

Contemporary Comments

Searching for a Social Democratic Narrative in Criminal Justice[†]

Paul Keating recently noted that what the Rudd Government lacked was an overall narrative or story. I would like to argue that Paul Keating is correct and suggest a narrative: that of retrieving and defending aspects of our social democratic heritage from some of the damaging effects wrought by neo-liberalism.

Moreover I want to argue that criminal justice policy needs to be seen as a part of this broader narrative, which requires it being prised from its current site, where it is wedged firmly in the narrative of law and order.

For the narrative of law and order is located fundamentally at the level of individual guilt and responsibility. Criminal acts are seen as individual issues of personal responsibility and culpability, to which the state responds by way of policing, prosecution, adjudication and punishment.

This is but one level at which crime and criminal justice can be analysed. The problem is that so often analysis ends there, at the level of individual action, characterised in terms of responsibility, guilt, evil.

In few other areas of social life does individualism have this hold. If we are grappling with the problems of the deleterious effects of obesity, smoking, excessive alcohol or drug use, unemployment, poverty, domestic violence, racism, and so on, while there is always and already an available discourse of individual responsibility (and blame) it competes with a range of wider discourses which locate causal or precipitating factors in social, cultural, economic and political structures beyond the individual. To take but one instance, it would be absurd to restrict analysis of obesity, to individual greed. It should similarly be seen as absurd to restrict analysis of criminal justice issues to the culpability of individuals.

To point to social determinants in explaining crime, is not, as Nicola Lacey notes, 'inconsistent with judging it adversely or with holding offenders accountable' (Lacey 2008:200).

Let me sketch out, following Lacey in her 2007 Hamlyn lectures, a way in which criminal justice issues can plausibly be connected to a broader narrative of retrieving social democracy.

If we jump right to the end point in the criminal justice process, imprisonment, it is common knowledge both that imprisonment rates have been rising rapidly across many jurisdictions over the last three decades, even as crime rates drop significantly, and that there are significant international variations, indeed local State and Territory variations, in imprisonment rates.

The highest imprisoning country is the leader of the 'free world', the United States, with a rate per 100,000 population of 762, more than four times that of New Zealand, six times

[†] This is an edited version of a plenary address delivered at the National Criminal Justice Forum, Canberra, Australia, 29 September 2008.

that of Australia, eight times that of Germany, 10 times that of Norway and 12 times that of Japan.¹

Rather than engaging in sweeping analyses of 'late modernity' Lacey uses a comparative analysis to try to explain the significant national differences in imprisonment rates and the measures of penal tolerance and severity which underlie them. Looking at the international imprisonment rates a pattern is discernable.

Focusing only on advanced western style democracies, those countries with the highest imprisonment rates are 'neo-liberal' countries with liberal market economies: USA 762, South Africa 342, New Zealand 178, England/Wales 154 and Australia 130. The next bracket with lower rates are 'conservative corporatist' with 'coordinated market economies' such as The Netherlands 117, Germany and France both 91, Italy 83. With lower rates still come the 'social democracies' with 'coordinated market economies' such as Sweden 79, Norway 75, Finland 68, and Denmark 66, followed by 'Oriental corporatist' with a 'coordinated market economy' with Japan at 63.

Lacey argues that the socio-cultural, political and economic variables affecting the capacity to deliver inclusionary and reintegrative criminal justice policies (which should be the aim of liberal democracies) vary in different forms of democracy around the 'liberal/coordinated market economy' distinction.

Key factors in the different forms democracy takes include:

- The structure of the economy
- Levels of investment in education and training
- Disparities of wealth
- Literacy rates
- Proportion of GDP on welfare
- Coordinated wage bargaining
- Electoral systems
- Constitutional constraints on criminalisation
- Institutional capacity to integrate 'outsiders'.

Lacey argues that the relatively disorganised, individualistic liberal market economies are particularly vulnerable to penal populism, for 'liberal market systems are oriented to flexibility and mobility' and 'turn to punishment as a means of managing an excluded population'. By comparison 'co-ordinated systems which favour long term relationships – through investment in education and training, generous welfare benefits, long term employment relationships – have been able to resist the powerfully excluding and stigmatising aspects of punishment' (Lacey 2008:109).

This is a highly condensed summary of the argument and obviously is open to question and challenge. But it is supported by recent work from other sources and I will cite just two. In the first, John Pratt (2008:135) has investigated the 'nature and roots of Scandinavian

¹ Imprisonment rate figures given here are an update on those in Lacey and are derived from the larger table provided at the Kings College London, International Centre for Prison Studies, World Prison Brief site, <www.kcl.ac.uk/dcpsta/law/research/icps/worldbrief/wp_b_stats.php>.

exceptionalism' and finds the origins of low imprisonment rates and exceptional prison conditions in a history of cultures of equality. The welfare state was particularly strong in these countries, institutionalising high levels of trust and solidarity through the provision of state-guaranteed security. Pratt identifies the following characteristics of low imprisoning countries:

- strong state bureaucracies with significant autonomy and independence from political interference;
- mass media largely controlled by public neo-corporate organisations rather than market forces ... providing its already well informed public with objective rather than sensationalised crime knowledge;
- traditions of social welfarism which reduced criminogenic tendencies and led to a less severe punishment mentality;
- high levels of social capital; and
- the power and influence of expertise.

In the second piece of recent research, the Vera Institute in New York released a report noting that between 1970 and 2005 there was a 628% increase in the US prison population (Steman 2007:1). At the same time there have been significant drops in crime rates in the US throughout the 1990s, and they are currently at their lowest level in 30 years. An analysis of the research on the effects of incarceration on imprisonment rates suggests that 75% of the reduction was due to factors other than incarceration, such as:

- fewer young persons in the population;
- smaller urban populations;
- decreases in crack cocaine markets;
- lower unemployment rates;
- higher wages;
- more education and high school graduates;
- more police per capita; and
- more arrests for public order offences (Steman 2007:8).

Yet 'between 1985 and 2004, states increased corrections spending by 202 percent' while 'spending on higher education grew by just 3 percent, Medicaid by 47 percent, and spending on secondary and elementary education by 55 percent; spending on public assistance decreased by more than 60 percent during the same period' (Steman 2007:13).

The Vera Institute study concluded:

Analysts are nearly unanimous in their conclusion that continued growth in incarceration will prevent considerably fewer, if any, crimes - and at a substantially greater cost to taxpayers. In the future, policing strategies, unemployment, wages, education, and other factors associated with low crime rates may account for more significant reductions. Yet policy and spending for public safety continues to focus heavily on imprisonment, effectively limiting investment in these promising alternatives (Steman 2007:2).

To return to my starting point, the need for a narrative of retrieving or defending social democracy, here is research from three sources in support of advancing such a narrative,

namely that it seems likely that the imprisonment rates of various liberal democracies are intimately linked to the institutional pre-conditions for the realisation of penal moderation and inclusionary practices. Further, that those preconditions are in turn constituted by a range of socio-cultural, political and economic variables, in their most favourable form closely associated with traditional concerns of social democracy such as levels of investment in education and training; disparities of wealth; literacy rates; high levels of expenditure on welfare; coordinated wage bargaining; capacity to integrate 'outsiders' and so on.

Many of these concerns are also concerns of the current federal government, however sotto voce they may be expressed. They are arguably also the concerns of sections of the electorate who have seen the ravages of neo-liberalism erode social solidarity and who seek a recuperation of key aspects of our social democratic heritage.

We need to relocate criminal justice debates out of the individualistic register of law and order narratives of responsibility, blame, desert and punishment, and into a wider narrative of retrieving and defending social democracy from the excesses of neo-liberalism.

Such a relocation will not absolve individuals from legal responsibility for their crimes, nor from facing their punishment, albeit, there is little consensus over the form and quantum of punishment among senior figures in Australian criminal justice.

What it will do, is provide a way of discussing criminal justice issues that maximises the prospects of reducing both crime and punishment, by enabling action on its causes; and minimising the number of people, who for want of access to employment, welfare or other such basics, however irrationally, see crime as the only response to their predicament.

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References

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