

Will developments in law and order over the next 30 years prove as predictable as those over the past three decades? In 1963, Richard Cloward wrote: "... We are faced with an occupational structure which is shrinking relative to the men it must absorb. Thus the streets of our urban slums are slowly filling with young men *who have no prospect of finding manhood through work*: who are coming of age in a society which neither wants them nor needs them." In the same vein, I concluded in *The Delinquent Solution* (1966) that "if the non-skilled young are to

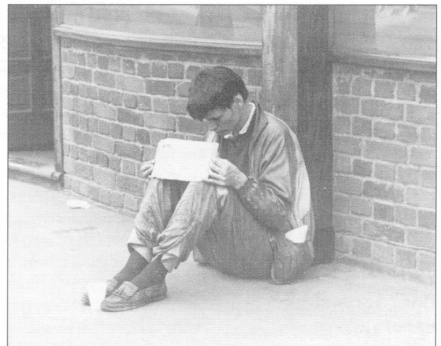
means better jobs for a few, and doing the same thing all day for the rest of us." He did not predict the dole queue, but the writing could hardly have been more clearly on the wall. Moreover, these predictions were embedded in much broader analyses of the manifest dangers of allowing short-term profit-taking to hit already highly unequal societies in an unplanned, devil-take-the-hindmost way, ranging from Galbraith's celebrated critique of private affluence/public squalor, to Titmuss's prescient critique of the private pensions industry in *The Irresponsible Society* (1960).

money being made in the City of London and Wall Street by the very processes (down-sizing, hostile take-overs, asset stripping and privatisation) which produced serious poverty among the newly excluded. The results are now documented in such books as, *inter alia*, William Julius Wilson's *When Work Vanishes* and Bea Campbell's *Goliath*.

None of which should be taken to imply that only the crimes of the powerless matter, merely that they were *the* supremely predictable development, given the trends.

Law and order futures

David Downes assesses the writing on the wall.



be denied the chance of engaging in building a technological society, as well as benefiting from its performance, the price they exact will be high." Earlier, John Mays had predicted the doubling of the crime rate if prosperity roared ahead in an unequal social structure. Most

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tellingly, Tosco Fyvel - in *The Insecure Offenders* (1961) - a book that must have been read by many deterred by academic sociology - cited a young delinquent as saying "Automation's coming. That

Unheeded warnings

So what didn't happen? Such portents and predictions were to some extent attended to in the educational sphere. Comprehensive schools were a real attempt to redress social inequality, but they were never fully established or properly resourced. They are now in the process of being deconstructed by both external and 'internal' market forces. Further education and industrial training remain a shambles, despite heroic efforts in pockets of resistance to under-funded commercialisation. In the 1970s, planning for the future became bogged down in a mire of industrial conflict as Trade Unions sought to protect existing jobs at all costs. The result was to usher in the New Right governments of the 1980s and 90s, who saw the central problem - not planning for the transition to automation - as a solution - a means of downsizing workforces to maximise profits. Inequalities of wealth and income reached florid dimensions due to serious

Part of that pattern was also the proliferation of drug-related crimes and the potential for huge female deviance. What was *not* predicted, at least until 1970s radical criminology, and the almost single-handed efforts of Mike Levi, were the rising rates of crimes of the powerful, the super frauds and the crimes of the State. As Richard Wilkinson has argued, in his comparative work on mortality rates, the effects of inequality pervade the whole society, from top to bottom.

Accounting for crime

A crucial dilemma in this process was how governments should account for the steep rises in crime that accompanied such trends. First in the USA, and now in Britain, though not as yet in the rest of Europe, the dilemma was solved by rendering social and economic causes inadmissible in accounting for crime trends. The entire conspectus of crime has come to be accounted for officially in

individualistic terms, and virtually the whole armoury of responses to it is now restricted to more punitive criminal justice measures. The single discourse of tough penal sentencing is now invoked to combat serious crime, though disciplinary community sanctions are - in line with Stan Cohen's *Visions of Social Control* - to be multiplied to deal with more minor disorders.

The logic of this discourse is now all too painfully clear. The USA, the penal workshop of the world, is the laboratory in which its consequences are already manifest. The society most resistant to structural social and economic reforms has sought stabilisation of the crime rate at a horrendous cost; the restoration of capital punishment, the quintupling of the prison population, the subjection of one-third of young black males to penal disciplines, the judicial strait-jacket of mandatory sentencing, and the widespread resort to curfews, house arrest and new forms of civic exclusion.

Penal regression

So marked a resort to what Sir Leon Radzinowicz has called penal regression is not a sign of success but of rampant failure. Rates of violence remain several times higher than in European societies, partly because handgun ownership is still regarded as a sacred constitutional right - an interpretation which is as contentious as it is lethal. Yet it is to the USA that politicians of both Right and Left have turned for guidance on the future of law and order, though in different respects. Michael Howard has embraced its mandatory sentencing and the entire 'prison works' philosophy, key elements of which have been demolished in a superb analysis of their mis-targeting by Roger Hood and Stephen Shute (*Criminal Law Review* No. 1996). Jack Straw has, so far, enthused only about Bratton-style policing.

However, the near-disappearance of any emphasis by the Left on the social and economic sources of crime has greatly boosted the dominance of 'punitive populism', whose logic is impossible to rebut, as it hinges on the unfalsifiable axiom

that, whatever happens to the crime rate, the answer is always tougher punishment. Devaluing that logic is now far more difficult given the shift in the politics of law and order since 1992.

Increasing inequalities

The ingredients for anomie have now taken far firmer hold than was the case three decades ago. Possessive individualism, the winner-loser culture, and increasing inequalities are hardly fertile soil for the nurture of a Kantian respect for persons. Instead, they are a recipe for not only rising crime but crime of a more serious character. If, following the work of the Braithwaites and Messner, inequality is taken to be the single main predictor of violence, then the English homicide rate cannot be expected to remain so low for much longer.

A dim awareness of the damage inflicted by such processes on families and communities is beginning to dawn even at government level: hence the sequence of forays into moral entrepreneurship, from 'back to basics' to parent-school 'contracts'. It is somewhat ironic, a century after Durkheim wrote of the 'non-contractual elements in contract' - the trust and ethical sense born of social cohesion - that a government which has so eroded those elements should resort to 'contract' as a basis for morality.

Towards social justice

On present trends, therefore, the next few decades will experience a marked deterioration in both crime and punishment, as our failure to engage with deeper causes leads to short-termism in the criminal justice sphere: more (privatised) prisons, more penetration of the State into civil society, and more intensive and extensive disciplinary sanctions. Present trends, however, are not tablets of stone and the hope remains that a more socially just society can be constructed, in which crime levels abate and more humane responses to it can be adopted.

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Protecting the public

Michael Howard explains the thinking behind his sentencing proposals.



About two-thirds of crimes are committed by a hard core - one-fifth - of offenders. Home Office research has suggested that between 3 and 13 offences could be prevented for every domestic burglar imprisoned for a year rather than given a community sentence. American research has backed this up. T B Marvell and C Moody¹ concluded that as many as 17 crimes would be prevented for every additional offender imprisoned for a year rather than left at large.

Prison works

Prison - and the threat of prison - can also act as a deterrent to criminals. Ros Burnett of Oxford University - in a study based on interviews with prisoners² - found that "for the whole sample, avoidance of imprisonment was the most frequently mentioned reason for not wanting to reoffend".

The risk of getting caught is also a major consideration for criminals. But certain capture is unlikely to deter hardened criminals if they know that, once convicted, they will only be lightly punished.

Some have argued that prisons simply make bad people worse. Yet the facts do not bear this out. The latest reconviction rates, published in February 1996, show that 51 per cent of prisoners reoffended within two years of being released compared with 55 per cent of those given community service orders. Given that persistent criminals are more likely to be sent to prison, it is perhaps surprising that the proportion who reoffend once

released is not higher. Of course we need to do more to rehabilitate criminals while they are in prison. That is why we have increased the amount of time that prisoners spend in work, training and education over the last three years and introduced mandatory drug testing in prison.

Prison is not, of course, the right response for all offenders. We have cautions for first time offenders and community sentences for less serious offenders. We are piloting tagging. But for the most persistent and dangerous criminals, prison is the only suitable punishment and the only means of ensuring that the public get the protection which they deserve.



Peter Dailymple

The Crime Bill

This principle underpins the proposals set out in the Crime (Sentences) Bill which is now before Parliament. The proposals address those offenders who pose a particular danger to the public.

First, serious sexual and violent offenders. The courts have the power to give people who commit crimes like rape and attempted murder a life sentence. But they rarely do even if the criminal concerned has committed a previous similar offence. In 1994, for example, 217 offenders were convicted of a second serious violent or sexual offence. All could have received a life sentence – but only 10 actually did.

The problem is that if these offenders do not get a life sentence, they have to be released after serving two-thirds of their sentence – even if everyone working with them is convinced that they will strike again. The sad reality is that many of them do. In 1994, some 40 serious violent or sexual crimes were committed by offenders who had already been convicted of a second such

offence. This is totally indefensible. That is why the Bill proposes that all those convicted of a second serious sexual or violent crime should automatically get a life sentence. These criminals would not necessarily spend longer in prison as a result. But none of them would be released until they had undergone a rigorous risk assessment.

Secondly, professional house burglars and dealers in hard drugs. The average sentence imposed by the Crown Courts in 1993 and 1994 on a sample of first time domestic burglars given a custodial sentence was 16.2 months. After three or more convictions it was still not significantly higher at 19.4 months – and offenders only serve half that. Indeed, 28 per cent of offenders with seven or more convictions were not sent to prison at all.

Most persistent dealers in class A drugs are sent to prison but, in many cases, those prison sentences are not very severe. A recent sample showed that the average sentence for a third

conviction of dealing in hard drugs was just over four years – and of course they are automatically released after serving only 32 months.

I do not consider that these sentences protect the public sufficiently. Nor do they deter the professional, career criminals for whom a short spell in prison has become an acceptable occupational hazard. I am therefore proposing that professional house burglars and dealers in hard drugs should receive automatic minimum prison sentences of three and seven years respectively.

Honesty in sentencing

Finally, there is what I call “honesty in sentencing”. As Lord Taylor, the former Lord Chief Justice, has said, the current system of early release from prison has “now reached a point where the sentencing exercise in court has the appearance of a charade with everyone engaged in a calculation of how much less than the pronounced sentence will actually be served”.

Prisoners sentenced to less than four years are out after serving half their sentence. Those given over four years after two-thirds. This undermines public confidence in the criminal justice system and enrages victims.

Under my proposals, prisoners who co-operate and behave well will be able to earn up to 20 per cent off their

sentence. Everyone else will serve their sentence in full. This will give prisoners an incentive to behave well while they are in prison.

Protecting the public

It is important to remember that these proposals form only a part of the Government’s comprehensive strategy to tackle crime. This strategy is based on crime prevention; on giving the police the powers and the resources which they need to catch criminals; on ensuring that the guilty are convicted but the innocent acquitted; and on punishing criminals appropriately for their crimes.

My primary objectives are to protect the public and to put in place a criminal justice system in which the public can have full confidence. The Crime Bill will make a real contribution to the achievement of these objectives.

The Rt Hon Michael Howard QC MP is Home Secretary.

Notes:

1. ‘Prison Population Growth and Crime Reduction’ in *Journal of Quantitative Criminology*, No. 10 (2), 1994
2. ‘The Dynamics of Recidivism’, Home Office Bulletin, No. 36, 1994.

“For the most persistent and dangerous criminals, prison is the only suitable punishment, and the only means of ensuring that the public get the protection which they deserve.”