

UK Parliament Justice Committee

Call for evidence: Future of prison population and estate capacity

Submitted by Dr Thomas Guiney (School of Sociology and Social Policy, University of Nottingham) and Professor Henry Yeomans (School of Law, University of Leeds)

Executive Summary

- Prison population forecasting remains one of the most poorly understood features of the annual prison planning process.
- While all responsible governments must plan for an uncertain future, we must also recognise that forecasting models make a series of assumptions about the world. Used uncritically they can give a misleading impression of scientific neutrality or encourage forms of political fatalism that underestimate our ability to make policy choices that alter our current path.
- Prison population forecasts can function as self-fulfilling prophecies. Our research demonstrates that they can amplify expansionary prison growth logics where they connect capital expenditure decisions with ‘business as usual’ planning cycles that assume considerable policy continuity with the past.
- We make several recommendations which are designed to ensure that prison planning is subject to greater democratic deliberation and debate. Specifically, we recommend:
 - i) Greater public scrutiny of prison population forecasts;
 - ii) Greater democratic deliberation about the prison and how we want these systems to look in the future.
 - iii) The creation and use of additional strategic techniques to help plan for a variety of possible futures, including qualitative or narrative-based scenario planning;
 - iv) Further research on how governments can affect positive penal change.

Introduction

1. This submission is provided by Dr Thomas Guiney, Associate Professor of Criminology at the University of Nottingham, and Professor Henry Yeomans, Professor of Criminology at the University of Leeds. Between 2021 and 2023, Dr Guiney and Professor Yeomans collaborated on an inter-disciplinary study exploring the links between prison population forecasting, prison estate planning and new prison building in England and Wales. The results were published in the *Howard Journal of Crime and Justice*¹ and those findings are summarised here where relevant to the current Justice Committee inquiry.
2. In this context, we limit our response to question one: ‘what changes are expected in the size and composition of the prison population in the short, medium and long term? Our central concern here is that the inappropriate use of prison population forecasting can

¹ Guiney, T. & Yeomans, H. (2023) Explaining penal momentum: Path dependence, prison population forecasting and the persistence of high incarceration rates in England and Wales. *The Howard Journal of Crime and Justice*, 62, 29–45. <https://doi.org/10.1111/hojo.12507>

amplify expansionary prison growth logics where they connect capital expenditure decisions about the overall scale, scope and reach of the prison estate with ‘business as usual’ planning cycles that assume considerable policy continuity with the past.

3. Our research demonstrates why it is so important that we challenge these self-fulfilling prophecies and create meaningful opportunities for democratic deliberation about the future of a prison system that is (a) morally justifiable and (b) economically affordable. We cannot build our way out of these problems, and it will require real political vision if we are to secure sustained reductions in the prison population in England and Wales. Reversing three decades of prison growth will not happen overnight but much could be achieved by revisiting sensible, pragmatic and effective policy interventions relating to remand, short prison sentences, the imprisonment of women, parole decision-making, prison recall and runaway sentencing inflation that has seen unprecedented growth in the use of the longest prison sentences.²

Prison population forecasting.

4. In England and Wales, prison population forecasts are published annually by the Ministry of Justice as an ‘aid to policy development, capacity planning and resource allocation’.³ The statistical bulletins have the status of official national statistics and report findings from a ‘dynamic flow model’ that tracks the movement of individuals through each decision-making stage of the criminal justice system and seeks to overlay these data with information pertaining to the anticipated impacts of certain policy positions.
5. We are not statisticians and we do not take issue with the statistical basis of these projections. Rather, we think it is important to recognise that however sophisticated these statistical analyses may be, prison population forecasts are always underpinned by a series of assumptions about the world that inevitably privilege some ways of thinking about the future while discounting others. To elaborate:
 - (i) Forecasting models typically adopt an uncritical posture towards current political assumptions and present a view of policy change which assumes that the drivers of existing policy and practice will continue in the same direction and at a similar rate of change into the future. For this reason, prison population forecasts tend to emphasise policy continuity and are therefore likely to become less accurate the further into the future we travel. For example, the 2019 forecast projected that the

² See e.g., Prison Reform Trust (2023) Prison: the facts—Summer 2023. London: Prison Reform Trust; Ministry of Justice (2019) The impact of short custodial sentences, community orders and suspended sentence orders on reoffending. Website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/814177/impact-short-custodial-sentences.pdf

³ Ministry of Justice (2023) Prison population projections: 2022 to 2027. Website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138135/Prison_Population_Projections_2022_to_2027.pdf

current prison population would, at around 82,000, be markedly lower than it actually is today.⁴

- (ii) Prison population forecasts are frequently invoked by penal policymakers to promote a misleading impression of prison population growth as a natural phenomenon that is external, and therefore beyond the reach of government action. By treating trends in imprisonment as equivalent to weather forecasts, rather than the product of conscious government policy⁵, prison population projections translate moral and political problems about who, when and how to punish, into technocratic questions relating to capacity, demand, resilience and adaptation. In this way the job of government is reduced to a discussion of how to accommodate those sentenced to imprisonment by the courts, rather than recognising that these administrative challenges are the direct and foreseeable consequences of prior political and policy choices.
 - (iii) While prison population forecasts are often presented as objective, scientific and neutral facts they are underpinned by a series of decisions about what is counted and what is not. As the Ministry of Justice make clear, the official forecasts do not pose ‘what if’ questions relating to policy options that have not yet secured ministerial approval, nor do they explore the impact of policy changes that are considered unquantifiable (see discussion of the Female Offender Strategy below). Finally, we know very little about how prison population forecasts are themselves fed back into the annual cycle of prison planning and influence decision-making behaviour.
6. While prison population forecasts may appear neutral and value free, they are in fact mobilised by a wide range of policy actors including politicians, civil servants, penal reformers and the news media to shape public debates over prisons and imprisonment. It is curious then that these projections have such a low public profile. Neither the accuracy of these models, nor the assumptions that guide them regularly feature in public debates about prison building, public expenditure or the performance of our prison system. We hope this Justice Committee inquiry will be an opportunity to provide greater democratic scrutiny of these forecasts and how we think about the future.

Policy legacies and self-fulfilling prophecies

7. The interpretation and application of prison population forecasts can have significant and lasting policy implications. Expansionary criminal justice policies relating to policing, prosecution, sentencing or prison release are fed into the annual cycle of prison

⁴ Ministry of Justice (2019) Prison Population Projections 2019 to 2024, England and Wales. Website: <https://assets.publishing.service.gov.uk/media/5d667a12e5274a170aad5733/prison-population-projections-2019-2024.pdf>

⁵ See e.g., ‘Prison places in England and Wales are ‘bust’, says governors’ union chief’. The Guardian, 9 October 2023. Website: <https://www.theguardian.com/society/2023/oct/09/prisons-england-wales-bust-governor-union-chief-andrea-albutt>

population forecasting and translated into value-free or politically neutral ‘facts’ about future ‘demand’ for prison places. These projections are then relied upon by officials, government ministers and committees of inquiry, such as the landmark May (1979)⁶ and Carter (2007)⁷ reviews of the prison system in England and Wales, to inform public expenditure decisions that drive long-term expansion or contractions in the prison estate. These moments of strategic self-reflection establish new baselines for the overall scale, scope and reach of the penal system, upon which successive phases of subsequent planning are then based.

8. Unlike other forms of public spending on criminal justice, such as the recruitment and training of staff, prison buildings endure across generational divides. They are less amenable to policy adaptation and the way we interact with these physical spaces can help to shape the administration of prisons for decades, if not centuries, as in the case of existing Victorian prisons.⁸ As Spelman⁹ found in his careful analysis of the US prison boom, criminal justice spending stood out as one of the strongest predictors of state-level prison population growth. Those states that invested most heavily in prison estate capacity and new prison building tended to experience higher and more sustained population growth over the long term than their neighbours. While capital spending did not in and of itself cause prison populations to increase, Spelman found that it did remove a very significant institutional counterweight against the sort of inflationary sentencing that drives up prison population.¹⁰

Case Study: Prison population forecasting and women’s imprisonment.

9. We can demonstrate some of these points with respect to recent debates over women’s imprisonment. In its most recent statistical bulletin, the Ministry of Justice indicate that the adult female population is projected to increase from 3,245 as at November 2022 to 3,800 by November 2024.¹¹ This forecasts have been used to secure additional capital investment, and justify new prison building for women, despite the fact that the adult female prison population has fallen in recent years (from 3,770 at the end of June 2019 to 3,116 at the end of March 2021).¹²

⁶ May Committee (1979) Report of the Committee of Inquiry into the United Kingdom Prison Service, Cmnd7673.London: HMSO.

⁷ Carter, Lord (2007) Securing the future: proposals for the efficient and sustainable use of custody in England and Wales. London: Cabinet Office.

⁸ Guiney, T. (2018) Solid foundations? Towards a historical sociology of prison building programmes in England and Wales, 1959–2015. *Howard Journal*, 58, 459–476.

⁹ Spelman, W. (2009) Crime, cash, and limited options: explaining the prison boom. *Criminology & Public Policy*, 8, 29–77.

¹⁰ *Ibid* (2009, p.65); see also Ministry of Justice (2020) Story of the Prison Population 1993-2020: England & Wales. Website:

https://assets.publishing.service.gov.uk/media/5f9959aae90e0740770c85af/Story_of_the_Prison_Population_1993-2020.pdf

¹¹ Ministry of Justice *op cit*, p.1

¹² Ministry of Justice Press Release: Extra funding for organisations that steer women from crime. Website: <https://www.gov.uk/government/news/extra-funding-for-organisations-that-steer-women-away-from-crime>

10. In this context it is noteworthy that while the latest prison population forecasts assess the likely impact of police recruitment and statutory change, the influence of measures intended to reduce the women's prison population are discounted. As the Ministry of Justice note in their own methodological commentary recent trends in the women's prison population are attributable to a drop in prosecutions and sentencing as a result of the COVID-19 pandemic', but go onto note that, 'the limited time between the publication of the Female Offender Strategy, which aims to improve outcomes for female offenders by treating custody as a last resort, and the start of the pandemic means it is difficult to disentangle any effects of the strategy. Any future impacts of the Female Offender Strategy have therefore been excluded from the baseline projection.'¹³
11. Here we have further evidence that what is counted counts. Not only are projections for the future of the prison tied to the overall growth rate of the male prison population, but the decision to exclude the Female Offender Strategy from the baseline projection in effect unravels the distinct policy frameworks that should now exist to manage these very different prisoner cohorts. In our view this creates a dangerous self-fulfilling prophecy that militates against any realistic prospect of shrinking the women's prison estate at a time when the prison system is gearing up for a period of sustained growth in the adult male population.

Recommendations

12. On the basis of our research, we make several recommendations which we hope will encourage greater public understanding of prison population forecasts and a more informed debate about the future of the prison system in England and Wales:
 - (i) **There is a strong and pressing need for serious and sustained scrutiny of prison population forecasts.** Prison population forecasting is about so much more than statistical analyses and we need to better understand how these ways of thinking about the future shape our national conversation. We call upon key criminal justice opinion formers – government advisory boards, parliamentary select committees, penal reform organisations and academic research networks – to work together to improve the visibility of the annual prison population forecasts and discuss the political assumptions that sit behind these projections.
 - (ii) We see value in agile and imaginative form of strategic planning that embrace the possibility of change, as well as continuity. This means drawing upon a range of decision-making tools - including, but not limited to, prison population forecasting - that are designed to support those with responsibility for prison policy and planning to prepare for a wider-range of possible futures. In particular, we recommend greater use of more qualitative or narrative forms of scenario planning

¹³ Ministry of Justice (2023) Prison population projections: 2022 to 2027, p.23. Website: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138135/Prison_Population_Projections_2022_to_2027.pdf

that draw upon international and historical experiences¹⁴, including those that are markedly different from the status quo (e.g., changes to the structure of the labour market, climate change, unanticipated wars and intergenerational shifts in public attitudes), and use these to facilitate future planning. These innovative techniques have been used effectively by many successful businesses to prepare for the future.¹⁵ **The sustained use of scenario planning would be additional and complementary to prison population forecasts and provide alternative visions of the future, which can feed constructively into processes of policy formulation, evaluation and scrutiny.**

- (iii) At a time when the UK Government is investing nearly £4 billion in the construction of 20,000 new prison places¹⁶ we must continue to build the case for a suitable ‘modesty’ about the very limited capacity of prisons to help solve longstanding social problems.¹⁷ As we have already noted with respect to women’s imprisonment, new prison building is frequently justified on dubious humanitarian grounds as a way to ‘modernise’ the prison estate, while prison closures are often made conditional upon future reductions in the prison population that are treated as external and beyond the scope of government action. **Our analysis demonstrates why the institutional link between prison forecasting, prison building and ‘business as usual’ prison planning cycles must be subject to effective democratic scrutiny.**
- (iv) **We recommend that Government and Parliament work with UK research funders to support pathbreaking research which examines international and historical instances in which governments have successfully managed to reduce prison populations.** The creation of a broader knowledge base about the occurrence of positive penal change could feed into the improved penal planning process we have sketched out and support policy-makers in the pursuit of alternative penal futures.

Finally:

13. We would be happy to provide oral evidence to the Committee if called upon. We would also be happy to talk informally with Committee staff if that would be beneficial at any point. We can be contacted at thomas.guiney@nottingham.ac.uk and h.p.yeomans@leeds.ac.uk .

-END-

¹⁴ Staley, D. (2002) A history of the future. *History and Theory*, 41(4), 72–89.

¹⁵ Wilkinson, A. and Kupers, R. (2013) Living in the Futures. *Harvard Business Review* May 2013.

¹⁶ HM Treasury Autumn Budget and Spending Review 2021 (Updated) Website <https://www.gov.uk/government/publications/autumn-budget-and-spending-review-2021-documents/autumn-budget-and-spending-review-2021-html#ministry-of-justice>

¹⁷ British Academy (2014) A Presumption Against Imprisonment: Social Order and Social Values. Website: <https://www.thebritishacademy.ac.uk/documents/274/presumption-against-imprisonment-social-order-social-values.pdf>