

SOCIETY AGAINST CRIME

Penal Theory Now

Edited by Howard Jones



Society Against Crime

Penal Practise in Modern Britain

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'Until the late sixties we knew where we were in penal thinking. People were either "reformers" or "traditionalists"' (Howard Jones). The former were humanistic and believed in rehabilitation; the latter believed in deterrence and in making 'the punishment fit the crime.'

New ideas have broken down the old alliances, the most important influence being the growth of deviance theory during the seventies. This book, discussing the central issues – Punishment or Correction?; Delinquency; Sentencing; Prisons; Probation; Alternatives – challenges the monolithic fashions in criminology and shows how thinking about this crucial element in our world is developing.

Written by well-known academics, but including contributions from a judge and a prison governor, this book makes the modern case for rational penal measures.

The cover photograph shows the interior of a prison cell block at Dartmoor (Popperfoto)

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Introduction: Setting the Scene

Howard Jones

Until the late sixties we knew where we were in penal thinking. People were either 'reformers' or 'traditionalists'. The former were humanistic, believing in a kinder, more rehabilitative penal system. The latter tended to believe more in deterrence and in making, in the words of Gilbert and Sullivan, 'the punishment fit the crime'. Of course, the borderline was blurred in places: the traditionalists were not always uncompassionate and the reformers would often express concern about punishments which they considered too severe in relation to the crime, e.g. long prison sentences needed for a training programme. The polarization of views was nevertheless very real and very clear.

Since then, new fashions have come to the fore in criminology. This has happened many times before and has often had its effect on penal methods. One could point to the growth of first psychiatric and then sociological ideas about the causes of crime and the impact these had upon the methods of correction adopted in prisons, probation, etc. No earlier vogue, however, affected basic thinking about the aims of punishment as much as has the growth of deviance theory during the seventies. While previous changes were confined to the advocates of rehabilitation and were concerned with improving methods of correction, the deviance theorists have straddled the time-honoured divide and, in particular, questioned whether the correctionalists were really the humanists they were thought to be.

This is not the place to offer a detailed account of deviance theory (Rubington and Weinberg, 1973). Such an account would have not only to include some assessment of the important new perspectives it has provided for penal thinking but also to describe the various competing and often conflicting themes within it, as well as its in-

completeness. Though thus incomplete, it makes absolutist claims, but this, sadly, is to place it well within the criminological tradition. Most earlier developments have also claimed to usher in a new era, in which all existing theory and practice would be supplanted. In this case, however, the claim has begun to be accepted by both academics and practitioners within the penal field and may end by producing a transformation in penal practice such as we have not seen since the beginning of the century.

This revolution in thinking, as it affects ways of dealing with offenders, centres on two main ideas:

(1) That the machinery of law enforcement paradoxically increases the likelihood of further crime by offenders who are subject to it. This is because of the twin processes of stigmatization ('labelling'), and the more intensive interaction with other deviants, which trial and sentence are said to bring with them.

(2) That correctional methods in particular are ineffective, unjust and illiberal.

The claim for rehabilitative effectiveness (it is said), though unfounded, is used as a justification for intrusions upon personal privacy and for sentences which are more onerous than would be justified by the crime, as when, for example, a long period of training is said to be necessary for effective rehabilitation. The correctional approach, it is argued, is also 'deterministic', seeing behaviour as in the last resort determined by upbringing and social circumstances rather than by the free choice of self-determining individuals. So crime, for the correctionalists, is evidence of faulty development – a kind of personal or social sickness, requiring 'treatment' in exactly the same way as physical illness. That a person might *choose* to be a criminal is overlooked, which not only leads to a degraded model of man but also, by placing the emphasis on manipulative resocialization, glosses over the important question of whether we have any right to change people's values in this way.

That the penal system harms and corrupts the offenders with which it deals is not a new idea. The stigma of a sentence or even a court appearance and the contamination resulting from, say, a prison sentence have long been recognized. What was new was the

discovery that penal experience may help to create in the offender a 'deviant identity' and thus produce in him a more established predisposition to criminality. Given this discovery, it was necessary to take the damaging effects of the penal system much more seriously. Some writers argued against criminal sanctions being imposed on drug addicts and other 'criminals without victims', on the grounds that otherwise non-criminals were criminalized. Proposals were made for the removal from legal punishment of other offences too. This would have carried much further earlier trends in Britain to 'decriminalize' acts such as homosexuality, abortion, suicide and the delinquent behaviour of young children.

Scope for decriminalization exists in relation to offences connected with drugs and drunkenness and sexual deviation; for failure to make payments (such as fines and maintenance allowances), legal attachment of wages could be extended. In spite of the rejection of rehabilitation by the deviance theorists, an even more fruitful area could be that in which an offence is better dealt with as a welfare matter than as a criminal infraction. We already do this in attempting to divert delinquent children from the courts into the social services departments of local authorities, but many other types of offence, especially those committed within the family and the trivial offences committed by inadequate offenders, would seem equally suitable for handling in this way. Diversion has seemed to have some attraction for deviance theorists, who have not always appeared to grasp the nettle of what you divert offenders to, if it is not to some kind of rehabilitative service.

It is in connection with their hostility to correction, however, that deviance theorists have blurred the borderline between the reformers and the traditionalists. The only equitable and liberal way to deal with offenders who are to be sentenced, they say, is as responsible individuals, who should receive punishment in accordance with the seriousness of the offence they have committed. The validity of this view is examined in Chapter 1 of this book, and it must be made clear that it does not exclude mitigation of punishment where this is justified, nor the 'treatment' of those who are clearly sick or disturbed. But, even with these concessions, this version of what is sometimes called the 'criminal justice model' is not

greatly different from the position taken by all except the most punitive among the traditionalists. Many who take this view see themselves as 'radicals', but, if so, it is the radicalism of people like Thomas Szasz, whom Pearson (1975) described as 'radical conservatives'. For they have returned to the eighteenth century, to the classical model of man as an autonomous rational and responsible being, in spite of a hundred years of psychology and sociology which has taught us that this is true to only a limited extent. This must not, however, be seen as an argument between free will and determinism. The truth may lie on either side, but in the present state of our knowledge we do not need to search for it. Sufficient to recognize that if the free will of the criminal exists, it is nevertheless constrained by a variety of powerful criminogenic factors.

To move thus back from a position of limited but growing knowledge about responsibility to a more romantic and uncomplicated view must be seen as conservative. So must a philosophy which abandons the aim of helping criminals to conform and substitutes an appropriate meed of punishment. And the 'justice model', by asserting that there is a level of punishment which a crime 'deserves', implies a moral obligation to conform to the law which sits uneasily with the suggestion cited earlier that correction is open to criticism on the grounds of cultural imperialism. If society is culturally pluralistic (which, to do them justice, some deviance theorists like Matza (1964) deny) the law will reflect the ideas of dominant social groups. To impose a moral obligation on deviants to accept the law then becomes truly conservative in the political sense of operating to the advantage of the social elite. Because of the way in which deviance theorists see the early manifestations of deviance as being 'amplified' by social reactions to it, such as those of law enforcement, they are sometimes called 'social reaction' theorists. Some may feel this description to be also true in another, more familiar sense of the words 'social reaction'.

Various positions on these issues are taken up by different contributors to this book, all connected in one way or another with the Department of Social Administration, University College, Cardiff. It is obviously important that such a debate should take place. Monolithic fashions in criminology have too long received an un-

challenged run, delaying the time when the contribution they have to make can be assessed and assimilated into the mainstream of our understanding of both crime and the penal system. It is to be hoped that readers will thus understand why they have been confronted in this book with conflicting basic conceptions of the nature and aims of a penal system. Apart from such philosophical differences, there will also obviously be others arising from the different professional backgrounds of the various authors. While most of them are academic teachers, one of social work and two of criminology, they also include a prison governor and a judge. It is thus possible for the observant reader to compare the views of prison and the courts held by those who work in them with the views of informed and concerned outsiders. Miss Elliott is in a rather special position here as she was once an approved school (community home) headmistress but has for some years been an academic with a special, but now outsider's interest in the field. This interplay of views will not give readers a clear lead on what they ought to believe, but we hope that it will make them aware of what the argument is all about, so that they make up their own minds on where the truth is most likely to be found.

Chapter 1 discusses the kinds of penal objectives – retribution, deterrence, incapacitation, correction – which have been proposed. Why courts (or the public) choose one or the other in a particular case often depends as much on emotional as rational considerations. A criminal whose circumstances arouse feelings of pity or whose bearing impresses the court favourably is more likely to receive a sentence with a correctional aim. A man who has committed a horrifying crime or shows defiance and independence may well find himself subjected to the full rigours of the tariff for his crime or even to a more severe, exemplary sentence. The judge may say that the latter is 'to deter others', but it is often not difficult to see in it also a reflection of his reaction to the nature of the crime itself or to the behaviour of the man in the dock.

Moral indignation is not out of place in a criminal court, but the rational element in sentencing needs to be strengthened; this chapter tries to tease out the strengths and weaknesses of the various sentencing aims. Needless to say, none is a panacea.

This subject is developed in Judge Stockdale's study of the courts as sentencers. While still at the bar, he was a keen and highly respected student of penological matters and wrote widely about them. He eschews further discussion of the aims of sentencing but instead sets himself the task of considering whether sentencing really should be the responsibility of courts of law. This eventually brings up many of the criticisms which have been levelled at the courts over the years. Being judge in your own case may not seem likely to produce an unbiased result, but on the way to his verdict of 'not guilty' Judge Stockdale gives us an admirable demonstration of the judicial mind setting out to ensure that both sides are given an airing.

With the recent decline in interest in correction, there has been a parallel decline in interest in non-judicial sentencing bodies, of which the California Youth Authority is probably the prototype. It looks as though we may be in for an era of strict legality in sentencing, with the 'justice model' in the ascendant. It is not so clear that this will be in the best interest of either society or the criminal himself.

Two chapters are devoted specifically to juvenile delinquency, written, as we have seen, from a knowledge of what it is like both to be directly involved in the correction of juvenile offenders and to stand a little apart and perhaps gain a more detached view. The juvenile courts and the modifications introduced by the Children and Young Persons Act 1969 are discussed first; Miss Elliott here explores the possible conflict between correction and traditional conceptions of justice. In the end she seems to want to compromise between the two, being perhaps more optimistic than the present writer about the extent to which oil and water can be successfully mixed. But she also makes it clear that there are many other, more immediate problems to be solved in our juvenile justice system and particularly emphasizes the lack of adequate resources for correctional work. Perhaps we ought to clear these up before we bite on the very controversial bullet of principle.

Chapter 3 reviews a wide range of provisions for delinquent children, extending from full-time residential correction in community homes and the short-term custody and rigour of detention centres,

through the aptly named but still rather vaguely defined 'intermediate treatment', to correction within the community and even 'non-intervention'. Some attention is also paid to borstals for older teenagers. These developed as more constructive off-shoots of the adult custodial system and bring us straight up to the gates of the prison.

This is where the thread of argument is taken up by Mr McCarthy, one-time Governor of Cardiff Prison and now Governor of Wormwood Scrubs. One could not have a more authoritative guide to the way in which prisons are organized or how they work in reality – which is different in many ways from how they appear to work to the outsider. The effect of both inmate and staff anxieties upon their method of working, resulting in the emergence of 'wanting a quiet life' as the overall aim upon which all can agree, shows what powerful social and psychological forces have to be countered if prisons are to gain a positive correctional purpose. It has long been the present writer's view that smaller prisons would resolve many problems (Jones, 1959). Security and the control of inmates would be easier, the corrupting inmate culture would be weakened and real relationships between staff and prisoners would replace their present impersonal and mutually uncomprehending mode of interaction. Nor need it be any more expensive than the present prison system with its enormous capital costs and the large staffs required to keep those great fortresses ticking over. They were designed for containment, not correction; when we begin to design different and smaller prisons, it will be the first sign that the philosophy is also changing at last.

Mr Willis approaches prisons from the perspective of the academic researcher and rather more pessimistically than Mr McCarthy – which is itself a remarkable reversal of what used to be the case. It used to be staff in daily contact with the criminal population of the prisons who were inclined to become cynical about the possibility of correction and the criminologists who would press for the introduction into prison programmes of measures with a correctional end in view. This shift in relative positions may conceivably betoken the advent of a new generation of prison administrators more interested in correction, but it is more