

The Affects of Punishment: emotions, democracy and penal politics

Ian Loader considers the ways in which emotions shape contemporary debates about punishment and examines the fit between public passions towards crime and the pursuit of a more rational policy.

Social analysts of punishment have been exercised of late by what appear to be some significant shifts in the character of contemporary penalty. Their attention has focused, in particular, on the at least partial eclipse of a system administered by experts, working at arm's length from democratic pressures, pursuing rehabilitative goals by one that has become more populist in style and punitive in outcome. Public discourse on crime has in the process assumed a high emotional charge, as politicians react to the mass-mediated anger, indignation and anxieties of the public by promising to 'get tough' with offenders and 'crackdown' on crime. A host of recent penal developments – spiralling prison populations, minimum mandatory sentences, controls on sex offenders, ASBOs and so forth – all attest to a new political consensus under which governments seek to give voice and effect to, rather than temper, the impassioned demands of citizens – and especially victims. The temperature of penal politics has moved, in short, from 'cool' to 'hot' (Garland 2001; Pratt et al. 2005).

This of course tells only part of the story of the current penal landscape. Some have even argued that this is the wrong story (Matthews, this issue). We can point to restorative justice initiatives that seek to give institutional effect to human emotions – notably shame, remorse and forgiveness – that are marginalized by established criminal justice practices. Other social control interventions seek quietly – below the radar screen of tabloid headlines – to effect pragmatic change in ways that neutralize or side-step the passions that crime excites – think of cognitive behaviour programmes, or practices of actuarial justice, or situational crime prevention. But these struggle for public acceptance at least in part because they fail to correspond to how people *feel* about crime and punishment. There seems little doubt today that the genie of public emotions is out of the bottle.

Perhaps this should not surprise us. Passion is after all – as the French sociologist Emile Durkheim once wisely instructed us – 'the soul' of punishment. Various emotional states – anger, fear, indignation,

resentment, disgust, guilt, shame, remorse, pity, compassion, excitement, pleasure – are intimately and inescapably tied up with matters of crime and punishment – even though criminology has largely been slow to recognize this (cf. Karstedt *et al.* 2006). But emotions that were once kept in check, held at one remove from the operation of the justice system, seem now to have been let loose in potentially dangerous ways. If so, what should be our response? How, in liberal democratic societies, should governments seek to handle the public passions that attend crime and punishment? Let us consider three possible answers.

Cognitive deficit

This first we may call the 'cognitive deficit' model. It has been associated in recent years with the important work of academics such as Julian Roberts and Mike Hough (2002) and has underpinned the campaigning efforts of the 'Rethinking Crime and Punishment' Project (www.rethinking.org.uk). This seeks for the most part to set aside the whole question of emotions. It rightly points out that public opinion towards punishment is not uniformly punitive or vengeful, but rather is ambivalent, complex and nuanced – subtleties that politicians routinely gloss over. It then attributes much of the anger and indignation that people feel towards 'lenient' penal practices to their lack of information about how the criminal justice system works and consequent misunderstanding of it. The ensuing policy goal is to make good this cognitive deficit by supplying citizens with more robust, independent information about the purposes of sentencing and the relative use and effects of imprisonment and community penalties. The hope – for which there is some supporting evidence – is that a better-informed citizenry will exhibit less punitive, more liberal-minded attitudes towards crime and punishment.

This approach is laudable, well intentioned and replete with practical suggestions. Yet it unduly privileges the cognitive over the affective dimension of people's orientations towards punishment. This is evident in the claim that penal policy is 'distorted'

(from what?) by the present interplay between government, media and popular opinion, as well as in the suggestion that public attitudes can be 'corrected' or 'improved' by better information. This presumes that such knowledge is uncontested and readily available. More importantly, it fails fully to come to terms with the emotional and cultural dynamics of contemporary punishment, and hence to understand that injecting facts and evidence into public debates about penal policy is unlikely to be sufficient to steer such policy in a more rational direction, or to loosen what for many is an affective – even pleasurable – attachment to the 'prison solution'.

Insulation

Let us call the second answer the 'insulation model'. Proponents of this model contend that opening up penal matters to democratic processes (and hence public emotions) generates a spiral of citizen outrage and 'tough' political response that gives rise to more punitive outcomes – the most glaring case in point being the 'Three Strikes' initiative in California (Zimring *et al.* 2001). A humane, moderate penal policy therefore depends, so the argument goes, on the determination of punishment being insulated from democratic pressures by institutions that act as a 'buffer' between criminal justice processes and popular demands. Many such mediating institutions already exist in liberal democracies such as England and Wales – unelected prosecutors and judges, parole boards, inspectorates etc. But enthusiasts for insulation – drawing an analogy with the delegation of monetary policy to independent central banks – seek to extend and deepen such buffers, thereby enabling expert authorities to decide on penal policy away from the heat of popular emotion. Punishment, in short, is held to be among those matters that liberal democracies – for reasons of good governance and social cohesion – may reasonably seek to remove from the agenda of electoral politics.

This too may be seen as laudable and well intentioned. But it is hopelessly elitist and technocratic in principle and likely to prove counter-productive in practice. It is elitist in its assumption that deliberation among experts (in what exactly?) is better placed than open public dialogue to produce penal policy that is simultaneously effective, rights-regarding and minimally credible to the citizens in whose name it is conducted. It is likely to be counter-productive because, since the genie of public emotion is out of the bottle, seeking by technocratic means to ignore or suppress it serves only to fuel public anger and leave it ripe for authoritarian exploitation. The cause of progressive penal policy cannot and should not be advanced by stealth – however tempting that option may sometimes seem.

Redirection

Let us, finally, consider a third answer – what one may call the 'redirection' model. This takes as its

The cause of progressive penal policy cannot and should not be advanced by stealth – however tempting that option may sometimes seem.

starting point the inescapable centrality of the emotions to crime and punishment and seeks to create institutions that can bring such emotions in from the shadows and subject them to the scrutiny of public reason. Something approaching this idea has in recent years animated initiatives such as restorative justice, neighbourhood mediation and Truth and Reconciliation Commissions. But there is no reason why forums of inclusive public deliberation may not also be encouraged and experimented with as a means of determining the contours of crime and penal policy more generally – forums in which citizens are able to tell their stories, voice their anger and press their claims as part of local and national policy-making processes.

I lack the space here to spell out what such institutional arrangements may look like. There also exist no cast-iron defences against the charge that in promoting such a course one is playing with fire, no guarantees that popular emotions can be redirected towards 'safe' outcomes. I am, however, prepared to make the following two wagers. First, that such democratic processes stand a better chance of dispelling the anxiety and resentment that drives much current 'law and order' politics than other extant or proposed solutions – not least because such anger surfaces among those who feel themselves to be concerned spectators of dramas in which they can play no part. Second, that such processes, in addition to addressing these punitive emotional states, may also help to foster the feelings of compassion and solidarity towards strangers that demands for security always in part represent, and which common democratic institutions enable us to articulate and act upon. My bet is that there is much to be gained by treating emotions as a resource for, as well as a threat to, the cause of a more rational penal policy.

Ian Loader is Professor of Criminology at the University of Oxford and Director of the Oxford Centre for Criminology.

References

- Garland, D. (2001) *The Culture of Control*. Oxford: Oxford University Press.
- Karstedt, S., Loader, I. and Strang, H. (eds.) (2006) *Emotions, Crime and Justice*. Oxford: Hart.
- Pratt, J., Brown, D., Brown, M., Hallsworth, S. and Morrison, W. (eds.) (2005) *The New Punitiveness: Trends, Theories, Perspectives*. Cullompton: Willan.
- Roberts, J. V. and Hough, M. (eds.) (2002) *Changing Attitudes to Punishment*. Cullompton: Willan.
- Zimring, F., Hawkins, G. and Kamin, S. (2001) *Punishment and Democracy*. Oxford: Oxford University Press.