CHAPTER SIX

Punishment in Britain in the Twentieth Century

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This chapter will examine the development and use of criminal sanctions across the twentieth century. The breadth of sanctions available to the courts increased substantially in the early decades of the century, but this continued throughout the century as the development of technology advanced considerably, and methods of monitoring and surveillance techniques expanded the range of possible sanctions in the criminal justice system. This chapter will look at three main areas: the end of capital and corporal punishment, the use of imprisonment, and the expansion of alternatives to custody.

Before addressing the above areas, it must be noted that the most frequently used criminal sanction at the beginning and end of the twentieth century was the fine. Across the period the fine continued to be used in court as a sanction, mostly as a penalty for summary offenses in the magistrates' court, but it also has developed in terms of fixed-penalty sanctions (often for motoring-related offenses, for example) outside of the courts. Despite its prominence in the criminal justice system, the fine has received surprisingly little attention from historians or from criminologists, although notable exceptions to this are Young (1989), Bottoms (1983), and P. O'Malley (2013). Crime as processed by the courts throughout the twentieth century was overwhelmingly minor or summary crime; this was the case in 1900 and was still the case at the end of the century.

In 1900 there were approximately 770,000 offenders processed by the criminal justice system. There were 7,975 offenders convicted at the higher

courts of the Quarter Sessions or Assizes (these were replaced by the Crown Court in 1972 following the Courts Act 1971). Of these offenders, twenty were sentenced to death, 728 to penal servitude (long-term imprisonment), 6,430 to imprisonment (periods of less than two years), sixty-one to either a reformatory school or an inebriate reformatory, ninety-one were fined, two were whipped, and 640 were ordered to recognizances (obligation reached in court). Overwhelmingly, therefore, the bulk of offenders were processed in the magistrates, or petty sessions or police, courts as they were then referred to; 760,704 offenders appeared in the magistrates courts, and 717,225 of these appeared were for non-indictable offenses. Of these cases, 616,731 were convicted and sentenced by the court to the following sanctions: 531,752 were ordered to pay fines; 66,867 were imprisoned; 14,805 were ordered to recognizances; 3,234 were whipped; 1,259 were sent to reformatory schools; and 120 were sent to inebriate reformatories (Judicial Statistics for England and Wales 1900 (1902)). At the beginning of the century, many offenders were unable to pay their fines, and this resulted in large numbers of people in prison for default on the fine payment. The Criminal Justice Administration Act 1914 allowed for more time for offenders to pay fines imposed by the courts and later, offenders were also able to pay in instalments, which resulted in the removal of large numbers of people serving short prison sentences from the penal system.

By the end of the twentieth century, although there were nearly double the number of offenders being sentenced by the courts, the majority of cases were still in the lower courts and the most commonly used sanction remained the fine. In 1999 there were 1,407,998 offenders sentenced by the courts; 94.5 percent were sentenced by magistrates court and 70.5 percent, that is 992,420 offenders, received a fine. In contrast, 7.5 percent of offenders were sent to immediate custody by the courts and 10.5 percent of offenders to community sentences (Ministry of Justice 2010). Whilst the most commonly used sanction across the whole century remained the fine, other sanctions have varied in use and some have been completely abolished. This chapter will first examine the use of capital and corporal punishment, both sanctions that were removed from the criminal justice system. The following section will outline the use and then abolition of the death penalty in England and Wales, as well as the end of corporal punishment sanctions by the courts, both of which were eliminated by the end of the 1960s.

CAPITAL AND CORPORAL PUNISHMENT

In 2003 the British government signed the European Convention on Human Rights and Procotol 13 of the Convention prevents the British government from restoring capital punishment. The underlying objective of this document

therefore was to ensure that Europe remained a "death penalty"-free zone in perpetuity. This was in marked contrast to the beginning of the century, when the death penalty was in use in many countries across Europe and indeed throughout the world. The end of capital punishment in Western Europe is often explained as part of a much longer process of movement away from bodily punishments and death used more frequently in criminal justice systems in earlier periods of history (Spierenberg 1984; Garland 1985 and 2001; Foucault 1991; Block and Hostettler 1997; Pratt 2002 and 2013; Smith 2008; McGowen 2017). By the early twentieth century, only those convicted for murder were executed in England and Wales and executions by hanging were carried out in private behind the walls of prisons.

In the first half of the twentieth century, 621 men and eleven women were executed in England and Wales, although a greater number (1,080 men and 130 women) had been sentenced to death and had their sentences commuted to life imprisonment (Royal Commission on Capital Punishment 1949–1953: 300). On average there were fourteen executions per year, and to varying degrees these cases were publicized through newspaper reports of the trials giving the private nature of punishment by this time. Some capital cases captured the public's

FIGURE 6.1 Crowds at the Old Bailey during the trial of Edith Thompson, 1922.

imagination and excited public opinion through the nature of the case or press sensationalism, but often the cases were the unhappy outcome of domestic or familial situations. Other cases drew a great deal of attention not only to the individual case, but also to the use of the death penalty in general, reigniting some of the wider debates on the use of the sanction that had continued since the abolition of public execution in 1868 (Morris 1989; Block and Hostettler 1997; Seal, 2014). Capital cases like those of Edith Thompson in 1922, Ruth Ellis in 1955, Timothy Evans in 1949, and Derek Bentley in 1953 all drew public opinion and remain prominent in the collective cultural memory of the death penalty. In the cases of Thompson and Ellis, the small number of women executed in the twentieth century made their cases immediately unusual and newsworthy, but for these women in particular, controversy remains over whether they are miscarriages of justice (Ballinger 2000; Seal 2011). The execution of Timothy Evans, executed for the murder of his wife and son in 1949, is now acknowledged as a miscarriage of justice. A few years after the execution, the investigation and discovery of a number of victims at the Evans' former address, 10 Rillington Place, killed by multiple murderer John Christie, led to further disquiet about the Evans conviction. During police interviews, Christie (convicted and executed in 1953) admitted to murdering the Evans family. Similarly, Derek Bentley's case is also acknowledged as a miscarriage of justice; Bentley, a teenager with a learning disability, was sentenced to death and executed for his part in the murder of a policeman. However, his co-accused, the perpetrator, was under age and therefore not subject to capital punishment. After years of campaigning, Bentley was given a posthumous pardon in 1993 and subsequently had the conviction overturned in 1998.

The campaign for the end of the death penalty gained more ground through controversial cases like those noted above, and by the end of the 1950s the Homicide Act 1957 tried to make better provision for different offenders and circumstances of cases by categorizing capital and non-capital murder. In the end this Act lead to yet more consternation. The last executions in Britain were those of Peter Anthony Allen and Gwynne Owen Evans, which occurred simultaneously at HMP Manchester and HMP Liverpool in August 1964. Both men, in their early to mid-twenties, were convicted of the murder of John West, a co-worker who they robbed and killed. The case received little media coverage outside of the local communities involved; the condemned both appealed the sentence, but the appeals were declined. Although the debate about the death penalty was prominent at the time, the case itself was unremarkable and it was not foreseen that these would be the last executions in Britain (Johnston 2018).

In 1965 the death penalty was suspended for five years by the Murder (Abolition of the Death Penalty) Act, and subsequently in 1969, the Houses of Parliament removed the five-year limit on the suspension, effectively ending the use of the death penalty (Emsley 2011). A similar movement away from capital

FIGURE 6.2 John Christie leaving court in 1953. © Flickr (CC BY 2.0).

FIGURE 6.3 Ruth Ellis, who was later executed in Holloway Prison. © Getty Images.

FIGURE 6.4 Police intercept a van driven by Violet van de Elst, a campaigner against the death penalty. © Getty Images.

punishment had occurred in many Western countries (McGowen 2017) and commitment to such a position became central to the European Convention on Human Rights.

The changes in the use of corporal punishment are less frequently discussed. As the statistics above suggested, whipping tended to be used in the lower courts and was often used as a punishment for juvenile offenders (Gard 2009). Corporal punishment was abolished as a judicial sanction by the Criminal Justice Act 1948. A departmental committee, the Cadogan Committee, in the late 1930s had come to the conclusion that flogging had no deterrent or reformatory effect; it recommended that it only be used as a punishment inside prisons, where it could be used on those responsible for serious disorder or violently assaulting staff. These recommendations were written into the Criminal Justice Bill of 1938, but effectively the Bill was not passed until 1948 due to the outbreak of the Second World War (Emsley 2011). Flogging remained in use as a punishment for those breached prison rules until 1967, although by this time it had not been used for around five years (Brown 2018).

IMPRISONMENT

Imprisonment in the latter decades of the nineteenth century was denoted by regimes based on deterrence. Both local prisons, where prisoners served short sentences (under two years), and the convict prison system, where prisoners

served long-term sentences known as penal servitude, operated regimes based on hard or severe labor, sparse living conditions, and periods of separation (cellular isolation from other prisoners). The government pressed for uniform practice in local prisons across the country and administrators debated and measured the exact amounts of food each prisoner was allowed; just enough to sustain their work but no more, as this may encourage the poor or destitute to criminality. Prison living conditions were sparse: plank beds or hammocks, a can and tin for food and water. By the 1870s, all prisons were under government control and the regimes were constructed around the marks and progressive stage system. Under such systems, each prisoner would pass through a series of stages based on time and merit, accumulating a number of marks before progressing to the next stage. Each stage offered a small amelioration in the regime, in theory offering some small benefit for good behavior and compliance (McConville 1995; 1998a). This system and the operation of remission worked well in the convict system; the overwhelming majority of convicts were released early on license (early form of parole), often with at least one-third of their sentence remaining; this saved the government money and provided the opportunity for changes in employment, relationships, and accommodation, which could contribute to offenders' desistance from crime (Johnston and Godfrey 2013a; Cox et al. 2014). However, in local prisons, progressive stages were almost entirely ineffective as most offenders were serving less than a month and there was no system of remission until 1898. The regime in local prisons was relentlessly severe as most prisoners served their entire sentence at the first stage and therefore no matter how good their behavior, their sentences were not long enough to earn any benefit, however small (McConville 1995; 1998a). The focus of criminology, government administrators, and the public is often on the "serious," "dangerous," or long-term prisoner, but in the nineteenth and throughout the twentieth centuries, most prisoners were those serving short prison sentences. The bulk of the prison population came in and out of local prisons, like Manchester, Leeds, Shrewsbury, Liverpool, or Wandsworth—prisons that have existed in their communities for many generations. The latter two prisons still operate in the twenty-first century and are amongst the largest prisons in Western Europe.

By the 1890s, the public mood towards imprisonment changed. Under the leadership of Edmund Du Cane, prisons had become increasingly bureaucratic. The emphasis of Du Cane's tenure had been on economy (making the prison system more cost-efficient) and deterrence was implemented to its fullest. The average prison population did fall in this period, but other wider factors might have influenced this; notably the shortening of penal servitude to a minimum of three years, a fall in recorded crime, and the development of non-custodial sentences (Bailey 1997). However, the proportion of recidivists was increasing and this was of great concern (McConville 1995; Johnston and Godfrey

FIGURE 6.5 Wormwood Scrubs Prison, completed in 1891. © Getty Images.

2013b). The severity of regimes and Du Cane's leadership came under scrutiny as commentators voiced their unease about the austere environment and the lack of accountability of the Chairman (Harding 1988; Nellis 1996; Bailey 1997; Pratt 2004).

In January 1894, the *Daily Chronicle* ran a short series of articles entitled "Our Dark Places." The anonymous author, now believed to be Reverend William Morrison, chaplain of Wandsworth Prison, called for a Royal Commission to investigate prison conditions. In appealing to the Home Secretary he wrote:

> to place the prisoners under the rigorous rule of the martinet, has broken down—our local prison system stands confessed a vast and appalling failure. It cannot well be patched from within; it must be remedied from without … our local prison system, which, far more than the convict system, enhances the faults of solitary confinement, and is marked more conspicuously than it by many terrible evils, cannot be maintained on its present military and purely centralized basis.
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> (*Daily Chronicle*, January 29, 1894: 5)

In 1895 the Departmental Committee on Prisons was appointed under the leadership of Herbert Gladstone, and in the wake of the criticism, reported and

recommended a balance between deterrence and reform (Gladstone 1895). The worst aspects of the regime were ameliorated, although the results were felt mostly in convict rather than in local prisons. Hard labor was replaced with productive labor, prisoners worked in association although still in silence, and the Prisons Act 1898 introduced remission to local prison sentences. However, this was not before another devastating tract on the penal system, provided by Oscar Wilde's *The Ballad of Reading Gaol* ([1898] 2002) appeared in 1897.

The Gladstone Committee provided the basis for change and in the wider penal system it had a considerable effect. Garland (1985; 2002) has argued that this is the period in which the modern "penal-welfare" complex was established. The result doubled the range of penalties available and had a dramatic effect on the prison population. Changes in sentencing practice, the development of probation and aftercare services and specialist institutions for young offenders or the mentally ill all removed people from the prison population. Alternative punishments for first offenders and allowing offenders' time to pay fines also had a profound effect; just over forty years later the prison population of England and Wales was the smallest in Europe (Rutherford 1984; Bailey 1997; Wilson 2014). There is no doubt that the foundations laid down during these early decades would fundamentally change the penal system during the twentieth century.

Before we turn to the use of alternative to custody in the final section of this chapter, first the early decades of the twentieth century will be examined as regards imprisonment and related custodial institutions such as the borstal system. Reflecting on her early experiences working as an officer in the Prison Service, Mary Size wrote: "Going from the grim, disheartening little prison in the north to Aylesbury had been like passing from a miasmatic [*sic*] fog into the bright sunlight" (1957: 36). Whilst Size felt these sentiments in comparing the two prisons she worked in, her comments also exemplify the shift in penal philosophy and practice in the early twentieth century. This shift, a movement towards a more reformative and rehabilitative period in the history of imprisonment, is often referred to as "the golden age of prison reform." The northern prison Size refers to was HMP Leeds, a local prison. Passing through it were familiar streams of local short-sentenced prisoners in the revolving door of imprisonment and dull, monotonous regimes, were largely unchanged from the late Victorian period. HMP Aylesbury symbolized the future for Size—a future where the prison system would be less constrained, in which she saw hope for the system; a future largely constructed and maintained by Commissioner Alexander Paterson during his tenure before the Second World War. Staff, like Size, shared Paterson's vision for a more positive rehabilitative approach to imprisonment. Paterson was appointed in 1922, and had a profound effect on the Commission, even though he was never Chairman. Paterson believed that offenders were sent to prison "*as* punishment rather than *for* punishment"

(Ruck 1951: 23), and the results of this approach were particularly evident with young offenders (Bailey 1987).

Impetus from the Gladstone Committee recommendations had also led to the development of the Borstal system for young offenders, pioneering by the new Chairman, Evelyn Ruggles-Brise. The first establishment opened at Borstal in Kent in 1902, although an initial experiment had been undertaken at Bedford prison from 1901. The system developed apace and was formalized by the Prevention of Crimes Act 1908 (Bailey 1987; Forsythe 1995; Horn 2010). The borstal system aimed to provide training and support for young adult offenders, initially those sixteen to twenty-one years of age, although this was later increased to twenty-three years. The borstal system was aimed at those who already had previous convictions or were seen as having criminal habits or tendencies. There were specific borstal institutions (Borstal, Feltham, and Aylesbury for young female offenders), but the system was also "modified" for use in wings of some local prisons. Those sentenced to borstal would undergo a sentence of between one and three years, based on the merits of physical training and education but also incorporating a system of after-care and release on licence (early form of parole). By the mid-1930s there were eight borstal institutions; by then the system was based on the public school "house" system, and one of these was an "open" borstal (see below). The borstal system continued to develop across the century and remained in use until 1982 when these institutions became replaced by youth custody centers and later Young Offenders Institutions.

FIGURE 6.6 The entrance to HM Borstal Feltham. © Getty Images.

However, inside adult prisons the change was much slower and separation and silence still dominated regimes into the 1920s and 1930s (Forsythe 1990; Bailey 1997; Brown 2013; Johnston 2008). In 1910 Winston Churchill had been appointed Home Secretary; six days into his appointment he took Ruggles-Brise to a performance of John Galsworthy's *Justice* (Gilbert 1991, cited in Bennett 2008). This play was highly critical of the practice of separate confinement in prison and successful in generating public concern about its use (Nellis 1996). What followed was one of the most famous statements about punishment and the treatment of prisoners, when Churchill observed:

> [T]he mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm and dispassionate recognition of the rights of the accused against the State, and even of convicted criminals against the State, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry all those who have paid their dues in the hard coinage of punishment, tireless effort towards the discovery of curative and regenerative processes, and an unfaltering faith that there is treasure, if you can only find it, in the heart of every man—these are the symbols which in the treatment of crime and criminals mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.
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> (Gilbert 1991: 214–15, cited in Bennett 2008)

Whilst this quote perhaps belies other aspects of Churchill's penal policy (Ibid.), and indeed separate confinement itself was not abolished for all prisoners until 1931, it has also come to epitomize the sentiment of the early decades of the twentieth-century punishment.

A process of change had begun, but as an unofficial inquiry into the system by two former prisoners, Hobhouse and Brockway (imprisoned as conscientious objectors to the First World War) in 1922 demonstrated, it was still bleak, oppressive, and rigid (Hobhouse and Brockway 1922; Forsythe 1995). Therefore, although it is often presented as the "golden age of penal reform," this was still a contested period. In 1932, only a decade later, occurred one of the largest prison riots in English prison history: the "mutiny" at Dartmoor convict prison (Brown 2013). Although the mutiny was presented as a localized event in the resulting inquiry by Herbert Du Parcq, not all staff shared Paterson's vision, and as noted above, changes inside prison regimes were was slow (Forsythe 1995; Brown 2013).

By the end of the nineteenth century, the grim Victorian architecture of prisons had become an obstacle to change (Pratt 2002). Attempts were also made to reduce the austerity of buildings, to diminish their threatening "look"

with landscaped gardening or flowerbeds. The locations of prison began to change. Some prisons in urban areas were sold off and prisons were relocated to other buildings that had had previously functioned as army camps, airfields, or country houses (Brodie et al. 2002; Pratt 2002; Jewkes and Johnston 2007). These new prisons "disappeared" into the landscape, often in much more remote locations and removed from communities (Pratt 2002). A core of local prisons remained within their communities as suburbs; industrial areas and the population grew around them.

As prisons were removed from sight, the public had little knowledge of what occurred within them (Pratt 2002). In 1938 the Commissioners announced that Britain's older prisons would be closed because they were: "a monument to the ideas of repression and uniformity which dominated penal theory in the nineteenth century, rather than a medium for the ideas of training and reformation which have for many years been the guiding principles" (1937–8: 30). However, these closures did not happen due to the outbreak of the Second World War. In the post-war period, "prisons were converted from country houses (HMP Hewell Grange, HMP Foston Hall) disused aircraft hangars, army camps (HMP Ford, HMP Leyhill), military hospitals and the like, which literally served to camouflage them" (Jewkes and Johnston 2007: 187).

Yet, despite efforts to conceal the visibility of the prisons, the most important development of the early twentieth century was the acknowledgement that not all prisons had to have the same level of security (McConville 1998a). This realization had grown out of the nineteenth-century administrators' obsession with classification; the more they classified, the more they found "exceptions" to the rule: the mentally ill, juveniles, inebriates, the physically disabled, for example. From this developed the idea of the "open" prison and the first was established at New Hall, near Wakefield in 1936 (McConville 1998a). Military buildings were well suited to this new institution; using existing buildings for accommodation, large areas of land for unrestricted movement and for agricultural work. The open prison also facilitated links with the communities in which they were located (Dunbar and Fairweather 2000).

The next "experiment," the idea of Paterson, was the first "open" borstal at Lowdham Grange in Nottinghamshire. Now part of penal folklore, the borstal was established by the arrival of forty-three selected borstal boys who had marched 162 miles from Feltham Borstal to the Grange, under the charge of William Llewellin, the newly appointed Governor (Bailey 1987; Lodge 2014). Harold Scott, later a prison commissioner, joined part way along the march, and his memoirs note his views of the three former borstals:

> Feltham with its ugly red-brick buildings and long corridors punctuated by iron-barred gates, had a grubby air of a Victorian Poor Law Institution. Portland and Borstal [both formerly convict prisons] still looked from the

> outside, as if they were living in their grim past (except for colourful flower beds which had been planted to bring some colour to the scene). But inside some cells had been gutted to provide classrooms and dining rooms, and the cell doors stood open as the boys moved freely about … Most significant of all were the open gates. The old prison dress was gone and the boys all dressed in jackets, shorts and stockings a practical dress for most purposes (introduced in 1924) … I could see for myself, even on so brief a visit, the effects of this life on the inmates and the burning faith in the work of the men and women in charge.
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> (cited in Lodge 2014: 25)

Lowdham Grange took the borstal experiment to an "open" setting. The existing borstals were overcrowded and a fourth site was needed, but government finances were constrained. In 1928 the then Home Secretary invited a wealthy philanthropist to donate finances "for this purpose and immortalise his name forever." The *Manchester Guardian* reported this: "Chance of Fame. Invitation to some rich man to give £100,000" (cited in Lodge 2014: 27). Interestingly, this was reminiscent of the sense of civic duty and philanthropy in prison reform in the late eighteenth century.

The borstal lads' march was met by gathered local people and the young offenders set about constructing tents in the grounds of the estate. Open prisons would afford a different relationship with the local community, one which harps back to the eighteenth century. Local instructors taught the lads trades and skills: bricklaying, plastering, painting, and decorating. Llewellin was keen to appease the local community and quickly established a good rapport with them. In the coming years the borstal lads attended local churches, listened to outside speakers, and the staff were encouraged to be part of local life (Bailey 1987; Lodge 2014).

The early decades of the twentieth century, broadly speaking, were relatively positive; indeed, the 1920s and 1930s as noted above are often described as a "golden age," and Paterson's belief that imprisonment should be used "*as* punishment not *for* punishment" (Ruck 1951) encapsulates the reformative liberal sentiment of the period. As noted above, change was slow to occur inside prison regimes, but there was a greater range of sanctions available in the courts and more thought was given to the needs of different offenders and to the possibility of reforming them.

The two world wars also impacted on the prison system in the twentieth century. The loss of life across Europe during the First World War may well have helped to ensure a more reformative approach in the penal system in the 1920s and 1930s, but decarceration had already begun to occur in the preceding decades (Rutherford 1984; Wilson 2014). The physical impact of the Second World War in terms of air raids and destruction of the prison estate was

markedly different to the First World War; prisons were closed or evacuated as a precaution or due to air raids and bombs, and auxiliary staff were bought in as prison service staff were called up (Jewkes and Johnston 2011). In a reversal of the experience of the First World War, the Second World War saw a 50 percent rise in the prison population, and a new building program after the end of the war (Soothill 2007). The policy of "open prisons" continued and in 1946, Askham Grange became the first open prison for women.

In the post-war period, the prison population continued to grow. The sentence of penal servitude was abolished in 1948 and the Prison Act 1952 consolidated numerous pieces of legislation and continued to be the major Act for the governance of prisons for the rest of the century. The second half of the century is somewhat of a contrast; by the 1960s and 1970s, belief in the "rehabilitative ideal" had faltered in the penal system and the prison population had begun to rise; it would continue to do so until the end of the century.

ALTERNATIVES TO PRISON

The decline in the prison population at the start of the twentieth century may also have been a factor in the expansion in other non-custodial punishments. It had been increasingly recognized that imprisonment might not be the most appropriate place for all offenders; that for some minor offenders, first time, or young offenders, it may be appropriate to offer an alternative to prison. As noted earlier, the Gladstone Committee is seen by some commentators as providing a platform for wider and more fundamental changes in the whole penal system (Garland 1985); it doubled the range of sanctions available to the courts and was particularly important in providing alternatives to custody. The origins of the twentieth-century system of probation are firmly located in the late nineteenth century. From around the 1870s, police court missionaries had been active in working with offenders in court, but also more widely on release from prison or through other welfare work. The passing of the Probation of First Offenders Act 1887 emerged from this activity and allowed those offenders with no previous convictions (for offenses punishable for not more than two years) to be subject to recognizances. Although initially slow in development, by the turn of the twentieth century police court missionaries had significantly expanded their work (McWilliams 1983; Radzinowicz and Hood 1990; Vanstone 2004; Mair and Burke 2012).

The Probation of Offenders Act 1907 was subsequently passed and introduced formal supervision by probation officers; the magistrates court could appoint probation officers to "*advise*, *assist* and *befriend*" offenders placed under their supervision (Worrall and Hoy 2005: 78). The Act also expanded the range of offenders who could be subject to probation, including

those with previous convictions (Gard 2014). The work of probation officers considerably expanded to juveniles and to families, as well as adult offenders as the Criminal Justice Act 1925 had made probation officer appointments obligatory in all courts (Worrall and Hoy 2005). Just before the outbreak of the Second World War, probation had developed apace; it was the most common penalty in the magistrates court, accounting for approximately one-third of sanctions for indictable offenses (Mair and Burke 2012).

By the latter half of the century, probation and related community penalties also developed significantly. As will be shown, factors affecting the prison system, such as "law and order" politics, privatization and managerialism, and risk management also permeated the use of "alternatives to custody" or community sanctions. Not only did the range of penalties available considerably expand during the twentieth century, but also the methods by which these penalties operated also altered significantly.

Despite the hiatus of probation by mid-century, the use of this type of punishment declined across the second half of the century; probation was not a sentence but instead offenders were sentenced to supervision in the community, for a period of between six months and three years, as well as to additional sanctions or requirements imposed by the courts (Cavadino and Dignan 1992). Cavadino and Dignan (1992) argue that in the early twentieth century it appears that probation did contribute to the reduction in the prison population, but in the period post-war, its decline in use seems to belie the relative optimism in rehabilitative punishments. However, by the 1970s, the collapse in the belief in the rehabilitative ideal certainly contributed to this.

In the 1960s the probation officer had, in addition to the above, also taken responsibility for prisoners' welfare, both inside and on release from imprisonment. The professional skills developed by probation officers across this period was detailed in the Social Inquiry Report, a report presented to the court to assist in making sentencing decisions by demonstrating the social environment of the offender (Worrall and Hoy 2005). Worrall and Hoy (2005) explain that as probation expanded nationwide, the three-fold function of the service: advising the court (criminal and civil), supervising offenders in the community, and supporting prisoners and supervising ex-prisoners did not present any "crises of conscience" as a "degree of tension between the role of caring for offenders and controlling their criminal behavior" had always been a characteristic of the work (2005: 78–9). However, across the next three decades, leading up to the Criminal Justice Act 1991 and beyond, this tension was epitomized by a crisis of identity in the role of probation officers, the introduction of National Standards, de-professionalization, and changing political dynamics which emphasized the "supervision" of offenders within a broader context of a more "law and order" and then later "risk management" agenda in criminal justice. A shift from "advise, assist, befriend" to a new

National Probation Service by 2001, the role of which was the "enforcement, rehabilitation and protecting the public" designed to increase public and the courts confidence in community sanctions (Worrall and Hoy 2005).

FROM "LAW AND ORDER" TO RISK MANAGEMENT

During the post-war period, recorded crime in England and Wales began to rise and continued to do so until 1995; the prison population which had stood at around 22,000 in 1960 also started to rise without abatement and reached unprecedented levels by 2000. An increasingly permissive society was blamed for the increase in crime and delinquency in the 1960s and 1970s, and in response to this perceived problem, politicians increasingly called for ever-tougher penalties and responses from the police and criminal justice system. The period was demarcated by the "collapse of the rehabilitative ideal," a collapse in the belief in rehabilitative sanctions, and the pervasive notion that "nothing worked" in punishing offenders. Crime and the "problem of crime" became an increasingly politicized issue as a "law and order" ideology demanded tougher sanctions based on notions of retributive "just deserts" for offenders and tougher stance on crime.

As Rawlings (1999) notes, on entering office in 1979 the Conservative Party and successive Homes Secretaries, pledged to be severe consequences for offenders, committing to send increased numbers of offenders to prison and to deter them with longer periods of incarceration. At the end of the century, the newly elected New Labour government continued a similar path with 1997 election pledges to be "tough on crime and the causes of crime." The 1970s and 1980s stand out as notable periods of instability in the prison system, denoted by prison riots (in long-term establishments), staff unrest and industrial action, poor sanitary conditions (prisoners were still "slopping out" until 1996), and rising prison population and overcrowding. Disturbances and riots in these decades were often put down to a "toxic mix" of prisoners with "nothing to lose" (IRA prisoners, lifers, for example) attempting to "break the system." Most of the twentieth century, the latter decades in particular, are relatively unexplored by historians, although criminologists and penologists have made a significant contribution to our understanding of the prison and wider penal system. There is a significant body of research that challenged perceived ideas about the roots of prison disturbances as well as examining what is often termed the "prison crisis" during these latter decades of the century (Evans 1980; Fitzgerald and Sim 1982; Bottoms 1983; Scraton et al. 1991; Cavadino and Dignan 1992; Sparks et al. 1998). Some of these authors interpreted the "crisis" as one of the prison system, others saw it as a wider crisis of the whole penal system (drawing in some aspects of what has already been said about the probation service). To

a great extent these issues, for the prison system, were brought to a head by a major disturbance at a local prison, HMP Strangeways, in Manchester in April 1990. One of the largest disturbances in prison history, it lasted for twenty-five days and exposed the prison system to media and public scrutiny unlike that ever seen before. The subsequent inquiry into the Strangeways disturbance and others that occurred in this period, chaired by Lord Justice Woolf and Judge Tumin, was published in 1991. The report argued that there needed to a balance between security, control, and justice, and stressed the need to prepare prisoners for return to wider society (Woolf Report 1991). But since then, the prison population continued to rise and high-profile escapes in the mid-1990s from high-security prisons (HMP Whitemoor and HMP Parkhurst) led to security clampdowns (Drake 2012); the population continued to rise to unprecedented levels in England and Wales.

FIGURE 6.7 Strangeways Prison riot, 1990. © Getty Images.

As observed above, the Probation Service was also caught in a conflict about its own role and identity; between "care" and "control" during the 1970s and 1980s, underpinned by the political discourses at the time that suggested that community sentences or alternatives to custody were not robust or severe enough to deter offenders from criminal behavior. They were often faced with calls for community penalties to be more severe and not a "soft option" for criminals.

The last decade of the twentieth century was also notable for the increased use of managerialism and privatization in the prison system. The first privately run, contracted-out prison in England, the Wolds in East Yorkshire, was opened in 1992 and was the first private prison in Europe. By the end of the century, England and Wales had one of the highest prison populations in Western Europe and the criminal justice system was increasingly focused on the risk of offenders re-offending and the risk they posed to the public.

The latter decades of the century as regards criminal sanctions were very different to the early decades. Those offenders subject to sanctions, whether that be through prison sentences or facilitated by the Probation Service, are managed through a focus on risk and the risk they offenders pose to the public. As Cavadino et al. note, these views were optimized by the changes to the role of the probation officer; in the late twentieth century the "stress on 'protection of the public' via the firm control of offenders remained. In 2000, the probation officer's historic statutory obligation to 'advise, assist and befriend' the offender … was finally abolished and replaced with a new set of aims in which protection of the public had pride of place, and which included 'the proper punishment of offenders'" (2013: 130). By the beginning of the twenty-first century, the two key agencies involved in delivering criminal sanctions and punishing offenders, previously separate agencies—the National Probation Service and the HM Prison Service—were merged into the National Offender Management Service in June 2004 on the recommendation of the Carter Report 2003 (Cavadino et al. 2013).

By the late twentieth and into the twenty-first century, the focus of the criminal sanction was still on the individual offender, but this focus centered on notions of "risk" and the extent to which offenders were "at risk" of re-offending or indeed a risk to the public. Thus, as we have seen above, the organizations who came in contact with offenders became agencies that "managed this risk," whether by imprisoning individuals or by monitoring them on release or under sentences in the community. This shift, occurring in a number of Western societies but notably in the US, has been interpreted by American criminologists, Malcolm Feeley and Jonathan Simon (1995), as one based on actuarial justice and risk management has been termed the "new penology." Features of this "new penology" also included "three-strikes" or mandatory long indeterminate sentencing policies (e.g. three offenses result

in life sentence), super maximum security prisons, shaming or humiliating punishments, increased use of technology, zero-tolerance policing, all justified on the basis of public protection. Other commentators have observed these and related changes as denoted by a "populist punitiveness" or "new punitiveness, a central feature of which is the notion that such policies and practices are necessary and are justified and indeed, demanded by public opinion" (Bottoms 1995; Pratt et al. 2005).

CONCLUSION

On the face of it, the twentieth century presents as a liberalizing period in which the most severe punishment—the death penalty—was abolished, and other bodily punishments also came to end and, from that perspective, it was. The developments in the wider penal system in the early decades of the century set down a much wider range of penalties, that also contributed to the decline in the prison population, but this appears to have only lasted for a few decades. At the outbreak of the Second World War the prison population had already begun to grow and from the 1960s did so dramatically. The maintenance of a high and increasing prison population has become a feature of the penal system in England and Wales at the end of the twentieth century and as it became the highest incarcerator in Western Europe (the world leader was the United States, incarcerating over two million people). The sheer size of the prison population and the features of the criminal justice system that emerged in the later period of the century must at least make us question the view that the twentieth century was a liberalizing one.