Contemporary Comments

Transcending Dichotomies: The Criminal Justice Network and a Dialogue Concerning Prisoners and Victims

Introduction

It is perhaps trite to observe that debates about crime and punishment seem perennially circular. While other issues in Australian social life: republicanism, indigenous land rights, cultural identity, gender relations, are marked by innovation and renewal, criminal justice and penal issues often seem caught up in a repetitive cycle. Around the often unspoken nub of revenge spin a series of set piece dichotomies: retribution/rehabilitation, individual responsibility/social conditions, just deserts/social justice, mad/bad, victim/offender, police/criminals, corrupt/clean, white hats/black hats, terror/mercy, soft/hard, unable it seems to break from their mutual embrace.

Activists and contributors to media debate over penal issues become jaded and embarrassed, in few other areas does the predictability of what is about to be said by different participants seem quite so apparent, in few other areas does one feel quite so spoken *by* the available public discourse. Circuit-breakers are not readily discoverable in the tool kit of the punitive cycle.

For those serious about presenting credible strategies or proposals for change one of the key difficulties remains the predominantly defensive tenor of the standard reform discourses around crime and punishment. Even when on strong ground in pointing out the basically social and economic determinants of crime, the connections between crime, victimisation, social disadvantage and political marginalisation, the weaknesses of deterrence, the stigmatising, brutalising and wasteful effects of much penal intervention, somehow such arguments tend to sound tentative when pitched against the moral certainties and resonant righteousness of a police chief, politician, radio talkback ideologue, or distraught relative of a homicide victim, making a simple demand for greater punishment, longer sentences, an increase in police powers, tougher prison conditions, the death penalty and so on. In popular parlance the former set of arguments are frequently portrayed as "soft", the implication being that they seek to absolve the offender from individual responsibility. A usually unspoken implication goes somewhat further, pointing to the wider context in which particular crimes are committed, amounts to a failure to condemn the behaviour tantamount to encouraging it, and shows a lack of solidarity with the victims of crime indicative of unconcern with the frequently devastating and tragic effects of particular crimes.

Stereotyping: The Fixing of Meaning

There is a powerful tendency in criminal justice and penal debates to want to fix meaning, to clarify the complexities of motivation and action into a simple tale. This tendency is understandable and inevitable up to a point, but the desire to pin meaning down, to throw a template over the complexities of actual lives and events runs the danger of becoming a

form of stereotyping. Everyone and everything can be given a fixed place, a fixed meaning, ambiguity and relativity can be denied, black hats and white hats can be distributed, good and evil assigned, heroes and villains, victims and "perpetrators" identified. This is the court process as morality play, a secular puppet show relying on the communications media to convey the moral reassurance of just deserts in the measured terms of judicial homily and denunciation on sentence to the populace at large.

One aspect of this imperative to fix meanings and identities can be illustrated in the increasingly politically powerful discourse of victim/perpetrator. In some versions of this relation, particularly those informed by essentialism, the status of victim or perpetrator take on the characteristics of set identities deriving from readings of gender relations as totally determined by a universal and totalising patriarchy, readings which brook "no excuses" in the form of the distortions wreaked by unemployment, cultural, racial and religious practice, drunkenness, addiction, histories of abuse, relative marginality and so on. The difficulty such arguments must confront is the clear evidence that particular economically and politically marginalised groups are far more likely to provide both offenders ("perpetrators") and victims. Indeed often in the form of one and the same person at the same time, and at different times. In short, the status of victim/offender are not permanently fixed, but are often ambiguous, interchangeable. This fluidity is apparent in the trials of women who have killed abusive spouses; a dramatic shift from "victim" to "perpetrator". But is the only option that of being trapped in dichotomy, must they be only one or the other, are these identities or positions mutually exclusive? Are there points beyond which forms of identity-based politics (for example "victim" and "ex-prisoner") cease to be empowering and become personally limiting? And are the political interests and concerns of what might broadly be called the penal reform and victims lobbies, totally opposed and antithetical?

Developing a Dialogue

In New South Wales the Criminal Justice Network, an umbrella group of various criminal justice, penal reform, and community organisations, has taken a first step in attempting to raise such questions. Through developing a dialogue between penal reform groups and victims organisations it is hoped that certain of the stereotypes might be broken down and points of agreement and disagreement over appropriate policy directions identified. One of the potential benefits of this process might be to reduce the ease with which law and order politicians, editorialists and talk back radio hosts are able to invoke and position victim's groups in order to oppose penal and criminal justice reform. Another benefit might be to open up increased awareness amongst penal reform groups that victims' demands for compensation, counselling and other services, protection from further victimisation and for better treatment within the criminal justice system, should be taken far more seriously than they have been in the past.

The sad irony that needs to be faced is that law and order forces have justified increased punitiveness in sentencing and the massive expansion in the New South Wales prison population partly in the name of victims. But such measures are a massive drain of financial resources, some of which might be directed to victim services and other social programs, and do very little to address victim's real needs. Increased penalties and the removal of protections for the accused, such as the abolition of the unsworn statement, while couched in the rhetoric of concern for victims not only cost a lot and deliver little but also stifle more imaginative thinking about ways victim's interests might be more effectively promoted. Hypocrisy is rife: the New South Wales government's move to abolish the dock statement in the name of fairness to victims is being pursued while it

simultaneously attempts to cut off access to the already overloaded and inadequate Victims Compensation system for a significant number of applicants.

It is also important to recognise that victims' groups, like penal reform groups, have different histories and positions on many of these issues. Those that deal with individuals who are likely to have inhabited both offender and victim identities or positions tend to be wary of the view that victim's interests are necessarily promoted by increasingly punitive penal intervention. To say nothing of the groups that represent the families of prisoners, mainly women and children, themselves victims but largely forgotten, stigmatised and denied political authenticity. One problem here is that certain "spokesmen" for victim concerns have emerged who have a high media profile and access by virtue of previous positions such as being judicial officers, enabling them to articulate a victim's perspective with their own highly inflected law and order philosophies.

With all these questions and issues in mind the Criminal Justice Network has written to over 80 groups which could broadly be called victims groups in New South Wales. These groups are in the main sexual assault services, child and youth organisations, community legal and health centres. A covering letter explains the initiative, proposes a dialogue and encloses a set of resolutions passed at a well attended public meeting in Sydney last year where representatives from a range of community organisations spoke of the need for a new approach towards criminal justice and penal issues. The resolutions, which are set out below, serve as a focus for discussion. Several organisations have responded favourably and discussion meetings are being arranged.

Resolutions on Crime and Sentencing

1. That the current prison system is an expensive, degrading and anti-social institution which fosters violent crime and fails to rehabilitate the offender or protect the community.

2. That, in particular, the isolation, systematic strip searching, daily humiliations, social stigma and labelling, tension and violence, frustration and boredom of prison often combine to create bitter and maladjusted people who are inevitably released back into the community, many times to commit more serious crimes than those which first saw them imprisoned.

3. That as it costs more on average to send a person to Harvard University for a year, and that this does not reduce the crime rate, it is a scandalous misuse of public money to have raised the New South Wales prison population from under 4000 in 1988 to well over 6000 in 1993.

4. That recognising these negative impacts by prisons, sentencing must be comprehensively overhauled to ensure that prison sentences are neither the norm nor the benchmark, but are the final alternative: the *absolute* last resort. A new Sentencing Act should rationalise all maximum penalties and sentencing considerations, including the abolition of prison as an option for such street offences as offensive behaviour.

5. That the outcome of the criminal justice process should include the following as central measures: (a) those which aid and recognise the victims of crime, and (b) those which exhaustively pursue community-based corrections for offenders.

6. That, in particular, (a) aid to victims should include compensation, counselling, protection from offenders undergoing community-based programs, and other properly resourced victim support schemes, while (b) community based corrections for all categories of offenders should include community service orders, restitution orders, drug rehabilitation programs, supervised work and training programs, and specialised counselling programs. Further, that the needs of people with intellectual, physical or psychiatric disabilities and those from non-English speaking backgrounds be fully and properly considered in all such measures.

7. That, as most juvenile offenders who are institutionalised go on to adult prison, sentencing for juveniles exclude detention in large institutions and that the principle of diversion from institutionalisation, enshrined in the report *Kids in Justice* and the *Green Paper on Juvenile Justice*, should be vigorously pursued.

8. That those who are imprisoned as a last resort be treated with respect and housed in civilised conditions: (1) under a properly staffed and implemented unit management scheme within small prisons; (2) be provided with constructive work, including a strengthening of the work release program, and/or educational and skills programs; (3) with properly funded education programs which have community-recognised accreditation, social and inmate peer-support programs; and (4) with the general prospect of parole to supervised community-based programs.

9. That, given that women in New South Wales prisons are mainly incarcerated for non-violent or drug-related crime, imprisonment is an inappropriate measure for a large majority of them. Further, sentencing alternatives which take into account the needs of parents and children must be pursued. In particular, the separation of parents from children should be avoided and, so far as is possible, children should not be subjected to prison conditions.

10. That, given the increase in numbers of Aboriginal people in police cells and prisons (New South Wales had a 70 per cent increase in Aboriginal prisoners from 1988 to 1992), radical action be taken to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody. In particular, Aboriginal Community Organisations should be effectively and consistently involved in all Aboriginal offender programs and sentencing matters.

11. That scare-mongering by politicians and media organisations, seeking to exploit an individual crime or victim for political advantage or to boost sales, costs the community dearly. In particular, the cry for longer or harsher terms has already cost New South Wales several million dollars in the past five years. At the same time, victims of crime have not benefited and many young lives have been destroyed or wasted in the state's prisons.

12. That "natural life" sentences be abolished as "cruel and unusual punishment", and that no prisoner be denied the right to apply for parole after 10 years.

13. That no new cell capacity be created in the state's prison system without an equal or equivalent old cell capacity being closed down, so that total capacity will not expand.

14. That Mr Carr's offer to develop a bipartisan policy and Mr Hannaford's interest is most welcome. An informed bipartisan agreement is the only basis on which to achieve an effective and civilised justice system.

15. That a summit meeting — including government, political parties, media organisations, criminal justice system workers and concerned community groups — be organised to look at (a) the efficient use of resources in the criminal justice process, and (b) the creation of a bipartisan policy which firmly rejects inflammatory and ill-informed contributions which may arise from political point-scoring or the media exploitation of people's feelings around particular crimes.

16. That an independent Criminal Justice Network be established to monitor, comment on and intervene in all the above issues.

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