

From England

CRIMINAL POLICY IN A CHANGING SOCIETY

by John Croft

The Cheshire Cat

This article focuses primarily on some of the issues that are relevant to criminal policy. The context is the last half century, from just before 1950 to the present day: this is the period roughly corresponding to my own systematic and personal involvement in criminology and the criminal justice system. The issues that I discuss are somewhat abstract and not easily amenable to empirical measurement. So what follows is *not* concerned with the detail of penal practice, ground that has been well traversed, researched and pontificated about elsewhere. I need to make plain that in this article when I refer to crime I mean crime perceived by the state as a moral wrong as distinct from those multifarious crimes that seemingly carry less ethical consideration.

Throughout the nineteenth and twentieth centuries there had been fluctuations in policy. The span of thirty years between 1950 and 1980 marked, however, the end of an era. It saw the gradual decline of the so-called liberal consensus which had largely dominated the post-war political arena and had characterised approaches in this country to crime and punishment for something like a couple of generations if not longer. Today (2006) that consensus has all but faded or at best has assumed a distinctly less 'liberal' significance. Rather like the Cheshire Cat in Lewis Carroll's tale¹ all that remains is the grin: '...this vanished quite slowly, beginning with the end of the tail, and ending with the grin, which remained some time after the rest of it had gone.'

1959-2006

When the White Paper *Penal Practice in a Changing Society: Aspects of Future Development (England and Wales)* was published by the Home Secretary in 1959² it was hailed, as I recall, as a positive vision for future policy. 'This Paper', it enunciated by way of foreword, 'indicates the

problem with which crime confronts us and the agencies which exist to deal with it. Reference is made to plans for newly conceived research and for the establishment of an Institute of Criminology. This Paper looks forward to the possibility of a fundamental re-examination of penal philosophy on the basis of the knowledge to be gained in this way ...'. It did, indeed, go on to deal with the growth of crime; what it described as the main instruments in the 'war'³ on crime – namely the police, the criminal law and the penal system; it then devoted a whole section and an appendix to research – the Home Office's own Research Unit had been set up in 1957 and the Cambridge Institute of Criminology was formally established later in 1959; and it concluded with a review, taking up 18 pages out of a total of 25, of penal methods. The social determinants of crime, let alone the economics, environmental or transnational dimensions, did not get a mention but this was an official document so speculation was to be avoided. The White Paper was envisaged as heralding the dawn of a new era, based on scientific discovery and supported by political consensus; the cost of crime and law enforcement was to be reclaimed by research which in turn would lead to a reduction in crime. To echo Lewis Carroll, it would be pursued with 'forks and hope'.⁴

Half a century later, after a vast expansion of criminological research and teaching, innumerable interventions both legislative and administrative by successive governments, and the expenditure of considerable sums of money, the so-called war on crime continues unabated. Admittedly the scenery, as it were, which forms the backcloth to this long-playing drama, has changed from time to time and the level of crime, in so far as statistics are a reliable indicator of what is going on, has ebbed and flowed. However, attitudes, as evidenced by the media (supposedly reflecting public opinion) and government action have hardened; they are, if anything, less tolerant, even if understanding of the ramifications of criminal behaviour are now better appreciated by some. Politicisation, where it is fuelled by populist concerns and impulses, can be inimical to rational development. Yet nevertheless the gap between academic knowledge and official implementation of crime control measures seems to have widened rather than narrowed.⁵ Government still retains the illusion that legislative and administrative intervention – the equivalent of micro-management by ministers – is the answer whereas, within broad parameters, it is perhaps 'market forces' that dictate the ebb and flow of criminality.

Sovereignty, legitimacy and accountability

It is not my purpose to go into how this state of affairs has come about, if only because this has been described and analysed more than competently elsewhere.⁶ My purpose is to explore what I believe to be some of the underlying issues. The first is sovereignty. What is meant by sovereignty? Brewer's *Dictionary of Phrase and Fable* describes sovereign as 'A strangely evolved word from vulgar Latin *superanus*, 'supreme', the last syllable being assimilated to 'reign'. Although not quite the last of the Stuarts, monarchical absolutism was virtually ended with the deposition of James II. The coronation of William and Mary in political practice signified the abolition of the divine right of kings and the substitution, by degrees, of parliamentary democracy as incorporating the sovereign state.

Hobbes, writing in the middle of the seventeenth century, had a lot to say about sovereignty but then he lived through times that saw the absolutism of both Charles I and Cromwell: all social authority, in his view, was concentrated in the Sovereign; thus resistance to authority cannot be justified, since justification would require the approval of authority itself. It was the Bill of Rights of 1689 and the gradual emergence of constitutional monarchy over succeeding centuries that eventually established the paramountcy of a democratically elected parliament – at least as regards the Lower Chamber. The state, and not the king, thus became sovereign. The whole apparatus of the criminal justice system and its agencies is thus predicated on delegated sovereignty, which within the framework of law is binding on all citizens. But what if a minority of citizens (or even a majority) rejects this sovereignty? This can be manifest in riot, strikes and even revolution. (In the southern states of the United States of America lynching was technically against the law but this did not prevent whites, almost within living memory, taking the law, as they would have it, into their own hands and thus assuming sovereignty.) Government, as the instrument of sovereignty, is expected to provide peace and security but where the sovereignty of government is abducted or rejected then anarchy looms. The only sound basis, therefore, for civil society is the acceptance of the sovereignty of the state: allegiance to any other authority, be it civil, military or whatever, is accordingly a threat to stability. Religious affiliation is recognised in civilised communities as a matter both for private conscience and public toleration, always provided that its observance is not conducive to civil unrest and disobedience.

All this may seem a far cry from the prevention and control of crime but it is fundamental to the social cohesion of society, namely the acceptance of the values, customs and law of any sovereign state, whatever its ethnic composition. Government, in my opinion, should be the sovereign provider of security and this responsibility should not be handed over to private initiative. Disregard of this sovereignty – even by minor infringement of the law – is therefore in principle a threat to civil society. Rectification of a perceived wrong or of what a minority cannot accept can only be obtained by democratic process under the rule of law.

As I have said elsewhere⁷, legitimacy is enshrined in the sovereign state; this power is delegated not only to the agencies of criminal justice. If, for example adolescents do not regard the police as a legitimate authority to maintain order then some degree of coercion is necessary. Much the same applies to the authority exercised by teachers, parents, public transport staff or even park keepers (if such there be). Most teenagers rebel – it is a *rite de passage* – as indeed do painters and poets, if not physically; but society sets boundaries on behaviour. It is reckoned that when these delegated agencies are democratically accountable and people, young or old, have some say in their objectives and management, the way the agencies go about their business is that much more acceptable. In contemporary parlance it means ‘ownership’ or being a ‘stakeholder’; it has already been conveniently forgotten that this was also one of the tenets, in theory if not in practice, implicit in communist society.

These three issues represent, in my opinion, the cornerstones of a system of social justice. If harmonised, they should in theory obviate social disruption. But I concede it is not quite as simple as that. External factors – poverty, disadvantage, unforeseen and extraneous events – will upset the applecart. Is there any way that these sometimes unpredictable elements can be contained so as not to shatter the whole edifice?

The cultural divide

What I have said above has wider implications only indirectly connected to criminal justice. The religious, political and military conflict that convulsed Europe in the late fifteenth and early sixteenth centuries had many consequences, especially a cultural renaissance leading to greater freedom of thought, even if this was not completely fulfilled until three centuries later with the Enlightenment. Just as the late eighteenth century saw an intellectual

flowering (as well as the birth of a more humanitarian and, in the succeeding century, scientific approach to criminal justice), so the religious differences manifest within the Muslim world following the death of Muhammad in 632 AD also saw a great intellectual upsurge, as well as a politico–geographic expansion, from the eighth century onwards. But, whereas even in medieval Europe the separation of church and state was recognised – an inheritance of Roman Law – in the Koran sovereignty rests with God and his Prophet. English common law, for example, is based on precedents established by the consideration of cases and is not imposed by the sovereign power: it is a secular law. Shari’a, by contrast, is divine law. In a nutshell the religious, philosophical and political differences between the Christian and Islamic worlds have been further exacerbated in the present day by the spread of globalization with all its implications for economic prosperity and the western concern for planting democracy in the alien soil of theocracy⁸. Democracy and representative government do not fit easily with the traditions of the Koran.

The issue is, bluntly, whether this cultural clash can be absorbed within the traditions of our own liberal and largely secular society. For a plethora of reasons – historical as well as economic – during the last few decades this country has rapidly become a multicultural society, and not just an amicable union of English, Welsh, Scots and Irish. This may not be apparent to the inhabitants of Steeplebumpstead but it certainly is to those who live in larger towns and cities which contain separatist enclaves.

Of course this has happened before, particularly with the influx into London in the early twentieth century of Jewish refugees from Eastern Europe and Russia fleeing persecution. And in many ways, but on a larger scale, the United States of America faced a similar problem in the late nineteenth century with the absorption of European immigrants from diverse backgrounds and also in the twentieth century of Hispanics largely from Central America and the Caribbean. With varying degrees of success, integration was achieved in the United States by the adoption of a common language, namely English; through a common schooling; and the circumstance of rapid upward social, or rather economic, mobility – a feature less commonly found among European nations of older settlement. This country, however, has a long tradition of state support for denominational schools (currently termed faith schools) which, enshrined by statutory authority, would be very difficult, even if desirable, to overturn. Furthermore, the relatively hierarchical structure of British society in terms of class, education and social status (based on

manifestations of accent and manners) reduces the pace of social mobility. English, meanwhile, has become such an universal language that its acquisition is, or should be, less of a hindrance to cultural integration though it may take at least a couple of generations before everyone speaks fluent English at school, work and above all at home.

So there is something of a dilemma as to whether total integration is to be encouraged, and if so how, or whether cultural diversity should be tolerated and neither suppressed nor actively discouraged. I have attempted to demonstrate, very briefly in the foregoing paragraphs, that there is more at stake than just the prevention and control of crime for criminal policy cannot be divorced from social policy. Criminal policy is what this article is about, so having raised some questions to which, at this juncture, I have no clear answer, I conclude with some further remarks on that theme.

Social Order

Social order depends on social cohesion and the acceptance of a common set of values. An integrated society should be less obsessed with law and order. Social order also involves the incorporation of the building blocks of sovereignty, legitimacy and accountability. Its principles are enshrined in the moral codes of religion as mediated by the Enlightenment of the eighteenth century. The stability of this Utopia depends on the assimilation of many practical features such as social and economic mobility, a common education – at least at the primary stage – and ideally a common language, democracy, basic human rights and adherence to the rule of law and the acceptance of a national identity.

However, there are stumbling blocks to visions of cultural harmony, integration and social cohesion. Many religious and ethnic minorities are understandably fearful of losing their cultural traditions and identity in what, to many of them, is still an alien land. The Jews of the Diaspora faced this problem but some (if not all) accepted a degree of integration, possibly for the sake of the advantages presented by economic opportunity, while at the same time managing to preserve their religious identity. Likewise, the Armenians. In the instance of Muslims, however, it appears that the Koran justifies their refusal to share a common set of values with non-Muslims⁹.

Nevertheless I believe that, given advantageous circumstances, social order as I have sketched it - if the cultural divide can be bridged - would reduce crime. But society changes and thus the model of social order needs to be

flexible. At a mundane level does the criminal justice system also have to adapt to changed circumstances? Historically it has usually been slow to do so, except under the pressure of dictatorship or external threat. And when the tectonic plates of contrasting concepts of social order clash, as happened towards the end of the fifteenth century with the Reformation, then what is called the ‘mindset’ or *Weltanschauung* changes too. Criminology alongside political science and social theory can contribute to this process in so far as conceptual frameworks can be satisfactorily formulated. This also implies more emphasis on long-term, fundamental research – preferably supported by funds from an institute independent of government – and less on what is characterised as short-term administrative research for bureaucratic purposes.

I would hesitate to forecast the course of events for criminal justice over the next decade but the liberal consensus of half a century ago has been clearly overtaken by something akin to a fortress society in which social separatism has replaced, if not yet uniformly, social cohesion founded on traditional values. But one cannot turn the clock back, and it is unwise to attempt it in a world increasingly dominated by the global economy. Whether the Cheshire Cat’s grin, let alone its body, will return is thus rather doubtful – at least for the foreseeable future. It is a question of assessing risk on a grand scale and ensuring that the adaption of criminal justice and its enforcement to changing circumstances proceeds as smoothly as possible while retaining the positive elements which help to bind society together.

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Notes

1. Alice in Wonderland (1865), Ch. 6.
2. Cmd. 645 (1959), Her Majesty’s Stationery Office.
3. A rather unfortunate expression, almost implying nuclear deterrence.
4. See also John Croft (2005): ‘*The Hunting of the Snark: Reflections on a Half Century of Crime*’. The Political Quarterly Vol. 76, No. 1.

5. More or less parallel with the expansion of research and teaching in criminology, there has been an expansion of the study of military history. I have the impression that communication between military historians, enshrined both in universities, the Institute for Strategic Studies and the Defence Colleges at Shrivenham and elsewhere, is closer; at least professionals (the armed services), bureaucrats and even politicians do take some notice of academics. During at least part of the second half of the last century this was also the case with criminologists but is it any longer? An independent Institute of Criminal Justice would fulfil the need.
6. See David Faulkner (2006): *Crime, State and Citizen*. 2nd Edition, Waterside Press (particularly Parts II and V); and Lucia Zedner and Andrew Ashworth (eds.) (2003): *The Criminological Foundations of Penal Policy. Essays in Honour of Roger Hood*, Oxford University Press (particularly Chapter 2 by Professor Nicola Lacey and Chapter 4 by Professor Lucia Zedner).
7. *Vista* (2005), Vol. No. 10, No. 2 (pp.109-112).
8. For an extended commentary on these issues see Roger Scruton (2002): *The West and the Rest*, ISI books.
9. David Selbourne. *The Times*, 9 September 2006.