

# Crime, punishment and politics

David Faulkner describes how criminal justice systems have been shaped by the changing attitudes of the age.

Western ideas of crime and punishment have mostly emerged from the Reformation and the Enlightenment, and before that from the *Magna Carta*. They have been based on principles of humanism, proportionality, natural justice, judicial independence and the rule of law (Croft, 2006). The offender is seen as a person empowered by free will, entitled to dignity and respect as a human being, and capable of change and improvement. That 'classical' view found expression in the *European Convention on Human Rights*, incorporated into domestic law by the *Human Rights Act 1998*. How it is interpreted and applied will change over time – the Convention is to be regarded as a 'living instrument' – but the values are permanent and not to be set aside because the 'world has changed'.

There is a contrasting instrumental, and sometimes 'positivist', view which sees the offender as a criminal person whose behaviour is determined by personality and environment. He or she is essentially 'different' from 'ordinary' people, of less value as a person, and a threat from which the public and the state have to be protected.

Both views have reflected and influenced public and political opinion in this and other countries at various times. The classical view has tended to be associated with governments of the Right, and the instrumental view with governments of the Left. The classical view has tended on the whole to be more 'liberal', and the instrumental view more 'authoritarian', but either view can be applied in ways that are more or less liberal or authoritarian in practice, depending on the social and political values of particular countries at particular times. It is hard to say whether one is more characteristically 'British' than the other, but the balance between them is one of the characteristics that define the kind of country that Britain is to be.

The two views could more or less be reconciled in the legislation and practice which prevailed for most of the twentieth century, and in the different theories or 'models' of penal practice which have found favour at different times. The models are well known to criminologists, and there is an extensive literature about them (Rutherford, 1993; Feeley and Simon, 1992; Faulkner, 2006).

The 'treatment' or 'medical' model was widely accepted during the 1950s and '60s. It was founded on an optimistic belief that science and technology could solve the problems of a modern society. Its vision was expressed in the white paper *Penal Practice in a Changing Society* (Home Office, 1959), and later in the rebuilding of Holloway Prison to become in effect a secure hospital. Crime and penal policy were not prominent features in the politics of the time or subjects of major political disagreement. Disillusion set in when research on the effectiveness of sentencing and penal treatment seemed to show that 'nothing works', and prison and probation staff were themselves uncomfortable about the legitimacy of treating offenders as 'patients'.

A 'justice' or 'due process' model took its place in the '70s and '80s. It inspired a programme of reform which included

the creation of the more independent, statutory inspectorates for prisons and probation; the appointment of a Prisons Ombudsman; the creation of the Crown Prosecution Service, reforms of prison discipline and the rules on prisoners' access to the outside world; policies on racial discrimination; the sentencing provisions of the *Criminal Justice Act 1991*; and the Woolf report on the disturbances which took place in prisons in 1990. The Conservative Party had for the first time made crime a feature of its election campaign in 1979, but apart from the short-lived revival of 'tougher regimes' in detention centres, Margaret Thatcher's government did not use criminal justice as a platform from which to make its appeals to public opinion and the electorate. Ministers were on the whole prepared to accept the limitations of criminal justice as a means of preventing and reducing crime, and concentrated on measures which they hoped would improve the working of the system.

The 1980s also saw the beginning of the 'new public management'. The Prison and Probation Services became more centrally and systematically managed. The Prison Service began the process of contracting out prisons and services to the private sector, and the probation service moved from a loosely co-ordinated collection of individual social workers to a managed service, with what was intended to be a clearer sense of direction and purpose. There was a new emphasis on economy, efficiency and effectiveness and increasingly, especially after the election of the Labour Government in 1997, on targets and performance indicators and a culture of compliance with rules, procedures and standards.

A dramatic change of political mood and direction took place in 1992 and 1993, especially after the appointment of Michael Howard as Home Secretary. The reasons and circumstances, and the policies and slogans which emerged, have been discussed many times elsewhere. Apart from the political and other events of the time, the focus of the 'justice' model was felt to be too much on process and not enough on outcomes. By 1992 it was no longer acceptable to Ministers, and it was not professionally satisfying for staff. Ministers needed to show they had policies that 'worked' and produced results. Staff, certainly prison staff, needed to feel that they were making more of a difference.

The outcome, both from the Conservative Government and even more from the Labour Government which took its place in 1997, has been the 'effectiveness' or 'crime control' model which holds the field to-day. The 'instrumental' view of criminal justice has become more prominent, reinforced by the demands for security following the terrorist attacks in America and London in 2001 and 2005. The model is based on techniques of risk assessment; on programmes or interventions which 'work'; on reforms of structure and management, including performance measurement, contracting out and diversity of provision; and new technology for communication, intelligence and surveillance. The implicit belief in a 'science' of penal treatment and crime control resembles in some ways that of the treatment model of the 1960s, but the underlying

attitude is less tolerant.

Significant changes are also taking place in political ideas about the purposes of punishment and of criminal justice itself. An earlier issue of *Criminal Justice Matters* (No 60, Summer 2005) explored the changes which are taking place in ideas about punishment and rehabilitation. Historically, justice has been seen as a matter of taking action after a crime has been committed. The state's process of investigation, arrest, prosecution, conviction and sentence was conducted according to a set of rules which led to a fair trial and a proportionate sentence. 'Justice' was the outcome which followed when the rules had been correctly observed, and when that was achieved it was a matter for professional pride and public satisfaction.

During the 1990s, justice came to be seen not so much as an outcome but as the process itself. Evidence of the change can be found in the Conservative Government's reaction to the miscarriages of justice in the 1980s and to the appointment of the Royal Commission on Criminal Justice whose terms of reference required it to "examine the effectiveness of the criminal justice system in England and Wales in securing the conviction of those guilty of criminal offences and the acquittal

purpose".

Those events were to a large extent the consequence of the government's concentration on management and its failure of political leadership over several years. But there are important substantive issues which still have to be resolved. One is lack of capacity in the prison and probation services to meet the demands which the government's policies and expectations placed on them. Another is the government's lack of realism in what it thought it could achieve. A third is the confusion over sentencing – predicted in *Criminal Justice Matters* – which has resulted from the legislation and guidelines that have been introduced over the period since 1992 and the complexity and rigidity which they have created. Far from being resolved by the sentencing provisions of the *Criminal Justice Act 2003* and the creation of the Sentencing Guidelines Council, the confusion seems to have been intensified (Gibb 2006), and of the five statutory purposes of sentencing only the punishment of offenders seems to be recognised in the most recent debate. A fourth is the growing recognition of the lack of principle in the Government's view of punishment and its approach to criminal justice.

***The classical view has tended on the whole to be more 'liberal', and the instrumental view more 'authoritarian'... It is hard to say whether one is more characteristically 'British' than the other, but the balance between them is one of the characteristics that define the kind of country that Britain is to be.***

of those who are innocent, having regard to the efficient use of resources...". The sense that justice has any absolute value came to be diminished. Convicting the guilty and protecting the public became as important as, perhaps more important than, acquitting the innocent. The Labour Government went a stage further. More people had to be 'brought to justice'; the 'justice gap' between crimes committed and crimes cleared up had to be narrowed, and the system had to be 'rebalanced in favour of the victim'. People could be punished not just for what they have done but for who they are.

There has similarly been a change of focus from dealing with crime and punishing offenders after they have been convicted, to protecting the public and preventing crime from being committed in the first place (Zedner, forthcoming). Some measures have been directed towards people who may not have committed any offence, or any offence which can be proved against them, but who may be suspected or considered to be a nuisance or 'at risk'. Examples range from anti-social behaviour orders and restraints on those who might be involved in disturbances at football matches at one end of the scale, to the detention of suspected terrorists without trial at the other. Other measures, such as extended sentences of imprisonment for public protection, are directed towards preventing convicted offenders from committing a further offence.

A series of events and the way in which they were reported led to a political crisis over criminal justice in May this year. One of them – the failure to deport foreign prisoners at the end of their sentence – led to the resignation of Charles Clarke as Home Secretary. Together they led his successor John Reid, in evidence to the Home Affairs Committee of the House of Commons, to say that the Home Office was not "fit for

In a speech on 23rd June, the Prime Minister acknowledged the need for a national debate on the future of criminal justice. There may now be an opportunity to establish a sense of principle and legitimacy, of moral as well as political purpose, and of political and professional leadership, of a kind that has been missing from the debate during the last fifteen years.

**David Faulkner** is Senior Research Associate at the Centre for Criminology, University of Oxford.

#### References

- Croft, J. (2006) 'Legitimacy and Accountability in Criminal Justice', *Vista*, 10/2, 109-112.
- Faulkner, D. (2006) *Crime, State and Citizen: A Field Full of Folk* (second edition) Winchester: Waterside Press.
- Feeley, M. and Simon, J. (1992) 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications', *Criminology*, 30/4, 449-474.
- Gibb, F. (2006) 'Under Fire: the judges speak out about "soft" sentencing', *The Times* Law section, 27 June.
- Home Office (1959) *Penal Practice in a Changing Society*, Cmnd 645, London: HMSO.
- Home Office (1979) *Report of the Committee of Inquiry into the United Kingdom Prison Services* (the May Report), London: HMSO.
- Rutherford, A. (1993) *Criminal Justice and the Pursuit of Decency*, Oxford University Press, reprinted 1996 by Waterside Press: Winchester.
- Zedner, L. (forthcoming) 'Pre-crime and Post-criminology', *Theoretical Criminology*, special issue on 'Criminology, Public Policy and Public Intellectuals' (November 2006).