

'Shock and Awe': judicial responses to the riots

Joe Sim focuses on the authoritarian response to the August 2011 disturbances

Justice, when it's swift, is most effective; it's about ensuring that they see the shock and awe of the criminal justice system. Because we represent society, we want to ensure that society is reflected in our courtrooms and we want them to experience what they made us experience.

(Nazir Afzal, Chief Crown Prosecutor, Manchester; Channel 4 News, 11 August, 2011; emphasis added)

The authoritarian response to the disturbances in August 2011 crystallised the hypocrisy and mendacity that is now deeply embedded in what passes for social democratic politics in the UK. From the obsessive concentration on 'feral', poor, single-parent families through to the demand for, and delivery of, exemplary sentences, the majority of politicians, state servants, local and national media outlets and the judiciary were clear about the causes of the disturbances and what needed to be done to prevent further eruptions from those living 'feckless' lives in the bleak, shadowy wastelands of neoliberal Britain. In almost every offence category, sentencing for those involved was heavier and harsher compared with similar offences committed in non-riot situations. By May 2012, almost 1,000 offenders had been imprisoned, with sentences averaging 14.2 months. Appeal court judges indicated that participation was 'a severely aggravating factor'. The appeals court said judges should sentence these offenders to much longer periods in prison than individual offenders who had committed crimes in isolation (Bowcott, 2012). How can this strong-arm reaction from the courts be explained? Two writers, Steven

Box and Isaac Balbus, provide the theoretical tools for critically analysing this response.

Class power and judicial power

Writing after the 1981 disturbances, Steven Box noted that the judiciary were 'a barometer of class anxiety felt by the superordinate class whenever class antagonisms deepen during times of economic crisis' (Box, 1983). Importantly, Box saw this reaction *not* as a result of a conspiracy but as a cognitive process inherent in the power structure of the judiciary. In sentencing those at the bottom of the ladder of social class, such as the unemployed, judges, 'as a matter of routine practice', considered legal and extra-legal factors. Therefore, 'extending the use and severity of imprisonment in an attempt to increase its deterrent and incapacitation effect will appear to them as nothing less than a *normal and rational response any sensible person would take*' (ibid; emphasis added). Finally, in a passage that is worth quoting in full, Box presented a prescient, resonating insight into judicial politics:

... during times of economic crisis, state coercion increases in response to the perceived threat, real or imagined, of public disorder, including crime waves. The judiciary, being an integral part of the state control apparatus, makes its contribution to this increased level of coercion by imprisoning more, particularly those typifying the actually, or potentially, disruptive problem populations ... it becomes quite clear that the government's 'law and order' campaign and its judicial ally's sentencing practice are not that concerned to control serious crime. Rather

they are more concerned to instil discipline, directly or indirectly, on those people who are no longer controlled by the soft-discipline-machine of work and who might become growingly resentful that they are being made to pay the price for economic recession. Whilst the powerful are getting away with crimes whose enormity appears to sanctify them, the powerless are getting prison. (Box, 1983)

Box's theoretical and inevitably political insights remain cogently and thrillingly relevant today and provide a direct challenge to those commentators, academic and otherwise, who socially construct the judiciary as disembodied, legal technocrats, free floating above the murky and distasteful world of politics, class, power and, of course, riots. The role of the judiciary post-August 2011 was therefore central to the state's punitive response to the disturbances in the context of the broader organic crisis laying waste, 'little by little and piece by piece' (in the words of Bruce Springsteen in 'Racing in the Streets'), to the lives of the poor and the powerless in the UK.

Order and legitimacy

Isaac Balbus, writing in the aftermath of the disturbances in America in the late 1960s, poses another set of questions. He was concerned with analysing how the capitalist elite, and the courts, can respond quickly and coercively to disturbances without losing their legitimacy. In other words: 'How can we reconcile our immediate interest in order with our long-run interest in maximising our legitimacy?' (Balbus, 1973). This dialectic between order and legitimacy means that judges may deviate from the formal rules of the judicial process in order to quickly restore order while minding and preserving the legitimacy of the elite. The elite therefore cannot simply mobilise any coercive response to disturbances, as this would undermine their long-term interests, making their rule illegitimate. Nonetheless, for Balbus, there is 'a (publicly inarticulate and even disavowed) presumption of guilt

against those who are funnelled into the court for formal proceedings'. These proceedings, in post-riot situations, are a 'disposition derby' where judges are 'ranked according to the number of cases they have disposed of in a given week or month' (ibid).

Both analyses provide a springboard for understanding the judicial response to the events in August. This response was, and is, framed by how the poor have come to be understood within the politics of contemporary neoliberalism. They are seen as a 'parasitic class', 'useless', 'dangerous', 'incompetent', 'depraved', 'lax' and 'sinful', undeserving of 'moral sympathy' (Bauman, 2007). Of course, many of these discourses are not new. There are clear historical links between the Victorian bourgeoisie's concern with the reproduction of the social residuum in the 1880s, the cycle of deprivation debate in the 1970s and the discourse of the underclass in the 1980s and 1990s (Welshman, cited in Estreich, 2011). Such discourses have evoked a 'shadowy category of persons, living perpetually off the labour of others, relegated to the social margins by their inability to acculturate to the work ethic' (ibid). These shadow people have been disdainfully caricatured as 'bodies without brains', whose very existence is intolerable to 'urban, entrepreneurial governance' (Wilson and Anderson, 2011).

Little consideration for legitimacy

The point is that, in the immediate aftermath of the disturbances, the state, could, and did, respond coercively in order to restore order, with little consideration for the legitimacy of the judiciary's actions. This was due to the simple fact that popular and political hostility towards the poor had become so deeply embedded in the wider society, notwithstanding the few, non-deprived individuals who were also convicted. Indeed, the ideological technique of linking deprivation with the disturbances, so beloved of liberal and, indeed, many critical commentators, not only displays a crude, positivist, deterministic

understanding of human behaviour (as well as marginalising serious consideration of the myriad and rampant crimes committed by the rich) but also, ironically, provides implicit support for the dominant analysis peddled by politicians and the mass media, namely that there are some individuals and communities, in the general category of the poor, who are so beyond the reach of state benevolence, that their regulation and control is now justified by any means necessary. Therefore, the threat and use of prison, and the institution's realignment with an increasingly punitive and privatised welfare state, are central to this response, alongside the formal and informal use of violence and intimidation in the policing of the streets. Again, in this case, as Thomas Mathiesen has noted, the state has no need to legitimate its interventions:

... the use of physical means of coercion in critical political conflicts and toward particular groups becomes, to those who at any time constitute the majority, more or less distant stories from another country. To those who at any time constitute the majority, the above-mentioned use of physically coercive means in turn does not demand any special legitimisation and may continue relatively unrestricted ... [There is] a sharp division between the everyday and the marginal, a division through which strong political conflicts and expulsion into marginal positions are kept completely outside of the everyday zone, makes the employment of coercive means possible precisely in the zone which has been separated out as marginal. (Mathiesen, 2004; emphasis in original)

Conclusion

State power, and its accumulation, feed voraciously on binary divisions. In a society that has been economically, politically, culturally and spiritually ransacked, fearing and despising the poor has become so ingrained that even millionaire celebrities can be dispatched to their homes, for the benefit of

reality television, to offer advice on surviving on their meagre incomes. Nonetheless, despite everything, including the regressive lurch backwards by the judiciary after the disturbances, the atavistic, ruling class fraction, through their own internal contradictions, their ineptitude ('genius[es] in the way of bourgeois stupidity', as Marx remarked about Bentham) and challenges and contestations from below, have not achieved hegemony. On the evidence in the months since August 2011, they are unlikely to do so. However, given the brutal policies pursued, and stresses engendered by, the political economy of neoliberalism, where this will lead remains politically and ideologically wide open. It could lead to the emergence and consolidation of radical economic and political policies. Alternatively, it could instigate another poisonous dose of neoliberal medicine where the toxicity of the social fallout will generate further judicial interventions, which are unlikely to be benevolent, redemptive or liberating. ■

Joe Sim is Professor of Criminology, Liverpool John Moores University

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