Penal policy in England and Wales has, over the last 13 or so years, travelled on a very distinct journey; and, only in understanding this journey, can one then outline and appreciate the course upon which current trends are headed.

In May 1997, New Labour came to power with a very clear mandate on criminal justice policy: “tough on crime, tough on the causes of crime”.11 As Tony Blair has noted: “I had a plan to reorganise the whole way the criminal justice system worked: to reduce crime, the fear of crime and their social and economic costs, to speed up the process of cases through the system, to dispense justice fairly and efficiently, to promote confidence in the rule of law and to promote confidence in the system.”12

It is critical, however, that one understands how Labour got to this position; particularly to appreciate that penal policy-making has not occurred in a vacuum. The roots of New Labour’s approach to tackling crime can be found in a decisive shift in emphasis that occurred in the early 1990s, when the Labour and Conservative parties began to trade blows over crime, each seeking to outmanoeuvre the other into appearing “tougher” on crime. Thus in 1992, in the aftermath of the horrific Bulger case, Shadow Home Secretary, Tony Blair, famously said: “The news bulletins of the last week have been like hammer blows struck against the sleeping conscience of the country, urging us to wake up and look unflinchingly at what we see.” The move by Labour to adopt the “tough on crime” strategy led to the then more “liberal” Home Secretary, Ken Clarke, being replaced by harder line Michael Howard. A key moment during Howard’s tenure, and more generally in the political dialogue around penal policy in the 1990s, came in October 1993 when Howard told the Conservative Party conference: “We shall no longer judge the success of our system of justice by a fall in our prison population... Let us be clear. Prison works.”

Howard’s conference speech, was the political dialogue centred on keeping prison numbers low; instead Labour had moved the debate onto catching criminals and protecting the public.

In police resources, therefore, through greater financial support, Labour funded nearly 17,000 more police officers and more than 16,000 PCSOs by 2010.13 As well as this, Labour overhauled penal policy. The Criminal Sentences Act 1997, the Crime & Disorder Act 1998 and the Criminal Justice Act 2003 all, for instance, sought to increase the length of sentences for certain offences. As a result of Labour’s reform package: “between 1994 and 2004 the number of male prisoners serving longer-term determinate sentences of 4 or plus years more than doubled (107 per cent). The number serving sentences of 12 months up to 4 years increased by almost three fifths (57 per cent).”14

Taken together, particularly the greater investment in frontline policing and overhaul of sentencing, Labour’s policies had a dramatic effect on crime. As former Conservative Home Secretary, Michael Howard, conceded on the Today programme in December last year: “We have seen a very significant increase in the prison population since 1993 and an almost halving in the rate of crime. These two things have gone together – they are connected.”

Prison population, England and Wales, 1900-2009
Source: Ministry of Justice (2008), Offender Management Caseload Statistics, Table 7.5.

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13 Hansard (2010), 22 March, Column 64.
The next critical step in understanding current trends was in the creation of the Ministry of Justice (MoJ) in 2007. As the first Justice Minister, Lord Falconer noted upon the creation of the department: “The justice system is complex. The problems it deals with are complex. However, through the creation of the Ministry of Justice, with the bringing together of the justice system, I believe we have the best chance for a generation to find the answers to some intractable problems.” Arguably the key intractable problem was re-offending; particularly a core group of repeat offenders on short sentences who were seen to continually be going through the “revolving doors” of prison.

In general terms, however, much progress was made under Labour in tackling re-offending, particularly through holistic offender management. An example of the overall reduction was given in the report I produced for the Government in 2007, which stated that re-offending had reduced by 5.8 per cent, comparing 2000 to 2004 using a predicted rate. In terms of youth re-offending, the frequency fell between 2000 and 2010 by 24.8 per cent: from 151.4 offences per 100 offenders to 113.9 offences. The Youth Justice Board, established in 1998, has thus proved a considerable success in helping to bring about this reduction in youth crime.

However, as Lord Falconer conceded in 2007: “We have always recognised that prison must be used for those who need it, and that sentences should be designed to reduce re-offending. However, over decades we have learnt that some short custodial sentences are not effective in reducing re-offending and this has been proved over successive governments.”

Thus under both his brief tenure and that of the subsequent Justice Secretary, Jack Straw, a greater emphasis was placed on what the MoJ identified in 2007 as “the cycle of re-offending”. As such, initiatives like the Intensive Alternatives to Justice, which Mr Straw introduced, sought to break the link between short term prisoners and re-offending rates. A recent Make Justice Work report has looked into the pilots launched under this scheme and has declared them a success.

Efforts were also made to slowly bring about a stabilisation in prison numbers. In 2007, for instance, there were 4,283 women in the prison system; by 2010 this figure had fallen to 4,230. More generally, as a report by the Ministry of Justice in October this year found: “the rise in the prison population slowed considerably from the summer of 2008, with an average annual increase of 1 per cent.” Critically, however, alongside these efforts, plans were put in place while Labour was in government to raise the prison capacity to 96,000 places by 2014.

Thus, by the time of the 2010 election, Labour was tackling crime through a renewed approach to cutting re-offending, while also ensuring prison places gave overhead to continue to lock up dangerous offenders the courts deemed worthy of a custodial sentence.

This all brings us to the state of play at the general election in 2010: record low crime, tougher sentences for serious offenders and an increased focus on rehabilitation. Despite much of the rhetoric, the Coalition Government’s policies under Justice Minister, Ken Clarke, have in some ways sought to continue these trends. In other ways, however, they have charted a new course. Thus, for instance, the term “breaking the cycle”, the name of Ken Clarke’s 2010 Ministry of Justice Green Paper, is itself borrowed from Lord Falconer and a continued focus on repeat offenders naturally follows from adopting such language.

Where Clarke diverges from his Labour predecessors is over his rhetoric around prison numbers. Disagreeing [openly] with Michael Howard, Clarke has recently argued that prisons have too often proved “a costly and ineffectual approach that fails to turn criminals into law-abiding citizens”. Stemming from this mindset, Clarke originally proposed to offer 50 per cent discounts for early guilty pleas and pledged to cut prison numbers by 3,000 over the lifetime of this

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Parliament. Clarke’s “reforms”, however, tread a very fine line between being a financial requirement necessitated by his acceptance of a 25 per cent departmental budget cut, and an actual strategy.

Where does the Government go from here? Much of the Coalition’s justice policy, despite noble intentions around working prisons, a greater involvement for the private and voluntary sectors, payment by results and so forth, now hinges on Ken Clarke being able to balance the books. Tightened fiscal spending will form much of the backdrop to his policy-making over the next four years and, as he seeks to reduce prison numbers, he is likely to encounter strong prevailing winds. Particularly as Cameron seeks to handle the Tory Right and opposition from a Labour Party whose current Shadow Home Secretary recently said: “Tough on crime, tough on the causes of crime, strong powers, strong safeguards, strong prevention and backing the police: Labour is the party of law and order and that is how we will stay.” As such, Clarke’s approach has already been blown off course on a number of occasions: the 50 per cent discount for instance having already been scrapped and with it £130 million of proposed savings.

With less money with which to tackle the “revolving door of crime and re-offending”, Clarke is likely to face, as he has already, rising crime figures. Electorally, the New Labour mantra of being tough on crime has borne results; can a more liberal approach survive in harsh economic conditions? Or, as I predict, are we likely to see a step-by-step return to the politically safer ground of “prison works”?

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23 Ministry of Justice (2010), Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders, Impact Assessment.