual predators (that in part propelled the development of the IPP sentence) was all too clear to see. What has occurred is not so much a democratising shift of power towards the public, but a reshaping of elitism in penal policymaking away from the traditional Oxbridge-Whitehall nexus (and we could add to this an observation on the growing influence of multinational corporations engaged in criminal justice roles).

Third, and particularly under these conditions, policy change requires a Secretary of State with the political standing, robustness, and to an extent good fortune of circumstances to take ‘brave’ steps in addressing issues such as the IPP. The past seven years has seen a string of Justice secretaries of mixed quality and status, often considered to be more focused

on nurturing their political ambitions than addressing urgently the severe problems facing the criminal justice system.

Fourth we must note the importance of political ideology. It may simply, if not necessarily satisfactorily, be that politicians mean what they say. Many, perhaps even most, from across all main parties, believe that protecting the public from dangerous people is a wholly good thing. This is not to uncritically accept such arguments, but it is to recognise the heavy pull exerted by commonsensical notions of crime, law and order, and the role of the criminal justice system in serving what is perceived to be the public good.

Fifth is the issue of policymaking dynamics. Prosaically, students of policymaking have long observed that, for policy change to occur, there needs to be a 'window' of opportunity, and (ideally) a 'hook' onto which reforms can be attached. In 2010, the change of government, focus on expenditure reduction, and on the potential for penal reform offered by coalition, provided such a window. This opportunity was squandered. Now with the government politically paralysed and administratively overwhelmed by the dilemmas of Brexit, it is difficult to see how a further opportunity will emerge in the near future.

The issues relating to the IPP prisoners left behind may be particularly acute, but they are not unique. In fact, they throw into sharp relief the more general failings of penal policymaking of recent years, made only more severe by the spending reductions imposed by the Treasury over the past decade. A crucial, deeper, issue to which this case study and the above observations relate is that of what we might term the penological imagination. What is considered to be thinkable, and sayable, in this policy field? Upon what logics does penal policymaking operate? I wish here to point to two inter-related matters: the othering of those sentenced to imprisonment and the dominance of a narrow, risk-averse, public protection paradigm.

As regards the former, I have argued elsewhere that the IPP story can usefully be viewed through the lens of the late sociologist Zygmunt Bauman's conceptualisation of modern society as a 'garden culture'.^{vii} It seeks defence against 'weeds': those who are viewed – through a specific cultural and political lens – as being useless, irrelevant or harmful. From this perspective, those defined as dangerous offenders – individuals apparently prone to repeat sexual or violent offending – are 'othered'. Their political categorisation, propelled by underlying cultural trends, sees them subject to administrative processes and quotidian discourse that significantly limits their ability persuasively to make moral demands upon society. Labelled as 'dangerous', these prisoners – and their families – struggle to interject on the policymaking process, or to have their voices heard.

Indeed, policy participants seeking to tackle the IPP issues discussed above have persistently complained that the explicit labelling of the measures as being targeted at particularly 'dangerous offenders' has created a rod for the government's back that makes efforts to address the sentence acutely difficult. Similarly, while a range of policy participants are aware of the need to involve what are often termed 'service users' in policy development, reform proposals, and so on, relevant policy makers have only recently begun to pay serious attention to the voices of IPP prisoners and their families.

A second crucial dynamic is the grip of a public protection paradigm on penal policy, and indeed the narrow boundaries of this perspective. Implicit in the IPP policy, and indeed indeterminate sentencing more generally, is a belief in the need for risk aversion, in the name of public protection. This was exemplified by the initial IPP provisions, which on their face excluded sentencing goals other than public protection from consideration.

Giving primacy to 'public safety' in the present age is generally taken to mean embracing a risk paradigm that sees the identification of 'the dangerous' as taking a robust, scientific and objective form. The notion that risk tools – be that forms of actuarial risk

assessment or expert judgment – can bear this weight was taken by the political creators of the IPP as a given. However, this view of the ‘state of the art’ of risk assessment has also faced significant challenge.

Alongside a number of compelling academic critiques in the UK, Australia, Canada and elsewhere, the Ministry of Justice itself asserted in its consultation paper preceding the abolition of the IPP sentence that:

The limitations in our ability to predict future serious offending also calls into question the whole basis on which many offenders are sentenced to IPPs and, among those who are already serving these sentences, which of them are suitable for release.

Further, policies that equate continued imprisonment with public safety fail to recognise the centrality of family relationships, employment, and put simply, hope to the likelihood that prisoners will successfully construct a crime-free life for themselves. Related to this is the conflation, within such systems, of indicators of vulnerability (mental illness, drug dependence, educational problems) as signs of dangerousness (of being ‘high risk’). Promisingly, the counter-productive effects of long-term indeterminate imprisonment – not least in the context of IPPs – are beginning to be recognised. For example in the recent case of *Roberts*, the former Lord Chief Justice Lord Thomas made the welcome observation that ‘there is some evidence that the effect of long periods of imprisonment or the recall to prison of those sentenced to IPP under their licence requirements may be either impeding their rehabilitation or increasing the risk they pose.’ Further, the Parole Board has encouraged its members to be ‘courageous’, being proactive rather than risk averse in considering how indeterminate-sentenced prisoners can best be supported in their transition to the community.

However, efforts to address this longstanding risk aversion in relation to IPPs – including by the former Lord Chief Justice, and the leadership of the Parole Board and National Probation Service – will inevitably fail to have immediately transformational effects

on organisational practice. Indeed, IPP prisoners and family members continue to report their exasperation at a system that seems incapable of recognising its own role in the failures of IPP prisoners to obtain release.

Conclusion

The IPP story has become a saga. Prisoners are losing hope, as are their families and friends. For all prisoners and staff, the penal estate is becoming increasingly dangerous. The prison population is outstripping growth estimates produced only one year ago. The pressures imposed by prisoner numbers are increasing, not to mention the complexity of needs exhibited by prisoners, while staff numbers and available resources continue to decline.

Significantly, this points to the ever-narrowing boundaries of the penological imagination demonstrated in political and public debate: reluctance by government to lead and facilitate a serious debate about the role and value – and significant disbenefits – of prison. Prisoners are also sons, daughters, (future) workers and (future) parents. We face a Ministry of Justice attempting to pursue a form of what Professor Andrew Rutherford once termed a standstill policy. It seeks to avoid penal expansionism (unaffordable in the current context, even if desired), while avoiding policy positions that might be regarded as denoting penal reductionism (let alone abolitionism), which could leave it open to attacks by right-wing opposition and the tabloid press.

The Chief Inspector of Prisons has repeatedly reported on the startling deterioration in prison conditions that have resulted from policy decisions taken by the 2010-15 Conservative-Liberal Democrat Coalition government and subsequent Conservative governments. The latest Prisons Inspectorate Annual Report has made clear that a vigorous response is urgently required. Substantive action, however, is slow in coming. A willingness to broach in a serious and sustained manner the broader underlying question of whether the

dynamics and assumptions that have been allowed to drive penal policy since the early 1990s remain appropriate seems further away still.

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ⁱⁱ See Annison (2015) *Dangerous Politics: Risk, political vulnerability and penal policy*. Oxford: OUP

ⁱⁱⁱ HM Chief Inspector of Prisons (2016) 'Unintended Consequences'

^{iv} Howard League for Penal Reform and Prison Governors' Association (2013) 'The Never-Ending Story'

^v Sainsbury Centre for Mental Health (2008) 'In The Dark'

^{vi} Lacey (2008) *The Prisoners' Dilemma*. Cambridge: CUP

^{vii} See Annison (2014) 'Weeding the Garden: The Third Way, the Westminster Tradition, and Imprisonment for Public Protection' *Theoretical Criminology* 18(1) 38-55