

# Punishment as a Hate Crime

Claire Valier takes a critical look at how vengeful hatred becomes part of the 'justice' process through the legal system's handling of sensationalised crimes.

**E**nraged and violent crowds, screaming and rushing at the van carrying the young defendants, were a daily feature of the 'Bulger killers' trial. These dramatic scenes were described in evidence to the European Court, when lawyers argued that the trial had been inhuman and degrading. The court was also told about the boys' terror upon hearing that their names and photographs had been publicly released. While the majority did not see the trial and penalty as inhuman, several judges denounced the handling of the case, stating, "Vengeance is not a form of justice and in particular vengeance against children in a civilised society should be completely excluded." The Bulger case is emblematic of the visceral passions and raw emotions so prominent in the crime debates, policies and practices of today. When hate is admitted into the penalties imposed under the criminal law, does punishment become a crime?

branding in two senses; branding in the sense of stigmatic marking, and branding in the sense of marketing a recognisable product for mass consumption. At the end of the trial of the 'Bulger killers', the judge took a controversial decision to release their names and school photographs. The European Court, while not identifying this act as a breach of human rights, did comment that it was somewhat unadvisable. When the boys, Thompson and Venables, were eventually released in 2000, the threat of attack was deemed so serious that they had to be supplied with new identities backed up by an anonymity order (see Valier, 2002). They were described in the *Times* as 'marked men' and 'dead men walking.' The police leaked the photographs taken back in 1993 to the press, and in the *News of the World's* coverage the stigmatic brand of the mugshot turned into the bullseye of the marksman's target. The detective who had interviewed one boy told BBC's

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Both hate crimes as conventionally understood, and severe punishments, perform a certain kind of communicative work. They send out controversial messages about those individuals that a society seeks to marginalise and exclude. Politicians and lawyers are beginning to recognise the damaging effects of hate crimes committed by members of the public against minority groups. It is quite an irony that the state's own criminal justice system not only fails to prevent hateful assaults of various kinds against convicted offenders and their relatives, but sometimes even seems to encourage them. The debate on hate crimes can be productively broadened to consider whether notorious murderers should be given protection against the extremes of vengeful punishment, harassment, vilification, and physical assault.

### **Branding criminals**

In an iconic age, fascination with high-profile offenders is widespread, fed by the flow of images and messages circulated daily in the media. Notorious criminals increasingly lose the power to control the uses made of their image, as their names, faces and stories become lucrative commodities. Distributing names and photographs is a form of

*Panorama* programme it was right that the freed killers should "live on a knife-point."

Vituperous reporting adds to the suffering and degradation that is one of the pains of imprisonment. It may also keep offenders in prison longer, once public opinion becomes a factor in tariff decisions. Some murderers have unsuccessfully sought censure of the media through the Press Complaints Commission (PCC) and the courts. The mother of Jon Venables has lodged a complaint with the PCC after the *News of the World* alleged that she had made the 'chilling prediction' that her son would be dead within four weeks of being released. Similarly, Myra Hindley complained about an article in the *Mirror*, which had erroneously claimed that she was dying of cancer, inviting readers to revel in her suffering and the thought of her imminent demise. Ian Brady has also made complaints about intrusive articles, and especially those featuring long-lens paparazzi-style images of him. So far the PCC has defended this style of article as being 'in the public interest.' They have affirmed that despite claims to the contrary by some tabloids, even notorious criminals retain some human rights. However, they have decided to give no redress in the complaints made so far, and implicitly extended no protection to offenders and their relatives.

Today in addition to notorious criminals, the victims of some crimes also become recognisable household names. Hate enters crimino-legal practices with the new forms of their incorporation into the criminal justice system. The dire rage of crime victims and their relatives is portrayed as righteous indignation, and their turning from grief to vengeful fury as natural and inevitable. In the USA, since 1991 victim impact statements have been lawfully admitted at sentencing in death penalty cases (see Sarat, 1997). In the penalty phase, narratives of graphic violence and extreme trauma are used to ground the prosecution's demand for execution. Forty searing impact testimonies were presented to the jury that unanimously recommended Timothy McVeigh, the Oklahoma City bomber, be put to death. The voices of survivors and relatives who oppose the death penalty and call for reconciliation, like Bud Welch whose daughter was killed by the explosion, were not heard by the court. By the time of the execution day, they were drowned out by the privileged vengeful victimhood narrative. The American President might call the imposition of the death penalty an act of justice, but for an abolitionist it is a hate crime, and wholly out of step with the current trend of international law. In Britain the Bulger family, backed by the tabloids, mounted a high-profile campaign for Thompson and Venables to suffer life imprisonment. The Home Secretary's action, in raising their tariff after receiving protest coupons from readers of *The Sun*, was censured by the courts. Yet the Home Office continued to send out ambiguous messages about listening to victims.

### Proportionality and emotion in punishment

A set of principles has emerged over the last few decades, which permits the legal system to legitimise, regulate and distribute the hatred which increasingly enters into punishment. These principles are premised upon an old distinction between retribution (lawful, within limits) and vengeance (unlawful). At present, retribution is officially practised within a legal logic of proportionality, or 'just deserts,' with the idea of imposing a punishment proportionate to the severity of the crime. This penal philosophy is premised upon the rational calculation of a penalty matching the gravity of the offence. However, by admitting matters of 'public opinion' and victim impact into decisions on punishment at the same time as they pursue a 'get tough' crime agenda, the government opens up the criminal justice process to vengeful passions. The notion of proportionality becomes a threat levelled against both individual offenders and the rule of law itself: if we deem the retribution imposed as insufficient, we 'the public', will exact our revenge. Cases like those of Timothy McVeigh, Myra Hindley, Jon Venables and Robert Thompson seem to confirm what scholars across the disciplines

have been noting for some time, that the public culture of western societies is increasingly centred on representations of graphic violence and trauma (Berlant, 1997; Seltzer, 1998). In a series of dramatic mutations, new relations are being created between public affect, legal practices and the political. Ultimately, the notion of proportionality is transformed, turning into an emotive conduit for hatred. Punishment becomes a hate crime.

*Claire Valier is a lecturer at the University of Leeds and will move to Keele University Law Department in September 2002. She is the author of Theories of Crime and Punishment (Longman) and Crime and Punishment in Contemporary Culture (Routledge), which reflects further upon questions raised in this article.*

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