Populism and Punitive Penal Policy

Professor Mike Hough describes the trend towards simple and tough 'solutions' to crime.

There are two striking facts about crime and justice across the developed world over the last decade or so. Crime, with some exceptions, has been in decline; and punitive penal policies have been on the increase. The trend is particularly marked in the industrialized English-speaking world. In England and Wales crime has fallen significantly since the mid-1990s whether measured by the British Crime Survey or by police statistics.

Explaining the drift to punitive criminal justice

Some would argue that 'getting tough on crime' is a sensible and overdue response to spiralling crime problems. I do not intend to spend much time addressing this argument. There is no persuasive evidence that the fall in crime across many countries can be attributed to any significant degree either to the incapacitative effects of large-scale imprisonment or to the deterrent effects of increased severity of punishment. (Indeed one of the few things on which criminologists tend to agree is that deterrence derives from certainty of punishment rather than severity of punishment.) What needs explaining is the fact that many liberal democracies have adopted increasingly punitive penal policies precisely at the time when their crime problems appear to be abating.

There are several strands to any explanation. First it is important to recognize that even if crime rates have fallen back recently, they rose steeply for much of the post-war period, and stand now at much higher levels than fifty years ago. These long-run rises have inevitably prompted concern about crime, and may have inculcated an enduring sense amongst the public that crime is getting worse.

This concern has been exacerbated by the sense of uncertainty that infuses modern life. Several commentators have identified characteristics of 'late-modern' society that engender popular attachment to simple and tough solutions to crime. Social and technological change has left us bereft of traditional certainties and sources of trust. Family life, a job for life and even an after-life are no longer taken for granted, for example, in the way they were half a century ago. These wide-ranging insecurities which people feel in the face of rapid social change may be translated into concerns about the risks of crime and about threats to personal safety. 'Criminals' become society's whipping boys; and the criminal justice system becomes the whip.

Another consequence of life in a rapidly changing and less controllable world is that there is less public confidence in public institutions, including the criminal justice system. In response to this shift in public mood, liberal democracies have abandoned traditionally paternalistic political styles in favour of more obviously responsive or populist ones.

At the same time, mass-media representations – or mis-representations – of crime and justice have systematically misinformed the public, and encouraged politicians to respond to the sense of public anger about crime that they have fuelled. The extent of public ignorance about crime and justice is now well documented. People tend to over-estimate the severity of crime problems and to underestimate the severity of court sentences. No wonder they have little confidence in the criminal process. However politicians have responded to public disquiet not by talking sense but by talking tough. The result is an increasing reliance on imprisonment as a response to crime.

Two futures for penal policy

I can see one optimistic future, which might be dubbed 'the end of spin'. In this scenario politicians recognize the need to respond to public disengagement with the political process. They accept that the 'democratic deficit' reflected in low voter turnout and cynicism about politicians is a direct consequence of populist strategies and of the 'Punch and Judy' debates in which politicians too often engage. The shadow Home Secretary, Oliver Letwin, is currently the most visible advocate of political honesty - perhaps a reaction to the political style of some of his recent Conservative predecessors - though New Labour and the Liberal Democrats are also making similar noises.

The 'end of spin' is a plausible scenario for penal policy only if crime trends continue to stay steady or fall further. Technocratic solutions to 'design out crime' could interact with successful strategies to address social exclusion in ways that yield even further falls in crime. These might lead to greater public confidence in criminal justice, providing enough space for a more rational debate about crime control and sentencing.

But there is a more pessimistic scenario. The structural pressures on politicians in liberal democracies to double-talk may mean that 'the end of spin' evolves simply into a more sophisticated form of spin. If the rise of the far right in several European countries turns out to be part of a broader trend, then the pull that these minority parties exert on the political mainstream may swamp the effects of any self-denying ordinance in favour of political honesty.

Crime trends could also start to rise again. For example the preventive gains yielded by technological prevention in harness with strategies to address social exclusion could easily be swamped by the crime associated with a crack-cocaine epidemic. Or equally

Daily Mirror front cover, 12 July 2002

possible, the level of government expenditure revenue needed to contain social exclusion could be judged unaffordable if we enter a period of deep economic stagnation. In either case, an upturn in crime occurring at a time when the far right is finding a louder voice could herald a return to extreme penal populism. It is hard to see how any of the mainstream parties could in these circumstance risk pursuing a sort of 'Letwin agenda' that values recognition of complexity, admission of fallibility, openness of debate and a commitment to evidence. In short, in a decade we could look back with nostalgia at a prison population that stood at 'only' 70,000.

Making a difference?

I vacillate between optimism and gloom. Sometimes it seems hard to resist the pessimism inherent in sociological analyses of late modernity: the most likely penal future in an increasingly uncertain world seems to be one in which those who threaten a fragile social order are simply contained or excluded.

At other times there seem to be enough points of leverage to ensure that this gloomy sort of scenario can be averted. There are signs that government is genuinely serious about containing the impact of social exclusion, and at times there also seems to be sufficient political consensus about the threat posed by the 'democratic deficit' that movement away from political populism seems possible or even probable.

There are things that can be done within the field of penal politics. Penal reformers and their academic allies need to learn from their failure to make any significant impact on penal debate when penal populism emerged so clearly in Britain in the mid 1990s. On the one hand we need to be smarter and a lot more systematic about the use of social marketing techniques to convey messages effectively about crime and punishment. On the other hand, any such social marketing has to be scrupulously honest if it is to maintain any long-term authority.

Certainly there is a pressing need to improve the quality of information available to the public about crime and justice. But those best placed to do so - government researchers - have increasingly less credibility in a world which equates government with spin. Whilst the technical quality and integrity of Home Office research and statistics remains high, any attempt by government to reassure the public will elicit the response that 'they would say that, wouldn't they'. This puts a particular obligation on reform groups and on academic criminologists to tackle public misperceptions. It is also important to ensure that the political costs of penal populism are increased. Where politicians put forward popular but flawed proposals, the latter need to be exposed as such by people who command credibility and authority. Finally, politicians need to be offered more cogent and compelling alternative models of crime control.

These proposals are easy to list, but hard to implement. If they are to be given any practical reality, professionals within and around the criminal process need to think harder about the institutional arrangements needed to ensure that there are adequate buffers between penal practice and populist policy. We need more effective alliances between practitioners, academics and reform groups that allow rational penal policy to develop a coherent, audible and authoritative voice. In the absence of such alliances, the likelihood is that populism will continue to dominate penal reform. ■

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