

editorial

punishment and rehabilitation

Will McMahon puts this issue in perspective.

Prison numbers seem to be rising inexorably. On current trends it is likely that the 80,000 cap, suggested by Government at the time of the Carter Report, will be reached in short order. More prisons will be needed unless there is a radical change in Government policy.

The criminal justice state beyond prison is also growing, both in budget and presence as it appears to be reaching into every crevice of society in the name of risk management and prevention. Thus, children are now being monitored because it is claimed they exist in circumstances or exhibit behaviours which are, in the language of Phillip Dick's novel *Minority Report*, 'pre-crime' in character.

More people are also being punished in the 'community' through compulsory treatment orders, penalty notices for disorder, ASBOs and a variety of dispersal and disorder zones. Even if, as Roger Matthews controversially argues in his contribution, we are not living in more punitive times, more people are being punished.

In such circumstances a discussion of punishment in Criminal Justice Matters is timely. This issue grew out of seminar, hosted in June 2005, by the Crime and Society Foundation, which is based at the Centre for Crime and Justice Studies. Many of the contributors attended the seminar which considered a broad series of questions in relation to the notion of punishment. Whether one feels more comfortable, at a philosophical level, with, for example, a consequentialist or

retributive rational for punishment, central to any discussion of punishment must be a consideration of the context. Philosophical discussions of punishment are important for the branch of social policy known as criminology only insofar as they can developed in relation to the world in which we live.

One thing we know about our world is that the overwhelming majority of those being punished in the criminal justice system are, for the most part, poor and socially vulnerable. In the first five years of the new millennium

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the state has seen fit to lock up growing numbers of women, the young, those from the minority ethnic community and those deemed to have untreatable personality disorders. The other 'usual suspects' are simply being sentenced to longer terms. Rather than asking ourselves what can be done about the 'cycle of offending behaviour' should we not be discussing the worrying pattern that our society exhibits for disproportionately punishing those at the bottom of the heap? What institutional processes are in place that generation after generation ensures such an outcome? Are prisons simply and literally the concrete representations of a pattern of inequality and injustice in divided societies?

It might also be worth

considering whether all those who commit that subset of harms, currently referred to as crimes, are equally morally independent agents and equally culpable and, therefore, equally punishable. With the abolition of *doli incapax* in 1998 the Government signalled that, in essence, it sees no difference in capacity between a child at primary school and an MP on trial for perjury.

It is the case that people make their own personal histories but not in circumstances of their own choosing. It should, therefore, not be assumed that being a morally responsible agent and not being comprehensively in control of one's actions are mutually exclusive categories.

Judith Rumgay's article points to the high level of victimisation of those women who are subsequently punished by the state. It should be noted that a similar finding was also

made in regard to young male prisoners by Gwyneth Boswell in a study in the 1990s (Boswell 1997). Barbara Hudson's article takes up the question of culpability arguing that the Canadian Charter of Rights and Freedoms has led to a more principled and generalised debate on equality and culpability.

A more principled and generalised debate is surely what is required following a decade of simply being tough on crime. During his recent visit to Britain former New York prisons chief Michael Jacobson explained to Government ministers and media alike that crime in New York fell when prison numbers fell. This was a good start; but as Ian Loader argues in his contribution, for a meaningful reconfiguration of the debate

on punishment to take place it must involve the public at large. This contribution should not be confined to the understandably distressed and grieving who have lost close relatives to terrible events or those who have 'taken a stand' and been given an award as part of the Government's hyperbolic anti-social behaviour campaign. An expansive democratic debate that has, as Ian Loader argues, "a better chance of dispelling the anxiety and resentment that drives much current 'law and order' politics" is needed.

Such a debate might eventually go beyond a discussion of how we might treat the 'other' and, in the words of J.G. Murphy (1994) "We may really be forced seriously to consider a radical proposal. If we think that institutions of punishment are necessary and desirable, and if we are morally sensitive enough to be sure that we have the moral right to punish before we inflict it, then we had better first make sure that we have restructured society in such a way that criminals genuinely do correspond to the only model that will render punishment permissible – i.e. make sure that they are autonomous and they do benefit in the requisite sense.

Of course if we did this then crime itself and the need to punish would radically decrease if not disappear entirely."

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References

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