

CRIME CONTROL AS INDUSTRY by Nils Christie,  
London, Routledge (distributed by Law Book Co Ltd),  
1993, 192pp, \$32.95, ISBN 0 415 09478 X

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This is an important book. It was written, originally in Norwegian, by a senior and internationally respected criminologist, Professor Nils Christie of the University of Oslo, who is a member of the Academies of Science of Norway and Sweden and has regularly taught in the United States. Its aim is to sound an alarm.

It warns against the expanding crime control industry. Its theme is that the war against crime in society has an apparent uncontrolled propensity for growth. Like any other industrial enterprise, the urge for expansion is very powerful. Evidence of this growth in activity against those who are seen as disturbing the social order is to be found in the absolute and relative increases in the number of those held in custody, or who are subject to "community-based" corrections. Christie uses America as the prime example. There are now 1.2 million people (or 504 per 100,000 inhabitants) in prison in the United States. This is almost five times greater than the Australian national imprisonment rate. When probation, parole and other forms of intermediate sanction are factored in, the total population under some form of legal control rises to 4.5 million. This is 1794 per 100,000 of the population:

This is so high a level of prisoners that it cannot be compared to what is found in any industrialised country in the West. But why only 1.2 million? Why not, two, three, or five million? And in view of the attempts to create a market-economy in the former USSR, why not a resumed use of Gulags there as well? And then, as the European welfare states decline, will these be able to resist the tempting models of the two forces now turned brothers? (p12)

This book documents how expansion of the corrections industry not only draws upon a growing population and a rising fear of crime, but also upon a great reservoir of acts which are being newly criminalised because of their environmental or economic consequences. The growing internationalisation of criminal law under treaties and other agreements, particularly in the drug arena, adds to this push. The new focus on management of aggregate populations by bureaucrats, trained only to solve administrative problems, encourages a shift away from individualised rehabilitation to retribution tied to the offence itself. The redefinition of those who are surplus to labour as the "dangerous" classes, because of the propensity of some to use recreational drugs or to engage in other "anti-social" activities to ease their pain or to make ends meet, points to the political biases in the selection of those targeted for action by the crime control industry.

Christie challenges the validity of conventional explanations of these burgeoning prison rates in terms of an actual growth in crime. He claims that such explanations do not hold up against declining victimisation figures. In chapter 7: "Crime Control as a Product", he contends that a more relevant partial explanation is the money push behind the provision of new prison buildings and prison equipment. This is more significant than in the past because of the current shift to private prisons and police services. Privatisation has eased the fiscal burden upon government and released some of the former restraints on the enlargement of the correctional system.

Thus far, Australian debate on privatisation of prisons and, to a lesser degree, on privatisation of police and security services, has been confined to the ethics and economics of reallocating public services to the private sector. However, Christie justifiably warns us of the need to be alert to the expansionary forces being unleashed in these moves to privatisation. With crime, the fear of crime, and the perceived need for security, as an unlimited natural resource for the crime control industry, its economic interests always will be on the side of oversupply. This applies to both police and prison capacity. This point is well illustrated by recent events in the fight against crime in the United States. President Clinton's August 1994 crime control legislation imposes mandatory life sentences for third time violent offenders and allocates funds for 100,000 new police. Both these measures will add to the numbers under sentence and in custody. The only effort made to address the structural features of the "crime problem" was to ban some nineteen types of rapidfire weapon. All the remaining guns are untouched and the social inequities which underlie the crime problem remain intact.

Christie writes in a clear, simple, and often anecdotal style to drive home the point that there are no "natural limits" to our penal population. His fear is that, in a world so influenced by the penal fashions of the United States, the growing prison numbers in that country and its infatuation with technological solutions such as electronically monitored home detention, which only further adds to the population under surveillance, will influence thinking in other industrialised countries troubled by crime. These signs are certainly evident in this country.

Other ideas just reaching our shores are the more severe forms of mandatory sentencing; guidelines to severely reduce judicial discretion; the depersonalisation of sentencing; and the heavy reliance on plea bargaining with judicial involvement to minimise the need for a trial and to speed up the sentencing process. A measure of the depersonalisation of sentencing is indicated by the directive which the United States Congress gave in establishing its Sentencing Commission. It required the Commission to ensure that its guidelines and policy statements:

reflect the general inappropriateness of considering the defendant's education, vocational skills, employment record, family ties and responsibilities, and community ties in determining whether a term of imprisonment should be imposed or the length of a term of imprisonment. (Sentencing Commission Manual, R5.35, quoted p133)

The aim is to award the offender his or her "just deserts" in accordance with some estimate of the "objective" gravity of the offence without any mitigation on account of factors personal to the offender. This further fans the expansionary fires by weakening the control which judges have over sentencing and by transferring that power to the executive arm of government through guidelines drafted by sentencing commissions.

Nils Christie's fundamental argument is that the amount of pain which society administers on its citizens by way of punishment does not, and cannot, depend only on questions of utility in controlling crime. It is, rather, a cultural question based on the standards and values of the society administering the law. It is much more than a direct response to the level of crime in society. There are pressures of other sorts leading to the expansion of social control and to changes in the level of punitiveness tolerated in the community. Just as

in the past we had to debate capital punishment in terms of the competing values to be attached to life itself, given the absence of any clear evidence of the efficacy or otherwise of the death penalty in deterring homicide, so we are now called upon to re-evaluate our expanding use of imprisonment. The utilitarians still like to think that the crime control industry is cleaning up and removing harmful elements from the social system, but Christie doubts the data and calls upon us to reject the "rational" economic approach to crime management and to face more squarely the moral question of when incarceration levels are to be regarded as intolerable.

Limits on the growth of the crime control industry are required as a matter of urgency and of policy. How large the system of formal coercion, which includes psychiatric as well as penal institutions, should be allowed to grow is a normative question, not an empirical one. Because we are not aware of, or have forgotten, that we possess the freedom to determine what limits are to be placed on coercive power, growth in this area has continued unabated. This book is no plea for a return to some idealised earlier condition of society with lesser formal social controls, but is an expression of a fear that, because we lack a conscious policy of restraint, we are moving, as its subtitle indicates, "toward GULAGS, Western style". He asks us to take stock of our willingness to give free rein to the crime control and corrections industry because, as he says, "[t]he major dangers of crime in modern societies are not the crimes, but that the fight against them may lead societies towards totalitarian developments" (p14).

It is advice worth heeding; it is a book worth reading.

RICHARD G FOX\*

**FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION** by Harold J Berman, Atlanta, Scholars Press, 1993, 401pp, \$US 39.95, ISBN 55540 852 4

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This book collects a body of essays, some previously published, whose underlying theme is described by the author as being that:

the legal order of a society, that is, the formal institutions, structures, rules, and procedures by which it is regulated, is intrinsically connected with fundamental beliefs concerning the ultimate meaning of life and the ultimate purpose of history, that is, with religious faith. (Preface p ix).

The author accepts that most people today — at least in the academic world — hold the opposite view, seeing only a remote connection between legal institutions and religious beliefs.

This modern heterodoxy, which regards religion as a "private matter", stems from the postmodernist attitude to knowledge itself, and the particular application of that attitude to religion. As a result of an "epistemological effort", religion has been reassigned "to the realm of opinion as opposed to knowledge" (Bloom, A, "The Closing of the American Mind", p28.)

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\* Professor, Faculty of Law, Monash University, Clayton Victoria.