

Between Reconciliation and Rejection: contemporary penal dilemmas through the eyes children

In their interviews with children, Richard Sparks, Evi Girling and Marion Smith revealed some commonly held notions about punishment.

In our recent research we have sought to introduce two small but important shifts of perspective into discussions of the place of punishment in contemporary culture and politics. The first was to try to explore the issue of penal 'culture' afresh by looking at it from the perspective of conversation. The second was to take as our particular focus the conversations of a special group of people, namely those who were not yet ten years old.

exists of how penal questions actually figure in the everyday consciousness or conversations of people in the ordinary settings of their lives. If we want to know more about how penal values are communicated and socially shared then one important research strategy will be to try to capture them in vivo through one of the most general and basic of human activities, namely talking. One influential attempt to come to terms with the position of

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We have discussed our reasons for pursuing this line of inquiry on the levels of theory, method and policy at some length elsewhere (see, for example, Smith *et al.*, 2000; Sparks *et al.*, 2001). Here, we will sketch the bones of those arguments before giving some illustrations of the sorts of things the children said and what we made of them analytically. It matters very much, of course, that the people saying these things are children. Nevertheless, the dilemmas and disagreements that arise in the children's conversations are not, we suggest, theirs alone. Rather they echo (or perhaps prefigure?) a host of difficulties with which we adults also struggle. In other words, we think that talking with children about punishment is instructive not just for the window it provides onto the social world of childhood nor even for what it discloses about children's observations on the perplexities of adult behaviour but also for what we can thereby discover about punishment as a social practice.

Punishment and conversation

In contemporary western societies punishment is a massive generator of moral conflict and political controversy. It seems unnecessary to labour this point here. Examples, whether in the latest promise or policy invention of politicians, the latest thundering newspaper editorial or simply almost any evening's television schedules, fall abundantly and continuously to hand.

Yet, for all the discussion that these controversies provoke, surprisingly little detailed examination

punishment in contemporary culture is Garland's (1990) account of penal "sensibilities". Garland uses this term to denote the ways in which historically specific "feelings, sensibilities, behavioural proprieties and values" have a "determinative capacity" in shaping our basic dispositions towards what we take to be tolerable, plausible or otherwise in responding to breaches of social and legal rules or expectations. Garland and other analysts have provided numerous discussions of the ways in which the circulation and contestation of penal discourses have served to locate, shift or reproduce the social meanings of punishment. We wanted to extend such a perspective by, as it were, drawing the gaze of the sociology of punishment down to the level of ordinary speech. Or, as Conley and O'Barr (1998) put it: "a full appreciation of law and its power depends on a thorough understanding of everyday linguistic practice".

We also took the view that it was timely in this context to reconsider the special position of children and childhood. One useful way of thinking about transmission and change in societal sensibilities towards punishment is to explore how children relate to the world of adult authority, rule making and rule breaking in respect of criminal justice, school and familial disciplines. How do the practices and justifications that characterize the penal realm look from the vantage point of children as they stand on the threshold of assuming the burdens of legal responsibility and the entitlements and obligations of citizens? Lest this sound an esoteric interest, it is



also clearly the case that many of our most pressing contemporary policy debates in criminal justice, child-care and education revolve in one way or another around claims to be able to communicate effectively with children. In this respect discovering something about how children themselves construe penal problems is also an intensely practical concern with quite wide-ranging implications (consider, for example, the numerous current moves in the field of restorative justice or the advent of citizenship education in schools).

We therefore initiated a series of conversations with about 160 eight and nine year olds in three schools. We spoke to the children in both mixed and single gender groups of four and made very detailed transcriptions of everything that was said (for further detail on methodological and ethical considerations see Sparks *et al.*, 2001). We tried a variety of conversational cues and stimuli. Of these one that especially engaged the children's attention and participation was a scenario in which they awoke one day to find that the adults had all disappeared. What difficult situations might arise, and how would troublesome people be dealt with in their world?

Rejection

One obvious, immediate and appealing way of dealing with people who cause you problems is to 'get rid of them', and this was the starting point for many of our groups. 'Getting rid' can mean physically restraining, confining or even eliminating. Such solutions have the attraction of seeming simplicity. They can also be pleasurable and exciting – they affirm quite strongly that you are in charge. Many groups very quickly cottoned on to the realization that the people doing the punishing were the ones exercising power. We were also struck by how often the children drew on historical references (of what 'the Egyptians' or 'the Romans' or 'the Tudors' had done) to flesh out this image of untrammelled domination. Consider the following disconcerting

example:

Tim: Tie them to a post.

Ken: Like in the olden days.

Becky: Tie them to a post and chuck a load of tomatoes at them.

Tim: No tie them to the post and set fire to the bottom of the post [one child laughs].

Becky: No that's killing them.

Ken: Killing them, but that would be a good punishment if they did it.

There are several striking elements here. One is the rather joyous sense of escalation – tying up is not just restraint but also an opportunity to inflict various revenges on the miscreant. Nevertheless even here someone (often, as in this case, but not always or exclusively, a girl)

introduces an objection. Even in moments of high excitement the rebuttal that in punishing to excess you are, as it was put in another group, 'being bad yourself' can always intervene. Another notable point, one that we want to emphasize here, is that in many such cases the persons being punished ('them') and indeed what they have done are very non-specific. This extract is a series of generalized injunctions ('Tie them', 'chuck a load of tomatoes'). This recurs often in our data. It seems that the most forceful and vehement punishments, with all their vivid appeal, are reserved for people who are essentially anonymous and faceless. Things change a lot whenever the conversation develops to include the idea of doing something to someone for some particular reason.

Reconciliation

A connecting thread throughout many of these conversations is the idea of 'teaching a lesson'. Teaching lessons is fundamentally what children take punishment to be about. However, 'lesson' is a complex word and can carry a varied freight of meanings (see Smith *et al.*, 2000). At one end it means nasty medicine, a deterrent shock, something you would not want to repeat. At other points, it means something very didactic and school-like – you literally 'teach' someone their lessons and check whether they have learned them by giving homework and tests. You can put someone in the 'naughty corner' and 'see' whether they are ready to come out. Sometimes too the children want to go further than this. On occasion 'the lesson' becomes a matter of talking, reasoning, persuading, of encouraging the other person to grasp the effect of their actions on others and to change inwardly. Thus:

Sally: The more, the more educated people could erm go and try and help the person who had like been taken into the corner and try and help them somehow,

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'bail bandits' on the one hand, yet on the other want to see a reduction in the prison population.

So who are these magistrates, the 30,000 men and women willing to make such fine judgements for no reward and scant public acknowledgement? Once upon a time being a JP carried a certain social cachet and had what H. G. Wells called 'the aura of a minor knighthood'. No longer. People apply to become magistrates for a variety of reasons, but seldom vanity. 'It is an important job, which someone has to do,' they tend to say. Some respond to an advertisement in the press or on local radio.

Many are former jurors, like myself, inspired by their experience to make a more regular contribution to lay justice. It used to be the case that employers and trade unions routinely put up candidates, but that is less true today when notions of civic duty are not so ingrained and the pressures of work are more demanding. Even so, the bench as a whole is a great deal more representative of the community at large than it once was.

Successive Lord Chancellors, notably the present one, have striven to democratise and de-gentrify the magistracy. Today, the ranks of JPs include people from almost every kind of background, occupation and ethnic minority, while the gender divide is close to fifty-fifty – which is a great deal more than can be said of the nation's judges. The selection process is pretty rigorous. Local boards known as advisory committees conduct the interviews. They turn down about three-quarters of those who apply, sometimes because they are unsuitable, more often, perhaps, in the interests of obtaining a socially balanced bench. Those who are chosen must undergo a certain amount of basic training, which will be regularly topped up throughout their magisterial careers. But the aim is very far from turning them into professionals. Magistrates who sit too often are as frowned upon as those who sit too seldom. The idea is to prevent them becoming case-hardened, a condition which might tell against innocent defendants. In fact the average work-load is just over forty half-day sittings a year.

In writing a book about the magistracy based on my own experiences in north London and visits to other parts of the country, I have come to the view that the system works pretty well. JPs strike me on the whole as conscientious, thoughtful folk, whose fair-mindedness may be judged from the fact that only a very small proportion of their decisions, around 4 per cent, are taken to appeal. They are also cheap. In 1999, the expense of 30,000 magistrates was just two-thirds the cost of fewer than a hundred district judges. True, a bench of three laymen is more cumbersome than one consisting of a single professional judge. And critics have a point when they claim that despite the national guidelines, there are sometimes worrying variations in sentencing between different parts of the country.

Nevertheless, in my opinion such imperfections are easily outweighed by the merit of involving ordinary, independent-minded people at the very heart of the judicial process. As Lord Bingham, the Senior Law Lord, put it, the lay magistracy is 'a democratic jewel beyond price'. What it needs is polishing up, so that society can see itself reflected there with greater confidence and clarity.

Trevor Grove's new book, 'The Magistrate's Tale', is published by Bloomsbury (£14.99), as is his earlier 'The Jurymen's Tale' (£7.99)

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even though they are like nasty people, I would still like to try and help them as much as possible...so that he would like become more better and then when he's done that, he might learn a lesson and then he might erm, that person might start to become like us and try and help other people.

Sally struggles valiantly to articulate a difficult thought about what it would be to deal with an offender with whom you had, or might develop, a relationship. Her conclusion could hardly be more different from those occasions when the conversation becomes dominated by the thrill of violent rejection.

Lessons

In a short paper, using only a couple of examples, we can merely scratch the surface of what is a rich, varied and contradictory body of material. The polarities evident in the children's talk, we suggest, are indicative of some endemic tensions in the realm of punishment and its uses in political culture. Considering these through the prism of conversation helps us to observe them close-up and in the process of formation. The abiding tension between rejection and reconciliation sits deep within our language and the 'vocabularies of penal motive' (Melossi, 1993) that it contains. The discourse of rejection is 'marked' by signals of distancing, generalising and anonymising. The will towards reconciliation, conversely, uses markers of affiliation and identification. The tension recalls one suggested long ago by David Hume and taken up more recently by the feminist philosopher Annette Baier (1994) between justice as "a cold, jealous virtue" and sympathy as the capacity of one's psyche to "reverberate to another's fate".

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