

New dawn fades. Criminal justice under New Labour

Will McMahon discusses what might have been expected from three terms of Labour.

Once in a while the mass media carries stories about individuals who have been in a coma for years, some for well over a decade, who then wake up and face a period of disorientation caused by a new world they are unprepared for. Now imagine the fate of a campaigner for prison reform, who, in the early morning of Friday, 9 May 1997, while making their way home from an election victory party, was knocked over by a pavement cyclist and into a coma – only to awake 13 years later in the spring of 2010.

While the previously comatose reformer would not have expected to discover empty prisons, it is likely that they might hope to find policy having moved, Fabian-like, avoiding battles that could not yet be won, in a progressive direction; particularly for the most vulnerable in society – much along the lines of the Commission for Social Justice published prior to the 1997 landslide.

For the triangulation strategists the third way promise was essentially meant to boil down, in the mind of the electorate, into a form of common sense rationalism predicated upon evidence based policy making. Following the revenge politics on the 1945 settlement that for many characterised Thatcherism (culminating in a 'poll tax' levied irrespective of the ability of the poor to pay that led to a national riot), and the chaos of the final years of Majorism, it seemed like a statement of the obvious that things could 'only get better' following a change of regime from the 'nasty party'.

So the proposed Youth Justice Board would have cut the number of

young people incarcerated; most of the few thousand women in prison would be outside on community sentences; the tense relationship between the police and the black and minority ethnic communities, and those seeking asylum from dictatorial regimes, would have been eased with fewer behind bars and a tolerable immigration policy. At worst, prison numbers for men would have held steady – perhaps even dropped a little.

The articles in this themed section describe some of the main out turns of the 1997–2010 administration. The first three form a triptych and focus on the key themes of the conference co-organised by the Centre for Crime and Justice Studies, the Centre for Legal Research, University of the West of England, Bristol, and the Centre for Criminal Justice in the Law School at the University of Warwick on 10 March this year, *Criminal Justice in an Age of Austerity and Change*. **Lee Bridges** describes the 'changes wrought to criminal justice under New Labour' as 'profound'; he discusses the exponential growth of non-court disposals introduced in an attempt to meet the 'offenders brought to justice targets', the 'often blanket' use of stop and search powers 'especially against members of the black and Asian communities' and the significant erosion of the right to custodial legal advice when arrested by the police. He concludes 'This is truly a "Life on Mars" moment, a throwback to pre-PACE conditions and all that implies'. **Ed Cape** describes the impact of New Labour's focus on delivering 'simple, speedy, summary' justice through a re-engineering of the system on the

adversarial process. He argues that increasing the rate of conviction through changes to bail conditions, greater pressures to disclose defence, and the introduction of previous misconduct into the evidential process, is not the same as ensuring that justice is done and notes that 'none of the five performance indicators against which Public Service Agreement 24 is measured are concerned with ensuring respect for the rights and interests of those accused of crime'. **Jacqueline Hodgson** builds on the discussion noting the general trend away from the courtroom disposal of cases (a phenomena also occurring in Europe and the United States) that places more powers in the hands of prosecutors and the police and concludes the efficiency gains that were the object of the exercise have not been realised 'whilst at the same time transforming police and prosecutors into sentencers and depriving those accused of the proper safeguards associated with a fair trial'.

It might be possible to conclude that New Labour's approach to criminal justice is simply a universally applied combination of new public management, 'common sense' thinking, and a desire for technocratic efficiency and driven by utilitarianism. The second set of articles in this themed section offers a challenge to that conclusion. **Joe Sim** contrasts the focus of criminal justice under New Labour being 'directed not only at the powerless but also at some of the most vulnerable groups in the UK' and contrasts this with the lack of scrutiny and accountability of those who have caused qualitatively more social harm through the banking system; while many of those who were supposed to have oversight of the financial institutions were getting the tax payer to fund second homes, gardening, moats, and duck houses. Sim quotes Bob Dylan: 'Steal a little and they throw you in jail, steal a lot and they make you a king'. He could equally have cited Morrissey: 'Educated criminals work within the law'.

New Labour have mainly focused on coaxing the rich to be good and its lack of willingness to tackle the misdemeanours of the powerful must



the ever widening and thinning mesh that is the law and order state that New Labour has built, with 3,000 new laws, 40,000 more prison places, and four million CCTV cameras as the signal metrics.

Having spent a decade building a law and order state the country as a whole stands on the precipice as the deepest public spending cuts ever witnessed. **Richard Garside** discusses what opportunities cuts in criminal justice might offer. Whatever the economics suggest there is little evidence that prisons, nor community sentences nor having tens of thousands of uniformed people on the streets have had the effect desired by the policy makers – that we live in a safer society or even that the public *feel* they live in a safer society.

However there is a great deal of evidence (e.g. Wilkinson, 2009) to show that if a society privileges social security over criminal justice spending then real benefits accrue – societies which are more equal experience less harmful behaviour across the board and tend to seek solutions to social problems that are restorative to society as a whole rather than punitive to particular groups who present as being outside the norm. Such evidence offers a lead to criminal justice reformers who perhaps felt the third way was worth a try but are now filled with disappointment – rather than a rag bag of schemas aimed at keeping particular sets of individuals thought of as problematic out side of the criminal justice system through one community sentence scheme or another, perhaps the argument has to be had from another perspective – less how do we keep these people ending up in prison the question that needs to be answered is what kind of society have we built that wants to keep some many people locked up? ■

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References

Wilkinson, R., and Pickett, K. (2009), *The Spirit Level: Why More Equal Societies Almost Always Do Better*, London: Allen Lane.

surely have something to do with the great helmsman Blair who, in 2005 expressed the view that ‘Something is seriously awry when ... the Financial Services Authority that was established to provide clear guidelines and rules for the financial services sector and protect the customer against the fraudulent, is seen as hugely inhibiting of efficient business by perfectly respectable companies that have never defrauded anyone’.

Continuing this theme **Steve Tombs** and **Dave Whyte** discuss the impact of the Hampton Report on the deregulation of business and the work of the Environment Agency and the Health and Safety Executive. Following the implementation of the report in the middle part of the decade the focus for business regulation is that of ‘advice and education’ – inspections by the Field Operations Directorate of the HSE fell by at least half and prosecutions of work place deaths investigated fell from 35 per cent in 2004–2005 to 8 per cent in the last year. The Environment Agency inspections fell almost by half in the same period.

Whilst ‘light-touch’ regulation has been the norm for the corporate wealthy those that Sim refers to as ‘the most vulnerable’ have come under the more intensive scrutiny of criminal justice. In his article **David Gregg** challenges the idea that the anti-social behaviour drive has been either well targeted or effective. For

example, reviewing the evidence about the ASB (Anti Social Behaviour) strategy he cites data showing that eighty percent of families to be found in the Family Intervention Projects, ‘have serious mental/physical health and learning disability problems’. This evidence sits uneasily next to Gordon Brown’s 2009 Labour Party conference speech where he argued ‘Starting now and right across the next Parliament every one of the 50,000 most chaotic families will be part of a Family Intervention Project – with clear rules, and clear punishments if they don’t stick to them’. The lesson is that those with large amounts of capital are to be educated and advised and those living on low incomes with mental health problems are to have clear rules and clear punishments.

Undoubtedly all of this, alongside the dramatic rise in prison numbers, women, young people, and BME (Black and Ethnic Minority) groups included, would come as a rude shock for our recently awoken prisoner reformer. The implicit deal that New Labour made with criminal justice reformers was captured in the pithy third way phrase ‘tough on crime, tough on the causes of crime’ – a ‘realist’ approach to law and order. As predicted by those caricatured as ‘idealists’ at the time, this strategy has been disastrous for the cause of penal reform and catastrophic for those at the bottom of the pile who have been caught in