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Crime and Penal Policy

John Bird founded Britain's best-selling street newspaper for the homeless, *The Big Issue*, in 1991. Behind this success lay a different story, of a childhood and youth laced with poverty, violence and criminality. At the age of ten, and newly emerged from an orphanage, John had been charged with shoplifting. He was fined at Chelsea Juvenile Court and put on probation by a 'grey-haired old lady' with half-rim glasses. Later he reappeared for not going to school; he had been at home, minding the younger children: 'Stupid woman. She should try bringing up a handful of children', complained his mother.¹ Then he was back again in front of the grey-haired lady for stealing a banana and five shillings, and then taking some bikes, and then receiving money under false pretences: 'My mate stole his granny's Home and Colonial savings book and I cashed it ... the police officers asked for me to be remanded in custody because they thought I'd do a bunk ... And she turned to me and it was the first time a grown up had ever asked me my own opinion ... she said, "Well, what do you think?"'² Lady Wootton, peering over her half-rim glasses, decided to return John to his approved school rather than dispatch him to a borstal. This proved to be a turning point. At school, John Bird learnt practical skills and he started to paint and draw, and he began to see that a life of crime was a life of crime and nothing more than that.

Barbara Wootton had been a magistrate for thirty years when first confronted with the delinquent John Bird, and the conundrum of establishing how best to keep boys like him out of trouble was one of the strongest motivations of her life, both as an academic and as a policy-maker. It led her to research and write her best-known work, *Social Science and Social Pathology*, with its blistering attack on the confusions of criminology and the arrogance of social workers; it drew her beyond the imperfections of economics to those of psychology and sociology as sciences purporting to explain human behaviour; and it led her into a lifelong study of the workings of the penal system. Every crime, she once observed acutely, is committed by a person who might not have committed it.³ Her quest to answer

fundamental questions about the causes and deterrents of crime and the efficacy or otherwise of the penal system took her into all sorts of places that as a young woman she could hardly have imagined. She became a stalwart and uncomfortably radical member of many commissions and committees, most notably of the Royal Commission on the Penal System, set up by a Conservative Government in 1964 and disbanded by a Labour one two years later, the only Royal Commission in history to be dissolved without producing anything. She was responsible for the work of two committees both of which resulted in a 'Wootton Report', on cannabis and on alternatives to prison respectively, the former invoking a tide of media hysteria for its mild evidence-informed suggestion that cannabis was probably not so socially damaging as alcohol, and the latter introducing Community Service Orders, a highly significant change in sentencing policy which is still in place today. Her habit of asking the most basic and simple of questions – what is the point of the criminal justice system? What are magistrates trying to do? How much do we know about the effects of different sentencing policies? – led her to challenge the obscurantism of much academic criminology and criminal law, and generated critical debates about whether criminals are sick or sinful, and how tricky concepts such as 'intention' and 'diminished responsibility' can be operationalized in practice.

Her achievements in transforming penal policy were summed up in the Festschrift *Barbara Wootton: Social Science and Public Policy, Essays in Her Honour*, half of which was devoted to her work in this field. She caused others 'to think furiously about matters which they had previously taken for granted'; in a whole series of reforms limiting the penal enthusiasms of the judiciary and the magistracy, she was one of those who designed, if not a new world of criminal justice, then at least a more rational, utilitarian and less moralizing one; she stood out against foolish theories and for sensible hypotheses about the factors encouraging and deterring anti-social behaviour; and she was the parent of 'the most imaginative and hopeful development in penal practice for half a century'.⁴ *Crime and Penal Policy*, her last book, was published in 1978. It was not a book for the experts, but for people like herself, or the kind of person she had been when she had first been made a magistrate fifty-one years earlier. It was a collection of essays, a 'personal document' reflecting her own journey through the penal system, written in a language of compelling logic.⁵ What Barbara Wootton wanted was a wholesale realignment of the criminal justice system. What she got was a series of important changes. In a world she helped conspicuously to shape, her voice in the field of crime and penal policy was 'one of constant and consistent sanity'.⁶

The story of Barbara Wootton's influence on penal policy has many chapters, each of which could form a book of its own. The background to the story is one of

the most significant social changes of her own lifetime, and one that was bound to grab the attention of any social scientist interested in public policy. The crime rate in Britain had historically been low compared with other European countries; from the start of the twentieth century until the 1930s there was actually a decline in the prison population, and a low rate of reoffending.⁷ Rising crime figures slid onto the political agenda in the 1950s. Huge social changes co-existed with a penal system designed for a very different and much more conformist social order. The welfare state made people newly aware of what they had not got, as well as what they had, and the pace of social change accelerated in the 1960s. Full employment replaced austerity; a youth culture emerged with a new form of popular music and much more spending money. People owned more property than ever before, thus enormously increasing opportunities for crime. The 478,349 indictable offences known to the police in 1945 swelled to 3.4 million by 1985.⁸ Yet to match all of this, there was a 'criminal literature' but little 'criminal science'.⁹ Criminology was dominated by a literature 'of little more than historical interest',¹⁰ and in England by psychoanalysts, psychiatrists and psychologists – those professions whose self-important claims to expertise had been laid bare by Barbara Wootton in her *Social Science and Social Pathology*. When Lord Longford carried out his inquiry into the causes of crime in 1954, she wrote a paper for him enumerating what she saw as the main problems with existing research: treating crime/delinquency as a simple unitary phenomenon; and drawing unjustified conclusions from poorly designed studies or by assuming 'soft' data (personal observations and opinions) to be 'hard'. The most important task, she said, was to discriminate between testable and untestable hypotheses.¹¹

Barbara's training in penal policy began when she first became a magistrate on 17 February 1926, at the age of twenty-eight. This immediately brought her into a head-on confrontation with the two most singular aspects of the English justice system: its domination by untrained lay people; and the absence of any thorough base of knowledge about either the causes of crime or the effects of different methods for treating offenders. When she began as a magistrate, over ninety per cent of crimes were handled in Magistrates' Courts.¹² (The figure is even higher today.) Most magistrates were and are lay people: a small proportion are trained lawyers and are paid. This use of untrained amateurs – the juries in jury trials as well as magistrates – is a peculiar feature of the English and Welsh penal systems, and the heavy dependence on what Barbara called 'this vast army of amateurs'¹³ meant that sentences of great importance to offenders were handed out by people who had no training in criminal law, and who were not obliged to give any reasons for their sentences. Most JPs were selected, as Barbara herself was, not for competence, but through party political routes as a means of 'bestowing

political reward'.¹⁴ An exception was that JPs in London Juvenile Courts were appointed directly by the Lord Chancellor – in Barbara's day, by the Home Secretary, on the recommendation of a small Committee appointed by him. For several years, Barbara chaired this Committee.¹⁵

In a context dominated by these 'amateurish, hit-and-miss methods',¹⁶ what happened to offenders was largely a matter of luck. Barbara noted that studies of Magistrates' Courts in different areas showed an astonishing variation of between three per cent and fifty-five per cent in the proportion of adult men sentenced to imprisonment for indictable offences. A man arrested for dishonesty, for example, would do well to choose the Court which imprisoned under fifteen per cent of such cases rather than the one that imprisoned fifty per cent;¹⁷ a criminal in Kent had a fifty per cent lower chance of going to prison if he appeared before the West Kent rather than the East Kent Sessions.¹⁸ Barbara knew at first hand how sentences passed by magistrates could be shaped by personal views. On her first day in the Juvenile Courts towards the end of the Second World War, when bombing raids were still regularly driving the Court into the basement, there was the case of an 'exceptionally beautiful' girl of sixteen who was regarded as in need of care or protection because she was sleeping with American airmen. Barbara always had a blind spot about conventional sexual morality: 'I just could not persuade myself that a night or two a week with a personable American was so immensely more degrading than forty hours or more of unskilled and uninteresting work in a factory'.¹⁹

When she first became a magistrate, all the adult criminal work of the Magistrates' Courts in London was reserved for the stipendiary magistrates, with the lay benches being mainly concerned with juvenile offenders or the licensing of public houses. But had she been appointed outside London, she would have tried criminal cases from the start. It took only one day in Court for her to realize the inefficiency of the system: of her two colleagues in Court on that day, one was blind and the other was deaf and senile.²⁰ After almost twenty years' service, she was promoted to be Chairman of Chelsea Juvenile Court, a post she held until 1962 and the compulsory age of retirement for Juvenile Court Magistrates of sixty-five – and it was in this capacity that she was presented with the challenge of sentencing the youthful John Bird. The Chelsea Court was one of eight Metropolitan Courts devoted to juvenile justice. It drew its clientele from a wide area of London, including Piccadilly and the West End, and some of the more notoriously 'criminal' districts of Chelsea and Fulham.²¹ However, serious cases of violence were rare.

The list of 200 cases in the Juvenile Court presided over by Barbara included in *Social Science and Social Pathology* showed a preponderance of boys (157 of the 200) committing larceny, and girls being caught for 'rail fraud'.²² In Magistrate Wootton's

eyes, the prize for ingenuity went to the boy who canvassed a block of flats for subscriptions to a 'Crusade against Juvenile Delinquency', claiming to be sponsored by a local vicarage, and reaping quite a harvest before anyone thought to investigate his credentials.²³ For pure pathos, there was the case of the eight-week-old baby abandoned in a church in Covent Garden with a brown attaché case of baby clothes and a bottle of milk beside him. His unmarried mother had been turned out of her parents' home, refused help by the N.S.P.C.C., and housed in a London County Council Hostel which ejected her into the streets from 9 a.m. to 5 p.m. every day and then closed its doors to her altogether.²⁴ Barbara voiced strong views about the harsh treatment of this young woman, as also about other cases which came under her jurisdiction. When a boy of sixteen stood before her charged with punching his girlfriend because she refused to kiss him, Barbara asserted the girl's right to decide whom to kiss.²⁵ She reprimanded a father for 'coddling' his eleven-year-old daughter to the extent of making her wear dark glasses and keeping her out of school for a week after a simple eye test;²⁶ and another father for spoiling his nine-year-old son by giving him five shillings a day pocket money (a donation that did not succeed in preventing him from stealing).²⁷ Some of her magisterial decisions were even starker challenges to convention. The mother of a sixteen-year-old girl found travelling on the railway without a ticket was asked by Magistrate Wootton how often she cuddled her daughter, prompting a discussion in the press about whether teenagers *ought* to be cuddled.²⁸ In another case, she decreed that a six-year-old girl, a child whose parentage was unknown, and who had been found as a 'waif and stray' and informally adopted by a couple with criminal records for manslaughter, should nonetheless be allowed to stay in the only place she knew as home.²⁹

A Magistrate's Court was a standpoint from which one got to see quite a lot of life, much of it otherwise invisible to the middle-class policy-maker. Barbara's work as a magistrate belonged to a new tradition of female magistracy which helped to professionalize the institution of lay magistrates. Women magistrates' insistence, from the early 1920s on, on formal guidelines for practice, criteria for appointment, and compulsory retirement, effected a gentle transformation of the penal system that was closely aligned with the kind of feminist agitation Barbara had witnessed in the drawing room of her childhood home, when Mrs Adam and Mrs Keynes and other indomitable Cambridge ladies had assembled to campaign for equal citizenship.³⁰

On her last day in the Juvenile Court, a journalist from *The Guardian* came to observe Barbara at work:

Yesterday was a heavy day at Chelsea Juvenile Court. Most of the cases were petty enough – a little amateurish shoplifting, truancy, unfortunate children in need of care

or protection, one case of possession of drugs in which the drugs turned out to be fakes. But the Chairman of the Court, Lady Wootton of Abinger, perhaps better known as Barbara Wootton, dealt with each one with care, never speaking harshly to the children, quick to spot a lie or evasion, and always ready with a sympathetic word for parents.

She appeared to take in all the relevant facts, consider them thoroughly, consult with her two colleagues on the Bench and deliver judgement without any haste. Yet in a few hours she cleared upwards of 30 cases.³¹

After she retired as Chairman of the Chelsea Juvenile Court, Barbara continued as Deputy Chairman of the South Westminster Petty Sessions at Bow Street and Marlborough Street Courts. The degree of magisterial efficiency noted by the journalist from *The Guardian* enabled her to process some 15,000 cases over a total 44 years of service as a JP.³² But – a point she was at pains to stress on many occasions – while this long experience opened her eyes to many aspects of human behaviour, it provided no data on which she could either improve her own performance or advise others on how they should improve theirs. ‘Justice is indeed blind in more senses than one,’ she wrote, looking back on all this at the age of eighty-one, ‘and in that respect she is peculiar. Doctors generally get to know of, and can learn from, the results of their treatments. Teachers observe what methods hold or fail to hold the attention of their pupils. Business men (or their accountants) read the results of different policies in their profit and loss accounts.’³³ Magistrates, on the other hand, never get to know what happened to the individuals they consign to the different remedies available to them. ‘For all I know, I’ve been doing untold harm for forty-four years.’³⁴

Barbara Wootton’s work in the arena of crime and justice was driven, above all, by this acute sense of uncertainty, expressed in the moral context of concern for the vulnerability of the young, respect for individual rights and opposition to violence. She took the opportunities presented to her to pursue these issues through the function of official bodies, but she was also proactive in creating them. Her penal committee work began in 1946, when she was appointed to the Probation Advisory Committee, a body set up to advise ‘on questions relating to the administration of the probation system and the other social services of the courts’.³⁵ Then came the Departmental Committee on Criminal Statistics, and the Interdepartmental Committee on the Business of the Criminal Courts. The former – the Perks Committee, named after its Chair, Wilfred Perks, an actuary with a public conscience – was set up in 1963 to look at the collection and presentation of statistics relating to crime.³⁶ Her appointment to the Committee on the Business of the Criminal Courts (the Streatfeild Committee) happened a few years earlier, in

the summer of 1958, shortly before she became a baroness. Its functions were to consider arrangements for bringing people charged with criminal offences to trial, and to provide courts with the information needed to decide the most appropriate treatment. The nine-member Committee was smaller than most such bodies, and it included a broader range of people: apart from 'the well-known sociologist' Barbara Wootton, there was her academic friend W.J.H. Sprott, the forensic psychiatrist Dr T.C.N. Gibbens, and the former head of the Law Department at the LSE, J.E. Hall Williams.³⁷ The Committee made a number of sensible and practicable suggestions, including altering the rules for cases that could be tried by magistrates rather than at higher courts, and shortening trial waiting periods. One of their recommendations, though not one given much prominence in the Report, exhibited the definite influence of Barbara Wootton. The Committee suggested that the Home Office should produce regularly updated information for all those responsible for passing sentences; sentencers should 'be systematically provided with a booklet giving comprehensive information, for every form of sentence, about what it involves, what it is designed to achieve and what it in fact achieves, together with information about research into the results of sentences'.³⁸

It could not be clearer that every day thousands of people arrested for committing crimes were subjected to sentences by people who had very little idea what they were doing. They exercised this ignorance, moreover, in an extraordinarily archaic and unfriendly setting. There is perhaps no place in English society where class divisions are more obtrusive than in the atmosphere of ritual that flourishes in the higher Courts: the formal language, the wigs and robes, and the remoteness of the judge from the lives and temptations of many defendants.³⁹ The exclusive ritual of the Court was one reason why Barbara held the radical view that the treatment of children committing unlawful acts should not be the business of the Courts at all. Another was that most children who get into trouble with the law are guilty of naughtiness rather than criminality: 'There is no need to make excuses for these children and I think it is a pity when their parents try to do so, as they often do in court, though I must confess that a parent's heated defence of his [sic] erring child can be very endearing'.⁴⁰ Unlike many policy-makers, she saw criminality in the young as a failure in the system. You should not punish individuals for such failures.

Commenting on the White Paper *Children in Trouble* in 1968, she remarked that: 'One of the deepest and most persistent class divisions in this country is that between children who have to play in the streets and those who have adequate play-space in their homes, or for whom organized recreation is available in school or elsewhere'.⁴¹ Those who had to play in the streets were more likely than those who did not to be condemned to formal systems of reprimand and punishment for

their naughtiness. Children so condemned should be dealt with, she said, by people with whom they were in contact in their normal everyday lives and who they had reason to listen to, not by strangers. A third reason for keeping the treatment of 'delinquent' children out of the penal system was to avoid their initiation into 'a delinquent culture'.⁴² 'I am not sure,' she said, in a House of Lords debate on the Children and Young Persons Bill in 1962, 'that more harm is not done in waiting room than anywhere else.' Children awaiting Juvenile Court appearances could wait for hours in the company of 'young men rising seventeen many of whom may be charged with serious offences, and be quite formidable anti-social characters'. The educational system was full of provisions for children with special needs – those with disabilities of a whole range of kinds – so why not take the staff and other resources away from the Juvenile Courts and approved schools, and add these to educational facilities for children with the special need of requiring attention for anti-social behaviour?⁴³ Barbara's opposition to the 'stigma' of court appearances for children was part of the evidence taken by the Labour Party's Study Group on crime in 1964. Her evidence 'powerfully and decisively influenced the committee' which produced the Longford Report, *Crime: A Challenge To Us All*, recommending the total abolition of Juvenile Courts, and driving forward a whole series of law reforms.⁴⁴ One obvious way of keeping children out of the courts was to increase the age of 'criminal responsibility'. In England and Wales, this had been raised from seven to eight by the Children and Young Persons Act of 1933. Barbara supported the proposal of the Children and Young Persons Bill in 1962 to raise the age of criminal responsibility to twelve, pointing out that many countries had set it at fourteen or higher.⁴⁵ Although this proposal was carried by one vote, the Government chose to give Baroness Wootton only 'half the cake' she was asking for⁴⁶ and in 1963 settled for ten years (the age it still is, the lowest (apart from Scotland, where it is eight) in the European Union).

An integral part of Barbara Wootton's defence of the rights of children and young people to their personal liberty was her attempt to make corporal punishment illegal. In 1973 she introduced into the House of Lords the Protection of Minors Bill which would have done just that, but it did not even achieve a second reading, despite the Baroness's persuasive case that many other countries had abandoned the practice or never engaged in it, and that even in Britain corporal punishment was illegal in approved schools, leaving the paradox, a dire comment on our social values, that 'the only people who are apparently allowed to wield a cane in the exercise of their profession are prostitutes and teachers'.⁴⁷ Was it not, she asked, an extraordinary reflection of our social values that the law forbidding us to strike our equals makes an exception for those who are smaller than us?⁴⁸ Barbara did not

expect her Bill to succeed. She predicted what in fact happened, that 'a great many of their Lordships' would 'get up and say "It never did me any harm"'.⁴⁹

In 1964, the Conservative Government had published an 'aggressively titled'⁵⁰ White Paper, *The War Against Crime in England and Wales*.⁵¹ This was the response of an insecure administration to the Labour opposition's determination to make the increase in crime a political issue.⁵² Existing penal methods were evidently not putting a stop to what was now officially known as 'the crime wave', and the time was ripe for a 'fundamental review of the whole penal system'. This the Government viewed as a task of such importance and magnitude that it could only be carried out, in true British tradition, by a Royal Commission. So they set one up. The Royal Commission on the Penal System's terms of reference were as follows:

In the light of modern knowledge of crime and its causes and of modern penal practice here and abroad, to re-examine the concepts and purposes which should underlie the punishment and treatment of offenders in England and Wales: to report how far they are realized by the penalties and methods of treatment available to the courts ... to review the work of the services and institutions dealing with offenders and the responsibility for their administration; and to make recommendations.⁵³

The extraordinary story of this Commission has never yet been told in full, and it is one that bears particular witness to the keen intelligence and rationalist courage of Baroness Wootton.

It was an astonishingly broad canvas, an impossibly gigantic task. The Commission had fifteen members, aside from Barbara, including Leon Radzinowicz, a professional criminologist, who had doubts about the whole enterprise from the start, describing its terms of reference as 'suicidal'.⁵⁴ Barbara listed their fourteen colleagues in the following terms: 'a trade unionist (who, as far as I know, had no contact with our system of criminal justice), seven JPs, two of whom were also MPs (one being a fervent advocate of capital punishment), an English and a Scottish judge, a psychiatrist with much experience of offenders, a Professor of Social Medicine, a Bishop, and the Secretary of a County Council – all under the chairmanship of a former Chancellor of the Exchequer with wide public experience, but no close acquaintance with penal matters'. Such a motley crew were bound to argue, and they did. They argued for eighteen months, making and re-making plans for future work, hearing 'platitudinous evidence' and debating 'the niceties of penal philosophies'.⁵⁵ Penologist Nigel Walker was one of those called to give evidence, and his 'bizarre' experience as a witness was probably typical of many: 'As soon as I began to give my views on the proper aims of sentencing, which is what they had asked me to do, they began to argue with each other, unchecked by the Chairman'.

Such a commission, Walker considered, had as much hope of getting anywhere as one on disease and its treatment.⁵⁶ Vast amounts of reading material, equivalent to an Open University course on criminal science, were made available to Commission members, with much time being taken up in discussion of which colours should be used for duplicating different types of document.⁵⁷ They decided to break up into three Sub-Committees. The most important of these was the 'Concepts and Purposes' Sub-Committee, to which Barbara Wootton belonged. It was allotted the task of examining the principles which should underlie the punishment and treatment of offenders. Unfortunately, the Sub-Committee drowned in hundreds of pages of 'evidence' which produced a 'hopelessly disorienting pseudo-seminar'; notions of 'concepts' and 'purposes' were endlessly taken apart, shuffled around, described in unreal terms, or in 'ponderous pseudo-philosophical language'.⁵⁸

There are various accounts of what happened to bring this sorry business to an end. The Conservative law reformer, Lord Windlesham, blamed Leon Radzinowicz and Barbara Wootton – 'both strong characters unaccustomed to taking no for an answer' – for saying that nothing could be done without years of systematic research.⁵⁹ This was a bit of an overstatement, but Barbara Wootton is certainly likely to have emphasized the need for well-done research, and Leon Radzinowicz, as the country's first Professor of Criminology and Director of the first Institute of Criminology, in Cambridge, had a direct interest in turning criminology into something that it clearly was not, namely a research-based science. He was the first to sound the alarm that the Royal Commission was going nowhere. Then Barbara joined him, and so did the Bishop of Exeter and Lady Adrian and Beatrice Serota (later a Baroness), and academic Professor Gibbens (who had served on the Streatfeild Committee with Barbara). On the days the Commission met, the dissenters would assemble in private at nearby Brown's Hotel for lunch or a drink to discuss their dissent. It was agreed that the Bishop of Exeter, aided by Radzinowicz, would prepare a memorandum outlining their views and proposing the dissolution of the Commission.

The document they produced was concise and logical: the idea that a comprehensive solution to the problem of crime lay round the corner just waiting to be discovered was a dangerous illusion; the Commission's existence might delay urgent, practical reforms; the Government was in any case introducing such reforms (for example, majority jury verdicts and suspended sentences) without consulting the Commission at all; and what was needed was not a 'slow deliberate survey of the field', but a 'continuous survey of the penal system by a body in continuous existence'.⁶⁰ They therefore recommended the discharge of the Royal Commission and the constitution instead of a permanent Advisory Council to the Home Office on the Penal System. A deep rift in views was revealed when the sixteen members

of the Royal Commission voted on this memorandum. Six, including Barbara Wootton, immediately resigned. Two resigned later on the grounds that a reduced commission would not function.⁶¹ At least one of the remaining eight, the Professor of Social Medicine, Jerry Morris, regarded the Royal Commission as the greatest failure of his life.⁶² According to the prominent left-wing QC Louis Blom-Cooper, 'Barbara and Radzinowicz went off to Roy Jenkins [then Home Secretary] and said, "Would you please dissolve this bloody silly body?" which he did.'⁶³ The business of disbanding it took some time, as there were no procedures for doing this, and it had never been done before. The dissidents' alternative, a permanent Advisory Council on the Penal System, was set up in 1966, and Barbara Wootton, Leon Radzinowicz, and Bea Serota transferred their loyalties to it 'with good grace'.⁶⁴ For twelve years, the Council's reports formed an important strand in the formulation of policy,⁶⁵ with Barbara's powers of intellectual persuasion steering it in the direction of 'controlled liberalism'.⁶⁶ The Council provided a framework within which Barbara Wootton could continue to make her case about the treatment of young offenders: for example, that the strategy of confining young people in institutions was at best 'a costly way of achieving very little', and at worst, the cause of more problems than it solved, since it reinforced rejection and anti-social behaviour.⁶⁷

Barbara Wootton's radical thinking about penal policy and practice is outlined most fully in *Crime and Penal Policy*, and in another of her books, *Crime and the Criminal Law*, published fifteen years earlier, in 1963. This was the published version of a series of prestigious lectures, the Hamlyn lectures – so named after a bequest from a wealthy Devon solicitor. Barbara was the first lay person and the first woman to give the Hamlyn lectures. Hers displayed a 'lucidity and intellectual honesty' that ought to appeal to any lawyer who was not completely hidebound and was still capable of thought.⁶⁸ *Crime and the Criminal Law* was a 'blend of irreverence, wisdom and wit', 'a remarkable book by a remarkable Englishwoman',⁶⁹ pronounced Herbert Hart, the eminent legal philosopher whose wife Jenifer had taken to communism in the 1930s partly as a result of reading Barbara's *Plan or No Plan*. He wrote a long review of the book in a respected legal journal, commending Barbara for having raised to a higher level the whole debate in England about the basic principles of the criminal law. Her views on sentencing policy and procedure were, he noted, still highly controversial, which is why *The Daily Mirror* deemed her book 'a strong attack on Britain's criminal-court system'.⁷⁰

Crime and the Criminal Law began, as Barbara Wootton usually did, with the facts of the matter: 'Penal treatments could be described as cumulative failures. The more anyone experiences them, the greater the probability that he will require further treatment still'.⁷¹ And yet, certain aspects of the statistical picture did

stand out: young men and cars were responsible for most crime. Barbara's second husband, George Wright, a delinquent in his own youth, once attempted to console 'his over-anxious magisterial spouse' with the observation that many cases of youth criminality would be cured by maturation: "'Don't worry about what you do in court";' advised George, "As we grow up, we see it's a mug's game and give it up."'⁷² The association with masculinity was more of a puzzle. In 1961, eighty-seven per cent of all those convicted of indictable offences were men, with the biggest gender differences at the younger ages, a picture virtually unchanged over the decades.⁷³ As Barbara had remarked in her *Social Science and Social Pathology*, gender far outranked all the other characteristics associated with criminality. If the explanation lay in some aspect of cultural conditioning, which she thought likely, 'To identify this would make possible a larger reduction in criminality than is offered by any other line of inquiry'.⁷⁴

The scanty research evidence available when Barbara Wootton gave her Hamlyn lectures showed remarkably few differences in reconviction rates between offenders fined, imprisoned, or put on probation.⁷⁵ She might well have quoted, in the later edition of the published version of these lectures, though she did not, a systematic review by Robert Martinson of 231 studies involving thousands of individuals that was so damning about the failure of research reliably to establish any sure way of preventing reoffending that its funder, the New York State Governor's Special Committee on Criminal Offenders, tried to prevent publication.⁷⁶ Any consideration of whether sentencing works involves thinking about what the function of the courts is in the first place: to punish or to prevent? 'I do not think that it is our business to punish the wicked', pronounced Barbara. 'Our business is to do what we can to prevent the repetition of crimes.'⁷⁷ Punishment does not work in deterring offenders from further offences, although of course it does prevent harm to the public while the offender is actually institutionalized. The word 'punishment' was not in her vocabulary as a magistrate; she never used it.⁷⁸ Instead, she held strongly to a view, which was not popular among many of her colleagues in the penal system, that the only justification for depriving someone of their liberty is the utilitarian one of preventing harm to others.⁷⁹ The emphasis on prevention rather than punishment means that it is necessary to be very sure, both that not depriving people of liberty *does* risk harm, and that whatever custodial sentence is imposed is likely to prevent reoffending. The difference between punitive and preventive approaches is a real one, and it has real consequences for how courts and magistrates ought to behave.

A key theme of Barbara Wootton's writing, thought and practice in the area of penal policy was the need for a *practical* approach to the treatment of crime. Yet, as noted earlier, hers was also a *moral* view: she wished to conserve the idea that most

of us are responsible, in an ordinary sense, for our actions. Here she was up against two traditional aspects of English law: the distinction between intended and not intended actions, and the associated principle that mental incompetence or (in its more modern formulation) 'diminished responsibility' is a reasonable defence. A concept closely cherished by criminal lawyers at the time she entered the penal policy field was that of *mens rea* (Latin for 'guilty mind') as a necessary element in a crime. In order to be guilty, you have to intend, or at least know, what you are doing. The importance of intention was one reason why motoring offences tended to be treated more lightly than others: 'No guilty intention, no crime, is the rule'.⁸⁰ It was a rule that derived from the traditional bias of English justice towards the punishment of the wicked: the penal system was a device for rooting out the wicked. Yet, said the sage Baroness, if the object of the criminal law is to prevent socially damaging actions, it is absurd to turn a blind eye to those which are due to carelessness, negligence or accident, since these often cause more damage in the modern world than deliberate wickedness. The question of motivation is strictly irrelevant; the only important matter to be decided is whether harm was done and how to stop it happening again.⁸¹ Barbara Wootton's attack on the sacred concept of *mens rea* was one of her most influential and unsettling contributions to the crime and penal policy field. As Herbert Hart remarked in 1965, her name became synonymous 'with the claim that the whole doctrine of *mens rea* and the conception of responsibility embodied in it is an irrational hindrance to sound social policy'.⁸² He took a different view, and the civilized disagreement between them produced what became known in the philosophy of law as the 'Wootton-Hart' debate.⁸³ Hart believed that a system based on the abolition of *mens rea* would not be a system of punishment. Precisely so, Barbara said.

The irrelevance of mental state in Barbara Wootton's approach to penal treatment had major implications for the notion of diminished responsibility, and thus for the role of psychiatrists in arbitrating who was, and was not, irresponsible. Barbara did not like psychiatrists. She did not like them when she wrote *Social Science and Social Pathology* in 1959 and she certainly did not like them when she understood the full extent of their 'wholly exceptional powers' over people who came into contact with the penal system.⁸⁴ Before the 1948 Criminal Justice Act, only offenders who were either insane or mentally defective qualified for medical, rather than penal, treatment. Nine years later, the 1957 Homicide Act restricted the use of capital punishment to specific kinds of murder, and/or repeated murders, and allowed a plea of diminished responsibility for the first time, thus hugely expanding the dependence of the penal system on the opinions of psychiatrists. This development was taken even further when the 1959 Mental Health Act allowed

a prison sentence to be replaced with a hospital or 'guardianship' order if certain kinds of mental disorder could be medically certified. In debates about the Act in the House of Lords before it became law, Barbara spoke out trenchantly about the danger of creating, as the Act proposed to do, a new category of psychopathic persons defined, not by the presence of a mental condition, but simply by virtue of anti-social behaviour. She noted that a contemporary textbook on social pathology widely used in the USA had a chapter devoted to radicals and radicalism as examples of psychopathological conditions.⁸⁵

The power of psychiatrists in penal policy would not matter so much, said Barbara, if psychiatry were a science. But psychiatrists disagreed with one another; definitions and concepts of mental disorder were unstable and elusive, and far from socially or ethically neutral.⁸⁶ There was the problem of spurious (unevidenced) expertise; and there was the problem of labelling. She was fond of pointing out that 'all the successful reforms in the world' had been instigated by powerful emotional drives, and all reformers have been motivated by emotional disturbances: Florence Nightingale and Emmeline Pankhurst were two examples she liked to quote of individuals who certainly would have qualified as in need of psychiatric treatment.⁸⁷ She made her audience laugh at a National Association of Mental Health Conference in London in 1962, when she pointed out that one result of the growth of psychiatry had been to give wives of unfaithful husbands a new excuse: to say the poor man was sick was so much more acceptable than admitting he preferred another woman. Talking about the 'cult' of psychiatry in the USA, she mentioned a friend of hers who taught at an American university and had told her that about fifty per cent of the staff were receiving psychiatric treatment. 'It seems rather a pity that young American students are being taught by such a collection of invalids', said Lady Wootton, getting yet more laughs.⁸⁸

Barbara's best-known attack on the concept of diminished responsibility took the form of an analysis of the 73 cases in which a defence of diminished responsibility had been raised in the 27 months following the 1957 Homicide Act. What these cases showed was that the only stable factor differentiating cases in which diminished responsibility was successfully, as opposed to unsuccessfully, argued, was that the person had a history of mental instability. In many instances, a propensity to commit criminal acts was taken as a sign of mental instability. This created the paradox that those people most likely to re-offend (as judged by this history) were those most likely to be returned to the community: 'The worse your conduct, the better your chance'. It would be interesting, said social scientist Barbara, to know how often psychiatrists would diagnose diminished responsibility if they did not know that the subject was on trial for murder.⁸⁹ Dependence on

psychiatric judgements to determine who was criminal and who was ill meant that 'the ranks of the blameless will be steadily expanded', and had the further resounding weakness of making an individual's personal guilt completely contingent on the state of medical science at the time.⁹⁰ Unsurprisingly, these statements of hers acted as a profound irritant to psychiatrists, lawyers and others.

Central to Barbara Wootton's approach to penal policy was her moral opposition to violence. Capital punishment was a burning question in the 1950s and 1960s; indeed, probably more words had been uttered over the years, in both public and private, on capital punishment than on any other single public policy issue.⁹¹ Barbara was implacably opposed to it, as she was to almost all forms of violence (the exception being 'certain cases of mercy killing'). For one human being deliberately and irrevocably to curtail another human being's life is 'an act of unsurpassable arrogance' and this is so whether the killer is a soldier in battle, an executioner or a murderer. Furthermore, killing degrades those who do it. She found 'the whole monstrous ritual' of judicial execution an offence to civilized values: 'the solicitous care for the condemned man's last days, the elaborate precautions to prevent him from taking his own life (why shouldn't he?). The stealthy introduction of the hangman into the prison the day before an execution in order that he may surreptitiously observe his victim's physique from which to make the calculations necessary for the successful performance of his hideous task.'⁹² She published a prose poem in *The Spectator* called 'I am ashamed of my country': 'I am ashamed that men can be found who, for a suitable wage, will build and maintain in good repair an apparatus for strangling their fellow men'. It made her wish she were not British.⁹³ Her friend Ernest Gowers, with whom she had shared the much less contentious platform of the Commission on Shop Hours, had provided in his little book *A Life for a Life?* a horrendous description of the procedures involved in using the execution chamber.⁹⁴ Gowers had chaired the 1949 Royal Commission on Capital Punishment, and, in the course of his four years' work on it, had changed his own mind about the death penalty.⁹⁵ He wished Barbara Wootton had been there to help him on the Commission: 'When it comes to a selected trio of prison doctors stoutly maintaining, as they did, that no pleasanter or more humane method of disposing of people than hanging could possibly be devised – Well, Really, as Lloyd George used to say when there was nothing more to be said'.⁹⁶

Barbara contributed a chapter to an 'avowedly abolitionist' symposium on *The Hanging Question* for the Howard League for Penal reform in 1969.⁹⁷ She joined the National Campaign for the Abolition of Capital Punishment as a member of its Committee of Honour, renewing the ethical case for abolition in the company of other distinguished members such as Benjamin Britten, E.M. Forster, John

Gielgud, Julian Huxley, R.H. Tawney, Arnold Toynbee and Leonard Woolf.⁹⁸ When the Murder (Abolition of Death Penalty) Act of 1965 finally arrived in Parliament as a Private Member's Bill, Barbara agreed to be its main sponsor in the House of Lords. Introducing its second reading there in the summer of 1965, she told their Lordships that it was an extremely simple Bill, whose main provision was that a sentence of life imprisonment should follow any conviction for murder. Voting in its favour would allow their Lordships to recover their (in her view) unfortunate history of supporting retention of the death penalty, even when a majority in Another Place (The House of Commons) did not: did they realize, for example, that between 1800 and 1818 they had rejected no fewer than six times a Bill abolishing the death penalty for shoplifting? What would they think about that now?⁹⁹ When the Bill was passed on its third reading, she was congratulated for her success in the face of 'the strongest opposition' – the retentionists had been vocal, and had given her a hard time,¹⁰⁰ but she was forced to return to the fray four years later because the provisions of the 1965 Act had been limited to five years. She was the 'unofficial Whip' in the 1969 debate. Her opening speech prioritized the moral case – that to take life in cold blood is wrong – but the strongest element in her case was the evidential one: 'This is not a topic on which opinion has the slightest value,' she enunciated – and one can just imagine the ringing tones in which she said it, perhaps peering over the half-rim glasses from behind which she had sentenced the founder of *The Big Issue*. 'But I have heard noble Lords, one after another, and many persons of influence outside, simply make the categorical statement, "I believe that the death penalty is a unique deterrent". My Lords, it makes no difference what you believe or what I believe: this is a question of fact.' And the fact was that there was no evidence that hanging people for murder had any deterrent effect at all.¹⁰¹ It was a tense debate, with the outcome doubtful until the last minute; when the result was finally announced, she felt like bursting into tears.¹⁰²

Of all the arenas relating to crime and justice which Barbara Wootton entered over her long life, the two that gained her most prominence were cannabis and alternatives to prison. These two issues are, on the surface, opposing cases in the relationship between evidence and policy: the work of the Sub-Committee she chaired, which produced the Wootton Report on cannabis in 1968, was entirely disowned by the Government that had sponsored it, whereas the main recommendations of the second Wootton Report on alternatives to prison in 1970 led directly to legislation establishing the radical alternative of Community Service Orders. However, the picture of what happened is rather more complicated than this.

The Cannabis Report was the work of the Advisory Committee on Drug Dependence. Barbara chaired its Hallucinogens Sub-Committee, a body set up

when cannabis use by students at Oxford University in 1967 led the Vice-Chancellor to write to the then Home Secretary, Roy Jenkins, asking for a national inquiry into cannabis and Lysergic Acid Diethylamide (LSD).¹⁰³ These were the hippie years, the years of flower power, pop festivals, and a general relaxation of mores. The epicentre of the drug scene was in London, in Piccadilly Circus at the notorious open-all-hours pharmacy Boots, but a wide range of drugs was available in a 'poly-drug culture'¹⁰⁴ to a wide range of people. By the mid-1960s, cannabis was firmly planted, not only in the culture of pop music and flower power, but among students and the upper classes, and via respectable routes of migration, including British naval ships and mail delivery to foreign embassies in London.¹⁰⁵ In 1967, when the Hallucinogens Sub-Committee began its work, there were well-publicized drug charges against Keith Richards and Mick Jagger of the Rolling Stones. Jagger's arrest and imprisonment for possessing four Italian amphetamine pills gave rise to a famous editorial in *The Times*, 'Who Breaks a Butterfly on a Wheel?' which compared his offence with the act of an Archbishop of Canterbury who purchased four proprietary airsickness pills at Rome airport after visiting the Pope: the two offences carried exactly the same legal status.¹⁰⁶ In May 1967, the Beatles released their psychedelically-charged 'Sergeant Pepper' album with a cover including marijuana plants, and the summer saw the 'Legalize Pot Rally' in Hyde Park with poets Allen Ginsburg and Adrian Mitchell, political journalist Carolyn Coon, and Black rights activist Stokely Carmichael, among others. The organization 'Release' was founded in that summer of 1967 by Coon, then a nineteen-year-old art student, and an artist friend, Rufus Harris, under the wings of Eros in Piccadilly Circus, and run as the world's first free twenty-four-hour drugs and legal advice telephone line from Coon's basement flat in Shepherds Bush. Release published a report in 1968 about police harassment in relation to drugs, and Coon was summoned to Scotland Yard. Afterwards she rang up Barbara Wootton.¹⁰⁷ Barbara was supportive of the Release venture, and is today listed on Release's website 'Roll of Honour'.¹⁰⁸

On 24 July 1967, *The Times* carried a whole-page advertisement advocating the reform of cannabis laws. The advertisement was signed by sixty-five people, including scientists, doctors, MPs, Graham Greene, one member of the Hallucinogens Sub-Committee and all four Beatles, who paid for its publication.¹⁰⁹ One aim of the publicity in *The Times* was to persuade the Sub-Committee to drop LSD from its terms of reference and focus on cannabis alone, on the grounds that the two drugs were different, both pharmacologically and in their patterns of use. The task of Barbara Wootton's drugs committee was thus to review the available evidence on the pharmacological, clinical, pathological, social and legal aspects of cannabis. The increased use of drugs had produced a sharp rise in convictions for

drug offences: from four convictions and four customs seizures in 1945, the total by 1967 was 2,393 convictions and 87 seizures.¹¹⁰ Many courts were faced for the first time with the task of how to deal both with drug-users and drug-traffickers. Cannabis was in the same class as heroin as a prohibited drug under the 1965 Dangerous Drugs Act, and the penalties common to all drugs covered by the Act were fairly substantial: on summary conviction (by a Magistrates' Court) a fine of not more than £250 or prison for not more than 12 months or both; and, on conviction on indictment, a fine of not more than £1,000 and prison for not more than ten years, or both. In 1967, a quarter of all cases, mostly involving possession of small quantities of cannabis, attracted prison or other custodial sentences.¹¹¹ The same penalties applied both to possession and supply. The questions in front of the Sub-Committee then were: did the dangers of cannabis merit this treatment, and should personal use and trafficking carry the same penalty?

Both public attitudes and the burden on the penal system were factors Baroness Wootton and her eleven colleagues on the Hallucinogens Sub-Committee had to consider. The group included four psychiatrists, a stipendiary magistrate, two pharmacologists, representatives of a drug company and the police, the editor of *New Society* and a sociologist. They went about their business in an unorthodox way, advertising for people to submit written or oral evidence, although the result of this initiative was disappointing.¹¹² According to the sociologist in the group, Michael Schofield, in the early meetings the weight of the Sub-Committee was against lightening the penalties for cannabis: six members wanted to take a hard line, four were undecided, and only two considered the penalties too severe; one member declared that no research was necessary, as all the Sub-Committee had to do was to work out ways to 'stop the spread of this filthy habit'.¹¹³ They held seventeen meetings, examined a huge body of evidence and commissioned a review of the international clinical literature by the renowned psychiatrist, Sir Aubrey Lewis. Their general conclusions were straightforward: 'There is no evidence that in Western society serious physical dangers are directly associated with the smoking of cannabis'; 'It can clearly be argued on the world picture that cannabis use does not lead to heroin addiction'; 'We believe that the association of cannabis in legislation with heroin and the other opiates is entirely inappropriate ... the present penalties for possession and supply are altogether too high'; 'All in all, it is impossible to make out a firm case against cannabis as being potentially a greater personal or social danger than alcohol'.¹¹⁴ These conclusions were substantially in line with the most comprehensive previous attempt to come to grips with the effects of cannabis: the seven-volume Report of the Indian Hemp Drugs Commission, which was produced in 1894 by four British and three Indian men, based on the testimony of 1,193 witnesses.¹¹⁵

Federal Union meeting, 1940 (BW on the extreme right)

Barbara Wootton in the House of Lords on the day she became a baroness, 21 October 1958
(with Lord Longford, left, and Lord Burden, right)

High Barn, Abinger, Surrey,
house and garden

Barbara feeding the donkeys,
Miranda and Francesca

Barbara Wootton inside High Barn

Barbara Kyle

Barbara Kyle (left), Barbara Wootton (far right) and Ann Monie on the terrace at High Barn, early 1960s

Delegation from British Parliament to Liberia, 1963 (left to right: J.D. Cordle, Ifor Davies, Harold Gurden, BW, Sir Kenneth Thompson, E.J. Milne)

Barbara Wootton at the 20th international training course of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, in Tokyo, Japan, 1969

Woman in a Man's World: Barbara Wootton receiving honorary degrees at the universities of Essex, 1975 (top left), Southampton, 1971 (top right), Warwick, 1972 (middle), York, 1966 (bottom left) and Bath, 1968 (bottom right)

Barbara Wootton, aged 67, 1964

Barbara Wootton, aged 80, 1977

'Any Questions?' at Nantyglo Community College and Sports Centre Complex, March 1974
(seated clockwise: Owen Edwards BBC, BW, David Jacobs, Enoch Powell, John Cole and BBC producer;
at rear, June Flower, Les Mitchell and Lyn Mitchell from Nantyglo Youth Centre)

Barbara on the tenth anniversary
of Horizon Holidays, having
lunch in La Pyramide Restaurant
near Lyons, France, 1959

Barbara's eightieth birthday party, 1977: Prime Minister James Callaghan giving a speech (left),
with James Callaghan and Gordon Brunton (right)

Barbara in China, 1972: with a guide (above);
in Sian, her hand resting on a tortoise, symbol
of longevity (right)

Vera Seal, mid-1980s

The main recommendations of the Wootton Report on cannabis were that possession of a small amount should not normally land the possessor in prison; and that maximum penalties for possession, sale or supply should be lowered on conviction in a Magistrates' Court to a fine of not more than £100, or imprisonment for not more than four months, or both; on conviction on indictment, these penalties should be an unlimited fine or prison for not more than two years, or both. The Sub-Committee did not want to encourage the use of cannabis, but nor did its members advocate legalization. However, legalization would have been logical, and it came as a surprise to some that the report did not recommend it.¹¹⁶ What the Sub-Committee proposed was a middle way, in which it was recognized that small-scale personal use of the drug was unlikely to harm anyone and certainly did not justify the absorption of police, court or prison resources. This was effectively 'a plea for the use of cannabis to be judged more realistically in our codes of law and social behaviour'.¹¹⁷ Looking back years later, Barbara conceded that their recommendations had been a 'rather illogical compromise', but they had been right to do as they did; the logic of legalization would have been quite impracticable at the time.¹¹⁸

The Report was ready in November 1968, but was not distributed until 7 January 1969. There were enough pre-publication leaks 'to fill a good-sized bathtub'.¹¹⁹ The leaks predicted that the Home Secretary, James Callaghan, would denounce its findings and recommendations.¹²⁰ This Callaghan duly did. His grounds were that reducing the penalties for possession, sale or supply of cannabis would be bound to lead people to think that the Government took a less than serious view of the effects of drug-taking; this was not so.¹²¹ Callaghan's response gave the 'escalation theory' of drugs a new lease of life: the suspicion that all soft-drug uses are inevitable invitations to progression to harder ones was, and remains, the greatest obstacle to clear appraisal of the effects of individual drugs.¹²² Callaghan also memorably complained that the Wootton Sub-Committee had been over-influenced by the lobby to legalize cannabis; the existence of this lobby was a fact that had to be combated by the Government and by public opinion. It was an aspect of the permissive society, and the permissive society was wrong.¹²³ His remarks gained cheers in the House of Commons, but infuriated Barbara Wootton. She and the chairman of the Advisory Committee on Drug Dependence, Sir Edward Wayne, wrote to *The Times* on 5 February, protesting that Callaghan's statement was offensive to their distinguished colleagues and themselves, and that they particularly deprecated the use of the emotive word 'lobby'. They tried to correct his misperception that they favoured legalization, and observed that more than half his speech was devoted to drugs with which their Report was not concerned.¹²⁴ However, Barbara's anger at

Callaghan's treatment of the Report did not poison relations between them, which remained sufficiently cordial for him, during his time as Prime Minister, to preside genially over her eightieth birthday party in 1977.¹²⁵

The climate of opinion at the time was not one to appreciate the careful review of the evidence and clarity of thought expressed in the Wootton Report. How many people were willing (i) to agree that the link with violent crime was far stronger for alcohol, a socially acceptable drug, than for cannabis; (ii) to accept the argument that rising prescriptions for so-called 'minor' tranquilizers were a substantial cause for concern; or (iii) to grasp the logic that, although many heroin addicts have a history of cannabis use, it does not follow that most cannabis users will become heroin addicts?¹²⁶ Barbara's own publicity for the report singled out the simple message 'Cannabis is Not Heroin',¹²⁷ on the grounds that this important distinction was the one most sentencers just did not grasp. Reviews in the British medical press, the *British Medical Journal* and *The Lancet*, were oddly contradictory, with the former, under the emotive title 'Potted Dreams', insisting that cannabis causes mental disorientation and that none of the Report's recommendations would achieve the necessary objective of diminishing its use.¹²⁸ The conjunction of the heady topic, an ageing baroness and a rejecting government provided a media opportunity of unparalleled proportions. A consultant psychiatrist's extraordinary description of the Report as a 'junkies' charter' provided several newspapers with heavily quoted headlines.¹²⁹ A chief constable from Cambridgeshire who hoped the Home Secretary would file the Report in his wastepaper basket was also newsworthy,¹³⁰ and Conservative MP Sir Gerald Nabarro's view that Barbara Wootton should be locked up for downright irresponsibility could hardly be resisted.¹³¹ A County Councillor in Welwyn Garden City decided that the recent 'terrifying increase in cannabis-peddling' in his area was directly due to the Wootton Report.¹³² Predictably, several papers ran sensational stories about young people whose lives had supposedly been ruined by cannabis: a nineteen-year-old who started on hash and was then hooked on heroin;¹³³ and the twenty-two-year-old honours graduate abandoned by her fiancé who tried pot at a party and eight weeks later was on heroin and the streets.¹³⁴

Most of the papers which commented also mentioned Barbara Wootton's age. 'Little Old Lady Talking Pot', was a *Sunday Mirror* headline. The *Sunday Mirror* journalist who interviewed Barbara reported that she sat, 'straight backed and serious, answering each question with precision, her seventy-one-year-old mind showing no trace of its age. Her thumbs don't twiddle. There are no extravagant gestures ... There's a bit of the headmistress in her. You wouldn't like to be caught in the toilets with even a cigarette in your mouth, never mind a reefer.' Lady Wootton was clearly a remarkable woman, but who was she? Her life, the interviewer

decided, 'reads like a cross between sensational women's magazine fiction and a chapter from a careers guide for school leavers'. Somehow they even got onto the fact that the donkeys' favourite drug was peppermint creams.¹³⁵ Many people wanted to know if Lady Wootton had ever tried pot herself. She apparently came close to admitting this when questioned on television.¹³⁶ 'Who is this seventy-one-year-old life peeress,' inquired *Time and Tide*, similarly surprised that anyone of her generation would know anything about drugs, 'who, although she has never been elected to Parliament, sometimes seems to wield more power than any other woman in the country.'¹³⁷ The constant references to her age annoyed Barbara, since they implied that the Report was 'the diseased brainchild of her own disordered and senile imagination', whereas a number of distinguished authorities with international reputations had actually shared with her the responsibility for the careful work that had gone into it.¹³⁸ She noted that, out of some 600 press notices, no more than half a dozen referred to the existence of any co-signatories, distinguished or otherwise.¹³⁹

'I never actually got letters threatening to kill me,' she observed, 'but several expressed satisfaction that at my age nature would soon take its course.'¹⁴⁰ The negative and/or rude letters in the cannabis file in Barbara's Girton College Archives outnumber the positive ones by more than three to one. 'I never thought I would write to an elderly woman in this strain,' said 'a hard working member of the community' in Manchester, 'but my heart bleeds for the state of this country and for the awful future people like you are preparing for the young folk.'¹⁴¹ A Mothers' Union in Essex wanted to put on record their protest against the idea that cannabis is not dangerous; they had proof that it was.¹⁴² The worst missives were, naturally, unsigned: 'you MURDERING OLD BITCH';¹⁴³ 'you Bloody Stupid OLD FOOL';¹⁴⁴ 'What a *stupid ridiculous interfering meddling* old gas bag you are'.¹⁴⁵ A thoughtful letter came from a Mrs Sonia Argyle in Oxford, a fellow Girtonian and the parent of teenagers, one of whom was 'unstable' and worryingly had access to cannabis. Mrs Argyle felt Barbara Wootton had let her down, and she felt this even more strongly because she herself had been the casualty of a wartime broken home and had been rescued as a teenager by Jack Wootton's family in Nottingham.¹⁴⁶ There were also some who bothered to write to approve of this Wootton Report. Edward Morag in the House of Lords congratulated Barbara and expressed his distress at the 'ill-informed attacks'; she should not despair, as her Report was thirty years ahead of its time in commonsense and forethought.¹⁴⁷ 'A regular cannabis smoker' offered to help her in any way he could.¹⁴⁸ A Mrs Starky in Devon thought it important to warn Barbara that the real danger was not cannabis but 'the dark treacly fluid of the coco-cola'.¹⁴⁹

At the end of the month in which the Wootton Report on cannabis was published, Barbara opened the 'Camping and Outdoor Life and Travel' Exhibition in London

in her capacity as Chair of the Countryside Commission. One would have thought she would have been pleased to leave the whole sorry subject of drugs behind. But she surprised her audience and herself by lashing out at the way the Report had been treated in the press: 'one of the biggest misrepresentations I have ever seen'.¹⁵⁰ Commenting in the House of Lords on the 'hysterical reaction' meted out to the Report from the press, the public and the House of Commons (but not, she noted approvingly, by their Lordships), Barbara offered her diagnosis of the reasons for it. The syndrome was familiar to students of social psychology: people responded with outrage when 'some critical and objective study threatened to block an outlet for indulgence in the pleasures of moral indignation'.¹⁵¹ In a television interview in 1984, she *still* had to correct the view that her Sub-Committee had recommended the legalization of cannabis.¹⁵² Nonetheless, she did allow her name to appear on the notepaper of the 'Legalise Cannabis Campaign', albeit in very small letters and on the understanding that she would not be pestered to attend meetings.¹⁵³

James Callaghan's shelving of the Wootton Report was not the end of the story, however. 'Drug Law Shock: Jim Changes His Mind' pronounced *The Sunday Mirror* in February 1970.¹⁵⁴ Less than a year later, he introduced legislation which adopted many of the Wootton Report's recommendations and eventually became the 1971 Misuse of Drugs Act. As Barbara Wootton later reflected, it was a considerable irony that, during Callaghan's own spell as Prime Minister later in the 1970s, the four months' sentence her Sub-Committee had proposed as the maximum on summary conviction for a cannabis offence was reduced to three months.¹⁵⁵ During the Committee stage of the Bill, Dr Richard Sharples, then Minister of State at the Home Office, observed that sentences of imprisonment for a first offence of possessing up to 30 grams of cannabis had fallen from 237 out of 1,857 (thirteen per cent) in 1967, to 21 out of 3,179 (less than one per cent) in 1969, a change he ascribed to the impact of the Wootton Report.¹⁵⁶

One of the headlines that appeared in the aftermath of the first Wootton Report was 'Peeress Who Led "Pot" Inquiry Gets New Drugs Job'.¹⁵⁷ It was not a new job, but part of the old one: an inquiry into amphetamines and LSD. This second drugs report received virtually no press attention. It took the same line as the Cannabis Report in proposing a firm distinction between possession of small quantities for occasional personal use, on the one hand, and habits that could threaten public health or otherwise do significant damage, on the other. Swallowing a few purple hearts was less serious than injecting amphetamines; as regards LSD, the use by psychiatrists then prevalent was not based on any evidence of therapeutic effectiveness, and the grave risks attaching to its unauthorized use placed it 'high on the scale of harmfulness'.¹⁵⁸

Both Wootton Reports on drugs criticized the absence of reliable research and the weakness of depending on subjective opinion which was liable to conjure up unreal hyperbolic images of drug-takers and drug-taking. '50 Arrested at Pop Festival' was a typical headline during the three-day festival held in Reading in the summer of 1971: 'More than 50 pop music enthusiasts, including girls, were arrested by detectives with long hair and dressed in jeans as they arrived for a three-day festival at Reading ... Hundreds of youths were searched for drugs.'¹⁵⁹ It was a police operation of 'unparalleled magnitude'. As the ever-incisive Lady Wootton pointed out, such an operation was not only an offensive but an inefficient way of doing business: ninety-three per cent of the searches by the duplicitously dressed detectives found nothing.¹⁶⁰ This statistic was completely in line with other evidence about the productivity of 'random' searches.¹⁶¹ Barbara received a number of letters from people affected by police behaviour at the Reading festival. One man reported what had happened when his twenty-year-old daughter Judith came to visit him during the weekend of the festival:

On arriving at Reading station, my daughter, who was dressed in a pair of blue linen trousers, blouse, black boots and a nearly new blue mac/coat, which I had just purchased from Harrods for £20 and having sunglasses in her hand, was walking from the train carrying a green plastic Harrods bag. Having left Platform eight she approached the main exit via the sub-way, when, as she was approaching the exit, a "Kinky/Hippy" type of woman, with blonde hair and leather jerkin, stopped her.

The detective asked Judith to go to a room to be searched for drugs, and the search included dropping her trousers and having her bra and pants felt. The young woman was very upset; in order to avoid a repeat event, her father drove her home in the evening.¹⁶²

Barbara wanted to know how such invasions of privacy could possibly be defended.¹⁶³ The issue of the police's illiberal use of the 'stop and search' law was one which had come up repeatedly in the enquiries of the Wootton Sub-Committee. Under the 1967 Criminal Law Act, the police had the power to arrest without warrant anyone they suspected of being involved in a dangerous drugs offence. This was a practice which much exercised public feeling, but, as it applied to all drug offences, the Sub-Committee suggested that it should be urgently reviewed by another Sub-Committee of the Advisory Committee on Drug Dependence.¹⁶⁴ Such a group was duly appointed, under the chairmanship of Tory journalist and politician William Deedes. Barbara Wootton was a member of this one as well. The Deedes Report, published in 1970,¹⁶⁵ lacked weight, and was greeted as disappointing by those who wanted a change in the law.¹⁶⁶ It provided yet another

occasion for the Baroness to dissent. She and Professor Glanville Williams, a specialist in English law, and the sociologist Michael Schofield, who had been on the Cannabis Sub-Committee, expressed their concern that young people were being searched as drug suspects for no better reason than that they had long hair or wore unconventional clothes. The three dissenters argued that searches should normally only be allowed *after* arrest, and particularly intrusive searches should always only be carried out after arrest, not just casually on the basis of a police officer's suspicion, as appeared to be happening.¹⁶⁷

Barbara Wootton could imagine a world in which such ineffective and humiliating indignities no longer happened, but it was the imagination she applied to a different aspect of penal policy, alternatives to prison, that earned her a more enduring place in the history books. The second report which became known as a 'Wootton Report' had the uncompromising title of *Non-Custodial and Semi-Custodial Penalties*. In 1966, Home Secretary Roy Jenkins asked the Advisory Council on the Penal System to consider 'what changes might be made in 'non-custodial penalties, disabilities, and other requirements which may be imposed on offenders'.¹⁶⁸ The background to this request was the perceived need to reduce the prison population;¹⁶⁹ concern about the efficacy of existing alternatives to prison;¹⁷⁰ and recognition that imprisonment often had detrimental effects on prisoners and their families and contributed to reoffending: 'Putting men three to a cell with a chamber-pot is unlikely to make them feel that society is just and good and that they want to be part of it'.¹⁷¹ In the usual manner whereby one committee spawns another, a Sub-Committee was set up to respond to Roy Jenkins' request, and Baroness Wootton was appointed as Chair. They held 39 meetings, solicited much evidence, and investigated schemes in other countries. Sweden had an interesting day-fine system, a formula-based arrangement in which fines imposed for some offences were calculated on the basis of the gravity of the offence and the offender's ability to pay. The Sub-Committee rejected the idea for Britain as not practical because personal incomes were not public knowledge as they were in Sweden. They looked at other fine systems, at deferment of sentences, at attendance centres, at intermittent custody, at probation and at disqualification and forfeiture, finding something in each of these ideas worthy of expansion and evaluation. But the proposal that attracted them the most, that broke new ground, was that of community service.

The idea of Community Service Orders (CSOs), as they became known, 'floated' into Barbara's mind one day 'on the commonsense basis that instead of sending people to prison it would be better to get them to do some useful work'. She vaguely remembered that the Germans had some scheme of this kind.¹⁷² The German in question was 'the Chocolate Judge', Karl Holzschuh of Darmstadt,

who acquired a degree of fame in the 1950s for his practical suggestion that a child who had stolen sweets should make reparation for this crime by giving some to a local orphanage. He also enjoined a motor-bike thief to join the local walking club, and a boy who had stolen milk from doorways to wash bottles in a dairy. He was a man after Barbara Wootton's own heart, rejecting the idea of punishment as ineffective retribution. Not only did his policy result in the girl who stole sweets never offending again, but the local delinquency rate was reported to fall by forty per cent.¹⁷³ The idea of asking offenders to give back in service what they had illegally taken had also presented itself to Barbara when she went to Australia in 1961. There, in a Juvenile Court in Alice Springs, she saw two boys who had stolen money from a church being ordered to spend their weekends for three months volunteering in an old people's home connected with the church.¹⁷⁴

The British version of these ideas was Barbara's own, but the other members of the Sub-Committee agreed with it. The kernel of the proposal was that individuals who had committed offences that lay between the trivial and the major – such as theft, some traffic offences, some cases of malicious damage and minor assaults – would be ordered by courts to spend a certain number of hours a week in volunteer service in the community. The scheme was envisaged as committing offenders only to work in the evenings or weekends, during what would otherwise be leisure time. A crucial aspect of the arrangements proposed was that offenders would work alongside non-offenders. The work would be provided by voluntary agencies, but co-ordination would be the task of the Probation and After-Care Service. The Sub-Committee was not trying to make the punishment fit the crime (as the Chocolate Judge did), rather requiring offenders to perform some service of value to the community. CSOs seemed to combine a number of desirable features: the community would benefit; offenders would not be exposed to the malignant effects of prison culture; and they might learn values and practices which would lead them away from crime in future. The scheme appealed to adherents of different penal philosophies; moreover, service to the community was much cheaper than seclusion in prison – perhaps as much as ninety-five per cent cheaper.¹⁷⁵

The Wootton Report on alternatives to prison is as notable as those on drugs for its careful sifting of the evidence, clarity of expression, and underlying commonsense, but it is also remarkable for the stress it lays on the need for experimental evaluation of all new proposals: 'We would emphasize,' said the Sub-Committee, 'the need for evaluative research in every instance in which an innovation is introduced. We are well aware that every new form of sentence which is not definitely known to be more effective than existing measures increases the risk of a wrong choice on the part of sentencers.'¹⁷⁶ In all untried kinds of treatments it is 'a wise precaution to

proceed initially by means of controlled experiments'.¹⁷⁷ It therefore made sense to suggest, as they did, that before CSOs were rolled out nationally they should first be tested in a few pilot schemes in different parts of the country. The argument for pilot testing and for proper evaluation followed the precepts of Barbara Wootton's own *Testament for Social Science* – that the case for social science being useful to public policy must rest on the secure foundation of well-conducted research.

The idea of CSOs, one 'with intuitive appeal'¹⁷⁸ for its combination of novelty and practicality,¹⁷⁹ tumbled into the climate of 'penological optimism allied to the rehabilitative ideal',¹⁸⁰ that prospered in 1960s Britain. There was an enthusiastic policy response. In 1971 the Home Office proposed their introduction, initially in six pilot areas, and this was operationalized once the necessary legislation in the form of the 1972 Criminal Justice Act had been passed. The Act, hailed as 'revolutionary'¹⁸¹ in the press, did, however, double the Report's suggestions of the number of hours of community service (from 120 to 240) and the length of time over which this could be spread (from six to twelve months). By an astounding stroke of coincidence for the author of the Cannabis Report, the first CSO was imposed on a first-time possessor of cannabis, a 'gentle and inoffensive' man whose ambition was to die on the banks of the Ganges.¹⁸² By the late 1970s, CSOs were being used throughout the UK, and the British scheme served as a model for those elsewhere, in Australia, Belgium, Czechoslovakia, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, New Zealand, Poland, Portugal, Norway, Sri Lanka, Sweden, Switzerland, the USA and Yugoslavia.¹⁸³ However, in the 2001 Criminal Justice Act, 'community service' was reframed as 'community punishment' in order to increase its attractiveness to sentencers,¹⁸⁴ a change of nomenclature that would have much displeased its originator.¹⁸⁵

Outside the policy domain, reactions to CSOs at the time were mixed. A senior probation officer in Birmingham championed the recommendations of the Non-Custodial and Semi-Custodial Sentences Report as 'based on humanitarian, economic and commonsense bedrock' and proposing a scheme of keeping people out of prison that would pay for itself.¹⁸⁶ Some academics were more critical: the Wootton Sub-Committee had produced no particular evidence to back up their proposal, which was therefore isolated from the main body of penological and criminological knowledge.¹⁸⁷ Barbara's rejoinder to this was, how else could they fulfil their terms of reference except by thinking up ideas which could then be tested by empirical observation? Moreover, where was the body of criminological knowledge which could be used to predict whether a new idea might work or not?¹⁸⁸ Media discussions distorted the whole idea: 'But surely,' asked one BBC interviewer, 'you are not proposing to have convicts working on the roads?' What might have been a useful

discussion was then wholly spent dispelling the image of 'chaingangs in uniforms branded with broad arrows'.¹⁸⁹ The smorgasbord of penal purposes met by CSOs – cost-reduction, retribution plus rehabilitation, benefit to the community – was seen as a weakness rather than a benefit.¹⁹⁰ The relevant paragraph in the Wootton Report which recites the attractions of the scheme to proponents of different penal philosophies was one Barbara later admitted to being 'slightly ashamed' of – it was 'an undisguised attempt to curry favour with everybody'.¹⁹¹ But that is, perhaps, what you have to do if you want people to agree with you.

'Community Service Works' acclaimed the headline of a report by one Probation and After-Care Service responsible for operating the new scheme in the West Midlands after two years' experience with it. Barbara's smiling face, resting on a hand holding a pen, appeared underneath the headline.¹⁹² But *did* it work? Evaluative research in the six pilot areas sponsored by the Home Office suggested that a sentence of community service was somewhat more likely than other sentences handed out to a comparison group (some of whom went to prison) to be followed by reconviction.¹⁹³ But these results were not based on a study in which individuals sentenced to CSOs were randomly chosen from among those considered suitable.¹⁹⁴ The result was 'dubious comparability' between the two groups.¹⁹⁵ The dispute about how to interpret data on the outcomes of the CSO experiment illustrates fundamental points of concern to Barbara Wootton throughout her life about the woolly science in which many important social issues of concern to policy-makers were (and remain) wrapped. Confusion about the purposes to which CSOs ought to be put – a genuine alternative to prison, or a sentence in their own right of quite a different kind – bedevilled their operation, particularly in a context where suspended sentences had been introduced (in 1967) with some of the same aims as the CSO scheme. If both suspended sentences and CSOs are only used in cases where prison would *not* have been seen as appropriate, what is the logic of comparing reoffending rates between the imprisoned and the non-imprisoned? As Barbara noted, even if CSOs yielded only the *same* rate of reoffending as prison, this non-custodial alternative would be counted as a success on the grounds of being much cheaper.¹⁹⁶

Statistics are notable for misinterpretation, and the issue of those in the pilot evaluation came back to haunt her. Twice in 1977–8 she took up with the BBC its inappropriate and misleading use of figures from the study. On the first occasion a 'Tonight' programme on 10 May 1977 declared it 'a statistical fact' that offenders given CSOs are as likely as ex-prisoners to reoffend. Barbara's contact in the Home Office, who had seen a preview of the programme, told her he had challenged the unreliability of this fact, but the programme-makers chose to keep it in, since many probation officers they had talked to had expressed the view that CSOs

did not work.¹⁹⁷ This argument did not impress Barbara. The second occasion for disgruntlement was a 'Panorama' programme on 13 February 1978 on alternatives to prison. Not only were viewers treated to a biased negative view of CSOs – they saw a cross young man whose CSO involved repairing a church, and who refused to do so on allegedly religious grounds – but Barbara's interview was cut up and used as background, rather than in its entirety, resulting in passages acquiring false meanings.¹⁹⁸ She had been on the alert for these devious strategies for some time. Her letter to *The Times* in February 1966 ('A Practice to Watch: Pre-Recording of Broadcasts') had sparked off a mild debate about the distortions clever programme-makers could engineer by stitching together different bits of recorded interviews, thus creating whatever impression they wanted.¹⁹⁹

The critical Barbara Wootton was opposed to various aspects of the Government's interpretation of her CSO idea. For example, the requirement that CSOs should be limited to persons convicted of offences classified as punishable by imprisonment resulted in the perverse incentive to retain imprisonability as the mark of an offence in order to ensure that offenders might benefit from the scheme.²⁰⁰ But in 1977, reflecting on the first five years of CSOs, she declared that the idea had caught on much better than she had dared to hope. She was especially pleased that the Home Office had now revamped the crime statistics so that CSOs were shown separately from other non-custodial sentences. She was proud of her invention, admitting to feeling a 'maternal instinct' about it: 'This is about the only thing I've got written down in the book I'm going to show St Peter when I get there,' she told a journalist in 1978. 'I haven't got much, but I will put that down because it is my child.'²⁰¹

She had a lot more than that to show for her time on earth. These years when Barbara rose to fame as the hippie Baroness and the imaginative inventor of a new way of preserving criminals' liberty were also those in which more people knew her name than ever before or since. She was interviewed repeatedly in the press, and had a high profile on radio and television. A journalist who interviewed her for *The New York Times* concluded she was 'one of ablest people in England'. On the day they met, Barbara was wearing 'tweeds of a cheerful purplish color, and her nails were painted pink'. The Earl of Longford, whose opinion the American journalist solicited, passed observation, not on Barbara's clothes, but on her intellect: Barbara simply had 'the most brilliant academic mind of anyone in public life'.²⁰² An ex-police officer called her 'the Dorothy Parker of criminology', and probably the only person brave enough to observe that the British penal system was 'well stocked with Freemasons'.²⁰³ In 1973, *The Times* placed Baroness Wootton twelfth among the top sixty women then alive – for the qualification of being 'so reasonable' on the Bench, in the Lords and at High Table.²⁰⁴ Not the least remarkable aspect of

Barbara Wootton's work in this whole area of crime and justice is the one noted by the delinquent John Bird – her age: she was sixty-two when *Social Science and Social Pathology* was published; in her early seventies when she gave up being a magistrate and put her name to the key reports on drugs and alternatives to prison; and eighty-one on the publication of *Crime and Penal Policy*. Throughout her eighties, when she was an active contributor to Parliamentary debates about crime and the criminal law, she was simply the 'Crime Expert of the House of Lords'.²⁰⁵

Barbara Wootton's essential ideas on crime and punishment were that the causes of crime are as heterogeneous as the crimes themselves; careful attention to the facts exposes the aridity of many theories: if broken homes create criminals, why are there not as many female as male criminals, since there are as many daughters as sons in such homes?²⁰⁶ If poverty is the cause of crime, then the typical offender would be an old woman, not a young man.²⁰⁷ Capital punishment would be the most effective way of preventing re-offending,²⁰⁸ but the values of a civilized society do not permit such an immoral act. The values of such a society demand that we be rational and humane about crime and punishment, which means that we do what works and what helps, rather than what seems politically expedient or simply a good idea at the time. Penal policy in Britain ought to build on the experience of other countries; mankind's tendency to throw away most of its experience is nowhere more conspicuously true than in relation to penal structures.²⁰⁹

In 1981 (aged eighty-four), Barbara wrote postscripts to her four Hamlyn lectures. Among the points she made were the following: why did the Home Office persistently fail to categorize deaths caused by dangerous driving as homicides; changes in the retirement ages of magistrates and judges follow the rule that the risks of senility vary inversely with the elevation of the post occupied; the radical change to majority verdicts in juries accomplished by the 1967 Criminal Justice Act was based on no solid evidence at all; the booklet for magistrates on sentencing recommended by the Streatfeild Committee had now been produced by the Home Office but it was disappointingly slim, and full of imprecise and shifting conclusions about the effects of different policies;²¹⁰ saddest of all, the crime rate continued to rise, the clear-up rate to fall, and the prisons were more crowded than ever. While, in 1963, she had been optimistic that better research and the growth of electronic mechanisms for handling complex data would make sentencing more scientific, and hence the penal system more effective in containing and reducing crime, in 1981 she was 'increasingly haunted' by the image of the whole penal system 'as in a sense a gigantic irrelevance – wholly misconceived as a method of controlling phenomena the origins of which are inextricably rooted in the structure of our society'.²¹¹ As she had said in 1963, 'The affluent society is not affluent.

It derives that name rather from its esteem of affluence; and the prizes which it offers, though unequally distributed, are nevertheless not wholly unattainable ... A highly competitive, socially hierarchical, acquisitive society offers in fact an ideal breeding-ground for crimes against property; just as a mechanistic speed-besotted age is a standing invitation to motorized violence.'²¹² And in a radio discussion on the subject of drugs in 1972, she remarked: 'If you ask me which I prefer, the values of the Pentagon or the values of the hippies, give me the hippies every time, because life in Western society makes really impossible and extravagant demands on people'.²¹³ It was spoken from the heart, but also from the mind, from a deep and sustained study of how citizens struggle to be good within the confines of a malignant social system.