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In its mania for jailing people, Britain has declared trivial offences crimes

A libertarian coalition is emerging in the US to resist an ever expanding statute book. The need is just as urgent here



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I have a foolproof scheme for cutting crime in Britain. It would slash court overcrowding, rescue legal aid, empty prisons and calm public fears. It would save billions of pounds, and all without endangering a hair on a single Briton's head. The scheme involves removing thousands of recently "invented" offences from the statute book.

This will not happen, because if there is one thing a macho politician loves, it is declaring any social problem or public disobedience a crime, and hiring more police to confront it. Constantly extending criminality enables prime ministers and home secretaries to walk tall down Main Street, pistols twirling in their fingers, and with no care for who gets hurt.

In a little-reported case at Oxford crown court on Monday, a 60-year-old businessman named Philip Bowles, with no previous conviction, found himself jailed for supposedly switching a VAT liability between two companies. He bitterly protested that he was unable to mount an effective defence because his cash had been seized in advance from his office, as an "asset" under David Blunkett's crass Proceeds of Crime Act. In addition his tax records had been taken by administrators. Bowles was refused legal aid to get a forensic accountant to exhume his seized records, which he thus could not use to defend himself.

After his conviction, an independent financial report into the tax records was submitted to the court but the judge was clearly confused at the sentencing. He admitted that the documents might have exonerated Bowles and implied that there was a case for the jury decision being overturned on appeal. He said he was "loth to put a man in prison if he shouldn't be there", yet added that the whole thing had "dragged on". So he called Bowles a "very serious cheat", banged him up for three and a half years and demanded he pay £130,000 in prosecution costs.

To all appearances, a gross injustice has been done to lift a large sum of money from a man carefully rendered defenceless by the authorities to enrich their budgets. Since the pointless, life-destroying jail term could cost the state as much as £140,000, the whole farrago will leave the taxpayer worse off than if Bowles and Revenue & Customs had been left to squabble before an arbitrator. Another crime is added to the statistics, and work is created for all.

Only the Americans among civilised democracies love prisons more than the British. For imprisonment Britain leads Europe, jailing convicts for non-violent crimes that most countries handle with non-custodial sentences, or do not regard as crimes at all. Thousands of British offences are for the "crime" of not obeying a government official.

Last month a Swansea man was jailed for two and a half years for peeping at naked women on holiday. In October a Newcastle man was jailed for 18 months for letting a toddler smoke a cigarette. A postman was jailed for four months for failing to deliver letters after being late for work. A student narrowly escaped jail for drunkenly urinating on a war memorial.

There is a move, led by the children's secretary, Ed Balls, that could lead to people being jailed for lying about their residence in a school catchment area. It is only a matter of time before someone is jailed for taking a friend's child on a school trip without state clearance, under the Stasi-like Independent Safeguarding Authority. Meanwhile Home Office arrest and conviction targets put constant pressure on the police to pursue such ubiquitous offences as bad driving or drug use.

The iron route to understanding the modern state is to follow the money flow to the professions. Advocates for restorative justice point out that most victims of minor crime brought face to face with offenders do not want them to go to jail. They want an apology and financial restitution. But since restorative justice offers no financial gain to the justice system in Britain, it is not financed, any more than is proper drug rehabilitation.

The Labour government under Tony Blair and Gordon Brown has been more obsessed with imprisonment than any predecessor. Martin Narey, when he led the prison service, complained that in the mid-1990s just 5% of shoplifters were sent to prison. Under Blair this rose fourfold. The number of over-50s entering the criminal justice system rose by almost 50% in eight years, largely through the police filling targets by chasing vehicle crime. Every category saw an increase in the proportion of convictions leading to custody.

Labour has created more than 3,000 new offences since 1997, of which 1,472 at the last count were imprisonable. You can go to jail in Britain for not having a licence for a church concert, smoking in a public place, selling a grey squirrel, trans-shipping unlicensed fish, or disobeying a health and safety inspector. In many cases a prison sentence is casually tacked on the end of a statute, like some macho cherry on a cake. Parliamentarians, judges, lawyers, prison officers all complain of overwork – but complain all the way to the bank.

An intriguing insight into this process is given in a batch of cases now before the US supreme court, challenging the "over-criminalisation" of American society. The most prominent is the appeal of the press baron, Conrad Black, against conviction for denying his shareholders his "honest services". This catch-all "default offence" is like tax evasion, a gift to federal prosecutors.

Questioning by the court's justices suggests a growing desire to bring this explosion of state power under eventual control. One of them, Stephen Breyer, told the US attorney general with reference to Black's honest services: "There are 150 million workers in the United States. I think possibly 147 million would flunk your test." The smart money is on Black getting off.

The case is one of those championed by an intriguing coalition of lobbyists whose like is not seen in Britain. It embraces both left and right of the political spectrum under a libertarian banner. Defence lawyers and the American Civil Liberties Union are allied to the conservative Cato Institute and Heritage Foundation. A fellow at the latter, Reagan's attorney general, Ed Meese, has drawn a line at 4,000 federal crimes, pointing out that the US tradition "has always been to construe criminal laws narrowly to protect people from the power of the state".

The left's objection to the size of the US prison population thus chimes with taxpayers protesting its cost. The New York Times reports that constitutionalists are demanding protection for states from federal laws; property interests object to the arbitrary seizure of "proceeds of crime"; libertarians claim the honest-service law is so vague that "all Americans violate it every day", even rightwing Christians want some scope for sinners' redemption. To sociologists, the "reconceptualising of social problems as crimes" raises foolish hopes of curing them through the law.

With Labour now leading the imprisonment lobby and David Cameron terrified of being called a hoodie- hugger, the chance of a libertarian coalition in Britain is minimal. State power still has all the best tunes. But those who regard the public realm in Britain as over-criminalised, and the imprisonment rate a social abomination, see a new dawn across the Atlantic. Who would have guessed its harbinger would be a certain Conrad Black?

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