

COPING WITH CONFLICT

by David Faulkner

This paper is about the kind of conflict which can get a person into trouble with the law, and what it is that turns a conflict from one which can be dealt with as a matter of personal and professional relationships and individual conscience into one where the state has to intervene and take it over as a matter of criminal law and criminal justice.

We are all conscious of the increase in the volume and possibly the seriousness of crime compared with 20 years ago, and of the increasing extent to which the experience or fear of crime can affect people's lives, confidence and relationships. People are naturally inclined to look first to the police and the courts for protection, or for action after a crime has been committed, but when they do they are often disappointed or disillusioned.

My argument in this paper is that the apparatus of the state is still quite good at bringing people to justice for serious crimes; but it is not very good at dealing with offences that are more a nuisance than a threat to society, or at resolving the situations which are created when crime takes place.

However much we may do to make the criminal justice process more efficient and more effective — and of course that is important — the process is still likely to leave many conflicts unresolved. Or it will create new conflicts which then have to be dealt with in other ways, for example when an offender leaves prison and has to return to his or her family, if they still have one, and have to make their way in what may for them be a hostile world. Putting the point another way, we should not as citizens think that the conflict, pain and distress which arise from crime and antisocial behaviour can be left for the state to deal with through the criminal justice process alone, or that we have no responsibilities of our own, even if we think of ourselves as innocent victims.

Crime, and more recently anti-social behaviour, which may not actually involve a criminal offence — and more recently still social irresponsibility (for example on the part of neglectful parents) — have become increasingly prominent as political issues for the last 20 years. This is partly because the problems have grown in their scale and seriousness, and partly because of

the adversarial nature of this country's politics. Successive governments have wanted to show that they have a solution, and that theirs is better than anyone else's, and they have tried to find that solution in what they know and think they can do best. That is legislation and the reform of public services. The direction that governments have taken has been to expand the scope of the criminal law and to extend the reach of the criminal justice services, and in the process to make increasingly ambitious claims for what they think the criminal justice process can achieve. Of course reform and modernisation are needed, although there will be different views about some of what the Government has proposed for example in its white paper *Justice for All*. But the problems we all want to address cannot be resolved through the criminal justice system, or even by the state and the government on behalf of the state, on their own. Compassion, mercy, forgiveness, remorse, atonement, charity and reconciliation all have a part to play, but there is not much room for those in the traditional criminal justice process.

The attitude we take to the scope and purpose of the criminal law reflects the view we take of the much wider questions of the role and authority of the state, and of the relationship between the state and the individual citizen. If we take the now much maligned 'liberal' view, we will say that the state should interfere as little as possible in the lives of its citizens; if we take a more authoritarian view we might say that the state — and therefore the government of the day — not only has a responsibility to protect its citizens from crime and disorder, but also a right or even a duty to impose and enforce its own view of social and moral order. Where Britain stands between those positions is now becoming a subject of public and political debate. It has profound implications as we try to redefine British identity and the rights and responsibilities of citizenship; for the way in which we approach not only questions of crime and anti-social behaviour, but also the wider social and moral issues of the day; and for how we try to come to terms with cultural and religious diversity and with the events of 11 September 2001.

We seem to be moving in different directions on different subjects. For example, the police have over the last 10 or 20 years moved professionally from a fairly authoritarian towards a more liberal position, while the opposite has happened in the probation service. It is the authoritarian view, which now seems politically to be in the ascendant in the United States and many European countries. On the criminal law itself, no-one knows how many criminal offences exist in England and Wales — perhaps about 8000 — and

Parliament has been creating new offences at a rate of 100-150 a year. The present Government has introduced eleven criminal justice acts, all of which have expanded the scope of criminal justice, extended its reach and tightened its grip in one way or another. Drug abuse and some forms of sexual behaviour are obvious areas of controversy, where the law and its enforcement may get in the way of an argument based on health or morality. Other examples are the physical punishment of children, and abortion, especially in the United States. Those in favour of relaxing the criminal law in one area, say on drugs, may want to tighten it in another, say to prevent parents from hitting their children. But I would argue that an action ought to be generally accepted as wrong if it is to be made illegal; but it does not have to be made illegal in order for it to be wrong.

The country is also divided on the nature, purpose and justification of punishment. Sentencing reform has been under discussion in England and Wales for the last three years, and prison overcrowding has reached a point of crisis during that period. It is not yet clear how the Government or those working in the criminal justice system will resolve that situation. Traditional arguments about the purpose of punishment as retribution, deterrence or rehabilitation are always inconclusive. So are the more modern arguments about the 'effectiveness' of particular sentences. Ideas such as reconciliation are hardly ever mentioned except by a few academics such as John Braithwaite and Kimmet Edgar, or by practitioners such as Charles Pollard or Tim Newell. But a public, political and sometimes judicial instinct to use punishment, and especially imprisonment, as the principal means of controlling crime is to over-estimate both its deterrent and its rehabilitative effect and to neglect its disruptive effects on society as a whole. It is also hard to reconcile with the attempt, to which the Government seems committed, to use imprisonment as a means of achieving a permanent change in the situation and behaviour of those who commit criminal offences. That attempt will not succeed unless it is supported by other agencies and by civil society and the attitudes of society as a whole. Again, this is where citizens should have a voice, and I suggest a responsibility.

Of course it is important to increase the rates of clear-up and conviction, and to use technology such as DNA testing and the recording and interception of communications for that purpose whenever it is practicable, and I would also say proportionate and legitimate, to do so. Of course it is important to reduce delays and to show more consideration for victims and witnesses, although

those two aims may sometimes conflict. But there will always be situations where no culprit can be found, where a prosecution would be oppressive or unjust, where the case cannot be proved, or where a long custodial sentence would be unfair or unnecessarily damaging to those who would be affected by it. Local communities and individual victims may be disappointed, or sometimes outraged, when that happens. But it should not be seen as a failure of criminal justice, and it may be a success if the test of success is — as it ought to be — a just outcome rather than individual or even public satisfaction.

Where conflict is unresolved, or where hurt remains, it may be a task for civil society rather than the criminal justice system to repair the damage. It may still be a task in which the police should take part, and one in which their contribution should be more formally recognised in the way in which the service is politically directed and professionally led and managed. But it is a task in which their role should be seen as one of ‘citizens in uniform’ rather than agents of the power of the state.

There are still serious shortcomings in the way victims are treated — by the criminal justice system and by the state and society more generally. Victims should not be seen, as they have been seen in the past, as creatures at the disposal of the criminal justice system; but nor should criminal justice be thought of as existing primarily to serve or satisfy the victim. Victims should not expect or be encouraged to look only to the criminal justice system for satisfaction and support, without regard for the responsibilities of other agencies and individuals. Respect and concern for victims, as for others who are vulnerable or distressed, are part of the wider responsibilities of public service and citizenship. And unfashionable though it is to say so, victims may themselves have some responsibility to contribute towards a wider sense of social reconciliation, for example through some form of restorative process, if they are able to do so.

Perhaps the most troubling aspect of the expansion of criminal justice is the criminalisation of children. The Government’s reforms of youth justice in England and Wales have generally been regarded as a political success, but their effect on crime and criminality has still to be demonstrated. There are serious problems of overcrowding, and consequential dangers of neglect or abuse, in what has come to be called the juvenile secure estate. Even putting those problems aside, it must be a matter of concern if the solution to bad behaviour and social disruption among children should be seen increasingly as an early, rapid and remorseless intervention by the criminal justice process.

This probably results in a criminal conviction, or even custody, with all their stigmatising and disabling effects, and less as a matter of prevention, conflict, resolution, reconciliation and social responsibility on the part of society as a whole. This is an area where the contrast between English and both Scottish and continental European systems of justice seem to be especially acute.

I would like to mention two topical and practical examples of subjects where citizens have a part to play, which is outside the criminal justice process, as we understand it. One is the resettlement of offenders, and especially prisoners, and the other is restorative justice.

Resettlement is the subject of an important report *Reducing Offending by Ex-Prisoners* from the Government's Social Exclusion Unit and one of the chapters in *Justice for All*. Both point out the enormous cost, in terms of wasted opportunities and re-offending, not to mention human suffering, which is caused by the failure to provide prisoners with adequate means of resettlement, especially in matters such as housing and employment. The SEU's report gives examples of what can be done if enough trouble is taken. Many of its actual recommendations are directed towards government and the statutory services, but very little can be achieved without the support of civil society and unless ordinary people are prepared to treat people who have offended, not as outcasts and a threat to themselves and their families or businesses, but as fellow citizens and human beings.

The other example is the process, and now increasingly the range of processes, which have come to be known as restorative justice. Their main feature is a conference, sometimes known as a restorative or family group conference, at which the offender and if possible the victim meet with their families or other supporters to consider the harm which has been caused and what can be done to put it right. The idea has some of its origin in Maori traditions in New Zealand but it has also been much influenced by Christian and especially Quaker thinking in this country. It is now used quite extensively in police cautioning, especially in the Thames Valley area where the Oxford University Centre for Criminological Research has recently finished an important evaluation, and also in connection with some of the new procedures for youth justice such as the referral order. Restorative justice has so far been used mainly for young offenders and fairly minor offences, but it is starting to be used experimentally for older offenders and more serious offences. It is also being used in other situations of conflict such as prison and school discipline, and for resolving complaints against the police.

The essential points about restorative justice are that it is not about punishment, it is not adversarial, it looks forward to the future, it recognises that many more people are likely to be involved than the individual offender and victim. It acknowledges and tries to give some reality to the rights and responsibilities of the wider communities in which crime is committed and conflict occurs. It challenges our culture and our assumptions. It is too soon to say whether restorative procedures will come to be established as a normal and standard part of the criminal justice process, or as an alternative to it; or whether they will remain on the margins, depending for their survival on the enthusiasm of a few committed individuals. They are not cheap — they demand a lot of preparation, care and skill if they are to be done properly. The indications are that they are successful in reducing re-offending, but the evidence so far is not conclusive, and that is not the only test by which they deserve to be judged. The effect on attitudes, relationships, trust and confidence may be just as important, but harder to measure and harder to justify in a political and professional culture dominated by quantified targets and performance indicators. But restorative justice in a broad sense does seem to offer more than the traditional or even a reformed system of criminal justice will ever be able to provide, not only for individuals but also in promoting the health and well-being of institutions and communities.

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