



## Rules, rights and justice: an introduction to law

*Does prison work?*

### **MISHAL HUSAIN:**

It's arguably one of the most controversial and politically charged questions about the law. When asked, does prison work, you probably already have your own strong opinions. You may think it's crucial to be tough on crime, or you may believe that prison does nothing but teach people how to become better criminals. But whichever side you instinctively fall on, think again. Behind the headlines there's a subtle interplay between pragmatism, politics and penal theory. Media stories come and go. The social climate shifts over time, different academics, politicians and practitioners views influence public opinion and when you ask, does prison work, you must also answer the question, for whom? The offender, the victim, or society at large?

Well in the studio with me I have four very experienced contributors to help unpick these complex questions. Juliet Lyons is director of the Prison Reform Trust. Her work puts her in daily contact with prisoners, prison workers and political decision makers. Erwin James is a writer and columnist who spent twenty years in prison. His Honour Judge William Kennedy is the judicial member of the London Probation Board and the judge responsible for all the youth cases at Snaresbrook Crown Court. Carol Howells started her career as a legal practitioner before becoming an academic and the W100 course team chair. Thank you all for being here. Let's start with the basic question, Erwin James - does prison work?

### **ERWIN JAMES:**

It can work. Because prison is a place with an abundance of opportunities. I mean I went into it, into prison ill-educated, inarticulate, with massive failings to overcome and over twenty years I - clearly I made you know significant progress. But I can't give the prison system and my prison experience, I am reluctant to give credit to my experiences in prison. I had to overcome massive obstacles in prison to achieve those successes. You know prison life is not conducive to succeeding.

### **MISHAL HUSAIN:**

Well let's get a view from Juliet Lyons. Juliet, if you look at the experiences someone like Erwin though, could you not say that something positive can emerge?

### **JULIET LYONS:**

I think it can. But I think it rarely does. And I think one of our problems is that we utterly fail to reserve prisoners a place of absolute last resort in the criminal justice system. So we have overcrowded jails, we have very poor staff/prisoner ratios, we have very limited opportunities for people to develop in any sense. And one should never minimise the pain of imprisonment. What losing liberty does to people. And whether it's somebody who's young or somebody who is old, prison is going to leave a lasting mark.

### **MISHAL HUSAIN:**

William Kennedy I am interested in your perspective as a judge. When you look at the experience of prison, what is it like actually making those sentencing decisions?

### **JUDGE WILLIAM KENNEDY:**

If you choose to be a judge then that goes with the territory. You know exactly what is expected of you by the system, what's expected of you by parliament, what's expected of you by the court of appeal. And so consequently the task of a judge is to do that which parliament has asked of him or her and that which the court of appeal expects. If that involves the imposition of a sentence of imprisonment then that is, that goes with the territory.

**MISHAL HUSAIN:**

Do you accept Juliet Lyons' point that perhaps we don't use prison enough as a last resort?

**JUDGE WILLIAM KENNEDY:**

I think the difficulty with Juliet's point is this, if prison is underfunded, if prison is crowded, if prison is a poor place in which to put people, then that's an argument for increasing the funding, increasing the provision of facilities and making it a better place. It's not a necessity, an argument for not using it at all. I think that prison should be a case of last resort. I hope that for the majority of sentences it is so regarded but I think Juliet will say that that's not her experience. Certainly those of us who sentence the young, regard the imposition of sentences of imprisonment as absolutely a last resort.

**MISHAL HUSAIN:**

Carol Howells, I want to turn to you for the academic perspective, these are clearly very big and often very emotive issues. What is the theory in this area?

**CAROL HOWELLS:**

Well the theory changes with time. Prison can be seen as retribution or as a deterrent or incapacitation so that society as a whole is protected.

**MISHAL HUSAIN:**

Erwin?

**ERWIN JAMES:**

I think society hopes that there'll be some punishment and there'll be some rehabilitation. That's what society hopes I think. If you stop the man in the street and ask him that. I think that's what the government tries to do. In the prison system they try to make it kind of punitive but they also provide rehabilitative initiatives and rehabilitative programmes like in my case education and things. And that's quite confusing for a prisoner. Because when you go to prison, you know prison to me was a mystery. Even though I had had some experience with police and the criminal justice system in my younger years, but adult prison, this was my first time to an adult prison and to me it was you know the most frightening experience. And my path was one of mainly survival. You need to be pretty well equipped to take advantage of the opportunities there are in prison. You need to be a very able, competent, skilled person and when most people go to prison obviously they're not, they don't have those abilities.

**MISHAL HUSAIN:**

Well there are some people whose offending is so serious or so persistent that there's no alternative to custody. But they're in a minority. For others the value of prison is more open to debate. When judges pass sentences, they should be tailored to the individual and his or her circumstances. Even so there are some groups of people for whom incarceration is a particular issue. One example is women. William Kennedy, is prison suitable for women?

**JUDGE WILLIAM KENNEDY:**

I think it's undoubtedly right that one sentences women to imprisonment with a very heavy heart indeed. Because the facilities for them are not as they should be. Many of the prisons involve separation from family and friends geographically and it's very, very difficult, particularly where young children are involved. Sadly however, the prison population so far as women is concerned has risen for a number of reasons. But a very great deal is to do with a trade in class A drugs. Either as mules, bringing drugs into the country or being at the forefront of the distribution of class A drugs. Class A drugs are the greatest social evil that we face as a criminal justice system. We have to deal with it and I'm afraid that means deterrent sentences upon those who dabble in it.

**MISHAL HUSAIN:**

Juliet would you accept that?

**JULIET LYONS:**

Well I think it's debatable whether it's a deterrent. What I was going to say was that these women - we know that 18,000 children or so are separated from their mum by imprisonment

each year, so there's a big social outcome to imprisoning women. I don't think that's always taken into account. I don't think the mental health issues in relation to women is always taken into account. But if we look at this particular offence, the importation of drugs, the women are very rarely the key players. The key players are frankly not caught. It's a rare occasion to catch someone who's orchestrated a drug run. There are plenty of vulnerable women who will do this for money, plenty of them who are assured by the people who orchestrate these things that they will get away with it.

**MISHAL HUSAIN:**

But prison doesn't solve the problems.

**JULIET LYONS:**

It doesn't really, it doesn't deter the next people coming on line to do that same offence and women serve maybe twelve/fifteen years for such an offence.

**MISHAL HUSAIN:**

Carol, again what's the theory? Or what's the evidence about the position of women in our criminal justice system?

**CAROL HOWELLS:**

There's been a lot of research academically into this area but in particular there's been a focus on sort of the under eighteens. Quite often simply because of the provisions within the system you will find that with young women, young girls they are actually sometimes within the adult prison system. There's evidence of a lot of bullying, a lot of self harm. The resources are maybe not there in the way that they are for maybe young males. Again offending issue. And it's a very difficult act to balance.

**MISHAL HUSAIN:**

Well another vulnerable group is young people. In 2005 the sixteen year old Gareth Price hanged himself in Lancaster Farms young offender institution. His suicide, one of twenty deaths of children in K custody threw the spotlight on some crucial issues whether prison is appropriate for young people, mental health in young prisoners and an alleged blind spot of the justice system towards the causes of antisocial behaviour like bullying, lack of parental support and poverty. Let's explore this further. Is custody suitable for young people? Juliet.

**JULIET LYONS:**

No. I'm - I say that with a very heavy heart because I was engaged some while ago in trying to improve training for prison staff over a long period of time. I think there are some very good people working in prison who want to do their best with young people but to spend money trying to make prison child centred seems a tragic waste of resources.

**MISHAL HUSAIN:**

So you're saying no custody for young people under any circumstances?

**JULIET LYONS:**

I'm saying no prison for children. I'm not saying that there aren't children who have committed very serious crimes, who need to be detained and contained. I think they need to be in smaller units, closer to their homes, with proper contact, with all the other support services. And in order to make something appropriate for children to try and turn prison into that place is a costly exercise and a bankrupt exercise.

**MISHAL HUSAIN:** William Kennedy, what would you say to that? That the emphasis is in the wrong place effectively.

**JUDGE WILLIAM KENNEDY:**

I think that there are certain children whose crimes are so serious that they need as Juliet has said to be confined, detained, assisted and treated. Obviously you don't lock them up in a twelve by eight with an open toilet, that is not what should be done. Frankly, it's not what is done except in the most extraordinary circumstances. But we've got to accept that there are children within our society who commit dreadful crimes. The only way that they can be

assisted is by taking them out of society for a while and subjecting to the most concentrated input by psychiatrists, psychologists and so on. I don't like to see children in the crown court. I don't like to see children losing their liberty. But there are certain cases where the loss of liberty is essential if the child is to be saved from himself or indeed herself.

**MISHAL HUSAIN:**

So when you are actually faced with a situation, what kinds of things are running through your head. Obviously the gravity of what they've done. But are you looking particularly at the personality of the person you're sentencing, the young person you're sentencing?

**JUDGE WILLIAM KENNEDY:**

Yes, and I - for what it's worth I've got teenage children of my own and so obviously I draw on my own experience hopefully in communicating with them which is a first step. My concern for any child of fourteen, fifteen, sixteen, seventeen is to ensure so far as I can that they're given the opportunity not to be still in the system and serving custodial sentences in ten or twenty years time. And what we've got to be prepared to do is to make whatever investment is necessary in giving them the very best assistance. It is expensive, it is resource intensive, but it's an expense that we've got to bear if we are going to have any chance of saving them from themselves.

**MISHAL HUSAIN:**

Let me ask Erwin what he thinks. Because you experienced custody as a teenager for the first time, didn't you?

**ERWIN JAMES:**

I did. My experience of custody as a teenager was that it was very - it was - hard to explain it. It was a lot of young lads together. We worked out in the gym, we played football, we kind of - we held ourselves strong against the prison officers. You know, it was a young offender's institution but it was prison, you know? It was cells and bars and uniforms and concrete and steel. And there were some nice, good people, well motivated people that worked in the system, a couple of good governors and there's always you know a good prison officer on the landing. But I'm not sure what the benefits were because I didn't get an education particularly - I wasn't in long enough. That's often the case where either, where they're not in long, in prison long enough to take advantage of those opportunities, or were in too long. But I seemed to come out better equipped to commit crimes, because I came out stronger and fitter. But I hadn't really been challenged, you know morally particularly. If the prison experience was positive, if the prison experience was fundamentally educational based, and was geared towards a personal development and personal growth and ensuring that the people that go away to custody come out better equipped to contribute to society. That's what prison should be about in my opinion.

**MISHAL HUSAIN:**

So that would make a difference?

**ERWIN JAMES:**

That would make a huge difference.

**MISHAL HUSAIN:**

Carol, I'm interested in the overall research and what we learn or what we know about the experience of young people in prison.

**CAROL HOWELLS:**

There has been research done and there is some evidence to show that young men in particular because that was the group concentrated on, could grow out of crime. But that seems to have moved from sort of the late teens into the early twenties. The more recent academic research, but one of the things that struck me when I was working in the youth justice system is that a lot of the young individuals that I had contact with were already socially excluded so that does raise the question of whether the courts are actually the right place to deal with these issues and indeed with the prison custody .

**MISHAL HUSAIN:**

And Juliet Lyons, we all say here don't we about these terrible instances of self-harm and even suicide amongst young offenders.

**JULIET LYONS:**

Well that's right. I mean very high levels of self-harm to the extent that very recently a research study had to be abandoned because the researchers wanted to look at what they called a contaminated group and an uncontaminated group. I.e, children who hadn't seen other children try and harm themselves. And it wasn't possible in the young offender institution to find any young man who hadn't heard the screams in the night, hadn't seen his cell-mate hurt himself, hadn't experienced that distress either actually or watching someone else. And I think you know we have to ask a fundamental question about whether the criminal justice system is the right place for many of these young people or were they given the levels of mental health need and we know that ten percent have some kind of functional psychosis, schizophrenia or something of that kind, should we actually look at this through a public health lens and should we look toward treatment rather than punishment for many of them.

**MISHAL HUSAIN:**

William Kennedy I just want to get your thought on that. Should we look at it through the public health lens?

**JUDGE WILLIAM KENNEDY:**

I genuinely think we do. Certainly as far as I am concerned the sentencing of any youth involved, a very profound sense of psychological and psychiatric assessment. If there's any history that gives cause for concern. The youngsters are not sentenced now on the basis of a short report by a single writer. Where there is serious offending that is likely to cost a young person his or her liberty there is now a huge range of interventions by psychological and psychiatric assessment.

**MISHAL HUSAIN:**

Well let's talk more about sentencing now. Because at the time of this recording in 2005 the overall number of inmates has continued to rise. The prison population has reached record numbers, over 76,000 people are in jails in England and Wales. Juliet are sentences becoming tougher do you think?

**JULIET LYONS:**

Well pretty clearly they are. The cusp, the decision that's taken, between a community sentence and a custodial penalty seems to have changed so that if the courts are tougher, people are more likely to go to jail for an offence that ten years ago they might not have been imprisoned for. I mean I think one of the issues and it's one of the saddest things about prison reform if you like, is that prisons have definitely improved to some extent, particularly in relation to drug treatment, to an extent - education as well, and some sort of form of rudimentary mental healthcare. What happens I think is that because of the failure of other public services, prisoners become a kind of welfare warehouse. So it's easier in some parts of the country to get a detox in a prison setting than it is in a health setting in the community.

**MISHAL HUSAIN:**

You become a priority?

**JULIET LYONS:**

Well they do. So the criminal justice gateway lets people in to some sort of treatment and my worry is that, Prison Reform Trust worry is that, as I said that prison's have become a welfare warehouse and that the courts are using them in order to obtain treatment for people who would otherwise not go to jail.

**MISHAL HUSAIN:**

William Kennedy, are you handing down longer sentences than you did five, ten years ago?

**JUDGE WILLIAM KENNEDY:**

I'm dealing with much more serious crime than I was five or ten years ago. You've got to bear in mind that an enormous amount of investment has been put into obtaining more police officers. Obviously that means that they detect more crime. Serious offences bearing in mind we used to have a clear up rate of twenty five percent have now been hugely assisted by forensic improvements, DNA now enables us to trace numbers of people committing very serious offences who before would have escaped imprisonment.

**MISHAL HUSAIN:**

But isn't that more about levels of conviction rather than actual length of sentences. Say if you're faced with the same conviction that you would have a few years ago, is there a trend for longer sentences?

**JUDGE WILLIAM KENNEDY:**

I am honestly not aware, Juliet may well have statistics, but I am honestly not aware in my own case of imposing any difference in sentence. Very particular offence than I did five years ago, or ten years ago. Offences have become on - in the main more serious and sentences reflect the fact that offending has increased in its seriousness.

**MISHAL HUSAIN:**

Juliet, so crime is just more serious today?

**JULIET LYONS:**

Well when we did the study of judges and magistrates we found, looking at real cases that they had become tougher. That they said it was in relation to the climate of public opinion. The political context has changed. I mean I think the other issue that's important to consider is the increased level of mandatory penalties. So that the courts don't always feel that they've got room for manoeuvre any longer.

**MISHAL HUSAIN:**

Well, many courtroom observers say that today we do seem to be observing a resurgence of interest in the rights of the victim. Ten years ago the emphasis was on the actions of the offenders, now judges must consider the impact those actions have had on victims in their sentencing decisions. Some victims in turn express their satisfaction that justice has been done if they see someone receiving a hefty prison sentence. Let's explore this now, William Kennedy, is this something that's in the forefront of your mind when you sentence?

**JUDGE WILLIAM KENNEDY:**

I'm very conscious of victims and the rights of victims. I think victims have long been ignored and it's disgraceful that they have been ignored. In the Way Ahead which was published by the Home Office in 2001, its first sentence is this - our programme of reform is guided by a single clear priority, to rebalance the criminal justice system in favour of the victim so as to reduce crime and bring more offenders to justice.

**MISHAL HUSAIN:**

So emphasis in the right place then? A correction then of what happened before?

**JUDGE WILLIAM KENNEDY:**

Absolutely, it's very important for sentencers to see a victim impact statement where the victim tells the court what the effect of the offence has been on him or her. And it's important the victim's voice is heard.

**MISHAL HUSAIN:**

Juliet, is that fair enough?

**JULIET LYONS:**

I think the purpose of the prison is to prevent the next victims and one of the distressing things about prison is the level of reconvictions, which you know we were talking about young people earlier on. We know that three quarters of those young people are going to be reconvicted within two years of release.

**MISHAL HUSAIN:**

But do you think that the victim should not be taken into account then at the point of sentencing the offender?

**JULIET LYONS:**

I think the victim needs to be taken into account but not to the point that their opinion overshadows in any sense the person who is passing judgement. I think that's always the danger. One talks about rebalancing the system. If it goes too far in favour of the victim then that's pushing it to one extreme. The victim's views need to be taken into account. I think the other thing that ought to be taken into account and this is difficult and complicated and unpopular is that very many offenders have also been victims and when you meet people in prison or when you talk to their families you realise that it's a messy business and that people have been both sides of the fence.

**MISHAL HUSAIN:**

So the categories aren't always so clear. Carol Howells, I'm just wondering - this is another classic case isn't it of balancing the rights of different groups?

**CAROL HOWELLS:**

It is and it's a very difficult balance to achieve because as with individual offenders who have you know their own particular personality events that have affected them, the victim also has their personality and I'm, whilst I agree that the victim should play a role, I'm not so convinced as to how large that role should be.

**MISHAL HUSAIN:**

Erwin, where do you think the emphasis should be? How large do you think the victim's role should be?

**ERWIN JAMES:**

I think it's healthy that victims should have an option to say, like the judge said, a victim impact statement, I think that might help a victim to feel that they have a voice and that they're involved in this, they've been a victim of a crime. They deserve to be treated with absolute respect and to be included if possible. But I think there's an awful lot of rhetoric in what the judge said as well. It's very easy to play on words and talk about victims and perpetrators, and as Juliet said it's just not that simple you know?

**MISHAL HUSSAIN:**

Yes. Well William Kennedy, it is difficult isn't it? Because these are very emotive things, victim impact statements and obviously the same crime can impact on victims in different ways depending on their own personal circumstances or their own strength. I mean is society served by the emphasis being on victims?

**JUDGE WILLIAM KENNEDY:**

We govern by consensus don't we, and it means therefore that everyone who is a member of the public has a voice. If the member of the public is a victim of crime then the victim could reasonably expect to be heard. Of course we don't say what does the victim think and sentence accordingly, but it would be monstrous to ignore that a particular victim by virtue of particular frailty has suffered in a particular way. Those who target the elderly, those who target the disabled and steal from them look out for victims and the interests and views of those victims must be heard.

**MISHAL HUSAIN:**

Carol.

**CAROL HOWELLS:**

The bringing of the victims into the system, into the process that also illustrates the consequences, so the consequences of the crime are not disengaged if you like.

**MISHAL HUSAIN:**

But starting to talk now about the broader impact of prison on our society, Juliet I just wonder if your work sometimes ignores the protection need for society in terms of the use of prison. You know often it's needing to protect society from dangerous people.

**JULIET LYONS:**

Absolutely, and we're not abolitionists. I mean I think prison is a very important, essential place of last resort. But the point I've been trying to make is that it isn't a place of last resort and consequently in a way we don't take account of society, we don't protect people because we're creating an ever growing pool of people who actually leave prison more, not less likely to offend again.

**MISHAL HUSAIN:**

But there are a whole range of institutions and different ways to treat people aren't there? There's all kinds of community orders as well as custodial sentences.

**JULIET LYONS:**

Well that's right, and I think there are options. I think one of the problems has been that the options have not been immediately apparent to the general public. When you look at public opinion polls and we've conducted a poll recently with the Daily Mirror and Smart Justice, looking at what do people actually want. They don't necessarily think prison is going to solve problems but they do have trouble conceptualising what will, and I think the government have got a very important role to play to explain to people that community penalties can be effective, that they can actually help people pay back to society, so paying back in terms of apologising for something, explaining, discussing, being involved in working out what would be the best form of punishment for this crime.

**MISHAL HUSAIN:**

So a whole range of options.

**JULIET LYONS:**

Community service, a range of options but predicated on the idea that it's important to recognise what you've done and to say sorry for what you've done.

**MISHAL HUSAIN:**

William Kennedy, I'm interested in the whole public opinion side of things because the newspapers particularly the tabloids are regularly full of screaming headlines about you know people being let out and re-offending. Is public opinion and the public mood relevant to you at the point of sentencing?

**JUDGE WILLIAM KENNEDY:**

Public opinion presumably guides parliament in deciding what should be the appropriate and the maximum sentence for a particular offence. Public opinion has apparently guided parliament to increase as you said the mandatory sentences so exponentially over the last few years so we are to an extent tied by public opinion to public opinion. Obviously we know that, and the court of appeal who direct us know that certain sorts of offending cause enormous public disquiet and in those circumstances they expect the public disquiet to be met by a sentence which the public will accept. On the other hand, many other offences that used to attract lengthy terms in prison, for example benefit fraud have been looked at now, are now being looked at in an entirely different way. And a non custodial emphasis being applied so the whole sentencing process changes as offending changes.

**MISHAL HUSAIN:**

Erwin from your own experience, in terms of this question about society and prison serving society, do you feel that your sentence and your incarceration did something to serve society as a whole?

**ERWIN JAMES:**

Well it did. In the end it did. But I mean my view is that prison is a valuable community resource. It is important as a school or hospital. But we don't use it in that way, we don't use that resource in that way so I found myself constantly surviving. I left behind people that will



never get out of prison. People that started off with sentences similar to mine who didn't make it through those years. That certainly didn't serve society. But you know a fundamental problem in our system is that we try to force together punishment and rehabilitation and they don't go together. They don't go together.

**MISHAL HUSAIN:**

So different kind of institution for punishment and a different kind for rehabilitation, totally separate?

**ERWIN JAMES:**

Well, I -

**MISHAL HUSAIN:**

Because then you're labelling people the minute they go in to that institution.

**ERWIN JAMES:**

I think the real time for punishment is at the judge's court. That's when punishment is handed down and that punishment is a prison sentence. That's a time for public opprobrium, shame, condemnation, embarrassment for the offender, a public show of punishment. When a person goes to prison it should be then a time for rebuilding and regrowing and positive initiatives. If you just send someone into a prison system where they live in fear and they live under a cloud of intimidation and it's all about survival of the fittest and the strongest and the meanest, I mean that's not a place for developing good citizens. I mean that's my point.

**MISHAL HUSAIN:**

Just a few final thoughts. Juliet, listening to what Erwin says, there is the kind of offender though who's not going to be at all shamed or humiliated by being a sentence handed down in a public courtroom, there's a much more hardened type out there.

**JULIET LYONS:**

Yes, I mean I think there's such a range of people in prison. You know we have to think about individuals and that's one of the hardest things to do is when you, as you said, at any one time there are 76,000 people in prison. But I think one of the things that happens to people often prison are, although they're there to lose their liberty, is that they lose their identity. They lose their sense of responsibility. So far from building responsibility we diminish it by imprisonment. I would like to see a much more effective, sophisticated, kind of punishment. A use of prison that would actually enable people to rebuilt as Erwin was saying.

**MISHAL HUSAIN:**

William Kennedy, is that true to you think, that in a sense prison is a blunt instrument?

**JUDGE WILLIAM KENNEDY:**

Yes, I think that there's no doubt about it. We've got, if we're going to incarcerate people try and use the time that they're there for some positive purpose otherwise than simply locking them up. It means I'm afraid a great deal of money being spent. But at the end of the year it costs sixty billion pounds ground costs each year, in losses and in consequential costs. Spending a tiny proportion of that on proper regimes within prison of education might well be a good investment.

**MISHAL HUSAIN:**

Carol the last word to you.

**CAROL HOWELLS:**

I think we're not achieving the aims of prison at the moment and partly that is due to the funding and to the purpose and to what actually happens once you go through those prison gates.

**MISHAL HUSAIN:**

Okay. Well here we must close. Has the discussion lodged new questions or nagging doubts in your mind? For my part I've certainly learnt a lot from hearing the familiar debate from

some unusual perspectives. Many thanks to our contributors Carol Howells, Juliet Lyons, Erwin James and William Kennedy for grappling so bravely with what's one of the most volatile subjects in the study of law.