

# The origins of penal populism

## Malcolm Dean considers the role the media played in turning law and order policy making into corrosive penal populism

*Five years ago after 46 years of daily deadlines – the last 38 on The Guardian – I retired to explore, with the help of Joseph Rowntree Foundation and Nuffield College Oxford fellowships, just how much influence was played by the media in the policy making process. The exercise was prompted by rising public concern over the ever widening power of the media. Onora O’Neill, the philosopher, in her Reith lectures in 2002 on trust in public institutions, noted with irony that the main champion of transparency and accountability – the media – were themselves the least transparent and accountable group in democracy. Anthony Sampson, a distinguished journalist, in his fourth edition of Anatomy of Britain in 2004, documented just how entrenched this perception was.*

Returning to interview the leaders of 24 other centres of power – Whitehall, Westminster, the judiciary, the Bar, Cabinet, corporations, the City, industry, academics etc. – he noted that virtually every institution he had talked to complained of a weakening of their influence in the 40 years since his first edition and the growth in the same period of media power. He found that the leaders mentioned ‘the media more often with fear or dislike rather than respect’ and had contempt for the trade’s ‘short horizons, superficiality and destructiveness’.

Spurred on by these authors – and other surveys which had reached the

same conclusion – I decided to examine seven separate areas of policy making: law and order, drugs reform, asylum, child poverty, health and social care, vocational education, and housing. They had all come within my remit as social policy editor at *The Guardian*.

### **Politicians and the tabloids**

It will probably not surprise readers that none of the seven areas examined had such labyrinthine links between the two groups of players – politicians and tabloid journalists – as law and order (although drug reform was a close second). The two groups live in a symbiotic relationship. My conclusion was that with law and order the politicians played the host, tabloid journalists as the parasite. With drugs it was the other way round. There was a third area – asylum – where the tabloids were an equally virulent factor.

It is the law and order case study that contains the saddest story: a field where politicians once acted like grown-ups, listened to professionals and Whitehall policy makers, and genuinely tried to pursue evidence-based policy

making. This must seem unbelievable to people who only entered the field in the last two decades and have seen at first

hand the corrosive effects of the penal populist wars waged by the two major parties.

Policy making, of course, is a much broader process than just politicians and the media. It is an

intricate mix of new events, old promises, bureaucratic loyalties, party allegiances, manifesto pledges, pressure group campaigns, think tank or select committee reports, research findings and legislative cooking time among other factors. But I was shocked by the degree to which the law and order agenda was bent to curry favour with the tabloids, documented by leaked Blair memos to his aides asking for more ‘tough on crime’ initiatives and the head of press at the Home Office complaining about being forced to produce ‘headlines’ before they had policies. As Alastair Campbell, Blair’s Communications Director, informed all new press officers: ‘If we don’t feed them, they eat us’.

Yet the main fault for the rise of penal populism in the last two decades can be laid more fairly at the feet of politicians than the press, although the tabloids have been eager accomplices. For the first 70 years of the twentieth century law and order was not a partisan issue. As Downes and Morgan (1997) have noted, there was not even partisan mention of the issue in party election manifestos. The two criminologists were as surprised as lay people by their finding. Bipartisanship covered a wide field including the response to crime, the nature of policing, and sentencing policy. There were, of course, debates and votes on capital punishment, but divisions on this issue were within parties, rather than between them.

### **The end of bipartisanship**

The politicisation of crime control did not really start in the UK until the run up to the 1979 election when Margaret Thatcher, as the Conservative opposition leader, openly and persistently blamed Labour for rising crime and disorder. Her over generous promises of higher police numbers, much better pay and tougher penal policies helped define clear blue water between the two main parties. Prior to the election she used the civil labour disputes in the 1978–1979 Winter of Discontent (hospital picket lines, uncleared rubbish, disrupted transport) to reinforce her claims that Labour were soft on law and

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order and following her victory consolidated this position in the 1981 Brixton/Toxteth urban disorders and the breaches of picketing laws during the 1984 miners' strike.

All helped to boost public support for her party on this issue. It was this loss of public support for Labour that prompted Tony Blair to seek to seize the law and order crown back. After Labour's surprise defeat in the 1992 election, Blair specifically asked for the shadow home secretary's post. A huge increase in recorded crime (more than double) in the Tory's first three terms and the grim death of Jamie Bulger, a Liverpool toddler killed by two young boys in 1993, provided him with powerful ammunition to attack the Thatcher/Major record. His new mantra 'tough on crime, tough on the causes of crime' – a rallying cry originally scripted by Gordon Brown – won him early headlines. All this was in place before Michael 'Prison Works' Howard became Home Secretary in May, 1999 and engaged in an epic battle with Blair over who could be the toughest.

A former senior civil servant in Howard's office told me how amazed they were, as Howard ratcheted up his proposals in the run up to the 1997 election, that all were accepted by Blair, by then Labour leader, including the draconian 1997 Sentencing Act, with its 'two strikes and you are in' prison provision. Passed by Howard, implemented by Blair.

### Blair's laws

The campaign did not stop once Blair had won office. He talked endlessly and inappropriately of the need to replace a nineteenth century criminal justice system with a twenty-first century model. He called for a victim justice system,

ignoring the fact that a main driver behind setting up a justice system was to end blood feuds and lynch law. He held 13 criminal summits in his first five years, announced 33 'get tough' initiatives between June 2001 and May 2003, passed 53 acts dealing with crime, criminal justice and punishment which created 3,000

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new offences in 10 years, as though this was the key to crime control when in reality only three out of every 100 offences ever get to court.

Tougher acts – and tougher rhetoric – led to longer sentences for a much wider range of offences. It took four decades between 1951 and 1991 for the prison population to rise by 11,000. Between 1992 and 2002 during the Blair-Howard law and order wars, the population went up by 22,000 – twice as fast in one quarter of the time. Successive chief inspectors of prisons along with successive directors of the prison service complained in vain about the number of inappropriate offenders incarcerated: young people, non violent offenders, and the mentally ill.

By the time Blair reached Downing Street we already had more prisoners per head of population than most developed states.

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Yet the expansion continued, each extra prisoner costing £41,000 a year in accommodation plus £100,000 in capital for each extra cell. By the time Blair left we were then spending a greater proportion of our GDP on the criminal justice system – 2.5 per cent -- not just more than any other EU state but the US as well. All this against a record fall in recorded crime – burglary, car crime, theft – all over 50 per cent down. Only a small proportion of this drop (about 20 per cent) was due to the penal

policies, as the Cabinet Office's strategy unit noted. The other factors included greater economic stability, better security of cars and homes, falls in the value of electrical goods, sharper police focus on persistent offenders and more investment in drug schemes.

The irony of Blair's penal populism was that he was hoist by his own petard. The main result of his tough rhetoric, hyperactivity and continuous criticism of the criminal system was that the public came to believe that everything was going wrong. Two thirds of the population wrongly believed crime was still going up and blamed the government; one third rightly believed it was going down, but gave the government no credit for the fall (Hough, 2005).

### The seven deadly sins

The irony of my project (for a fuller version of this case study along with six others see Dean, 2011) is that although at the start the media were still a big, bad uncontrolled beast, it now looks more like a fatally wounded stag, leaching readers, viewers and advertisers to the internet. What emerges from the study are seven deadly sins of journalism: distortion, dumbing down, more interested in politics than policy, too adversarial, too readily duped, group think, and its obsession with the negative. ■

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### References

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