

# Punitive Myths

Roger Mathews argues that an exaggerated focus on punitiveness detracts from a realistic appreciation of the complexities of contemporary crime control.

**A**re we becoming a more punitive society? The answer to this question by a number of leading criminologists is a resounding 'yes' (Garland 2001; Simon 2001). It is the increase in punitiveness, it is argued, which is responsible for driving up the number of people in prison, increasing sentencing lengths, encouraging the development of 'zero tolerance' policing and generally 'to punish more and understand less'. A core concept which is associated with these developments is 'populist punitiveness' first developed by Tony Bottoms (1995), which sees the recent increase in punitiveness as a function of opportunist politicians playing on the fears and anxieties of the general public to create a more punitive climate, while allowing the development of a series of 'get tough' policies. The creation of a more punitive climate is seen to be further stimulated by an active mass media who are keen to sensationalise 'law and order' issues in order to increase circulation or to push up viewing figures.

It is the case, however, that in much of this literature the notions of 'punitive' or 'punitiveness' are left undefined and their meaning is taken for granted. At the same time the causal links between

more or less directly, with adherence to a number of well-developed myths.

**Myth One: The rise in prison population is largely a consequence of an increase in punitiveness.**

One of the central points of reference for those who gravitate towards the 'punitiveness thesis' is that the significant increase in prison population in both England and Wales and the USA is the result of the adoption of increasingly punitive policies. However, changes in the size of the prison population, as penologists constantly remind us, can be influenced by a number of factors including the level and seriousness of crime, recidivism rates, changing patterns of victimisation, the availability of suitable community-based alternatives to custody, the use of probation and parole as well as the development of other early release mechanisms.

In fact, recent American research has shown that approximately one in three prison entrants during the 1990s were parole violators (Petersilia 2003). These parolees were returned to prison, not for committing new crimes in many cases, but for failing to fulfil the conditions of their parole. Arguably, if this more

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the apparent rise in punitiveness and the other specified changes are rarely identified and where they are presented they tend to be weak and unconvincing (see Matthews 2005). Indeed, there are serious limitations in trying to locate current crime control policies along a continuum of punitiveness.

By reducing the diversity of crime control strategies to a punitive/non-punitive opposition commentators have limited the range and depth of analysis. In this either/or approach punitive is presented as *bad* while non-punitive is seen as *good*. This is a simple and comfortable world, which allows the expression of moral judgements on a whole range of phenomena without a great deal of conceptual effort. Crime control policies can be neatly allocated to one side or other of the punitive divide. It is paradoxical that as crime control policy becomes more complex, multi-layered, diverse and contradictory, that one of the dominant tendencies in criminology is to try to reduce these developments to a punitive/non-punitive opposition.

I would like to suggest that support of what we might call the 'punitiveness thesis' is associated,

rigorous mode of enforcement, which was largely a function of the 'new managerialism' had not taken place, prison populations in many American states would have decreased during the 1990s. This 'new managerialism' while containing elements of enforcement is not motivated primarily by a desire to 'get tough' as such, but rather is driven by the desire to realise performance targets. These strategies are not therefore essentially punitive.

Another major development which has had some influence on the size and composition of the prison population is the growing numbers of those diagnosed as 'mentally ill' who have been dumped in prisons. A recent report by Human Rights Watch (2003) found that there were three times more mentally ill people in prison than in mental hospitals in America. Similarly, in the UK, Nick Davies (2004) reported last year that of the 75,000 men and women behind bars in England and Wales over 60 per cent have been diagnosed as suffering from at least two types of mental disorder. One suspects that they may have been incarcerated, not so much as a result of punitiveness, but rather because their offending was either so excessive, at one extreme, or because they



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The public: not as punitive as you might assume. We know what they think of the Olympics, anyway. London, July 2005.

are a danger to themselves, at the other extreme. The implication is that prisons are increasingly being used as a repository for those who come before the courts and for whom more constructive options are not available.

**Myth Two: The traditional focus on rehabilitation has given way to a preoccupation with retribution.**

One of the major criticisms which is raised in relation to the use of prisons as a dumping ground for the mentally ill is that they do not have the resources and expertise to address these problems properly, with the consequence that people leave prison in worse condition than when they went in. However, this does not mean, as many commentators have claimed, that rehabilitative programmes are in terminal decline and that treatment is being rapidly replaced by punitiveness.

There are of course examples of super-max prisons, boot camps, 23 hour a day lockdowns and the like, but these developments represent the more extreme variants within an increasingly diverse system of penal provision. At the heart of the penal system we have seen the proliferation of rehabilitative programmes in recent years and the provision of services directed at groups of offenders who were once seen as untreatable and unsalvageable such as sex offenders. Drug treatment programmes are flourishing both in and out of prisons alongside cognitive skills programmes designed to improve the choices made by offenders while addressing the reasons for their offending. Alongside the proliferation of these treatment programmes there are another set of programmes aimed at improving literacy and education levels as well as the provision of training programmes and the development of skills.

It may well be that these programmes have changed in recent

years and that the conventional focus on need is increasingly being linked to notions of risk – particularly the risk of reoffending. In some countries prisoners may have little choice about engaging in these programmes, particularly if they want to apply for parole or early release. For that reason even apparently therapeutic programmes in prisons can have a coercive and punitive component. Therefore to see therapeutic and punitive responses, as Norval Morris (1974) argued many years ago, as opposites, can be misleading.

At the same time there is little evidence of overt retributionism in government policy in the UK. In fact, recent government documents on penal policy are very defensive about the use of imprisonment and in some cases almost apologetic. The claim that 'prison works' is increasingly being replaced by the notion that prison is a necessary evil and there is a growing acknowledgement in official circles that prison can be 'an expensive way of making bad people worse'. The recent report by the Social Exclusion Unit (2002), for example, provides a thorough and sustained critique of the way in which imprisonment compounds the forms of social exclusion which already operate in society. This report which has been influential both inside and outside of government circles has been instrumental in drawing attention to the 'revolving door' syndrome whereby the same offenders are continually recycled through the criminal justice system. Consequently, it has stimulated greater interest in addressing the problems associated with the rehabilitation and resettlement of ex-prisoners.

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**Myth Three: That if community-based sanctions, restorative justice programmes and other 'non-punitive' sanctions were developed we could reduce the use of prison.**

The conceptual ambiguity of the notion of punitiveness becomes increasingly apparent when we examine the operation of so-called 'alternatives' to custody. Amongst liberal criminologists (who form the vast majority of the criminological fraternity) and self-proclaimed progressives the answer to what they see as the 'punitive turn' is the development of what are portrayed as more benign, constructive and cheaper community based alternatives. These 'non-punitive' options, it is claimed, will reduce pressure on the prison population, limit social exclusion and provide a more humanistic option.

Much of this debate is premised on a comparison of the treatment of offenders in prison compared with those in community-based or restorative justice programmes. The reality however, as Stanley Cohen (1985) made clear twenty years ago, is that many of the people who end up in these programmes would probably never have gone anywhere near prison in the first place. They are often minor or first time offenders. Indeed, as Cohen explained, placing individuals on these community-based or restorative programmes may provide a more punitive option than that which they would have otherwise received. In one recent study, for example, on a restorative cautioning scheme in Northern Ireland, the authors noted that some 80 per cent of the cases examined were for offences for property worth £15 or less, while it was not uncommon for a full conference to be

arranged for cases involving the theft of a chocolate bar or a can of soft drink (O'Mahoney and Doak 2004). Thus, rather than offering a sanction which is less formal and intrusive, many of these options involve the formalisation of what was previously dealt with informally and the deepening and extending of control networks.

Whether the advocates of community-based sanctions do not read these key texts or have short memories is not clear. What, however, is apparent is that to characterise these processes as non-punitive is not only naive but badly misguided. For those who suggest that if we only had used community based sanctions and alternatives to custody more frequently we could have reduced the level of punitiveness and the reliance on imprisonment should be aware that just as the prison population has tripled over the past fifteen years in the USA, probation and parole have increased at roughly the same rate. Similarly, in England and Wales, the expansion of the prison system has been paralleled by the expansion of community-based sanctions. In a disturbing number of cases those on probation or parole today will be in prison tomorrow and vice versa.

**Myth Four: Public opinion is becoming more punitive and intolerant.**

Making assessments of public opinion or public attitudes is notoriously difficult and the methodology used to gauge 'public opinion' can have a major influence on the findings. Decontextualised studies such as surveys carried out by the British Crime Survey or commercial organisations like MORI are likely to report superficial responses which do not explore the full depth and range of attitudes that people hold individually or collectively. Such surveys may be useful where the phenomena to be measured is relatively self-contained and finite but where matters are more complex and opaque such instruments are at best of little value and at worst seriously misleading. More nuanced and sophisticated research methodologies reveal that members of the public embrace a range of competing attitudes which will combine elements of tolerance and intolerance, as well as simultaneous support for retribution and rehabilitation, while noting that these attitudes will, in turn, be conditioned by the context and the nature of the people involved.

Recent research has suggested some variation in attitudes according to class, race and gender and different levels of punitiveness amongst different groups, but punitiveness is invariably only one side of a complex and multifaceted equation. It should also be remembered that, as in the cases of Stephen Lawrence and Rodney King, populist attitudes can also be positive and progressive. Much time and space is devoted to the populist concern with paedophiles and the events around Paulsgrove during 2000. However, despite the attempts of a well-known Sunday newspaper to fuel these concerns they represent a relatively short-lived exception to a general climate of tolerance. What is remarkable given the rapid change and uncertainty of the late modern era is just how tolerant the vast majority of the population are.

So where does this leave us? These four myths have considerable currency in criminological circles, despite the fact that on closer examination they are little more than half-truths or distortions. It is not difficult to find examples of punitiveness but as we have seen it often takes unexpected forms, while those processes that are presented as a product of punitiveness often turn out to have other determinates.

In a rapidly changing world, however, the task is to separate

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