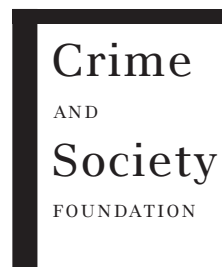


Does criminal justice work?

The 'Right for the wrong reasons' debate

Edited by Richard Garside and Will McMahon



The Crime and Society Foundation is a social policy and criminal justice think tank based at the Centre for Crime and Justice Studies at King's College London.

The Foundation stimulates debate about the role and limits of criminal justice and enhances understanding of the foundations and characteristics of a safer society.

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INTRODUCTION

When Tony Blair launched the government's 'Respect Agenda' earlier this year, the Prime Minister expressed his view that 'traditional' criminal justice processes were 'utterly useless' for getting 'on top of twenty-first century crime'. One of John Reid's first public acts as incoming Home Secretary was to endorse the Prime Minister's assessment, telling the Home Affairs Committee that the Home Office was 'dysfunctional'.

Taking this indictment of the criminal justice system as its starting point, Richard Garside's paper *Right for the wrong reasons* examines the government's reasons for its assessment, and explores the implications of criminal justice failure in relation to the fundamental goal of reducing crime and engendering greater safety. The analysis developed in the paper centres on two general propositions:

- That while the government is correct to identify criminal justice failure as a pressing policy concern, its analysis of the causes and extent of this failure is profoundly flawed.
- That criminal justice policy is largely irrelevant as a means of reducing crime, and that the government therefore needs to explore a much broader policy canvas in order to promote greater safety and security.

UNDERSTANDING CRIMINAL JUSTICE FAILURE

The government's analysis of criminal justice failure is at heart very simple. When crime rates took a sharp upward turn from the early 1980s, the criminal justice system failed to respond to both the increased volume, and the new characteristics, of criminal activity. On the government's account,

this inadequate response was not simply a matter of bureaucratic malaise – the failings of the criminal justice system were in fact an important causal factor in the further growth in crime. The policy response deriving from this analysis is similarly straightforward: the criminal justice system must be modernised in order to keep pace with the changing patterns of crime.

There are, however, a number of serious flaws in this analysis. Firstly, by the government's own preferred measure, the present day criminal justice system is only marginally less effective (or more ineffective) at resolving crime than it was two decades ago. In 1981 around one individual was successfully convicted for every 25 offences estimated by the British Crime Survey (BCS). In 2003/4 the equivalent figure was one individual convicted for every 30 offences.

This does suggest a marginal decline in performance, but hardly one that could be described as a deterioration from success to failure. Instead - and this is the second flaw in the government's analysis - the obvious and crucial conclusion to be drawn from this comparison is that the criminal justice system was, and continues to be, spectacularly unsuccessful in resolving crime.

And thirdly, this already dismal 'success rate' actually over-estimates the effectiveness of the criminal justice system in resolving crime. This is because it is based on a comparison between the number of convictions and the number of crimes estimated by the BCS. On this basis, around three per cent of crimes are resolved by the criminal justice system. However, the BCS covers only a limited selection of crimes, excluding for example crimes against children and corporate crime. When the former prime ministerial adviser Lord Birt was asked to provide an estimate of the 'real' level of crime

in 2000, he calculated that 'the real level of indictable offences was as high as 130 million' - compared to a BCS figure of under 12 million. On the basis of Lord Birt's statistics, the criminal justice system resolves just a fraction of one per cent of 'all crime'.

CRIME, HARM AND TRAUMA

The purpose of this brief overview is not to argue in support of one or another of the various estimates of crime levels (the BCS and Lord Birt figures are just two of a wide range that are available, all of which have their inevitable limitations). The point is rather to establish that, whichever measure one uses, the criminal justice system can be seen to be largely irrelevant as a means of resolving crime.

The same conclusion is also reached when one adopts a more 'qualitative' approach to assessing the effectiveness of criminal justice. As a basic starting point, it seems reasonable enough to suggest that one of the most important tests of criminal justice performance is its ability to deal with those actions that involve the greatest degree of harm or trauma to those who experience them. *Right for the wrong reasons* examines three groups of such offences: rape and sexual assault of females; child abuse; and homicide.

SEXUAL ASSAULTS ON WOMEN

In a special survey undertaken as part of the 2001 BCS, it was estimated that there had been some 720,000 sexual assaults on over 400,000 female victims in the preceding 12 months. During the equivalent period, there had been just 2,780 convictions, giving a conviction rate of well under one per cent.

CHILD ABUSE

An analysis undertaken by the National Society for the Prevention of Cruelty to Children found that in the year ending 31 March 2003, 5,989 incidents of child abuse were reported to the police in England and Wales. The number of children officially recorded on child protection registers was 32,809. The figure for children reported to English social services departments as in need of protection, but not included on the child protection registers, was 570,000. In contrast, there were just 775 convictions for child abuse in 2003.

These statistics are sufficient in themselves to demonstrate the irrelevance of the criminal

justice system as a means of addressing sexual assault and child abuse. However, these already damning figures almost certainly understate the scale of the abuses concerned, and therefore over-estimate the effectiveness of criminal justice in addressing them. This is because, for example, many women will be reluctant to disclose their experience of sexual assault in the context of a research project; and because the figures provided for child abuse exclude (unavoidably) those cases that have not been reported to any professional agency.

Before moving on to consider homicide, it is important to draw out two of the more general implications of this analysis, in addition to what it tells us about criminal justice performance. The first is that the scale of sexual assault and child abuse is substantially higher than is suggested by official statistics, and generally assumed in public debate. This throws into sharp relief much of the current policy focus on the seemingly more everyday offences like burglary and robbery, as well as the government's current preoccupation with tackling 'anti-social behaviour' and 'fostering respect'.

The second is that it is upon those members of society with proportionately less power – women and children, in the above cases – that some of the most serious and traumatic crimes appear to fall most heavily. Further evidence for this conclusion is provided by an analysis of homicide rates over the past twenty years.

HOMICIDE

At first glance, the criminal justice system appears substantially more successful in dealing with homicide than with the other offences considered so far. In the year ending 31 March the police recorded 766 suspected homicides, while 501 individuals were convicted of the crime in 2000, giving an approximate conviction rate of 65 per cent. However, this figure of 766 murder victims represents an increase of 36 per cent on the 564 people who were murdered in 1980 – a rise which calls into question the apparent success of criminal justice in addressing homicide.

Moreover, a closer analysis of the trends over the period concerned provides a further significant insight into the marginal relevance of the criminal justice system in this context. In England, Scotland and Wales during the 1980s and 1990s, the risk of being murdered increased for men but decreased for women, and decreased for the rich while increasing for the poor. In fact, the rise in murder victimisation

in Britain was concentrated almost exclusively in men of working age living in the poorest part of the country, who grew up in the era of mass unemployment that was the 1980s. In other words, it was the increased rates of poverty and income inequality, rather than any marginal criminal justice impact, that exerted by far the strongest influence on murder rates.

TAKING CRIME AND HARM SERIOUSLY

Right for the wrong reasons draws three broad conclusions in terms of the policy implications of the impotence of criminal justice as a means of reducing crime and related social harms.

QUANTIFYING AND ACKNOWLEDGING CRIME AND RELATED HARMS

The basis for any coherent policy is a clear and honest assessment of the scale and nature of the problem or challenge that needs to be addressed. In the present context, that means acknowledging that crime and related harms are far more widespread, common, everyday and endemic than official statistics suggest and than the government would have us believe.

THE ROLE OF CRIMINAL JUSTICE AND THE LIMITS OF REFORMISM

The ineffectiveness of criminal justice does not negate the importance of reform. If anything, the fact that criminal justice processes disproportionately impact upon the poor, marginalized and excluded actually strengthens the moral case for civilising and humanising them. However, it is vital not to confuse this important task with the more fundamental one of crime reduction and harm minimisation.

BEYOND CRIMINAL JUSTICE: TACKLING CRIME AND HARM AT SOURCE

The scale of crime and related harm, combined with the inability of criminal justice to deal with it, means that it is necessary to formulate a policy response on a much broader canvas. *Right for the wrong reasons* suggests some of the key principles that must underpin such a response:

POVERTY AND INCOME INEQUALITY

The analysis of murder trends demonstrated the relationship between victimisation and income

inequality. However, behind every homicide will be thousands of violent assaults that could easily have ended in death, as well as millions of serious assaults. Policies that tackle inequality are thus likely also to address the causes of a wider range of violence.

GENDERED VICTIMISATION

Tackling poverty and inequality will never be enough on its own, not least because much violent victimisation is also heavily gendered, directed by men against women. This means that much violence suffered by some of the most vulnerable in our society will not begin to be addressed until the systemic misogyny and sexism of British society is confronted.

UNEQUAL POWER RELATIONSHIPS

Male violence towards women is only one of the ways in which unequal power relationships are enacted and reinforced through violence and coercion. Any set of policy interventions aimed at reducing crime and minimising harm would need to confront the dangerous attitudes and behaviours all too frequently directed by adults towards children and young people, for instance. It would need to think seriously about how crimes of the powerful, and not just the powerless, should be addressed.

INFORMATION

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'Right for the Wrong Reasons' – Responses

Richard Garside's paper was intended to provide the starting point for an ongoing discussion about criminal and social justice policy, engaging with representatives of the public policy, practitioner and academic communities. To this end, the Crime and Society Foundation invited six leading figures within those communities to provide responses to *Right for the wrong reasons*.

All of the respondents welcomed *Right for the wrong reasons* as an important and timely contribution to the debate on crime and criminal justice, and echoed Richard Garside's call for a less politicised and more evidence-based approach to policy making. This is not to suggest – by any means – that there was total consensus. The following extracts are intended to provide a flavour of the responses that the Foundation received.

PROFESSOR IAN LOADER

One...way forward lies in framing the issues at stake not in terms of crime reduction but as a matter of citizen *security*...What matters to citizen security is not reducing crime and disorder *per se*...but the manner in which such reduction is effected. Here one can see how an individual's security can be enhanced or undermined by *every* act or omission of police and criminal justice agencies – all of which convey a message about whose voices are to be heard or silenced, whose claims are to be judged legitimate, and whose security-enhanced membership of society is to be affirmed or denied.

GEOFF DOBSON

The criminal justice system exists to fulfil a wide range of functions. The Police and Justice Bill defines the system's remit as including ten different elements – only one of which is the prevention or reduction of crime...Thus, the contribution of the system to society is rather more complex than portrayed in Richard Garside's paper...Bizarrely, key agencies such as prison –and probation have recently been shown to have met most of their key performance targets, and yet they face unprecedented condemnation for failing to protect the public...There is a need to address crime prevention more determinedly in localities and across the broad social policy agenda.

ROB ALLEN

If we want to produce a safer society while adopting a sparing use of criminal justice, there are three areas which need attention. First is a need for a vastly enhanced infrastructure of education, health

and social services in England and Wales...Second, there is a need for much better support for the families of children in poverty...Third, there is a case for a much more local approach to the governance of criminal justice...A local community based approach would focus on places not cases, looking beyond 'cops, courts and corrections' to create a wide range of more socially productive alternatives to punishment.

PROFESSOR JOE SIM

It is important to recognise that the government's perspective on modernisation is built on an idealisation of the past where informal social controls held crime in check...It is from this nostalgic position that the government makes its zero sum case for radically altering the balance of the criminal justice system away from the 'law breaking minority' towards the victim and 'the law abiding majority'...However, for many of those living in these idealised communities - women, children, minority ethnic groups, gay men and lesbian women – the fear of crime, and their actual experiences of it, including violence, incest and harassment, was a feature of their daily lives.

EDWARD GARNIER QC MP

It is surely uncontroversial that the criminal justice system is not the only nor even the main agency of crime prevention...The causes of crime are almost as varied as the crimes in the statute book, but in most cases flow from complex combinations of social, familial, demographic, medical, educational and other factors, making it difficult either to identify or to resolve them. A simplistic explanation which makes a direct causal link between economic policy and crime has no place in a serious discussion on criminal justice and crime reduction.

NICK CLEGG MP

We [the Liberal Democrats] want to make the criminal justice system carry out its basic duties well – rather than overloading it with ill-conceived, populist measures designed to win headlines rather than cut crime...Restoring confidence in the system and increasing its transparency is a crucial condition for a more considered debate about crime overall...But the causes of crime will not go away however sophisticated a criminal justice system we develop. We must tackle them head on, and our focus on community empowerment, on cutting reoffending, and on education is an essential part of any longer-term agenda to address the causes of crime.