

## Has Liberal Criminology ‘Lost’?

*2007 Eve Saville Memorial Lecture*

Ian Loader, Centre for Criminology, University of Oxford

All serious thinking about crime touches on the nature of liberalism. Conversely, every single principle of liberalism carries implications for how we think about crime.<sup>1</sup>

### **Liberal criminology – what do you mean?**

Now that I am standing here about to present it I have several reasons for regretting giving my lecture this evening the title that it has. The first is the usual one: that any title given over six months in advance of the event never quite seems to capture what it is one wants to say when that event finally comes around. The second is that my title takes the form of the question (the first time, I now realize, that I have ever done this) – something which sets up in the audience the not unreasonable expectation that the lecture that accompanies it will deliver an answer. The third is a fear I have that my question may be taken by at least some of you to be rhetorical – akin to those (such as: is religion the opiate of the people?) that used to entice people to leftist political meetings back in the 1980s - the ‘correct’ answer to which you could pretty well always accurately take a guess at.

The reason I worry about this is because my question is not meant to be of that kind at all. This is so firstly because I have *not* set out to answer it in an activist mode. This is to say, I am not seeking to align myself with something called ‘liberal criminology’, or assuming that my audience tonight is comprised only of people who self-identify as liberals (I won’t ask for a show of hands). Nor do I see it as my task this evening to either – depending on the answer I supply – rally or depress the gathered faithful. The task I have set myself is a different one. It is to ‘take a step back’ from the present political dynamics of crime, punishment and (since 2001) security in a effort to grasp – and say some things about – the intersections that exist between the claims of criminological research and

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<sup>1</sup> S. Cohen, *Against Criminology* (New Jersey: Transaction Books, 1988), p. 14.

reflection and the substance, tone and direction of crime control and penal policy. I am concerned, in other words, to think sociologically about the (changing) relationship criminology has had to the mundane culture of, and political programmes pursued in, England and Wales over the last several decades – and my lecture this evening forms, in this respect, part of a larger investigation I have commenced along these lines with Richard Sparks.<sup>2</sup>

But there is another reason why my question is not rhetorical, which is that the answer to it is not clear-cut, or at least not as clear-cut as a superficial treatment of it might lead one to suppose. That answer depends further, of course, on what one means by ‘liberal criminology’ or how, more broadly, one thinks about the connections between criminology and liberalism. Here one enters some tricky and contested territory - not least because liberalism itself remains a ‘deeply contested notion’ even among liberals themselves.<sup>3</sup> But the relationship between liberalism and crime is also – as Stan Cohen wisely indicated some time ago – fundamental to the study of, and our responses to, crime – for the simple reason that the prevention, control and punishment of crime *inescapably* exists at the forefront of what it means for any society to be plausibly described as liberal or illiberal. That relationship stands, as such, in need of more sustained and explicit consideration than it has generally tended to receive. Though I can this evening only skate over the issues involved, I want at least to make a start.

The first way in which one can address this topic is to consider the status of liberalism *inside* criminology. Here it is possible to give the most emphatic of answers to the question I have posed – and that answer I think is ‘no’. This is not to say that all or most practising criminologists evince some clearly worked through and principled commitment to political liberalism and its focal concern to afford equal concern and respect to all individuals. Not at all. Nor it to deny that the field is populated by

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<sup>2</sup> See, further, I. Loader and R. Sparks, ‘For an Historical Sociology of Crime Policy in England and Wales since 1968’, *Critical Review of International Social and Political Philosophy*, 2004, 7/2: 5-32; I. Loader, ‘Fall of the “Platonic Guardians”: Liberalism, Criminology and Political Responses to Crime in England and Wales’, *British Journal of Criminology*, 2006, 46/4: 561-586; I. Loader and R. Sparks, *Public Criminology?: Studying Crime and Society in the Twenty-First Century* (London: Routledge, forthcoming).

<sup>3</sup> P. Kelly, *Liberalism* (Cambridge: Polity, 2006) p. 2.

practitioners who self-identify as feminists, or conservatives or social democrats, or who – as social *scientists* – eschew overt identification with any political ideology at all.

I do however want to suggest that the ‘thought-behaviour’<sup>4</sup> of most criminologists is bound up with a set of mentalities and sensibilities which are broadly liberal, and which quietly structure, *inter alia*, the topics they select for study, the questions they pose, the matters they think it important to teach students, and such involvements and commitments as they have – *as* criminologists - in wider public controversies about crime and its control. I take this liberal disposition to include the following elements:

- parsimony in the use of policing, criminal justice and penal ‘solutions’;
- proportionality in sentencing;
- distaste for prison and a determination to see it used as an institution of last resort;
- a ‘contextual’ understanding of the causes of crime and the means of preventing it;
- belief in the application of reason (and evidence) to the prevention and control of crime;
- scepticism towards the state and recognition of the importance of checking and constraining its operations;
- commitment to the rule of law and human rights;

These commitments – which are, we should recall, by no means uncontroversial in the wider culture – serve as what Michael Freeden calls ‘a symbolic mapping device’ without which criminologists would become, as he puts it, ‘disoriented’.<sup>5</sup> If I am right about this, it raises the question of whether the relationship between criminology and liberalism is not simply contingent but internal. It is not merely that criminologists just happen, as if by accident, to be liberal in these terms. There may, rather, be an elective affinity between criminology and liberalism such that to be a criminologist, to learn

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<sup>4</sup> M. Freeden, *Ideologies and Political Theory* (Oxford: OUP), p. 43.

<sup>5</sup> M. Freeden, *Liberal Languages* (Princeton: Princeton University Press, 2005), p. 132.

criminology's lessons and absorb its 'good sense', is at the same time to be drawn towards positions on penal policy questions that are coded within contemporary politics and society as liberal. Hence Garland and Sparks' claim that there has never really been 'a "right-wing" in British criminology' and that 'the real conservative opposition' was outside, consisting of 'those magistrates, politicians and sections of public opinion who continued to think of crime in common-sense terms'.<sup>6</sup>

It is not my intention tonight to examine or make good this claim (not least because my views on it remain sketchy and tentative). I am going to focus instead on a second – *external* - dimension of that relationship. My concern is with how criminology and its (liberal) commitments have fared, and are faring, in the wider world of politics and policy-making around crime. The answer to my question – put this way – is neither straightforward nor easily arrived at. Part of the difficulty here is that the issue has an unavoidably empirical dimension, and we do not have all the evidence required to address it at hand. And part of the difficulty lies in the fact that most of you this evening will, I suspect, have come along having already answered my question for yourselves. This is not unimportant. For the activity of thinking hard about, and empirically investigating, this topic is one that demands something that it as difficult as it is important to bring off: namely, that we treat the worlds – whether of knowledge production, policy formation, or service delivery – in which we are and wish to remain insiders, practitioners and participants as proper objects of enquiry over which we must acquire some critical, reflexive distance. For only by doing so can we hope to shed new light on, and come to see in new ways, practices that we can too easily fail to understand because we (think we) know them too well. We must – as the late French sociologist Pierre Bourdieu nicely put it – 'exoticize the domestic'; find ways, that is, of rupturing an 'initial intimacy with modes of life and thought which remain opaque because they are too familiar'.<sup>7</sup>

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<sup>6</sup> D. Garland and R. Sparks, 'Criminology, Social Theory and the Challenge of our Times' in D. Garland and R. Sparks (eds.) *Criminology and Social Theory* (Oxford: OUP, 2000), p. 10.

<sup>7</sup> P. Bourdieu, *Homo Academicus* (Cambridge: Polity, 1984), p. xi.

My aim then this evening (he says, getting his excuses in first) is less to arrive at any satisfactory answer to the question that has served its purpose by enticing you all along, than to clarify how we may best go about answering it and specify what is at stake in our efforts to do so. This involves me in doing the following three things:

- Describing some recent – and familiar - trends in crime control and penal policy and indicating some of reasons why they might lead us to suppose that liberal criminology has, if not lost, then certainly been placed on the defensive.
- Outlining some old and new forms of what has been termed ‘liberal constraint’ – including those provided by criminology – which mean that the more punitive, illiberal, crowd-pleasing strands of recent penal policy have not had things entirely their own way.
- Explaining the merits and shortcomings of criminology as a mode of liberal constraint – seeking in the process to make a case for subjecting the political treatment of crime to sociological scrutiny and redeeming politics as the legitimate arena for determining how our society responds to the crime question.

Let us take each in turn.

### **Penal excess and the fall of liberalism**

It *is* possible – and, for those who like their social analysis sweeping and gloomy, tempting - to answer the question I have posed this evening with a pretty resounding ‘yes’. Indeed, this was sufficiently tempting that the original title I came up with for tonight’s lecture was ‘Why liberal criminology lost? – as if it was clear who the winners and losers were, the only outstanding task being to account for the defeat. I think that such an answer is too easy and superficial – in other words, wrong – for reasons I shall set out. But we first have to examine why it seems, at first glance, so compelling.

The dominant narrative goes something like this. Over the first 70 years of the twentieth century crime came to be governed, and the broad contours of penal policy set, by a liberal elite comprised of Home Office civil servants, senior practitioners in the justice

and penal system, and a number of researchers from the then small world of criminology. Broadly speaking, this coterie of experts was committed to the following axioms that constituted what they took to be political responsibility in the management of crime:

- Balancing effectiveness in tackling crime with humane, ‘civilized’ treatment of offenders;
- Generating policy outcomes by means of deliberation and consensus forging among experts;
- Managing – and where necessary leading - public opinion, generally keeping it at one remove from the operation of the justice and penal systems.

The overall touchstone of this worldview was one of caution and restraint; the overarching purpose to control crime and reintegrate offenders whilst constraining the impassioned expectations that might flow from this field of public policy becoming politicized.<sup>8</sup> The ‘liberal fear’, I have argued elsewhere, was that no social good would come from seeking to excite – or promising to sate – popular feeling around the crime question.<sup>9</sup>

This worldview has over the last three decades or so fallen radically out of favour and lost its control over the levers of political power – in the UK and US at least.<sup>10</sup> It has done so both because it came under largely successful assault by successive governments from the late 1970s onwards and because of the erosion of the cultural and social conditions

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<sup>8</sup> See Lord Windlesham, *Responses to Crime* (Oxford: OUP), 1987 and M. Ryan, *Penal Policy and Political Culture* (London: Waterside Press, 2003), ch. 1.

<sup>9</sup> I. Loader, ‘Fall of the “Platonic Guardians”’: Liberalism, Criminology and Political Responses to Crime in England and Wales’, *British Journal of Criminology*, 2006, 46/4: 561-586.

<sup>10</sup> Cf., on France and Germany, J.Q. Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe* (Oxford: OUP, 2003).

that underpinned it. The contributing causal factors have been well-documented and it will serve my purposes this evening merely to list the most prominent among them:<sup>11</sup>

- ‘internal failure’ – the coming to penal common-sense of the idea that ‘nothing works’ and the consequent decline of the rehabilitative ideal;
- The rapid rise in levels of crime from the 1950s to the mid-1990s and the establishment of crime as what David Garland calls a ‘normal social fact’;
- The attack on social welfarism (and its reputed culture of dependency) and the rise to the political fore of economic/neo-liberalism (and its strictures of individual responsibility);
- The rise of crime-related anxieties and a more pervasive condition of social anxiety and insecurity, coupled with the general elevation of crime and control within social routines and public consciousness;
- A shift in dispositions towards social and political authority and a democratization of social relations; with the resultant atrophy of faith in expertise and rise in consumerist expectations, coupled with declining levels of public trust in the capacity of government to deliver;
- The advent of a 24/7 media culture and elements of the media industry which routinely sensationalize crime, uncritically press the claims of victims, and present criminal justice and political responses to crime as an arena of repeated failure and scandal.

The results of this process have become apparent in the ways in which successive – first Conservative and then New Labour - governments have responded to crime since Michael Howard asserted that ‘Prison Works’ in 1993. Since that time, the political barometer around crime and punishment has remained fixed in pretty much the same place. If anything, the punitive, crowd-pleasing and illiberal note struck by political rulers since then has reached a new pitch of intensity under New Labour – in an overall approach to this field of public policy that Neil Walker and I have described as ‘cosmetic

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<sup>11</sup> For more details, and analysis, see I. Taylor, *Crime in Context* (Cambridge: Polity); J. Young, *The Exclusive Society* (London: Sage 1999); D. Garland, *The Culture of Control* (Oxford OUP, 2001) and J. Simon, *Governing through Crime* (Oxford: OUP, 2006).

perfectionism'.<sup>12</sup> The broad picture can be traced under three heads – *scale/speed*; *substance* and *sensibility*.

*Scale/speed.* One of the most striking features of recent political activity in the crime and disorder field – during a period when rates of volume crime have been declining – is the sheer amount of restless energy and activity that is devoted towards it. Time and again, New Labour has returned to the issue with new statements, announcements, proclamations of intent, initiative and laws – as if not doing so may be taken as a sign of political irresponsibility for which a high electoral price may be paid. This has in some respects become so taken for granted that we are surprised by just how quickly it has changed the political landscape. The New Labour government has, for example, passed 53 Acts of Parliament dealing with crime, criminal justice and punishment in the 10 years since Tony Blair's election in 1997. Strikingly, this figure exceeds by 10 the total number of such Acts (43) passed in the *100 years* leading up to 1997. New Labour has, in the process, created somewhere between 1,018 and 3,023 new criminal offences.<sup>13</sup> These are arresting facts, testament to how the fight against crime, anti-social behaviour and (latterly) terrorism has been placed at the defining heart of governmental activity and purpose, and to the frenetic, symptom-chasing way in which New Labour has tended to address the crime and security question.

*Substance.* The mantra 'tough on crime, tough on the causes of crime' notwithstanding, New Labour has tended to emphasize and fund policing and penal – over social policy – solutions to problems of crime and 'anti-social behaviour'. The fact that the UK now

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<sup>12</sup> I. Loader and N. Walker, *The Good of Security* (London: Demos, forthcoming).

<sup>13</sup> The figure for the number of crime statutes passed by New Labour since 1997 was taken from *The Guardian* (28/3/07). The figure for the number of crime acts passed between 1897 and 1996 was calculated by my research assistant Robert George, and the methodology is available from me on request. The lower new criminal offences figure was given in an answer to a Parliamentary question asked by (then) Liberal Democrat Home Affairs Spokesperson, Mark Oaten MP, on 8<sup>th</sup> February 2005. The higher figure was calculated and promulgated by the office of the current Liberal Democrat Home Affairs spokesperson, Nick Clegg MP, in July 2006.

spends more on policing, criminal justice and punishment as a proportion of GDP than any other OECD country is testament to that.<sup>14</sup> So too is a prison population standing at record high levels of 81,000 and a steep rise in the numbers of young people being directed towards, and detained by, the criminal justice system. To this one might add the concerted efforts this government has made to drill-down into the professional cultures of police and probation to seek to ensure that its will prevails on the ground (something that has distinguishes it from its Conservative predecessors), and the government's overall distaste for – and assault upon – the paradigm of criminal justice. This was the key message of Tony Blair's 2006 'big picture' lecture on the criminal justice system (it is slow, remote, obsessed with procedural technicalities and generally replete with the vestiges of nineteenth-century liberal reformism that have left it unfit to tackle twenty-first century crime), as it has been of government efforts to serve the needs of victims through 'on-the-spot' fines, ASBO's and related forms of summary justice that sidestep (slow, uncertain) due process protections.<sup>15</sup> The post 9/11 arrival of a homeland security agenda – and the flurry of new powers that have attended it – has only served to reinforce this pre-existing tendency to set crime control and security up in a zero-sum relationship with liberty in ways that risk making in/security a pervasive feature of social relations and political life.<sup>16</sup>

*Sensibility.* The scale, speed and substance of New Labour's approach has been underpinned by a significant shift in political sensibility towards crime, and a related alteration in what it means to act responsibly - one brought into being by the pincer movement of increasing expectations of, and faltering trust in, government. No longer is criminal justice the province of experts who – in their own terms – 'effectively' and 'humanely' manage crime at some deliberate remove from public opinion. Nor is it the

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<sup>14</sup> E. Solomon et al., *Ten Years of Criminal Justice under New Labour: An Independent Audit* (London: Centre for Crime and Justice Studies, 2007), p. 20.

<sup>15</sup> See, <http://www.pm.gov.uk/output/Page9737.asp>. For a critique of Blair's lecture see I. Loader, *Re-balancing the Criminal Justice System?*, available at: [http://news.bbc.co.uk/2/hi/uk\\_news/politics/5108972.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/5108972.stm)

<sup>16</sup> See further on this, I. Loader and N. Walker, *Civilizing Security* (Cambridge: Cambridge University Press, 2007), and B. Goold and L. Lazarus, eds., *Security and Human Rights* (Oxford: Hart, 2007).

task of government to ‘restrain, ‘educate’, or ‘lead’ such opinion on penal matters – to, as it were, manage public responses to crime. Such presumptuous paternalism has been replaced by responsiveness to ‘consumer-citizens’ which holds that the priority of the democratic polity – and by extension its police and justice professionals – is to elicit and listen to the experiences and concerns of their customers and to respond accordingly – to act, in other words, as an uncritical cipher for, and translator of, the collective consumer will. Government must become the consumers’ champion – if necessary taking on the vested ‘producer’ interests that run the police and criminal justice system.

The result, I have recently argued, is that government today less and less acts – and less and less sees its role to act – as what Avner Offer calls a ‘commitment device’<sup>17</sup> – a source of moderation and restraint, capable of considered reflection, forsaking instant (political) temptations in return for greater (security) benefits over the longer term, and persuading others to do the same. It more typically, instead, responds to crime (and to public responses to crime) in ways that ape, express and enact whatever mediated demands press most forcefully upon it. New Labour has, in short, become an agent of arousal and a propagator of – often illiberal - penal excess.<sup>18</sup>

### **The forms of ‘liberal constraint’**

This is a largely compelling story of recent criminal justice and penal history, and of the fall from favour of criminological liberalism. It is one to which I have contributed and feel able in broad terms to sign-up to. Yet there are also several good reasons why we ought not to rest (dis)content and leave matters there.

Part of the reason for this has to do with not arriving at overly crude and one-dimensional account of government activity in this and related fields of public policy. For all that the scale, substance and tone of policy have taken the form described above, not everything

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<sup>17</sup> A. Offer, *The Challenge of Affluence: Self-Control and Well-Being in the United States and Britain since 1950* (Oxford: Oxford University Press, 2006).

<sup>18</sup> I. Loader, *Insecurity, Politics and Excess*, Inaugural Lecture, University of Oxford, 26 April 2007; available from the author on request.

New Labour has done (and accomplished) in this field can be forced in to that box. One can in this regard cite the Human Rights Act 1998; the opportunities that devolution has created for Wales and Scotland to pursue a somewhat different criminal justice course; local community safety partnerships; the government's refusal to cave-in to popular (i.e., tabloid) pressures to introduce 'Sarah's Law', and the recent move of youth justice to the new Department for Children, Schools and Families.<sup>19</sup> One might also point to 'Sure Start' and government efforts to alleviate child poverty as crime prevention programmes that have rarely been promulgated or shouted about under that banner. The traffic may have flowed predominantly in one direction, but it has not all been one-way.

But the penal excess narrative also risks an analytic excess of its own. It runs the risk, in particular, of chasing the dominant public discourse around in a manner that loses any operative connection to the sociological tradition. One important consequence of such an analysis of discursive surfaces is a failure to register and explain the effects in this field of what – in migration studies – have been called the institutions of 'liberal constraint'.<sup>20</sup> In both crime and migration – fields that share a tendency for policy-making to take populist measures directed against unpopular minorities – such institutions have the following common features: they possess the resilience, relative autonomy from the state, and capacity to develop alternative ways of thinking and acting that enable them to resist, hold-up, partially subvert, or even on occasions defeat illiberal political initiatives promulgated by elected rulers.

I want now to consider two such forms of liberal constraint operating in the penal policy field whose persistence and effects may cause us to qualify the penal excess narrative I

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<sup>19</sup> The question of whether the 'work of change' promised by Gordon Brown upon becoming Prime Minister in July 2007 will include any change in the scale, substance and tone of crime and security policy is an intriguing one – to which the answer is presently unknown. Taking the 'Respect agenda' away from the Home Office and placing it in a new Department for Children, Schools and Families seems to me a potentially positive sign. So too was the public tone struck by the 'new' government in response to the (failed) car bombs in London and Glasgow that marked Brown's arrival in 10 Downing Street.

<sup>20</sup> J.F. Hollifield, *Immigrants, Markets, and States: The Political Economy of Postwar Europe* (Camb., Mass.: Harvard University Press, 1992); see also C. Boswell, 'Theorizing Migration Policy: Is There a Third Way?', *International Migration Review*, 2007, 41/1: 75–100. I am grateful to Richard Sparks for bringing this to my attention.

have just described, before considering whether and how criminology may today have become – sometimes willfully, in some cases inadvertently - just such an institution.

*Criminal justice professionals.* Just because government makes an announcement, or launches a new initiative, or enacts another law, one cannot simply assume that it has either the intended effects ‘on-the-ground’, or only those effects. This is a sociological truism. In giving a full account of recent criminal justice history – and the fate of liberal criminology in the broadest sense – one thus needs to examine what happens to political programmes once they work themselves into and through the police, criminal justice and penal organizations who are either the intended targets of change or who are meant to act as the medium of change upon others. This invariably means having to account, *inter alia*, for implementation failure (which is not always a bad thing!), bureaucratic inertia, the professional ideologies, idioms and ways of doing things of penal practitioners, and the institutional and constitutional autonomy that allows such practitioners to resist change that do not care for, or at least partially to shape it to their own ideological or organizational ends.

We have learned enough about police culture over the years to know both that this happens – and that its effects are not always benign or liberal. It is also true that the ideological positions of, and relationship between, the elected and administrative arms of the state, and criminal justice professionals, varies over time and from jurisdiction to jurisdiction. But we nonetheless have to recognize that much professional opposition, foot-dragging, and independent thought in the penal field has since the early 1990s has come from a broadly speaking liberal direction. One can in this regard record the ways in which judges – in both the US and England and Wales – have sought to ‘water down’ three strikes sentencing initiatives, and how the senior judiciary has spoken out against the escalating use of imprisonment. One might note that much of the diversity and equality agenda in the police force has been driven by senior officers, or that the current Director of Public Prosecutions has railed against the ‘war on terror’. One can describe the involvement of practitioners in the formation of ‘ASBO Concern’, or note the mobilization of criminal lawyers against ‘Imprisonment for Public Protection’ (IPP)

sentences, or the refusal of South Wales Police to play ball with ‘sanction detection’ targets. And one can sense a professional consensus emerging among groups offended and exasperated by what they have come to be view as a ceaseless round of criminal justice initiatives driven more by tabloid pressures, electoral imperatives and a misplaced assumption that one is standing up for ‘the law-abiding majority’ than by what is considered sound professional judgment and criminological good sense.

It is also worth noting, in this regard, that professional actors in criminal justice have been to some extent formed by a criminological education, or at least exposed to criminology (certainly more so than almost all media and political actors), and that those criminologists motivated to intervene in criminal justice and penal matters often do so by seeking, and making, common practical cause with like-minded practitioners – very often in local settings.

*Social movements, pressure groups and ‘opinion-formers’.* It is no longer the case, as it perhaps once was, that pressure groups, social movements and others forms of political activity and lobbying in the crime and penal arena mobilize predominantly behind positions that are politically liberal, or radical. The rise of various organized and disorganized victims groups – whether in response to particular criminal outrages, or certain categories of offence, has meant that the pressures on government ‘from below’ are today more diverse and complex – and hence sometimes punitive in their tone and demands. It is a telling fact about our society that RAP – which some of you may recall used to stand for ‘Radical Alternatives to Prison’ – is now more likely to mean ‘Residents Against Paedophiles’. We also need to recall the periodic interventions in this field over the last three decades of right-wing think tanks such as the Adam Smith Institute, and the ongoing efforts of Civitas to use crime, policing and punishment as part of its rearguard effort to resurrect a nostalgic social conservatism.

Yet it remains nonetheless the case that the field of political and social campaigning, and what used to be called ‘consciousness raising’, in the crime and punishment arena is both busy – and predominantly, in so far as it a force at all, a force of liberal constraint upon

government. This political space today includes such long established bodies as the Howard League for Penal Reform, The Prison Reform Trust, Women in Prison, Nacro and, I should add, the Centre for Crime and Justice Studies – all of whom partly or wholly understand themselves as agents of liberal rationalism and penal reform. But to these we need to add a host of organizations in the human rights field such as Liberty, Amnesty International, Human Rights Watch, Statewatch (and its recent offshoot, Asbowatch), as well as a number of journalists and ‘opinion-formers’ who remain eager and able to defend liberal values and positions on crime, punishment and security, and individual freedom from encroachment by the state. We should not of course confuse presence and activity with effects – the precise extent (or otherwise) of which requires careful empirical scrutiny. But it would be equally foolhardy to deny that the persistent presence within civil society of a range of voices and forces determined to put up a rearguard action in the face of what it views – and names – as illiberal excess, whether publicly or behind closed governmental doors.

*Criminology – as critique.* This brings us (back) to criminology, several recent strands of which can, I think, be interpreted in the revised light as forms of liberal constraint. I have in mind first – and bring together under the heading of criminology as critique – some recent bodies of criminological research and writing which strive to do one of two things. The first has set out to subject the ‘punitive turn’ in crime policy, and the rise of crime within popular consciousness, to social *analysis* and *critique* in way that pinpoint the political forces and social conditions that have given rise to it, describe its (deleterious) effects, and (sometimes) suggest alternative ways ahead. Though often conducted at a high level of generality, and not always or even often in an overtly interventionist mode, this work nonetheless appears motivated by a serious – typically, in the above senses, liberal - concern about, and consequent desire to account for, what has ‘gone wrong’ in recent penal policy, or within social relations and political life more generally.<sup>21</sup> A second has been more explicitly – and often politically – concerned with what it views as

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<sup>21</sup> See, among many, many examples, M. Tonry, *Punishment and Politics* (Cullompton : Willan, 2004); E. Burney, *Making People Behave* (Cullompton: Willan, 2005); M. Lee, *Inventing Fear of Crime* (Cullompton: Willan, 2007); J. Simon, *Governing Through Crime* (Oxford: OUP, 2007), J. Pratt, *Penal Populism* (London: Routledge, 2007).

the erosion of due process protections and sentencing excesses under New Labour, first in relation to the government's crime and anti-social behaviour agenda, and latterly in terms of the new powers granted to fight terrorism. The broad move here has been both to dissect and expose this attack on the paradigm of criminal justice and criminal law, and to put up a *principled defence* of its values and procedures – of the continuing importance of liberal legalism.<sup>22</sup> It seems to me that the rapid expansion of criminology inside British universities since the early 1990s has resulted in an explosion of research, writing, teaching and – occasionally – journalism which has been largely conducted under one or other of these umbrellas, as even a cursory glance at the burgeoning number of criminology journals – or the latest Willan catalogue - will reveal.

*Criminology – as technique.* A second broad strand of criminological work displays its ideological commitments less visibly, or claims not to have them, but has nonetheless I think typically come to act – on account of changes in the governmental world in whose ambit it operates and seeks to have effects – as a form of 'liberal constraint'. Sometimes this has been inadvertent; the result of criminological practitioners having stuck to their scientific lights over many decades only to see the social and political field whirl around their heads in ways that seem to situate their patient empirical rationalism in a more 'oppositional' relation to the dominant strands of current policy – think of developmental criminology. Often however, it is the outcome of an explicit belief in – and motivated effort to try to bring about – crime and penal policy that fits with criminological reason and reliable evidence; something that necessarily calls into question and dispute, and potentially acts as a check upon, policy driven by other, more politically expedient factors.

I have in mind here a family of criminological positions oriented to discovering 'what works' in crime control and penal policy - and pressing government to act accordingly. This has indeed long been the implicit objective underpinning many decades of

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<sup>22</sup> See, again among many others, A. Ashworth, 'Social Control and 'Anti-Social Behaviour': The Subversion of Human Rights?' *Law Quarterly Review*, 2004, 120: 263-291; L. Zedner, 'Securing Liberty in the Face of Terror: Reflections from Criminal Justice', *Journal of Law and Society*, 2005, 32/4: 507-533; A. von Hirsch and A. P. Simester, eds, *Incivilities: Regulating Offensive Behaviour* (Oxford: Hart, 2006).

longitudinal research on what has come to be called ‘pathways into and out of crime’.<sup>23</sup> It is also the primary concern of the meta-reviews of scientific evaluations of government programmes conducted under the auspices of the Campbell Collaboration,<sup>24</sup> as well as among advocates and practitioners of a back-in-favour experimental criminology and a nascent crime science.<sup>25</sup> New Labour’s claimed belief in ‘evidence-based’ policy also prompted a call – from the head of the Home Office’s Research and Statistics Directorate – for the criminological community to (re)orient itself in order to produce the evidence that might call the government’s bluff and press ministers to live up to their stated intentions.<sup>26</sup>

The form of constraint that these strands of what one may call criminology as technique exert upon government flow from its desire to effect crime policy that *is* evidenced-based and to *produce* the evidence that expressly or implicitly condemns prevention and penal programmes that depart from it. This is clear from the analogy its practitioners sometimes draw between crime policy (with its unhelpfully emotive ‘blame culture’ and history of politically driven failures) and safety in the airline industry (which has improved in recent years, it is said, because of a no-blame culture which has generated a collective professional will to do all that is necessary in terms of openness, and admitting and learning from error, to drive up standards). It is clear also from another analogy that is also commonly drawn – between crime science/criminology and medical science. The point of this analogy is twofold: first, to urge practitioners in criminology to reinvent themselves in the image of medical researchers – supplying reliable scientific evidence as to what does and does not have the claimed effects in the field of crime prevention and

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<sup>23</sup> D.P. Farrington, ‘Childhood Risk Factors and Risk-Focussed Prevention’ in M. Maguire, R. Morgan and R. Reiner, eds., *The Oxford Handbook of Criminology* (Oxford: OUP, 2007).

<sup>24</sup> See, <http://www.campbellcollaboration.org>.

<sup>25</sup> See, for example, L. Sherman, ‘The Use and Usefulness of Criminology, 1751-2005: Enlightened Justice and its Failures’, *The Annals of the American Academy of Political and Social Science*, 2005, 600: 115-135; G. Laycock, ‘Defining Crime Science’, in M. Smith and N. Tilley, *Crime Science: New Approaches to Preventing and Detecting Crime* (Cullompton: Willan, 2005).

<sup>26</sup> Wiles, P., ‘Criminology in the 21<sup>st</sup> Century: Public Good or Private Interest?’, *Australian and New Zealand Journal of Criminology*, 2002, 35/2: 238-252.

penal intervention; second, to expose the folly of government repeatedly foisting on taxpayers programmes whose efficacy is either untested or unproven – something they would not dream of, or dare to do, in the case of drugs and medical treatment. The implicit – but never quite stated - aim here would seem to that of establishing an equivalent in the crime control field of the National Institute for Clinical Excellence (NICE).

Criminology as technique provides, for these reasons, a form of constraint upon government whose liberal effects may be unintended or inadvertent – it just so happens that many illiberal crime and penal policies do not work. But it is also the case that many advocates and practitioners of ‘what works’ criminology appear to be motivated – often, though not always, *sotto voce* - by an *anti-penal sensibility*; a distaste for prison and excessive punishment in particular, and for penal solutions to crime problems more generally – an important fact that many critics of situational crime prevention or experimental criminology, and proponents of what I think of as a largely phoney war between (applied) criminology and crime science, have failed to notice or too quickly glossed over. Taken together, these sensibilities have combined to form a criminology which has either just been – or sometimes actively acted as – a roadblock along the path towards ill-informed, illiberal populism.<sup>27</sup>

But does ‘what works?’ work? How effective is the criminology of effectiveness as a form of liberal constraint? What are its wider effects? Is it – in the present climate - the best that we can do or hope for? I want now to consider briefly these questions.

### **Criminology and democratic politics**

How one answers these questions rather depends upon how one interprets ‘what works’ criminology - and what, in particular, one thinks is intended, or is considered by the

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<sup>27</sup> For one recent example of an active – methodologically-based – effort to call the government’s evidence-based bluff, see T. Hope, ‘Pretend it Works: Evidence and Governance in the Evaluation of the Reducing Burglary Initiative’, *Criminal Justice*, 2004, 4/3: 287-308.

protagonists to be at issue, when this question gets posed in contemporary crime control and penal reform debates.

Two – rather different – stances can be discerned in this regard.<sup>28</sup> The first one might call *good faith technocracy*. The ‘liberal *constraint*’ is mobilized here by actors who hold a sincere belief in pursuing crime policies – and *only* those crime policies – that have been reliably tested and proven; those who are genuinely offended by governments acting for other motives and playing fast-and-loose with the evidence in so doing – by, say, wilfully distorting research findings, or disregarding established facts. On this view effectively achieving stated crime control or penal goals is what counts – and is all that counts.

There are two principal problems with this position:

- It too readily forgets – or pays insufficient practical attention to – the idea that it is not reducing crime per se that counts, but *how* one reduces crime. It is perfectly possible to cut crime in ways that increase citizen insecurity, reduce police legitimacy, dispense with hard-won liberties, exacerbate social inequality and division, and by many other indicators make that – lower crime – society an altogether worse place to live. This point is often acknowledged in passing – only for the serious work of funding and evaluating *crime* reduction programmes to continue undisturbed. But taking it seriously surely demands the development of a rather more capacious sense of what ‘effective’ crime control policy is than tends to be operative in current political and criminological debate.
- Technocracy – for all that it claims otherwise - has a politics; often, it should be added, an anti-political politics. Yet if crime and crime control cannot and should not be severed from the question of how we live together, and allocate social

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<sup>28</sup> I should add that these positions are implicitly or expressly taken by criminologists who seek to use their, or wider criminological, knowledge as the basis for interventions in crime and penal policy discussions; among, that is, those who share the view – once held by Leon Radzinowicz and today propagated by Paul Wiles – that criminology’s *raison d’etre* lies largely in the contribution it can make to policy. It is, by contrast, possible to retain a purely scholarly interest in whether crime policies ‘work’ and to leave the practical implications of one’s findings entirely to others.

goods (and bads), and hence from dispute among competing political ideals and ideologies, then it is not at all obvious why evidence as to what works should trump determinations of crime policy based on other more political criteria. This is not, it should be noted, an argument for ignoring reliable evidence, or for throwing money at ‘failed’ programmes. But it ought to prevent us from concluding that respect for criminological evidence somehow entails that crime policy is or should be an expert domain – akin to certifying drugs or setting monetary policy – that can be handed to a criminological variant of NICE, or the penal equivalent of an independent central bank.<sup>29</sup>

Typically, however, these are not the underlying claims. It is perhaps more common today for the ‘effectiveness card’ to be played – by criminologists and by other penal and political actors - in support of, or opposition to, policies and programmes that they are predisposed to like or dislike for reasons other than that they do or do not work. Let us call this *bad faith instrumentalism*. Here the question of ‘what works’, and the attendant evidence and its interpretation, becomes a tactic in a political game – often that of liberal constraint.<sup>30</sup> In a hostile (that is to say, punitive) political and media climate where it seems hard to foster genuine popular support for liberal positions on penal affairs, and

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<sup>29</sup> A proposal for a ‘penal policy board’ defended on these grounds can be found in P. Pettit, ‘Is Criminal Justice Politically Feasible?’ *Buffalo Criminal Law Review*, 2001, 5: 427-450. It should be added that Pettit in no technocrat. His argument for insulating penal policy from direct political and public pressure is intended, rather, to deal with what he calls the ‘outrage dynamic’ that characterizes penal policy in democracies, whereby a spiral of crime/public anger/political response drives sentences towards the ‘cultural maximum’. For a discussion, and an alternative view, see, I. Loader, ‘Playing with Fire?: Democracy and the Emotions of Crime and Punishment’, in S. Karstedt, I. Loader and H. Strang, eds., *Emotions, Crime and Justice* (Oxford: Hart, forthcoming).

<sup>30</sup> Recent criminological examples of this instrumental instrumentalism can be found in the important work of Tom Tyler and Bernard Harcourt. One of the reasons that Tyler’s work on police legitimacy has, I think, proved so popular among the liberal left – being on occasions reduced to a factoid - is his argument that by treating individuals with fairness and respect the police can increase both their legitimacy and people’s compliance with the law. By defending procedural justice on these ‘law and order’ grounds, rather than first and foremost as a value for its sake, he makes a case that can, it is believed, be (more) persuasive in getting street officers to alter their behaviour; see, T. Tyler, ‘Enhancing Police Legitimacy’, *The Annals of the American Academy of Social and Political Science*, 2004, 593/1: 84-99. Harcourt similarly develops a critique of racial profiling in the US not on the moral grounds of systematic discrimination against minority populations, but by doing the calculations that demonstrate it doesn’t have the effects claimed – and thereby winning in a game of immanent critique; see B. Harcourt, *Against Prediction* (Chicago: UCP, 2006).

where the idea of not wasting tax-payers money seems to hold greater rhetorical power, one can easily understand why this move is made – and one finds it routinely today in debates on reducing levels of imprisonment.<sup>31</sup> But it is problematic nonetheless, for the following reasons:

- It too readily presumes that the answer to the question ‘what works’ will always happily coincide with the policy positions that flow from a wider political and moral belief system – in the present case liberalism. In other words, one plays the effectiveness card as a liberal in the perhaps genuine belief, or at least hope, that bad policies will prove to be ineffective policies.<sup>32</sup> Yet this seems most unlikely, raising the question of what one does if and when the crime reduction evidence contradicts a cherished policy ambition. Either one adjusts one purpose to fit the facts, or one seeks to move the goalposts, thereby risking exposure of one’s ‘bad faith’ – purely instrumental - instrumentalism.
- Yet even if this stealthy move is successful in defending certain (liberal) policy outcomes – say reducing the prison population – this typically comes at a price. Firstly, it means making little or no progress in the wider objective of seeking to foster and sustain public support for liberal principles and values in criminal justice and the penal system. But it also, secondly, risks licensing and reproducing effectiveness as the master category of political rule. Here one can all too easily end up playing the good faith technocrats hand for them –

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<sup>31</sup> See, for example, J. Russell, ‘This Lock-‘em Up Policy Isn’t Just Cruel. It Isn’t Working’, *The Guardian*, 26 February 2007. My point is this: what if the policy was cruel, but *was* working?

<sup>32</sup> The recent work, and practical interventions, of Lawrence Sherman are interesting in this regard, since Sherman, so far as I can tell, sincerely believes in *both* experimental criminology (and therefore, presumably, in *whatever* crime policies can withstand the rigours of randomized control trials) and restorative justice in particular and ‘social change’ in general (see <http://education.guardian.co.uk/higher/profile/story/0,,2079423,00.html>). How can this circle be squared? My sense is that the resolution can be found in Sherman’s commitment to innovation and experiment in both science *and* government – we try things out, we see if they work, and if they don’t we try something else. Sherman’s position can, in other words, most generously be interpreted as that of a pragmatist democrat in the spirit of John Dewey – see J. Dewey, *The Public and its Problems* (New York: Swallow Press, 1954).

that is, publicly propagating the belief that ‘what works’ should be *the* guiding principle in crime prevention and penal policy.

So is this the best that one can hope or strive for in a cold penal climate? Is it possible to imagine and foster a contemporary criminological sensibility – and attendant programme of empirical research and social analysis - that transcends instrumentalism and aspires to do more than act as a mode of liberal constraint? I am, along with Richard Sparks, in the early stages of seeking to answer this latter question affirmatively, and want to introduce two brief suggestions as to how one might develop such a positive response. One of these has to do with how to go about scrutinizing politics, the second with the importance of redeeming its promise.

We need I think, first, to enlarge and enrich our capacity for understanding the ways in which crime and punishment have come to be taken up and treated within contemporary political culture. It seems *de rigueur* nowadays for liberal criminologists whose individual and collective efforts to press upon government this or that research finding in particular, or the case for a more evidence-based response to crime in general, to react to the fact that these calls often fall upon deaf ears with an ‘explanation’ of that failure which risks ending up as either a cod sociology of politics or amateur political journalism (they are bad people, or have malign motives, or are serial liars, or have become subservient to Rupert Murdoch . . . ). These ‘explanations’ often moreover trade in cynicism – as if this were a reliable indicator of sociological wisdom - in a manner that makes an independent criminological contribution to the pervasive air of popular mistrust in politics. The public believe politicians are all duplicitous, greedy, corrupt, interfering and inefficient<sup>33</sup> – and we agree, wishing only to add that they never listen to (criminological) reason and stir up social fear for their own electoral ends.

I highlight this partly to make the (only partly) scholastic point that the ‘criminological analysis’ of government typically goes on today with little or no reference to the theories,

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<sup>33</sup> C. Hay, *Why We Hate Politics* (Cambridge: Polity, 2007), p. 160 and passim.

perspectives and tools of those who study politics and government on a full-time basis. I think it is also worth registering the irony that it is often those criminologists who are closest to and most networked in government, and who see policy-makers as a primary audience for their work and are actively involved in pressing research findings upon them, who seem to have the least developed and compelling analysis of the decline of the liberal criminological voice within government – and the least interest in trying to advance one. Yet this, it seems to me, is precisely what the present situation calls for, and what this lecture and the project of which it forms part is aiming towards: namely, the production of an adequate historical and political sociology of the ways in which crime is represented culturally and treated politically in contemporary societies – and not only our own. If nothing else, such an undertaking may shed much needed light on why it is the world has slipped away from liberal criminology. It may even offer a clue as to how such criminology can hope to gain some purchase over its future.

There is a danger, secondly, of some complacent half-truths about politics forming into a new criminological common-sense in ways that may, inadvertently or otherwise, licence some anti-political and ultimately conservative conclusions. I think the routine playing the effectiveness card is indeed symptomatic of this. So too is the view which either holds it possible or desirable to put Humpty-Dumpty back together again and resurrect some form of enlightened liberal elite, or else strives to conjure up a twenty-first century equivalent that can, once more, insulate crime and punishment from democratic politics and hence public pressure. Not only does this seem sociologically untenable – as David Downes has recently argued in *Criminal Justice Matters*.<sup>34</sup> It also forgets that that there is something entirely proper about questions of crime and punishment being determined *politically* – politics being, at its best, the realm in which members of democratic societies deliberate about common problems and provide collective goods – including the good of security.<sup>35</sup>

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<sup>34</sup> D. Downes, 'Editorial', *Criminal Justice Matters (Issue on 'New Labour: 10 Years On')*, Spring 2007, 67, p. 3.

<sup>35</sup> C. Hay, *Why We Hate Politics* (Cambridge: Polity, 2007); I. Loader and N. Walker, *Civilizing Security* (Cambridge: CUP, 2007), chs. 7-8.

### **A criminology for our times**

Let me conclude. There is of course a legitimate role for criminology in doing the patient work of supplying an evidence base that can make the public and political debate about crime and how we respond to it an informed one. This is even perhaps one of the field's standing functions – and nothing I have said this evening is intended to detract from that. This does not mean however, I have tried to suggest, that governments will – or even should – simply listen to the individual or collective wisdom of the field and act accordingly, or that we treat criminological knowledge as a trump in democratic conversations about crime, security and punishment. Nor, as should by now be clear, do I think this role exhausts the contribution that criminology can fruitfully make to contemporary public debates on the crime question.

That contribution can I think reasonably and legitimately hope to be wider in its scope and more ambitious in its purposes. That scope, I have indicated this evening, may today usefully extend to an investigation and analysis of the place that crime and punishment have come to occupy within the social relations and political culture of contemporary societies – and the effects of that prominence. But it may also encompass – under the altered social and political conditions in which we now live<sup>36</sup> – a renewed effort to enhance sociological understanding of the changing contours of crime and its control, and of the plurality of state and non-state actors who today seek or promise security within and across national borders. This, one might add, is something that entails criminology becoming open to a closer, more sustained dialogue with those areas of the social sciences that are also, increasingly, attending to 'criminological' questions – notably international relations and security studies. That, however, is for another day.

As to the ambition: it seems likely, for reasons that have become well-known and that I have re-emphasized this evening, that criminology will continue – whether inadvertently

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<sup>36</sup> See, further, I. Loader and R. Sparks, 'Contemporary Landscapes of Crime, Order and Control: Governance, Risk and Globalization', in M. Maguire, R. Morgan and R. Reiner, eds., *The Oxford Handbook of Criminology* (4<sup>th</sup> edn) (Oxford: OUP).

or otherwise – to serve as a mode of liberal constraint over forms of crime control and penal policy that remain ill-informed and driven by short-term political calculation. Encouraging ‘responsible speech’ about crime and its control may also, in this sense, be one of criminology’s standing functions. Yet this, one might suggest, carries a further implication: namely, that criminology put its empirical knowledge and theoretical analysis to practical use not merely in a bid to temper illiberal excess, but also, more positively, as a modest but hardly unimportant contribution to task of fostering and sustaining a crime politics that can secure the security of citizens without undermining the values and institutions of liberal democracy and whilst keeping resolutely in view the unfulfilled promise of social justice.