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A Meaningful Criminal Justice System for the Future— An English Perspective

**The Fourth Annual John E. James
Distinguished Lecture
Walter F. George School of Law,
Mercer University,
Macon, Georgia,
September 21, 2004**

by The Rt Hon. Baroness Scotland of Asthal QC*

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After graduating with LLB Hons (London), Patricia Scotland was called to the Bar, Middle Temple, in 1977, received Silk in 1991, and became a Bencher in 1997. She has an Honorary Doctorate from the University of Westminster, the University of Buckingham, and the University of Leicester.

She is a member of the Bar of Antigua and the Commonwealth of Dominica; was appointed an Assistant Recorder in 1994, Recorder in 2000, and approved to sit as a Deputy High Court Judge of the Family Division; she is a Door Tenant at Bridewell Chambers.

I. INTRODUCTION—CRIME AND SOCIETY

Good evening. I wanted to say straightaway how honoured I am to have been invited to give the prestigious John E. James Distinguished Lecture. And it is a particular pleasure to be speaking here at Mercer University.

When Jesse Mercer founded the University a hundred and seventy years ago, he could not have known it would grow so big or develop such renown. If he saw the University today he would be staggered at its size, scope, and influence.

But he would be gladdened to see how the values on which he founded the University still pervade its work and its people. Those values—of tolerance and freedom of thought allied to a clear and unashamed

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She is a Dame of the Sacred Military Constantinian Order of Saint Georgia.

She was awarded Peer of the Year in the House Magazine 2004 Awards, Peer of the Year in the Channel 4 Political Awards 2004, and Parliamentarian of the Year in the Political Studies Association Awards 2004.

She is a patron of The Margaret Beauford Institute, GAP, The Frank Longford Charitable Trust, sponsor of the George Viner Memorial Fund Trust, and is on the Advisory Panel of the British American Project.

She is a member of Thomas More Society and the Lawyers' Christian Fellowship. She is a member of the All Parliamentary Group on Breast Cancer, The Parliamentary Labour Party Women's Group, the House of Lords All Party Parliamentary London Group, the All Party Parliamentary Group of CAFOD, the All Party Parliamentary Group for Children, and the Lords' Prayer Group.

She is a former member of the Bar Public Relations Committee, Race Relations Committee, Professional Conduct Committee, Judicial Studies Board Ethnic Minority Advisory Committee, House of Commons Working Party on Child Abduction, Legal Advisory Panel on the National Consumer Council, the Independent Committee for the Supervision of Standards of Telephone Information Services, and the National Advisory Committee on Mentally Disordered Offenders. In addition, she was formerly one of Her Majesty's Commissioners for Racial Equality, a former Honorary President of the Trinity Hall Law Society, a former Chairman of the ILEA Disciplinary Tribunal, a member of the BBC World Service Consultative Group, Chairman of HMG Caribbean Advisory Group, the Dominican Representative of the Council of The British Commonwealth Ex-Service league and served as a member of the Millennium Commission from 1994 to 1999.

She has specialized in family and public law and has chaired and represented parties in a number of inquiries relating to Child Abuse, Mental Health, and Housing. She was voted Black Woman of the Year (Law) 1992.

She was founder member and former Head of Chambers of 1 Gray's Inn Square.

Baroness Scotland was created a peer as Baroness Scotland of Asthal, of Asthal in the County of Oxfordshire, in 1997 and was raised to the Privy Council in July 2001.

She married in 1985 and has two sons.

affirmation of right and wrong—are the best possible foundation on which a university can build. I am glad to be here.

I hardly need to underline the importance of getting criminal justice right. Sadly, there is not a single one of us who will not be affected by the criminal justice system. Whether we are victims of crime ourselves, or members of our family are victims of crime, whether we are accused of crimes, or called to give evidence, criminal justice touches the lives of all of us.

The point was made with typical lucidity by a late son of Georgia, Martin Luther King. He said, “[L]aw and order exist for the purpose of establishing justice and . . . when they fail in this purpose they become the dangerously structured dams which block the flow of social progress.”¹

He was speaking in vastly different circumstances from those we face today. Thankfully, society and the law have moved on at an incredible speed, and mostly for the better. But the principles are the same, and so are the underlying concerns. Dr. King knew that a government had to protect *all* its citizens from racial prejudice and from crime. Justice, and equal access to justice, are not optional extras for a healthy society. They are its core.

But societies do not stay still. Martin Luther King is owed a debt of gratitude by the United States, and by the whole world, for the moral lead he gave race and tolerance. But the issues he raised about the relationship between governments and their citizens are just as valid today. It is an iron rule of policy and politics that as soon as governments meet one challenge, changes in society mean that new ones arise.

In this Lecture, I want to talk about how the English criminal justice system is changing to keep up with society. I should explain that I come to this lecture wearing two hats. I am lucky enough to be the Government Minister charged with modernizing the criminal justice system. Few challenges are so engrossing, few political mandates so charged, few chalices so poisoned. But I am also a lawyer—for twenty-two years I went to court on a daily basis. I became a Government Minister in 1999. Since then, I suppose I have been responsible for helping to formulate our law. The law is in my blood, and its core values of equity and fairness are my core values too.

In the United Kingdom, we have long prided ourselves on having what we thought was one of the best legal systems in the world. In many ways, it is an admirable system, the product of centuries of evolution, filled with lawyers and judges of real brilliance and dedication, one of

1. Letter from Birmingham Jail, Dr. Martin Luther King, Jr., available at <http://www.Stanford.edu/group/king/frequentdocs/birmingham.pdf>.

whom we are privileged to have with us today. Lord Slynn of Hadley is one of our best-loved judges and rightly so. But pride can sometimes lead to complacency, and complacency can blind us to the need for change.

It is a system that has its origins in the middle ages, and it can draw on a long history of legal practice and deeply embedded traditions. The wigs and gowns, the pomp and the ceremony that are so often associated with the British legal system still exist because they reflect the system's deep and ancient roots.

However, for these very reasons, we need to keep asking whether this criminal justice system meets the needs of the modern world. The last fifty years have brought enormous changes to British society. The social revolution of the 1960s, immigration, globalization, and the twenty-four hour news culture have transformed communities out of all recognition from those that existed just after the Second World War.

It is my government's view that with this transformation has come a disconnect between what the community needs and what the criminal justice system is supplying. It is this that I want to talk to you about today: Our attempt to remake this connection between society and the criminal justice system.

II. BACKGROUND TO THE BRITISH CRIMINAL JUSTICE SYSTEM

Before I go any further, however, I thought it would be a good idea to give those unfamiliar with the British criminal justice system a bit of background. The first thing to say is that, because the United Kingdom is not a federal state, there is no division between federal and state systems like there is in the United States. Ours is a unitary system.

But if that makes it sound like the system is happily simple, think again. Scotland and Northern Ireland have separate criminal justice systems entirely. Throughout this speech I will, therefore, be referring to the criminal justice system in England and Wales.

Unlike the United States, there is no single Department of Justice overseeing administration of the justice system. Instead, three government departments share responsibility for running the system. This is a big plus because it helps us maintain a strict separation of powers. But it has also made it harder to manage and reform the system in a planned, coherent, and effective way.

The first of the three departments involved is the Home Office, where I am a Minister of State. This is the department where new criminal justice legislation is formulated and sent to Parliament to be enacted. The Home Office also oversees the forty-three local police forces in England and Wales, which are independent from central Government.

It is also responsible for the correctional services—the prisons and probation.

The Crown Prosecution Service is the second of the three. It is responsible for prosecuting people charged (or indicted to use the U.S. term) with a criminal offence. The department is led by a Director of Public Prosecutions and reports to the Attorney General, who holds parliamentary responsibility for the Service and is also the senior legal adviser to the Government. Like the Police, the Crown Prosecution Service is divided into over forty areas throughout England and Wales, each with a Chief Crown Prosecutor.

The third key criminal justice department is the Department of Constitutional Affairs. The Department manages the court system (both civil and criminal) across England and Wales. The department is headed by the Lord Chancellor, who has a pivotal role in the justice system as a cabinet minister in the Government, head of the judiciary, and speaker in the Upper Legislative Chamber, the House of Lords.

Historically, the role of the Lord Chancellor has worked well as a balancing influence between the executive, the legislature, and the judiciary. However, there is now a debate about the merits of a single person straddling all three branches of government, and whether a clearer separation of powers would be more sensible. But that is a whole different story, which can be the subject of the next lecture I give here.

III. JOINING UP/PARTNERSHIP WORKING/CONSOLIDATION

So you can see how the separation of powers between the departments reflects underlying principles, such as the independence of the judiciary and the separation of police from prosecutors. However, this separation of powers does not always lend itself to the efficient administration of justice.

In his report on the criminal courts in 2001, one of our Lord Justices, Lord Justice Auld, who occupies roughly the same role as your Supreme Court Justices, noted “a multiplicity of inter-departmental and inter-agency bodies at national and local levels [. . .] [with] [m]ostly . . . no authority or operational function.”² This has meant that our criminal justice system has responded haphazardly and reactively to the changes in the communities it served.

Let us now go back for a minute to those communities, which existed in the United Kingdom at the end of the Second World War. Communities then were more homogenous, more paternalistic, and more self-

2. THE RIGHT HONOURABLE LORD JUSTICE AULD, *REVIEW OF THE CRIMINAL COURTS OF ENGLAND* (2000).

contained than they are today. This was reflected in the way such communities regarded the criminal justice system. Essentially, it was there to deliver justice and punishment.

This may seem obvious, but let me give you an illustration of why things are not so simple today. Let us imagine that John, living in Liverpool in the north of England, is wrongfully dismissed from his job. To find a new job, he travels about four hundred miles with his family to London in the south.

Unfortunately, he fails to hold down a regular position, and his family falls into debt. This leads to housing problems, and the strain causes his marriage to collapse. John decides to return to Liverpool, but his ex-wife and children remain in London. He has little contact with his family, and his ex-wife struggles to keep the family afloat. The children perform badly at school and drift into drugs and criminality.

In the 1950s this scenario could have existed, but it would have been much less likely. Even if John had lost his job, he would have been much less likely to leave his hometown. Even if his marriage were under strain, he would have been less likely to get divorced. And if his children had drifted into criminality, more people in the community would have known about the family's history. They would have expected the criminal justice system to provide the justice and the punishment, and they could return to the community afterwards.

Moreover, in today's Britain, John is just as likely to be Ahmed or Hussein. He, and certainly his parents, might not speak fluent English. When his family came to England, they might have brought with them a very different attitude to authority. Instead of giving it the trust, which it generally enjoys in England, they might see it with fear and suspicion.

This is deliberately simplistic, but serves to make a point. In short, we do not live in small, self-governing communities like this any more. Today's criminal justice system cannot afford to simply deliver justice as it used to fifty years ago. The criminal justice system cannot try to exist in isolation from the rest of society; in fact, it relies on society and government to tackle the root causes of crimes like those in the case of John's children.

This is why, throughout the government's programme, we have introduced schemes, which are designed to help the development of a new type of "modern community." They promote basic social order, decent behaviour, and the socialization of the young into community norms.

Fundamental to this is the whole of the government, including the courts, the prisons and probation service, and government departments, working together to support young people and families during the key

stages of their development. Sure Start is a programme run by our Department of Education and Skills providing health, education, childcare, and financial advice for families with toddlers in the most disadvantaged neighbourhoods.

But I must give credit where it is due. Sure Start is based on the U.S. federal programme, Head Start. For older children we have Connexions, which helps teenagers make the difficult transition to adult life by providing access to personal advisers and a range of extra-curricular activities.

We have also made structural changes to put the *whole* criminal justice system back into the heart of our communities. In April 2003, we established Criminal Justice Boards at national and local levels. Local Criminal Justice Boards bring together all the key players in criminal justice in each of the forty-two criminal justice areas of England and Wales.

Accountable for local targets and working together to improve the whole of the criminal justice system in their area, the local boards have been a landmark in helping us develop solutions across the whole of the system. They give local communities a chance to hold one single body accountable for the services they receive.

At a national level, the new National Criminal Justice Board brings together all the main national players—the Ministers from key departments, heads of the court and prison services, and senior civil servants. Together, we agree upon clear priorities and strategy for the criminal justice system as a whole.

In some parts of the system, more fundamental shake-ups are underway. These have sometimes been controversial, but they are also necessary. One such example is the creation of Her Majesty's Courts Service; the national courts agency, which for the first time puts all courts in England and Wales under one administrative roof.

Previously, there were different bodies managing different parts of the system. One body managed Magistrates' Courts, which primarily deal with primary misdemeanours and minor felonies and have no jury. Another body managed the Higher Courts, including the Crown Courts, which deal with felonies and have a jury. The change will provide greater efficiency and make court work more transparent, and less arcane, to the general public.

IV. MEANINGFUL END-TO-END SERVICE

Structural change, however, does not lead to individual satisfaction with the system. The formation of Criminal Justice Boards and the unification of Courts' Services mean little to the law-abiding citizen if prolific offenders keep on offending, victims and witnesses are left to

fend for themselves, or cases collapse through faulty administration. Too often the criminal justice system has been the equivalent of a relay team, in which each of the runners is individually excellent, but who keep dropping the baton.

We have been careful not to rush into solving such a fundamental flaw in the system. Instead, we have done some serious analysis and made informed decisions based on empirical evidence about the fundamental nature of the problem. In particular, we have asked what impact these flaws actually have had on the public, who the criminal justice system serves?

Our research showed that, on a basic level, these flaws have led to a gradual erosion of public trust and an increase in cynicism about the criminal justice system. In the more impersonal modern world, people are less likely to know those who are running their local public service. They, therefore, tend to be less forgiving of systems that fail.

The public does not see all the valid reasons why a system is struggling; they just see the flaws, as those flaws affect them. When they see cases collapsing, or victims and witnesses treated badly, or child offenders given inappropriate sentences, they lose their faith that the criminal justice system works, and works for them.

So what are we doing about it? Perhaps most importantly, we have begun improving case management. We have done this by looking at the problems in the system as a whole, rather than trying to fix individual problems in isolation. This has led to the introduction of the criminal case management programme. This is already making a major difference to how cases go through the system.

One part of the criminal case management programme is ensuring that suspects initially are charged with the right offence. Too often, the charge (or indictment) brought by the police has been wrong from the outset, causing cases to collapse later in the process with all the resulting waste of time and money, not to mention the possibility that an offender has escaped justice.

This may seem a basic thing to get right. But the fact that changes have been necessary is simply a reflection of an increasingly complex legal environment and a system that has failed to keep up.

The key is that lawyers should be involved from the start—a lesson we have learned from you. The Criminal Justice Act of last year, therefore, makes charging (or indicting) the statutory responsibility of the Crown Prosecution Service, rather than the Police. Involving the legal experts so early in the process increases the likelihood of successful prosecutions. The change involves prosecuting lawyers working much closer with police officers by physically locating them in police stations.

Another consequence of changes in society is the increase of prolific offenders. Offenders find it easier to disappear into Britain's modern towns and cities and feel they can escape effective punishment over and over again. Furthermore, our research has shown that ten percent of offenders are responsible for over fifty percent of all crimes. In response to this, society feels justifiably angry and often powerless to do anything about it.

So, we have been stepping up efforts to target those ten percent. Our prolific and other priority offender strategy empowers local criminal justice boards and their partners to target the most prolific, anti-social, and harmful offenders, who have been identified locally through police intelligence.

The messages of the strategy are clear: prevent and deter, catch and convict, rehabilitate and resettle. The role of the criminal justice system must now be wider than just catching and convicting.

Enforcement must also be effective. Nothing undermines public confidence more than the spectre of criminals parading their assets from criminal activity or flouting fines.

The newly established Assets Recovery Agency,³ based on U.S. experience with the RICO laws, has recovered over £25 million (or \$44.75 million) from criminals in its first year, well ahead of its £10 million (or \$18 million) target.⁴

In March 2004, "Operation Payback," a week long national blitz on outstanding fines in March 2004, yielded an extra half a million pounds (or \$895,000), and the fines collection rates, in general, are making significant improvements.

We are closing loopholes, tightening procedures, improving communications, and targeting resources to where they will make the biggest difference. But it is not just about procedures. It is about offering a seamless service to the law-abiding citizen and restoring public confidence that the criminal justice system really can serve their needs.

V. MORE EFFECTIVE SENTENCING AND MANAGEMENT OF OFFENDERS

If we are to win back that public confidence, we need to get sentencing right. Current perception among the British public, like in other areas of the criminal justice system, is that sentencing patterns are too soft on the criminal. But to get this right, we must not increase the sentences

3. Please refer to the following website for more information: <http://www.assetsrecovery.gov.uk>.

4. *Id.*

in response to popular pressure. We must think carefully about the role we want sentences to play, and what they are supposed to achieve.

The most important purpose of sentencing is that the public should be protected. This means that serious offenders should be punished in a way that ensures public safety and also acts as a deterrent for others contemplating committing similar offences. Whilst dealing with the complex challenges of looking after offenders, we must never forget that a government's primary responsibility is the safety of its citizens.

But effective sentencing should be as much about reducing re-offending as about removal from society. We do not believe that prison and probation should be a revolving door for offenders, with the sentencers, the prison service, and probation officers all blaming each other when an offender is back in the dock shortly after his sentence is finished. It is a cycle in no one's interest.

But as anyone involved in criminal justice knows, resources are painfully finite. The most effective systems are often the most expensive. Over time, they may be cost-effective for society as a whole. But I have a budget, and I need to get the best value for the money I have.

So if those are some of the concerns, what practical measures are we undertaking? The Criminal Justice Act⁵ of last year introduces new sentencing options—with custodial sentences for the most dangerous and violent offenders and tough new community punishments for other offenders.⁶

For example, a new programme called Custody Plus is being developed to replace the ineffective short prison sentence. Once capacity has been developed to implement it, Custody Plus will see up to 35,000 offenders who currently receive short prison sentences supervised for up to forty-nine weeks post-release. Another scheme, Intermittent Custody, is currently being piloted in which sentenced offenders are spending either weekends or weekdays in prison, and the rest of the week in the community.

The Act also establishes the Sentencing Guidelines Council.⁷ The Council is creating and revising a comprehensive set of sentencing guidelines for all offences. It has a statutory duty to ensure that these guidelines achieve greater consistency in sentencing and to obtain value for money in the use of correctional resources. The Council is truly representative of the whole criminal justice system and brings together

5. Criminal Justice Act 2003. Please refer to the following website for more information: <http://www.cjsonline.gov.uk/thecjs/parliament/legislation/index.html>.

6. *Id.*

7. Please refer to the following website for more information: <http://www.sentencingguidelines.gov.uk/index.html>.

members of the judiciary, police, probation and prison services, lawyers and, importantly, victims of crime.

But sentences are only effective if they are properly enforced and if the public feels they are properly enforced. In late 2003, we commissioned a review of the correctional services in England and Wales. The findings made a convincing case for a national offender management service, bringing together the prisons and the probation service in one coherent whole.

The review drew heavily on United States state experience, in particular from Virginia and Minnesota. As another example of international knowledge sharing, practitioners from both states came over to the United Kingdom to address the Sentencing Guidelines Council in July.

The review found that, while the existing prison and probation services have made significant improvements over recent years, the corrections system is still dominated by two services, which have remained largely in their own silos. This day-to-day separation has meant that all too often, offenders have fallen through gaps in the system. Put simply, there was no clear ownership of the responsibility to reduce re-offending.

In January 2004, therefore, we announced the creation of the National Offender Management Service. What the creation of a national offender management service will bring, for the first time, is clarity of focus on the offender and a clear responsibility for reducing re-offending.

Key to this will be the creation of ten Regional Offender Managers. They will "own" the implementation of the sentence, from beginning to end and, therefore, have the necessary focus and authority to reduce re-offending.

VI. PUTTING VICTIMS, WITNESSES, AND LOCAL COMMUNITIES AT THE HEART OF THE CRIMINAL JUSTICE SYSTEM

Throughout all our reforms, we have kept at the forefront of our minds the pressing need to build the public's confidence in the criminal justice system and put victims and witnesses at the heart of our efforts.

Confidence in the criminal justice system is getting better, but current levels of public confidence in bringing offenders to justice in England and Wales have only just reached forty percent. The British public's confidence in the criminal justice system's effectiveness in reducing crime is at a worrying thirty-four percent. Yet, seventy-eight percent of defendants and offenders have confidence in the criminal justice system and believe it to be fair.

The majority of our society still lacks confidence in the criminal justice system's ability to deliver. And trust is lowest among those who need it

the most—among racial and religious minorities, the poor, and those groups most likely to become victims of crime.

So what do we do to win back public trust? The key is that we involve the public in the process of justice. This means providing better service to victims and witnesses. But it also means giving members of the public the opportunity to have a stake in the process.

To address the first point, we have launched a project for victims and witnesses—the *No Witness, No Justice* project, which sets up specialist Witness Care Units throughout the country. Witness Care Units will, for the first time, provide a single point of contact for victims and witnesses from charge through disposal.

They will ensure that victims and witnesses have the right level of emotional and practical support to enable them to give evidence successfully. And they will help us ensure that we meet the needs of each individual caught up in the criminal justice system. For instance, we will now ensure that every victim gives a personal statement, which will enable the criminal justice system to take account of their view before, during, and after trials.

As an example of something that helps involve the community in the process of justice, nothing is more exciting than the pioneering community justice centre we are launching in Liverpool. It is based on the model of Red Hook Community Justice Center in New York.

The evidence from Red Hook shows how tremendously effective such centres have been in bridging the gap between the criminal justice system. Using a problem-solving approach to cases, the centre in Liverpool will tailor punishment and rehabilitation to reflect the damage done to local neighbourhoods as well as to individual people.

We are also introducing the innovative pilot projects in restorative justice. These give victims and representatives of the community the chance to meet either face to face or communicate indirectly with offenders.

Restorative justice is vital in giving victims the opportunity to have their say, to explain how they and their family have been affected by the offence, to ask the offender why they committed the crime, and to receive an explanation. Restorative justice also helps offenders to understand the impact of their crime. The evidence shows a positive effect on re-offending and high levels of satisfaction among victims and community groups.

We have also set up what we have called Community Legal Service Partnerships. These Partnerships are a way of taking legal issues out to the communities and not expecting them to find their own way through a maze of different providers. The Partnerships bring together

local organizations offering legal advice and services helping people find quick, responsive, and expert support more easily.

We have also responded to the pleas of communities blighted by anti-social behaviour, calls which had been ignored for too long. There is now a range of legal tools in place, including specialist prosecutors and anti-social behaviour orders. These changes really do work. The latest British Crime Survey has shown a significant drop in perceptions of anti-social behaviour over the last year.

VII. CONCLUSION

This evening I have tried to give you an idea of at least some of the many projects and reforms we are instituting in the English Criminal Justice System. The speed of change has been breath-taking, but then so has the speed of change in society, and we have to keep up.

Some of the changes I have spoken about are copied from the good practice in the United States. Some may well be uniquely British solutions to British problems. However, there is one universal truth—every criminal justice system needs to become more responsive and adaptable to keep pace with the societies they serve.
