



**“Creating Criminals: Crime and Punishment in a market society”**

**Speech by Baroness Vivien Stern to Prison Fellowship New Zealand 25<sup>th</sup>  
Anniversary Conference, May 2008**

I am very honoured to be here at this very important conference for the 25<sup>th</sup> anniversary of Prison Fellowship New Zealand. It is good to follow two such eminent speakers. Ron Nikkel gave us such a good tour through the prisons of the world and the harm they do. I was also glad to hear Simon Power – New Zealand is lucky to have such a thoughtful and well informed politician.

I should explain briefly, for those of you not here yesterday, why I am flaunting this title of Baroness. I have no castle, no riches, no aristocratic family. What it means is that I am a member of the House of Lords, the upper house of our bi-cameral parliament. Baroness is just the name that describes a female member of that House.

At the House of Lords one evening I found myself chairing a meeting in one of our biggest Committee Rooms about the laws on prostitution. The Government was planning to put some clauses in a Criminal Justice Bill going through Parliament to make women arrested for prostitution undergo compulsory rehabilitation courses with imprisonment as a penalty if they failed to comply.

This meeting I chaired was to voice opposition to this move. It was packed with were representatives from the English Collective of Prostitutes to the Mothers' Union. The star speaker at the meeting was Catherine Healy, national coordinator of the New Zealand Prostitutes Collective who was talking about New Zealand's successful decriminalisation of prostitution in 2003. She was wildly applauded. The campaign to learn from New Zealand was successful. The Government dropped the whole section on prostitution from the Bill and promised that before any new proposals for legislation came to Parliament they would study the New Zealand system. So New Zealand got a lot of gratitude and admiration for that.

Decriminalisation of prostitution is clearly a sane, humane policy that puts harm reduction before pointless punishment. Sadly you, like us, are not doing much decriminalisation, not much putting harm reduction before pointless punishment. You, like us, are in the creating criminals business.

This is how it works. This is the story of a boy called Joseph Scholes. His story does not take long to tell. He had an unhappy childhood. It is said that he was severely sexually abused as a child by a member of his father's family. As a teenager he suffered depression and began to do injuries to himself. In November 2001 he tried to kill himself by taking an overdose and jumping to the ground from a window.

Ambulance staff came to take him to hospital. He attacked one of them. After the hospital had dealt with him he was charged, prosecuted and convicted for the attack on the ambulance worker. He became more disturbed and was then put into a children's home to be looked after by the local authority. One night he went out from the children's home with some other children and participated in stealing three mobile phones from people on the street. He was arrested and charged. Whilst waiting for the trial he slashed his face thirty times with a knife. The walls of his room were so covered with blood they had to be repainted. When the case came to trial on 15 March 2002 the court was told that he had serious mental problems. The judge after lengthy reflection gave him a two-year prison sentence and asked the proper authorities to take note of Joseph's condition.

The Youth Justice Board is a national body that places children in secure custody. They were asked to place him in a local authority secure unit with social services. But they did not. They sent him to a youth prison called Stoke Heath. Because they were worried about him in the prison they put him in a special cell. To protect him they took away all his clothes and left him there naked except for a garment described by his mother as 'not unlike a horse blanket'. On his ninth day in Stoke Heath prison Joseph, aged 16 years and one month, hanged himself with a sheet from the bars of his cell.

Here is another story, about Patricia Amos. I do not know Mrs Amos but I have read a lot about her. She is a mother with three daughters. She has had problems in her life. She had one kidney removed and became addicted to painkillers. She then started taking heroin, but after a while she tried to change her life by undertaking treatment. The treatment was successful and the drug problem was over. But in the meantime her mother had become the carer looking after them all.

Then one day the daughters came home from school to find their grandmother lying on the floor. She died 24 hours later. After that one of the daughters, Jackie, became very unhappy and would not go to school. In 2001 not sending your children to school became a crime that carried the punishment of prison. Mrs Amos was sent to prison for one month because the court listened to her story and decided that she had not tried hard enough to get her daughter Jackie to go to school.

My next character is also a woman – Angela Schumann. She went with her daughter Lorraine who was nearly two and jumped from a very high bridge. Unexpectedly they survived. Angela was charged with attempted murder. The court heard she had reached the depths of despair after the break up of her marriage to Julio. She was deeply religious and believed the deaths "would lead to an afterlife where she could be with her daughter in a place where they could be happy together." She suffered a fractured spine in the fall and spent almost two months in hospital. A psychiatrist said she was suffering from a "depressive disorder" as a result of her lack of contact with the child. She was prosecuted and sentenced to 18 months in prison for attempted murder.

What happened to these people, Joseph, Patricia and Angela, illustrates the first point I want to make, the point about creating criminals. How do we make criminals? First by putting on crime spectacles when looking at certain people. We see a very disturbed child. He is clearly, undeniably ill. Joseph Scholes was undeniably ill. The judge knew that. Everyone dealing with him knew that. He attacked ambulance staff because he was ill. He went out mobile phone stealing when he was ill. The most noticeable and measurable aspect of his life was that he was ill. But the authorities put on the crime spectacles and they saw a teenager who assaults ambulance staff and they saw crime. After the outing to steal mobile phones, they saw not just crime

but 'persistent young offender'. No-one saw 'illness' and said 'psychiatric treatment'. The system chose a different set of definitions and thus we got a different, and tragic, outcome.

With Mrs Amos the authorities saw an act that did not fit in with the way they want the world to be. School is good. Children must go there. Very reasonable. How can we get people to make sure their children go there? A range of answers will come to the minds of everyone in this audience. Find out why they are not going. If they are not going because they fear leaving their mother on her own because she might go back on heroin, then there is a problem to solve. Perhaps they don't go because the school is a frightening hostile place. There too is a problem to solve. But the authorities decided to take another path. Instead of solving problems it was decided to create more crimes. Not sending your children to school became not a social problem but a crime.

Angela Schumann who jumped from the bridge should never have gone to prison – the prosecutor put on the wrong spectacles there - and fortunately I was not the only person to take that view. When her appeal came up before the Lord Chief Justice, Lord Phillips, he said "We have asked ourselves is it really necessary or was it really necessary to send this unhappy woman to prison to punish her for a momentary aberration which led her to try and take her own and her child's life? There is one word that you will not read in the sentencing guidelines and that is 'mercy'. There are occasions where the court can put the guidelines and authorities on one side and apply mercy instead."

Angela was given a three-year supervision order but she still has a conviction for attempted murder. In most countries this would not have happened – she would not have been created a criminal.

Here is another way of creating criminals – an anti-social behaviour order. An anti-social behaviour order is an order made under a civil process that stops people going to certain places and doing certain things, mainly disadvantaged children who need special education and don't get it.

One 13 year-old had 60 prohibitions, including not to throw eggs at the public and not to swear in public places. Eddie Jones, a homeless alcoholic who was sent to prison for a year (a 12-month sentence) because the day he came out of prison where he had served a sentence for breaching an anti-social behaviour order he went to a pub in the centre of Wrexham for a drink. He is banned from going to city centre pubs. The judge said that at least he would have a bed in prison. She had no option but to send him to prison, she said.

It might help to explain how crime is created – how a whole society puts on the crime spectacles – if I say a word about Afghanistan.

We had the opportunity to do a report for our Foreign Ministry on the justice system in Afghanistan. I discovered that the international community in Afghanistan had, amongst other things, introduced a draconian anti-narcotics law. This is a country whose biggest export is opium. This law was not just to catch the big organisers of the drug trade – they are meant to be caught by this law; they built a special prison for them all which cost millions – they caught three I think and they escaped and the prison is empty. The law mainly now criminalises women who have no other pain killers, women who use opium for their sick children, the poor people at the bottom.

It is the clearest example of how to create a nation of criminals to no good effect instead of looking at all the other possibilities such as crop substitution or making the opium crop legal by buying it for pharmaceutical purposes – many ideas have been mooted – and it shows who is primarily affected by these policies everywhere.

I expect this is happening in New Zealand too. At least I noticed the creation of a specific offence called 'Graffiti vandalism' which makes it illegal to sell spray cans to those under 18.

So what are we doing here? We are filling the crime category with people whose acts can indeed be defined as criminal, but which should in fact be defined as manifestations of some social distress. And we create new crimes to absorb all the socially annoying or uncomfortable acts that people engage in.

Let us move on to ask, who is primarily affected by these policies? Do they impact equally on all sections of society? In fact of course, this increase in criminalisation affects mostly those at the bottom of society, the poor and the marginalized and the minorities. In England and Wales if we just look at the women we imprison, of the women sent to prison 15 out of every hundred had previously been an inpatient in a psychiatric hospital. Nearly four of ten had already tried suicide. Four of ten were drug users. Five out of ten had been the victims of domestic abuse and three out of ten the victims of sexual abuse.

Yet, their victim hood is of no account once the label of offenders is fastened upon them.

What does this information tell us about the operation of crime policy? It tells us that crime control is impacting substantially on people with problems that society has failed to deal with. Children from care are highly over- represented in prison. The care system failed. Children who did not go to school are highly over-represented in prison. The education system failed. Women who have been abused and ill-treated to the point of trying to kill themselves are over-represented in prison. The mental health services failed. We are choosing to punish many people whom life has already punished severely in other ways.

We have redefined problems of social deprivation and poverty as problems of crime and of controlling risky and annoying behaviour. Once we have done that, we have changed the shape of the issue and all those involved put on different spectacles and instead of seeing that some people in their community have been left behind and that our social policies need re-thinking they see a given, a pool perhaps of people who are risky and need controlling, a pool of people different from themselves.

And then they start thinking in a certain way. They don't think 'let's get these people health care; let's work to explain to society how if these people are helped we all benefit and we are all safer.' Basically they go shopping.

Shopping!! They say there are things we need to buy to deal with this, and then the commercial sellers of these things get organised and the market in crime control takes off. Canadians make money out of cognitive behavioural programmes. Americans make money out of IT databases that often don't work. Electronic monitoring comes in – that is a great profit-earner and not very effective according to research done in Scotland.

This way of thinking has had a very deep effect on criminal justice thinking in some Anglo-Saxon countries. There is a cautionary tale from England and Wales here. In

2003 the Government suddenly decided - without consultation and over a Christmas break – to introduce something called the National Offender Management Service, or NOMS, and something called seamless end to end offender management. It found no favour with anyone except the Government. The building in which it was being devised was in a street called Marsham Street, so it became known as Nightmare on Marsham Street.

The hidden agenda was the part-privatisation of the probation service. There was enormous difficulty in getting the legislation about this through Parliament and in the end the ambitions for privatisation were scaled back considerably. The seamless end to end offender management was to be based on a computer database called C-Nomis which was to have details of everyone who entered the system from arrest to release.

Of course it was not do-able and a new Minister came in and faced up to the difficulties and it was quietly shelved as was most of the idea for end to end offender management.

But these ideas have gone deep into the thinking of some countries, your and mine. They will shape the way we look at people.

Consider the average, typical young male offender, Gary maybe. The database the corrections department now uses does not help us to decide how to re-root Gary in his community. I do not imagine it will tell us if he has an aunt or a grandmother who could be persuaded to play a part in helping him sort out his life. I am sure it will not tell us if he is registered with a doctor. I am certain it will not tell us if he has a hidden talent for something that could get him off the path he is taking.

So, a risk assessment programme is done and Gary will come out high risk. Why? Because on all the indicators on the computer he is high risk. He has no proper home. His mother is in and out of mental hospital. He has unsuitable drug-using friends, no job and three previous convictions. So Gary will get a lot of serious offender management. He will need to come to the probation office, two bus rides away, and see the probation officer twice a week. If he misses twice he goes back to court and maybe goes to prison. The computer programme has little to do with the reality of Gary – a young person from a difficult background full of despair and trauma, who needs to be brought to understand that harming others is wrong but who is really just like everyone else and aspires to his own flat, two children and a job.

Gary becomes what the computer says he is – high risk or medium risk. He becomes a 'something' to be managed, not belonging to us but outside us. This is about values too. He is not one of us; he is not living in our world. He is from outside; he threatens us and he must be 'managed'.

The new spectacles have worked. They have changed the way we look at a section of our population. We think of them as criminals, as different, as frightening and threatening, and we are afraid.

So I have set out what for many people in this room is probably a rather gloomy scenario. More people pushed into social exclusion and defined as 'risky'. More responses that are based on surveillance and control. Less use of traditional methods of social control through building social cohesion, setting up mutual associations and co-operatives, opening youth clubs, strengthening families, supporting parents, providing remedial education and job training.

The pressure is on the hard-pressed municipal government to buy CCTV cameras to watch its young people rather than training a youth worker to engage with them. I understand that the UK has one per cent of the world's population and 25% of the world's CCTV cameras.

Certainly, the company that sells the surveillance cameras has more power to lobby, to sell its wares, than the small non-government organization that does neighbourhood mediation and brings families together in community activities. The company that sells lie-detector testing equipment for people convicted of sex offences has a lot more resources to advertise than the group of volunteers from the local church who offer to befriend and support such people in their local community on their release from prison.

That is only the first instalment. Tomorrow you are going to hear the good news - people are waking up. This is not the way to go. We need to take off all these spectacles and look again through different lenses at what a criminal justice policy looks like when the State stops treating people as things to control and remembers they are people, a policy that makes a country safer and happier.

Till then, thank you.