

Their Morals and Ours

Marcus Roberts argues that progressive criminology needs to take punishment seriously.

“We do not consider an individual disciplined only when he has been rendered as artificially silent as a mute and as immovable as a paralytic. He is an individual annihilated, not disciplined”, Maria Montessori 1870-1952, Italian educationalist.

“The only real, the only frightening and appeasing punishment ... lies in acknowledgement of one's own conscience”. Dostoyevsky, *Crime and Punishment*.

“Without being forgiven, released from the consequences of what we have done, our capacity to act would, as it were, be confined to one single deed from which we would never recover”. Hannah Arendt, *The Human Condition*.

The *Criminal Justice Act 2003* identifies five purposes of sentencing: (1) the punishment of offenders, (2) reduction of crime, (3) the reform and rehabilitation of offenders, (4) the protection of the public and (5) the making of reparation by offenders to persons affected by their offences. Obviously, these different strands are complexly inter-related.

The core message of what might (loosely) be described as the progressive criminal justice and penal reform lobby has been that the reform and rehabilitation of offenders (purpose 3) is a more effective way of cutting crime (purpose 2) and protecting the public (purpose 4) than a harshly punitive approach. While this lobby has begun to develop the case for reparative forms of justice (purpose 5), it has had far less to say about the first purpose of sentencing – punishment; including how (if at all) this might relate to the other four objectives. In a similar way that ‘law and order’ was once considered home turf for the Conservatives and a zone of non-engagement for the Left, the notion that the criminal justice system is there to *punish* crime has acquired a guilt by association with the forces of reaction. Criminal justice progressives worry that punishment spells punitiveness spells prison.

This is a mistake, both intellectually and strategically. The political space is opening up for a progressive view of punishment, that is supportive of traditional arguments for penal reform (and is, broadly speaking, ‘anti-prison’). This article identifies three reasons why the progressive lobby needs to start thinking more seriously about punishment as a core purpose of sentencing, and, in doing so, it begins to trace out the contours of a progressive theory of punishment.

First, an approach to crime reduction with

nothing to say about punishment will have only limited resonance with the public, the media and politicians.

The penal reform lobby is heavily reliant on figures showing the high costs of imprisonment and the high rates of reoffending. These are a powerful tool, but they do not speak directly to what is the primary issue for the general public. If someone has committed a string of burglaries or assaults in the local community, or if you or a member of your family has been the victim of a crime, then your first priority is likely to be whether or not the offender has got his (or, much less often, her) just deserts.

In 2001-2002, the Centre for Social Marketing at the University of Strathclyde ran a series of focus groups on behalf of Rethinking Crime and Punishment. They asked “what do the public really feel about non-custodial penalties?” Neither the comparative costs nor relative effectiveness of prison and the non-custodial alternatives had much resonance. Informing people prison is expensive was largely ‘counter-productive’, not least because “respondents were not necessarily angered by the notion that punishment costs a lot of money, recognising that essential public services are expensive”. What did hit the spot for the Strathclyde focus groups were those arguments that highlighted the *values* and *principles* underlying community sentences – they responded positively to the idea of ‘pay-back’ and ‘making amends’.

Secondly, and paradoxically, there are some grounds for believing that a criminal justice system that gives priority to punishment may be *less* punitive in its *outcomes* than one that places the *primary* emphasis on reform, rehabilitation and crime reduction. It is an interesting (and under-researched) phenomenon that a New Labour government that has done more than any of its predecessors to promote imaginative alternatives to custody has filled Britain's prisons to bursting point. Is it convincing to attribute this exclusively to a tendency for ministers to indulge in tough populist rhetoric as the electoral cycle and tabloid news agendas demand? Or is it, perhaps, an expression of more systematic trends? Could it be

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driven not so much by punitiveness as by *compassion* itself – not by the Labour focus on toughness on crime but the way it has approached toughness on crime's *causes*?

If the defendant's *needs* take priority over the more abstract demands of justice (and tackling the causes of crime over proportionality to the offence itself), then the defendant can end up with a higher tariff sentence than justice requires (or even allows) – for example, the minor shoplifter with a major heroin problem ends up on a Drug Treatment and Testing Order. The high breach rate for some community sentences means that what was intended as an alternative to prison can too often serve as a back door into prison. The road to Pentonville is paved with good intentions.

Thirdly, it is arguable that adult offenders are treated with greater respect and consideration when they are treated as morally responsible agents with an active role to play in their own reform, not as the mere products of 'social factors'. To deny the moral responsibility of adult offenders for what they have done is to risk dehumanising and infantilising them. Being held to account can be experienced as empowering by people accustomed to being processed by impersonal systems, in which their capacity for responsible moral agency is denied and repressed. For many offenders, sociologically deterministic explanations of their crime do not fill the hole or enable them to move on with their lives – 'making amends' can be a form of symbolic redemption and an important step on the road to rehabilitation.

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The 12 step programme does not work for many people with substance misuse problems, but it achieves spectacular results with some of the most troubled and troublesome people in the criminal justice system. It is striking that its language exactly mirrors the language of restorative justice. Step 8 states "We made a list of all the persons we had harmed, and became willing to make amends to them all", and step 9 "We made direct amends to such people wherever possible".

This provides an example of what might be called *rehabilitative restoration*. According to this view, feeling bad about what you have done, and doing something to put it right is both the ultimate purpose and essential content of punishment. (This is not necessarily to argue for a massive expansion of restorative justice in the narrow sense – or the fifth of the purposes of sentencing set out in the *Criminal Justice Act*). Restorative justice in this limited sense will only ever be appropriate in a limited number of cases. Rather it is more to argue for a restorative theory and practice of punishment *as such*, with universal implications – for example, for the way a whole range of community sentences and offending behaviour programmes are designed, delivered and presented to the public.)

Crucially, from this perspective, it is possible to challenge the claim that prison is a good way of punishing people, which is currently an unquestioned dogma for all sides of the debate. Does prison really deliver what the public *actually wants and expects* from punishment? Does it encourage moral responsibility and a greater victim-directness from people who commit crime? The purpose of punishment is not to isolate,

brutalise and demoralise, but to strengthen the ties that bind the offender to the wider community, encourage empathy with victims and – to coin a phrase – to *remoralise* offenders. It is not about making people feel bad *full stop*, but making people feel bad *about what they have done and the harm it has caused to others*.

As DrugScope's *Using Women* report argued, where the isolation of a prison cell does induce a sense of remorse and moral responsibility this is too often denied any constructive outlet and turns inward in destructive ways. Our report stated: "Women often experience intense guilt and remorse following drug detoxification. Properly channelled, this remorse can be a motivation to pay something back to the community and to make amends ... without a constructive outlet, it can turn inwards and can result in depression, despair, self-harm and suicide". This is not only an indictment of a system that places punishment before the vulnerabilities and needs of – often disadvantaged and damaged – offenders, but also of one that has lost sight of the point of punishment itself – to channel remorse constructively, and, as one woman at HMP Send put it to me, to enable offenders who have often had difficult, damaged and demeaning lives "to live as adults at last".

Here, perhaps, lie the seeds of a more coherent and comprehensive progressive narrative that incorporates a theory of punishment that challenges its connection to punitiveness and prison, while organically connecting punishment to progressive theories of rehabilitation, restoration and crime

reduction. Such a theory is already implicit in much of what the progressive lobby says, but as an aside or caveat or hand waving gesture – for example, when it insists on the 'toughness' of community sentences or drug treatment – and not as an integral part of the narrative it presents to the public. Arguably the progressive lobby's silence on punishment has been its Achilles heel. The good news is that this heel is fixable without the need for major surgery. A restorative theory of punishment is as consonant with progressive values as it is resonant with public concerns. ■

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References

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