

PUNISHMENT & POLITICS

'... course of events ... will depend ... on ... skill, confidence and integrity; ... assert professional standards and principles; ... regain the confidence and respect of the wider public.'

David Faulkner was one of a number of participants in a seminar on Punishment and Politics organised by the Goethe Institute in June 1994. David Faulkner spent many years in the Home Office at a senior level guiding Criminal Justice Policy and is a long standing friend of the Prison Service. He retired as Deputy Under-Secretary of State at the Home Office in 1992 and took up his current post as Senior Research Associate at the Oxford Centre for Criminological Research.

The Current Scene in England and Wales

Crime and punishment seem to have a special fascination for people in Britain. It is illustrated by the popularity of detective novels and of police films on television; by the detailed reporting of sensational crimes - for many years in popular newspapers and now again on television; and by the debates about forms of punishment which have ebbed and flowed for 200 years.

Issues of law and order, or crime and punishment, have always been matters of acute political concern. But it is only since 1979 that law and order has featured prominently in the political parties' election manifestoes, and perhaps only in the last two years that the government has presented its policies on law and order as a test of its own credibility.

The 1980s and early 1990s were a period during which important developments took place in the country's approach to crime and criminal justice, for example

- the increasing emphasis on crime prevention, pursued independently of policies on law enforcement and the operation of the criminal justice process;
- the increasing recognition of the situation of the victim and the need to appreciate and respect victim feelings and expectations;
- reforms in the procedures for questioning, charging and prosecuting suspects and defendants, including the Police and Criminal Evidence Act 1984, the formation of the Crown Prosecution Service, and the appointment and subsequent report of the Royal Commission on Criminal Justice;
- changes in the management structure and

style of the various criminal justice services, reflecting the emphasis on efficiency and value for money which was being applied to public services generally;

- the attempts to introduce a more principled statutory framework for sentencing, to moderate the use of imprisonment, and to establish the validity and credibility of community sentences, culminating in the Criminal Justice Act 1991;
- reforms in the administration of prisons, both as regards the principles and standards to be applied following Lord Woolf's report on the prison disturbances in April 1990, and in the contracting out of certain prisons and prison functions to the private sector.

These developments were the subject of extensive consultation with all the relevant services and professional groups, and were for the most part carried out on a basis of broad agreement between the political parties. They were a natural and logical part of the Government's Financial Management Initiative, with its emphasis on outcomes, cost effectiveness and value for money.

A dramatic change of political mood, and of political direction, took place at the end of 1992 and during 1993. It was claimed that the policies pursued since 1979 were 'not working', and that they were the creation of 'soggy liberals' and 'trendy criminologists'. Crime was in future to be dealt with by vigorous law enforcement, certainty of conviction and severity of punishment, with the slogan 'prison works' and a claim that the balance of the system was to be changed 'in favour of the victim'. The government itself took the lead, but the opposition parties felt obliged to follow suit for fear of appearing 'soft on crime'. The

Labour Party did however adopt an alternative slogan 'tough on crime and the causes of crime' and continued to emphasise the social context in which crime takes place and the social and economic influences upon it.

A Change of Direction

Events which may have contributed to the change of direction include

- public anger at the continuing rise in recorded crime, perhaps experienced by Members of Parliament during the 1992 election campaign;
- a public perception that criminals were 'getting away with it' because the police and the courts were powerless (or unwilling) to stop them, and that the country was being terrorised by teenage villains;
- judicial and public criticism of some of the detailed provisions of the 1991 Act;
- the exploitation of all these by the media;
- a political need to the Conservative Party to find a new, unifying focus of attention after the debates on the Maastricht Treaty;
- the political ambitions of certain individuals.

The consequences have included

- a hardening of sentencing practice as courts reacted to the change in public and political mood, resulting in a sharp increase in the prison population;
- a circular intended to restrict the use of police cautioning for minor offenders;
- a move towards 'more austere' regimes in prisons and 'tougher' standards for supervision by the probation service;

and above all

- the proposals in the Criminal Justice and Public Order and the Police and Magistrates Courts Bills before Parliament at the time of speaking.

The most relevant provisions of the Criminal Justice and Public Order Bill are those which create new custodial institutions, to be run by private companies on prison sites, for children aged 12-14; an increase in the maximum sentences available for young people aged 15-17; restrictions on the grant of bail; new police powers and new criminal

offences aimed at demonstrators, squatters, travellers and 'raves'; and changes in the presumption of innocence and the burden of proof where suspects decline to answer questions by the police or in court. The Police and Magistrates Courts Bill changes the basis of accountability for the police and the magistrates courts service, with an increase in central direction and a loss of local control; and provides the basis for a major shift in the role of the police away from their long standing functions of preventing crime and supporting the community and towards a narrow concentration on law enforcement and the detection and arrest of offenders. The Bill was amended in several important respects during its passage through the House of Lords, but the policy thrust remains.

A Pessimistic View

The prevailing political view is one which reflects the classical notions of free will and personal responsibility, to be expressed through a largely retributive view of justice with little attention to preventive measures apart from those involving physical protection and security. Policies reflecting the contrasting 'determinist' view, emphasising the influences which affect personal development and human behaviour, are those which can be dismissed as the failures of the 1980s. Associated with the 'free will' view of crime is the conception of a 'quiet' or 'deserving' majority who wish to benefit themselves and those around them without interference or inconvenience from others; and of a separate, undeserving, dependent and potentially criminal class from whom they need to be protected. The latter group is seen as having been getting away with fecklessness and criminality for too long, and the balance needs to be shifted away from the criminal and in favour of the victim.

This view of crime is essentially pessimistic. It has little confidence in the prospect of individual or social progress, and in its current form it sees the motivation for human conduct mainly as a desire for personal gain and a fear of punishment or disgrace. The purpose of criminal justice is to supply the coercion which is ultimately necessary for social control. Within organisations, particularly public sector organisations including those in the criminal justice system, the view has its counterpart in an approach which has little regard for a

sense of public duty, equity or personal loyalty, and which emphasises material rewards (such as performance related pay) for those who conform; the discipline of competition; the threat of dismissal or the loss of the contract for those who do not perform adequately; and a top-down structure of output measures, performance indicators and performance appraisal.

A More Hopeful View

The contrasting view is more hopeful. It believes in the capacity of individuals to change and improve if they are given guidance, help and opportunities. It emphasises respect for human dignity and autonomy. It looks more towards putting things right for the future than towards punishing what is past (although the latter may sometimes be part of the former). Within organisations, it favours a participative style of management, with consultation and representation and an emphasis on mutual trust and individual discretion. It recognises that an organisation's internal style must match its external performance: staff who do not feel respected themselves will not easily show respect for others, or receive it in return.

The criminal justice system, like other public services in this country, is placed awkwardly between these two points of view. Neither provides a complete paradigm, or a complete analysis of the dynamics of a complex modern society or a modern public service. The courts must usually take a predominantly 'free will' view of guilt and culpability, although considerations of age, social background or future prospects may enter into their judgement by way of mitigation. Coercive powers including imprisonment must always be available to be used when the public cannot otherwise be adequately protected. But preventive measures must also be taken to deal with the large volume of crime which never comes to court and which is effectively out of reach of the criminal justice process. The Prison Service and the probation service, and to some extent also the police, try to function on the basis that their task is to make things better for the future, and in the case of prisons and probation to help offenders towards the prospect of a better life. Their objectives and values, strongly reinforced for the Prison Service by Lord Woolf's report, are closer to the 'determinist' than to the 'free will' approach. The political message to

those services is often ambivalent and confusing, but a sense of hope, a belief in the possibility of progress and respect for individuals are essential to their professional identity and integrity.

It is difficult to forecast the way in which events will now unfold. Amendments may be made to the Criminal Justice and Public Order Bill during its passage in the House of Lords. Prison overcrowding or prison disturbances may return on a scale which requires emergency executive action. Finance, even private sector finance, may not be available to support a prison building programme of the size needed for the present policies to continue indefinitely. Courts may not use their sentencing powers as severely as seems to be expected. The political emphasis may in time shift from punishment to prevention. Or the political and public obsession with punishment may continue and grow, with results such as those which can be seen in the United States.

Tension between Politicians and Professionals

An inevitable feature of the present situation is an underlying tension between matters of political and matters of professional or judicial judgement, and ultimately between politicians and professionals, and possibly also the judiciary themselves. It has been a consistent theme of government policy since 1979 to displace professionals, of all kinds, from the elitist, privileged and self interested positions which they are thought to have occupied; and professionals who have not shared or come to accept the government's political outlook have felt themselves to be weakened and sometimes intimidated. Academics have suffered a similar experience. The management changes now taking place in the criminal justice services (and other public services) may reinforce that situation. It is however the professionals who have ultimately to operate the system and to give effect to the legislation that is passed. The ultimate course of events will depend to a large extent on their skill, confidence and integrity; on their capacity, with academics, to sustain, renew and assert professional standards and principles; and on their ability to retain, or regain, the confidence and respect of the wider public.