

Management of Prisons and Probation: New Challenges and Innovative Responses

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New Challenges

- Pace of change
- Pandemic
- Economic, social, demographic
- Vulnerable people exploited ... and sometimes forced into crime themselves
- New technologies with potential for crime
- Changes and new insights – for example
 - Non-nationals
 - Mental health, trauma, learning difficulties

Need for creative and innovative responses

- Usual / familiar methods – not all very good in the first place – may not be fit for the present and future
- Technologies (assessment algorithms, surveillance, monitoring, remote supervision)
- Artificial intelligence
- Innovative methods

How are new proposals to be evaluated?

- Effectiveness
- Efficiency
- Economy
- Ethics

Effectiveness

- What works?
 - In reducing offending by convicted individuals
 - In reducing overall crime figures
 - In making sure that the orders of the court are properly carried out
 - In bringing some degree of closure to victims
- These are different projects

Efficiency

- Impact of innovations on other parts of the agency and on the wider criminal justice system
- Shifting of resources?
- Partnerships with other agencies and implications of the change for them

Economy

- Always a consideration for managers
- Many countries are under economic stress or recession
- Costs of changing (some of them not immediately apparent)
- Costs of not changing (some of them not immediately apparent)

Ethics

“... the pursuit of values such as justice, tolerance, decency, humanity and civility should be part of any penal institution's self-consciousness - an intrinsic and constitutive aspect of its role - rather than a diversion from its 'real' goals or an inhibition on its capacity to be 'effective'.”

David Garland

Justice

- ‘Justice is the first virtue of social institutions ... laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.’ (John Rawls)
- A criminal justice system that has lost sight of moral principles is no longer worthy of being described as a ‘justice’ system. ...
- It would be only a crime control system - and it wouldn't be much good at controlling crime anyway.

Ethics

- How work is carried out - not just measurable outcomes
- Defending and enhancing the rights of all concerned
- Treating people with dignity and respect
- Unfailing regard for their interests – even when their interests must take second place to others’
- Consultation and dialogue
- To help people to be at their best you must treat them well

Human Rights: Liberties and Claims

- Freedoms from (liberties) and also ...
- Claims – for example, a right to education, to a fair trial, to an effective legal remedy
- Positive obligations
- Right to rehabilitation
- Retain rights as fully as possible during the time of the sentence
- Right to fair opportunities / no unfair discrimination after sentence served

Council of Europe Conventions, Recommendations, Resolutions

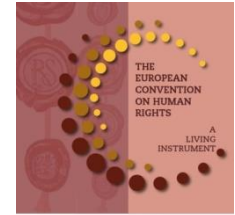
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COMPENDIUM OF CONVENTIONS, RECOMMENDATIONS AND RESOLUTIONS RELATING TO PRISONS AND COMMUNITY SANCTIONS AND MEASURES

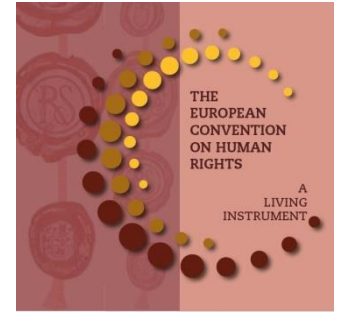
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The Convention: A Living Instrument



“... the Court interprets it dynamically, in the light of present-day conditions. By its case law the Court has extended the rights set out in the Convention, such that its provisions apply today to situations that were totally unforeseeable and unimaginable at the time it was first adopted, including issues related to new technologies, bioethics or the environment.”

A Living Instrument



- This applies just as much to the Recommendations
- Have regard to their ethos – not just the exact wording
- Basic principles are a resource here
- Recommendations should evolve, learning from attempts to put them into practice



When rights are in conflict

- ‘Conscience and convenience’ (David Rothman)
 - Lack of resources is not a justification for violation of fundamental rights
 - Yet there are other rights that may have to give way to other considerations
 - In all cases, attempts should be made to mitigate any threat to rights

When rights conflict with other rights

- No easy answer – depends on the rights
- Look to mitigate any dilution of rights
- Remember the rights of others (e.g. children of prisoners)
- Sometimes said that rights of offenders are in conflict with those of victims, but
 - Less often than supposed
 - ‘Offenders’ and ‘victims’ are not separate tribes – many people with convictions have been victims, perhaps especially women
 - Restorative justice seeks to enhance rights of both

Restorative Justice

- Recommendation CM/Rec (2018) 8 of the Committee of Ministers to member States concerning restorative justice in criminal matters
- Venice Declaration on the Role of Restorative Justice in Criminal Matters
- “not only a simple tool in the framework of the traditional approach to criminal justice, but a broader culture that should permeate the criminal justice system based on the participation of the victim and the offender on a voluntary basis, as well as other affected parties and the wider community in addressing and repairing the harm caused by crime”

Legitimacy with service users: Learning from lived experiences

- Need to learn much more from people who are and have been subject to punishment
- Pains of punishment – not always what they are imagined to be ...
- Shame, emotional pains and assaults on self-respect and identity can be harder to bear than the more obvious hardships
- And sometimes there are benefits
- Benefits and pains can take place during the same sentence

Legitimacy with courts and the public

- Legitimacy is achieved by being clear, accountable and open about what you are trying to accomplish
- ... and then by working well.
- It is not achieved by making exaggerated and unrealistic claims.
- Legitimacy must be constantly cultivated through dialogue and negotiation – it is not something that be ticked in a box as established for ever.

Emotions of punishment

- Anger
- Fear
- Aversion (feeling that someone who has committed a very serious crime does not belong among us)
- Punitivism is linked with these emotions
- These are ugly emotions that easily spread and affect other social relations
- Othering – for example, racism



“The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country.” (Winston Churchill 1910)



Punishment as declaration

- Penal institutions and practices declare / make statements to the whole society and to other countries
 - About what is considered unacceptable
 - But also about how we should respond to wrong doing, including our responsibility towards victims and to people who have committed crimes

As we punish, so we are

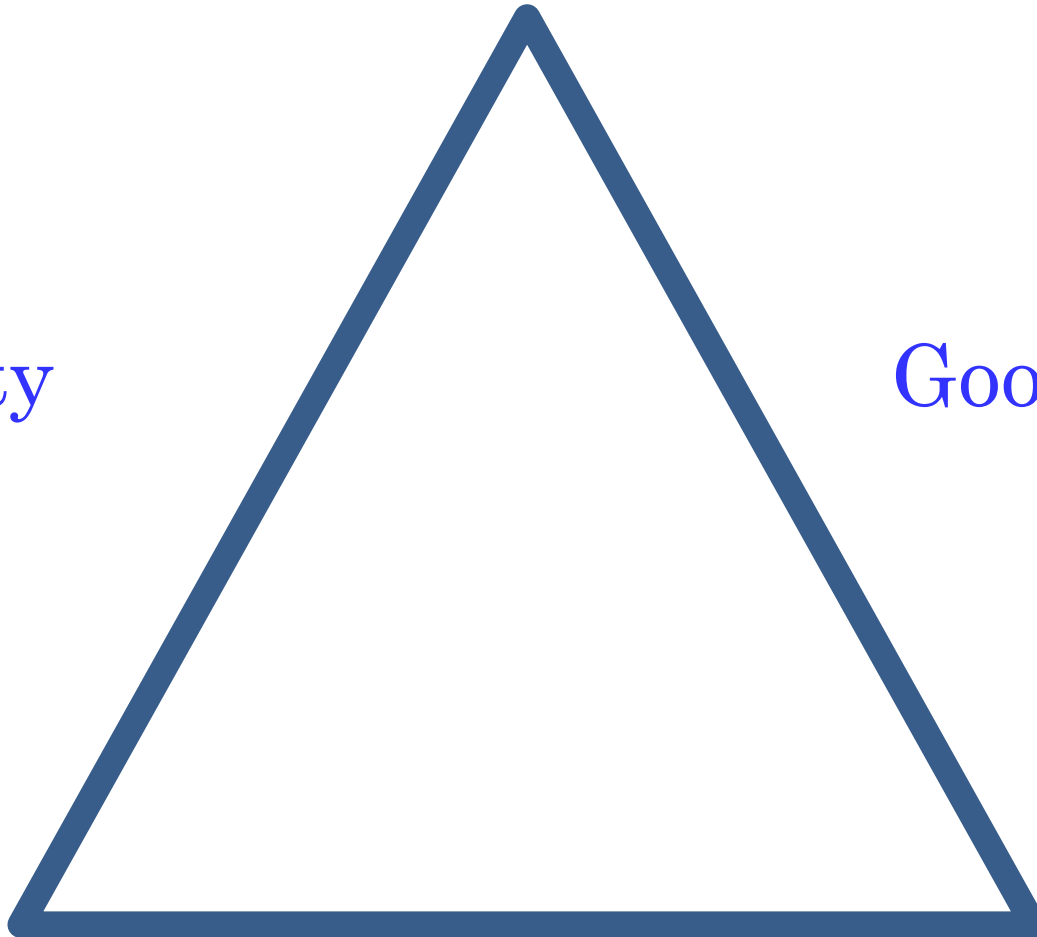
- The penal system of any country is an important part of its character
- And among the ways in which it is judged by other countries
- A ‘good society’ must be one that has just penal institutions and practices
- ‘... a nation's attitudes towards the methods [of punishment] it adopts have a tendency to pervade its culture. They move into and through society... As we punish, so we are.’
(Anne-Marie Cusac)

Prisons

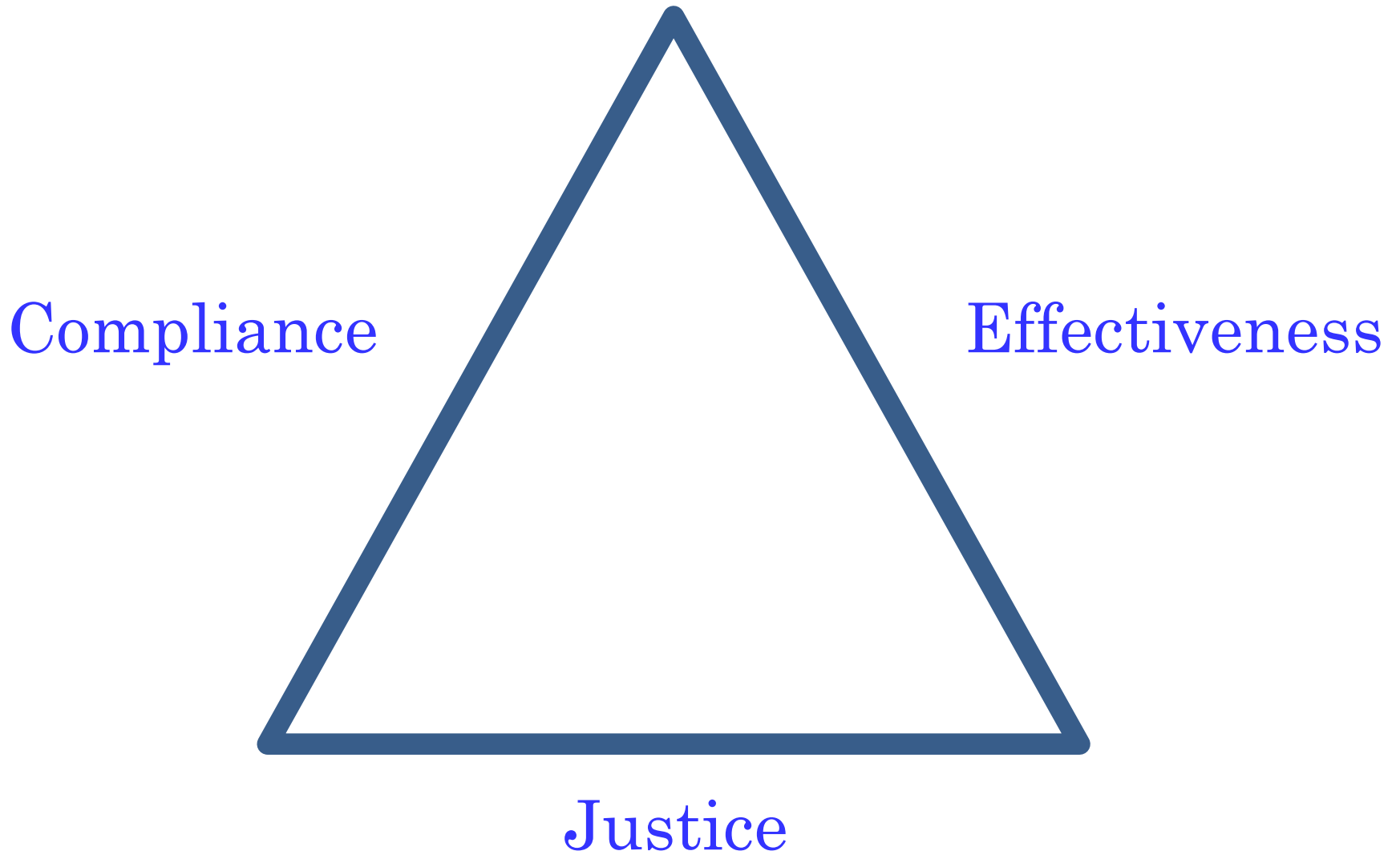
Security

Good order

Justice



Community Sanctions and Measures



Impact of change

- Push and pull factors
- Will this serve to defend and / or enhance human rights?
- Will its effects impact differently on different groups (anti-discrimination)? Especially
 - Women
 - Minority ethnic groups
 - Non-nationals
- First questions and not afterthoughts

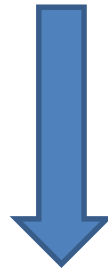
Rights of staff

- An approach that is guided by human rights and ethics will enrich the staff experience ...
- Making them justifiably proud of their work
- People who can find fulfilment in their practice do their work better
- Giving staff that sense of worth is the best possible way of enhancing the rights of offenders

Ethics supports purposes

- Basing work on human rights and justice will make institutions
 - more effective (because people will be more motivated and enabled to change)
 - more efficient (because staff will be able to spend time on tasks that matter rather than on enforcement and discipline)
 - more economical (because resources can be directed to core tasks)
- All of this advances the rights of the community by reducing crime

Human rights and ethics



Effectiveness

Efficiency

Economy