

GLOBAL  ISSUES

Creating Criminals

PRISONS AND PEOPLE IN A MARKET SOCIETY

VIVIEN STERN

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About the author

Dr Vivien Stern is Senior Research Fellow at the School of Law, Kings College London and Honorary Secretary General of Penal Reform International. Her most widely read previous book is *A Sin Against the Future: Imprisonment in the World* (Penguin Books, 1998).

Praise for this book

‘In *Creating Criminals*, Vivien Stern gives us a stunning, revealing and deeply troubling account of the growing resort to imprisonment as the default solution to the escalating social problems of a global market society. This is essential reading for anyone who cares about the future of justice – in Europe, North America, and throughout the world.’ – Elliot Currie, Legal Studies Program, University of California, Berkeley

‘This book sparkles with hopeful ideas about how we could reduce crime and the prison population. It shows how the worldwide move to privately owned prisons and the ideas that flow from marketed services are leading to increased fear of crime, costly prisons and cruel regimes. It outlines very clearly how we could do better.’ – Clare Short, MP

‘This important new book encourages the development of more humane and effective ways of preventing crime.’ – Yuichi Kaido, lawyer, Secretary General of Center for Prisoner's Rights, Japan

*In memory of Ahmed Othmani, former political prisoner, penal reformer
and human rights activist, founder member of Penal Reform International
and elected its Chairperson in 1994, who was killed in a road
accident in Rabat, Morocco, on 7 December 2004*

Foreword and Acknowledgements

This book will be hard for librarians to categorize. It is not criminology, though it draws on the thoughts of some outstanding criminologists. It is not sociology, though crime and justice policies have their roots deep in societies. Law is the basis of a criminal justice system but this is not a law book. In the end it is about politics, the politics of punishment. I hope it will be useful to readers in both the North and the South, the West and the East, and particularly to non-specialists, who can see that their system is wrong but have not had time to find out why it is wrong, what is behind the wrong and what can be done to put it right.

I owe a great deal to many people who have inspired this book and helped me to turn the idea into reality.

I have learnt a great deal from Nils Christie, whose analysis of trends in criminal justice has informed and inspired all those throughout the world who care about prisons and prisoners. Paul Farmer's work on the global injustice of health provision has thrown much light on similar injustices in crime policy and the use of prison. Many have worked to point out why a market in imprisonment poses dangers, and amongst these Stephen Nathan's dedication in collecting and disseminating information on the private prison business is unparalleled.

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Introduction

Crime and Justice in the Twenty-first Century

In 2004 a scandal was discovered in Meru prison in central Kenya. Five prisoners were found dead in a cell the size of a single bed. Seven other prisoners were also in the cell. At first it was thought that the dead men had suffocated but a post-mortem showed that they had been beaten to death. Reports said that they refused to enter the cell because it was overcrowded, so the prison guards beat them up. The cell measured one by two metres. When they got into it they were attacked by the prisoners already in there. It was alleged that when the investigation started the prison staff tried to stop the chief government pathologist from conducting autopsies. The dead prisoners were not dangerous criminals. Three of them were being held whilst awaiting trial after being accused of illegally brewing alcohol. The two others were serving sentences of just three months.¹

In Japan in 2004 a radical plan was unveiled by the Minister of Justice. For the first time the country was to have a private prison to help cope with the rapid rise in the number of Japanese prisoners and the overcrowding in existing prisons. For many years Japan had managed with a very small prison population. But in the mid-1990s suddenly the number of prisoners began to grow. In 1995 Japan had 46,622 prisoners and an imprisonment rate of 37 per 100,000, one

of the lowest in the world. By 2001 the figure was one-third higher. Private prisons were in the news. And the Japanese government was persuaded that a private prison was the solution to their overcrowding problem.²

In February 2003 in Bam Lam in Thailand a 42-year-old woman called Somjit Kuanyuyen was shot dead in front of her house. She had discovered three days before that she was on a police blacklist of all those suspected of having something to do with illegal drugs.³ These blacklists appeared in January 2003 after the Prime Minister of Thailand, Thaksin Shinawatra, announced a new war, a war against drug dealers. He said, 'There is nothing under the sun which the Thai police cannot do.... It may be necessary to have casualties....'⁴ When she heard she was on the list Somjit Kuanyuyen reported to the Bam Lam district police station. She could neither read nor write, but she put her mark on a document. Apparently she did not know what she was signing but she was reportedly told by the police that she was now safe. On 20 February four unidentified men in a pick-up truck with darkened windows drove up to her house and shot her seven times in front of her seven-year-old granddaughter and her seven-months-pregnant daughter. Her house was only 20 metres from a police box but the police took a long time arriving at the scene of the crime and they did not collect the spent bullet shells. By 15 April, according to the police, 2,245 people had been killed in the 'war on drugs' announced by the Prime Minister.⁵

In the US Presidential election in November 2004 about five million people, that is roughly 2.3 per cent of the number of people eligible to vote, were prohibited by law from participating. They were disenfranchised because they had been convicted of a crime. These five million people were not a representative sample of the American electorate. They were overwhelmingly poor, and overwhelmingly African or Hispanic Americans.⁶ How they would have voted if they had not lost the right and what the effects of their votes would have been will never be known.

In England in 2004 a fifteen-year-old boy called Jason had his face on a leaflet that was put through the door of every house in the housing area where he lived. The leaflets were also distributed in the local supermarket. This happened because Jason was the subject of an Anti-Social Behaviour Order (ASBO). This is a court order that is made after an application by the municipal authorities. Jason had been accused of riding a motor-bike around the housing area. The court order said that Jason could not go anywhere near the local shops. If he did he would be committing a crime and then the court could send him to prison.⁷ According to a newspaper report, 'neighbours have taken to abusing him in the street and taunting him that he will soon be in prison. One woman in particular follows Jason with a camera, hoping to gather evidence that he has breached his [order] to pass on to the police.' And it was not just prison that faced fifteen-year-old Jason. If he breached his order his family could be thrown out of the house they lived in, which was rented from the municipal authorities. His mother knew Jason was a problem. She had been fighting for years to get help for his educational and emotional problems. The help did not come.⁸

These recent incidents taken from round the world all tell us something about crime and punishment in the first decade of the twenty-first century. They are very specific to their place, whether it is Meru in Kenya, an English neighbourhood, Japan, Bam Lam in Thailand or the United States of America. They reflect the policies, practices and problems of nation states. The methods of dealing with crime and the punishments for it are domestic issues under the control of national governments, and crime rates in each country are related to domestic policy. States decide for themselves what is against the criminal law, how people should be punished for breaking the law, and whether they want their prison population to go up or down.

However, crime and punishment policies are no longer insulated from outside pressures. Many aspects of life in the twenty-first century, including crime and punishment, are now subject to globalizing

influences. Practices in nation states reflect patterns of policy change that come from beyond the borders of the nation state. Levels of crime are affected by the way the world economy is structured. In responding to crime in their communities governments react to worldwide pressures. The leaflets that went through the doors in the public housing project where Jason lives represent the influence of wider forces than just angry neighbours.

These influences and their consequences are the subject of this volume, the first of the Global Issues series to deal with crime and punishment. In one sense the answer to the question, 'Is there some connection between crime and forces operating around the globe?' is simple. Crime and globalizing trends are obviously interrelated because economic globalization gives many opportunities for crime on a bigger scale than was previously possible. Frauds such as those associated with big companies (Enron, WorldCom or Parmalat), where profits were exaggerated, the companies got into considerable difficulties, the people at the top enriched themselves and thousands of ordinary workers lost their pensions, are a result of the dismantling of regulation and financial controls. These relationships and developments have been well documented.⁹ Criminal syndicates can use the Internet to streamline their operations, as do other multinational operators. When markets are opened up to legitimate trade they are also opened up to people traffickers or arms traders.

World-scale financial crime or cross-border crime, however, are not the subject of this book. Nor is it about crimes against humanity such as the genocide in Rwanda in 1994 and the ethnic cleansing in the former Yugoslavia. These are crimes so out of the ordinary, so huge in their impact and beyond the capacity of a single country to confront and cope with alone, that they are dealt with by the country concerned alongside international machinery set up by the United Nations. Both of these subjects have been well covered by many distinguished commentators.

This book is about crime at a much more mundane level: the crimes of the village and the neighbourhood, of towns and cities

where people live and work. It is about crimes committed by ordinary people in their own countries against their own families, neighbours and those in their social circle, crimes that have no international significance at all. It is also about what acts are seen as crimes, how such crimes are dealt with, who gets punished, what punishments are used and what the consequences are.

Huge financial frauds or large-scale crimes against humanity are clearly global issues. Can ordinary crime and the way it is dealt with also be a global issue? This book will argue that it has become one because pressures from the neoliberal economic consensus are having a profound effect. They are affecting how much crime is committed. They are influencing how crime is defined. They are creating an orthodoxy about how crime ought to be dealt with by society. Also, and not surprisingly, a market in protection from crime and in dealing with convicted people is being developed that is having an effect on policy and practice worldwide.

These trends are complex and many scholars have analysed them.¹⁰ The analysis suggests the following pattern of events. First, changes in the global economy have an effect on levels of crime. Worldwide research shows that crime levels are low when communities, built on strong family relationships, are cohesive and mutually supportive. When people's lives are based on shared values of how life should be lived and children are socialized into those values, then social norms are more likely to be accepted and followed. When communities are under great pressure – when whole industries close down, for example, as did the coal mines in the North of England or the motor industry in Detroit, and stable livelihoods are taken away – crime increases. When all members of a family, including the grandparents, have to work to keep the family afloat, children are more likely to get their values elsewhere. They learn that committing crime is the way to be respected by the group on the street. In a market society, in which the jobs go to the places where wages are cheapest and communities are left with no help and no alternatives, crime and insecurity in those neighbourhoods will rise.

Harsher attitudes to poor people and the withdrawal of social safety nets also lead to more crimes. Social order is no longer assured by socially inclusive welfare policies. Instead, policies aimed at maintaining social order concentrate on law enforcement and punishment. People do not get the support they need from state institutions to deal with social and health problems in their families. Spending on preventive action is reduced and the state action when it comes is punitive rather than supportive. The bigger the gap between rich and poor, the greater will be the levels of violence and serious crime.

In these circumstances, more acts are treated as crimes. Some acts are universally seen as crimes. Murder, rape, robbery, embezzlement and arson are seen as crimes in the laws of all countries. However, other actions can become crimes only when governments so decide. In many countries pressure from the United States and the United Nations Drug Control Programme forces governments to introduce new drug crimes, making possession of or dealing in certain substances a criminal offence. Such laws bear more heavily on some people than on others, because the major drug traffickers have money to spend on bribes and thus they can evade the criminal process. Small traffickers and users do not and cannot.

Politicians have less control over what happens in their economies. To show that they have control over some aspects of the lives of their people they turn their attention to crime. First they stoke up fear of crime and encourage demands for retribution. Then they offer their frightened populace harsher measures against the crimes of the small criminals, the poor and the least powerful. Since harsher measures are ineffective in reducing crime or the fear of crime, the results are not impressive. So the politicians promise more and then even more toughness: another few years are added to prison sentences and new crimes are created. In 2003, for example, under a new law passed in Texas, it became a crime punishable with up to ten years' imprisonment to give a prisoner a cell

phone, tobacco or cash.¹¹ In England in 2004 it became a crime punishable with a fine of £80 (US\$160) for a person under the age of eighteen to carry a firework in a public place.¹²

Global Trends

This pattern can be seen in many countries. Punishments for crimes are becoming harsher. Prison populations have risen more than 50 per cent in the last twelve years in 50 major countries, with some countries showing dramatic increases. The prison populations in Brazil and Thailand, to take but two examples, have more than doubled during those years.

Along with this shift from welfare policies to punishment policies, in many countries market forces have secured a large-scale entry into the business of crime control. The increase in crime, insecurity and levels of punishment has provided opportunities for many sorts of companies: some providing security guards, some building and managing prisons, and others selling equipment such as CCTV cameras or machines that screen people for traces of illegal drugs.

The growth in income inequality within many societies that has characterized the last two decades is also reflected in crime and policies to deal with it. Across the world it is the disadvantaged who have felt the greatest impact of these changes. They suffer most from the increase in crime. Their neighbourhoods are less likely to be protected. The rich can withdraw and live in a self-contained gated community or hire a security guard for their homes. The poor cannot. The poor are more likely to be detained by the police than protected by them, more likely to be punished by prison than by a fine or an alternative sentence, more likely to be prosecuted for drug taking. The crimes of the poor are perceived as more threatening than the crimes of the wealthy or crimes against the poor.

This is the direction being taken by many countries. Yet it can be resisted and many countries are doing so. Some governments