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Social justice and criminal justice

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and Will McMahon

Harm and Society

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Introduction

Since the election of the first 'New Labour' administration in May 1997 the themes of social justice and criminal justice have become inextricably linked in government policy. A decade on, with the termination of Tony Blair's premiership in view, it seemed the right moment to hold a conference to examine the nature of the relationship between the two and to consider the future contours of social and criminal justice policy.

'Criminal justice and social justice: New Directions' was held on the 5th and 6th of July 2007 during the interregnum between the Blair and Brown administrations. The conference marked the integration of the Crime and Society Foundation project, now retitled as 'Harm and Society', into the mainstream work of the Centre for Crime and Justice Studies. This change was announced at the conference and the theme of 'social harm' was discussed in a number of seminars as well as at a main plenary which included a debate between Professor Paddy Hillyard, a leading advocate of the social harm approach, and Professor Rod Morgan, formerly head of the Youth Justice Board.

Other plenary speakers included Professor Colin Leys, who outlined New Labour's policy agenda from a political economy perspective; Professor Richard Wilkinson introduced on 'Why inequality matters' and Rene van Swaaningen on 'Bending the punitive turn'. Professor Joe Sim also spoke on 'Law and Order for an Iron Age'. Each of the plenary contributions added a new layer to our considerations on the relationship between social justice and criminal justice in the 21st century.

This collection of essays draws together contributions from the conference workshops and covers a range of subject areas relating to the overarching theme of criminal justice and social justice. 'Neoliberalism and New Labour' explores recent political and economic agendas and the subsequent impact on social and criminal justice policy. 'Violence against women' investigates drug facilitated sexual assault, domestic violence policy reform and men's attitudes to prostitution. Following this, in 'Considering a social harm perspective', gendered harm is explored further alongside contributions on social harm and social policy and also 'supranational' criminology. 'Policing communities' looks at the 'socialisation' of crime control and the role of surveillance and policing techniques in the control and penalisation of marginality. The final section, 'Regulating the young' draws together essays on youth justice policy, evaluating recent reforms, considering the National Evaluation of the Children's Fund and finally, taking a comparative look at recent reforms in New South Wales, Australia.

We are extremely grateful to the contributors for their involvement in both the conference and this monograph. By publishing and disseminating critical analysis

we aim to act as a bridge between academic, practitioner and public policy worlds, stimulating public debate and providing space for thinking critically about social harm and criminal justice.

Rebecca Roberts and Will McMahon

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Neoliberalism and New Labour

1

Neoliberalism, crime and justice

Professor Robert Reiner

What is neo-liberalism?

Neo-liberalism is the economic theory and practice that has swept the world since the early 1970s, displacing communism in Eastern Europe and China, as well as the Keynesian, mixed economy, welfare state consensus that prevailed in Western liberal democracies after World War II (Harvey, 2005). As an economic doctrine it postulates that free markets maximise efficiency, by signalling consumer wants to producers, optimising the allocation of resources, and providing incentives for entrepreneurs and workers.

Neo-liberalism as culture and ethic

Advocates of neo-liberalism see it not only as promoting economic efficiency, but political and personal virtue (Hayek, 1944 {2001}). They associate free markets with democracy and liberty. Welfare states, they claim, have many moral hazards: undermining personal responsibility, and advancing the sectional interests of public sector workers, not the goals of public service. Neo-liberals advocate market disciplines and New Public Management to counteract this (Leys, 2001; McLaughlin et al., 2001).

Neo-liberalism has spread from the economic sphere to the social and cultural. Consumerism predates neo-liberal dominance, but has now become hegemonic. Aspirations and conceptions of the good life are thoroughly permeated by materialist and acquisitive values. Business solutions, business models, suffuse all spheres of activity: sport, entertainment, charities, and crime control (Zedner, 2006). The 'Rich List' has ousted all other rankings of status.

The dysfunctions of markets

The supposed benefits of neo-liberalism have been familiarised as common sense by its cheerleaders. There are however many negative consequences of unbridled markets and materialism. They used to be stressed by the various forms of socialism, but also by religions, and even by classical liberal political economy, from Adam Smith, to Alfred Marshall and Pigou. As with the trumpeted virtues of markets, their dysfunctions transcend the economic, and include moral, social and political harms:

Economic:

a) Left to themselves competitive markets will become dominated by monopolies, as the winners use their resources to drive out competitors; b) Inequality of wealth and income become ever greater as the winners of early competition multiply their advantages; c) Allocation of resources reflects the consumer power of the rich not human need, with the Galbraithian juxtaposition of private affluence and public squalor; d) Market systems are prone to macro-economic cyclical fluctuations; e) Insecurities caused by the vicissitudes of ill-health, old age etc. are widespread, hard to predict at the level of the individual, and better protected against by collective rather than individual strategies.

Ethical:

Market societies generate cultures of egoism, short-termism, irresponsibility to others. Bakan's analysis of company law shows that it requires corporations to act in ways psychiatrists would diagnose as psychopathic in an individual (Bakan, 2005: 56-9). The most stirring expression of this claim remains Tawney's quintessential statement of ethical socialism in *The Acquisitive Society*. Competitive market society 'suspends a golden prize,

which not all can attain, but for which each may strive, the enchanting vision of infinite expression. It assures men that there are no ends other than their ends, no law other than their desires, no limit other than that which they think advisable. Thus it makes the individual the centre of his own universe, and dissolves moral principles into a choice of expedencies' (Tawney, 1921 {1961}: 33).

Social/Political:

a) Inequality and competitiveness produce many adverse social consequences, notably poor health, social conflict, and violence (Wilkinson, 2005); b) 'Free' markets have complex institutional, cultural and legal conditions of existence. These include state suppression of the disorder sparked by market-generated social dislocations. As Karl Polanyi forecast in 1944, the same year that Hayek published his Road to Serfdom warning of the perils of socialism, markets can threaten freedom and democracy (Polanyi, 1944 {2001}). The 'free' market needs the strong state (Gamble, 1994). Democracy is threatened by wide inequality (Jacobs and Skocpol, 2005), becoming the 'best democracy money can buy' (Palast, 2004), as the costs of campaigning spiral beyond the reach of all but the wealthy.

Neo-liberalism and crime: theoretical interpretations

Crimes have complex and multiple origins. A crime will not occur unless five necessary conditions are satisfied:

(1) Labelling:

Troublesome, dangerous, harmful acts occur in profusion, but are only treated as crimes if labelled as such. This involves the creation of the necessary legal categories, and the reporting of incidents by victims or witnesses, and their recording by the police. What appear to be new trends in crime may really be due to shifting laws, or changing social and official perceptions and practices.

(2) Motive:

A crime cannot occur unless someone has formed a motive to commit what lawyers call the actus reus. In the last 150 years criminologists have offered many theories of the sources of these

motives. They may be quite normal desires for widely sought property or pleasures, or (by definition much more rarely) deeply deviant pathologies.

(3) Means: The motivated potential offender must have the capacity to commit the crime. The means of crime change as technology and social routines alter.

(4) Opportunity:

A motivated, capable potential offender cannot carry out a crime unless there is a suitable victim or physical target.

(5) Absence of Controls:

The crime will not occur if the perpetrator is prevented by social controls. These may be formal: the presence or threat of codes, courts or constables; or informal: the inhibitions of conscience that Eysenck called the 'inner policeman'.

The impact of neo-liberalism on the conditions of crime

Neo-liberalism affects all these conditions in ways that make the commission and/or recording of crimes more likely:

(1) Labelling:

A consumerist culture makes the reporting of property crime more likely. This can produce apparent crime waves that are largely recording phenomena. For example the General Household Survey in the 1970s showed that the huge growth of burglaries was primarily due to increased recording, caused by the spread of domestic contents insurance (Hough and Mayhew, 1985: 16). Much (although not all) of the increase in recorded crime that fuelled the politics of law and order, and helped propel Mrs Thatcher into Downing Street, was illusory.

(2) Motives:

The most plausible (and venerable) sociological account of crime is Robert Merton's extension of Durkheim's concept of 'anomie'. In a materialistic culture aspirations are fuelled beyond any possibility of attainment, at all levels of society, and the legitimacy of the means adopted to pursue them are accorded

little weight. Monetary success is everything, and crime and anti-social behaviour multiply in the suites as well as the streets. When a meritocratic culture, holding out the dream of affluence to everyone, is combined with a structural reality of rampant inequality of opportunity and attainment, the anomic pressures of unfulfilled aspirations multiply.

It is this perspective that has always been at the heart of social democratic criminology, not a simplistic materialistic determinism linking poverty or unemployment straightforwardly with crime (Reiner, 2006). The connection between objective economic conditions and criminality is morality. Materialism and inequality foster a culture of egoistic grasping and cynical pragmatism. If callous, ends-justifies-the-means practices are celebrated as dynamic entrepreneurialism at the top of society (think *The Apprentice*) it is hardly surprising if the young and excluded mirror this.

This future was anticipated forty years ago by the Longford Study Group Report for the Wilson government, in the days when Labour was really concerned to crack down on the causes of crime. The 'get rich quick ethos' (not a yet unheard of 60s permissiveness) led, it argued, to a 'weakening of moral fibre... The values that prevail among those who dominate society may be expected to spread to all its levels. If men and women are brought up from childhood to regard personal advancement and ruthless self interest as the main considerations, material success will certainly not train them in social responsibility, and worldly failure may lead to social inadequacy and a resentful sense of inferiority' (Longford Study Group, 1966: 4-5).

The *Daily Mail* is right to agonise about 'weakening moral fibre', but fingers the wrong culprits. The ruthless pursuit of profit, not permissiveness, has strained and undermined family life and the other underpinnings of civil society (Currie, 1998).

(3) Means:

Technological advances and globalisation increase capacities to commit old types of crime, and provide spaces for new forms of offending. Internet fraud, grooming by paedophiles, identity theft, drugs, arms and people trafficking, terrorist networks and many

other examples are the stuff of contemporary media nightmares. This is recognised by, and reflected in, the proliferation of new international policing bodies and security co-operation (Sheptycki and Wardack, 2005).

(4) Opportunity:

The huge proliferation of glittering 'must-have' goodies of popular affluence and consumerism simultaneously constitute tempting targets for crime. From cars and TVs in the 1950s, to mobiles and iPods today, property crime patterns have tracked these conspicuous objects of desire.

(5) Absence of controls:

a) Formal Controls: Attempts to stabilise the social tsunami unleashed by neo-liberalism led to toughening the strong arm of the state. However as crime rates are likely to rise faster than police numbers, clear-up rates will fall. Even if the severity of punishment increases, certainty of punishment, the crucial element of deterrence, weakens.

b) Informal/internalised: As argued earlier, the anomic and egoistic culture shaped by neo-liberalism, with its sole emphasis on aspirations rather than on legitimate or ethical means, weakens institutions and inhibitions regulating antisocial or criminal conduct. 'All that is solid melts into air' as Marx famously put it (Marx, 1848 {1998}: 38). The dominant theories of conservative criminologists stress inability to control impulses and defer gratification as the key ingredient of criminality. In the words of one influential text, criminals 'tend to be impulsive, insensitive... risk-taking, short-sighted' (Gottfredson and Hirschi, 1990: 89-91). Remember some iconic catchphrases of early consumerism... 'Live now, pay later'; 'Take the waiting out of wanting' (the advertising slogan for Access, the first widely available credit card). Are these not explicit calls to cultivate the characteristics of criminality? Is it any coincidence that the remorseless rise of recorded crime began simultaneously with the 1955 birth of commercial television in the UK? Much research energy and expenditure

has been devoted to assessing the effects of supposed media glorification of deviance and violence. But the culprit is much more likely to be the saturation of the ratings by cupidity-inflaming shows from Double Your Money in the 1950s to Who Wants to be a Millionaire? and its ilk today.

Crime and neo-liberalism: empirical evidence

There is a plethora of empirical evidence demonstrating that neo-liberalism produces more crime and law and order politics, promising and delivering more punitive and authoritarian crime control practices (Reiner, 2007a, b).

Twenty years ago the late Steven Box wrote an important book assessing the impact of economic recession on crime and punishment (Box, 1987), reviewing the empirical literature up to that time. He found only weak support for the causal relationship between unemployment and crime that would be predicted by anomie theory (or indeed the neo-classical rational choice perspective). This does not, however, mean that unemployment is not linked to crime, as the Thatcher and Reagan governments claimed. Unemployment has contradictory consequences for crime, partly cancelling each other out. It increases motivations for crime, proffers opportunities in the sense of the Devil finding work for idle hands, and reduces the disciplinary effects of work. On the other hand, it is linked to recession meaning fewer goods to steal, and more people at home to guard property.

Unemployment involves a plethora of different social experiences, with very different meanings for criminal motivation. Transitional voluntary unemployment in a buoyant economy is unlikely to increase motivations for crime. The studies reviewed by Box in 1987 predominantly examined data from the full-employment post-World War II decades. Unemployment then did not involve the long-term social exclusion that affected increasing numbers of poor young men (especially from ethnic minorities) after the advent of neo-liberalism in the late 1970s.

Most studies carried out since the mid-1980s do show the expected positive relation between unemployment and crime

(Clarke et al., 2000; Hale, 2005; Farrington and Jolliffe, 2005: 65-9). This is especially so when voluntary unemployment is controlled for (Marris, 2000: 73-4).

Since the 1970s a casual, poorly paid secondary labour market has increasingly displaced long-term manual work. This lessens the stark contrast between unemployment and employment, attenuating the statistical correlation between the former and crime, but studies show a link between the advent of the dual labour market and property crime (Hale, 1999).

Box also looked at studies of the relationship between inequality and crime. Inequality was linked unequivocally to property crime, but not to serious violence (Box, 1987: 87).

Studies conducted since 1987 studies, however, show clear relationships between inequality, market society and crime (Messner and Rosenfeld, 2000; Hale, 2005:334-6).

There is much evidence that neo-liberalism is causally linked to homicide. A recent review of the literature concludes that there 'have now been over fifty studies showing a clear tendency for violence to be more common in societies where income differences are larger' (Wilkinson, 2005: 47).

In Britain homicide is increasingly concentrated amongst poor males who have entered the labour market since the summer of 1981, when the recession induced by Mrs Thatcher's neo-liberal policies first bit (Dorling, 2004). All other groups in the population are now safer from murder than they were. But the risks of serious violence and death facing poor young men, growing out of fights between them, are the dark heart of the social and cultural destruction wreaked by neo-liberal policies (Davies, 1998). The 'woman who only noticed "those inner cities" some six years after the summer of 1981, and the people who voted to keep her in office... are the prime suspects for most of the murders in Britain' (Dorling, 2004: 191).

A more optimistic recent finding is that the introduction of the minimum wage reduced crime in the areas where it had the greatest impact (Hansen and Machin, 2004). This confirms the link between inequality, relative deprivation and crime, whilst pointing a tangible way forward.

Political economy, crime, justice: comparative and historical studies

A number of recent studies have demonstrated clear links between neo-liberalism and harsher, more punitive penal policies. A comparative analysis of states in the USA between 1975-95 found an association between high incarceration and declining in welfare spending, both over time, and cross-sectionally (Beckett and Western, 2001). Downes and Hansen (2006) found the same in a cross-national comparison: welfare spending and punishment were inversely related. A major recent book on penal policies in 12 countries (Cavadino and Dignan, 2005) demonstrates that imprisonment and punitive cultural attitudes and policies are highest in neo-liberal societies and lower in social democracies. The Scandinavian social democracies remain less characterised by law and order politics and punitive policies, but are moving in that direction as globalisation exposes them to more pressure to adopt neo-liberalism.

This is only partly related to rising crime. Social democracies are less prone to serious violent crime, although they do have comparatively high rates of minor and property crime – possibly because greater civility actually produces more reporting (Young, 2003: 37). The prominence of law and order as an issue is related to media and political campaigning rather than crime rates (Beckett, 1997).

Historical research demonstrates a long-term association between the growth of social inclusion in the late nineteenth and early twentieth centuries, and a secular trend of falling crime and violence (Hall and Winlow, 2003). The advent of mass consumerism in the late 1950s saw a reversal of this process, although some of the increase in crime rates may have been due to greater reporting and recording. In the 1980s and early 1990s, coinciding with the deepest impact of neo-liberalism and a huge growth of inequality, poverty and exclusion, recorded crime exploded to a record level.

The new British Crime Surveys (BCS) from 1981 confirmed this was a real increase in victimisation.

Since the mid 1990s, however, the police recorded crime figures and the BCS data have diverged. Between 1993 and 1996 the recorded crime statistics fell, but the BCS suggested that this was due to decreased reporting by victims and recording by the police. Since 1996, however, the BCS has registered a continuous decline in victimisation, taking it back to 1981 levels. The police recorded data showed several years of rising crime after 1998, primarily because of new counting rules and procedures introduced between 1998-2002. The crossing over of the trends indicated by the series coincided with the 1997 election of New Labour. So whether Michael Howard (Home Secretary from 1993-7) or Tony Blair is the greatest crime-buster since Batman turns on which figures we see as more reliable. Unsurprisingly Tory think-tanks have recently begun questioning the BCS, whilst New Labour reiterates the well-known problems of the police figures as rehearsed in most criminology texts.

In sum, recent British experience suggests that the social and cultural fallout of neo-liberalism produced massively rising crime in the 1980s and early 1990s. This accentuated already existing tendencies for crime and criminal justice to become politically polarised issues (Downes and Morgan, 2007).

After 1993 the politicisation of law and order was displaced by a new higher-level consensus. New Labour sought to shed its electorally damaging image as 'soft' on crime, with the legendary formula 'tough on crime, tough on the causes of crime'. Michael Howard responded with his 'prison works' return to tough Tory penal fundamentalism. At first New Labour balanced punitiveness with a search for 'smart', evidence-led, partnership-based policies that could 'work'. Over time, however, toughness has edged-out smartness in a stream of knee-jerk initiatives responding to red-top rages (Hough, 2004; Roberts, 2005/6). Blatcherite consensus, in which New Labour accepts the fundamentals of Thatcherism with some nuances of difference, is a sad reverse echo of the Butskellism of the 1950s when the Tories were forced to adjust to Labour's mixed economy and Welfare State.

Nonetheless under Labour enough has changed to help explain the British crime drop of the late 1990s. Unemployment has been consistently low, and there has been some reduction in poverty if not overall inequality (Downes, 2004; Garside, 2004). The 'smart', 'what works' approach to policing and crime prevention has also contributed to falling property crime, notably burglary and car theft – although possibly producing some displacement to robbery and other serious, harder to prevent crimes (Fitzgerald et al., 2003; Hallsworth, 2005).

Soft on the causes of crime?

Political economy – whether a society is organised on neo-liberal or social democratic lines - helps explain much of the trends and patterns in crime and punishment. But the sharp 1990s crime drop in the USA, most famously in New York City, is something of a mystery. Most American academic analyses give some weight to political economy (Zimring, 2006), but see it as marginal compared to criminal justice and other factors. Popular culture sees 'zero-tolerance' policing as the panacea, though research questions the contribution of policing to the crime drop (Bowling, 1999).

American analyses of the disappearing crime rate resemble Agatha Christie's *Murder on the Orient Express*: everybody dunnit. British analyses are more like *Prime Suspect* (the title of Dorling's study of homicide, in which one offender – in his case Margaret Thatcher) is unmasked at the end.

There remains a deeper puzzle: how can 1990s US experience be reconciled with the strong evidence of links between inequality and violence? The 1990s US crime drop fanned a resurgence of 'can do' optimism amongst police, and criminal justice policy-makers. But has a new paradigm really been achieved, refuting all previous experience – or is this like the mythical 'new economy' of the 1990s?

Raymond Chandler in *The Long Goodbye* expressed what used to be a criminological truism: 'Crime isn't a disease, it's a symptom. Cops are like a doctor that gives you aspirin for a brain tumour'. In the light of the extensive evidence of the relationship between inequality and violence, it would be hazardous to conclude that

the lid can be held down indefinitely on injustice. The comparative evidence clearly suggests that there are 'root causes' shaping crime and penal trends, related to variations in political economy.

Social democracy is associated with less homicide, violence and serious crime, and less punitive penal policies. This is related to cultural differences in the moral quality of individualism. Social democracies reflect and encourage reciprocal individualism, with mutual concern for the welfare of all, as distinct from the competitive individualism of neo-liberalism, fostering a Darwinian struggle in which only the strongest flourish.

Suppression neglecting structural causes is what in the context of the 'war on terror' Paul Rogers has called 'liddism' (Rogers, 2002). Are new smarter and tougher policing and penal policies a panacea for holding down the lid on inequality and exclusion? Or do they just offer a temporary breathing space? We cannot afford to be soft on the causes of crime.

ABOUT THE AUTHOR

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2

New Labour – social transformation and social order

Will McMahon

It is often thought that contemporary British political and social history is divided into 'BT' and 'AT' - before and after Thatcher. Yet the social spending cuts implemented by the Labour government in 1977 represented a crucial moment. The then chancellor, Denis Healy, prefigured Thatcher's 'prudent housewife' election spin by arguing that 'we cannot spend more than we earn'. From this point on began the dramatic increase in poverty and inequality, and the journey towards the more divided society we know today.

Thus, the current level of inequality in the UK is relatively recent. From the late 1970s on, the shift from direct to indirect taxation and cuts in corporation tax and higher income tax rates have resulted in the richest 10 per cent increasing their share of total net income by almost one third while the poorest 30 per cent have seen their share fall (Levitas, 2004). The Sunday Times (September 16, 2007) reported that when both indirect and direct taxes are taken into account, the richest hand over 31 per cent of their

income to government while the poorest 10 per cent pay 44.2 per cent according to Treasury figures.

The growth in inequality forms the foundation for the intense period of social change that those who have lived through last two generations have been experiencing. It is important to remember this, because, as leading social policy theorist Ruth Levitas argues in *Shuffling back to equality*, 'it is very easy to forget' - it is very easy to be captured by the present lived reality (Levitas, 2004).

The years between 1977 to 1990 were ones of periodic and significant social disorder. From the late 1970s, whole sections of the British population experienced an accumulation of traumas. The first shock was the dramatic cuts to public expenditure towards the end of the 1970s that shattered the idea that, in the post-war world, Labour inevitably meant progress. This was followed by the country being transformed into a laboratory for monetarism in the early 1980s with many communities losing industries that had promised a life-time of employment. The first experiments produced a bout of nationwide rioting in the summer of 1981. Once critical to the strength of the British economy some of these communities became industrial wastelands and emerged as an internal periphery in the new globalised economy. Further trauma was experienced in the closure of mines employing over 200,000 in the second half of the 1980s. The period culminated in what a historian might describe as a mass Leveller riot in opposition to the poll tax in Trafalgar Square on March 31, 1990 reported by the BBC as one of 'the worst riots seen in the city for a century' (BBC, 2007).

A later accompaniment to social disorder was the legislated social disorganisation of everyday life. In the drive to create a more individualistic, competitive and self governing society, Thatcherism claimed to have set people free by changing the micro-political economy of almost every aspect of personal existence for the whole population. Legislative changes affecting nursery and schooling options; financing of university education; pension provision; personal social care for the elderly, the sick and the

mentally ill; and the mass sell off of council housing and basic utility supplies had radically changed people's lives.

Life was transformed by the elevation of 'choice' as the motor-force of service delivery. At an individual level many welfare services were turned into quasi-markets for 'consumers'. Services previously provided by the state began to be contracted out. At one stroke not only did the profit calculation begin to govern but employment pathways were fragmented. At the level of the welfare state there was a huge shift away from an ethos of universal social insurance and a collective guaranteed minimum towards personal and family obligation.

All that was solid about the post war welfare consensus - from life long employment to the welfare safety net - had been actively unravelled and seemed to have melted into air. This extraordinary arc of change was more than a reconfiguration of resource allocation using social and economic policy levers. As Peter Marris suggests in *The Politics of Uncertainty*, in such circumstances the burden of uncertainty is redistributed downwards and increases the cumulative insecurities of the least powerful and most vulnerable in society and also 'tends to maximize uncertainty for all, because it undermines the reciprocity of social relationships' (Marris, 1996).

Rather than viewing our neighbours as allies, they may now be viewed as a competitor for scarce social resources. Queues to get an NHS dentist, or the well known practice of parents 'discovering' religion, or moving into the right area, in order to access what is perceived to be a 'good school', are expressions of this competition. Such consequences are not inevitable but there are material and emotional pressures that enable people to feel that such steps are necessary. Living an uncertain life can make people more anxious. So, for example, when reviewing the literature on anti-social behaviour it becomes clear that teenagers 'hanging around' are viewed as a source of concern and menace rather than as engaging in social activities.

The increased insecurities and anxieties have a double source - first the endogenous economic and social policy changes and also the full force of globalization that we have begun to experience since the early 1990s. People have been placed under tremendous pressures and there are many issues here concerning the different capacities of people to adapt to the new environment that has been created around them, depending on where they are in the social structure.

One type of adaptive behaviour is explored in a report published by the Centre for Crime and Justice Studies (Karstedt and Farrall, 2007). The research explored so called 'middle class crime' and one of the interesting points given by those participating in acts such as non-payment of VAT or fiddling of insurance claims was that many referred to feeling ripped off by pension mis-selling, the sale of endowment mortgages and even bank charges. For those who seemed neither needy nor greedy, they identified feeling vulnerable to powerful forces in society in which they felt victimised and justified their behaviour in terms of getting their own back. They were unconvinced that law governing social order was working properly or fairly.

That such an explanation emerged as a common narrative in the research, whether or not it is a satisfactory explanation itself for middle class fraud, perhaps expresses the insecurities the middle classes feel about the great disorder and transformation that our society has gone through. A more acute version of this problem has been faced by many working class people in the period of welfare retrenchment and growing inequality. How do individuals and households manage the social disorder that three decades of social transformation has produced?

When preparing for power New Labour itself began to grapple with this question of how government might restore social order at the level of social relationships and community. As David Blunkett argued (Blunkett, 2001), there was a need to 'appreciate the scale of the social disaster brought about by the neo-liberal period'. More than simply restoring order there was a question of how to maintain social order in a further period of rapid economic and

social transformation, particularly in areas that had for twenty years felt the brunt of what he described as 'neo-liberalism'. The question New Labour asked, and has been unable to find an answer to, is how to reconstitute civil society at a local level within the framework of free-market globalisation.

New Labour organised much of its discussion of the repercussions of 'neo-liberalism' through the term 'social exclusion'. The use of the term allowed New Labour to build a tri-partite coalition, each part of which could use a different interpretation of the concept. Ruth Levitas (Levitas, 1998) describes the narratives as: 'RED' – redistributionist and social democratic; SID – social integration/inclusion, a European 'catholic corporatist' view, and finally, MUD – moral underclass discourse – a narrative associated with United States' social conservative Charles Murray.

Each narrative enabled New Labour to talk to three audiences at once, but clearly there were always going to be significant tensions in how this was implemented in the real world. Part of New Labour's social policy story has been how this has unfolded over the last decade. One part of this story has been how people who think of themselves as being 'progressive', engaged with the social exclusion discourse from a redistributive or social integrationist perspective, took up positions inside governmental projects, and found themselves being taken places that they would rather not have gone. One hopes, for example, that some of the policy-makers, and their visceral hyperbole, introduced into the criminal justice debate by the 'anti-social behaviour' and Respect agenda, are quietly being put out to grass by the Brown administration.

New Labour has used the 'social exclusion' discourse to offer to solve what it thought was a suitable level of problem. The argument runs something like this: there is a group who are socially excluded that are the product of Thatcherism and in the main they are located in areas of severe deprivation. Through the application of a specific set of policies we will enable them to overcome the social exclusion they face. There were Education Action Zones, Health Action Zones, Sure Start areas, New Deal for Communities, Employment Action Zones and a whole range of pilots.

The 'we can fix it locally' approach was also reinforced by the managerialism that gripped New Labour. Multi-agency teams, cross departmental meetings and 'thinking across the piece' took hold. This was underpinned by an appeal to the evidence base. During a speech to academic research specialists in 2000 David Blunkett argued 'It should be self-evident that decisions on Government policy ought to be informed by sound evidence. Social science research ought to be contributing a major part of that evidence base. It should be playing a key role in helping us to decide our overall strategies' (Blunkett, 2000). So, for example, even as late as the 2005 Labour Party Conference, the then Home Secretary Charles Clarke told the audience that 'we have to determine by the next general election ... [that] we have eliminated the anti-social behaviour and disrespect that blight the lives of so many'.

As is known, the problems of the people thought of as 'socially excluded' in their day to day lives have not been so amenable to solution. New Labour's response to this has been to fall back onto some very conservative social policy themes. Through the social exclusion dialogue we have seen the re-emergence of the underclass thesis.

John MacNicol's (1986) essay, *In pursuit of the underclass* uncovers the 'cycles of rediscovery' and 'reconstruction' of what has been variously described as 'the social problem group' or 'the problem family' or 'the underclass' by at least three generations of policy makers in the twentieth century. MacNicol refers to Sir Keith Joseph's 1970s discovery (and this may sound eerily contemporary) of dysfunctional families in the inner cities who needed aggressive state intervention. Those who recall Keith Joseph will probably remember him as Margaret Thatcher's chief intellectual architect.

MacNicol argues that 'in its periodic reconstructions the "underclass" concept has tended to consist of five elements: First, an artificial administrative definition relating to contacts with particular institutions of the state - welfare agencies, social workers, the police, and as such it is a statistical artefact. Second, in order to attain scientific legitimacy such a definition has to be conflated with the quite separate question of inter-generational transmission

through either heredity or socialisation - otherwise the underclass could simply be those "at the bottom of the pile" at any one time. And it is the transmission of alleged social inefficiency rather than structural inequality that is the focus of attention. Third, there is the identification of particular behavioural traits as anti-social and the ignoring of others; and as part of this exercise it necessary for proponents of the underclass concept to lump together a wide variety of human conditions (in order to make the problem appear significant) and attribute them to a single cause (so that it appears a problem amenable to solution).'

It would be difficult to find a better predictive description of the anti-social behaviour artifice and the 'Respect' agenda than MacNicol's third point.

Fourth, MacNicol continues 'the underclass problem is essentially a resources allocation problem and as such', and fifthly, 'it tends to be supported by those who wish to constrain the redistributive potential of the welfare state and it has thus always been part of a broader conservative view of the aetiology of social problems and their correct solutions'(MacNicol, 1986).

Although written over 20 years ago the article describes perfectly the point at which we have arrived and it underpins New Labour's social justice and criminal justice thinking. Put simply, the Government is unable to find another answer to the question 'Why if we have done so much for the socially excluded are they still behaving so badly?'

Three 'facts' have come onto my radar recently. These are not the result of a systematic literature review or a meta-analysis - they are just points that I have found of interest or that colleagues have directed me to. The first is that despite 60 consecutive quarters of economic growth (that is the longest period of growth since 1701) the number of children living in poverty increased by 100,000 in the most recent annual figures. Given that extended periods of growth always come to an end, what do we imagine will happen to child poverty rates when there is a change in the economic cycle?

The second comes from a seminar that the Centre for Crime and Justice Studies organised with Professor Ben Bowling in summer 2007 in response to the recent Home Affairs Committee report on young black people and the criminal justice system. The number of black people, predominantly young black men, in prison has risen from 4,000 to 12,000 in the last twenty years. It rose from 4,000 to 7,000 from 1985 to 1997 and then another 5,000 since 1997. Despite a welter of policy documents focused on reducing social exclusion, the concrete policy out turn has been exactly the reverse.

The third is a quote from a recent essay by Professor Danny Dorling (2007):

'apart from two "blips"; the gap in infant mortality rates between manual and middle class families has relentlessly grown' (the period Dorling is writing about is since 1998). The growth of the gap in the survival chances of infants born to working class parents and infants born to middle class parents reflects well the growth of the gap between the material living standards of their parents and prospective parents.'

He goes on:

'It is important to note that the government's decision to differentiate non-working individuals without children from those with children in the welfare and benefit system has led to many infants being born to parents without the means to care for themselves during pregnancy, or properly for their child after birth. Tax credits, child and other benefits associated with having children kick in too slowly for most of these children who die so soon after birth.... There is a correlation between that financial punishment and the rising relative numbers of dead bodies of poor infants under New Labour.' (ibid.)

According to Dorling's work the infant mortality inequality gap fell to 12% in 1998 but rose to reach 18% in 2004. For sure, after a decade of New Labour in government, we seem to be living in an increasingly harmful society, but I am unsure as to what

contribution Labour's criminal justice policies can make to reducing that harm.

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3

'Punitiveness' and 'populism' in political economic perspective

Richard Garside

It is commonly argued that Labour's record on criminal justice has been characterised by a damaging 'populism'. An apparently tough public opinion, fed by media-inspired moral panics, has placed a premium on punitive policies and rewarded those politicians who embrace and champion them. The resulting waves of 'tough on crime' policies, largely unsupported by criminological knowledge and research evidence, have had a baleful impact on rational and informed criminal justice policy.

That, at least, is the general line that one encounters in its various iterations in much of the current criminological literature that deals with what might broadly be termed 'the politics of criminal justice'. In this paper I want to give some consideration to the conceptual weaknesses in some representative examples of this literature, particularly in relation to its two dominant categories: 'punitiveness' and 'populism'.

I start by considering the locus classicus of the argument about punitiveness and populism: Tony Bottoms' influential 1995 essay, *The Philosophy and Politics of Punishment and Sentencing*.

It was in this essay that Bottoms coined the term populist punitiveness 'to convey the notion of politicians tapping into, and using for their own purposes, what they believe to be the public's generally punitive stance' (1995: 40). The term has proved remarkably influential and is probably what Bottoms' essay is best known for. There is a degree of irony in this, for 'populist punitiveness' plays a relatively minor role in his argument.

In his essay Bottoms identifies three themes that he considers to be 'of special importance in much recent change in criminal-justice systems' (1999: 38). These are just deserts and human rights as principles informing sentencing decisions; managerialism as a principle for organising the operation, delivery and monitoring of criminal justice processes; and the concept of the 'community' as a principle informing sentencing reforms.

The broader context for these themes and the changes that they have wrought is what Bottoms calls, following Anthony Giddens, the 'disembedding processes of modernity' (1995: 47). Developments associated with these processes – such as the rise of individualism, technological innovation and the disorienting impact of globalisation – provide the explanatory context for the three thematic changes Bottoms highlights.

'Populist punitiveness', by contrast, is largely an add-on to Bottoms' analysis. It is, he argues, a 'more overtly political dimension' to sentencing trends (1995: 39), 'political' here signifying the transitory and the superficial. The result, according to Bottoms, is as follows:

'[M]ost criminal-justice systems will contain some features reflecting the themes of just deserts/human rights, managerialism, and community; but that is not necessarily the case as regards populist punitiveness, that factor being potentially more closely tied to short-term political considerations.' (1995: 48).

Indeed populist punitiveness has a distinctly unpredictable and contingent quality. It 'grows less obviously... out of long-term social change' (1995: 18), Bottoms writes, and is dependent more on a politician's own predilections and desire for popularity than it is on objective or structural factors. That said, populist punitiveness does correspond with the lived experience of the population. The 'increased crime rate' and the 'fairly widespread sense of insecurity' offers a rich seam which the 'politician seeking popularity can reasonably easily tap into', writes Bottoms (1995: 47).

There are two implications here that I would in particular like to draw out. First, Bottoms points to the broader context out of which populism and punitiveness emerge. He offers an explanatory framework by which certain social processes give rise to certain social anxieties and a corresponding political response. Populist punitiveness is not, in other words, merely a spontaneous eruption in the heart of the body politic. That said, Bottoms also argues that these processes are in no sense determinative. Populist punitiveness sits in relative autonomy to them, a loosely connected feature rather than a deeply embedded element.

Second, this relative autonomy places significant explanatory weight for why populist punitiveness arises on the freely determining decisions of politicians. Playing the populist punitiveness card confers certain benefits on those politicians who seek to do so. But politicians are in no sense compelled to so play that card and they could just as easily chose not to play it. Populist punitiveness is thus largely a form of political voluntarism, an act of will on the part of the politician largely undetermined by objective structural factors.

Bottoms' conceptualisation of populist punitiveness as sitting in relative autonomy to broader social processes and as being the product of political voluntarism has set the frame for much of the criminological theorising in this area ever since. To track this influence, I will consider contributions by two of the most influential contemporary criminologists: Jock Young and Michael Tonry.

In an essay on New Labour's criminal justice record, published in 2003, Jock Young makes the following observation:

'In the last resort spokespeople for New Labour will turn to their focus groups and to opinion polls and argue that they merely do what the people want. But is it really surprising, given the direction of political leadership and the prevalent mass media coverage of crime, that public opinion is pushed in a pessimistic and vindictive direction?... Of course, politicians and a media banging the law-and-order drum are not the sole reason for such [pessimistic and vindictive] views existing. The level of economic and ontological insecurity in late modernity guarantees that public anxieties are constantly generated... But it is in precisely such a context that the government should provide objective assessments of the crime situation.' (2003: 41).

That the government has not provided the requisite leadership in these matters is a fundamental failing, in the view of Young, and his frustration with New Labour is palpable throughout his essay. Their policies, he claims, 'fly directly in the face of research evidence, and would seem almost wilfully to ignore expert opinion' (2003: 36). He excoriates Labour for increasing police numbers and expanding the prison estate at a time when the official crime rate has been falling. 'The level of unreason displayed by such actions beggars belief' (2003: 46), he writes. There is also a sense of weariness and disappointment over opportunities missed and roads not taken. His essay concludes on the following, rather doleful, note: 'each progressive moment is submerged amid a welter of populism' (2003: 46).

In a similar vein, Michael Tonry passes a scathing judgement on Labour in his book, *Punishment and Politics*, published in 2004. He accuses ministers of pursuing 'ineffective' criminal justice policies that have caused 'unnecessary human suffering' and a 'waste of public resources' out of a self-interested desire to stay in power (2004: ix). England offers fertile ground for such policies, Tonry believes, because, the 'English... people seem better able to endure the suffering of others, especially of criminals, than... citizens of most Western countries' (2004: 60-61).

Tonry argues that this cultural pattern was for many years offset by the elite policy-making tradition in England, in which policy formation in the field of criminal justice was kept 'in the hands of professionals' (2004: 64). New Labour's decision from the early 1990s on 'to abandon the insulated English governmental conventions and traditions in favour of rawer anti-crime politics' has given succour to the underlying punitive tendencies permeating English culture.

Tonry is puzzled by these recent changes. Notwithstanding his remarks about the self-interested pursuit of power, he is perplexed about why it is that Labour has opened this particular Pandora's box. 'Those answers are known, if by anyone, only by senior figures in the Labour Party' is his despairing and rather unsatisfactory answer (2004: 70).

Young and Tonry offer two representative criminological accounts of recent criminal justice developments under New Labour. Most readers will also disagree with details of their arguments. In the world of dodgy dossiers and corrupt arms deals Young's expectation that governments should provide 'objective assessments' will strike some as well-meaning, if naïve. Most English people hold unsavoury views on some issue or other, but are they really that much more reactionary than their continental cousins, as Tonry suggests? The far right is a rather more significant political force in France and Italy, for instance, than it is in Britain. But Young and Tonry articulate with great clarity certain themes in relation to 'punitiveness' and 'populism' common to much recent writing. In particular, those two themes already identified in Bottoms' analysis reappear.

First is the question of the underlying context in which the apparent shift to more 'punitive' and 'populist' forms of policy making has taken place. Young offers a sociological and historical explanation, relating shifts in criminal justice policy-making to the broader social and economic changes of 'late modernity'. This argument resonates strongly with that of Bottoms', albeit using slightly different terminology.

Tonry is sceptical of the explanatory value of 'late modernity' as a factor influencing policy development. While all western countries have been affected by late modernity, he argues, only a few – notably Britain, America and parts of Australia – have gone down a punitive path. Putting to one side the validity of his assertion that only certain Anglophone countries have taken a punitive turn, we might recall that Bottoms resolved this apparent paradox by positing the relative autonomy of punitive populism.

Tonry's resolution echoes Bottoms' in certain respects. The 'best explanations', he argues, 'remain parochially national and cultural' (2001b: 518; see also 2004: 121). '[C]ruel punishments and other intolerances' come about 'in the heat of an historical moment', he writes (2001a: 169). They are 'contingent' in relation to broader social processes, rather than being determined by them (2001b: 518).

But if this sounds rather like Bottoms' explanation, the resemblance is superficial. For Tonry posits a cyclical view of history in which 'recurring normative cycles' (2001a: 179) are a perennial feature of human society. This essentially pre-modern understanding of the dynamics inherent in human society can be traced back to the philosophers of classical antiquity. It was the essential innovation of modernity to reject this worldview and to conceive of history as a future-oriented dynamic marked by the onward march of progress, rather than simply being the endless repetition of past forms (see Callinicos, 2007).

Given the troubled history of the twentieth century, as well as the significant potential threats posed by climate change in the current century, this optimistic belief in the inevitability of human progress is problematic to say the least. But a cyclical view of history does not resolve this problem. To understand why, consider the following, from Tonry's 2001 essay, 'Unthought thoughts':

In western countries, the pendulum swings between conservative and liberal policies are so regular as to be a cliché. And the same thing is true in recent centuries in relation to punishment' (2001a: 167).

It seems an almost too easy point to make that Tonry here elides those natural laws systematised in the Newtonian laws of motion with historical institutions that are obviously not the result of natural laws, but rather the product of social relations and political processes. In doing so Tonry engages in what Marx described as 'reification', the tendency to treat as objectively occurring what is in fact the product of human relationships. The acute conceptual confusion this causes was well summarised by the Hungarian Marxist Georg Lukács nearly a century ago:

'[A] relation between people takes on the character of a thing and thus acquires a "phantom objectivity", an autonomy that seems so strictly rational and all-embracing as to conceal every trace of its fundamental nature' (1922/1971: 83).

In attempting to find what he considers a more satisfactory explanation for recent policy developments than that afforded by modernity, Tonry ends up reifying historical and social processes.

On the face of it this is a trap that Bottoms and Young avoid. But their references to 'modernity', with or without the 'late-', and their discussions of 'disembedding' and 'market relationships', of individualism and technological change, are deceptive. This relates to a more fundamental problem with the resort to 'modernity' as an explanation for historical change. To see why this is the case, let us consider briefly Young's discussion of 'late-modernity' in his book *The Exclusive Society*.

In that book Young traces the historical changes attendant on the shift from what he terms, following Eric Hobsbawm, the 'Golden Age' of post-war modernity to the crisis era of late-modernity. The terminology used by Young is not without its problems. The 1950s and 1960s were hardly a 'Golden Age' for the urban poor in Britain's major cities, or for the people of Korea, Vietnam or any number of other third world countries subject to western military intervention during that period. But no matter.

The two processes Young seeks to uncover are what he calls the 'cultural revolution of individualism and the economic crisis and

restructuring of labour markets of the advanced industrial world' (1999: 6). Taken together these two factors, along with associated developments, comprehensively disorganised and unpicked what Young at one point describes as the 'functionalist dream' (1999: 3) of the Golden Age.

In explaining the underlying dynamic of these changes Young argues that they 'are the result of market forces and their transformation by the human actors involved' (1999: 7). The reference to market forces here is interesting, hinting as it does at one of the central features of capitalist economies: namely the exchange of commodities in the market place via the cash nexus. But while Young argues that market forces have been transformed by human actors, their specific provenance is left unexplained. This looks suspiciously like another example of reification. For 'market forces' do not have an existence outside of the framework of the capitalist political economy. And capitalism, as Ellen Meiksins Wood points out in *The Origin of Capitalism*, is the relatively recent construction of humans, grounded in the social relations into which they enter. It is not an independently occurring or natural phenomenon imposed upon human society from outside (2002).

Appeals to modernity, with or without its 'late-' prefix, thus explain too little by assuming too much. By eliding certain social and cultural products of the operations of capitalism with the political economy of capitalism itself they tend towards rendering as natural and objective those features of contemporary society that any critical discipline worth its name should seek to explain and understand.

Second is the question of the role of politics and politicians in relation to criminal justice policy-making. For both Young and Tonry political responsibility involves maintaining a steady, unflustered policy course while navigating the shifting currents of public opinion and media hysteria. Political opportunism, by contrast, involves surrendering to the currents, giving the public and the media what it wants. This is obviously much closer to Bottoms' own concept of the role of the political.

One of the features of Bottoms' perspective on politics, I noted earlier, was the tendency to view the political as largely transitory and superficial. The political process – and particularly the taint of so-called 'politicisation' – gets in the way of rational policy making. The challenge is to keep it at arms length. Given the debased nature of contemporary party politics this distaste for the political is understandable. But such a position does risk collapsing into an anti-democratic paternalism. Tony's apparent scorn for much of the English public and his barely concealed elitism is rather distasteful in this regard. Young's public is a malleable entity, open to a change of heart if only Labour politicians were to discharge their political responsibilities.

The horizon of the political for both writers is thus radically foreshortened. The challenge for politicians in relation to criminal justice largely involves the effective management of public opinion, whether through educating it or marginalising it, holding the line so that the experts can get on with the difficult job of policy-making insulated from corrosive effects of public sentiment. As Ian Loader has recently shown, this essentially 'Platonic' notion of sacred guardianship was a prevalent feature within governing circles until relatively recently (Loader, 2006). But in its contemporary guise, it has much in common with certain themes associated with 'Third Way' thinkers such as Anthony Giddens, who argue that with the definitive triumph of capitalism over alternative ways of organising society, the challenge of politics becomes the management of the status quo and the introduction of incremental reforms. Indeed, it is axiomatic to much 'Third Way' thinking that this is the only realistic option available to contemporary politicians; that more transformational aspirations are but utopian pipe-dreams. But as political theorist Alex Callinicos has pointed out, '[i]t is hard not to see this as... a de-ideologization of politics, as the latter is reduced to a form of problem solving' (Callinicos, 1999: 83).

Regardless of its virtues as a normative vision for politics, it must be debateable whether, as a descriptive account, this understanding of politics adequately captures the nature of the political processes

that have culminated in today's so-called populist punitive criminal justice policies.

Consider, for instance, the analysis offered by David Harvey in his recent book, *A Brief History of Neo-liberalism*. Like Young and Bottoms, Harvey points to the profound changes wrought across the capitalist world from the early 1970s. Prior to these changes, the political-economic arrangements of the post-War period were characterised by what, to quote Harvey:

'is now usually referred to as "embedded liberalism" to signal how market processes and entrepreneurial and corporate activities were surrounded by a web of social and political constraints and a regulatory environment that sometimes restrained but in other instances led the way in economic and industrial strategy' (2005: 11).

From the early 1970s, however, Harvey argues that there was a 'serious crisis of capital accumulation' (2005: 57). The neo-liberal project, he claims, sought to 'disembed capital' (2005:11) from the constraints imposed upon it by embedded liberalism, in order to 're-establish the conditions for capital accumulation and to restore the power of economic elites' (2005: 19).

This neo-liberal turn, Harvey points out, was a profoundly political project. This is true in the simple sense: it involved politicians implementing particular programmes with the intention of achieving a particular result. It is also true in the sense that it involved a root-and-branch reordering of the institutions of the state in ways that have systematically shifted the balance between coercion and consent; between the elites and popular movements; between the power of the executive and the power of the institutions of representative democracy. To quote again from Harvey:

'[N]eo-liberalism does not make the state or particular institutions of the state (such as the courts and police functions) irrelevant... There has, however, been a radical reconfiguration of state institutions and practices' (2005: 78).

This raises a number of important questions in relation to those criminal justice developments that tend to fall under the moniker of 'punitiveness' and 'populism'. By way of conclusion I address them here briefly.

First, Harvey's analysis foregrounds questions of the nature and role of the political in relation to recent criminal justice developments. Contemporary criminology, as I have attempted to demonstrate, is marked by a tendency to displace the political to the margins, either from an assumption that it is largely irrelevant to policy formation, or from a belief that only by so displacing it will effective policy making be possible. The implication here is that it is possible to mark out a pristine space of rational criminal justice policy making, unaffected by political or other institutional pressures and agendas. But if neo-liberalism is, as Harvey contends, little short of a full-blown project to reconstruct the political economy of the capitalist states, it is implausible to think that criminal justice will be unaffected by this process. Indeed, the centrality of criminal justice to contemporary politics suggests that it is also central to the neo-liberal project.

Second, it places the question of the structural determinants of criminal justice policies in a new light. The New Labour project, with its emphasis on the family, community and social order, might reasonably be considered a response to the social disruptions of neo-liberalism, seeking to blend a neo-liberal political economic project with a more socially conservative set of social policy interventions. This would be in keeping with what Harvey argues has been the recent, neo-conservative, answer to the contradictions inherent in neo-liberalism. In particular, Harvey points to the neo-conservative 'concern for order as an answer to the chaos of individual interests, and... [the] concern for an overweening morality as the necessary social glue to keep the body politic secure in the face of external and internal dangers' (2005: 82). In such a context, the expansion and extension of criminal justice policy prescriptions to ever more areas of public policy, which has been such a hallmark of New Labour's time in office, is an entirely predictable development.

Moreover the political marketing of social conservatism to voters is an integral and managed part of the project that is far from being simply a search for electoral advantage. The constant drive to show 'super-toughness' is a sign of how the imperatives of the neo-conservative project permeate political life in the absence of an alternative agenda.

Third, and finally, these considerations shed new light on one of the preoccupations of Bottoms', Young's and Tonry's analyses: the degree to which populist punitiveness is a contingent phenomenon. It should be clear by now that there are reasons for thinking that it is anything but incidental to the contemporary political economy of neo-liberalism. Indeed, it could be argued that so-called populist punitiveness is a quintessentially neo-liberal set of policy interventions and rhetoric. That point noted, neo-liberalism itself is a historically local set of prescriptions to address the crisis of accumulation in contemporary capitalist economies. The challenge of thinking critically about populist punitive policies involves reflecting on their relationship to broader political economic processes, while resisting the tendency to reify either.

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4

A new direction for penal politics?

Putting the popular back into populism

Emma Bell

Over the past ten years of the Blair government, one of the most frequent charges that has been levelled against it by critics of its penal policy has been that of ‘populism’. Yet, as with most such ‘isms’, over-use has led to a certain abuse of the term and confusion over its meaning. Richard Sparks (2003) has claimed that it is now applied in a general way to things we don’t like. Indeed, it seems it is applied equally well to both left and right-wing politicians of whom we disapprove, despite the fact that the original populists – the late Nineteenth Century American *People’s Party* – came specifically from the left and sought to challenge the dominant conservatism (Collovald, 2004).

When ‘populism’ is used with reference to penal policy, it is almost always associated with negative terms such as ‘punitiveness’ (Bottoms, 1995) or ‘authoritarianism’ (Hall, 1988), and almost never

considered as a way of advancing a more progressive, liberal penal politics. This is why we ought to exercise the utmost caution in using the term. As Collovald (2004) has eloquently argued, its negative use may serve not only to de-legitimise the parties to which it is applied, but equally to de-legitimise those who support such parties, making them seem like 'bad citizens', as people who, in the absence of adequate education, do not really understand the implications of their political support. She argues that the application of the term 'populist' to the *Front National* has served to de-legitimise the legitimate concerns of many of its working class supporters (e.g. over high-levels of unemployment), thus advancing the neo-liberal project of the conservative élite. There is a danger that the use of the term 'populist' by many contemporary critics of 'punitive' penal politics discredits the 'popular' and simply replaces one elitist view by another. This is why Julian Roberts (2006) points out that we ought to dissociate 'populist' policies which 'are not necessarily consistent with public opinion' from 'popular' policies "which are consistent with the evolving tenor of informed community reaction to crime". Mick Ryan (2005) has also noted that we should not confuse populism with "the rise of the public voice" – something he considers as a positive, democratic development, paving the way for a truly participative penal policy which need not necessarily be punitive. The aim of this paper will be to analyse the use of the concept of populism by New Labour with regard to its penal policy. Firstly, we will see how some policies described simultaneously as popular and populist actually tend to work against the public interest. It will then be shown that this may be explained by the Blair government's adoption of a rather narrow definition of public opinion and its failure to adequately engage with it. Finally, it will be suggested that the end result has actually been the adoption of an elitist penal politics over the popular.

New Labour would certainly claim to be defending the popular interests of its electorate, such assertions being most clearly illustrated by its professed claims to be 're-balancing' the criminal justice system in favour of 'the law-abiding majority'. It has stressed the break between New Labour and what it has described as 'the 1960s liberal, social consensus on law and order,' (Blair, 2004) by adopting 'left realism', the doctrine according to which the left

ought to take crime seriously and to recognise the fact that the poor suffer disproportionately from all the more serious forms of crime. This has enabled it to claim that it is anti-elitist and addressing genuine working-class fears – indeed, it has not made any serious effort to refute allegations of populism. However, it has conveniently ignored the earliest proponents of left realism's claim that 'Crime is endemic to capitalism,' (Lea and Young, 1993 [1984]) – acceptance of which would necessitate an admission of state responsibility for the crime problem – allowing it to lay responsibility for crime at the door of working-class communities themselves. Consequently, there is constant talk of 'empowering' these communities and stress on the need to develop local partnerships to deal with crime. For example, both Anti-Social Behaviour Orders (ASBOs) and Closed Circuit Television (CCTV) are sold as ways of enabling communities to play an active role in criminal justice through tackling crime, or simple nuisance behaviour, in their own communities. Local people are encouraged to report incidences of anti-social behaviour and breaches of ASBOs to their local authority or to the police and, in May of last year, the residents of Shoreditch were invited to tune into their own local CCTV channel and report any suspicious behaviour to the police (*Daily Telegraph*, 10 May 2006). Roberts (2006) has suggested that these initiatives, although widely criticised by criminal justice élites, attract widespread public support. Indeed, according to a 2005 MORI poll, eight people out of ten – 82% – support ASBOs. A Home Office report (Springs et al., 2005) has concluded that only a small minority opposes the installation of CCTV cameras and a large majority believes them capable of reducing crime and other anti-social behaviour in their area. However, even if such initiatives receive wide support from the community, it is hard to see how they necessarily work in its interests. Firstly, it is hard to see how they actually empower communities: residents are merely encouraged to help the police, yet they remain excluded from playing any significant role in the sentencing process. This is despite the fact that it has long been suggested (Christie, 1977) that victims 'own' their crimes and should therefore be given a greater role in this respect. Despite some recent initiatives, such as the admission of Victim Impact Statements in English criminal courts, and attempts to get private individuals involved in fighting

crime through the creation of Community Support Officers, Neighbourhood Wardens and Street Wardens, and the patchy implementation of restorative justice schemes, it would seem that little has changed since then, people remaining excluded from the system and criminal justice policy still being led very much from the top down. Paradoxically, it would seem that, held responsible for their own crime problem, communities are, in spite of the rhetoric, deemed irresponsible and therefore incapable of resolving their problems independently. Importantly, New Labour's version of Left Realism has allowed it to portray crime and disorderly behaviour as both a problem *for* and *of* communities, rather than for government, thus distracting attention from the negative consequences which its pursuit of a neo-liberal agenda may have on the crime problem. Yet, simultaneously, when communities fail to protect themselves against crime, government can step in to tackle the problem, allowing it to carve out a new role for itself as provider of physical security rather than of economic security. In this way, the fact that absence of the latter may actually undermine the former is eclipsed, allowing the government to pursue its project unhindered, regardless of how it may conflict with the public interest. Far from being a 'popular' policy, in the sense that it may be rooted in genuine popular sentiment, New Labour's crime strategy may be seen more as a strategy of governance. This idea will be developed in more detail towards the end of this paper.

A second way in which current criminal justice policies such as those described above may be seen to run counter to the public interest is that they tend to be ineffective in tackling crime and may simply displace the problem both spatially and temporally. Its spatial displacement occurs when an ASBO may simply require a person to refrain from engaging in certain proscribed behaviour in a specified area, or when breach of the order results in a prison sentence. In the first instance, the problem is merely shifted from one community onto another; in the second, it will only provide temporary respite while the offender is incarcerated and, given prison's well-known failure to adequately address offending behaviour, the problem may even be exacerbated on his release. It is in this final sense that the problem is temporally displaced. Indeed, it is hard to see how the imprisonment of minor offenders

will best serve the public interest. Firstly, it is widely accepted that prison is ineffective. For example, according to a report by the *Coalition on Social and Criminal Justice* (2006), 67% of people released from prison go on to re-offend within two years. This is perhaps unsurprising given the government's apparent failure to adequately invest in prisoner rehabilitation. Indeed, a House of Commons Select Committee Report, published in 2005, found that half of all prisoners do not have the necessary skills for 96% of jobs. It asserted that the education of prisoners has not been a government priority for decades. According to Anne Owers (2005), HM Inspector for Prisons, 'Time out of cell, and engagement in genuinely purposeful activity, remains poor in most local prisons.' She cites the example of Bristol where 60% of inmates were found to spend around 22 hours per day locked in their cells and where only 12% benefited from some form of education. In addition, prison is unlikely to provide the public with value for money: according to *Rethinking Crime and Punishment* (2007), in England and Wales, a prison place costs £37,500/adult prisoner/year, compared to between only £2,000 and £8,000/offender/year for alternative penalties. Finally, As Roberts and Hough (2005) have pointed out, sending offenders to prison will most probably fail to convince the public that 'justice has been done,' given that many people continue to believe that prison is a 'soft option.' It may come as a surprise to find that some prisoners themselves confirm such views. Interviews carried out by the author with a sample of prisoners at HMP Lewes in February this year revealed that some men having had previous experience of prison preferred a short prison sentence over a longer community sentence, the conditions of the latter often being seen as more demanding. This suggests that, contrary to the government's tendency to represent community and offender as binary opposites, the opinions of both may actually converge. If the government truly wishes to respond to 'public opinion' in the widest sense of the term, it should therefore define it in a more inclusive way. This would allow it to formulate effective policies which are more likely to act in the 'public interest' rather than against it.

Currently, the government seems to favour a particularly narrow definition of 'public opinion.' Despite the fact that it has

been estimated that 27% of males currently aged 18 to 45 in England and Wales have a criminal conviction (Prime et al., 2001), government ministers repeatedly refer to the need to protect the interests of 'the law-abiding majority', thus automatically excluding the interests of at least a quarter of the population – probably more given the large number of offenders who are never brought to justice. A recent report published by the CCJS (Karstedt and Farrall, 2007) has challenged the very notion of a 'law-abiding majority' on account of the fact that a significant part of crime is committed by those who consider themselves 'respectable' and who would reject the label 'criminal'. In addition, as Richard Garside (2006) has pointed out, drawing on the work of Danny Dorling (2005), the failure of the criminal justice system to significantly narrow the justice gap has meant that large numbers of sexual offences and incidences of child abuse go undetected, while the poorest remain most likely to be murdered. This suggests that, despite its professed claims to the contrary, the government is currently failing to protect the interests of the weakest members of society; women, children and the poor. Lastly, it would seem that government tends to misrepresent public opinion: recent work carried out by *Rethinking Crime and Punishment* (2004) into public attitudes on crime found that 'although public attitudes are complex, sometimes contradictory and often highly dependent on the wording of poll questions, they are in general much less punitive than is often thought to be the case.' Indeed, research by Hough and Roberts (1999) has shown that the public often know little about sentencing practice, perceiving it to be more lenient than it actually is. Yet, ignoring expert advice, government persists in representing public opinion as it is narrowly constructed by the British tabloid press. The danger is that the adoption of simplistic, ineffective criminal justice policies, such as over-reliance on imprisonment, is justified by their supposed ability to accord with the common sense of 'the people,' despite the fact they are unlikely to ultimately protect them from crime.

It would therefore seem that, despite New Labour's claims to be responding to public demands, there is in reality an absence of genuine dialogue with the people. It fails to adequately explain to the public exactly how the criminal justice system really does

work and instead fuels the belief that the system is out-dated and ineffective. It is as if the government is wary of entering into real dialogue with the people. Nick Cohen (2003) has even gone so far as to suggest that 'the populist élite despised the People, and was a little frightened of them.' As evidence for such an assertion, he cites the attempt to abolish the right to trial by jury by the *Criminal Justice (Mode of Trial) Bills of 1999-2000*, the *Criminal Justice Act 2003* and, latterly, by the *Serious Crime Bill 2006-7*. Indeed, jury trial, although accounting for only a small minority of cases, remains one of the few mechanisms via which ordinary members of the public may get involved in the criminal justice system. Yet the government has questioned the ability of juries to pass judgement in certain circumstances, notably in complex fraud cases, and the Auld Report (2001) expressed concern that juries may return too many 'perverse' (i.e. not guilty) verdicts. The government also seems reluctant to commit itself wholeheartedly to restorative justice schemes, initiatives that could finally grant the public the right to participate in the criminal justice process in a meaningful way. Although the *Crime and Disorder Act 1998* and the *Youth Justice and Criminal Evidence Act 1999* both endorsed various forms of restorative justice, New Labour's commitment to such schemes is questionable. Since 1998 Thames Valley Police has been operating restorative cautioning, designed to bring offender, victim and community together in order to make the offender face up to the consequences of his actions. It also operates a restorative conferencing scheme, the aim of which is to encourage the offender to apologise for his actions and perhaps make an offer of reparation. But Morris and Gelsthorpe (2000) have claimed that this scheme 'operates at the margins of the criminal justice system rather than as an integral part of it' given that it is aimed at relatively low-level offending only. They also note that conferences there rarely involve victims. Consequently, they conclude, 'power and control will remain with the professionals'. This is also likely to be the case with the mandatory sentence of referral to a youth offending panel for most first-time young offenders, introduced by the 1999 Act. Ball (2000) highlights the coercive nature of the referral order – notably the fact that offenders may be referred back to court for failure to agree to a programme of behaviour with the Youth Offending Panel, wilful

failure to sign the Youth Offender Contract, failure to attend panel meetings, or the breach of a requirement of the contract – and suggests that this will preclude the schemes from achieving the declared objectives of restorative justice, in particular a reduction in imprisonment. In addition, the fact that an ever-increasing number of young people are finding themselves incarcerated shows that the system remains predominantly in the hands of the state. This over-reliance on imprisonment has led John Pitts (2001) to write of the ‘dejuvenalisation’ of youth justice policy. All these policies would suggest that the Blair government is only prepared to responsabilise and ‘empower the people’ with regard to crime prevention, not crime resolution. In doing so, it is only likely to fuel punitive sentiment, distance from the criminal encouraging stereotyping and discouraging empathy (Christie, 1977). Given that it is finding punitive demands increasingly difficult to satisfy, notably on account of the current lack of available prison places – the prison population reached its highest peak ever of 80,951 in June of this year (NOMS, 2007) – it must be asked how such an apparently imprudent policy can be explained.

Cohen (2003) has suggested that the ‘anti-élitist élite was interested in distracting people, not empowering them.’ As we have seen, New Labour has indeed failed to empower the people with respect to the criminal justice system in any truly meaningful way. It has also distracted them by locating the crime problem outside national boundaries, emphasising the impact of globalisation on the destruction of fixed communities (Blair, 2006). In this way the public’s attention has been diverted from the possible impact which the current government’s neo-liberal policies may have had on the exacerbation of the crime problem. Yet, that the public do feel less secure in a globalised world is undeniable and, as Jock Young (2001) has suggested, such ontological insecurity leads to the creation of ‘folk devils’ and increased demands for punitive responses to their behaviour. Instead of confronting these sentiments and challenging them through engaging in meaningful dialogue with the public, the government tends to take them at face value and even exacerbates them through its constant criticisms of the criminal justice system. In this way it is arguably abusing the concept of ‘populism’, using public opinion to justify

the imposition of a top-down criminal justice policy. Consequently, the public are in reality disempowered and rendered even more vulnerable by policies that have been proven ineffective. The state can then step in and prove its value as able protector of the public, following a policy of maximum incarceration in order to prove that it is doing something, not just about crime, but about tackling the atmosphere of risk of which crime is a chief manifestation. In this way, it 'governs through crime,' to borrow Jonathan Simon's (1997) phrase – using the law to bolster its position as risk manager rather than as social security provider – thus securing a belief in the legitimacy of government and in its neo-liberal project. In this sense, we may assert that New Labour's populism is truly 'authoritarian'. The complex issues involved in criminal justice have been deliberately presented in simplistic terms in order to discredit expert opinion and better 'connect' with a narrowly-conceived notion of 'public opinion' or the popular 'common sense.' In doing so, the government plays a role in the construction of common sense, creating consensus around a tough, law-and-order policy. Hence, the Blair government, as the Thatcher government before it, is in search of hegemony, attempting, as Stuart Hall (1988) wrote almost twenty years ago, 'to impose a new regime of social discipline and leadership "from above" which had to be rooted in popular fears and anxieties "below"'

New Labour may have succeeded in rallying support for a tough penal policy which promises physical security, thus distracting attention from its failure to provide economic security, but it has nevertheless failed to gain public confidence. According to an IPSOS/MORI poll (2006), the percentage of people stating that they believed Labour to have the best policies on law and order fell from a high of 40% in February 2005 to 28% in August/September 2006, despite constant government promises made last summer to 're-balance the system in favour of the law-abiding majority' (Home Office, 2006). It seems that loss of confidence in 'the system' equates with loss of confidence in government. As Roberts (2006) has pointed out, 'the public' will continue to lack confidence whilst the government fails to provide it with adequate information. Tough polices may provide short-term distraction but they are unlikely to provide long-term satisfaction (James and Raine,

1998). New Labour cannot hope to continue to govern effectively through crime but it may yet be able to restore confidence in its criminal justice policy. To do so, it must engage with the public in a meaningful way, recognising the complex nature of the public voice. This means discussing policy with members of the public at large, not just with 'Middle England' but also with criminal justice professionals and even with prisoners themselves. Through dialogue, perhaps it might discover what a truly 'popular' penal policy might be. This would constitute a genuine 'new direction' for criminal justice, albeit one that remains somewhat unlikely to be followed in the current political climate.

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5

Tough on...what? New Labour's war on crime statistics

Dr Phil Edwards

New Labour's term in office has been remarkable for the emphasis the government has placed on 'law and order' issues - traditionally associated with Conservative rather than Labour governments. A more significant innovation, representing a break with the law-and-order Right as well as the Left, has been the adoption of a broad and coherent preventive agenda, aimed at the active management of both crime and non-criminal disorder. An unintended consequence of New Labour's 'disorder prevention' programme has been to make it significantly more difficult to define, record or count criminal offences in coherent ways. Ironically, a government which prides itself on its achievements in the fight against crime has made it harder than ever before to measure the actual rate at which criminal offences are committed.

From crime control to behaviour modification

New Labour's law and order legislation has been marked both by a proliferation of new forms of criminal offence and by the

creation of opportunities to define and sanction non-criminal behaviour. *The Crime and Disorder Act 1998*, one of New Labour's first legislative interventions, explicitly instructed local authorities to work with the police to reduce the levels of disorder as well as crime, through Crime and Disorder Reduction Partnerships (CDRPs). Local authorities thus have a statutory duty to fight potential as well as actual crime, and to do so in collaboration with the police.

This extension of policing activities into areas where no offence has been or is likely to be committed is underpinned by a wide range of new police powers and practices. Table 1 records some of the significant changes in police practice since New Labour came to power.

TABLE 1: TYPES OF INTERVENTION BY POLICE FORCES (ENGLAND AND WALES)

Description	Introduced
Reprimand (youth)	1998
Warning (youth)	1998
Anti-social behaviour order	1998
Acceptable behaviour contract	1999
Penalty Notice for Disorder (adults)	2001
Fixed penalty notice (minor offence)	2002
Conditional caution	2003
Penalty Notice for Disorder (children aged 16-17)	2004
Penalty Notice for Disorder (children aged 10-15)	2005

Young offenders are no longer cautioned, but given a 'reprimand' at a first offence and a 'final warning' at a subsequent offence. A warning will generally be coupled with a referral to the local Youth Offending Team (YOT), who will be charged with developing a programme of activities to address the offender's behaviour; in some cases a reprimand will also include a YOT referral. While a YOT programme is not a criminal penalty and is not compulsory, non-compliance is likely to incur a warning or a criminal charge; the effect is thus to couple a police caution with an official sanction.

The introduction of 'conditional cautions' for adult offenders follows the same logic, enabling a police officer to make a caution conditional on a programme of restitutive or rehabilitative activity; 'punitive' conditional cautions, requiring the payment of a fine, are currently under consideration. In such cases, a prosecution for the original offence may follow if the offender does not comply with set conditions.

Additional types of sanction have also been introduced. Penalty notices for disorder (PNDs), introduced by the *Criminal Justice and Police Act 2001*, are a type of fixed penalty notice (FPN). An FPN - previously used primarily for traffic offences - is not a penalty for an offence. Rather, the FPN gives notice to the offender that he or she may be prosecuted for the offence, but that the liability can be discharged by paying a set fine. The availability of the PND, as an alternative disposal to arrest or caution, has led to a net increase in the numbers sanctioned. Figures from a twelve-month pilot, during which over 5,000 PNDs were issued, suggested that 'between a half and three-quarters of PNDs issued for disorderly behaviour while drunk and causing harassment, alarm or distress were "new business"' (Halligan-Davis and Spicer, 2004: 3).

Unlike a caution, receipt of a PND is not conditional on an admission of guilt; those issued with PNDs remain innocent of any offence unless and until they are proved guilty in a court of law. Indeed, in theory every recipient of a PND could opt to contest the charge in court. However, in practice this is a remote possibility; fewer than 2% of PNDs issued during the trial period resulted in a court case (Halligan-Davis and Spicer, 2004: 3). Payment of the fine averts the possibility of prosecution and does not produce a criminal record; accordingly, Home Office guidance stresses that it does not amount to a formal admission of guilt. However, given that payment of a fine waives the defendant's right to contest the charge in court, the opposite inference could easily be drawn. Indeed, for some classes of offence the police are empowered to record details of those issued with PNDs; this is justified on the grounds of identifying repeat 'offenders'. PNDs can also be referred to in a subsequent court case as evidence of bad character (Roberts and Garside, 2005: 6).

Initially, juveniles were excluded from the scope of PNDs and other FPNs. However, the *Anti-Social Behaviour Act 2003* included provisions for PNDs to be made applicable to young people aged 16 and 17, with a further extension to children of 10 and over available if the government should require it. These two extensions were both enacted in 2004, without new legislation. Provision for FPNs to be issued by locally-accredited community support officers as well as by police officers was introduced in the *Police Reform Act 2002*. The range of offences involved has subsequently expanded - under the 2002 Act and by provisions in the *Anti-Social Behaviour Act 2003* - from three to 20.

Anti-social behaviour orders (ASBOs), first introduced in 1998, have in common with FPNs that they offer the prospect of police intervention against a wider range of behaviours and larger absolute numbers of offenders; they also have in common a tendency to dissociate the sanction from the offence. However, FPNs simply enable offenders to buy their way out of a possible court sanction for past offending behaviour; the structure of an ASBO is considerably more complex. The first and most obvious difference between the two is that anti-social behaviour is not necessarily criminal in itself. Secondly, an ASBO is a 'two-step prohibition', akin to a court injunction or abatement order. A two-step prohibition is preventive rather than retributive: it 'makes it a crime to do Y in the future not a crime to have done X in the past' (Simester and von Hirsch, 2006: 178). Although ASBOs are imposed in response to past behaviour - because, to the satisfaction of a civil court, the subject of the order has 'done X in the past' - they are not imposed as a punishment for that behaviour. Rather, an ASBO lays down conditions that the individual subject of the order may not breach for a period of time in future. Thirdly, these conditions are - by design - not identical with the behaviour for which the order was obtained: a young person seen throwing stones at passing cars may receive an ASBO, but it is highly unlikely that the only activity prohibited will be throwing stones at passing cars.

Where identifiable criminal offences are concerned, the nature of the actions prohibited by a specific ASBO is secondary. An ASBO breach, like any breach of an imposed licence or proscription, is

thus inherently an 'iatrogenic' offence - one 'caused in part by processes of law enforcement' (Gowri, 2003: 601). This makes identifying and recording the relevant criminal offence doubly problematic. On one hand, the level of breaches of licenses or proscriptions is clearly meaningless unless the levels of licenses and proscriptions are also taken into account. On the other hand, the offence represented by the breach has no necessary relationship to the actions involved - which in themselves may not constitute anti-social behaviour, but may simply be seen as actions associated with or preparatory to anti-social behaviour. This is a particularly common pattern in cases where an ASBO is used as an informal curfew or exclusion order, excluding an individual from particular areas or from being out after a certain time. An individual may thus be found guilty of a criminal offence after carrying out actions, which are not only legal in themselves, but entirely blameless if carried out in another place or by another person.

These problems have beset anti-social behaviour legislation since it was first discussed. Anti-social behaviour was defined in the *Crime and Disorder Act 1998* as acting 'in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household [as the offender]'. Questioned in Parliament, Alun Michael MP explained:

'guidance, which will be offered, will make it clear that the target is not just odd behaviour or loud music. We are talking about continuous behaviour, over time, which causes harassment, alarm and the ruination of lives.' (Michael, 1998)

However, the 1998 Act does not specify that the behaviour in question must be *continuous ... over time* or that it must be serious in its impact. Nor, perhaps surprisingly, does it specify that anti-social behaviour must be engaged in intentionally or recklessly; anti-social behaviour has a victim or victims, but there is no requirement for the offender to be acting aggressively towards them, or even actively disregarding their interests. Strictly speaking, anti-social behaviour can be identified and sanctioned even if no victim has been affected by it ('was likely to cause').

The inbuilt breadth of the definition of anti-social behaviour is matched by its vagueness. The promoters of the legislation clearly see this as a strength rather than a weakness: for Beverley Hughes MP, speaking in 2003, the fact that 'anti-social behaviour is not easy to pin down, or to define,' was 'part of the challenge,' which could best be met with equally fluid legislation. However, there are serious problems with the approach of extending the criminal law to cover a set of behaviours which remains undefined - or, at best, is defined only by its reported effects. A key term in this move is 'sub-criminal', as in the phrase 'criminal and sub-criminal behaviour'; phrases along these lines were used heavily by Michael in the debate cited above and have subsequently figured strongly in Home Office guidance. Dismissed by Macdonald (2006:186) as meaningless - 'either behaviour violates the criminal law or it does not,' - the term 'sub-criminal' nevertheless validates the regulation of non-criminal behaviour by the police: if the police are involved, in other words, what appears to be non-criminal behaviour must be sub-criminal. In effect, the ASBO defines the behaviour it sanctions.

Lastly, an acceptable behaviour contract or agreement (ABC/ABA) is a formal agreement with no legal standing; it may be offered to individuals whose behaviour is at issue by any one of a number of agencies, including local authorities and housing associations as well as the police. An ABC provides a semi-official means of communicating to potential offenders that their behaviour is under review by the police, and that a measure such as an ASBO may be taken if unacceptable behaviour continues. ABCs are not the subject of legislation; they were first introduced by a local police force in 1999 (Bullock and Jones, 2004). Unsurprisingly, given their borderline status, there is at present no formal system for recording ABCs. Current Home Office proposals (Home Office, 2006) would couple the ABC with a 'deferred PND' - in effect a 'suspended sentence' PND which would take effect if and when the provisions of an ABC was breached. Concern has been expressed that this would erode the voluntary status of the ABC.

These diverse measures consistently erode the distinction between police intervention and penal sanction, and do so with a view to

modifying criminal and potentially criminal behaviour before it reaches the level of a prosecutable offence. It follows that they also make it more difficult to use statistics from the criminal justice system as a record of crimes having occurred. Conditional cautions and PNDs record that an offence may have happened; ASBOs record that something other than an offence has happened; ABCs record that nothing has happened yet.

From crime recording to counting incidents

If a substantial proportion of police activity is focused on non-criminal or 'sub-criminal' incidents, perhaps these incidents should themselves be counted. One initiative which shows how this approach might work was the Anti-Social Behaviour Day Count 2003. On 10 September 2003 agencies of 17 different types, covering every CDRP in England and Wales, reported a total of 66,107 incidents of anti-social behaviour. Each type of incident was assigned an estimated cost; the conclusion was that '[a]nti-social behaviour recorded on the day of the count cost agencies in England and Wales at least £13.5m; this equates to around £3.4bn a year.' (Home Office, 2003a).

However, the apparent precision of the 'Day Count' dissolves on inspection, casting doubt on whether a valid and reliable count of 'incidents' could ever be achieved - let alone any reliable estimate of associated costs. With a disparate set of agencies submitting counts for classes of incident as imprecise as 'noise' (5,339 reports) or 'litter' (10,686 reports), there is no reason to assume that the incidents reported will include all the relevant incidents occurring on that day. On the other hand, it cannot be guaranteed that those incidents which were reported were genuinely of the same type; that they met a uniform threshold of significance; or that incidents were not reported more than once, by the same agency or multiple agencies. Extrapolating from the Day Count to a full-year estimate is also problematic, raising the distinct possibility of multiple reporting over time. In the case of 'vandalism' - the category with the highest estimated cost - the grounds for extrapolating from an estimated cost of £2,667,000 for a single day's incidents to £667,000,000 for a full year seem particularly debatable.

Costing is a problematic operation in its own right. To arrive at cost figures, incidents are grouped into two main categories and a mean unit cost estimated for each category; costs of £400 and £204 are proposed for individual incidents in each category (Home Office, 2003b). The estimated cost for each category of incident reflects a calculation of the costs of different levels of agency intervention, qualified by the estimated probability of intervention at each level (Home Office, 2003b; see also Whitehead, Stockdale and Razzu, 2003). 'Hoax calls' and 'abandoned vehicles' are each classified separately, since more detailed information regarding the costs of responding to incidents of these types was available.

The great majority of incidents recorded fall into either the 'Type one' or the 'Type two' category - 13,000 and 46,000 respectively. The calculations underlying the costing for these types of incident are inevitably skewed by the use of an upper value ('Report and high-level response': £5,025) which is nearly ten times the value assigned to the next category ('Report and mid-level response': £525) and 250 times the value assigned to the lowest ('Report only', £25). In all likelihood, these estimates give a valid indication of the costs of different types of intervention in this area, which will range from the sanction of an ASBO (total processing costs estimated at £5,000) down to incident reports which require very limited action or no action at all. However, the breadth of the range produces calculated mean values which are highly sensitive to small changes in the distribution of incidents between categories. In the case of vandalism, the estimated £400 unit cost derives largely from the calculation that 20% of incidents will receive a 'mid-level response' and 5% a 'high-level response'. Relatively minor changes to these two estimates, holding other estimates constant, would change the calculated unit cost significantly: assuming that 6% of incidents received a 'high-level' and 19% a 'mid-level' response, for example, would give a unit cost of £445 - an increase of over 10% on the original estimate of £400. Given that the total cost figure was arrived at by multiplying the calculated unit cost by the count of 7,855 reports, while the full-year figure was calculated by multiplying this figure by 250, this small adjustment would produce a change

of around £90,000,000 in the estimated yearly cost - 2.5% of the total estimated cost for anti-social behaviour.

The methodological critique of these calculations is potentially even more serious. These figures are based on costs of law enforcement responses; as such, they are vulnerable - like police recorded crime figures - to external pressures for a more or less hard-line response. In the specific case of anti-social behaviour, the calculations are strikingly circular: the perceived scale of the problem of anti-social behaviour, and hence the need for enforcement measures such as ASBOs, is determined in large part by the processing costs of ASBOs and the frequency with which they are already imposed. Perceived on this basis, the problem threatens to feed on itself: a higher rate of enforcement would automatically lead to a higher overall cost and hence to the perceived need for still more enforcement. A more defensible approach would be to remove the cost of a 'high-level response' from calculations; this would remove the difference between 'Type one' and 'Type two' incidents, cutting the cost of both to £150. The published 'Day Count' uses figures ranging from £156 to £194 for Type 2 incidents and £340 to £366 for Type 1, making it difficult to estimate the exact impact which this change would have; a conservative estimate is that it would take £1 billion off the headline annual cost of £3.375 billion.

Beyond the crime rate? Alternative measurements of crime

The difficulties inherent in the incident-based enumeration and costing of anti-social behaviour suggests that it might be appropriate to abandon incident-based enumeration altogether. As Genn suggests, in some areas the reality of crime is not of an incident or series of incidents, but of a continuous process:

'Although isolated incidents of burglary, car theft or stranger attacks may present few measurement problems, for certain categories of violent crime and for certain types of crime victim, the 'counting' procedure leads to difficulties. It is clear that violent victimisation may often be better conceptualized as a process rather than as a series of discrete events. This is most evident in

cases of prolonged and habitual domestic violence, but there are also other situations in which violence, abuse and petty theft are an integral part of victims' day-to-day existence.'
(Genn, 1988: 91; quoted in Maguire, 2002: 358)

One localised 1986 survey found that two-thirds of women under 24 reported being 'upset by harassment' in the previous twelve months (Maguire, 2002: 357). This can perhaps best be understood as revealing a continuing process or climate of harassment, rather than a large number of individually memorable incidents.

Some Home Office statements on anti-social behaviour also suggest a possible move away from the 'incident-based' approach, focusing attention on the perceptions of those affected by anti-social behaviour. In a 2003 speech, the then Home Office minister Beverley Hughes commented:

One in three people in the British Crime Survey say that it's a problem in their area. Its impact is significant - on the individual and on the community. Anti-social behaviour can make people feel afraid and unsafe.... It can mean very different things from one place to the next. In one area it's young people causing problems on the street, in another it's noisy neighbours or abandoned cars. In one town centre it's street drinking and begging, in another it's prostitution. In practice anti-social behaviour ranges from the litter on our streets, to dealing with the problems caused by the behaviour of some of our most complex and challenging families.
(Hughes, 2003)

The implication of Hughes' remarks is not that begging, prostitution, residential noise or groups of young people only occur in certain areas, but that there are only certain areas in which these phenomena 'make people feel afraid and unsafe,' and hence amount to anti-social behaviour. The underlying activities themselves are thus less significant than the continuously unsafe environment or climate which they are perceived to create. This argument echoes the 'signal crimes perspective' advanced by Innes (2004), according to which certain crimes - and non-criminal

incidents - have a 'signal' effect of undermining a public sense of safety and security. As Innes writes, this perspective

'Recognises that crime and disorder incidents directly harm victims, and they can also harm a wider sense of collective security. As such, the signal crimes perspective can be seen to focus upon processes of social reaction, being concerned with how criminal and disorderly acts are used by people to construct judgements about the levels of individual and collective risk across different social situations. ... The premise being that people construct their perceptions of risk around certain visible incidents. Thus, even in relation to ostensibly similar offences, public reaction may differ according to the situational context. Early empirical studies suggest that people often tend to construct their insecurity around the kinds of comparatively trivial crime problems that they experience directly and regularly, as well as the very rare serious types of offences ... if it is possible to identify these signal offences then acting against these problems might be predicted to have a disproportionate impact in tackling the causes of crime inspired insecurity. As such, the National Reassurance Policing Programme (NRPP) formulation of reassurance policing strategy aims to make neighbourhoods more secure by targeting signal crimes and signal disorders.' (Innes, 2004: 163)

On this basis, the only consistent index of anti-social behaviour is perception - the degree to which members of the public report feeling 'afraid and unsafe' as a result of anti-social behaviour. A continuing stress on anti-social behaviour (or on 'signal disorders') is thus likely to lead to a focus on measuring the perceived effects of this behaviour, rather than a - necessarily imprecise - enumeration of individual incidents. Fear of crime thus becomes an indicator in its own right, rather than being contrasted with data on 'real' levels of crime.

This, however, immediately prompts the question of whether law enforcement measures are an appropriate and effective way to address the social problem of fear of crime. As Loader argues, demands for greater security against crime and disorder are inherently political and require democratic mediation:

'When ... people speak of crime and disorder, and make claims for this or that level of security provision, they are always also giving voice to a series of fears about, and hopes for, the political community in which they live ... They may do so, moreover, in ways that are by no means ... consistent with the idea that security is a right available, by reason of their membership alone, to all members of that community.' (Loader, 2006: 207)

In other words, while measurements of the fear of crime may sometimes track the level of criminal offences within a community, they will much more predictably articulate a complex of social strains and conflicts, giving voice to and empowering some parts of the community rather than others.

Another alternative to incident-based counting is the 'zemiological' approach, which offers to measure the harm done by crime rather than enumerating criminal actions. As Garside argues:

'Getting a better sense of the total amount of crime of itself tells us little about the variable impact of different types of crime. A prolific car thief might blight the lives of tens or hundreds of people. The misselling of endowment policies has blighted the lives of many thousands. A child's graffiti might cause an unsightly mess. A factory knowingly polluting the environment might damage the health of tens of thousands of people. Is it time to develop ways to quantify the variable harm caused by various forms of criminality, rather than content ourselves with simply knowing the raw numbers?' (Garside, 2004: 23)

Clearly, there are real social phenomena which can reasonably be classified as criminal; equally clearly, records of crime exist. But there are many differences between one and the other - and the meaning of each of the two has evolved, continues to evolve and can never finally be fixed.

Moreover, while a level of epistemological fluidity is ultimately unavoidable, the situation has been made much more fluid and less predictable by New Labour's enthusiasm for preventive policing of non-criminal disorder. The last ten years have been

characterised by a stream of legal and policing innovations in the area of public order. The impact on levels of crime and disorder is hard to judge - not least because the reforms themselves make crime levels harder to measure. This government's legislation may have been driven by a desire to be 'tough on crime', but its overall effect has been - paradoxically - to make it hard to assess whether it has been tough on crime or not.

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6

New Labour, New Legitimacy?

The 'making punishment work' agenda and the limits of penal reform

Dr David Scott

In this paper I consider the thorny question of whether the policies and penal reforms undertaken by the New Labour government in the last ten years have made the penal system more legitimate. Penal legitimacy has always been important, but in a time when the massive growth in prisoner populations shows no signs of abating, questions of the validity of the penal institution itself become ever more pressing. To answer this question requires first a definition of what we mean by the term legitimacy. I understand penal legitimacy to exist when the application and distribution of the ways and means of dealing with wrongdoers successfully attain both *political validity* and a sense of *moral rightfulness* (Scott, 2006, 2007a). This dictates that there are both political and moral dimensions to considerations of an appropriate response to dealing with wrongdoers, and the current way of achieving this through punishments in the criminal justice system.

For a number of liberal penologists penal legitimacy is intimately tied to prisons and the criminal justice system conforming to public opinion, meeting certain practitioner expectations, fulfilling given administrative goals and targets, or meeting certain ends such as crime reduction, public protection or the rehabilitation offenders (Sparks et al., 1996). By contrast, radical penal activists and [neo] abolitionists have looked beyond the criminal justice system when thinking about legitimacy, pointing to wider concerns about the moral and political limitations of the power to punish, ultimately raising concerns about who we punish, why, and even if we should punish at all (Fitzgerald & Sim, 1979; Hudson, 2003; Scott, 2006). In this paper I highlight the inherent limitations of recent penal reforms by 'New Labour' since 1997 and point tenuously towards new directions and alternative visions for thinking about responding to wrongdoers rooted in the principles of accountability, democracy, human rights, and social justice.

New Labour governance

When New Labour won the general election in May 2007 it had successfully distanced itself from its traditional image of being soft on crime. The new tougher rhetoric of Blairism led in office to both continuities and differences between New Labour penal policy and what had come before. Though, as Joe Sim put it back in 2000, there was 'clear red water' between the parties, it is apparent that New Labour genuinely embraced at least some aspects of the previous administration's thinking. Conservative Home Secretary Michael Howard in 1993 had famously claimed that 'Prison Works' in terms of deterrence and incapacitation, promoting an orientating penal ethos of public protection. Significantly, this principle has not been rejected by New Labour, but supplemented with the further goal of reducing re-offending. The Mantra subtly changed from one of *prison works* to *making punishment work*.

Making punishment work?

Perhaps the most significant policy documents on prisons and punishment under New Labour are the 2001 Halliday Report *Making Punishments Work* and the subsequent 2003 *Criminal Justice Act*. Halliday (2001) advocated a form of punitive rehabilitation that brought together both imprisonment and

community punishments. The poorly managed prisons under the Conservatives may not have worked, but with appropriate reforms they could be made to do so. This ethos tapped into New Labour's almost evangelical mission to turn the prison into a *special place*, working to 'rescue or save' the unrespectable poor. Originating from a distinctly communitarian political vision, prioritising self discipline, individual responsibilities and mutual obligations, the prison is conceived as an expensive way of making people better. Incarceration is consequently a major opportunity that should be profited upon. In the words of Tony Blair (2002: 3)

'[w]e are failing to capitalise on the opportunity prison provides to stop people offending for good ... We need to make sure that a prison sentence punishes the offender, but also provides the maximum opportunity for reducing the likelihood of re-offending ... And above all, prisoners must have the consequences of their actions and their responsibilities brought home to them.'

Through the rhetoric of opportunities and responsibilities the message is clear: prisoners should be given opportunities to make choices that help them learn how to behave responsibly, and if this process is effectively managed the wider community and victims, for whom the prisons serve, will be protected. This 'making punishment work' approach can be divided into six broad strands.

i) rehabilitation

Rehabilitation today in effect means accredited programmes rooted in the principles of cognitive behaviouralism and the 'what works' movement, signalling a resurgence of criminological positivism, crime science, and an increased trust in psychological knowledges. Indeed the potentially progressive *questioning* of 'what works?' when responding to wrongdoing was quickly transformed into an assertion of 'what works' for offenders (Robinson, 2005; Sim, 2005).

However, like previous rehabilitative initiatives, it fails to account for either the constraints of the punitive environment it operates within, or the contexts shaping prisoners' social circumstances and choices. The obfuscation of social inequalities are reinforced

further by its moralisation of individualised blameworthiness, creating a logic whereby prisoners are 'othered' as cognitively different to law abiding citizens. In short, the new rehabilitation and 'what works' agenda cloaks the authoritarian nature of imprisonment within an apparently humane and benevolent face. This can lead to humanitarian justifications and the belief prison can do some good, despite centuries of failure and recidivism rates that blatantly contradict that prisons reduce 'crime'. The truth is prisons do not work when understood as a means of reducing offending.

ii) responsibilities

Prisoners have failed to act responsibly and make wise choices to the opportunities that they have been given. Prison becomes a place where those responsibilities can be re-learned. Prisons can rehabilitate if they can re-responsibilise through embedding a culture of contracts, compacts and incentives and earned privileges. It is within this context that the one of the most progressive policy decisions of New Labour should be contextualized: the *Human Rights Act 1998* (HRA), which came into force in October 2000. Adopting a minimalistic approach from the start, the prison service largely ignored the legislation and gave staff virtually no training. In a number of key statements the introduction of the HRA was contextualised as being involved in a balancing act with the responsibility of the prison service to protect the general public

*'The Government's objective is to promote a culture of rights and responsibilities throughout our society. The act will make people **more aware of the rights they already have** but also balance these **with responsibilities to others.**' (Prison Service, 2000: 1, emphasis added)*

The legislation should therefore be understood as working towards the enhancement of existing practices whereby prisoner responsibilities are not just prioritised above their rights, but where the prison service should be proactive as an inculcator of responsibilities that they owe to society (Scott, 2006).

iii) performance

There has been much talk under new labour of improved offender management and better performing prisons. Improved prison performance is part of a wider managerial ethos knitted to Thatcherite logic of public sector reform, the privileging of privatisation and moves towards a more minimal but coercive capitalist state. The argument goes that if prisons were only better managed, probably by a private sector provider, many of the poor performance currently characterising in the public sector parts of penal system would magically disappear.

Perhaps the most significant change here was the introduction of the National Offender Management Service (NOMS) in June 2004. This re-organisation introduced the concept of 'contestability' (Carter, 2003), intended to encourage the privatisation of rehabilitative services in both the community and the prison. In future if a prison should fail to work in reducing re-offending, the problems can be identified as the combination of a problematic prisoner with failings on the part of the delivery of rehabilitative programmes. By identifying and testing the performance of prisons in a competitive market, governments can avoid damaging critique by simply replacing the failed providers of correctional services with others deemed more efficient, effective, or economic in the management of the responsabilisation of offenders. When things go wrong, it is not the capitalist state which is to blame, but the provider of services (Clarke and Newman, 1997). The solution is to replace poor performers, providing yet another barrier to genuine penal accountability.

iv) decency

The decency agenda was initiated by Martin Narey (Director General, 1999 - 2003) and his successor Phil Wheatley.

'The decency agenda is intended to run like a golden thread through all aspects of the services work. Decency means treatment within the law, delivering promised standards, providing fit and proper facilities, giving prompt attention to prisoners concerns and protecting them from harm. It means providing prisoners with a

regime that gives variety and helps them to rehabilitate. It means fair and consistent treatment by staff.' (HM Prison Service, 2003: 29)

This definition is very broad, including a number of different factors which are neither new, and would appear to promote a concept that mean all things to all people. In addition, decency is largely rhetorical, as none of the above commitments can be enforced. Perhaps most damning of all, however, is that the word decency appears to be used as a means of responding to a myriad of other problems, such as in recent years acknowledging institutional racism, prison officer brutality and responding to horrendous suicide rates. Again, is this term merely a means of trying to make the prison sound better than what it really is? In short, the decency agenda appears to be much more useful as a means of providing a new cloak of penal legitimacy than mitigating the inherent harms of imprisonment that confront prisoners on a daily basis.

v) victims

In the last few years it has become clear that it is the victim who is the real customer of the correctional services. The government wishes to bring about a cultural change to improve customer services and reduce offending in the interests of victims. For Tony Blair (2004: 5-6),

'[s]entencing will ensure the public is protected from the most dangerous and hardened criminals but will offer the rest the chance of rehabilitation... This whole programme amounts to a modernising and rebalancing of the entire criminal justice system in favour of victims and the community.'

The prison is a place for reducing crime and punishments pursued for wider utilitarian interests. They are not to serve the needs of prisoners, the flawed consumer who has made inferior choices but to achieve goals which meet the requirements of victims, witnesses and its other legitimate consumer, the general public.

vi) expansionism

When New Labour took office in May 1997 they inherited an average daily prison population of 60,131. At the end of June

2007 the population breached the 81,000 mark for the first time, leading to a prison population of 81,007 in the week when Gordon Brown became prime minister. Between June 2006 and June 2007 the average daily population of prisoners increased by over 3,000 people.

But let us go a little further back to December 1992 when there were 40,600 prisoners in the prisons of England and Wales, the lowest recorded rate in recent times. In fifteen years, ten of them under a Labour government, the average daily prison population has *doubled*, and this of course is ignoring a number of detainees which are not included in the official figures. The solution to the problems created by the prison, it would seem, is more prison. Penal expansionism is highly significant means of shoring up claims to its utility, appearing more natural, indispensable and inevitable. Growth in the use of imprisonment is one way to sediment the idea that we cannot live without imprisonment.

But who is contained within? At any one time approximately 65% of people in prison are there for a property related offence and this percentage increases when you consider who is actually sentenced. These people are also largely from impoverished backgrounds, with 67% of prisoners unemployed and 72% in receipt of benefits immediately before entry to prison, and one in 14 prisoners homeless at the time of imprisonment. These people are often more vulnerable than dangerous. 27% in care as child, 80% have writing skills, 65% numeracy skills, and 50% reading skills at or below the level of an 11 year old child and 80% of prisoners have mental health problems (Social Exclusion Unit, 2002; Scott, 2007b). Despite making the claim that prisons are *protecting the public*, this does not really appear to be the case at all.

New directions and the limits of reform

From a 'neo-abolitionist' perspective (Swaaningen, 1997; Scott, 2006) the current appliance of the power to punish can be considered to be illegitimate. This implies that prison reform itself is profoundly limited. Imprisonment cannot be understood outside of social context, that is, the social divisions and structural inequities of society around racism, sexism and poverty. In addition

the moral legitimacy of imprisonment has also been questioned, for imprisonment must be understood within the wider debates on punishment (the intentional imposition of suffering). The very deployment of the punitive rationale and punishment itself, rather than the liberal reductionist concerns with prison conditions or standards, become the central focus of a moral critique.

So where do we go from here when we think about legitimate responses to dealing with wrongdoers? Well first of all we need a much greater political commitment to social justice and recognition that our current penal system actually increases social injustice. Current policies are increasing further human need and social problems rather than solving them. Social justice therefore must entail a commitment to redistribution of the social product rather than just the provision of opportunities and choices for the socially excluded. Second we need a much greater recognition of wrongdoers human rights and the fact that they should be recognised as fellow human beings, whatever they have done. Their suffering and hardship must be fully acknowledged alongside their shared humanity (Cohen, 2001; Scott, 2007c). It is a moral imperative that the human rights of the powerless and vulnerable should not be dependent upon responsibilities.

Third we need a commitment to legal accountability, due process, and the rule of law. This should entail government agencies meeting the legal entitlements of all citizens and providing enforceable mechanisms to hold the powerful to account. Fourth we need a commitment to genuine social democracy, when all voices, including the discredited and marginalised views of offenders and deviants, are heard and given an opportunity to shape societal norms and values. I believe that any truly legitimate response to dealing with social harms, wrongs, troubles and problematic behaviours must be rooted in these four principles. We must continue to highlight dehumanising penal realities and fully develop our critical imagination (Barton et al., 2007), providing alternatives that go beyond the use of that most 'detestable solution', the prison.

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Violence against women

7

Constructions of harm and crime in drug facilitated sexual assault

Dr Miranda Horvath and Professor Jennifer Brown

A predatory stranger slipping Rohypnol into an unsuspecting woman's drink¹ before taking her away as soon as she becomes unconscious to rape her is a dominant image drawn largely from media portrayal of drug assisted rape. This or the alternative pejorative belief that women are constantly out binge drinking and accusing men of rape when they have had sex with someone who they would not have if they were not drunk appears a prevalent public attitude.

The available research literature shows consistently that the drug most frequently used to facilitate sexual assault is alcohol. However there is a lack of acknowledgement that alcohol is a drug; and understanding about its effects and how harmful it is. Furthermore there is the serious problem of attrition in rape cases with the resulting low conviction rate for this crime.

Effects of drugs

A House of Commons Science and Technology Committee report in 2006 addressed the relationship between scientific advice and evidence and the classification of illegal drugs. This report highlighted the importance of considering drugs in terms of the social harm (amongst other things). Interestingly the report included and highlighted the negative impact of its abuse and the harm on society perhaps even more clearly than the adverse effects of illegal drug use. For example, alcohol is involved in more than half of all Accident and Emergency hospital visits (Academy of Medical Sciences, 2004).

Furthermore, alcohol causes major damage to family and social life, either because of the impact of the intoxication or because they distort the motivations of the users. The report also highlighted that alcohol and tobacco (the only two legal drugs considered) lie in the upper half of the ranking of harm index created by the report. As such the report suggests that alcohol should be considered as a drug in the same way that Ecstasy and Rohypnol are.

Excessive drinking poses a number of health and safety risks to the general public and young people in particular: in addition to sexual assault, the Portman Group (2005) found that women reported a number of additional consequences of excessive alcohol consumption, including injury in an accident, being robbed and being admitted to hospital. Other studies have identified that women are affected by alcohol more rapidly than men (e.g. report in *The Guardian*, 16 May 2005). Yet more studies show that rates of heavy drinking (five or more drinks on a single occasion, at least once a week) in women are highest among those women aged 18-29 (Midanik and Clark, 1994), which mirrors the finding that rape is most prevalent among women aged between 16-25 years old (Bureau of Justice Statistics, 1994). This does not imply that there is a causal relationship between these two statistics, but it is indicative of risk factors that future research might demonstrate to be the case.

Drugs such as Rohypnol and Gamma Hydroxybutyrate (GHB) very rarely cause people who have ingested them to lose consciousness,

although their effect may prevent victims recalling events by creating a memory 'void'. The brain then 'rationalises' the lack of memory as a period of unconsciousness, when in fact the victim actually retained consciousness and would have appeared to an observer (including an offender) to be inebriated but able to act under her own volition (Dowd, Strong, Janicak and Negrusz, 2002). Another powerful effect of these drugs is that they lower anxiety, alertness and inhibition whilst inducing euphoria, passivity and a sense of relaxation which could cause victims to engage in sexual activity that they would never normally agree to (Weir, 2001). Many of these drugs are quickly absorbed after oral administration, thus producing a rapid onset of effects. This is combined with very short half lives, which means they pass out of the body very quickly, making them difficult to detect (LeBeau et al., 1999).

Interestingly, it has been found that moderate to heavy consumption of alcohol and marijuana has similar effects to GHB and Rohypnol which Slaughter (2000) defined as 'intoxication, disinhibition and amnesia'. Weir (2001) states that any substance that when administered has the ability to reduce inhibitions towards sex and thus perhaps led to unwanted sexual activity should be considered a drug-facilitated rape drug.

Alcohol is known to have a variety of effects on individuals. It impairs cognitive and motor skills and people's ability to engage in higher order cognitive processes such as abstraction and problem-solving (Hindmarch, Kerr and Sherwood, 1991; Peterson, Rothfleisch, Zelazo and Pihl, 1990). It has also long been implicated as a contributing factor in a variety of aggressive and criminal acts including rape (e.g. Coid, 1981; Forrest, 1983; Richardson and Hammock, 1991). Limited research conducted in the USA has found that alcohol, especially in men, enhances sexual behaviour and aggressiveness (Abbey, McAuslan, Ross and Zawacki, 1999). Added to this, alcohol consumption by women has consistently been identified as a risk factor for sexual victimisation (e.g. Mohler-Kuo, Dowdall, Koss and Wechsler, 2004; Testa, Livingston, Vanzile-Tamsen and Frone, 2003). Lastly, it has been found that when intoxicated, people tend to focus on the most salient cues in a situation and ignore more peripheral information (Steele and Josephs, 1990;

Taylor and Leonard, 1983). As a result, it is possible that women may pay less attention to cues which would normally alert them to a dangerous or threatening situation, while men may focus on their immediate feelings of sexual arousal and entitlement rather than a woman's discomfort or the potential for later punishment (Abbey, Zawacki, Buck, Clinton and McAuslan, 2001; Nurius and Norris, 1996; Parks and Miller, 1997).

The inhibiting response caused by alcohol to unpleasant stimuli in intoxicated women may lead to a mild response to an aggressive act. The intoxication may reduce the likelihood of resistance and the ability to try and alter the situation (Strizke, Patrick and Lang, 1995; Testa and Parks, 1996). It is important to acknowledge that whilst a woman's ability to spot the warning signs or indeed resist an assault are impaired when she is intoxicated, this does not imply that if women were to remain sober they would necessarily avoid the risk of sexual assault; the responsibility for the act remains with the perpetrator (Testa and Parks, 1996).

Negotiating sex

It is argued here that drug-assisted rape is a particularly problematic form of rape. Women in the drug-assisted rape situation have limited behavioural options, not only through the disadvantages of being incapacitated, but also by the norms surrounding male-female interaction and the social rules or 'etiquette' of negotiating sex. In such situations, we argue, women have less negotiative 'space for action' than men. The idea of negotiative space expands upon notions of sexual scripts and highlights the gender specific restriction of such scripts when put into practice.

Jeffner (2000) introduced the concept of 'space for action' based on research with young people in Sweden. The starting point for this research was to consider participants' definitions of and circumstances leading to a rape. What emerged was that consensual ('good') sex is bound up with notions of romantic love based on reciprocity and trust. Rape was considered to be anything that happens after a woman has said 'no'. Reciprocity was taken to mean mutual consent rather than the obligation created by

say a man financing an evening out. So at the level of principle, at least, there is a boundary where 'good' sex ends and where rape begins and vice versa. Whilst at the level of abstract principle Jeffner found the definition of rape to be simple and clear, it then emerged that the concrete enactment of sex was open to dynamic reinterpretation. Jeffner states:

'There is a constant negotiation about boundaries, and constant reinterpretation of what conditions have to be satisfied for an event to be defined as rape' (p. 3, Jeffner, 2000).

Jeffner's research highlighted six conditions used as tools for negotiation in the process of this reinterpretation. These are:

1. how 'no' is said;
2. notions of the whore;
3. consumption of alcohol;
4. notions of the rapist as deviant;
5. consequences for the girl and
6. the significance of love.

Jeffner argues that the same factors that provide men with more 'space for action' simultaneously narrow and restrict the space available for women. Where these factors are present they operate differently for men and women. For example, and most relevant for this paper, the consumption of alcohol. A male who is drunk was perceived by Jeffner's participants to have a legitimate excuse for behaving badly and acting in ways he normally would not. They are forgiven for drunkenness and permitted drunken behaviour. Women have to protect themselves from drunk men whilst also ensuring that they themselves were not drunk. Women are not forgiven for drunkenness or putting themselves at risk. The dual standard continues to operate whereby a woman is held to be more responsible than men for both maintaining her reputation and the regulation of sexual activity. Jeffner concluded:

'Only a sober young woman, who does not have a bad reputation, who has not behaved sexually provocatively and who has said no in the right way can be raped, and only by a young man who is sober and 'deviant' and with whom she is not in love.' (p. 12, Jeffner, 2000)

We argue that the increased availability of alcohol and the development of a culture of binge drinking by young women (and concomitant pejorative attitudes) further reduces women's space within which to negotiate sex. When women find themselves in situations where sex is a possibility, women may be less able to protect themselves from rape as a consequence of the alcohol they have consumed and the degree of male expectation. Moreover because they are voluntarily intoxicated they are susceptible to being blamed for their own victimisation. So scripts about reciprocity, women's concern for men's feelings and peer pressures towards being sexually experienced all serve to limit women's autonomy and erodes their freedom to give genuine consent for sex.

It is also important to consider the context in which the incapacitation occurs because there are different expectations and etiquette attached to different contexts. Two contextual factors stand out as being particularly relevant to drug-assisted rape. Firstly the perception (and actuality) of safety or risk a female perceives depending on who she is with. It is likely that a woman will feel safest with someone she is intimate with or a friend and that she will feel least safe with a stranger. This suggests that a woman will have a different latitude for action in accordance with the relationship she is in with a person. Yet research (e.g. Horvath and Brown, 2005, 2006) confirms that a woman is most likely to be raped when incapacitated by someone she knows. So the perception of safety is misplaced. Secondly her sense of safety and risk, and resulting latitude for action, is attached to different places a woman may find herself in. It is postulated that women will most likely feel safest and at least risk in their own home and increasingly less safe and more at risk as the location becomes more public. However yet again our research shows this perception to be misplaced as the majority of rapes occur in either the victim's home, the offender's home or another person's private home (Horvath and Brown, 2005, 2006). We argue that the two elements

of place and relationship interact to create different latitudes or space for action for women.

To re-capitulate the argument so far: drug-assisted rape is a particularly problematic form of rape because it shares so many characteristics with normative behaviour. For example, consensual sex often takes place after or in social situations where one or both parties are consuming alcohol and/or drugs. Hickman and Muehlenhard (1999) examined how women and men communicate sexual consent. They found that women and men appear to attach different meanings to the same consensual signal. Specifically, men reported more frequently than women that they understood indirect non-verbal consensual signals, statements about intoxication and not responding to sexual advances, as indicating consent. Conversely, women used indirect verbal signals more frequently than men. Both sexes reported most often showing their consent to sex by making no overt response. This indicates that there are grounds for miscommunication, because by their own admission both sexes are saying that when they say 'no' clearly they mean 'no' and if they say 'yes' clearly they mean 'yes'. However despite the differences aforementioned research highlights between the sexes in understanding signals they do seem to agree that anything else, being 'no response' or a vague response, could be reasonably interpreted as consent. This indicates that whilst miscommunication and misunderstanding are likely to be very prevalent between men and women, in light of their differing interpretations of non-verbal consensual signals it is not a reasonable explanation for rape as both sexes do seem to be aware of definite consensual signals. Non-verbal responses often convey consent and there are occasions when sexual consent is not given in a clear manner (Byers, 1980; Hall, 1995; Hickman, 1996; Muehlenard, 1992, 1996; O'Sullivan and Byers, 1992).

Gender roles and sexual scripts

Much of the research on negotiating sex assumes a traditional sexual script in which the male is the initiator of sex and the female is the gatekeeper giving permission for sex to take place (Graverholz and Serpe, 1985; Lewin, 1985). In order to understand

this more fully it is important to understand the context of sexual encounters. Many drug-assisted rapes are initiated in social situations where males and females are interacting. There are a number of factors, behaviours and actions influencing negotiation in such circumstances, for example flirting. Flirting has been argued to be ambiguous because it allows one or both parties to encourage the other person to acknowledge sexual interest and which may or may not result in sexual intercourse (Sabini and Silver, 1982). What is crucial to note is that both genders have been found to view flirtation differently. Montgomery (1987) suggests that females see the function of flirting as an expression of friendship whereas men tend to focus more on the sexual undertones, real or perceived. Added to this ambiguity, the effects of drug and alcohol consumption create a dynamic in which misunderstandings can arise and there is the potential for this to be exploited by men.

Research about flirting can be linked with traditional sex role scripts in which women are expected to resist men's sexual advances, even when they actually want and plan to reciprocate. The result of this is that men have been socialised to believe that women sometimes misrepresent their actual level of sexual interest and may even hide it (Harnish, Abbey and Debono, 1990). Furthermore it has been suggested that men are actually socialised to search for evidence of women's sexual intent (Abbey, 1982), which could lead them to be somewhat over optimistic and misrepresent ambiguous information as evidence of sexual attraction (Graverholz and Serpe, 1985; Green and Sandos, 1983). If these arguments are accepted, it follows that women are restricted or constrained in the behaviours they can display without running the risk of having them misinterpreted as cue for sexual contact. Hence the latitude or 'space' available in which women can negotiate is restricted whilst the perceived space for males is increased as a result of socialisation expectations exacerbated by the effects of dis-inhibition through e.g. intoxication. Thus factors such as alcohol consumption add to the constraining of space for women to negotiate sexual encounters and increase men's latitude for having sex.

To summarise the argument:

- Social and sexual scripts put males in a dominant and advantageous position in relation to females.
- Social and sexual scripts reduce female's negotiating power and restrict the behaviours they can perform without running the risk of being misinterpreted by males.
- Men's use of alcohol to facilitate sex is seen as acceptable behaviour.
- Males typically are perceived as the initiators and females the gatekeepers of sexual interaction (however, there may have been a shift in this in recent years, but there is no research evidence available at present to support this).
- Consuming alcohol or drugs before being raped or interacting in a manner that could be construed as flirtatious with the offender casts doubt upon a victim's credibility when she reports a rape to the police.

Conclusion

To conclude our argument: Society at large has notions of what it thinks of as rape and when so defined the harm is acknowledged. The problem is that society has a very inclusive narrow definition of what it thinks rape is and as a result encounters experienced as rape by victims are often not thought of as 'real' rape and therefore not thought to be harmful. Whilst it is acknowledged that rape and drug-facilitated rape have a lot in common there are differences, in particular the harm to the victims. This is exacerbated by the excessively high levels of victim blaming society applies to victims who were intoxicated when assaulted.

This is also compounded by the criminal justice system not being sufficiently enlightened to ensure that the majority of rape cases get to court let alone result in conviction. Research from around the world for example Jan Jordan's work in New Zealand (2004) has shown consistently that one of the most common factors associated with allegations of rape not even making it past the initial reporting and investigation stages is the intoxication of the victim.

This paper has sought to outline some of the multitude of factors that combine to increase the harm of drug-facilitated rape. It is suggested that because many drug-facilitated rapes resemble consensual sex, in all but the lack of consent it is easy for society, the criminal justice system, the perpetrators and sometimes even the victims themselves to minimise the harmful and criminal nature of the offence.

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Notes

¹ Throughout this paper rape will be considered in terms of its most frequently occurring dyad, male perpetrator and female victim. Greenfield (1997) identifies that more than 91% of rape victims are female and nearly 99% of perpetrators are male. It is acknowledged that rape occurs between other dyads but for the sake of clarity and consistency only the male perpetrator-female victim dyad will be considered here.

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8

'It's fine as long as she's not doing it out of force': Paying for sex – harmful and/or criminal?'¹

Maddy Coy

The demand side of prostitution is increasingly emerging on national and international policy agendas, connected to debates on legalisation and the appropriate subjects of criminalisation. This research reveals that men's motivations for paying for sex and constructions of the experience are complex, and as such illustrate gendered intersections of harm and crime in both public policy and discourse. As the men's accounts contain ambivalence, including limited awareness of exploitation, they also highlight that some sex buyers feel compromised and self-disgust, and in this context, harm takes on new meanings.

Introduction

The distinction between harm and crime is at first glance dependent on the lens used to view an issue; in short whether or not we use a legalistic framework. However, John Stuart Mill

(1859/1974) defines the concept of harm as infringement of rules that are integral to the viability of society. In this context crime has an almost identical meaning; breaking laws that are designed to regulate society and delineate appropriate behaviours. If we consider that one of the functions of defining behaviours as criminal is to prevent harm to others, then the debate shifts to whether or not certain behaviours constitute harm and should therefore be criminalised. As Muncie (2000-2004) has noted, recent criminology has considered questions of social harm and as such 'in a harm-based discourse the concept of "crime" remains important only in so far as it alerts us to relations of power embedded in social orders which generate a whole series of social problems for their populations but of which only a selected few are considered worthy of criminal sanction'.

The sex industry is a revealing example of the complex relationships between concepts of harm and concepts of crime as it has long been at the centre of debates of both. Stuart Mills' harm principle suggests that preventing harmful conduct to others is the rationale for limiting liberty; in a similar way the purchasing (and selling) of sexual services is defended by freedom of choice and individual autonomy. Feminist perspectives that have added gender analysis to discussions of both harm and crime and have argued that the liberal promotion and defence of individual rights and freedoms are frequently used to justify practices that constitute or support harm to women. Whether or not the sex industry constitutes harm to women is at the centre of debates surrounding prostitution (O'Neill, 2001; O'Connell Davidson, 2002), but the perspectives of men who buy sex are under researched and poorly understood. This paper explores the notions of both harm and crime in the accounts of men who pay for sex. In doing so it highlights how the socio-legal context and constructions of masculinity influence sex buyers' understandings of what constitutes harmful behaviour.

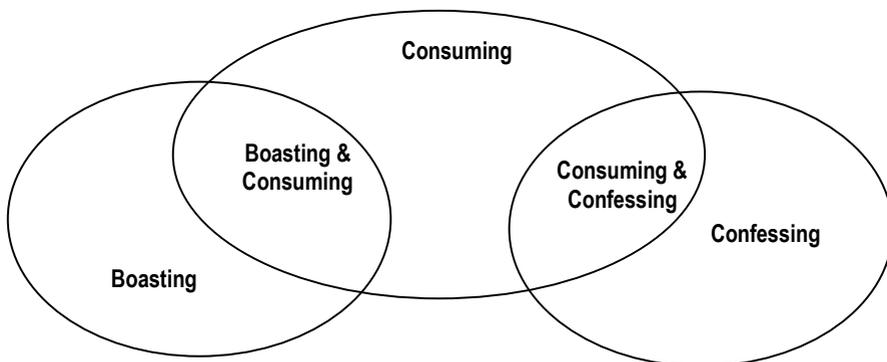
The research

This paper is based on telephone interviews with 137 men who responded to advertisements in newspapers in London. The mean

age of the men was 32 years old, with 88 per cent in employment, and a total of just over half in relationships. Two thirds of the men reported buying sex in off street premises.²

The men's narratives revealed complex attitudinal patterns that have been analysed along three dimensions: Boasting, Consuming and Confessing. The fact that they were not mutually exclusive in men's accounts meant a typology of 'boasters', 'consumers' and 'confessors' would not only have been inaccurate, but missed the overlaps that were apparent for a third of the sample. We analyse them, therefore, as framings of behaviours rather than categories of people.

- Boasting - A discourse/construction characterised by an equation of masculinity with sexual prowess and women's sexual availability.
- Consuming - Paying for sex is framed as a leisure activity that is based on fulfilling a sexual 'need' and/or where women's bodies and sexual services are regarded as commodities that are purchased in a similar fashion to other goods.
- Confessing - A discourse/construction characterised by guilt, ambivalence and negative feelings, including for some a recognition of harm and exploitation within the sex industry.



This paper focuses only the Consuming and Confessing constructs since for the men in the Boasting construct, there was no acknowledgment of harm.

The key elements of the consuming narrative centre on conceptualizing commercial sex as 'just a job'; a profession and occupation. Two-thirds (n=98) used aspects of this discourse of consumerism, focussing on the quality of service, ease and convenience, locating commercial sex in the market economy. They often invoked a rhetoric of mutual exchange and frequently mentioned the relative cost of buying sex. Austrin and West (2005) argue that the social and legal conditions that regulate, and therefore construct, prostitution have similarities with other types of employment in terms of market forces and men drew on these in understanding selling sex as employment. Where the sex industry has grown to include lap-dancing clubs marketed as entertainment, pole dancing as exercise, there is a powerful socio-cultural context for the commercial sex encounter to be conceptualised as employment for women and as a form of normalised leisure activity for men.

In the analysis, we use the term 'consuming' rather than consumption as it describes a collective attribute of late modern society rather than an individual behaviour (Bauman, 2007). In contemporary social consumerism, human relationships and connections, even desires and wants and needs, are both consumable and disposable. In the commercial sex industry, some of the most intimate levels of human communication have become a normalized form of what Bauman has termed a 'market for consumer goods' (2007: 82). This raises interesting questions about how men who pay for sex conceptualise the commercial sex encounter. For these men, the increasing commodification of sex and women provides a context in which not only is commercial sex normalised, but is associated with entitlements: with enough money, you can buy whoever (whatever) you want (Coy, Horvath and Kelly, 2007).

The motivations offered by men for paying for sex are multiple and varied (O'Neill, 2001, Mansson, 2004 and Kelly, 2006), but at the core, they draw on notions of biological imperative and/or the rights of male consumers. These are usually based on a male 'sexual drive/need' discourse (Hollway, 1984): articulated as a physical 'need' for release/relaxation; and/or that paying means

they can choose which woman and what kinds of sex without responsibility. Hilary Kinnell (2006) suggests that since sex buyers rarely give the need to be in control as a reason why they pay for sex, analyses of prostitution as a practice of gender inequality are undermined. There are at least three logical flaws in this statement: firstly, survey questions rarely feature control as one of the options; secondly the discourse of consumerism enables men to legitimate paying for sex as a leisure activity (Marttila, 2003), and finally, the underlying basis for actions are not necessarily openly recognised or admitted. Clearly if paying for sex is framed by the buyers as 'not resorting to commercial sex but as a conscious, consumer choice' (Marttila, 2003-2006), then harm is minimised (Coy, Horvath and Kelly, 2007).

In terms of identifying harm, the gendered nature of the 'prostitution contract' is apparent in the economic power of men to purchase women for the purposes of fulfilling fantasies and desires, and the power over women's bodies, however temporal, that is inherent in the transaction itself (O'Connell Davidson, 1998). This physical power of command operates in different ways – purchasing specific sexual acts means that the buyer defines the acts that women's bodies perform – oral sex, anal sex, etc and defining the use of the body enables punters to exercise manipulation of the body – moving limbs into position, the degree of roughness of penetration. At a symbolic level, the command of ownership has been suggested by Sheila Jeffreys (1997), Kathleen Barry (1995) and Melissa Farley (2004) among others, to represent to the women that they are commodities, objects to be bought and exchanged. It is whether sex buyers conceptualise this as evidence of inequality in the transaction or harmful to women that we sought to explore in the analysis of their narratives.

Do sex buyers perceive harm?

Recognition of harm within the men's accounts was apparent within the narrative of confessing. As mentioned earlier, in the confessing construct, accounts contained descriptions of guilt and shame and some men explored negative feelings as a consequence. A minority of the sample drew on notions

that commercial sex was 'wrong' and demonstrated awareness of coercion and trafficking. Almost half of those classified as confessing (22 of 53) had only paid for sex on one/two/three occasions and stated that they were unlikely to buy sex again. All reported feeling nervous when paying for sex.

At the most basic level for some of the men, the only harm in commercial sex is where women are forced to sell sex. Where in the consuming discourse, men considered that commercial sex was based on mutual reciprocity (O'Connell Davidson, 1998) – men's sexual needs and women's financial needs being met - there was no room for notions of harm. For example, where paying for sex is embedded in contemporary sexualised culture, then both harm and/or crime are confined to breaking of existing laws and exploitation through explicit force.

'They [women] come into two categories, those that feel positive about the environment and those who almost feel like victims.'
(Q133)

'Provided it's done of their own free will and they're not slaved into the industry, I've had no problem. It's their own decision, their own choice, of their own free will, then I've got no problem with that.'
(Q22)

This distinction between women who are 'forced' and those who 'choose' to sell sex reflects intellectual and policy debates about prostitution, which have polarised around commercial sex as a form of labour to afforded employment rights, and concerns about the exploitative foundation of the commercial sex industry and the commodification of women's bodies. These debates around choice and agency are almost always focussed on women who sell rather than the men who buy. Men's capacity to choose and act has rarely been the subject of critical scrutiny. Responses of men in our sample showed that a minority had value positions whereby they took time to notice if women were 'free' to choose. Others simply presumed that so long as there was no incontrovertible, visible evidence of force, women were on an equal footing with them (Coy, Horvath and Kelly, 2007:24)

Settings and contexts

In debates on the socio-legal context of regulating prostitution, European policy models are often cited with contrasts between the Netherlands and Germany where the view that prostitution was a 'victimless crime' led to forms of legalisation, and Sweden where the view that prostituting women is intrinsically harmful both to individuals and gender equality has led to the decriminalisation of selling sex and the criminalisation of buying sex (Bindel and Kelly, 2003).

Men were asked if they had paid for sex overseas, and if they had, if it differed to paying for sex in the UK. Of the 31% (n=43) that had paid for sex overseas, the three most popular destinations – the Netherlands, Spain and Germany – were all countries where prostitution has large, visible and legalised sex industries. Germany has a legislative and policy regime that regards selling sex as employment and was described by one respondent as 'a lot more open over there' (Q93). In the Netherlands, legalisation has resulted in high visibility of women selling sex in urban spaces, which according to some 'makes it possible to see the sex industry as just another social phenomenon' (van Doorninck, 2002:193). The accounts of men who had paid for sex overseas demonstrate that where the sex industry was visible in urban landscapes, it also gained prominence in their psycho-social landscapes and became integrated into available entertainment choices. The socio-legal context influences men's attitudes and behaviours – clearly men seek out paid sex where it is easier and most accessible to do so (Coy, Horvath and Kelly, 2007). Some of the sex buyers' descriptions of Thailand and Australia illustrate how legalisation influenced behaviour and notions of acceptability:

'It's different, I mean they work out of bars there, do you know what I mean? It's not like you go to a flat, do you know what I mean? Cause it's all legal and, you know what I mean, you don't feel so seedy doing it.' (Q82)

'It's not as undercover in Australia, because it's all legal... there are just sort of parlours everyone goes to.' (Q137)

Men were asked what, if anything, would deter them from buying sex. Only a minority mentioned criminal sanctions, with the most popular deterrents being fear of disease and having a regular sexual partner. Twice as many men (14%) reported that their own ambivalence and/or negative feelings was most likely to prevent them from paying for sex than women were being forced and exploited (7%). Not only are current law enforcement measures ineffective in tackling sense of entitlement that some men have with respect to sexual access to women, but even where high numbers of men suggested that their own feelings would stop them from buying sex, the feelings of women who sell sex are less relevant to them. This indicates that a challenge for policymakers addressing the demand for commercial sex is, as Garside (2006: 18) suggests, '[to] instead look for answers in a broader constellation of social, economic and political interventions'.

Concluding thoughts

In a more sophisticated analysis of harm that integrates these emotional and psychological associations, an unexpected finding was the frequency of narratives of guilt and shame in the men's accounts. Although a sense of ambivalence was the common theme of the negativity expressed, feelings here ranged through disappointment to self-hatred. There is an opportunity for the field of critical men's studies and criminology to engage with men through research and practice about the meanings of masculinity in relation to sexualised culture, particularly what we might think of as 'callous masculinities' where harm to others is not a preventative mechanism for engaging in certain types of behaviour.

Muncie (2000:6) suggests that 'Harm can signify a host of material and emotive negativities - from notions of pain to fear, insecurity, violation, grief, powerlessness, dispute and transgression - as well as the prevailing discourse of crime'. The accounts of some men who pay for sex indicate that this definition of harm applies to their experiences. Whether or not buying sex should be criminalised is a much larger debate than the scope of this paper; but it is clear that although not illegal in the UK, it constitutes harm for some of those who buy. It is also clear that where surveys show that the proportion of men paying for sex is rising, the sexualisation

of contemporary culture and the proliferation of the sex industry is a supportive, even promotional context that can – and should be – considered a significant barrier to gender equality, and therefore, socially harmful. We need to think of ways to address demand using both criminal justice and other approaches such as recognising men’s uncertainties and negative emotional experiences, and crucially, prioritise social and gender-based harm above narrowly defined criminal activity.

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Notes

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¹ Coy, Horvath and Kelly, (2007) It's just like going to the supermarket: men who pay for sex in East London. www.cwasu.org

² Glaser and Strauss, (1967) The quantitative data from the interviews was analysed using SPSS and the discursive material coded and analysed using grounded theory.

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9

Domestic violence policies under New Labour: wasted years?

Dr Aisha Gill and Lorraine Radford

Taking domestic violence seriously?

Some criminologists have been skeptical about academic involvement in the 'what works' agenda of recent government policy on crime reduction (Garland, 2001; Hillyard et al., 2004). The same level of concern has not been found within feminist criminology and activism where, especially in relation to violence against women, academics have mostly supported evidence-based practice and continued to research and engage with community action, sometimes in precarious 'partnerships' with Crime and Disorder Reduction Partnerships (CDRPs). Changes in crime reduction policy on domestic violence have occurred in the context of a liberalist onslaught against welfare services and a criminalisation of social policy (Young, 1999). Women fleeing domestic violence are consequently in a more vulnerable position regarding access to longer term financial support and accommodation (Morrow, Hankivsky and Varcoe, 2004). Few believe, or have ever argued, that the criminal justice system alone

can deal adequately with domestic violence. Policy trends in one area have undermined reforms elsewhere, which has yielded a two steps forward and one step backward form of 'progress' (Radford, 2000). While the police and other agencies urge women to leave abusers, the family courts lock them into relationships post separation by making unsafe contact orders for children (Saunders and Barron, 2003). The impact of these backward steps has been uneven and, as we argue below, some women have been affected more than others. Furthermore, despite all this activity at the strategic and policy-making level, practice at the grass roots level of policy implementation has been fairly resistant to change (Hall and Whyte, 2003).

Thirty years of feminist activism and research on the criminal justice system has led some people to claim that little has changed, and in fact, fewer rape¹ or domestic violence cases than before ever proceed to prosecution and trial² (Kelly, 2006). A recent review of attrition in domestic violence cases commissioned for Her Majesty's Inspectorate of Constabulary and the Inspectorate of Probation found that, from 463 domestic violence calls to the police in six areas, there was a 50% drop out at each stage from call to response to prosecution. In only 65% of cases did the police follow the call log procedures. Moreover, the 463 calls resulted in only 25 of the suspects being charged and 13 being convicted. The report *Violence at Home* found great variations among police forces in the number of arrests made as a result of domestic incidents (ranging from 13% to 63%), the crime reports lodged (ranging from 10% to 66%) and charges that were made (ranging from 2% to 8%). The attrition rate for domestic violence was higher than for other violent crimes (HMIC, 2004).

The regional and local variation in the quality of responses to individual women has been dubbed the 'domestic violence lottery' (Regan, 2001). The response varies within and between agencies and across geographical areas. It is further influenced by issues of difference and social exclusion, especially race, culture, sexuality, age, and income level. A complex range of historical and local factors will influence whether or not a woman living with domestic violence gets a helpful response when she approaches an agency

for aid. Research suggests that important influences are feminist activism and the commitment to the issue shown by individuals in local agencies and government (Hague, Malos and Deer, 1996). Specific local events may also sway public concern. Whatever the reason, practice ranges from excellent to appalling, with much of it located around the 'still not so good' standard.

The partnership approach to domestic violence is a formal recognition of what many refuge services have always done, which is to bring together a range of different agencies to co-ordinate and improve services to give better protection and prevention. When domestic violence forums were first set up in the early 1990s, the main focus of the government was on 'coordination'. However, in recent years there has been an increased emphasis on a top-down approach to make partnerships effective. The Home Office guidance in *Domestic Violence Don't Stand For It*, 1995, spelt out who might be involved in multi-agency domestic violence forums, but its suggestions were permissive rather than prescriptive. Few resources have been allocated to this work, so partnerships have had to operate within the context of 'doing more for less' and even doing much for free. Partnerships have been hindered by a lack of direction or sense of purpose in response to a problem where no agency has been keen to take responsibility (Crawford, 1998). According to the Audit Commission, partnerships could perform a range of tasks. A partnership can (a) *collaborate* to bring added value and make the most efficient use of scarce resources; (b) exist to bring about a transformation to *change the beliefs* and the culture of partner agencies; or (c) focus on *enrichment* to attract financial resources (Audit Commission, 1998). Some partnerships might strive for a combination of these three and this would clearly be appropriate for work against domestic violence.

The Crime and Disorder Act 1998 formalised partnership working by establishing roles for local authorities in the Crime and Disorder Reduction Partnerships. This has helped to put domestic violence on the agenda so that participants who have traditionally been reluctant and disinterested have to take it into account. However, the context of 'doing more for less' also encouraged competition between partner agencies over limited

pots of local funds to finance improvements (Hall and Whyte, 2003). The overall approach has been top-down, carrot and stick, because control of activity at the local level is maintained by central government departments, such as the Home Office. The 'carrot' held out to local partnerships is knowledge transfer - urging evidence-based practice through the dissemination of 'good practice guidelines' and toolkits. Advice for partnerships on domestic violence endorsed by the Home Office includes the Crime Reduction Programme review of 'what works' in preventing domestic violence (Taylor-Browne, 2001), guidance on data collection and information sharing, and a range of 'what works' evaluation studies published on the Home Office website. Advice, evidence sharing, and toolkits have the potential to provide direction to groups that are largely made up of individuals who lack prior knowledge and expertise. The central government stick is increased monitoring, measuring efforts at the local level by setting objectives and performance indicators. Audit and performance indicators in this context of reluctant participation at least promise some output from all this activity, but also risk a backlash resistance against the 'Big Brother' state. A great danger for working against violence against women will be that even before anything much happens in the work of local partnerships, there will be a backlash on the basis that domestic violence has dominated crime reduction policy.

Concurrently there has been an increased emphasis on assigning responsibility, responsabilisation (Garland, 2001); where individuals (as active citizens) and for communities (working in partnerships) have now taken on greater responsibility for crime control. Risk assessment and risk management has become an integral part of current crime control and evidence-based practice. A risk assessment involves a calculation of the probability that a harmful behaviour or event will occur, and an assessment of its likely impact and who it will affect (Kemshall, 1996). Responsibilisation is seen by some criminologists as being integral to the new attitude towards crime and is linked with an overall 'punitive turn'; away from offender reform and welfarism towards imprisonment and exclusion of the dangerous (Garland, 2001; Young, 1999). This is a worrying vision that fits ill with the traditional feminist

commitments to social justice and equality. A number of academic criminologists are generally pessimistic about current trends in crime reduction policies.

Many pressures exist in the local politics of crime reduction partnerships that have the potential to divert participants from their main goals or intentions. Is the emphasis on evidence-based practice a risky business for criminologists (as Hillyard et al., 2004 imply), a new type of diversion, keeping participants busily engaged in working to monitor a lot but achieve very little? Reflecting on our own research, we consider whether or not feminist criminologists who engage with crime reduction partnerships in developing evidence-based practice risk being diverted from their political goal of eliminating violence against women. Ellen Malos has observed that feminists who work in partnerships with state agencies are in the ambiguous position of 'supping with the devil' (Malos, 2000). Similarly, McGhee (2003), writing about gay and lesbian rights activists' cooperation with the police to reduce homophobic hate crimes, has raised concerns about how these collaborations might influence the vision and fundamental principles of social movements. We explore the perils and prospects of the 'what works' approach to domestic violence in relation to our own experiences and observations. Our discussion draws on knowledge gained from research in two areas of the South East of England completed before (Study A) and after (Study B) the government's crime reduction initiatives. Study A was completed in 1996 by one of the authors (Dominy and Radford, 1996) and Study B was completed by us both in 2004 (Radford, Gill, Burrows and Bone, 2004). Both studies employed a mixture of qualitative and quantitative methods to research survivors' experiences of, and agency responses, to domestic violence.³ In this paper, we reflect on our research to consider two key diversionary pressures operating within contemporary crime reduction work: (a) pressures resulting from the ambiguous position that 'domestic violence experts' now occupy in the politics of partnership working; and (b) the narrowing of potential activity regarding what works to Performance Indicators.

Partners in the 'community'?

Partnerships give an opportunity for women's voices on crime prevention to be heard and for unhelpful thinking and practice about domestic violence to be challenged. In theory, effective partnerships require:

- An acceptance of the need for partnership and co-operation amongst participants.
- Clarity and realism of purpose.
- A shared commitment to multi-agency working, which is demonstrated by regular attendance, taking a share in the work, and having an agency view on 'ownership' with respect to the problem of domestic violence.
- Trust between partners.
- Identifying barriers that prevent cooperation and working to reduce them. Data sharing and resource issues are clear barriers that have been identified in our research on partnership work against domestic violence.
- Establishing clear and robust partnership arrangements.
- Setting up methods for monitoring, review, and organisational learning (Hague, Malos and Deer, 2006).

Partnerships assume equality amongst participants, with an equal commitment to work cooperatively, good leadership, trust between agencies, and a willingness to share information and to take criticism constructively. At the grass roots level, the reality is very different. The mixture of willing and engaged, forced or reluctant, and marginalised and silent participants, who are often involved in partnerships to varying degrees, frustrates worthwhile outcomes and any notions of 'shared' decision making. Academic 'experts' who enter this environment occupy a precarious position. In a climate of conflict avoidance that often prevails in partnerships (Crawford, 1998), the 'safe' voice of the expert has more sway than the sometimes troublesome voices of service users. The view of an 'expert' criminologist in partnership work is valid almost by default. This situation is due to the lack of commitment, interest, or capacity that statutory agencies have for putting in the required work. One

domestic violence forum chair whom we interviewed in Study B explained how difficult it could be to make progress in work against domestic violence:

'The chief executives can say, "yes we fully support this," but then you get into the real world of people that are working long and hard, and saying, "well, fine you know, I am committed to tackling domestic violence. The problem is I haven't got the resources or the capacity to do it." So things like that can hold up all the best of your intentions and all the rest of it. But I mean, these are what, this is what happens all the time in partnership.'

Agencies shy away from taking on any responsibility or extra work, as one social worker interviewed in Study B explained:

'I think the biggest challenge is that there is no one with overall responsibility for anything. Public agencies are very much entrenched into you know, guarding our very minor, miniscule budget and I think for the voluntary sector they are increasingly overstretched covering the gaps that we no longer plug. There is no one with overall responsibility; there is no one willing to take responsibility. A lot of the work that needs doing involves some financial underpinning and no one will put that money in and the community safety funds are not enough to do what is required.'

Rather than sharing a collective responsibility with agencies to work together against domestic violence, the voluntary sector (especially women's refuge services) ends up having to do more and more of the actual work; 'covering the gap' as this interviewee noted.

It appears that opportunities for survivors to participate in front-line services have declined. Refuge services used to be key agencies committed to survivors participating in management, but the professionalisation of refuge services that has accompanied supporting people led to service users' views being excluded from decisions made in refuges in the study areas. As a result, we have been uneasy about the position in which we have found ourselves and have had a constant struggle to maintain the involvement of survivors. Feminist criminologists have been fairly successful in their

efforts to develop a more context-specific analysis to violence that takes into account cultural and local influences, although there is a lot more that needs to be done to develop anything like a fair dialogue. Who represents who and who speaks for women's different experiences has been a challenging political question for feminism. Researchers cannot speak for the diverse experiences of women living with abuse, but we are able to play a part in generating and facilitating dialogue about the differences and similarities in experiences that exist. For an exchange of ideas to occur, there needs to be scope for different identities and multiple voices to be heard.

Often, those who have less power in partnerships must build their power base before they can gain legitimate status as a stakeholder. This places responsibility on those stakeholders who are the most disenfranchised to acquire the power, recognition, and resources needed to participate. We found a marginalisation of minority women's groups and a reluctance among agencies and some forum leaders to facilitate their participation on the grounds of inexperience, overload, or limited resources. Asian activists who work with vulnerable groups who experience domestic violence welcomed, in many ways, working in partnerships to provide a more co-ordinated 'joined up' response. However, many have found that more fragmentation than ever before exists for minority women. Activists may have been included in partnerships, but women in need of support get less coordinated services. As Burman et al. (2004) note, eligibility for support is now so circumscribed that many minority women can no longer gain access at all to the support that they need. Immigration and asylum policies have excluded more and more minority women from refuge services and emergency support. Often, a woman's right to be in the UK depends on her staying with her abusive partner. If women decide to leave their violent partners, they are not only subject to immigration control, but are also denied access to public funds, housing and social security benefits, and refuge accommodation (Gill, 2004).

The sidelining of survivors and minority women is exacerbated by the previously mentioned tendencies of partnerships to aim for consensus and keep the community happy by avoiding any

contentious issues. Women in a community are likely to have different views and experiences than men about domestic violence, but keeping a community happy has, in practice, meant appeasing men or male community leaders and extending opportunities to participate only to those who are more likely to appease than challenge. This is most apparent in the growing trend for community safety partnerships to de-gender the thinking about domestic violence and to ignore those findings of academic research that do not fit into a curious 'equal opportunities' approach where public opinion (or prejudice) holds more influence over the strategy for controlling crime. The men's rights lobby has promoted the image of men victimized by policies taken too far by dressing up as 'super heroes' and staging stunts to amuse the media. The claim that men are also battered has been actively promoted by many CDRPs and by the Home Office. As a result, strategies and practice guidelines are written, not only as gender-neutral, but also on the assumption that domestic violence is the same experience for men and for women and thus requires the same sort of gender-blind services. The experience of persistent violence from a partner that results in injuries overwhelmingly affects women (Walby and Allen, 2004). The gender-neutral approach to domestic violence in CDRPs shows a widespread failure to confront the underlying inequalities in citizenship and human rights that contribute to the persistence of violence against women globally. Abuse is abuse and is, of course, harmful to men, women, and children alike, and we in no way want to trivialise the impact it has upon any person who is victimized. Some aspects of abuse and the consequences are very similar. In addition, victims may have some needs that are very similar, regardless of gender. However, the political, economic, and cultural contexts in which domestic violence occurs contributes to other experiences and needs that are very different. A gender-blind approach is unhelpful for male victims of abuse, especially male victims of sexual violence, where it is unhelpful to treat their needs as being the same as women's.

Objective setting, performance indicators and 'What works'

Auditing the local need for crime control at community level is an important aspect of New Labour's approach to community safety.

Hillyard et al. (2004) argued that an obsession with 'what works' has brought with it a de-radicalisation of academic criminology, a diversion of criminologists' energies, and an inability to see the broader picture of crime control and its steadily 'punitive turn'. Government has idealised the new partnership between social science and the state working together to inform practice. However, critics argue that criminologists support the government agenda uncritically, only tinker with what already exists, and thereby create a self-perpetuating and narrowly focused research industry (Hillyard et al., 2004). They unthinkingly contribute to the proliferation of new technologies of control (Garland, 2001). This raises the bleak prospect that, by engaging with what works against domestic violence, feminists could become diverted from the bigger picture of eliminating violence against women and instead, contribute inadvertently to the greater regulation of everyday life.

Engaging with what works implies acceptance that a policy for crime control can be measured and is worth measuring, and that its assessment will contribute in some small way to the bigger picture of social justice and crime reduction. This assumes that partnerships can agree on what the problem is and what needs to be done. Keeping sight of the bigger picture is especially difficult for feminists working against violence against women in the UK. Government policy on violence against women has perpetuated a form of conceptual 'divide and rule'. The UK government has not situated policies on violence against women firmly within a framework of gender equality. Policies on domestic violence are developed separately from those on violence in the workplace, rape, trafficking, or the commercial sexual exploitation of women and children. Policies on gender equality have focused mostly mothers' needs to balance care work with paid work to achieve a better work-life balance. A narrow emphasis on what works in preventing domestic violence could aggravate this partitioning of thinking about gender equality and gender-based violence.

Another potentially diversionary aspect linked with the setting of objectives and performance measurement relates to resources. The setting of objectives, even narrowly defined, does not necessarily

bring about a better service if sufficient resources are not made available. The narrative of governance broadly encompasses the view that shifting responsibility for service provision from state onto community partnerships has been steered by the principle of getting 'more for less' (Rhodes, 1997). Funds did not necessarily follow the increased responsibility given to local partnerships; indeed, the emphasis in neo-liberal politics has been to hunt for cost effectiveness and savings. A major flaw in policy on domestic violence has been a lack of willingness to provide the resources needed for adequate services. Resource problems were mentioned as being a block to progress in the Home Office survey of CDRP work on domestic violence. Nationally, there are huge gaps in the provision of refuge services, outreach, and children's services, and progress in developing these has been slow. For example, Area A had only one fifth of the level of refuge services recommended by the Select Committee on violence in marriage in 1977, while Area B had just 12%. Services to support the needs of children living with abuse are even poorer.

There are great difficulties in demonstrating the impact that local and central government policies have upon women living with domestic violence where responsibilities are shared between agencies. Most performance indicators are agency-specific and much more work is needed on system-wide indicators. By setting targets for crime reduction in the more readily measurable police response, a more holistic view of what works is overlooked. Traditionally, government policy has promoted getting women out of relationships as a solution to abuse. However, feminist research has shown that leaving is a complex process that can take time, information about options, and resources. How can we evaluate the impact of providing advice or leaflets on domestic violence if, in the majority of cases, the advice may not lead to immediate action? Inevitably, the temptation has been to find a pragmatic solution by measuring what can be measured easily, such as police data on repeat victimization, assessed on the basis of the number of victims who contact the police more than once in any given year, or the arrest rates. These performance indicators do have value, because once baseline data has been developed, trends can at least be monitored where no monitoring existed before. We

found some evidence that funds would not flow unless there was a performance indicator set by a central government agency. As a social worker involved in local strategic work against domestic violence in Area B explained:

'Within adult protection we are lobbying, there aren't any performance indicators around adult protection and when No Secrets was published they were supposed to be. And we kept saying, "where are they?" and they kept getting deferred and deferred and deferred and eventually the DOH said we are not going to do any, but of course one of the things within local government is the tighter budgets get, the more expenditure is geared around the performance indicators, so if you haven't got a performance indicator for domestic violence or for vulnerable adults' protection, then getting expenditure for it is nigh on impossible. So performance indicators do have their strengths and their bureaucratic weaknesses.'

We found that in Area B, the police data showed an increase in the recording of domestic violence incidents, an increase and then leveling off of repeat victimisation calls, and an increase in rates of arrest for domestic violence incidents. The 'benefits' of arrest are not evenly accepted, so demonstrating an increase in arrest numbers may not reflect better protection for women living with domestic violence.

The emphasis upon measurable performance can also concentrate attention on performance in the police or statutory sector, whereas most women turn first to informal sources of support where the effectiveness of crime reduction is especially difficult to measure. Is arrest more important than making a referral to Women's Aid or than having a supportive neighbour to stand by and help? The new broader performance indicators under consideration include assessments of users' satisfaction with services. This could help to broaden the scope of assessments to include the perspectives of survivors on worthwhile interventions, but they are difficult and expensive to monitor.

On balance, we argue that setting objectives and measuring performance have important benefits for work against domestic violence at the community level. Setting clear goals for partnership work against domestic violence can progress the agenda and force some minimum action or compliance from disinterested individuals and organizational partners. Targets produce results and bring focus to partnership work. Narrow targets are not accepted blindly by partner agencies and may be subject to challenge, for better or for worse. The outcomes of partnership work are variable, complex, and sometimes innovative. Although, in our research, we found many examples of a narrowing in focus linked with performance measurement, there were also examples of partners broadening their vision. For instance, in Area B, broader visions of crime control had developed as a result of the police, social services, and health care services working in partnership. Broader, rather than narrower, visions can be encouraged by the sharing of information and knowledge, linked with evidence-based practice of 'what works.' Building a knowledge base to challenge the prejudice and misinformation about violence against women is welcome.

On balance

Engagement with 'what works' is not, on the basis of our experience of working against domestic violence at the local level, a pointless diversion of activity. However, Hillyard et al. (2004) are right to draw attention to the risks and diversionary aspects of working within the 'what works' framework. The 'what works' framework may demand compromises that affect the independence, accountability, and integrity of feminist academics. The expansion of the domestic violence knowledge industry has been one aspect of 'what works' and evidence-based practice. The simultaneous professionalisation in voluntary sector services providers, especially refuge groups, in the two areas we observed brought a greater marginalization of survivors' voices and loss of services for women and children who are the most socially excluded. One of the lessons we wish to draw from the results of our studies is that it is for researchers to challenge these trends and to sustain focus on the needs of all women who experience domestic violence. It has also become increasingly clear that we

can no longer take for granted some of our long-held assumptions about feminist activism. We believe there is a need for a more pro-active approach to dialogue, participation, and consultation, which should be informed by thinking on human rights. We will develop these ideas in future work. Clearly, this is likely to be an area of considerable debate, given the establishment of a victims unit in the Home Office and the new Domestic Violence, Crime and Victims Act provisions for victims of crime.

Disappointingly, our research over several years has not brought us much further in understanding the considerable variations in responses to domestic violence from area to area. Why do some CDRP areas seemingly achieve so much and innovate in their work against domestic violence, while others seem eternally stuck on discussing what to do? Clearly, as Diamond et al. (2004) have already stated, there is a pressing need for more research. Our own experiences have taught us more about the barriers to making progress than about the opportunities for building up the capacity for effective responses at the grass roots. We have also found, unsurprisingly, that financial, material, and human resources are important if progress is ever to be made.

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Notes

¹There were 84 rape crisis centres in England and Wales in 1985. Today, there are 32, despite there being no evidence that assaults have dramatically declined. Meanwhile, only 18% of people who use crisis centre services report a rape to the police, rendering the extra resources pumped into the criminal justice arm of victim support useless for 82% of victims.

²In England and Wales, the rate of conviction for reported rape, decreased from one in three cases reported (33%) in 1977 to 1 in 13 in 1998. By 2004, only 1 in 8 (12%) reported cases currently reached trial and in 2004, 5.3% ended in conviction.

3 Study A was commissioned by the county council's social services committee to assess the needs for services for women experiencing domestic violence, and to evaluate current provisions, policy, and practice across a range of agencies, especially developments in inter-agency working. Study B was commissioned by the CDRP Domestic Violence Strategy Group to assess the needs for services for women experiencing domestic violence and to evaluate current provisions. However, Study B was firmly situated within the CDRP's strategy development. The findings were to be used to inform the development of a strategy to deal with domestic violence.

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Considering a social harm perspective

10

Social harm and social policy in Britain¹

Professor Danny Dorling

Introduction

'The distinction', Dupuy says, 'between a killing by an intentional individual act' and killing as a result of 'the egoistic citizens of rich countries focussing their concerns on their own well-being while others die of hunger' is becoming less and less tenable.' (Bauman's 2006, page 100, translation of Jean-Pierre Dupuy)

In Britain, France, and no doubt almost everywhere, part of the understanding and study of crime is slowly refocusing on studying social harms more widely defined and often more damaging than those acts we currently choose to criminalise. The most devastating acts of social harm concern the preventable deaths of one hundred million children under the age of five globally that occur every decade. Locally, premature deaths that could be prevented if we cared can be counted each decade in Britain in only hundreds and thousands by area – but still the vast majority who die even in this country due to the callousness of others do not die directly at their hands. It is not murder that accounts for the ten fold 'variations' in infant mortality between areas at the extremes.

In practise much of the harm is institutionalised. Welfare spending in Britain is set so that those reliant on it live in poverty. The government aims to abolish poverty by getting folk 'who can' into work and one way they do this is by making life outside of work very hard to live for those the government thinks should work. One effect of this is to damage the bodies of, (and subsequent survival chances of the babies of) those who become pregnant while living in poverty. Eating, resting and living well while pregnant is not possible when living in poverty. However, what matters more than physically damaging their bodies though such treatment is damaging young adult minds. If the government tells you through your own welfare payments how little you are worth a week why have much respect for yourself? And what pleasures can you expect in life? You may as well have a smoke, or worse. If you think I'm making this case too strongly walk past the line of new teddy bear shaped grave stones in any large municipal cemetery of a poor town and then look at the odd one or two such stones in the cemetery near where you live. You can't blame the infants for dying, so do you think the harm was caused by apparently feckless parents?

Current inequalities in infant mortality in Britain are the most obvious manifestation of the social harm poor social policy can bring. The statistics of the last century shows that previous Labour (and Liberal) governments had a better record of narrowing the gap than the current one has (Dorling, 2006a); and in more than just our mortality (Dorling, 2006b). In this short commentary I want to try to show how the banal process of public policy creation is currently often skewed to result in outcomes that in turn result in greater social harm for little meaningful benefit. There is also much that is good and well meaning in current policy creation, but a streak of particularly nasty inhuman market idolisation runs though much of what is currently being proposed on this richest of islands to deal with its poorest of people.

Many know this to be the case for some of the civil servants inserting clues to their discontent by giving fatuous examples of the implications of proposed policy in even the pages of published Green Papers! I give a few references below. I suspect that at the heart of some of our current stupidity is the naivety of a few who

do not realise that we are all human and those who are poor are not some other species that can be treated differently. In contrast there are also plenty of signs of good intent and of those involved in the process who still see people as people and the error of the pursuit of ever more wealth and work.

The new welfare reform bill

The *Mental Health Bill 2006* was introduced to the House of Lords by the then Minister of Health, Lord Warner. Part of the extremely long debate over its clauses concerned changes to the ways in which individuals could be deprived of their liberty. It was a mess and denounced by 77 charities and other members of the most concerned policy alliance as 'a missed opportunity for legislation fit for the twenty first century' (Mental Health Alliance, 2007). Depriving individuals of their liberties of course requires serious debate and members of parliament (and their civil servant advisors) should have done better than they did, but what was introduced by Lord Warner in November 2006 was not, I argue, the real mental health bill. That came later, with *The Welfare Reform Bill 2006* designed to alter the lives of hundreds of thousands of people have not worked for at least the last two years, mostly because of mental illness.

There are currently over two million people surviving due to receiving Incapacity Benefit (Freud, 2007, page 4, Figure 2 and PFMHTWG, 2006, page 8). The majority are too mentally ill and demoralised to work (while others are working with such illness, and many others are ill and not working nor claiming). I have documented some of the bizarre process of public consultation over the Bill elsewhere (Dorling, 2007a), it is now law and affects far more people with mental illness than the Bill but received far less attention.

Despite the Welfare Reform Bill (2006) having become law, much of its potential effects are still to be determined. As with the Mental Health Bill, the actual law does not determine the codes of practice and other mechanisms that will now be put in place. It simply enables them to be. In this way members of parliament do not get to scrutinise what will actually happen at the point when they could have most effect. The key policy turning point was obscure: the

Minister's (then Jim Murphy's) acceptance of the Physical Function and Mental Health Technical Working Group's (PFMHTWG, 2006) Report on the Transformation of the Personal Capability Assessment of the Department of Work and Pensions, (DWP). The remit of the Minister's department's working groups included, especially for the mentally ill, to 'accurately identify those who in spite of their condition are fit to continue to work' (*ibid* page 2). They did this by attempting to assess the level of functional limitation at which it is unreasonable to require a person to engage in work.

What level of cognitive and intellectual function is too low; what degree of learning disability too high; of autistic spectrum disorder too severe; or of acquired brain injury too poor scoring on their new system, to excuse a working age adult from the compulsion to labour in the new Britain to come? As I say, despite the Welfare Reform Bill having now passed into law we don't know the precise answers because their main recommendation involves testing and further developing, and full piloting of various claimant questionnaires and forms of medical evidence certification throughout 2007 (*ibid* page 4) and I am writing this in August of that year, but already there are enough clues to guess at the outcomes. (Dorling, 2007a).

The current Personal Capability Assessment (PCA) is too physically based for the liking of the technical groups. Currently an assessment is made as to the extent that your limbs work; you can see, talk, and hear enough for whatever it is you might do; you can remain conscious; and can control your bowel and urine voluntarily. Points are given for how well (or badly depending on your point of view) you score on these and hit the magic number of 15 such that you are entitled to benefit. At that number, or above, they currently consider it would be unreasonable to expect you to work. Below that number and they have ways of making you work. It's not called 'New Labour' for nothing.

Not all work is good for you

The impetus for changing the rules in Britain over who has to undertake paid work has been the rise in benefit claimants suffering from mental health problems, depression and anxiety;

and the falls in the number suffering back pain (PFMHTWG, 2006, page 8, paragraph 13). As our industrial employment continues to collapse at a rate as fast as it ever did in the 1980s it is hardly surprising that fewer folk have been developing serious musculoskeletal conditions (Dorling, 2006b).

Changing industries and technology is not the reason more people are unable to work due to mental illness. Instead it is the rise in mental illness itself along (possibly) with a fall in our tolerance of difference. The huge rise there has been at work has been in employment with very low skilled service jobs (Elliott and Atkinson, 2007). So what could be contributing to the rise in mental illness? Illness rates have risen among children and the elderly in Britain, not just for those of working age, and they are highest where most people also spend most time providing unpaid care, so if the rise is partly deceit it is a very well organised deceit involving children, carers and pensioners too!

One possibility is that it is the substantive nature of the recent change in the nature work and society that literally made people ill. It is not a superficial difficulty with saying the words 'would you like to go large with that sir?' that presents the mental challenge. It's the mind-numbing drudgery of serving folk with crap, having to say crap, having to wear crap², and be demeaned through doing all that which would make any individual depressed if they were to work as an automaton on show for too long.

One of the government's responses to the problem of 'worklessness' is, to work closely with the fast-food chain McDonalds (DWP, 2007, page 6) to help them fill jobs nobody want to do possibly through forced (and not necessarily paid) employment. This is one example of those clues to disenchantment left by civil servants in the recent 'welfare' Green Paper. Another is their example of getting black women to work (again possibly by compulsion and not necessarily paid) as care assistants for those taking our private health insurance (*ibid* page 34).

I read that and thought; what a nice way to celebrate one the centenary anniversaries of the abolition of directly sponsored

British slavery. These are just two examples, but I would have found it hard to make them up or some of the many other ridiculous ideas clearly inserted to show how even many of those putting policy together within the heart of government dissent so much from the 'everyone must labour' mantra.

Think about it. It is not an enjoyable (or easy) or particularly rewarding process claiming Incapacity Benefit due to mental illness. It is not something you would boast about in the pub, after all, success does not fund many pints for anyone. How often do you hear people celebrating the fact that they managed to convince a DWP contracted private doctor to believe that they really do feel 'tired all the time', look forward to almost nothing in the future and think they personally have no significant contribution to make?

This rise in mental illness is no great scam to claim higher benefits. This is not the feckless masses conspiring to live it up on an enhanced dole. It is also not occurring in many places because there is a lack of jobs of any kind, just a lack of reasonable jobs. It has been many years since we have had so many jobs available and so many in work in Britain. But exactly what kind of jobs are these, we want the mentally ill in particular to take? What are the jobs left unsold at the bottom of the labour market? I'll give some examples below, but many more are given in the Green Paper though the websites of the firms that are, the DWP's partners – those firms that obviously offer work that is so bad, they cannot easily find labourers (DWP, 2007, page 36). One of the firms listed provides 'manned guarding services' - a boom industry, and much of the work is of that nature, shelf stacking or till serving. However, the same firm needing those currently on benefits due to mental illness to work as security guards is also contracted to decommission some of the 'ponds' at Sellafield, the future's bright etc. But the majority of un-fillable jobs are not quite so exciting, take former 'mining' and industrial areas and the new leisure industry for example.

The mining industry had been in decline for sixty years before its obliteration in the 1980s. In 1991 the area with the largest number of people working in the mining industry was the potteries, and

these 'miners' were mostly women³, presumably hand-painting ceramics of one kind or another (Dorling and Thomas, 2004). Monotonous work, and far better done by robot spray brush than human hand, but work none the less that did not involve a constant feeling of being devalued while having to appear something you are not: happy.

By 2001, around the potteries, as much as anywhere – services of one kind or another now employ almost all who are employed. The best known perhaps is the theme park of Alton Towers. And the person most likely to greet you as you take your seat for a meal there grew up in Warsaw rather than Stoke. For those with hope and a future, university students, well-educated Polish immigrants, gap year migrant working-tourists, asking minute after minute exactly the same questions or groups of people taking their plastic seats to eat plastic food - people who quickly blur into exactly the same customers - becomes not only a monotonous, but a very demeaning occupation.

Being a servant in the new economy is demeaning because the interaction is directly and repeatedly with people and their money, not with putting colours on white clay. Factory work is brain-numbing, but other than in Cadbury's Bournville Chocolate factory (where tourists can pay to see those who help run the conveyor belts) it is not a spectacle. Today's acts of service are. And you are no longer the servant of a rich family, who might at least get to see you as slightly human out of familiarity. Today's service worker is the 'annoying' voice of the call centre, never the same twice; the 'surly' receptionist; 'slow' bar tender; or 'immigrant' restaurant work in a theme park. You don't really like them – and they have to be nice to you and what you blow your money on: valueless stuff that they could not afford.

Every time they return your change for that drink in the chain-pub they are reminded by their hourly wage, they are worth less than a minute's profit that passes through their fingers. Every time they listen to you on the phone transferring money between your bank accounts, order consumer goods, holidays, hotel rooms, they are aware of how little they have. Look how old the next person

serving you is or ask them on the phone. They are almost always under or around age thirty. I don't think that is because of an ageist recruitment practice. Almost no one could take the drudgery for long who could see there were better things to be had, all around them.

If it were you and you did not know it would only be temporary how would you begin to feel? For an extra 10 pounds an hour wouldn't you rather work around the ponds in Sellafield? If it were me, I would. If I had to face the idea that demeaning service work was my only option, for year after year, I'd begin to feel tired all the time. Think about doing it yourself, the hours, the pay, the conditions. Doing this kind of work makes people ill, as will the thought of doing it. Of course pre-industrial agricultural toil will have been almost as boring and more backbreaking, and seemed as interminable, but it might have been more consistent with dignity and self-respect. It is the servile, inferior, low-status of the jobs, in a society where we are very conscious of other possibilities which is new, not just the jobs, but the kind of society their existence and growth represents (Wilkinson, 2007).

Direct visual contact is not all that is required to feel demeaned. Those working in call centres only hear the (not 'their') customers. Those changing the sheets in hotels only get to smell the customer. But the constant realisation that so many people can afford the luxuries they order through your ear, or don't have to make their own beds, begins to grate. It was only a few years ago that people applied for a mortgage, rather than shopped around for one. Then the building society clerk looked down on, or more often across to, you as customer. In most cases a local customer. It was not much further back in time that only the very rich stayed in hotels. Far fewer beds needed changing by others' hands each morning (leaving aside who made beds in the home – and who was most depressed back then?).

Providing badly paid service labour is less and less a respectable profession, career, or something that makes you part of the old working class majority – cohesive at least in the collective experience of living at the whim of a small minority of the affluent. If you knew that most other people were reading scripts in answer

to customer queries, changing bed sheets, serving at tables, or repeatedly asking whether folk wanted to 'go large' or not, you might convince yourself that this is as good as it gets. But you'd have to be quite unaware of how much many others get, let alone how much today's most affluent get to be happy with your lot.

And then the magazines and daytime TV shows are filled with detail on the lifestyles of the rich and famous. Popular culture is obsessed with what kind of home or second home you can purchase for that odd extra couple of hundred thousand in your 'budget'; or with locations for exotic holidays; with quick fixes whereby nobodies can become famous; with a message that says that if you are not beautiful, thin, non-smoking, rich, attractive, interesting and enjoying a great job – it is your fault for not trying hard enough. We are surrounded by advertising for what we cannot afford. State schools charge for school trips to embarrass the poorest of children and their parents. And we have a regressive taxation system whereby those who get more pay more and are taxed less. Only a fool would not feel hard done by.

The solutions – mass medication?

In contrast to my musings, the government's PFMHTWG report does not concern itself too much with the cause of the main component of the huge rise in mental illness; instead it just says that such depression is 'very amenable to therapeutic interventions' (PFMHTWG, 2006, page 8). It used to be psychoanalysis, but today there is medication, and if the drugs don't work, evidence can be created to show that they do (Dumit, 2005). There is a huge danger in implying that mass medication may be needed to get hundreds of thousands of depressed working age people to work.

What is needed, but lacking in almost all of this debate, is an understanding of how we came to organise our working lives to exclude so many who would like to work and to compel so many more to do jobs that might well make them ill. In the remainder of this commentary I concentrate on what is being suggested for the non-working mentally ill of working age in Britain to illustrate why that need for better understanding has become so vital now.

There are some sensible suggestions in the PFMHTWG report that suggests how more of the mentally ill can be coerced to work. It says that a new assessment regime should not be so biased against the mentally ill, scoring their afflictions so lightly; it could concentrate on the positive rather than the negative; it could involve practical help for people to find work rather than just simply assess their benefit entitlement status; it could be better linked to the pathways to work initiatives lauded as so successful in another more recent and much public DWP Report (Freud, 2007).

Incidentally don't be fooled by the figures in the (DWP commissioned) Freud report suggesting spectacular falls in the number of Incapacity Benefit claimants in pathways pilot areas (a 9.5% fall on page 44 of his report). David Freud got his numbers wrong (to verify this simply read the sources he cites – they do not apply to all claimants as he implies, most of whom have been claiming for years, but only to a small minority for recent claimants), but then he is not a social scientist but a banker.⁴

David's report is titled *Independent*, but was both commissioned and published by the DWP. Independent no longer means independent. The point of independent reports to government and ministers is that they are not written by people who are independent of government but by folk whose lives and connections are intimately wound up in the machinery of government and elite civil society. For those who enjoy unravelling these connections, and given the origins of the Centre for Crime and Justice Studies (formerly the Institute for the Scientific Study and Treatment of Delinquency), it is relevant to point out that David is the great grandson of Sigmund, and Sigmund was briefly associated with the Institute (CCJS, 2007). Delinquency was thought then and still by many now to be a mental illness, possibly inherited. Although such thinking is now discredited the use of some of Sigmund's thinking to sell ideas to the public is continuous and underpins a huge consultancy industry: public relations (PR).

The DWP Working Group's report on the PCA was not written as an exercise in public relations. It is not all advertisers bluff to try to

get the public to purchase ideas that they should not really want to buy (if an idea is good it does not need PR which is needed mostly the worse an idea or product is for you). Also parts of the report are not all carrot and stick. For instance, it suggests that as the PCA currently stands, it writes off too quickly people deemed to have learning disabilities and other conditions affecting their ability to think as not being able to work without considering their rights to work and support to work. Having a series of the most minor levels of physical ailment that can be recorded by the current system can entitle an individual to benefits whereas the same is not true of mental illnesses. The report also identifies the current self assessment questionnaire as being 'hardly user-friendly'; but then advocates a widening of the approach currently being piloted in 'Pathways to work' areas where the doctor carrying out the PCA reports on each 'claimant's residual functional ability' PFMHTWG (2006, page 19). 'Residual functional ability' is not a phrase someone working in PR would applaud.

Conclusion: residual functioning ability

I suspect that the phrase 'residual functional ability' will not make it to the final wording of the codes the law is to enable: there is much work yet to be done on the language. But although the wording will change, it is unlikely that the underlying thinking and prejudices behind much of this current policy making will alter a great deal. These are not policies being made for the people making them – but with others in mind. Reading the report it is clear to me that most of those who wrote it never expected to be sitting being assessed by these criteria, nor do they expect that for their children, lovers or friends. But they should, because the current numbers and trends make it very likely that all of us or someone very close to us will one day soon be assessed for whether our mental health means we are up to labouring.

So how can new social harms be averted such as those about to be inflicted through the *Welfare Reform Bill 2006* and far worse if the Green Paper is unopposed? During the final debate on the bill in the House of Commons on 17 May 2007 there was no dissent from the cross party committee considering DWP's aims, including their

aim of getting four out of five folk into paid work, almost regardless of what that work might do to these workers:

'The whole Committee agrees that the 80% target is wonderful;...'
(Engel, 2007)

Perhaps all other MPs and folk in cyber space (the then DWP minister's blog went quiet) were keeping their heads down? Better not to be identified as a dissenter in this brave new world where more people will get better, more will work harder, more will be responsible, even if Natascha Engel ended her sentence above with a tiny note of caution. Here is what she said in full:

*'...The whole Committee agrees that the 80% [sic] target is wonderful; it was just the way to reach it that we had slight concerns about.'*⁵

One day soon such slight concerns need to be expressed a little more clearly. The more policy documents on health, work and well-being I read the more I come to believe more than ever that we need to thinking more carefully about why so many of us have become so ill in recent years (Wilkinson, 2005). The alternative to this is that 'in the not too distant future we will have mass medication, 80% in work, and wake up one morning and wonder what we are all working for' (Anon, 2006).

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Notes

¹ A longer version of this argument appears as an editorial in the *Journal of Public Health Medicine*, Autumn 2007 (Dorling, 2007a).

² A colleague who kindly commented on an earlier draft of this piece told me they once worked for a multinational firm where the uniform included trousers with no pockets below management level. Only the managers were trusted not to steal. When you are next in a cinema, fast-food restaurant, or similar establishment, have a look for the pockets (but please try not to be obvious in your glances).

³ People's jobs can be classified by the industry they work in. Thus in the mining industry, although for decades only adult men were allowed underground, there were (mainly)

women who cooked the food that miners ate after their shift, clerks who worked on the surface, managers, and cleaners among many other occupations employed. The industry was repeatedly decimated to such an extent before and especially after the miner's strike of 1984 that by 1991 the largest single group of people classified as working in the industry of mining by the Office of National Statistics (ONS) in any one local authority then were (mainly) women working in districts in the potteries. Ceramics were included in the extractive mining industries as clay has to be extracted from the ground just as coal is. When this decision was made it is almost certain that no one in the bodies that preceded ONS ever thought that the greatest concentration of 'miners' would be women in Staffordshire. Incidentally the industry continued to collapse to 2001 employing only a seventh of the workforce of 1991. The potteries (and the Stoke area) suffered most, and the greatest concentrations remaining by 2001 were of people associated with the north sea oil industry working in Scotland, and a rise of people working in 'mining' in the centre of London – these being consultants associated with multinational mining companies working with bankers there (all recorded in the 2001 population census as 'miners'). Britain makes more money from mining than it ever did – it just that most of the miners are now in copper, coal, iron and diamond mines in very far flung parts of the globe. The future for mining in Britain was far worse than anyone envisaged in 1984 there was no fall in the numbers of people working in dangerous conditions down holes in the ground – they were just working on holes in the ground in other countries – and many of the new miners are, of course, children.

⁴ This is not an isolated example of innumeracy in the Freud report. That report will have been checked by civil servants so again I think their leaving of obvious gaffs in the text is an indicator of dissent in the policy maker ranks. Earlier in his report, on page 37, he suggested that: 'By 2009, over half the new entrants to the labour market are anticipated to be people in ethnic minorities.' Again Freud has misread the source he quotes (which is referring to half the increase, not half the total for new entrants). These errors do need pointing out as we should record how poor the 'evidence base' became in the dog days of the Blair government, when – presumably as I suggest above because so few civil servants had managed to maintain enthusiasm for the spin and were bothering to fact check even simple things any more – such errors could emerge. For this error to be true would require (say) all new jobs to only be in London. And even then for their distribution to be skewed towards ethnic minorities dramatically, to redress old inequalities in employment in that city. Put another way, the only way David Freud could be correct is if Ken Livingstone became prime minister. I may be missing something here – but I really don't believe Ken's ascendancy is the establishment plot.

⁵ Natasha was appointed parliamentary private secretary to Peter Hain MP a few weeks later. Hopefully she will still raise a few concerns as she climbs the ladder, but it is usually at this point of initial promotion that younger MPs become acquiescent.

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11

Gendered harm and the limits of criminology

Dr Christina Pantazis

Introduction

Despite women living longer than men and generally living longer than ever before, the experience of many female lives across the globe is one which is lived at great risk of harm at different stages of the life-course.

In some countries such as Pakistan, India and China social harm can be said to occur when abortions are carried out on female foetuses as a result of son preference. In some countries the rate of abortions is so great that it is leading to a serious depletion of the female population. Sen's (2001) work on the 2001 Indian Census shows, for example, that for every 100 boys under the age of five there are only 93 girls in the same age group. And it is a situation that is worsening as a result of the economic and patriarchal re-structuring of India, in which the female form is increasingly being commodified.

Poverty and health-related disease is the biggest killer of all children in infancy (Gordon, 2004), however, girls may face additional perils as a result of their gender. Female infanticide is

commonplace in some countries. In China it is associated with the government's one-child family policy, whilst in India it is thought to be increasing due to the spread of the dowry to lower castes. However, more common than infanticide is the killing of girls through the denial of food or healthcare. In many countries of South America, South and East Asia girls often come second to their brothers in food and health care provision within families, often with deadly consequences (UNDESAPD, 1998).

Female mortality rates decrease in older female children, so that beyond a certain age girls are unlikely to be killed or left to die because of son preference. However, they may experience serious forms of abuse and commercial exploitation by parents and other adults. In many countries, girls may experience female genital cutting (or mutilation). Some forms of FGC cause no or minor injury but infibulation which is carried out on the majority of girls in Somalia, Ethiopia, and Kenya for example, involves cutting or removing the external genitalia and then stitching or narrowing the vaginal opening (WHO, 1998). This form of FGC is known to cause serious health risks (for example, Aids, Hepatitis B, urinary incontinence, complications in labour), sometimes leading to death.

In womanhood, many females continue to experience harm in the form of domestic violence (WHO, 2005). Unlike in some western countries where domestic violence is the main cause of death among adult women, complications in pregnancy and labour are the biggest cause of death and disability among women of reproductive age in developing countries. Against the background of abject poverty half a million women throughout the world die each year because of complications in pregnancy and child birth (WHO, 2001). More than half of these (easily preventable) deaths take place in Africa.

In older life, abuse is common although what constitutes abuse varies significantly across the globe (WHO, 2002). Accusations of witchcraft in some African countries can lead to abuse but in

others it is the ill-treatment by families or the denial of pension rights that are perceived as forms of elder abuse.

The status of gendered harm within criminology

It is surprising that a discipline which supposedly concerns itself with harm and the reduction of harm should be virtually silent on the harmful experiences of females (and males) living in the developing world. Despite some of these harms being criminalised in many of the countries in which they occur, and therefore providing legitimate topics for investigation for criminologists, they have remained largely unresearched by the discipline. It has been left to other disciplines, for example, anthropology, development studies, human rights and international relations, to interrogate these issues. Criminology has had very little to say on the depressing plight affecting millions of females throughout the world.

What might explain this myopia within criminology? As a discipline which developed in the nineteenth century to investigate the dangerous poor (male), criminology has only since the latter part of the last century begun to incorporate wider concerns. Certainly the 'engendering of criminology' did not take place until the western feminist movement of the 1970s began initiating a gendered awareness to social problems. This impact has gradually been felt by criminology in the last ten years or so in relation to domestic violence and, to a lesser extent, sexual violence. However, it has been both geographically and culturally specific. Feminist research examining violence against women has tended to be restricted to locations in the western hemisphere. Furthermore, traditionally it has treated the experiences of all women as the same. With the embrace of the 'Western Woman', there was a lack of regard of issues connected to class, age, ethnicity, sexual preference, geographical location as well as a lack of focus on the intersection of these specificities. Only in recent years has feminist research examined the harmful experiences of minority ethnic women or the situation affecting trafficked women from abroad, for example. But these have generally been within domestic, rather than international, settings.

How do we explain the silent treatment and what does it tell us about the limits of criminology as a discipline? Some factors which

apply to the silence or marginalisation of other topics within criminology (e.g. corporate harm) might also explain the silent treatment by criminologists of gender-based harm. The fact that some forms of harm have lacked or continue to lack a distinct criminal label (e.g. domestic violence, forced marriage) in the social conscience might provide some of the explanation. But there are also specific explanations which relate to the lack of attention given to gendered harm in developing countries.

First, feminist research within criminology has largely been restricted to investigating issues closest to them. It is perhaps inevitable that feminist criminologists researching gendered harms should have begun investigating social problems which they could see occurring around them or which they themselves may have experienced. This is, in part, linked to a discourse within feminist criminology which is about experience and documenting that experience. Secondly, and more recently certainly within the UK context, government funding priorities have served to consolidate but also restrict the breadth of research that is carried out by feminist researchers working on violence issues. The focus of such research has tended to involve the evaluation of government policies or the effectiveness of criminal justice system in responding to female victims of crime. Funding priorities of government inevitably impact on the scope of work carried out by feminist (and other) researchers.

Secondly, and not unrelated to the first point, is Cohen's (2000) argument that criminology is essentially an ethno-centric discourse of a western-dominated criminology. For example, most research carried out under the auspices of criminology is English or European speaking. Most research carried out by criminologists is concerned with issues relating to crime and criminal justice in western countries. The way crime and criminal justice tends to be understood is in relation to western values. For example, western conceptions of domestic violence tend to be discussed in relation to intimate partner violence yet an understanding of violence which incorporates wider experiences may define domestic violence in terms of familial violence – in Kurdish and Pakistani families for example, domestic violence may be perpetrated by

partners, but also by brothers, fathers, cousins etc. The Home Office's recent definition of domestic violence certainly reflects such an acknowledgement.¹

In making the claim that criminology is a parochial discourse, it should of course be acknowledged that there is now some research emerging under the umbrella of what has been termed as 'third world' criminology (Banks, 2000). Criminology journals in developing countries are beginning to emerge (for example, the *African Journal of Criminology and Justice*, *Indian Journal of Criminology*). However, it is too early to say whether these will successfully counter both the ethno-centric focus and gender-bias of criminology.

Conclusion

Criminology as a discipline has dramatically failed to address the harms affecting girls and women living in developing countries - even where those harms are criminalised. The lens of crime and criminal justice has produced a myopic interrogation of gender-based harm. A harm perspective, rooted in an understanding of patriarchal and capitalist relations, can address these deficiencies by offering a systemic investigation of the harms which are experienced by females from the cradle to the grave.

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Notes

¹ The Home Office defines domestic violence as 'any incident of threatening behaviour, violence or abuse between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality'. www.homeoffice.gov.uk/crime-victims/reducing-crime/domestic-violence/

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Social harm and supranational criminology, post-Maastricht 2007

Professor David O. Friedrichs

Preface

What follows is a selective outline of some of the themes I addressed during my presentation at the Criminal Justice and Social Justice Conference at King's College, London, 5 – 6 July, 2007. It addresses some premises, core concepts, and an agenda for an emerging supranational criminology, with some special reference to the 'social harm' perspective. It offers a provisional 'mapping' of the terrain of this criminological initiative, with some special attention to context. More detailed discussion of the themes noted here can be found in the author's forthcoming articles 'Transnational Crime and Global Criminology: Definitional, Typological and Contextual Conundrums,' *Social Justice* – originally presented at the Prato Transnational Crime Roundtable, Prato, July, 2006 – and 'Towards a Criminology of International Crimes: Producing a Conceptual and Contextual Framework,' *Towards a Criminology of International Crimes*, R. Haveman and A. Smeulers, Editors, Antwerp: Insentia – originally presented at the Expert Meeting on International Crime, Maastricht, April, 2007.

Introduction: Criminology post-Maastricht 2007

A gathering of criminologists in the old city of Maastricht in April, 2007, focused upon promoting an adaptation of their field to a fundamental historical neglect of international crimes within the context of our evolving social order. Criminologists affiliated in some way with the 'supranational criminology' agenda want to promote a criminology taking into account broad, evolving global transformations.

At the outset of the twenty-first century criminology has become a vast and multi-faceted enterprise, with an especially broad range of substantive foci, theories and methods, but conventional forms of crime and their control remain the dominant concerns. We can speculate on the future direction of the field of criminology during the course of the new century. One can state with some confidence that the contours of the field will be significantly transformed during the course of this century. But it seems worthwhile to differentiate between the direction twenty-first century criminology is likely to take and the direction that it should take.

If one holds the conviction that those who will live out their lives during the course of the new century will contend with immense challenges, then the urgency of promoting a criminology that addresses these challenges in some form becomes quite imperative. These challenges include the question of whether human beings will be able to maintain a sustainable environment, surviving catastrophic climatic changes, destruction of diverse species and ocean life, new infectious disease pandemics and pathogens, extreme destitution in developing countries, unstoppable global migrations, economic and political crises and collapses, escalating international terrorism, large-scale inter-group and nationalistic wars, the proliferation of weapons of mass destruction, and nuclear apocalypse (Martin, 2006). And these challenges all too often encompass at their core large-scale crimes of powerful political and private sector entities.

If criminology as a field of academic endeavor survives the present century it seems quite certain that attention to the whole range

of 'conventional' forms of crime, and their control, will be one part of the work of this field. A principal objection to the character of contemporary criminology, however, is one of proportionality. An 'inverse' hypothesis of criminological concerns can be posited: that is, there is an inverse relationship between the level of harm caused by some human (individual or organizational) activity, and the level of criminological concern (Friedrichs, 2007a; Green and Ward, 2004; Rothe and Friedrichs, 2006). Those who have now called for a supranational, international, transnational, or global criminology are at a minimum calling for a fundamental realignment of criminological concerns, and for far more attention proportionally to the large-scale forms of harm as opposed to the more conventional smaller-scale forms of harm characterised as conventional crime.

Criminology has been largely retrospective or present-focused, explaining crime and its control in the past and the present. A 'prospective' or 'anticipatory' supranational criminology ideally identifies emerging conditions conducive to fostering increases in supranational forms of crime, and identifies as well optimal policies and practices that prevent, deter, or at least limit such crime. From a progressive vantage point a core conundrum for a supranational criminology is this: How would such a criminological endeavor avoid being co-opted by the state to serve its own purposes, and in doing so become complicit in the expansion of state power and oppression?

The establishment of a supranational criminology that realises a fundamental impact both in the realm of scholarship and policy confronts some immense challenges. But if one adopts the position stated earlier, that potential supranational crimes of the future collectively pose a devastating threat to human existence and in the extreme case to the survival of the species, then it would seem that criminological engagement with international crime and its control is quite imperative.

Crime, social harm and supranational criminology

The appropriate meaning of the key term 'crime,' and its relationship to the notion of social harm (Henry and Lanier, 2001), obviously represents one key point of departure for a supranational

criminology. The promotion of a 'social harm' approach embraces this notion as a more appropriate focus of concern and interest than crime in the conventional sense (Hillyard, Pantazis, Tombs and Gordon, 2004; Pemberton, 2004). Criminologists who identify with the supranational criminology project should also engage with the work of 'social harm' criminologists, with obvious intersecting points of interest. But how broadly does one stretch the notion of social harm to intersect in relation to 'crime,' in some sense? Some criminologists and social philosophers (e.g. Gordon, 2004; Pogge, 2005) have characterized poverty as the world's largest source of social harm, a function of historical crimes by Western developed nations, complicit in millions of preventable deaths, and an on-going massive crime against humanity. If one accepts such claims worldwide poverty is encompassed within the framework of a supranational criminology. But such a diffuse conception of crime has the cost that it deflects attention and resources from more narrowly defined forms of international crime, and creates an overwhelming, unfocused criminological perspective. Any such costs of these more diffuse conceptual frameworks have to be evaluated in relation to benefits. A second issue that arises in relation to the 'social harm' project is an evaluation of the costs and benefits of literally abandoning criminology, possibly in favor of zemiology, the study of harm itself. Finally, to the extent that the 'social harm' approach is associated with the abandonment of even a pretense of objectivity and neutrality, as opposed to direct advocacy on behalf of those identified as the socially harmed, the costs and benefits of such a stance must also be weighed.

A criminology of genocide, war and humanitarian intervention

By any measure, a criminology of genocide and a criminology of war are two key strains of a criminology of international crime or supranational criminology. Humanitarian intervention, as a response to alleged crimes of states, and as a controversial form of pre-emptive or preventive warfare, is a major issue within international affairs. I offer here a few observations on these matters. First, in recent years a number of criminologists have called for a *criminology of genocide* (e.g. Day and Vandiver, 2000; Friedrichs, 2000; Hagan, Raymond-Richmond and Parker, 2005; Morrison, 2004;

Woolford, 2006). Indisputably genocide has been neglected by criminologists historically. A supranational criminology of genocide as crime has to establish the right balance between reflexive concerns and substantive analysis, uniquely criminological and multi-disciplinary dimensions, and between broad scholarly credibility or legitimacy and promoting moral commitments or mobilization against genocide.

The specific call for a *criminology of war* is also quite recent, and might be said to parallel the call for a criminology of genocide (e.g., Hagan and Greer, 2002; Friedrichs, 1998; Jamieson, 1998; Kauzlarich and Kramer, 1998; Kramer and Michalowski, 2005). War and acts committed in the context of war can be shown to intersect in many different ways with both the theoretical concerns and the empirical findings of criminology. On the one hand, a sophisticated criminology of war must engage with the literature on many of the macro-level phenomena identified in this article. On the other hand, criminologists can potentially make unique contributions to the understanding of war by delineating both parallels and differences between war as crime (and crimes committed within the context of war), and the whole range of other forms of crime, from conventional crime to white collar crime.

Also, much recent scholarly attention has been devoted to *humanitarian intervention*. In one sense humanitarian interventions can be characterized as an ultimate form of supranational policing in a globalised world, and in light of ever-expanding globalisation it seems quite certain that both calls for and critiques of humanitarian intervention will intensify during the course of the twenty-first century. Clearly, humanitarian interventions are undertaken when the interests of powerful states are threatened or compromised in some way, and rogue states are seen as sponsoring terrorism in some form; they are not undertaken solely in response to violations of human rights, no matter how severe. Criminologists should be uniquely qualified to compare the supranational form of policing involved in humanitarian interventions with more conventional forms of policing that criminologists have thoroughly studied. Critical criminology in particular has a long tradition of exploring and exposing the

‘dark-side’ of policing, and activity carried out in the name of policing that has had demonstrably harmful consequences. More broadly, then, criminologists should be able to contribute to the understanding of how policing activity intersects with or fosters other forms of criminal activity.

Supranational criminology and related concerns

The establishment of a supranational criminology is in some respects an impossibly ambitious project. A truly sophisticated supranational criminology must engage with a wide range of phenomena, with many of these phenomena addressed by a vast literature. I believe it is useful to identify the whole range of enduring and emerging concepts and ‘global concerns’ that intersect with those of a supranational criminology. A number of such concerns have been addressed earlier; the list of further such concerns could be extended considerably. A supranational criminology, for example, should incorporate a *criminology of crimes of the state*, a *criminology of state-corporate crime*, a *criminology of crimes of globalization* (i.e., crimes of international financial institutions), a *criminology of crimes of international high finance* (e.g., investment banks), a *criminology of crimes of transnational corporations*, and a *victimology of international crimes*. Two other central components of a supranational criminology are: *international law* and *international tribunals*. Rather than addressing these important topics, I here identify and briefly comment upon a finite and selective number of other concepts and concerns that are components of a supranational criminology and that have captured my own interest. These concepts and concerns might be regarded as elements of a prospective, comprehensive mapping of the terrain of a supranational criminology. The construction of such a mapping – ideally, as comprehensive as possible – would allow those working on projects within the scope of supranational criminology to first, consider which of these pieces are and are not relevant to their own particular project, and second, consider how their particular project is related to other projects. Of course each of the concepts or concerns identified here, as well as those discussed earlier, encompasses a large (and sometimes overwhelmingly large) literature. What follows is obviously

provisional and limited, in the extreme, but ideally offers one point of departure for further exploration.

Some concepts that have not been a significant part of the vocabulary of criminology traditionally are important in relation to an emerging supranational criminology. *Sovereignty* is one such concept. Although this term has different meanings, in this context the state's exclusive control over the territory bounded by the state's borders is central. The term 'jurisdiction' is part of conventional criminal justice discourse, and parallels that of sovereignty in certain respects. Obviously, the controversial concept of *universal jurisdiction* will be of central interest to students of supranational crime (O'Keefe, 2004). In a world of increasing globalisation and transnational crimes sovereignty and jurisdictional claims become increasingly problematic or irrelevant (Sands, 2005: 15-16). Sovereignty claims are often an illusion in terms of their traditional meaning. They are increasingly invoked to justify various forms of state-organized law-breaking. Criminologists must attend to sovereignty and jurisdictional issues as they intersect with international crime and its control.

Nationalism is also a concept little addressed within criminology traditionally. Significant points of intersection exist between issues of nationalism and international crime and criminal justice. Nationalistic tendencies promote or deter international crime. How is nationalism directly complicit in some forms of international crime? Does international crime and the promotion of international criminal justice contribute to a resurgence of nationalism?

The concept of *legitimacy* refers to an order of authority perceived to be valid and deserving of compliance. Legitimacy claims become increasingly problematic and contested as one moves from the local to the global. For example, on what specific grounds are the legitimacy claims of international tribunals based? What are the consequences for their effectiveness if legitimacy is largely withheld from such institutions? How do globalisation and emerging postmodern tendencies foster legitimacy crises domestically? How do legitimacy crises create conditions conducive to promoting certain forms of international crime?

The topic of *human rights* has, of course, inspired an immense literature. Obviously human rights concerns intersect in fundamental ways with the issues addressed by a supranational criminology. Criminologists, in particular, are well-positioned to address how conceptions of human rights come to be integrated with conceptions of crime and its control, and how such conceptions are resisted.

The whole matter of *transitional justice* is also critically interconnected with the supranational criminology project (Bohl, 2006; Roht-Arriaza and Mariezcurrena, 2006). A comparative survey of and evaluation of major historical cases of transitional justice in the recent era – with South Africa and Iraq as just two cases – should enrich our understanding of both optimal and failed forms of such justice. In particular, criminologists should be especially well-qualified to address the role of criminal justice institutions in this process.

The recent era has also witnessed a significant rise in interest in *cosmopolitanism*. The notion of a cosmopolitan outlook especially relevant to a supranational criminology is one that views humans as part of a world community with allegiances to all human beings, transcending particularistic attachments, and takes into account the impact of globalization on local and national issues (Appiah, 2006; Delanty, 2006). A ‘cosmopolitan turn,’ or a social science methodology incorporating the fundamental premises of a cosmopolitan outlook, comes out of this (Beck and Sznaider, 2006). Accordingly, the initiatives being undertaken in relation to methodological cosmopolitanism would appear to be of special interest to those committed to a supranational criminology.

Interest in *sustainability* has expanded greatly in recent years. Within criminology itself, an emerging ‘green criminology’ – focusing upon environmental crimes – intersects most directly with the concerns of the sustainability movement (Beirne and South, 2006). But if a relative absence of violence and chaos is also a central element of a sustainable environment, then concerns of the sustainability movement and supranational criminology intersect at other points. Furthermore, the impact of the work of those who

pursue supranational criminology projects is that much greater to the extent that such work can be connected with mainstream movements, and the 'sustainability movement' is framed in such a way that it has especially broad appeal.

On context: globalization, a postmodern world, and the American empire

Crime and its control can only be coherently studied and understood within a particular context (Friedrichs, 2007b). Traditionally crime and its control has been addressed within the following contexts: first, a locality, state or nation; second, a traditional or modern society; third, a Western framework; and fourth, a historical era, most recently that of the 'Cold War.' This is hardly a comprehensive delineation of the relevant context within which crime and its control has been addressed, but surely it encompasses principal dimensions of such contexts. Admittedly, much criminological analysis does not specifically address context, but it is then a 'taken-for-granted' or unstated dimension of the analysis at hand.

A supranational criminology has to address the very fundamental matter of globalisation, insofar as going forward the importance of this phenomena as the larger context within which international crime and its control occurs is sure to intensify. It is no less important to engage with the emerging *postmodern* dimensions of our social environment. The transformation of typically modern attributes of our society in a postmodern direction is occurring at an accelerating pace. Accordingly, students of international crime must attend to the proportional relationship between traditional, modern and postmodern attributes of the social order, as a fundamental dimension of the context within which international crime and its control occurs.

Clearly, the *post-Cold War* political environment is a significant contextual element of our world, and more recently the post 9/11 world as well. It is still arguably too early to assess the extent to which responses to 9/11 will endure over time. The term *American Empire* has been invoked with reference to a resurgent form of nationalism on the part of the United States, which intensified in the wake of 9/11 (e.g. Ferguson, 2004; Johnson, 2004; Mann, 2004).

For students of international crime, the American case brings into especially sharp relief the complexities of disentangling global policing and global state criminality. Whether it is either possible or desirable to separate ideological commitments from objective analysis when it comes to such questions is a matter of enduring debate.

The global justice movement and supranational crime

An expanding dialogue on a broad range of global justice issues is increasingly evident today. International crime is surely among the most visible of these issues. The challenges of controlling international forms of crime are obviously immense, and the role of governmental entities in doing so are immensely problematic. In one view, then, the best hope for any such control resides with the collective activity of private parties, or concerned citizens. The so-called anti-globalization movement that has emerged in the recent era has challenged in a fundamental way the 'top down' claim that neo-liberal economic policies are both universally beneficial and inevitable (Cavanagh and Mander, 2002). The term 'global justice movement' seems preferable to the term anti-globalization movement, insofar as the latter term has a powerfully negative character, and the true essence of this movement is a widely diffused demand that global policies promote justice for ordinary people, rather than favoring powerful organizations and privileged classes (Friedrichs and Friedrichs, 2002). Both the dangers and the limitations of a global justice movement, and its potential to effectively challenge many major forms of international crime, should be taken seriously. What lessons can be derived from studies of the impact of past social movements on local, state, and federal criminal justice policy that might be applied to an understanding of the potential of such movements to have an impact on international criminal justice policies?

International crime and global governance

The question of global governance is certain to become progressively more urgent and more widely discussed during the course of the twenty-first century, and it is quite imperative that students of international crime and law engage with the evolving

transnational discussion on this question. The key terms here – including ‘global’ and ‘governance’ – are invoked in different ways, with popular writers tending to equate global governance with ‘government’ whereas academics and international practitioners tend to equate it with complex public and private structures and processes (Dingworth and Pattberg, 2006: 187). Global governance is not synonymous with international relations, since the latter tends to be restricted to relations between sovereign states while global governance encompasses non-state actors (Dingworth and Pattberg, 2006: 191). At a minimum, then, global governance can serve as a ‘heuristic device’ capturing (or describing) the on-going, accelerating transformation of the international system. The future form of global governance, whatever form it takes, is likely to include both the formalization of existing transnational networks as well as the development of new forms of cosmopolitan citizenship (Khagram, 2006: 110). A global civil society, for example, is one important dimension of evolving global governance. A global civil society, in one view, can serve as an antidote to the activities of predatory states and unregulated markets (Barnett and Duvall, 2003). It is important to bear in mind, of course, that transnational civil advocacy is not necessarily progressive, that many formalized transnational civil society organizations are oriented toward technical, scientific, and professional matters, and that the forms of non-state actors engaged in transnational issues include for-profit companies, business associations, ethnic communities, religious groups – and organized criminals and terrorists (Khagram, 2006: 104-105). Ideally, a global criminology can play a constructive role by working out the complex nature of the evolving relationship between global governance and transnational civil society and international or transnational crime, and the optimal model in terms of the broad promotion of global justice.

In conclusion: an agenda for a supranational criminology

First, an emerging supranational criminology of international crime should attempt to arrive at some consensus on defining itself coherently. It should identify the parameters of expanded criminological concerns within the context of globalisation. It

should address the definition of crime issue anew within this context. It should attend to defining the relevant key terms clearly and cogently. It should develop a coherent typology of transnational, international and global crime, and of the institutions of control of such crime.

A supranational criminology needs to address systematically the formidable methodological issues that arise in relation to studying international crime. It should adopt a credible 'world order' framework within which international and transnational forms of crime and their control can be analysed. It should identify optimal strategies for promoting a broader awareness within the discipline of the need to adopt a global framework. It should identify viable and useful empirical projects that can advance the understanding of international and transnational crime and their control. It should also identify optimal strategies for securing funding and support for such projects. It should identify the major policy issues that now arise in relation to international and transnational crime and their control, and the optimal resolution of these issues. Finally, it should delineate the relationship of an emerging supranational criminology to a range of disciplines – including international law and comparative politics – that address some of the same concerns.

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Policing communities

13

Regeneration through discipline: Sustainable communities, liveability and the penalisation of marginality¹

Dr Craig Johnstone

Introduction

Historically concerned with very different sets of social, cultural and economic problems, it has become apparent since early in the current decade that the objectives of criminal justice and urban regeneration policy in England and Wales are converging. A current central goal of both these strands of public policy is to enhance the liveability of deprived and marginalised urban neighbourhoods.

To regenerators, purging these places of signs and symbols of disorder, be they boarded-up property, abandoned cars or loitering groups of youths, are crucial to ensuring these communities remain sustainable: 'places where people want to live and work, now and in the future' (Communities and Local Government, (CLG), 2007).

From a criminal justice perspective, seemingly prevalent, even endemic, anti-social behaviour (ASB) is both a problem in itself and

a potential antecedent of criminal activity. As such, considerable effort during the last decade has been expended on enforcing pro-social behaviour and, more recently, rebuilding respectful values. While the New Labour government maintains it is adopting such measures to improve the quality of life of citizens, often at the behest of residents of these 'problem' neighbourhoods, this article explores the possibility that liveability is being secured for some at the expense of others and examines whether the pursuit of sustainable and liveable communities is serving to further penalise those already socially excluded.

Making neighbourhoods liveable

Since the middle of its second term in office, the New Labour government has promoted the creation of sustainable communities (OPDM, 2003; Raco, 2007). If the rhetoric used to describe them has tended towards the somewhat utopian, painting a picture of an appealing urban idyll (see CLG, 2007; Hoskins and Tallon, 2004), the notion that sustainable neighbourhoods needed to be both viable and places where people with choice would opt to live, seems wholly realist. The agenda pursued by government envisioned a number of routes to sustainability. First, proposed new-build communities were to be well-designed, sensitive to environmental concerns and supplied with all the services required for a good quality of life. Second, old, failing communities in de-industrialised regions were to be rejuvenated by selective demolition of unwanted properties and the building of new dwellings that would appeal to a wider market (OPDM, 2003). However, new build and substantially reworked communities are small in number, meaning far more significant at a national level have been efforts to enhance the sustainability of existing communities by making them more 'liveable' places to reside.

What constitutes a liveable community is open to a certain amount of debate. On the one hand, government has emphasised the physical environment, bringing forward legislation and Public Service Agreements concerned with enhancing the visual appearance of place (Parkinson et al., 2006). In the same vein it established the Commission for Architecture and the Built Environment. On the other hand, crime and disorder reduction

is a central facet. When asked in Parliament in 2006 to offer a definition, Tony Blair responded that, 'Liveability is the ability of local communities to be free from fear and crime' (Hansard, vol.447, c.1315). This reinforced the impression given three years earlier by the then regeneration minister Yvette Cooper (Home Office, 2003a), when she told the Home Office Anti-Social Behaviour conference that, 'Tackling ASB is a fundamental part of the drive to improve the quality of life for people in our towns and cities and is key to creating sustainable communities'. While the evidence might, therefore, seem to suggest a divergence of opinion within government, common to both interpretations is the problem of disorder and the distress it causes. Fly-tippers and groups of hoodie-wearing youths congregating on street corners, for example, are both viewed to be using public space inappropriately or committing what Stokoe and Wallwork (2003) refer to as 'neighbourhood spatial abuse,' behaviour which in recent years has been discursively constructed as requiring remediation.

Converging policy agendas

It is around purging neighbourhoods of signs of disorder and disciplining purported 'agents' of disorder that urban regeneration and criminal justice priorities have synchronised. While government urban regeneration schemes have provided the additional resources, the criminal justice system has contributed new social control instruments. Urban policy programmes have long channelled additional state funding to the most disadvantaged parts of the country and Labour has continued to utilise the area-based initiative as a vehicle for addressing the problems associated with concentrated multiple deprivation (Johnstone and Whitehead, 2004). Significantly, its flagship schemes – New Deal for Communities, Neighbourhood Management and Neighbourhood Renewal Fund – have all been exercised to some extent by the problems of crime and ASB (Johnstone, 2004). Whether responding to community demands for action or deeper concerns about the impact of criminality and incivilities on long term neighbourhood desirability (and thus viability), these programmes have funded a diverse set of initiatives from additional police patrols through neighbourhood wardens, CCTV and street lighting upgrades to

the installation of alley gates and other situational crime reduction measures.

While regeneration schemes have mainly (although not exclusively, for example Flint and Smithson, 2007) concerned themselves with making disadvantaged neighbourhoods more difficult places in which to commit disorderly acts, the criminal justice system has homed in on the anti-social and/or irresponsible behaviour of 'agents' of disorder. To this end, new legal sanctions have sought to control both the disorderly and those, such as parents, whose inactivity or ineffectiveness is blamed for burgeoning ASB (Home Office, 2003b; Squires, 2006). Of the new criminal justice instruments, the Anti-Social Behaviour Order (ASBO) is perhaps best known but others include parenting orders, child curfews and dispersal orders. The latter two are particularly significant to deprived communities because, rather than target named deviants they throw a blanket of social control over designated geographic areas, forbidding certain activities (principally youth congregation) from occurring within these public spaces.²

The pursuit of liveability: conflicting explanations

It is difficult to argue against the Labour government's basic premise that, in order to secure their viability, neighbourhoods must be made liveable. Indeed, a clean, visually appealing, safe and tolerant environment would probably be amongst most people's criteria when selecting where they would like to live. As such, government ministers have repeatedly argued that its crackdown on high visibility threats to liveability and quality of life is simply a response to the demands of residents, whose lives are being made unbearable by the activities of 'neighbours from hell' (Field, 2003; Nixon and Parr, 2006). Moreover, for a government committed to social justice and improving the everyday lives of those on the margins of society, intervening in behaviours that impact so negatively on what Nixon and Parr (2006) describe as a sense of 'at homeness' – the ability to be at ease in the private space of the home – has symbolic and electoral significance. The pursuit of liveability has further symbolic importance in that it signals that nowhere is beyond the reach of government policy. Whereas in previous decades urban authorities were content

simply to shunt signs and symbols of disorder from high value commercial and leisure areas to surrounding ghettos (Short and Ditton, 1998; MacLeod, 2002) – the ‘out of sight out of mind’ approach – government now trumpets the penetration of the most socially and economically marginalised communities by its new disciplinary techniques (Respect Taskforce, 2007).

This concern with disciplining the ‘hard to reach’, instilling in them pro-social values and respect, is an example of the communitarian ethic which underpinned much of Tony Blair’s premiership. Communitarians, often criticised for evoking an idealised ‘golden age’, lament the erosion of traditional values and the usurping of collective social responsibilities by unearned individual rights (Levitas, 1998; Etzioni, 1998). They call for the rebuilding of the institutions of civic society such as the family and the community and, as New Labour has so often advocated, the rebalancing of rights and responsibilities (cf. Home Office, 2003b). Indeed, Labour has shown that it is prepared to go to considerable lengths to change the values of those unwilling to accept their responsibilities to wider society. The latest incarnation of the government’s communitarian discourse, the Respect Agenda (Home Office, 2006), promises tough action to enforce considerate and neighbourly behaviour.

While recreating a culture of respect to fix aspects of what David Cameron recently called ‘Britain’s broken society’ (*Daily Telegraph*, 2007) is an end in itself, strong local communities are also believed to be well placed to exercise informal social control over their members (Wilson and Kelling, 1982; Johnstone, 2004), even if it is often forgotten that there can be a considerable gulf between what a community and the law deem acceptable (Crawford, 2001). There is also a concern, in spite of government claims that the Respect Agenda is ‘not about going back to the past or returning to the days of “knowing your place”’ (Home Office, 2006), that respect is, indeed, uni-directional in so much as it is socially excluded ‘problem’ people who are expected to be respectful of the values and norms of ‘hard working families’.³ Indeed, the communitarian impulses of New Labour, backed by legislation and campaigns encouraging ever more enforcement, have tended to empower ‘respectable’, ‘active’ citizens to take action against the disreputable, ‘yobbish’

element within communities. Reporting on his investigations in Britain, the European Human Rights Commissioner (2005) observed that ASBOs criminalised the behaviour of 'individuals who have incurred the wrath of the community'. While there is no doubt that 'neighbours from hell' who commit grievous 'neighbourhood spatial abuse' do exist, the definition of ASB is so loose and the mantra of 'enforcement, enforcement, enforcement' so strong that there is a risk that those already marginalised within society become ever more so as the more articulate, the older and more established, the better educated and those most willing to engage with the relevant authorities work to define what constitutes acceptable behaviour⁴ and, by extension, mobilise the powers available to them to control the behaviour and spatial practices of those viewed as agents of disorder.

The asymmetric nature of the liveability engendered by New Labour's policies, whereby conditions improve for some at the expense of the freedoms of others, finds resonance in the work of Loïc Wacquant on the penalisation of poverty. In a series of publications, Wacquant (2001a, 2001b, 2005, forthcoming) explores the way in which neo-liberal states are becoming increasingly reliant on their criminal justice systems to manage the economically unproductive and disruptive elements of society. Here, the poor are punished for their marginality; for their inability to adapt to or unwillingness to submit to the rigours of neo-liberal capitalism. Wacquant notes that governments have 'hollowed out' welfare programmes while strengthening the 'penal fist' to such a degree that the criminal justice system remains one of the few policy domains through which states can exercise genuine influence over their citizenry. Furthermore, as penal policy rapidly supplants social policy, the criminal justice system rather than social welfare services becomes more and more the arena where the socially excluded citizen and state come into contact. This shift is well illustrated by the emphasis the British government has placed on enforcement action against the anti-social.

In recent years, the greater use of ASB reduction powers has been encouraged by ministerial rhetoric, local publicity campaigns and special government initiatives, the latest example being Respect

Areas – 40 local authority areas wherein the more effective and efficient deployment of ASB measures is to be facilitated. During this period, by contrast, assistance to aid the anti-social in changing their behaviour has been limited. The Individual Support Order (ISO), which since 2004 can be imposed on young people alongside an ASBO and provides structured help to recipients in addressing their behavioural problems, has been used very little due to funding constraints and a lack of awareness about them on the part of magistrates (Youth Justice Board (YJB), 2006). Indeed, during 2005 only 42 were issued (Respect Taskforce, 2007). Moreover, it has been revealed that in many areas Youth Offending Teams, although supposedly central to the delivery of youth justice, were not always involved when children in their areas were subject to ASBO applications and, as a consequence, were unable to press for alternative and potentially more appropriate courses of action or provide post-sentencing assistance (YJB 2006; Home Affairs Select Committee, 2005).

The widespread adoption of punitive solutions to social problems – the so called penalisation of social policy – is captured succinctly by Wacquant (forthcoming) when he notes:

'Penal severity is now presented virtually everywhere and by everyone as a healthy necessity, a vital reflex of self-defence against a social body threatened by the gangrene of criminality, no matter how petty.'

There has been much debate over what has fuelled this punitive turn (Garland, 2000; Pratt et al., 2005; Tonry 2004; Wacquant 2001a; Young, 1999), if indeed such a 'turn' has occurred at all (Matthews, 2005). The key drivers, according to most commentators, are the economic and ontological insecurity that are thought to typify the late modern era, with the increasingly precarious inclusion of the once contented middle classes fuelling a hardening of attitudes towards criminal 'others'. In his most recent work, Young (2007) has moved the debate further forward, arguing that the tenuous nature of social inclusion is such that vindictiveness now colours the relationship between the 'haves' and those on the margins whose hedonistic, at times almost carefree lifestyles,

seemingly unhindered by the daily grind associated with work and responsibility is envied at the same time as the threat they, as folk devils, pose is feared.

While the criminology of vindictiveness is a new departure, the notion of the socially included seeking to shore up their uncertain socio-economic position at the expense of the poor is not. In his work on New York City in the 1990s, Neil Smith (1996; 1998) coined the term 'revanchism' ('revanche' being the French for revenge) to describe the retaking of city spaces from the poor by middle class gentrifiers. The revanchist city, Smith (1996: 227) argues:

'...is a divided city where the victors are increasingly defensive of their privilege, such as it is, and increasingly vicious defending it... The benign neglect of 'the other half', so dominant in the liberal rhetoric of the 1950s and 1960s, has been superseded by a more active viciousness that attempts to criminalize a whole range of 'behaviour', individually defined, and to blame the failure of post-1968 urban policy on the populations it was supposed to assist.'

Revanchism took on perhaps its purest form in mid 1990s New York, when Mayor Rudolph Giuliani's 'quality of life' campaign made parts of the city unliveable for the homeless and those whose survival depended on the informal economy; when the NYPD quite literally reclaimed the city for 'respectable' people by means that on occasions stretched the boundaries of legality (see Smith, 1998). Although attempts to make British neighbourhoods more liveable have relied on methods very different to Giuliani's police-led strategy, there are striking similarities in, firstly, the post-welfarist willingness to blame and exclude rather than assist and seek to identify root causes, and, secondly, the desire to purge public spaces of difficulty, that is to say activities, behaviours and individuals whose presence is deemed out of place and infringes 'common sense moral order' (Nixon and Parr, 2006: 91; Young, 1999). There would seem to be every chance in the coming years, as the overheated UK housing market forces the migration of middle class home buyers into the previously less sought after parts of towns and cities, that calls to pacify urban space and discipline agents of disorder will intensify.⁵

Conclusion

The New Labour government has a vested interest in making Britain's neighbourhoods more liveable: safe, clean, attractive and tolerant neighbourhoods are more likely to be sustainable and well-disciplined communities less likely to be a burden on the criminal justice system. To deliver liveability however, behaviour and pastimes to which a blind eye may once have been turned have been recoded as sufficiently deviant to warrant (usually punitive and enforcement based) intervention by agencies of the state. As Squires (2006) has noted, the language of ASB is essentially a new way of talking about pre-existing incivilities and low-level criminality but, crucially, this supposedly never-before-witnessed ASB has functioned as 'a virtual metaphor for the conditions of contemporary Britain, particularly its youth' (p251). Coupled with concerns about the breakdown of respect, marauding groups of hoodie-wearing teenagers, other forms of 'neighbourhood spatial abuse' and the increasingly commonplace continuation of private lives in public spaces – swearing, loud mobile phone conversations, playing music, or drink-induced shouting and screaming – by people seemingly oblivious of the impact their activities are having on the lives of others, the discovery of ASB and the public concern it has aroused has proved a powerful motor for government action.

In order to enhance liveability, government has taken steps to tackle both signs and symbols of disorder. While some initiatives have focused on cleaning up the physical environment and curbing the activities of those who pollute or in other ways detract from the visual appearance of urban neighbourhoods, it is in empowering communities to discipline their disorderly members where efforts have been concentrated. This tough government response to an 'out' group implemented with the fulsome support of others within society, is reminiscent of the 'consensual authoritarianism' which Norrie and Adelman (1989) argued was characteristic of Thatcherism. Then, the Conservative government proved extremely adept at mobilising the aspirational and respectable small 'c' conservative segment of the working class in support of its crackdown on more militant working class 'enemies within', such as the miners. Two decades later it is once again the respectable members of working class communities who

have been enrolled in a disciplinary project, this time setting the boundaries of acceptable behaviour and, prompted by the new agencies working in this field (see Home Affairs Select Committee, 2005), calling down the power of the state on those who do not abide by their agreed norms. As well as tending to exclude rather than include the hard to reach (see Young, 1999; 2007) and to entrench divisions between the deviant and the law abiding, New Labour's cure for disorder has drawn families and communities into its social control matrix in new and unsettling ways. Parents must now police their children's behaviour under pain of criminal sanction or the termination of tenancy, young people must take care over the number of friends they fraternise with in certain public space if they are not to be 'dispersed', and being a 'good citizen' can now also include keeping detailed notes of the ASB of fellow community members with which to present the authorities. The dispersal of discipline (Cohen, 1985) across deprived communities has arguably made certain spaces more liveable for some, but to achieve this goal the mesh of the penal dragnet has been narrowed and many more caught up within it.⁶

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Notes

¹ Some of the ideas explored in this article are developed more fully in work I have produced with Gordon MacLeod published as: *New Labour's 'broken' neighbourhoods: liveability, disorder and discipline?*, in Atkinson, R. and Helms, G. (eds) *Securing an Urban Renaissance: Crime, Community and British Urban Policy*, Bristol: The Policy Press.

² For a discussion of research into Dispersal Orders, see Flint and Smithson, 2007.

³ For a discussion of the significance of respect to the socially excluded see Young, 2007.

⁴ What ASB constitutes is left very much for local interpretation. It is defined by the Crime and Disorder Act 1998 as, 'behaviour by a person which causes or is likely to cause

harassment, alarm or distress to one or more persons not of the same household as that person. Thus, one person's normative behaviour may be another's ASB and this gives rise to concerns about justice (or injustice) by geography. The grounds on which the police can intervene to disperse group in areas blanketed by Dispersal Orders are similarly open to considerable interpretation. Here, people may be moved on if their presence 'has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed' (Anti-Social Behaviour Act 2003, Sect 30.3).

⁵ This clash of cultures and expectations has been a problem previously associated with city centre living (see Hoskins and Tallon, 2004). Here there is a contradiction between the city centre as a space of 'licensed liminality' (Hobbs et al 2005) where hedonistic leisure pursuits are encouraged by entrepreneurial regeneration strategies and the city centre as 'home' or living space, where loud music and the noise made by inebriates are not a welcome addition to the 'urban idyll' in the early hours of a working day.

⁶ 'Caught up' in that they come into greater involuntary contact with agencies of the criminal justice system, but this might simply mean being expelled by the police from a Dispersal Order zone. While there is an argument that the ASBO criminalises recipients for behaviour which in itself is non-criminal and, as a consequence, is sucking more and more mostly young people into the criminal justice system, the limited evidence available indicates that the majority of ASBO'd children are already known to the authorities and in many cases have a number of previous offences to their name (Home Affairs Select Committee, 2005). That is not to say that there are not many other problems with ASBOs which fall outwith the scope of this paper (for examples see www.asboconcern.org.uk).

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14

Whose right to the city?

Surveillance and policing the working class in the regenerating city

Dr Roy Coleman

'In another decade or two Britain will have learned to manage the problem – meaning you will have learnt how to keep the underclass from getting underfoot, even though its numbers are undiminished.'
(Charles Murray, *The Sunday Times*, 3 April, 2005: 6)

In Murray's narrative the right to the city is circumscribed and placed alongside the pursuit, punishment and containment of threats to the contemporary urban: namely, the poor whose 'place' is outside of 'normal' social functioning. What he calls 'custodial democracy' will ensure that the 'neighbourhoods we seal away from the rest of us' are rendered non-threatening and indeed silenced (ibid). His vision of a spatially demarcated city expunges the 'disorder' of the poor and dovetails with a politics of urban regeneration that interweaves notions of visibility, spatiality and discipline – reverberations of which are ensconced within New Labour's modernisation idea. For example, The Respect Agenda speaks of the 'intractable problems with the behaviour of some

individuals and families ... in the most deprived communities' (2006: 1). It is here where 'we should build a culture of respect for the modern age' (ibid:5). This moralising imperative takes place within the neo-liberalisation of the city, which has itself helped restate the problem of policing the working class in a general sense. This wider social policing designates multi-levels of surveillance (classification, monitoring and 'knowledge' assigning processes) which problematises and targets the urban poor. This latter group are positioned in a spatially problematic place within a current material and moral restructuring of the city – the trajectory of which has been gathering momentum for the past 30 years – where investment, individualisation, competitiveness and market sovereignty have consolidated a new urban mantra. The proliferation of 'capable' eyes now surveying the streets of the UK including cameras, street wardens and business funded street cleansing initiatives are, in the words of a government document, integral to bolstering 'the extended police family' (Home Office, 2003: 54). It is argued here that the ubiquitous surveillance of the poor have a bearing upon how 'the right to the city manifests itself' (Lefebvre, 1996: 173). A key question is whether current surveillance practice and organised responses to crime move the city toward or away from 'a superior form of rights: right to freedom, individualisation through socialisation, to habitat and to inhabit' (ibid). A focus on rights to the city urges a re-consideration of 'crime control' and how it intersects with a representation of class and classed subjects in contemporary urban 'regeneration'. Murraysque depictions of the 'underclass' reflected in governmental and media discourse code the urban poor as 'backward', atavistic and culturally impoverished - as occupants of a problematic space in relation to 'rights' codified in the new urban frontier. Narratives of ill repute not only recall some longstanding class based fears and judgements as to social worth but form the wider backdrop to policing the working class. Wider narratives of working class irresponsibility coupled with the responsabilisation of the business class, and the privileging of property rights in the city more generally need to be challenged if we are to argue for - not only democratic criminal justice practices - but a broader sense of the right to the city.

Regeneration, modernisation and the degenerate

'Our culture is yob culture ... we are welfare dependent and our problems wont be solved by giving us higher benefits. We are perverse in our failure to succeed, dragging our feet over social change, wanting the old jobs back, having babies instead of careers, stuck in outdated class and gender moulds. We are the 'challenge' that stands out above all others, the greatest 'social crisis of our times.' (Peter Mandelson in Skeggs, 2004: 8).

Mandelson's words can be read as a Foucauldian surveilling discourse in its depiction of working class subjectivity that at the same time designate a means to control it. Under New Labour, urban regeneration forms a key plank of its modernisation programme in which 'progress,' 'the modern' and the causes of social exclusion are articulated. The working class poor are problematic in the sense that their behavioural and moral outlooks stand against 'modernisation'. They are thus a subject population to be policed and 'educated' in a very broad sense. The presence of the 'anti-modern' working class potentially, if not actually, hinder the trajectory of regeneration that engenders a notion of commodified urban space through which the rehabilitation of property – through heritage sites, cultural and consumption zones, iconic architectures and increasing property prices – reinforces a performative and visual regeneration (Coleman, 2005). Thus modernisation dovetails with an ideology of urban space governed through self-promotional entrepreneurial discourses that, in taking inspiration from business models, rework discourses of social entitlement and socio-spatial participation. A notion of visually pleasing space propagated through central government urban design guidance documents forms the backdrop that – in recognising business logic - tie 'the look' of the urban fabric to successful regeneration (DETR, 2000) along with the encouragement of appropriate behaviour and decorum in renaissance spaces. This notion of regeneration works towards the effectivity of space where the visible takes centre stage, encouraging not only the performance of consumption and tourism but, increasingly, the performed appreciation of 'culture' and 'art' in the city that now form part of the consuming experience (Coleman, 2005). As a driver for 're-awakening civic

pride' this notion of regeneration is to be 'supported by strong enforcement action' against anti-social behaviour in public space (Department of the Environment, Transport and the Regions, 1999: 2). At the outset then a behavioural problematic sits at the centre of regeneration discourse within a set of visual signifiers denoting 'successful' regeneration. In relation to regeneration discourse, the 'working class poor' (although the terminology is rarely applied) are problematic by virtue of their own cultural shortcomings. 'Awakening civic pride' is a behavioural-cultural cog that stresses individual choice to engage, or not to engage, in these new times regardless of economic position and constraint.

Within entrepreneurial regeneration vernacular, an inclusive social imagery resonates more closely with models of crime control discourse and practice. Appeals to an inclusive social entity are predominantly couched in negative and oppositional terms with reference to degenerate, 'anti-social' activities:

'Anti-social behaviour means different things to different people – drunken 'yobs' taking over town centres, people begging by cash points, abandoned cars, litter and graffiti. [...]. Anti-social behaviour creates an environment in which more serious crime takes hold. [...]. It blights people's lives, undermines the fabric of society and holds back regeneration.' (Home Office, 2003: 6).

A definition of the modern social is presented in contradistinction to its supposed antithesis – the anti-social. This construction of regeneration promotes a 'quality of life' unhindered by degenerate forces: the criminal, unruly and the nuisance. Despite the illusion of a wide definitional scope of anti-social behaviour seen in the above quote – meaning 'different things to different people' – there is in truth a fairly narrow media and governmental circumscription of what counts as 'anti-social' in public spaces. A presumption exists that the 'blighting' of peoples lives should be understood primarily as a problem of street behaviour - particularly the behaviour of the poor. The quality of life at stake here is that of the propertied and 'responsible' individual or organisation. Within this rhetoric the voice of the newly responsabilised is constructed and privileged while those labelled 'anti-social' are relatively silenced – thus

reworking the distinction between the 'rough' and 'respectable' (those that 'take a stand' against anti-social behaviour).

At the other end of the class spectrum other voices have become more capacious in contemporary modern regeneration. The notion that 'businesses are part of communities and can be victims of anti-social behaviour' (Home Office, 2003: 70) has underpinned private sector funding and management of urban surveillance systems as an empowering technology enabling 'consumers' the 'freedom and safety to shop' (Home Office, 1994: 9). Alongside this, local chambers of commerce and privately sponsored town centre management consortia have been incorporated into local strategic partnerships (under the *Crime and Disorder Act 1998*), not merely as 'a source of funds' but as educators in the skills of 'project management and technical know-how' (ibid: Sec. 2.33). As part of such developments 'the business friendly city' is an idea which captures the meaning and political direction of contemporary urban 'regeneration'. Here we can glean the trajectory of a vociferous war on the enemies of modern renaissance buttressed by the empowerment of capital to shape the urban form. These developments are discussed with reference to Liverpool a city, like others, that is undergoing profound political, socio-economic and cultural change.¹

Re-branding, regeneration and class in Liverpool

Representations of urban space as creative and performative are crucial in directing strategies that are aimed as much at local constituencies in convincing them of the legitimacy of entrepreneurial city building. This is the case with the Capital of Culture in Liverpool, described by its architects as 'the people's bid' (*The Observer*, 7 September 2003) along with socially inclusive notions of place implied in slogans such as 'The World in One City'. The theatrical language that portrays contemporary urban regeneration in Liverpool paints a forward looking, spontaneous and playful urban scene that is nevertheless demonstrative of a new class hegemony in the city. The responsabilisation of marketised institutions now governing urban space are often presented in the local media through the 'heroic' status of high salaried 'city slickers' who articulate the means and meaning of

state leadership, 'partnership' and local democracy (Coleman, 2004). In Liverpool city centre, for example, - now branded 'Liverpool One' by its developer, The Grosvenor Group - the marketing director hails the 'New Rules' associated with this space as expressing the 'confident and multifaceted nature' of the city:

'The 'New Rules' are the driving force behind Liverpool One and describe Grosvenor's philosophy in creating the development. Six core rules will be launched ... They are: Make new rules, Involve everyone, Love the city, Think big, Create more, and Be best. The rules, however, are fluid and have the ability to change and evolve as the development progresses.' (Spokesperson for Grosvenor. Daily Post, 1 November 2005)

The Rules for the new city centre fabricate an ideal citizen in that this 'is no ordinary regeneration story' because Liverpool people 'possess so much passion, so much pride, and such a desire to shop' (ibid). The Grosvenor Development in Liverpool is Europe's biggest city centre development costing over £1 billion and covering a huge 42-acre site. The Liverpool site was acquired from the City Council when the leasehold was given at no cost to the private developer for a 250-year period. To establish Liverpool as a 'premier European city' the form of corporate aggrandisement at work here is not only geared to maximise external investment but confers responsibility for the new city centre to organised capital to be privately policed with gated access and 400 surveillance cameras. The privatisation of 35 city centre streets with no public right of way points to the consolidation of propertied rights in urban politics along with power to construct and ideologically represent such spaces.

Although officially dubbed a 'public realm', Liverpool One is an experiment in the urban gating of an area to cater for city centre living, high-quality consumption, tourism and leisure. This enclosing tendency in the urban form speaks to a responsabilised middle class, empowering their 're-entry' into urban spaces previously perceived through a lens of fear and ungovernableness. The development will be patrolled by United States style quartermasters whose role is described by one council official

involved in the scheme as to 'control and exclude the riff-raff element' (Coleman, 2004: 233). A spokesperson for the developers put forward the logic for this strategy in saying that 'we are developing a series of quarters for the area which will have security staff making sure that people maintain reasonable standards of behaviour' (ibid). In denoting terms like 'reasonableness', the managers of entrepreneurialised space are able to articulate a version of the public interest in a reworking of social civility. Within this context, the network of cameras and security guards is ideologically positioned by its proponents as a 'people's system' and the city centre as a 'people's place' (Coleman, 2004). The New Rules that accompany this development are attempts to hail and responsabilise agencies and individuals within a broader re-branding of urban identity:

'Our image campaigns are aimed at addressing local audiences as much as outsiders ... The best burglar jokes are about Liverpoolians, but Liverpoolians tell them best. So that is why there are Mersey Partnership campaigns aimed inwardly to address Liverpool people and their relationship to the city. We are saying ... 'you are not just poor or self-pitying'. We have to get across the fact that Liverpool people are not all scallies, they have flash, well dressed young people who drink cappuccinos.' (Regeneration Manager in Coleman, 2004: 146-147)

Re-branding is refracted through talk of responsabilised self-governing subjects (whether they are responsible authorities, 'active citizens', businesses or consumers) and underpin and reformulate 'new' moral obligations and behavioural codes to be applied in traversing rejuvenated city space. In September 2004 the Chief Executive of Liverpool City Council, Sir David Henshaw, articulated anxieties of the new primary definers of respectable urban space when he spoke of how 'sometimes Liverpool can be a mind bogglingly awful place, where the glass is always half empty. There are some things we do not do well – such as customer care, cleanliness, litter. We are still an ordinary city'. He spoke of the 'immature and irresponsible' sensibility of Liverpool people in undermining the new entrepreneurial spirit (*Daily Post*, 2004, 15 September). This thinly veiled attack on what he called 'the

whingers' of the city, identified working class foot-draggers whose sensibilities hinder the regeneration drive. This also set the context for implementing a wider educatory and disciplinary strategy aimed at cultivating 'a friendly welcome' among those that work in the front line of service and tourist industries as well as instigating fines of £135 for dropping matches, cigarettes and paper in the city.

Henshaw's comments indicate how emblematic representations of class are drawn through sensitisation towards desirable and undesirable urban behaviours that speak of middle class fragility and anxiety in relation to the visibility and indeed viability of elite modes governance reflected in re-branding. In exploring the wider regeneration vernacular of power we can see that crime control is embroiled in processes beyond formal criminal justice and into the realm of the spatial-cultural as a site through which to cultivate the elite's confidence in 'their' city. Through funding and managing CCTV systems, the growth of private security networks and the private funding of public police officers, the private sector has an important role in a reclamation strategy that targets and stigmatises behaviours of a non-consumerist nature; including street trading, skating and begging (Coleman, 2005).

Improving the city for business

Business Improvement Districts (BIDS) are depicted by their proponents as more flexible mechanisms for meeting local business needs and circumventing inefficient local democratic decision-making (Coleman, 2004). Established under the Local Government and Finance Act of 2003, 23 BIDS now operate pilot schemes in the UK and, as the brochure of Liverpool's BID makes clear, can be 'established where businesses want them' (2004: 17). Like other BIDS, Liverpool's model promotes 'street cleanliness' as a catch-all category under which problems of marketing, environmental improvements and 'street safety' become conflated. To achieve 'a culture of cleanliness' Liverpool's BID utilises the privately funded CCTV scheme and specially funded police patrols to 'control beggars and homeless issues'²; enforce existing bye-laws in relation to litter, illegal trading and skateboarding; and has encouraged an audition and licensing system for vetting 'quality' street entertainers and 'community artists' (Liverpool BID, 2004: 25). The focus is firmly on

'effective management' of the 'look' and ambience of streets 'to stimulate greater economic investment' (ibid) in a context of what is seen as greater competition between city regions.

In the light of inter-urban competition, BIDS are part of a local jump onto the neo-liberal bandwagon where the cultivation of 'business friendly cities' undercut, often more democratic, alternative local visions of political rule. The bandwagon effect applies to the spread of camera surveillance in the UK with the pressure to develop systems through funding regimes that insist on developing and utilising private know-how. The BID, as the crafting of sovereign control over territory, helps hegemonise the idea of the corporation as essential to maintaining socio-spatial order and normalises, through financial promotion and ideological re-presentation, a politics of corporate power that is difficult to scrutinise. BIDS prioritise new ways of envioning the city, extending beyond the regulation of legally defined crime to encompass behaviour problematic to a scripted urban imagination where order is strived for through quasi-legal forms of control and constraint.

Silencing, violence and regeneration

Regeneration for the business class means greater political power, resources and infrastructure as the means to articulate and materialise an urban vision. For the poor, regeneration offers less room for manoeuvre and reworks a form of self-responsibilisation without recourse to organised infrastructure with which to envision a 'credible' and alternative political voice. Given the imbalance of material power, the structure of regeneration produces a silencing understood as an 'attitudinal and behavioural subordination to political standpoints which are regarded as authoritative' (Mathiesen, 2004: 9). This does not mean that neo-liberalised regeneration goes unchallenged.³ Where as the working class poor have to 'live up to' and attain credible behavioural standards, the business class has without fear and with much favour attained the power to act, the means and ends of which lie beyond local democratic scrutiny (Whitefield, 2006). The right to the city is evermore dictated by the power of capital. Such power has consequences in the 'biggest building site in Europe' (Liverpool City Council, 2007: 98) and particularly for those who

labour within it and seek to challenge aspects its direction. The HSE Report in 2007 described Merseyside 'the most dangerous place to work in the UK' (*Liverpool Echo*, 26 March 2007), not helped by union leaders being banned from Liverpool One over disputes concerning casualisation, accidents and pay.⁴

In this context, policing the working class in the regenerating city has a number of interlocking dimensions in need of exploration. First, the rehabilitation of private property acts as a frontier against the un-propertied. The performative enactments of property 'constitute ... spaces, investing them with particular valences and political possibilities' (Blomley, 2003: 122) which not only brings its own rules, space-shaping technologies and forms of harm but also allows freedom for a moral entrepreneurs to define the how space is produced and used.

Second, techniques of crime control and associated discourses of censure exist as a continuum of violence to the extent that they display a common concern with curtailing spatial mobility in extending the threshold of transgression. Violence is made more likely when the social support aspects of the state are rolled-in (see below) relative to, for example, marketing and policing practices. This is evident, for example, through the eye of a street camera as the celebrated motif of neo-liberal space. Through the camera lens a host of urban social problems; including popular protest, homelessness, street trading and petty violations to local byelaws become detached from any social context, and instead are defined through the lens of crime, disorder and 'nuisance'. Violence against property outlaws enacted within crime control practice includes; moving on loiterers; fines for skateboarders and litter louts; child curfews; exclusions from space (using Anti-Social Behaviour Orders and banning orders); stops and searches (overwhelmingly targeted at black people in Liverpool); physical attacks by police and security personnel against rough sleepers (Coleman, 2004).

Third, 'safe places to do business' are preoccupied with an aesthetic of 'crime and grime' that reinvigorate the perceived necessity of 'broken windows' theorising which, if nothing else, begins (and probably ends) with a focus on the superficial appearances of

crime and disorder. The social significance of the least powerful, in terms of rights to a political voice and urban habitation is almost entirely eradicated through criminogenic reasoning. The criminalisation of poverty and powerlessness is therefore an over-looked flip side to regeneration practice and dovetails with Murray's sense that 'the underclass is no longer an issue because we successfully put it out of sight and out of mind.' Mystification through re-branding drives a corporate-state 'backlash' against the poor along with attacks on progressive social movements in cities more generally (Katz, 2001: 108). If an outcome of surveillance practice in the city is the hiding, silencing and mystification of powerlessness and social conflict (Coleman, 2004) then Murray's fantasy of the visibly purified city may be coming to fruition through generously resourced surveillance networks that by-pass the structures of democratic accountability.

Fourth, the growth of a real-estate regeneration industry ignores the needs of the poor. Liverpool is rated as having the lowest form of growth in the UK with the most benefit claimants and least jobs (*Daily Post*, 9 July 2007). In a recent national report it was found that Liverpool had the greatest discrepancy between rich and poor where the wealthiest earn three times more income than the poorest (*Daily Post*, 14 June 2006). Coupled with this an Audit Commission Inspection Report in 2004 demonstrated (and reinforced in its 2007 report) how exclusion operates through what it called the 'financial mismanagement' of Liverpool city council in relation to its support for the city's poorest groups (Audit Commission, 2004). The roll-in of support encompasses groups including; homeless people, refugees, asylum seekers, young people leaving care, the elderly and women fleeing domestic violence who were rated in the Report as receiving 'poor' service from the council (*Liverpool Echo*, 4 November 2004). Services for homeless people were described in the Report as 'like the workhouses of the 1900s' (ibid). The decline of social control (as a check on the free-market and rampant individualism) constitutes a form of social harm epitomised by the de-prioritisation of state provisions for the poor. This makes violence directed at the poor more likely as my own research into experiences of homeless people in Liverpool confirms. Shifts in local state resources and

the prioritisation of growth also have an impact on issues that used to be a part of local democratic debate around rights to the city. For example, policing the black population was only 20 years ago, and like in other cities, a point of fractured debate – however imperfectly – between local authorities and police. This appears less so in the current climate of re-imaging indicated, in part, by the fact that 1 in 3 black people were stopped and searched between 2002 and 2003 – a rise of 112% (*Liverpool Echo*, 2 July 2004). Moreover, black people lodge 40 percent of complaints against the police in relation to stop and search practices and are nearly 10 times more likely than whites to be stopped and searched in the city (*Liverpool Echo*, 29 March 2004). The Racial Harassment Unit in the city has reported ‘a culture of denial in the public sector’ when acknowledging and responding to racist violence. The Unit itself faces the possibility of being disbanded through funds being withdrawn by Liverpool Council and Merseyside Police (*Daily Post*, 6 July 2006).

Such local political re-positioning is reflected within the broader debates surrounding New Labour’s approach to wealth distribution (Hills and Stewart, 2005), and its self-prescribed ‘success’ on ‘toughness issues’ (Watkins, 2004). Again, ‘risky’ working class behaviour, and its potential to contaminate public sanctity, is depicted as harmful to the working class themselves and who appear as a body outside of governance (Skeggs, 2005). There is a distinct lack of political will to reverse the ‘grotesque caricatures’ of people living on low or no incomes in the UK (Bamfield, 2005: 6). Instead such caricatures underpin a range of disciplinary state interventions entwined with a marketisation of the social. Out of this emerges a discourse that reinforces prevailing definitions of ‘crime’, ‘risk’, and ‘harm’ as emanating solely from powerless and ‘disaffected’ people; those known-unknowns who pollute the glamour of city space. The ‘naturalisation’ of the criminal, the deviant and the wrongdoer, through CCTV replays for example, portrays in synoptical fashion the nightmares that may follow were the forces of urban ‘degeneration’ to be allowed a free reign and contaminate the urban civic aesthetic. In this sense, ‘reminders of the unevenness and fragmentation brought about by capitalism are being pushed out of the central spaces of the city, and

significant rhetorical and physical vigilance is mounted against their return' (Katz, 2001: 107).

Fifth, 'the tendency to de-socialise property's violence' (Blomley, 2003: 134) is evident as property is rehabilitated and naturalised in contemporary urban regeneration. Moreover, the rehabilitation of property reproduces structures of vulnerability through an unequal distribution of risks that pinpoint problems around environmental pollution, unsafe and unhealthy working conditions and the sale and distributions of unsafe goods. As 'crime control' and zero tolerance proliferates (for the powerless), and narrows (for the powerful), the costs of each fall heavily upon the most disadvantaged groups (Coleman, Tombs and Whyte, 2005).

In conclusion, we need to reassess the role of 'property as a crucial category in the organising of social and political relations' but also begin to put forward progressive rights claims in arguing that 'the massive wealth generated through real estate should be treated as a social dividend, rather than a private entitlement' (Blomley, 2006: 4). This would go some way to redressing the view of the poor as poor solely on the basis of their cultural traits and question the pitiful lack of surveillance, scrutiny and moral judgement directed at the powerful. For it is out of the cultural dumping of the poorer urban inhabitants that the symbolism around disorder produces a myopic construction of the relationship between 'crime' and 'class'. It is class inequality, and how this comes to be misrecognised (as a socio-cultural disease and *not* as a social harm) that needs to be addressed if we are to move towards an open and democratic debate about urban social possibilities.

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Notes

¹ In Liverpool, the Capital of Culture is purported to be worth £2billion in investment in the run up to 2008, with 14,000 new jobs created in the service industries to manage the expected growth in tourism (*City*, March 2003). Key signifiers of regeneration such as gentrification and rising property values are, as Shelter point out, leading to actual increases in local homelessness (*Liverpool Echo*, 21 December, 2004) which point to a source of risk *within* the regeneration process for less well-off groups.

² Dealing with homelessness is encompassed by a politics of visibility and is reflected in national approaches: 'No one in this country should beg – it is degrading for them, embarrassing for those they approach and often a detriment to the very areas where environmental and social improvements are crucial to the broader regeneration of the community itself. We need to tackle the nuisance and intimidation caused to those going about their lawful business, by people who persistently beg (Home office, 2003: 340).

³ See Lupton (2003).

⁴ Liverpool union leaders point to the fact that local tradesmen are not part of the city's property renaissance and are undercut by hiring migrant labour. As one union leader stated, 'in the 21st century people have a right to stable employment' (*Daily Post*, 6 January, 2006).

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15

The socialisation of crime control?

A critique of New Labour's 'social' approach to crime control

Dr Daniel Gilling

Introduction

For observers of the domain of criminal justice policy making, one of the most pressing questions accompanying the arrival of the New Labour government in 1997 was whether there was going to be a renewed emphasis upon addressing the social causes of crime. Through previous Conservative administrations, talk of social causation had become unfashionable, both politically (hence Home Secretary Michael Howard's notorious assertion that the cause of crime was 'the criminal'), and criminologically (hence the rise of 'the criminologies of everyday life') (Garland, 2001). In the particular field of local crime control, the above question translated more specifically into the question of whether, under New Labour, we would see a paradigmatic shift away from the Conservatives' preferred model of situational crime prevention, and towards a more progressive model of community safety along the

lines proposed by the Morgan Report (Home Office, 1991), whose recommendations the Conservatives had roundly ignored.

To explain, situational crime prevention directs attention at those criminal opportunities that unwittingly become embedded in the physical fabric and design of particular situations, that can then be 'designed out' by the manipulation of those situations, thereby negating or reducing such opportunities through, for example, various forms of surveillance or target hardening. Yet while successful in terms of reducing specific crime problems (see Clarke, 1997), situational crime prevention brings with it a concern that success may only come at the cost of 'designing in' a socially divisive and corrosive fortress mentality. There also remains a nagging doubt that whilst opportunities may be blocked, criminal motivations remain largely unaffected by situational measures, and thus problems may be merely displaced. The nature and extent of displacement may be hotly debated by criminologists, but it is hard to imagine that, other things being equal, criminal motivations would simply disappear in concert with the associated opportunities that can be designed out. Indeed, in the changing social context of the 1980s and 1990s, associated as it was with an economic restructuring that left large swathes of urban Britain to the mercies of market forces, and vulnerable to family and community breakdown, particularly in the light of welfare retrenchment in areas such as social housing and income maintenance, any sense of the death of social causation seemed wildly, indeed ruthlessly, premature.

As a concept, community safety may incorporate situational crime prevention within its armoury of crime control measures, but it also recognises the latter's limitations and consequently seeks to complement it with an approach that also addresses social causes, thereby 'mopping up' the criminal motivations that would otherwise be left frustrated by situational methods alone, or pre-emptively countering them before they become manifest in criminal behaviour. These social causes may be proximate, located, for example, in attempts to support parenting and to build community infrastructures, or they may be more distant, located in

the structures of capitalism that generate economic disinvestment and widening social inequalities.

In his pledge that a New Labour government would be tough on the causes of crime, Shadow Home Secretary Tony Blair offered some hope to those advocating community safety over situational crime prevention. Indeed, in the *New Statesman* article in which the now infamous New Labour soundbite first appeared in print, as one of five key crime control objectives Blair (1993) committed his party to implementing the Morgan Report's recommendation to establish permanent local statutory crime prevention partnerships. In the same article he clearly recognised the social correlates of crime, and in classic third way style he described as 'false and misleading' the notion that there are only two sides to the 'law and order' debate – those who want to punish the criminal and those who point to the poor social conditions in which crime breeds' (1993: 27). New Labour, in pledging to be tough on crime and tough on the causes of crime, would be looking at both sides, and in the case of the latter at least this appeared to be a nod in the direction of community safety.

The question that remains, that the rest of this article endeavours to answer, is whether New Labour has indeed moved in the direction of community safety, thereby effectively socialising the discourse of crime prevention. The answer given is that while crime prevention has been socialised, it has been socialised in a way that does not necessarily further the cause of a more progressive policy of local crime control. Before we begin, however, two notes of caution must be sounded. Firstly, limitations of space prevent us examining everything New Labour has done in the field of local crime control. Much of this falls under the label of 'crime and disorder reduction', which combines elements of situationalism with elements of law enforcement, deterrent patrolling and disruption, and which has rather little to do with the social causes of crime. Our focus here is upon what is recognisably 'social' in its preventive orientation, and our aim is to unravel its social character. Secondly, the emphasis in the article is upon policy as it has been 'made' or imagined at the centre, amongst the political elite and principal architects of the New Labour project. There is a real

difference between what is conjured up at the centre and what emerges in local translations (Edwards and Hughes, 2005), and therefore what follows is more a critique of the New Labour project than of local practice, though it is recognised that this project exerts a powerful influence upon local practice, not least because of the managerial tools that the former has at its disposal.

Early signs of progress

The *Crime and Disorder Act 1998*, through which New Labour realised its pledge to establish local Crime and Disorder Reduction Partnerships (CDRPs), appeared to open up the space for community safety. In contrast to the Conservatives, who had always endeavoured, albeit not always successfully, to steer localities in the direction of situational crime prevention, New Labour introduced their reforms alongside an apparently principled commitment to *local solutions for local problems*. Since many localities had been practising their versions of community safety for much of the 1990s, despite the Conservatives' rejection of Morgan, this appeared to offer the green light for such an approach to continue.

One element of New Labour's thinking on crime lent further encouragement to those expecting a progressive social approach. On taking up office, New Labour moved quickly to make social exclusion a strong policy focus, hence the establishment of the strategic Social Exclusion Unit (SEU), with its brief to develop joined-up policy solutions to 'wicked issues'. Importantly, as evidenced by the SEU's (1998) first report, *Bringing Britain Together: A National Strategy for Neighbourhood Renewal*, the concept of social exclusion was stretched to include crime as one of its many features. In that report, social exclusion was presented as a phenomenon that was thought to be spatially concentrated in some 4,000 English neighbourhoods, caused by a combination of economic changes, social changes, the failure of previous urban policies, and the poor quality of public services in such areas. Although crime did not feature prominently in this report, the report did cite perception survey evidence that showed crime and anti-social behaviour to be among the most pressing problems that local residents faced, and it conveyed the impression that while aspects of social exclusion caused crime, crime made

such aspects worse. There is a close similarity between this representation of crime and its representation in an earlier Labour Party document authored by Straw and Michael, who acknowledged that '(p)overty and lack of opportunity cause crime. But crime and disorder worsen poverty and reduce opportunity further' (1996: 5).

The National Strategy for Neighbourhood Renewal became New Labour's flagship programme for tackling social exclusion and, implicitly, for addressing the social causes of crime. As heralded by the SEU report (1998), it relied upon an approach intended to 'reduce the gap' between these 4,000 excluded neighbourhoods and the rest of the country, via a three-pronged strategy that comprised a range of area-based initiatives (ABIs) such as health and education action zones; mainstream programmes such as those relating to welfare reform; and the establishment of 18 separate policy action teams (PATs) to explore and make recommendations on issues, such as anti-social behaviour and school truancy, that existing policy responses had yet to properly or effectively address.

On the face of it, the coupling of crime with social exclusion by the SEU marks a clear point of difference between the discursive formations of New Labour and its Conservative predecessors when it came to matters of local crime control, because of the Conservatives' frequent denial of 'the social'. The acknowledgement of social causation is something of which progressive advocates of community safety were likely to approve. However, although the SEU couples crime and social exclusion, the fact of their coupling does not of itself guarantee a progressive approach towards tackling the social causes of crime.

Discourses of social exclusion

One way of seeking to understand this issue is to place it in the context of different discourses of social exclusion. As Levitas (2005) has observed, the concept of social exclusion is something of an empty vessel that takes on the character of the discourse poured into it. She discerns three such discourses in the contemporary usage of the term, namely a redistributivist (RED) one, a social integrationist (SID) one, and a moral underclass (MUD) one. The RED

discourse imagines exclusion as a problem of relative deprivation, both in terms of income and social participation, and envisages its solution in terms of redistribution and the restitution of full citizenship rights for those from whom they have been denied. The SID discourse imagines exclusion more narrowly, in terms of marginalisation from the labour market, the solution being 'insertion' into the labour market. And the MUD discourse imagines exclusion as a consequence of the individual and/or cultural failings of 'the excluded', who are presumed to lack appropriate habits of industry and propriety. These are the underclass as imagined in the work of Charles Murray, identified in particular by their criminality, their illegitimacy, and their withdrawal from the labour market.

Of the three discourses, it is RED and MUD that concern us particularly at this point. The RED discourse fits most neatly with the criminological perspective of left realism, which sees relative deprivation as a principal social cause of crime, along with the cultural process of 'othering' portrayed by Young (1999), which hinders the social participation of those that have been so-marginalised. Significantly, left realism is also the closest criminological parent of progressive community safety. The MUD discourse, meanwhile, connects most strongly with the right realism that was initially born in the US, associated particularly with such characters as James Q. Wilson, Charles Murray and John Dilulio. Right realism effectively contends that 'bad people' exist, produced and reproduced in underclass cultures of poverty. Their 'inclusion' requires the enforcement of law and order, via measures such as zero-tolerance policing, that are justified as means of fixing broken windows (Wilson and Kelling, 1982); and measures directed at re-moralisation, particularly through the enforcement of individual, parental and community responsibility. So, which of these discourses does New Labour's 'social' approach sail most closely towards?

The limits of spatialisation

The picture of exclusion painted by the SEU is, as noted above, a spatialised one. As Watt and Jacobs (2000) observe, by setting 'the excluded' apart in such a neat way, whereby 'the excluded' are

always contrasted negatively with 'the included,' this spatialisation plays into the hands of a MUD discourse. It makes exclusion governable in a way that fails to address the structural processes that generate exclusion in the first place. Watt and Jacobs (2000) illustrate this in the case of social housing by showing how 'the housing problem' comes to be conceived by the SEU as a problem of hard-to-let estates, whose reputations have been forged out of the bad behaviour of their tenants. There is no recognition that the housing problem may alternatively be a problem of the lack of provision in large parts of the country, notably the South East, or attributable to more literal structural problem such as poor design or build quality, as well as poor styles of housing management. A further problem with this spatialisation, often noted in critiques of ABIs, is that it misses many who may be excluded who fall outside the spatial boundaries; and it diverts attention away from the exclusionary processes that may be occurring outside these boundaries, as if beyond the boundaries lies only inclusion. Spatial exclusion may be a particularly obvious and manifest form of exclusion, but it is not the only form (Byrne, 2005).

The constraints of New Labour's philosophical foundations

If spatialisation is one contributor to the presence of a MUD discourse in New Labour's social approach to local crime control, another contributor is the philosophical rationale that underpins its welfare reform programme. New Labour differentiates itself from 'Old' Labour through a commitment to 'social justice' conceived narrowly as equality of opportunity, not equality of outcome. Cynically, one might argue that this new commitment to equality of opportunity is intended to show off New Labour's 'capital friendliness', by distancing itself from the 'tax and spend' image of 'Old' Labour's nominal commitment to equality of outcomes. In terms of addressing the social causes of crime, what it does is to establish a governmental commitment in particular to find opportunities for paid work as the principal route out of social exclusion, with relatively little interest taken in the quality of such paid work, and little interest taken in other forms of unpaid work, particularly caring for children or other vulnerable people (Levitas, 2005).

New Labour's vehicle for delivering work and training opportunities, the New Deal, operates on the assumption that work opportunities are generally available, but that people – particularly those dependent upon benefits – have to be 'activated' to take advantage of those opportunities. This has been done, for example, by making the payment of welfare benefits conditional upon recipients actively seeking work (so-called welfare-to-work), and by stimulating work opportunities through direct payments to employers, or through indirect subsidies in the form of tax credits. This 'activation' is seen as a means of addressing crime because it provides individuals with an income that makes criminal solutions unnecessary, because it gives them a 'stake in conformity', and because it also has a moralising effect, helping wage-earners to develop self-esteem and to take responsibility for themselves and their families. The implication that those dependent upon welfare benefits have not taken advantage of available work opportunities belies the MUD foundations upon which the New Deal is built. The assumption that work opportunities are available, furthermore, neglects the structural fact that in a very unequal labour market many of these are poor work opportunities (Byrne, 2005) that provide little more than a revolving door between work/training and unemployment, and that in many parts of the country there may be insufficient labour market demand to generate work opportunities in the first place (Hall, 2003). The New Deal may have been praised for having reduced the unemployment rate, but its 'success' has had more to do with a supportive economic climate and subsidy than with the veracity of the presumption that work opportunities are out there for those who can be morally 'activated' into habits of industry. In the context of a very unequal labour market, moreover, it does nothing to address the feelings of relative deprivation that left realists see as a major social cause of crime.

Finally, the valorisation of paid work as a moral end in itself, and as a crime control measure, starts to look disingenuous when it comes with the de facto denigration of unpaid work, as it does in the case of single parents, who are put under considerable pressure to find work as soon as possible, because of the importance of good parenting as a developmental crime preventive measure in itself. On the theme of parenting, and as a part of its national

child care strategy, New Labour has put in place several hundred Sure Start schemes, intended to support the parenting of children aged under four, and premised upon the crime preventive successes of the Perry Pre-School Programme in the USA. There is, however, a strong MUD element to Sure Start because '... it is still founded around a rectifying deficits model of the parenting ... of the children who engage with the scheme' (Byrne, 2005), and its provision is targeted at the most deprived electoral wards in England, making it a spatialised policy that fails to recognise the structural disadvantages experienced by those parenting within a society that generally fails to value the social contribution of good parental child care, too frequently still denigrated as women's work.

The New Deal is an important part of New Labour's mainstream social policy approach to addressing the social causes of crime, and, as we have seen, the far from radical commitment to equality of opportunity leaves it vulnerable to capture by a MUD discourse. The same problem exists with ABIs, which form the other core ingredient of neighbourhood renewal, but in this case the philosophical cause of the problem is not so much a commitment to equality of opportunity, but rather New Labour's commitment to the moral authoritarian communitarianism of influential thinkers such as Etzioni (Hughes, 1996). A principal theme of many ABIs, such as the New Deal for Communities (NDC) is to secure the regeneration of urban areas, both socially and physically. The social end-point of this regeneration, well captured in the idea of an urban renaissance, is an imagined community of renewed civility, where '... the agenda is the remoralisation of social life' (Levitas, 2005: 91). This imaginary takes its cue from Etzioni's communitarianism, based on an idealised, consensual view of the moral order where individuals take responsibility for themselves, their families, and their neighbourhoods. In this view, participation is conceived largely in terms of the exercise of social control (Levitas, *ibid.*), in terms of the ability to act as the responsible, entrepreneurial consumer of late-modernity. Problems arise when attempts are made, through regeneration, to realise this imaginary, which totally neglects the reality of the power imbalances and conflicts that exist within and between actual communities.

Although physical regeneration may be concerned primarily with the physical built environment, it has important social consequences. Thus, for example, the physical improvement of residential areas is often accompanied by a gentrification that involves, in effect, the replacement of a putative underclass of flawed consumers with those who are better able to fulfil the imaginary of this renewed civility. The improvement of retail and leisure areas, often opening up regenerated areas of mass private property for the benefit of outsiders and visitors (Hancock, 2003), moreover, may be accompanied by various measures of physical exclusion, drawing upon the technology of CCTV and the personnel of the extended policing family, that are designed in effect to keep the flawed consumers – groups of young people, homeless people and others who do not look the part – out.

On the more explicitly social side of regeneration, heavy emphasis has been placed upon the importance of community participation. But as we have noted, this is participation conceived as control, premised on a community deficit model (Taylor, 2003), which calls upon residents to exercise the control that is presumed to have been lacking in the past. In this vision, the neighbourhood warden becomes something like the new model citizen (Whitehead, 2004), but for those who cannot or will not comply authoritarian measures may be used to secure compliance and suppress conflict. Perhaps it is no surprise, as both Levitas (2005) and Emmel (2005) have noted, that it is social order maintenance – particularly targeting issues like anti-social behaviour and truancy – that has tended to become predominant in areas subjected to social regeneration. Some of this, such as measures of contractual governance like parenting orders or acceptable behaviour contracts (Crawford, 2003), has its own responsabilising logic, while other parts may be more purely coercive in orientation, as one might surmise from the growing prison population, that disproportionately contains residents from such areas. In this way, then, social and physical regeneration perpetuate a MUD discourse that looks to address the social causes of crime not by addressing inequalities, but by enforcing responsibility on those that can, and controlling and excluding others. In this way, the social causes of crime are managed, but not addressed.

It would be misleading to characterise all efforts at enhancing community participation as being orientated towards order maintenance and social control. Neighbourhood renewal and, more recently, civil renewal, have sought to engage communities with the policy process in more conventional participative ways, that offer some channel for the pursuit of a RED discourse-informed approach to social problems by overcoming the problems of system and structural failure (Taylor, 2003) that may result from a lack of community participation in the policy process. However, as many commentators have observed (Byrne, 2005; Dinham, 2005; Lawless, 2005; Raco et al., 2006), attempts genuinely to empower community participants have proven difficult to realise, as they have been variously marginalised from or incorporated into the policy process.

More recently, New Labour policy has shifted in emphasis somewhat, from tackling social exclusion to building social capital, on the understanding that social capital is now regarded as a route to renewal and regeneration, providing individuals with the capacity to generate pro-social attitudes and to exercise informal social control within their neighbourhoods ('bonding' social capital), and connecting them to governmental authorities and work opportunities ('bridging' social capital) beyond their immediate neighbourhoods. As it is a property of civil society, social capital is something that governmental action struggles to influence, but the way in which New Labour has pursued its mission has done little to alter the course of the MUD discourse that flows through its social approach to local crime control. Thus, for example, attempts to engage 'the community' in voluntary activity feed off the same community deficit model discussed above, while the idea of building social capital through voluntarism itself can founder on the tendency of some voluntary agencies to become disconnected from their membership and entwined with governmental authorities as part of a 'shadow state' (Fyfe, 2005). More obviously, attempts to build social capital through crime and anti-social behaviour control also seek to address community deficits through a dose of responsabilisation that, when expressed through crime control, inevitably leads to a degree of 'othering' based on conflict, mistrust and suspicion that is often strongly

influenced by populist punitive attitudes (Farrow and Prior, 2006). Any inclusion, where residents are united against anti-social others, is bound to be offset by the exclusion of 'others' who are most likely to originate from amongst the most powerless and vulnerable groups in society.

The problem of managerialism

Before concluding the discussion, the last part of this article briefly considers the way that a more progressive approach to the social causes of crime has been hindered by the New Labour project's adherence to managerialism, ostensibly as a way of keeping that project on track. Expressed mainly in the form of Public Service Agreement (PSA) outcome-oriented targets, against which the 'performance' of public agencies can be measured and compared, this managerialism has inadvertently undermined the pursuit of progressive community safety. Progressive community safety requires a joined-up approach that connects crime to its proximate and distant causes, whether they be situated in families, neighbourhoods, regions or beyond. To this extent, and in recognition of the limitations of criminal justice responses to crime (Faulkner, 2003), the embedding of crime within the broader concept of social exclusion was a positive policy development of New Labour's. However, the problem that managerialism causes is the effective de-coupling of crime from its broader context, in two principal and related ways.

Firstly, as many others have observed (e.g. Crawford, 1997), the performance management agenda tends to operate in such a way that individual agencies are endowed with targets related to their 'core business' that effectively force them to concentrate on their own narrow, traditional specialism, developing the very 'silo mentality' that joined-up concepts such as social exclusion are intended to address. Health agencies, for example, that are pulled in to partnerships such as CDRPs to consider the contribution that they might make to community safety, find themselves drawn away to concentrate on targets such as reducing hospital waiting lists or increasing throughput, which leaves them little in the way of time, space or other resources to consider their community safety contributions. Secondly, the selection of performance targets

leads to a focus upon what is measurable rather than upon what is most effective practice. The isolation and use of measurable performance indicators can result in the misrepresentation of the real processes of social change (Byrne, 2005) that may be occurring as the social causes of crime are (or are not) being addressed. Measurement may be oriented at the manifest symptoms of social exclusion, such as police crime statistics, but focusing upon such symptoms ontologically separates them from the processes that produce them. Effectively, then, their use when expressed as targets is to make social exclusion governable, by imagining it '... as local bundles of educational, health, employment, crime, transport and housing problems.' (Emmel, 2005). The aggregation of these symptoms, as local crime rates, for example, does not relate in any straightforward way to the problems that joined-up policy may be trying to address: the statistics do not directly measure efforts to address social causes as such. This makes the pursuit of a joined-up policy, which is more likely to connect with a progressive, redistributive approach to the social causes of crime, less likely. In turn, it probably makes a MUD approach more likely, because it counts the symptoms of social exclusion – as instances of crime and disorder, or instances of enforcement (such as the number of ASBOs issued) – upon which this moralising approach focuses its explanatory attention: the excluded are defined in terms of what they do (which can be measured), rather than in terms of the structural forces to which they are subjected. Crime becomes a problem of its occurrence, not of its causation.

Conclusion

It was the aspiration of many, and certainly of the proponents of progressive community safety, that in contrast to the Conservatives, who had done their best to deny the fact of social causation, New Labour's pledge to be tough on the causes of crime would translate into a renewed assault upon the social causes of crime. In office, New Labour has certainly made moves in this direction, with the establishment of CDRPs to pursue local solutions for local problems, and more particularly, for this article, the connection of crime with the joined-up concept of social exclusion, which has mutated more recently into the idea of building social capital. However, while it is clear that New Labour's approach to local crime control is more

'social' than that of its Conservative predecessors, it is not a social approach that is progressive in its orientation, along the lines of the RED discourse of social exclusion identified by Ruth Levitas (2005). Rather, New Labour's social approach accords more with Levitas's MUD discourse, which would have sat as comfortably with the Conservatives, whose forays into 'the social' tended to be used to assert the existence of an underclass whom, in John Major's famous phrase, we should understand a little less and condemn a little more.

In part, New Labour's ploughing of this MUD furrow is attributable, as this article has shown, to its philosophical foundations, based upon a far from radical commitment to equality of opportunity rather than outcome, and a distinctly conservative strain of communitarianism. In part, however, a more progressive approach has been undermined by the constraints imposed by a spatialised approach to social exclusion, and by the constraints of an ill-conceived performance management agenda, that reveals more of the nature of New Labour's passion for centralised control than it does of the way public policies actually set about addressing social problems. It follows that the prospects for a more progressive approach to the social causes to crime might improve were these constraints to be addressed. Good policy analysis and advice might go some way to overcoming the limitations of spatialisation and managerialism, but altering New Labour's philosophical underpinnings may require the kind of political change that presently looks like it will be a long time coming.

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16

Terrorism, counter-terrorism and Muslim community engagement post 9/11

Dr Basia Spalek and Robert Lambert

Introduction

The notion of 'community' features significantly in criminal justice policy and practice. Underpinned by the principle of 'active citizenship', whereby individuals are encouraged to volunteer their services and participate in, and contribute to, civil society, communities are viewed by government as an important resource for tackling crime and incivility, by working with local criminal justice organisations, as well as other statutory and voluntary sector organisations. Similarly government and police have long proclaimed that 'communities defeat terrorism' and sought to make communities hostile environments for terrorists. In reality 'terrorism' and 'counter-terrorism' remain contested terms both notoriously resistant to definitions that governments and communities can agree on and both susceptible to conflation with other agendas. This paper addresses a conflation between the al-Qaida movement responsible for a 'severe' terrorist threat in the UK (Security Service,

2007) and influential narratives addressing 'radicalisation' and 'extremism'.

In a post 9/11, 7 July 2005, London bombing environment, engagement with Muslim communities takes on particular significance, and includes an added dimension of counter-terrorism activities whereby Muslims are encouraged to work with state agencies in order to help combat terrorism, radicalisation and extremism. Therefore, it might be argued that Muslims' responsibilities as active citizens have increasingly been framed by counter-terrorism and counter-radicalisation policies which encourage internal community surveillance so that the responsible Muslim citizen is expected to inform the authorities about the activities, suspicious or perceived to be suspicious, of their fellow community members, and to actively help deal with any potential threat, whether terrorist, extremist, radical, or even 'fundamentalist.'

Nonetheless, the issue of engagement with Muslim communities for the purposes of counter-terrorism, counter-extremism and counter-radicalisation, whilst stimulating much controversy and debate within social policy and media arenas, has generated little sustained academic research attention. This paper addresses that gap and consists of two sections. The first section highlights some key questions that community engagement raises in relation to Muslim groups when the topic is counter-terrorism, counter-extremism or counter-radicalisation. The second section focuses on Salafis and Islamists, minority sections of heterogeneous Muslim communities in the UK that are regularly conflated with the terrorist threat by influential commentators. In doing so, section two highlights contested police and community partnerships in London where the skills of Salafis and Islamists in tackling al-Qaida influence in sections of the community that are susceptible to it are empowered. As such the second section serves to illustrate some of the complex and challenging issues raised by the notion of community participation in challenging the range of threats outlined in the first.

Section one

Government discourse appears to emphasise the importance of the involvement of Muslim communities in helping to combat terrorism, extremism and radicalisation. For example, in the National Policing Plan 2005 to 2008 it is stated that the 'counter-terrorism strategy of government is underpinned by strong intelligence processes within each force area and strong communities to build and increase trust and confidence within minority faith communities' (Home Office, 2005a: 2). Moreover, in the aftermath of the 7 July bombings in London, 2005, the British Government put together seven 'Preventing Extremism Together' working groups consisting of representatives of Muslim communities who drew up a series of proposals seeking to respond to extremism, and these included a professional development programme or the 'upskilling' of Imams and mosque officials, as well as a national campaign and coalition to increase the visibility of Muslim women, and empower them to become informed and active citizens, amongst many other proposals (Home Office, 2005b). 'Preventing Extremism Together' clearly contains the expectation that Muslim communities are to work with government to help address this issue. For example, as part of this initiative a consultation was launched by the Home Office which sought views on 'how the government and communities can work together to prevent extremism', and also sought views on 'a proposed legal process and powers that strengthen the hand of the community and police in dealing with extremism at places of worship' (Home Office, 2005b: 77)

Key questions

Despite the emphasis placed upon community involvement in counter-terror, counter-extremist and counter-radicalisation strategies, community engagement here raises a number of questions that research and policy makers are yet to properly address. Indeed, how Muslim groups work through engagement with government and police to empower their communities in challenging terrorism, extremism and radicalisation is an under-researched and under-explored area. One key question is the following; which groups should be involved in engagement work

when working towards challenging terrorism, extremism and radicalism?

Currently, there is considerable discussion about which Muslim groups should be excluded from engagement work with the government and police due to their 'extremist' or 'radical' nature. There appears to be no consensus among government officials, the police and security services, and indeed within Muslim communities themselves, as to which Muslim groups the word 'terrorist', 'extremist' or 'radical' should encompass. Most controversially major Muslim groups in the UK insist on regarding Hamas and Hizbollah as legitimate 'resistance fighters' in the face of government censure of the same groups as 'terrorists.' Moreover, some UK Muslim communities have been accused by media commentators, policy makers, security experts and academics, as well as by other Muslim communities, of being extremist, of holding religious and political views that are seen as being contrary to the norms of a liberal state democracy, and therefore should be excluded from processes of consultation and engagement (Malik, 2007). With the rising number of proscribed groups under anti-terror legislation, one can surmise that the number of individuals excluded from engagement mechanisms is likely to rise. However, there needs to be greater reflection upon which individuals should be excluded from engagement processes. For example, can individuals claiming they are loyal to the wider ummah and loyal to the fundamentals of Islam be included in processes of dialogue and participation, and, if governments or security officials decide not, then what are the possible implications of these types of decisions? Can individuals who consider themselves to be 'radical Muslims' also be law-abiding British citizens who therefore should legitimately be part of engagement processes?

These questions can be linked to broader questions about whether, how, and the ways in which, those Muslim groups that occupy less powerful positions, or who are seen potentially as 'troublesome', may be marginalised or ignored in engagement approaches. Such consideration in turn gives rise to further questions: do government and police sometimes choose different Muslim groups

to partner and if so why? To what extent do government, police and communities agree on what partnership means? To what extent does a partnership approach conflict with a policy to recruit informants from Muslim communities?

Diversity within the Muslim population

The Muslim population in Britain is diverse and increasingly fluid. For example, Muslims comprise of Pakistani, Bangladeshi, Indian, Afghan, Arabic, Iranian, Turkish, Kurdish, Somali, Kosovan, Malaysian, Jamaican and Nigerian origin communities, as well as people belonging to black and white convert communities. In London mother-country loyalties are slowly giving way to new inter-cultural and inter-ethnic Muslim communities amongst Muslim youth. Politically active Muslim groups in the capital have formed strong alliances with non-Muslim political activists, most notably securing a victory for the anti-war Respect party and former Labour rebel MP George Galloway in the 2005 general election campaign in Tower Hamlets. Within Muslim communities there are also differences in relation to gender, age and socio-economic status. Furthermore, there are many different and competing religious and political strands within Islam, with different groups representing these strands.

The wide variety of Muslim groups, and the diverse nature of Muslim communities, pose challenges for partnership work. A key research question therefore is to explore which Muslim groups are represented in partnership approaches. For example, the voices of young Muslims and women are particularly likely to be marginalised through usual consultation processes. At the same time, it is important to explore which religious strands within Islam are represented in engagement processes, and what the ethnicities are of Muslim individuals who are taking part in engagement processes.

Power differentials in partnership approaches

Another central issue is the power differentials that exist between Muslim groups and the police, and how perceptions of engagement work between police and Muslim groups may differ. Police may be confident that engagement implies a level playing

field but many Muslim community representatives have first-hand experience of being singled out for critical scrutiny when going about their business, both in the street and when traveling through UK airports, and this may undermine their confidence as stakeholders. Similarly an engagement approach may be fatally flawed if government officials, police and community representatives hold different views as to the root causes of the problem they seek to tackle – in this case terrorism, extremism and radicalisation. Such problems may be heightened when engagement work consciously seeks to become a partnership (see section two). Given the importance that attaches to time and confidence building in all partnership endeavours it is unsurprising that government and police tendencies to move ministers and officials at regular intervals has militated against their intended purpose. This highlights an issue raised by other researchers who have studied working partnerships – that there can be considerable difficulties arising from, and tensions within, partnership approaches (Garland and Chakraborti, 2004).

The wider social and political context

Another key area relates to examining the wider social and political factors that impact upon community engagement initiatives in relation to counter-terrorism. British foreign policy can impact negatively upon engagement as this serves to alienate Muslims, and indeed is one of the most significant sources of anger within Muslim communities (Briggs, Fieschi and Lownsbrough, 2006). At the same time, the 11 September 2001 attacks, as well as the 7 July 2005 bombings, have brought to crisis, core tenets of the liberal democratic state relating to notions of citizenship and individual rights in multi-ethnic and multi-religious contemporary democratic societies, which may impact upon engagement approaches. For example, the issue of Muslim women wearing the niqab has recently generated much political and media debate, with MP Jack Straw stating in December 2006 that he would ask women visiting his constituency surgeries to remove the niqab (Blair, 2007).

Also, the criminalisation of young Asian Muslim men will impact upon engagement approaches - whilst Asian men have traditionally been viewed by the authorities, as well as by wider

society, as law-abiding and peaceful, more recently, young Muslim men have been viewed as constituting a 'problem group' (Alexander, 2000), particularly in the aftermath of the attacks on the World Trade Centre on 11 September 2001. Ethnic minorities associated with Islam have experienced increased attention from the police and security forces. Increasingly, Arab and Muslim populations have been viewed as constituting a possible threat, raising new questions about citizenship, identity, and loyalty during times when individuals' countries of origin, or their culture or faith are seen to be at odds with the dominant norms associated with individuals' countries of residence (Poynting and Mason, 2006).

Section two

An attempt to detonate crude incendiary bombs in the West End of London, and a second failed terrorist attack at Glasgow airport on Saturday, 30 June 2007, served to raise the UK terrorist threat level to 'critical'. This section examines an attempt by powerful lobbyists to conflate what has subsequently been reduced to a 'severe' threat with the political and religious views of minority sections of Muslim communities that are well represented in London – Islamists and Salafis. This conflation is significant given police empowerment of Islamist and Salafi projects aimed at countering the adverse influence of the al-Qaida narrative in sections of the youth community that are susceptible to it.

The argument is simple: Islamism and Salafism pose a subversive threat to Europe and al-Qaida is just the violent tip of a malignant Islamist-Salafi iceberg. On this account a failure to tackle the whole problem is to make a grave strategic mistake. Islamism and Salafism must be tackled in the way Communism was tackled – as a dangerous, long- term, subversive threat. This is to address the most pressing issue in post 9/11 policing. A broad alliance of powerful and influential politicians and commentators are adamant that the al-Qaida terrorist threat is just the tip of an Islamist-Salafi iceberg. As such police should be encouraged to target and monitor Islamists and Salafis as subversive groups or organisations rather than seek to serve them as minority communities. A brief bibliography of a growing canon that demonises Salafi and Islamist communities includes some of the best selling books feeding a

large post 7/7 terrorism market (Gove, 2006a; Phillips, 2006; Bawer, 2006). Other popular books contribute by locating the al Qaida threat within the bosom of Salafism (or Wahabbism) (Olivetti, 2002; Sookhdeo, 2004); by comparing Islamism to Communism (Desai, 2006); by denigrating hitherto respectable UK Muslim groups like the Muslim Council of Britain (Bright, 2006); and by excluding Islamists and Salafis from partnership status (eg Benard, 2004). The list could be multiplied many times. The political voices that concur with the thrust of this argument dominate the mainstream across Europe and the US.

Therefore, it follows on this account, to empower Islamists and Salafis is to legitimise and appease subversives and extremists. Accordingly, both the Mayor of London and, to a lesser extent, the Metropolitan Police Service (MPS) stand accused of this serious charge. For his part, the Mayor remains typically defiant in his willingness to engage publicly with leading Islamist scholars like Sheikh Yusef al Qaradawi and Islamist campaigning groups like the Muslim Association of Britain (MAB). The MPS too has remained loyal to engagement with Islamist and Salafi groups, most notably in support of the Muslim Safety Forum (MSF), in the deployment of the Muslim Contact Unit (MCU), and on London boroughs such as Lambeth and Islington where Salafis and Islamists have demonstrated considerable skill and bravery in tackling the adverse influence of al-Qaida propagandists and recruiters at close quarters.

Thus, in February 2005, an MPS borough commander was challenged by a *Sunday Times* reporter for working in partnership with MAB Islamists to rid the notorious Finsbury Park Mosque of hard-line supporters of Abu Hamza, a key al-Qaida propagandist in London. The reporter presented the police chief with an allegation of MAB connections to Hamas (Fielding and Tahir, 2005). Increasingly, since then, police willingness to distinguish between mainstream Islamist groups (notwithstanding their background connections) and supporters of al-Qaida has become subject to increased scrutiny and criticism (Godson, 2005; Gove, 2006). Moreover, from a community perspective, notwithstanding the work of the MSF, MCU and the MPS, there is a growing fear in Salafi

and Islamist communities in London that they may become subject to monitoring, profiling and stigmatisation in a way that occurs across mainland Europe. This paper argues that while elements of Salafi and Islamist thinking are necessary components in al-Qaida ideology, neither is sufficient. Just as a belief in communism was not sufficient to describe the motivational characteristics of a Red Army Faction terrorist so is it woefully inadequate and misleading to conflate a 7/7 suicide bomber with an Islamist participant in a 'Stop The War' demonstration. Still more misleading to compare an apolitical Salafi purist with an al-Qaida supporter who may be described as a 'Salafi Jihadist' (Wictorowicz, 2006) or - in the eyes of a Salafis purist - a deviant 'takfiri'.

For most European policy makers, however, Salafi and Islamist communities should be profiled for the same reason that fascist neo-Nazi groups are monitored and profiled: it is a given that Islamists and Salafis pose a similar threat to the fabric of European society. In contrast, this paper argues that it is an overgeneralisation to categorise Salafi and Islamist Muslims as being pejoratively linked to groups that promote terror and violence. Moreover, unless this conflation between violent and non-violent groups is challenged it becomes normal to deal with Salafis and Islamists not as 'communities' but as 'subversive groups' and as 'associates' of subversive groups. The prevailing account of Islamists as members or associates of groups with links to the Muslim Brotherhood is a good example of how adverse attention may focus on one particular Muslim community while seeking to engage positively with other Muslim communities. It is also an example of how police and security services may sometimes focus on 'groups' and 'networks' in ways that obscure the extent to which their operations may sometime impact adversely on 'communities'.

This is also to argue for a greater appreciation of the heterogeneous nature of Muslim communities in London (as elsewhere in Europe) and the extent to which they are misrepresented when divided them into two crude camps – those that are 'with us' and those that are 'against us'. This approach, at the heart of the global war on terror, has, in our view, played into the hands of al-Qaida who intend that precisely this response should

be adopted against them. Shrewd al-Qaida strategists know that over reaction by the US and Europe will increase recruitment and tacit support (both critical) for them. Furthermore, as Alex Schmid reminds us, terrorism should be conceptualised as it is intended – as a form of communication that ‘cannot be understood only in terms of violence’. Rather, he suggests, ‘it has to be understood primarily in terms of propaganda’ so as to penetrate the terrorist’s strategic purpose:

‘Violence and propaganda, however, have much in common. Violence aims at behaviour modification by coercion. Propaganda aims at the same by persuasion. Terrorism can be seen as a combination of the two. Terrorism, by using violence against one victim, seeks to coerce and persuade others. The immediate victim is merely instrumental, the skin on a drum beaten to achieve a calculated impact on a wider audience.’ (Schmid, 2004)

Stripped of pejorative usage, ‘Islamist is a term used to describe an Islamic political or social activist’ and ‘Salafi is a name derived from salaf, “pious ancestors”, given to a reform movement that emphasises the restoration of Islamic doctrines to pure form, adherence to the Qur’an and Sunnah, rejection of the authority of later interpretations, and maintenance of the unity of ummah’ - Muslim community (Esposito, 2003). In our view there is nothing inherent to either community to warrant them being the subject of stigmatisation or religious profiling. Indeed, in the UK a handful of Salafi and Islamist groups have been at the forefront of ground breaking community work that successfully counters the adverse influence of al Qaida propaganda amongst susceptible youth. That in doing so they face the double jeopardy of attack from within their own increasingly alienated communities (‘working with the enemy’) and suspicion from without (‘Islamists and Salafis are allied to the al-Qaida threat’) is symptomatic of a failure to construct a coherent ‘hearts and minds’ counter terrorism, counter-extremist or counter-radicalisation strategy.

Precious little academic or activist attention has been paid to the question of whether Salafi and Islamist communities might be as deserving of equal treatment as other Muslims. Rather comment

is confined to the need to treat ethnic groups – especially Asians (principally Muslims, Hindus and Sikhs) – fairly so as to avoid alienating large sections of the community. Indeed, many Muslim groups have been quick to support the view that Salafis and Islamists are part and parcel of the extremist problem of which al-Qaida is but one manifestation. Thus when the Sufi Muslim Council (as approved by the Department of Communities and Local Government) attacks UK Salafis and Islamists as dangerous extremists one is reminded of Loyalist Protestant condemnation of Catholic communities as terrorist sympathisers in Northern Ireland during ‘the troubles’. Interestingly the Sufi Muslim Council sets itself up as being in the business of ‘counter radicalisation’, that is, presumably, preventing young Muslims from becoming Salafi or Islamist.

Needless to say Salafi and Islamist communities are aware of this government alliance with their religious opponents and tend to retreat further into a position of ‘passive disengagement’ in consequence. Those few Salafi and Islamist groups who engage pro-actively with police to help tackle the adverse influence of al-Qaida propaganda feel dismayed at this development. They complain that police and government refused to take heed when they sought to highlight the extremist problem posed by influential al-Qaida propagandists like Abu Qatada, Abu Hamza and Abdullah el Faisal in London throughout much of the 1990s. Now that the threat is taken seriously government appears more comfortable working in partnership with other Muslim community groups, Sufi groups that have little knowledge of al-Qaida activity and even less street credibility to be able to tackle it. The paper expresses concern that licensing and encouraging one religious community (eg Sufis) to conduct ‘counter radicalisation’ community work against another (eg. Salafis and Islamists) may prove divisive and provide further ammunition for al-Qaida propagandists who seek to demonstrate how UK and other Western governments continue to adopt what they describe as neo-colonial tactics of ‘divide and rule,’ when engaging with Muslim communities.

Moreover, Salafi and Islamist community leaders are at pains to stress how this issue has been exacerbated by a concerted effort from

lobbyists to separate 'moderates' from 'extremists' in the aftermath of 7/7 - a sense of 'good' versus 'bad' Muslims. The contrary evidence of the MPS Muslim Contact Unit is summarised in a recent Demos report that has failed to achieve an impact (Briggs, Fieschi, and Lownsbrough, 2006). This paper considers it will be hugely counter productive to endorse the stereotyping and profiling of Salafis and Islamists. The fact that al-Qaida terrorists adapt and distort Salafi and Islamist approaches to Islam does not mean that Salafis and Islamists are implicitly linked to terrorism or extremism still less that individual Salafis and Islamists are likely to be terrorists or extremists. Equally, UK recruits to al-Qaida have a range of backgrounds that will sometimes include prior affiliation to Sufi or Barelvi traditions (one of the British suicide bombers in a suicide bomb attack in Tel Aviv in 2004 is reported to have Sufi credentials). However, it is axiomatic that by the time individuals become suicide bombers (or other active terrorists) they have bought into al-Qaida ideology and thus a strand of distorted Salafi / Islamist thinking. That is why Salafis and Islamists often have the best antidotes to al-Qaida propaganda once it has taken hold. To conflate them with the problem is to inhibit their willingness to tackle it.

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Regulating the young

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The socialisation of crime policy?

Evidence from the National Evaluation of the Children's Fund

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Our starting point for this paper is the familiar assertion that social policy has, in recent times, become 'criminalised' – that one consequence of the increasing priority attached by governments to dealing with crime and disorder is that the policy and service domains associated with the welfare state (children and family policy, education, housing, health, employment, social security, etc) are required to contribute to the achievement of policy objectives concerned with controlling and reducing crime. In short, social policy has become colonised by, even subordinated to, crime policy.

Whilst not disputing the general trend identified by the 'criminalisation of social policy' thesis, we wish to suggest that the reality is somewhat more complex; and indeed that it is possible to identify instances of crime policy being influenced and altered

by elements of social policy. We begin by setting out some general arguments for seeing the crime policy/social policy relationship as complex and multi-dimensional, before discussing the significance of specific research evidence from the evaluation of a major recent national initiative.

Background to the policy relationship

By way of introduction, two general observations can be made about the relationship between crime policy and social policy. The first is the welfare state's own history of involvement in processes of social control – the manifestation of the disciplinary tendencies of social policy (Squires, 1992). The criminalisation of social policy is not a simple story of the corruption of innocence or of the colonisation of a green and pleasant land by the forces of darkness. Social policy (as demonstrated in the British welfare state and its origins in Victorian and Edwardian times) has its own 'dark side' – it has always had a strong disciplinary/controlling dimension through its functions in regulating the poor and the dangerous classes in society.

Secondly and conversely, for much of the twentieth century the purposes of the criminal justice institutions (police, courts, probation, prisons) were dominated by 'social' theories and welfare rationales that were concerned with the needs of offenders and emphasised the priority of methods of crime control founded on ideas of treatment and rehabilitation rather than retribution and public protection (Hudson, 2002). Crime policy, while never being formally part of what we understand by the 'welfare state', was nevertheless permeated by a number of its core values and objectives.

The changing relationship of crime policy and social policy

Social policy transformations

Arguments about the criminalisation of social policy need to be located within understandings of a wider process of transformation of the welfare state over recent decades. Of particular significance within this process of transformation are three distinct sets of changes:

(i) Changes in the definition of policy outcomes – in particular, the emergence of complex, multi-dimensional policy objectives as over-arching goals of government: examples include ‘social inclusion’, ‘community cohesion’, ‘urban regeneration’, ‘neighbourhood renewal’, ‘respect’ (Percy-Smith, 2000; Levitas, 2005). The penetration of ‘crime and disorder’ policies into traditional areas of social policy (housing, education, child care, etc) is only one aspect of the pressures on individual policy domains to contribute to these more complex goals; for example, local education services required to contribute to the economic development goals of urban regeneration schemes; public health initiatives contributing to strategies for addressing the social exclusion of deprived neighbourhoods; the police contributing to local community cohesion strategies or to neighbourhood renewal initiatives.

(ii) Changes in governance and service structures – the development of cross-sector and multi-agency partnerships as the core vehicles for the development and delivery of policy objectives (Newman, 2001; Glendinning, Powell and Rummery, 2002). The increasing prevalence of partnership-based forms of organisation within public policy carries the potential for weakening the traditional professional and bureaucratic boundaries between policy and service domains, as staff from different policy spheres come to understand each other’s values and aims, to appreciate the benefits for their own service objectives of co-operation with other services, and to develop ways of working together. Partnership actors are increasingly likely to see themselves as contributors to policy goals that embrace a multiplicity of objectives.

(iii) Changes in the relationships between social policy and citizens – a new citizenship in which the individual is cast as a responsible member of a community; and the priority given to ‘community’ as simultaneously both subject and object of policy and a key resource for its implementation (Prior, 2005; Taylor, 2003). The arrival of ‘the community’ in policy discourse and its practical implementation has exposed the representatives of established policy domains (including crime policy) to the realities of life in needy or deprived communities and in particular to the

connections between apparently discrete problems – poverty, ill-health, crime, poor-housing, low educational achievement, unemployment, etc.

There are thus strong grounds for suggesting that the ‘criminalisation of social policy’ is only one aspect of the processes of transformation that have reshaped the objectives of social policy in recent times.

Crime policy transformations

The changes to the traditional domains of the welfare state outlined above have also affected other areas of public policy, including crime and criminal justice. Thus:

(i) Crime policy and practice has itself been subject to processes of transformation – the traditional objectives and technologies of crime control have changed in the face of new social demands and problems (Garland, 1996). For example, changing concerns about threats to social order and the capacity of established crime control policies and institutions to respond adequately to such threats led to the emergence of ‘community safety’ and situational and social crime prevention strategies as new modes of crime control (Crawford, 1998; Hughes, 1998). Moreover community safety is itself to be understood as a complex policy goal involving a range of social outcomes in addition to reductions in levels of criminal offending.

(ii) Ways of responding to crime have been influenced by new governance processes – the requirement for crime control agencies to be full and active partners in multi-agency responses to new social policy priorities is itself a source of change in the development and delivery of crime policy, as crime control agencies become exposed to and influenced by the values and practices of others. Within the crime control field itself, examples can be found of social policy professions influencing police practices in partnership bodies such as Crime and Disorder Reduction Partnerships, (CDRPs) Youth Offending Teams (YOTs) and Anti-Social Behaviour Teams (ASBTs), (Hughes, 2006; Field, 2007; Burnett and Appleton, 2004).

(iii) New relationships with communities have altered the way crime control functions are undertaken – crime control agencies have been influenced by their participation in strategies and initiatives that seek to address the ‘joined-up’ nature of needs and problems in particular communities, in which they experience the potential of different ways of defining problems and different ways of working demonstrated by other agencies; for example, the development of neighbourhood policing and of ‘reassurance policing’, the ‘pluralisation’ of local policing and the secondment of police officers to local authority initiatives concerned with local regeneration and renewal (Newburn, 2002; Crawford et al., 2005).

Children, young people and crime

There are some additional points in relation to policies on children and young people that are helpful in locating the specific findings from the Children’s Fund within the changing crime policy/social policy relationship outlined above:

- The recognition of juvenile delinquency/youth justice as a key arena in which the boundaries between social policy and crime policy have fluctuated over time (Muncie, 1999); and, as part of this fluctuation, emerging evidence of a re-assertion of social work/‘welfarist’ values and approaches within YOTs (Field, 2007) and CDRPs (Burnett and Appleton, 2004) and the influence of this on other agencies including the police.
- The significance of Every Child Matters as the current overarching policy framework for services to children, in which the prevention of children’s involvement in crime is incorporated as one of the outcome objectives alongside, and connected to, others that focus on various aspects of children’s personal and social needs.
- The Respect Action Plan as one of the latest examples of cross-cutting policy objectives, embodying both complexity and contradiction in its simultaneous concerns with enforcement, punishment, prevention and support in relation to young people’s behaviour. It is also apparent that

some elements, such as the provision of more constructive activities for young people in deprived areas, are welcomed by both young people and their parents for reasons that are not just to do with the control of crime and disorder, e.g. impact on personal development and self-esteem, education, participation in wider range of cultural interests (Mason and Prior, forthcoming).

The Children's Fund and its evaluation

The Children's Fund Prevention Programme was established in 2001, following the work of the Social Exclusion Unit and in particular the 'PAT12' report 'Young People at Risk' (SEU, 2000), which highlighted the need for joined-up and multi-agency services for children and young people at risk of social exclusion. The Children's Fund (CF) was delivered across all 150 English top-tier local authorities in 149 partnership arrangements, and strategies were developed to address seven objectives linked to the reduction of social exclusion amongst children aged five to 13 years and their families. These included raising educational attainment and attendance, reducing involvement in crime and reducing the numbers who are victims of crime, reducing health inequalities, and involving children and families in the development and delivery of services (CYPUP, 2001). The CF is funded from 2001 until 2008, with an overall allocation to the programme of £966.6m.

In conceptualising prevention, the CF Guidance issued to local partnerships used two frameworks:

(i) Hardiker's framework defined four levels of prevention, ranging from open access services at level one, to acute services for crisis intervention at level four (Hardiker and Exton, 1991; Hardiker, 1999). Children's Fund services were expected to focus upon levels two and three, so that any problems faced by children and families were addressed before acute services were required. The aim was to learn from CF services so that mainstream provision could be re-configured to this preventative approach.

(ii) The second framework was the paradigm of 'risk and protective factors' (YJB, 2001). Protective factors are those that mitigate against identified risks, but in the Guidance these were left un-defined with the focus instead upon possible risk factors; strategies were expected to enable services to intervene where a number of risk factors combined to indicate 'probable' negative outcomes (CYPU, 2001).

The National Evaluation of the Children's Fund (NECF) was commissioned for 2003 to 2006, and worked across a number of CF programmes that served as case studies. One focus was upon the work of partnerships with a number of identified target groups. Using a 'Theories of Change' approach, the strategies, rationales, activities and outcomes were identified and explored (see NECF 2006 for more information). This included the work of two CF partnerships that aimed to reduce crime and anti-social behaviour, and incidences of victimisation, amongst five to 13 year olds and their families.

Prevention of crime and anti-social behaviour and the Children's Fund

The guidance that detailed the programme requirements for CF partnerships identified as one of seven sub-objectives 'to ensure that fewer young people aged between 10 and 13 commit crime and fewer children between five and 13 are victims of crime' (CYPU, 2001: 69). The sub-objectives underpinned two overarching objectives stressing the need for flexible and responsive multi-agency and strategic approaches to the reduction of social exclusion through the provision of preventative services. Within this conception of the disadvantages faced by some children and families as multi-faceted and interlinked, it was recognised that CF services would have a potential impact on crime reduction, even where this was not their primary focus.

The Treasury's 2002 Spending Review agreed the allocation for the Children's Fund for the next three years, but required that 25% of the allocation for each local programme be spent on 'crime prevention' initiatives developed by the Youth Justice Board (YJB). YJB developed a 'menu' of evidence-based interventions for the CF allocation, issued in guidance in late 2002. Drawing on studies

from the United States and UK, the services developed by YJB worked within the risk and protection paradigm and each of the interventions from the menu was placed within this model. The menu included:

- Junior Youth Inclusion Programmes (YIPs)
- Work with schools, including Safer Schools Partnerships (SSPs)
- Restorative Justice
- Youth Inclusion and Support Panels (YISPs)
- Work with Young Victims of Crime

The list included a final option to develop 'Innovative services or activities which have the specific aim of preventing the involvement of children aged five to 13 in crime' (CYPJ and YJB, 2002).

The imposition of the '25%' requirement can be read as further evidence of the criminalisation of social policy. Whilst the aim to prevent crime and anti-social behaviour was always central to the Children's Fund, the ring-fencing of a substantial proportion of the budget, and the obligation to select from a number of established interventions approved by the Youth Justice Board, represented a significant shift in the conception of the programme and was perceived by many partnerships as a limitation on the identification of local priorities and choices (Mason and Prior, forthcoming). However, as we try to show below, in its implementation the 'crime prevention' strand was interpreted by at least some local partnerships in ways that enabled the development of projects and services that engaged with a much wider range of social needs and concerns than would normally be found under the heading of 'crime and anti-social behaviour'.

Findings from two Children's Fund partnerships

(i) A YISP-centred approach

NECF studied the development of crime prevention initiatives in a medium-sized local authority area. Here, as with many other CF partnerships, the principal means for achieving crime prevention objectives was the creation of a Youth Inclusion and Support Panel (YISP).

The aim of the YISP was to bring together people from a wide range of different services, to enable a broad assessment of a child's needs and subsequent collaborative working to address identified issues. In this authority, the YISP membership included representatives of the Youth Service, Housing, Community Safety, Women's Refuge, Social Services, Education Welfare and the Child and Adolescent Mental Health Service (CAMHS).

Typically, packages of support put together by the Panel included:

- one to one mentoring sessions to address issues such as anger management, low self-esteem and emotional literacy;
- activity based sessions such as sport and trips out to provide alternative positive activities; and
- short-term packages of family work related to bonding and attachment problems, primarily to support parents deemed unable to establish boundaries.

Such packages of support represent a short term focus on reducing risk factors associated with the likelihood of the committal of crime and anti-social behaviour, as opposed to the prevention of crime *per se*. As such, the indicator of success was derived from the expectation that the young person would score lower on a structured risk assessment.

Indeed, even in the medium-term, the intention was to explore with education and other services ways of tracking whether, for example, school attendance had improved for the individual, and whether individuals had progressed further into the judicial system and received further reprimands, final warnings or court appearances. As such, the primary focus was on associated risk

as opposed to actual crime or anti-social activities. The means to deliver a reduction in crime and the risk of crime was presumed to lie not within the youth justice system, but in educational provision, emotional development and family support.

(ii) 'Innovative' approaches to prevention

NECF also studied a CF partnership in a large northern city. Here, we observed a range of services and approaches presented as 'innovative' for the sake of commissioning against the CYPJ requirements. These activities focused on different dimensions of 'prevention' and included:

- A mentoring service for children aged eight to 13 years who had been excluded from school, with the aim of reintegrating the children into mainstream education; thereby reducing the risk of engagement in criminal or anti-social activity that is associated with exclusion from school and poor quality educational experiences.
- A project for children aged five to 13 years who were affected by drug and/or alcohol misuse within their families. The primary aim was to reduce the risk of the children themselves becoming substance abusers, with secondary aims including better physical and mental health, better family relationships, educational improvement and a reduction in crime.
- A locality-based project targeting children aged five to 13 years from one specific area characterised by considerable ethnic diversity and high levels of deprivation. The project offered a range of activities (such as sports and arts) on a multi-ethnic basis, providing personal and social development opportunities as well as diversion from the risk of engagement in crime.
- A Domestic Violence Children's Counsellor for children and young people living in a particular area of high multiple deprivation who had been exposed to domestic violence within their families. The project was premised on the theory

that exposure to violence at a young age is a risk factor in relation to later engagement in violent behaviour.

In addition, CF crime prevention activities were extended to include support for a number of play schemes across the authority area. As with the projects targeting children exposed to the effects of drug and alcohol misuse and domestic violence, the play schemes demonstrated an imaginative approach to the use of CF resources in order to establish early preventive interventions in children's lives. Fourteen play schemes were supported in different local areas, for varying periods of time, providing holiday play activities for any children in the five to 13 years age range who lived in or close to the local area. These were funded from the 25% allocation.

Services targeted particular geographical areas and identified 'at risk' groups. For example, one play scheme was specifically designed for children on particular estates whose families had become homeless and been placed in interim accommodation, as a result of a family crisis or because they were refugees or asylum seekers. These children were viewed as 'high risk' in terms of potential involvement in crime and anti-social behaviour because they typically led chaotic day-to-day lives in an area of high crime. This scheme was notable for its innovation in bringing together play workers, who organised programmes of activities for the children on the estates, with a learning mentor whose task was both to ensure the children obtained a place in school and to help meet their additional learning needs through tailored one-to-one activities, after-school clubs and support for the parents. Constructive working relationships had been developed with the housing management teams responsible for the estates and, towards the end of the research period, the learning mentor post had become mainstream-funded and the play support activities had been linked up to PAYP ('Positive Activities for Young People' – an initiative funding holiday provision) resources. The outcome was viewed as giving the young people opportunities for involvement in cultural and recreational activities designed to assist their personal development, and a framework for access to and continuity of support from relevant services.

In this partnership area, as in other local CF areas studied by NECF, such services recognised the links between, on the one hand, the provision of leisure and cultural activities, skills and education-orientated work, and different types of support for children and families, and on the other hand the incidence of involvement in crime and risk-taking behaviour. In other CF areas such provision was identified both by commissioners as well as service deliverers as having an impact upon crime and anti-social behaviour. For example in a neighbourhood of one large city, services provided structured out-of-school and supplementary learning, holiday and Saturday activities for children and families, and home-school liaison. Providers made reference to the links between enabling children and young people to engage in constructive activities, gain new skills, raise their confidence, and raise their educational engagement and achievement, and to reductions in negative behaviour and the negative consequences that can arise from the lack of opportunities and facilities in particular neighbourhoods.

Crime control within a broader 'preventative' agenda

The initiatives outlined above relate to themes within the research literature about the inter-linking nature of problems that can lead to involvement in crime and anti-social behaviour, and to emerging evidence about effective preventative interventions, at least in the short and medium-term (Prior and Paris, 2005). Whilst not explicitly modelled on the risk and protective factors paradigm, the services illustrated by the examples above are situated within the framework provided by the original Children's Fund guidance through the identification of early intervention and open preventative services.

As such, the means of targeting provision and triggering support are broad but labelled as 'risk' of crime. In both case study sites definitions of the target group were based in assumptions about the kinds of children likely to become engaged in criminal or anti-social activities; assumptions which themselves rest on actuarial or risk-based judgements. That is, there was a basic assumption that children most likely to offend would substantially comprise children from 'dysfunctional' families, in which risk factors such as drug and alcohol abuse, domestic violence and poor parenting

were strongly evident. The impact of these factors would often be seen on children who showed poor self-esteem, social skills and anger management, many of whom had poor levels of school attendance and educational achievement, and some of whom had been 'in care' or had previously offended. This concern with certain kinds of family, in which children were exposed to risks that could lead to involvement in crime and anti-social behaviour, was over-laid by an awareness of risks associated with environmental factors. In particular there was an assumption in both sites that the target group would, to a significant extent, be drawn from areas experiencing high levels of deprivation and social exclusion.

As noted above, in addition to a broad basis for targeting, we also identified a broad range of intended outcomes, with services primarily addressing problems identified as risk factors for crime as opposed to crime *per se*. Assessment and subsequent support was based on an understanding that short and medium term objectives regarding education, health and well-being could still be the primary focus, even if outcome objectives regarding anti-social behaviour and crime were the official indicators for success or failure against which commissioning bodies were monitoring and evaluating. This is further reinforced by the recognised difficulties in evaluating against outcomes of crime prevention. Such indicators are seen to be difficult to measure in preventative terms. As such, risk and protective factors are used as a short term measure or a more realistic account of success or failure, further reflecting the aims of such services.

This is also indicated by the range of agencies providing such services. Frequently service providers were not explicitly crime prevention agencies or those with any previous experience of crime prevention work. Instead they were identifying the crime agenda, and the new money associated with it, as a means to further their own service provision, often receiving funding to maintain pre-existing provision that had previously not been labelled as crime prevention activity. As such, whilst the indicators for success may have altered (although in many cases they had not), providers were delivering an identical service. This is illustrated by one family support service delivered by Connexions.

Whilst the service was targeted at those 'at risk of anti-social behaviour', as identified by a local CDRP, the service delivered to the family on referral was identical to that provided in other Connexions interventions not funded by a crime prevention agenda. When asked about the implications of receiving funding through a crime prevention programme, the manager of the service questioned whether such provision implied the service was 'criminalising family support', arguing instead that it was 'supporting criminalised families'.

Conclusion

We feel that there is, at the very least, sufficient evidence emerging from our own and others' research, to suggest that the criminalisation of social policy thesis needs some qualification. There are complex dynamics at play in current policies that are simultaneously concerned with individual and community well-being on the one hand, and the maintenance of social order on the other (Hughes, 2006). More specifically, there are strong indications of the ways in which local policy implementers and service deliverers are subordinating objectives of crime and disorder prevention and reduction to the pursuit of broader 'social policy' outcomes, and that this is having some influence on the thinking and practice of mainstream crime control agencies.

However if this process of 'socialisation' of crime policy is indeed discernible, it is unclear how far it can be attributed to social policy itself. One consequence of the changing role of the voluntary and community sector in recent years is a highly developed skill in accessing whatever funding becomes available and channelling it into pre-existing purposes. It may be less the case that social policy is enabling the kind of trend we identify, and more that local service commissioners and practitioners are subverting top-down crime-oriented agendas for purely pragmatic reasons, in order to divert much needed resources to meet other perceived needs.

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Early intervention to prevent youth offending – something old, anything new?

Dr Raymond Arthur

Introduction

The UK government's latest youth offending initiative is to intervene at an early stage in the lives of children to stop them growing up into troublemakers (Blair, 2006a; HM Government, 2006). This new initiative has been heralded as a radical new approach to preventing children going 'off the rails' and a 'radical revision for tackling social exclusion'. The central plank of this new approach to youth offending is that the state must be prepared to intervene early in high-risk families in order to prevent young people from becoming problem teenagers and a menace to society. Indeed in May 2007 the government announced that unborn babies were to be targeted in this crackdown on criminality (Ward, 2007). This new plan anticipates that health visitors, the police and social workers will identify children in problem families and at risk of becoming offenders so that intervention can begin before they become involved in anti-social and offending behaviour.

What is truly remarkable about this new plan is that it is not new at all. The power to direct a multi-agency early intervention in order to support young people at risk of offending, and their families, is not a novel new power. Such a power has been in existence for many years and all of the above organisations already have legal duties and powers to work together to prevent young people from offending. In this chapter I will examine how current legislation in England and Wales already provides extensive powers and duties in relation to tackling the familial and social problems that compel young people into a life of crime or social exclusion. I will then investigate if these powers and duties have been implemented effectively in order to respond to the needs of young people. Having identified how the current legislation is performing, I will consider what lessons we can learn from the past and what improvements need to be made in order to deliver a coherent modern system of support in England and Wales that is truly capable of preventing young people 'going off the rails'.

Preventing youth offending - the youth justice system

The Youth Justice Board of England and Wales was established under the *Crime and Disorder Act 1998* and was given a statutory duty to prevent offending by children and young people. Section 37 of the 1988 Act places all those carrying out functions in relation to the youth justice system under a statutory duty to have regard to the principal aim of preventing offending by children and young people. In response to this the Youth Justice Board launched a two track youth crime prevention strategy. Track two focused on post-crime intervention in order to prevent further offending, whereas track one concentrated on pre-crime prevention by reducing risks associated with offending. The plan for track one was to identify 'high-risk' young people at greatest risk of becoming involved in anti-social or criminal behaviour based upon a multi-agency risk factor assessment involving the local authority, children's social care, police force, police authority, health authority, local probation committee or voluntary sector body. The Youth Justice Board envisaged that such agencies, voluntary bodies or individuals would work together to ensure that a multi-agency risk assessment is undertaken. This strategy is supported by Section five of the 1988 Act, which places a statutory duty on all local authorities, police

forces, police authorities, health authorities and local probation committees to work together in combating problems of crime and disorder in their locality. Youth offending teams (YOTs) have been charged with facilitating this joined up multi-agency and inter-agency response to the risks associated with youth offending and social exclusion.

There is a YOT in every local authority in England and Wales comprising representatives from the police, probation, children's social care, education and health authorities and the local authority thus guaranteeing that teams of trained professionals with specific disciplines work together to tackle youth offending. Youth offending teams have taken the lead in creating schemes which provide a rigorous multi-agency process to identify those young people most at risk of engaging in offending behaviour. Pre-crime risk panels have been set up with the aim of identifying children as young as eight who appear to be developing criminal behaviour and offering interventions to tackle this behaviour. Examples of such schemes include Youth Inclusion Programmes (YIPs) which offer a structured and supervised environment and alternative activities for young people who might otherwise become involved in crime. The Youth Inclusion Programme targets their work on the 50 most 'at risk' young people aged 13 to 16 in some of the most deprived neighbourhoods in the country. This group of young people are identified through a multi-agency consultation process, drawing on input from the youth offending team, police, children's social care, education or schools, other local agencies and the community. In October 2002 the Youth Justice Board announced the creation of further pre-crime risk panels in the form of Youth Inclusion and Support Panels (YISPs) in areas with the highest levels of street crime. YISPs comprise a range of experts, including youth offending teams, police, schools and children's social care, who identify eight to 13 year olds displaying problematic behaviour and at risk of offending, direct them into mainstream social services and provide a key worker to offer the young people and their families help.

These are wide ranging and ambitious programmes that enable a great deal of supportive, preventive and rehabilitative work

to be undertaken and are for the most part similar to the latest government initiative. The government's 'radical' new plan to intervene early to prevent youth offending seems to overlap with, and replicate, the role of YOTs. However evidence suggests that much of the work of youth offending teams is concerned with those young people who have come to the notice of the criminal justice system and that preventing youth crime is a low priority. Overall a mere 2.5% of the total youth justice board budget is being spent on preventing offending (Morgan, 2005). For the period 2002-2005 the Youth Justice Board spent just 0.28% of their total budget on directing young people at risk of offending to mainstream services; a further paltry 0.83% of their budget for this three year period was allocated to reducing the number of young people who offend (Youth Justice Board, 2002). In 2005/06 the Youth Justice Board allocated just £9 million of its total budget of £383 million to preventing offending, in contrast 70% of the Youth Justice Board's budget is spent on secure accommodation (Youth Justice Board, 2005a). For the period 2005-08 the Youth Justice Board plans to increase its spending on youth offending prevention to £45 million by 2008 (almost 11% of their total budget), while still spending approximately 65% of their budget on secure facilities (Youth Justice Board, 2005b).

The effect of this budget allocation is that the early intervention youth crime prevention schemes devised by youth offending teams are being developed and implemented in a piecemeal and incremental fashion. For example there are currently approximately 72 Youth Inclusion Programmes, all of which have been guaranteed funding until 2008. The government has indicated its aim for a 50% expansion in Youth Inclusion Programmes (YIP) by 2008 increasing the total number of YIPs to approximately 108 (Home Office, 2004; HM Treasury, 2004). Yet in October 2002 the then Chairman of the Youth Justice Board, Lord Warner, conceded that to have a real impact on youth crime prevention 300-400 of such schemes were needed across England and Wales (Warner, 2002).

As a result of lack of resources and over-reliance on short-term funding, effective procedures for the establishment of social programmes to provide necessary support for children at risk of

engaging in offending behaviour and their families are not being adequately developed. Gray et al. found in their study of young people supervised by YOTs, that YOTs appear to be playing the roles of prosecutor, enforcer, monitor and correctional mentor rather than adviser, mediator, advocate and counsellor. Gray et al. found relatively little mediation between young people, their families and their schools. Gray et al.'s findings suggest that YOTs are not prioritising the goal of reducing the social exclusion of young people (Gray et al., 2003). YOTS were found to provide little help in terms of social support to establish stable family relations, resolve health issues, and succeed in education, training and employment (Gray, 2005). If the latest youth crime prevention initiative is to succeed it needs to address the important issue of resourcing, there needs to be a more wide-ranging alignment of national policy with local provision of resources.

Preventing youth offending – the role of children's services

The *Children Act 1989* recognises the importance of intervening early in high-risk families in order to prevent delinquency and youth offending. Schedule two of the 1989 Act requires local authorities to take reasonable steps to encourage children in their area not to commit criminal offences. *Guidance* suggests that this might involve advice and support services for parents, the provision of family support services, family centres, day care and accommodation, and health care and social care (Department of Health, 1991). *Guidance* does not carry the same legal force as the Statute. Nonetheless they are issued under *Section 7 of the Local Government (Social Services) Act 1970* and local authorities are required to act in accordance with such guidance. Local authority duties are also informed and influenced by *Section 17(1) of the Crime and Disorder Act 1998* which provides that it shall be the duty of each authority to exercise its functions with due regard to the need to do all that it reasonably can to prevent crime and disorder in its area. Thus local authorities have the power to work with vulnerable young people at an early age, and their parents, to help them lead more productive and law abiding lives and prevent them engaging in antisocial and offending behaviour.

The primary responsibility of the local authority in relation to identifying children at risk of offending does not diminish the role of other agencies and the need for inter-agency and multi-agency co-operation in the assessment of children and families. Indeed in *R v Local Authority and Police Authority in the Midlands ex parte LM Butler-Sloss LJ* stressed that '[T]he whole emphasis of the [Children] Act is on inter-agency co-operation.' She highlighted the need for a multi-disciplinary approach to the protection of the welfare of children. To achieve this, there should be effective joint working by education, children's social care, housing and leisure, in partnership with health, police and other statutory services and the independent sector. The 1989 Act provides local authorities with the statutory mandate necessary to call upon other departments within local government, such as any other local authority, any local education authority, any local housing authority, YOT and any health authority, special health authority, primary care trust or NHS trust to assist them in their duties to provide services for children and to prevent youth crime (Section 27 the 1989 Act). The *Children Act 2004* reinforces the need for closer joint working and better information sharing between the various agencies involved with children. The 2004 Act establishes a duty on local authorities to make arrangements to promote co-operation between agencies in order to improve children's welfare. The 2004 Act defines children's welfare as specifically including their physical and mental health and emotional well-being; protection from harm and neglect; education, training and recreation; the contribution made by them to society; and their social and economic well-being. Despite the omission of the term 'prevention' from the 2004 Act, *Guidance* stresses that safeguarding and promoting the welfare of children is an essential part of preventing juvenile offending (Department for Education and Skills, 2005). Central to the 2004 Act are sections 18 and 19 which require local authorities to put in place a Director of Children's Services and Lead Member to be responsible for, as a minimum, education and children's social service functions. Local authorities have discretion to add other relevant functions to the role if they feel it is appropriate. YOTs are not stipulated as being automatically within the remit of the Director of Children's Services, however there is a possibility of incorporating them. This cautious approach could potentially discourage effective partnerships

between YOTs and children's social care as it leaves the impetus to local discretion rather than being led by central government.

Section 13 of the 2004 Act requires each local authority to establish a Local Safeguarding Children Board (LSCB) for their area. LSCBs are designed to help ensure that the key agencies work effectively together by co-ordinating local arrangements and services to safeguard and promote the welfare of children. Also, the 2004 Act enshrines in law the ambition that all local authorities in England shall by 2008 establish children's trusts. Children's trusts place key agencies, including YOTs, under a new duty to cooperate with local authorities and other agencies to promote positive outcomes for children. However to what extent the YOTs should be incorporated into children's trusts arrangements and LSCBs has also largely been left to local discretion. *Working Together to Safeguard Children 2006* aimed to provide statutory guidance to organisations on how they should work together to safeguard and promote the welfare of children (Department for Education and Skills, 2006). However this document offers no advice on working together to prevent juvenile antisocial and offending behaviour. The effect of this approach has been evidenced in the first stage of the National Evaluation of Children's Trusts (NECT) which found that YOTs had peripheral involvement in the interagency governance and financial arrangements of Children's Trusts (University of East Anglia, National Children's Bureau 2004, 2005). The Youth Justice Board found that many YOT managers were uncertain regarding the implications of local structural arrangements for their alignment with children's services and criminal justice partners (Youth Justice Board, 2006). Despite these criticisms the 2004 Act represents a catalyst for the development of an effective multi-agency response to young people with needs. The introduction of the 2004 Act raises the question whether further initiatives on improving co-operation between the agencies responsible for young people's welfare is needed, particularly as the 2004 Act has not yet had a chance to be implemented and evaluated. The *Childcare Act 2006* also reinforces the role of the local authority in ensuring that every child has the best start in life. The 2006 Act requires local authorities to improve the outcomes for all young people by providing better joined up and accessible services

through children's centres. The 2006 Act also requires local authorities to reduce inequalities between those at risk of the poorest outcomes and the rest.

The *Children Act 1989*, the 2004 Act and the 2006 Act provide a framework for local authorities to provide established types of family support and services to youth at risk of engaging in offending behaviour and their families, including: family support; access to play and leisure opportunities; training parents in effective child rearing methods; pre-school intellectual enrichment programmes; positive opportunities for physical, emotional, social and intellectual development in childhood; the provision of day care and providing respite breaks and family holidays. The Acts also authorise local authorities to request the help of other local authorities, the youth justice system, youth offending teams, the police, youth inclusion panels, housing authorities, education authorities, voluntary organisations and other bodies in seeking to fulfil their youth crime prevention duties. Thus everything, which is being heralded as new and radical in the latest government initiative has already been legislated for in the *Children Act 1989*, the *Children Act 2004* and the *Childcare Act 2006*.

However, in practice, it seems that families who require help where children are in need for reasons other than child maltreatment are not always getting access to services. Child protection is taking increasing priority over child care with family support and preventive services viewed as some kind of optional extra to be offered if resources allow rather than part of the same package of services for vulnerable children. The evidence points to social workers having little spare time to organise support for families who are not necessarily in crisis. Field social workers in particular appear to have insufficient time to undertake more proactive work in support of at risk children and are giving less priority to the relationship skills which are so valued by teenage children because of the pressures of child protection work (Arthur, 2007; Department of Health, 2001; Horwarth, 2002). In these circumstances the ongoing issue of youth crime prevention has become marginalised.

Ofsted's *Narrowing the Gap* report found that actions to reduce offending and re-offending and to manage the reintegration of young people who offend back into the community are not as effective as they could be, reflecting the need for more effective multi-agency work (Ofsted, 2007). Partner agencies were found to lack a clear shared understanding of their roles in relation to safeguarding. Governance provided through the local safeguarding children board is unsatisfactory and attendance of partners at meetings is poor. Thresholds governing access to social care services are set too high, with no shared understanding of their purpose and application. A common area of weakness was found to be the inequality of provision between different areas and different groups of children and young people. This includes poor ongoing monitoring and assessment of the physical and mental health needs of vulnerable groups – in particular looked after children and young offenders, especially as they make the transition to adulthood.

Evidence also suggests that those most in need of support are the least likely to access it. Analysis from the Millennium Cohort Study showed that poorer families were less likely to receive a visit from health visitors than those families with higher incomes (HM Government, 2006). Feedback from parenting programmes such as Webster Stratton's *Incredible Years* and *Triple P* show that parents value extra support such as parenting classes. Yet not all parents who need these services can access them, the principle of progressive universalism is not yet being met with respect to support for parents (Leung et al., 2006). The *Child Poverty Review* identified a number of potential barriers to engagement of those most in need of support: a fear or mistrust of statutory services and concerns that children's services might take away children from parents if they are seen to have problems (HM Treasury, 2004). There is a lack of readily accessible information about what services are available. Parents may recognise they need some support, but they do not know where to get help (HM Treasury, DFES, 2007). Many services are perceived to cater for 'failed' or 'struggling' families, and this stigma may deter parents from accessing support that they know is available.

The government's interest in tackling youth offending by using co-ordinated multi-agency early intervention is to be welcomed. It is certainly more acceptable than the former Home Secretary John Reid's suggestion that the army could be used 'to provide structure to young people's lives' (Travis, 2006). However the latest initiative is neither new nor radical, nor does it offer any solutions to the problems with the current system. Although the current system is not adequately responding to the needs of young people at risk of offending, all of the problems examined in this chapter could be remedied within the existing framework. The reality is that all previous attempts at multi-agency early intervention in young people's lives have been seriously under-resourced. This is despite the evidence that spending on prevention may be more economical and effective in the longer term. The Crime and Society Foundation found that countries with higher rates of welfare investment are likely to enjoy lower rates of custody and conversely countries with the highest rate of imprisonment, including the UK, all spend below average proportions of their GDP on welfare (Downes and Hansen, 2006).

Conclusion

In launching the government's *Respect Action Plan* the then Prime Minister, Tony Blair, stated that 'we need to take responsibility for ourselves, our children and our families, support those who want to do the same and challenge those who will not' (Blair, 2006b). In accordance with this, the Respect Task Force is charged with ensuring that the culture of respect extends to everyone, young and old alike' (Home Office, 2005). However as Squires and Stephen astutely observed: 'Respect and responsibility is a two-way street – it cannot be demanded of children (or of adults for that matter) who have not the wherewithal or the appropriate opportunities to demonstrate responsibility' (Squires and Stephen, 2005). What is required is the development of a well resourced network of family support services which would encourage professionals to take a wider view, there would be efforts to work alongside other agencies and organisations, to strengthen and support families in their parenting responsibilities, to raise their self-esteem rather than reproach families and to promote family relationships where children have their needs met, rather than leave untreated

families with an unsatisfactory parenting style. Local authorities need to devote far more attention to prioritising resources in the direction of preventive services, including youth crime prevention. Central government needs to devote far less time to eye-catching, but ultimately empty, initiatives and more time on fulfilling the challenge of supporting families in preventing youth offending.

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19

Sharing stories about Labour¹: youth justice strategies in New South Wales and the UK

Elaine Fishwick

Introduction

In 1995 the Labor Party in New South Wales (NSW) won the state election² two years before the Labour party came into power in the UK. Two governments on either side of the world have been responsible for introducing criminal justice legislation, policies and programs that collectively have had a major impact on young people's lives, especially those young people who have engaged in behaviour deemed to be socially unacceptable, and/or criminal.

There are similarities in the directions that both governments have taken in relation to youth justice, but there are also fundamental differences.

The Centre for Crime and Justice Studies' report *Ten Years of Criminal Justice under Labour: An Independent Audit* outlines the

rationales, key policy developments and outcomes of the Labour government which have led to the introduction of a range of quasi contractual regulations (Crawford, 2003), an expansion of public order legislation and an increase in the number of young people in detention (Solomon, Eades, Garside and Rutherford, 2007).

Over the same period in NSW it appears on the surface that the NSW Labor Party has embarked on a more progressive policy agenda. The *NSW Young Offender's Act 1997* is generally considered to be a forward thinking, diversionary initiative underpinned by restorative justice principles (Chan et al., 2005). Overall the numbers of young people appearing in court and in custodial detention are declining (Taylor N., 2007). Drug control policies are underpinned by a harm minimisation approach, and the government has introduced needle exchange programs, medically supervised drug injecting rooms and pre-sentencing programs for alcohol and drug dependent young people administered by the Youth Drug and Alcohol Court (<http://www.lawlink.nsw.gov.au/youthdrugcourt>).

In NSW there has been limited use of anti social behaviour type contracts.³ For example it was only in the last New South Wales election in March 2007 that controlling antisocial behaviour (with an emphasis on reducing domestic violence, bullying and harassment) was formally placed on the political agenda by means of the NSW State Plan (<http://www.nsw.gov.au/stateplan/>) and the Youth Action Plan (http://www.youth.nsw.gov.au/minister_and_policy/youth_action_plan/youth_policy_index).

Both governments have been led by strong, media savvy politicians. Tony Blair and NSW Premier Bob Carr invested resources in developing media strategies. As in the UK, media and politicians in NSW have voiced concerns about young people posing risks to themselves and others. 'Media stories about 'youth gangs and graffiti hooligans have fuelled perceptions of young people as a threat' (YJC/YAPA, 2004:1), but for a number of reasons, including a less fiercely competitive tabloid market, it appears that on the whole politicians and the media in NSW appear to have been far less punitive towards and less judgemental of young people, than

in Britain (Tonry, 2004:55-66 cited in Jones and Newburn, 2007:4; Bolzan, 2000). For example in the last NSW election campaign an attempt by the Opposition to demonise young people and remove *doli incapax* failed miserably. (Mascarenhas A. and Clennell A., 2007).

At the same time the NSW government there have extended and consolidated police powers especially in relation to public order, searches, and young people's movement and use of public space.

The following analysis aims to establish some of the key factors that may have shaped the way that the two governments have pursued youth justice strategies. In examining some of the key historical, social and economic contexts of policy development in NSW it provides examples of how international comparative work can lead to critical explorations of domestic policy, actors, and institutions, challenge taken for granted policy paths and offer alternative possibilities, as well as examples of where not to follow (Howlett and Ramesh, 2003; Kingdon, 1984; Colebatch, 2005; Newburn and Sparks, 2004).

Comparative work can also reinsert the national/local into globalised accounts of crime control, governance and penal practices (Jones and Newburn, 2007; Karstedt, 2004). According to Tonry, 'the world increasingly may be a global community... but explanations of penal policy remain curiously local' (2001: 518 cited in Jones and Newburn, 2007:3).

Background to the NSW experience

Pat O'Malley's work on risk governance, and actuarial justice has highlighted the differences in risk governance across jurisdictional and national boundaries, and different welfare regimes (O'Malley, 2004:31). He argues that Australia has taken a different route in developing criminal justice policies targeted at young people and that despite high levels of unemployment among some sections of the young population there hasn't been the same attention given to the idea of underclass, risk and exclusion compared to the UK and the USA (O'Malley, 2004).

O'Malley asserts that there are major differences in the policies of countries that adopt a strong anti-welfare stance such as the USA, compared to the characteristics of neo-liberal influenced policies in countries like Australia, Canada and New Zealand - "where welfare apparatuses are substantially intact, if partially translated into forms more compatible with economically rational sensibilities" (O'Malley, 2004: 31).

In Australia in the 1980s a series of Federal and State inquiries and investigations into homelessness, unemployment, access and equity, and social justice didn't demonise young people and didn't ascribe blame. Young people were identified as *victims* of chronic unemployment and problems facing indigenous communities were located in explanations of that acknowledged the effects of racism and colonialism (O'Malley, 2004: 370) The Federal Labor government developed a corporatist, consultative economic strategy which integrated government, union and business interests in dealing with unemployment and related social policy initiatives. This was very distinct from the strategies adopted at the same time in the UK and the USA during the Thatcher and Reagan years.

O'Malley argues that this has had important consequences for criminal justice policy, in that attempts to introduce exclusionary and incapacitating techniques like 'three strikes' policies or punitive sentencing, reforms were constrained and conditioned by a different set of discourses, practices and policies than those in the UK and USA. He argues that Australia was still engaged to some extent in the modernist project of normalisation rather than colluding or classifying the 'other' (O'Malley, 2004: 40).

Since the publication of O'Malley's work there have been trends in the development of welfare and industrial relations policies in Australia that have undermined the Australian welfare tradition. Neo-liberal economics and neo-conservative morality dominate many aspects of recent policy development at both Federal and State levels.

Punitive breaching rules targeted at welfare recipients, tightening of benefit eligibility criteria, so called 'mutual obligation' requirements, individual work contracts, privatisation, competitive tendering, performativity, new managerialism, increased restrictions on union representation, and under-employment for some sections of the population are reshaping the Australian welfare industrial, and employment landscape. What impact this may have on youth justice strategies has yet to be seen.

Over the past 20 years there has also been an emerging pattern of growing inequality Australia wide (Green, 2006; Vinson, 2007). Aboriginal and Torres Strait Islander people who account for approximately 2.3% of the population are hardest hit. On every health, socio-economic and risk indicator indigenous people are far worse off than non-indigenous people.

In some of Australia's remote indigenous communities children are not just living in relative poverty but are experiencing absolute poverty (Australian Productivity Commission, 2007; Australian Medical Association, 2007; Serr, 2006). A recent international study revealed that Australia was at least 50 years behind other OECD countries in terms of governance, welfare, health and educational policies for indigenous people. Indigenous people are overrepresented in prison populations and in juvenile justice institutions (Weatherburn, Snowball and Hunter, 2006; Snowball and Weatherburn, 2006; Cunneen, 2002) and rates of violence including child and adult sexual assault are far higher than in non-indigenous communities (Cunneen, 2001).

A colonial legacy

Australia's colonial legacy has not only shaped its relationship with indigenous communities but has also framed the history and development of policing and prisons.

Indigenous communities were destroyed, and dispersed after the British established a presence in NSW and other states. The police until the 1970s were responsible for taking children away from their families, for dispossessing Aboriginal people of their land,

for failing to prevent massacres (sometimes being responsible for them), for controlling movement in and out of reserves, for welfare relief and many other aspects of day-to-day life. The colonial 'solution' for problems facing indigenous people is never very far away. This year the Federal government decided that its way of combating high rates of child sexual assault, and neglect in some indigenous communities in the Northern Territory was to send in the army, as well as other personnel, to impose strict moral obligation requirements on welfare recipients, to take over land, and directly control services for entire communities without consultation and negotiation.

In the early days of colonial government in NSW the police initially were involved in broad range of State activities apart from regulating indigenous communities. These included; developing public infrastructure, administering welfare, running elections, managing amenities like sewage and sanitation and many other aspects of everyday life. They were provided with extensive public order and moral regulation powers, and invested with broad discretion to enact them (Finnane, 1994; Dixon, 1999). Regulating public behaviour has been and continues to be a relatively unquestioned aspect of New South Wales policing.

The colonial police force was an armed, hierarchical, militaristic organisation and to some extent still is (Finnane, 1994). It is ultimately politically accountable through the Police Minister to the NSW Parliament, and operationally accountable to the Police Commissioner. The police are not accountable to local government or to the local community like in the UK. Some police area commands may work in partnership with local government in crime prevention initiatives but in practice local communities have very little input into policing policy, and day to day operations.

This history is important for understanding policing today in that there is far less sensibility than in the UK to the need to maintain the idea of citizen in uniform, there are less institutional and local government or community constraints on both the development and exercise of public order powers, and related summary offences legislation.

International constraints

Unlike the UK, Australia does not have national human rights legislation or recourse to a regional human rights court to oversight domestic legislation.

International constraints on Australian youth justice policy are minimal. Australia is a signatory to the UN Convention on the Rights of Child and the Beijing Rules (United Nations Standard Minimum Rules for the Administration of Juvenile Justice). However the Convention has not been incorporated into domestic legislation in a systematic way.

Responsibility for ensuring compliance with many of the policy areas associated with the Convention including juvenile justice lies with the States and Territories.⁴ There is no national body responsible for ensuring national compliance on issues affecting children, and the only clear accountability mechanism is in the government and non-government reports to the UN Committee on the Rights of the Child. This leaves children and young people in the state with very limited recourse for redress if government policies or practices breach their human rights.

Criminological accounts of policy development which highlight the impact of international constraints and the consequent convergence of policy across national boundaries are less relevant in examining NSW youth justice policies than in Europe and elsewhere (Newburn and Sparks, 2004; Jones and Newburn, 2007).

A Federal system

One of the key differences between policy formation on youth issues in the UK and NSW is that Australia has a Federal system of government⁵ with a very complex shared delegation of powers and responsibilities for governance and service delivery in health, education, welfare, housing shared principally between Federal (Commonwealth) and State/Territory governments.

For State and Territory governments criminal justice including juvenile justice, and related courts including children's courts (apart from anti-terrorism and international security) has become one of

the few areas over which they retain autonomy and control (King M., 2005: xi).

All states individually have an agency responsible for watching over children and young people's issues such as Children's Commissions, but they have different powers and responsibilities, different levels of funding and status but there is no national body (see <http://www.aifs.gov.au/nch/resources/commissioners/commissioners.html>).

There is no national equivalent of the UK Youth Justice Board, or the Home Office. There aren't any national criminal justice benchmarks or standards. The NSW Bureau of Crime Statistics and Research and the Australian Institute of Criminology conduct research and evaluation, and the Australian Bureau of Statistics conducts surveys of victims, and crime, but there is no recurrent national survey like the British Crime Survey.

The mix of national and State powers and responsibilities also means that there are a range of policy/epistemic communities involved in the policy process at Federal and state levels all with varying degrees of influence. On one hand a Federal system opens many more policy opportunities in relation to youth justice, on the other it becomes very difficult to have a consistent coordinated whole of government approach.

Youth Justice in NSW - Young Offender's Act 1997

The *Young Offender's Act* (YOA) was enacted by the NSW Labor government on 6 April 1998. The main object of the Act according to s.3 (a) was to 'provide an alternative process to court proceedings for dealing with children who commit certain offences.' (Hansard, 21 May 1997, Legislative Council).

The Act was the initiative of the previous Coalition government. It had conducted a widespread review of the juvenile justice system after a major report *Kids In Justice: a blueprint for the 90s* – a report card on the juvenile justice system in NSW was published by a community based advocacy group, the NSW Youth Justice Coalition (<http://www.mlc.asn.au/YJC.html>). The report had

concluded that the NSW system breached the recently ratified Convention on the Rights of the Child on many different levels. It provided the government with a blueprint for future legislative, policy and administrative reform.

The report advocated for a more consultative, research informed decision - making body to develop juvenile justice and related policies, and for a more diversionary juvenile justice system. The government responded by establishing the Juvenile Justice Advisory Council (JJAC)⁶ made up of government and community members. The Council instigated a research program, and a series of White and Green papers to develop a consultative policy and law reform program.

At the same time a number of individual police officers, ministerial advisers and community advocates had been influenced by youth justice conferencing programs established in New Zealand. In Wagga Wagga, a rural town in NSW local police had established their own conferencing program and advocated its adoption state-wide. John Braithwaite's early work on restorative justice was becoming influential. Consequently policy entrepreneurs were enthusiastically advocating conferencing as a youth justice strategy.

The YOA created a diversionary system for less serious juvenile offenders. Police acted as gatekeepers to a hierarchy of warnings, cautions and conferences with the aim of diverting young people away from court.

Young people have to admit to an offence in order to access court alternatives, and although legal advice⁷ is made available there were, and continue to be a number of difficulties in accessing it (O'Sullivan, 2003).

The conferencing program is administered by an agency independently established within the Department of Juvenile Justice, the Youth Justice Conferencing Directorate (<http://www.djj.nsw.gov.au/conferencing.htm>). Conference convenors invite the parties to the conference, supervise proceedings and police may, or may not be present.

Since the introduction of the YOA there has been a huge increase in the number of warnings and cautions administered to young people by the police. In 1990/91 they accounted for only 12% of all interventions (Chan, J. et al., 2005:17). After the introduction of the 1998 Act warnings accounted for 2,357 (10%) of all interventions, and cautions 23% (5,616) by 2003 this had dramatically changed so that warnings accounted for 46,591 (71%) of all interventions and cautions 8,981 (14%). At the same time Court interventions dropped from 16,113 to 9,364 (*Source Table 1 total interventions under the YOA Clancy, Doran and Maloney, 2005: 59*). After an initial flurry in the number of conferences convened - 508 in 1998 increasing to a peak of 1339 in 1999, they have reduced to 1.5 % of all interventions (see table below).

Year	Warnings (number of interventions and then expressed as a % of all interventions)	Cautions (number of interventions and then expressed as a % of all interventions)	Conference (number of interventions and then expressed as a % of all interventions)	Court (number of interventions and then expressed as a % of all interventions)	Total no. of interventions
1998	2,537 (10%)	5,616 (23%)	508 (2%)	15,672 (64%)	24,333
1999	8,272 (26%)	8,542 (27%)	1,339 (4%)	13,672 (43%)	31,825
2000	13,393 (38%)	9,097 (26%)	1,248 (3.5%)	11,436 (33%)	35,174
2001	20,265 (50%)	9,465 (23%)	1,148 (3%)	9,960 (24%)	40,838
2002	33,952 (62%)	9,268 (17%)	1103 (3%)	10,303 (19%)	54,626
2003	46,591 (71%)	8,981 (14%)	969 (1.5%)	9,364 (14%)	65,905

(Table adapted from Table 1 total interventions under the YOA Clancy, Doran and Maloney, 2005: 59)

The implications of this are clear. The police are now responsible for over 80% of criminal justice interventions with young people, with very few cases being reviewed by the courts. The participatory and restorative aspects of the legislation are very limited. The Youth Justice Advisory Council's initial concerns about net widening appear to be substantiated with a 27% increase in the total number of interventions. Recent research by the NSW Bureau of Crime Statistics and Research shows that indigenous young people and young men from particular ethnic backgrounds continue to be overrepresented in recidivism rates,

and in the more serious end of the criminal justice spectrum (Moffatt and Poynton, 2006; Vignaendra S. and Fitzgerald J., 2006).

Youth Justice in NSW - policing powers

Not only has the Young Offender's Act delegated more responsibility to police for dealing with young people's behaviour but a raft of legislative reforms have extended and consolidated police powers.⁸

Over the past 12 years search powers relating to drugs, drunkenness, weapons, suspected criminal activities (including graffiti), 'anti-gang'⁹ measures (YJC/YAPA, 2004: 6) allow police to search young people, pat them down in public check their bags, school lockers and cars on reasonable suspicion. In deciding whether they have reasonable grounds to search someone, police can take into account whether the person is in a crime hotspot area (YJC/YAPA 2004:4; Macquarie Legal Centre 2003). Young people in New South Wales as well as older people can also be subject to random searches by sniffer dogs through provisions in *Police Powers (Drug Detection Dogs) Act 2001*.

Police have the power to issue directions to people in public places to 'move on' if the police reasonably believe the person's presence or behaviour may cause obstruction, fear, is causing intimidation or the person is there for the supply or purchase of drugs. If someone disobeys a reasonable direction after two warnings they may be guilty of an offence resulting in a fine or an arrest. Anecdotal evidence from young people and youth workers and court decisions, indicate that some of the directions given by police are unreasonable, for example telling a person to leave a 2 km radius of a particular railway station for seven days, or issuing a direction without any reasons to a person who had already moved on (YJC/YAPA, 2004:3).

The New South Wales Ombudsman in a review of the *Crimes (Police and Public Safety) Amendment Act 1999* found that; young people and indigenous people were overrepresented in contacts with police, that about 50% of the directions issued did not have a valid reason, young people or street sex workers were deemed by

police 'to be intimidating' or 'likely to cause fear' just by their mere presence, and the percentage of successful searches of those under 18 where a knife or dangerous implement was actually found was extremely low, indicating that the police were searching many young people without reasonable grounds to do so.

The *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001* was introduced with the stated aim of breaking up gangs. A court can apply conditions to bail, parole or leave from a detention centre which stop individuals from associating with each other and hanging out in certain places. Breaking the conditions of the order can result in imprisonment or a hefty fine (The Shopfront Legal Centre, 2007).

For youth and indigenous advocacy groups one of the most contentious pieces of legislation introduced in New South Wales has been the *Children (Protection and Parental Responsibility) Act* first introduced in 1994 and then reissued in 1997. It provides police with the power in 'operational' local government areas¹⁰ to pick up a young person in a public space deemed to be at risk (i.e. not supervised by a responsible adult, in danger of being abused, or about to break the law) and take them to the home of the parent, carer, relative or an approved person or to the Department of Community Services at any time of the day or at the night.

The Act provides the Children's Court with powers to compel parents to attend court with their children, to make them sign undertakings as to their children's behaviour, and in extreme cases punish parents whose neglect has caused their children's offending (YJC/YAPA, 2004: 5).

The Act has been constantly criticised on a number of grounds including its potential for net widening and the fact that it is racially discriminatory (see note below). In 1997 it was subject to condemnation by the United Nations Committee on the Rights of the Child,

'The committee is concerned by local legislation that allows the local police to remove children and young people congregating

which is in every infringement on children's civil rights, including the right to assemble.' (S.73 UN Concluding Observations Committee on the Rights of the Child AUSTRALIA 40th Session 2005 CRC/C/15/Add.268)

Public order legislation has been tightened even further after a number of street disturbances. These happened in Dubbo a rural town, and in Sydney in the inner city suburb of Redfern and outer suburbs of Macquarie Fields and Cronulla (Burchell, 2007). The *Law Enforcement Legislation Amendment (Public Safety) Act 2005* was hastily introduced in the wake of the the Cronulla disturbances. Police can now 'lock down' neighbourhoods, control movements of people and vehicles, they have significant powers of detention (Part 6A), and extended search provisions and traffic control powers (ss 14, 15, 36A and 38). NSW has also invested in the first water cannon in Australia.

It's important to re-emphasise here that the New South Wales police are not subject to the same kind of accountability measures that are contained within the UK PACE legislation (Dixon, 1999). S15 of LEPAR imposes some restrictions on police in execution of their powers in public but they are minimal. Checks on police powers are conducted through, complaints processes of the Police Integrity Commission (PIC) and the Ombudsman's Office, PIC investigations, and legislative reviews, occasional research/investigation reports, and audits.

The increased scrutiny of young people's use of public space has gone hand in hand, with increased privatisation of retail and commercial space with the growth of enclosed shopping malls (Cunneen and White, 2006). They are policed by private security guards, with extensive powers. They can control movement into and within centres, and have citizen's arrest and banning powers. Being banned from a shopping centre in rural areas in New South Wales can have a devastating effect on people's lives. Shopping centres often house government department service centres associated with income support, employment services, housing, health, post offices and many other services. Some young people have been banned for life.

Juveniles in detention

Unlike the growth in numbers of young people in detention in the UK (Solomon et al.), across Australia the number of young people in detention has decreased since 1981 (Taylor N., 2007) Indigenous young people are still overrepresented as a ratio of young people in detention, in fact indigenous young men are almost 23 times as likely as non-indigenous young men to be incarcerated.

To date there is no clear research evidence to show why the numbers of young people in detention has declined, but it may be associated with the separation of welfare and criminal sanctions in relation to custody, a general downward trend in serious offending and increasing use of diversion as an option for dealing with juvenile offending.

In NSW until 2005 young people under 18 were held in separate correctional facilities from adults. Those over 18 could be transferred to an adult correctional facility but only after a Ministerial order requesting transfer. However after a campaign by juvenile justice detention officers following disturbances in Kariong detention centre, and media scare stories about convicted rapists having an easy 'motel' type time in juvenile justice detention, the government reacted by transferring the management of the facility to adult corrective services. Young men over 16 in NSW who have a poor disciplinary record in detention, or who are initially convicted of very serious offences serve their time in Kariong.

Conclusion

It is hoped that the above analysis can set in context some of the reforms and changes that have taken place in NSW over the past 12 years, changes that have combined progressive, diversionary strategies with a significant increase in police powers. Although NSW may not have ASBOs there are many other ways in which their behaviour is regulated and criminalised.

There are still a large number of young people coming into contact with police in NSW. 'even if no specific operation is taking place, police intervention is a fact of daily life for young people in many areas... young people are frequently targeted for intervention

- for lacking “respect”, for being “rowdy”, for being part of the “rave” culture, or simply for being young and out in public (YJC/YAPA, 2004:2). In a 1997 report 78% of 843 people surveyed said that the police *never* or only *sometimes* treated young people with respect (ALRC/HREOC, 1997), recent anecdotal evidence from youth workers doesn’t indicate that anything has changed.

There has been a great deal of symbolic value placed on the ‘Respect agenda’ in the UK, and both the UK and NSW governments have publicly used the rhetoric of community safety, tackling fear of crime and being tough on crime to set youth justice policy agendas (Jones and Newburn, 2004, 2007; Karstedt, 2004; Weatherburn, 2004; Lee, 2007). Indicators from the Centre for Crime and Justice Studies Report 2007 reveal that Labour’s success in reaching youth justice targets has been variable (Solomon et al., 2007). The NSW Labor government hasn’t to date set any benchmarks or targets but officially recorded crime trend statistics, and detention statistics tend to indicate a downturn in serious crime overall and in the numbers of young people in custody.

The NSW youth justice strategy has been shaped by many underlying factors, it is hoped that this comparative study can show some insight into these. Maybe it might initiate a dialogue about policy strategies and initiatives and develop a range of alternative options to be drawn upon when policy opportunities open up.

ABOUT THE AUTHOR

Elaine Fishwick was born in the UK but now lives, works and studies in Sydney. She is currently undertaking a PhD at the University of Sydney which is examining the influences on decision making in juvenile justice policy. She has taught social policy and criminology in universities in the UK and Australia, and for 15 years ran her own research and policy consultancy business. She has been an active volunteer member of a community based youth justice advocacy group for the past 20 years. In 2005 she completed a Masters in Journalism.

Notes

1 It is the New South Wales Labor Party but for the purposes of this conference paper I will be using Labour when referring to both governments.

2 All States and Territories currently have Labor governments, although Federally (i.e.

nationally) the Coalition party (Conservative) is in government led by a neo conservative, neo-liberal right wing Prime Minister, John Howard.

3 Anti-social behaviour contracts have been introduced in public housing rental agreements, and in regulating school student behaviour but only in a very limited way in comparison to the UK.

4 The Australian Capital Territory has implemented a Human Rights Act 2004 and Victoria has a Charter of Rights and Responsibilities 2006.

5 Although Scottish legal history is distinct, and recent shifts towards devolution has seen delegation of powers and responsibilities a Federal system is very different.

6 This was replaced in the Act by the Youth Justice Advisory Board.

7 In NSW there is a salaried publicly funded children's legal service, where all children no matter what their socio-economic background are eligible to receive legally aided representation from a specialised duty solicitor in criminal matters. There are a number of accredited private solicitors who can provide legally aided representation in protection and other civil matters to children and young people who satisfy means and merit tests (<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=717>).

8 Many of these powers were consolidated in the Law Enforcement (Powers and Responsibilities) Act 2002 implemented in 2005.

9 An area becomes 'operational' on the approval of the NSW Attorney General currently the only areas are Orange, Ballina, Coonamble, Moree rural areas with higher than average indigenous populations in Moree between 30-40% of people under 14 are of Aboriginal descent

10 Research conducted by Rob White demonstrates overwhelmingly that USA style use gangs do not operate in Australia (White 2006).

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