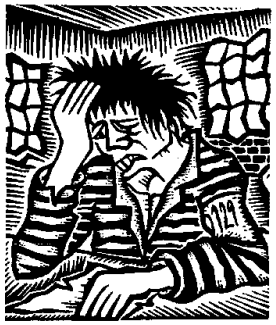

Why Punish? Why Prison?

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Why punish?

- A question about causes – why it is people so often repay the harm of a crime with the harm of punishment?
- A question about reasons – what are the purposes people set for punishment?
- Neither way of understanding this question settles the matter of moral justification

Retribution

- Retributive emotions - the feeling that the harms of a crime should be responded to by the harms and deprivations of punishment
- These emotions are very deep in our culture …and perhaps in our human nature (though so is reconciliation)
- Most of us have a sense that a wrong must be righted
- Reciprocity / tit-for-tat has been argued to be an essential evolutionary response
- Maybe retribution is the other side of the coin from do as you would be done by (the 'Golden Rule')

‘Populist punitiveness’

- It is said that public / popular opinion constrains liberal penal change
- (Although sometimes it is the politicians who excite these feelings)
- Less is understood about why crime and punishment have this political resonance
- If we are to bring about change, we need to understand this better
- Punishment and emotion
- ‘It is useless to attempt to reason a man out of a thing he was never reasoned into’

Purposes

- "Punishment is the only / best way to 'right the wrong' and / or to honour the victim"
- But restorative justice is showing other and better ways
- "The more punishment there is, the safer we are"
- But there is no evidence that punishment as a strategy is the way to reduce crime

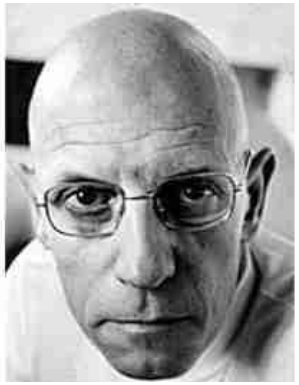
Since punishment fails in these purposes, we need to understand its significance to us if we are to understand its persistence – and this involves thinking about the retributive emotions .

Garland on punishment

'What appears on the surface to be merely a means of dealing with offenders so that the rest of us can lead our lives untroubled by them, is in fact a social institution which helps define the nature of society, the kinds of relationships which compose it, and the kinds of lives it is possible and desirable to lead there.' (David Garland)

Why prison?

- Deterrence – no clear relationship between levels of crime and rates of imprisonment
- Rehabilitation is undermined (Can you teach people to live in freedom by locking them up?)
- Prison damages prospects of desistance
- Prison makes restorative justice or compensation much harder if not impossible
- Prison does incapacitate, though it often delays rather than prevents further crimes



Does prison 'work'?

- Foucault asked why prison persists when it so plainly fails
- His answer (to summarise a complex thesis) is that prison creates the criminal, the deviant, and uses this standard to control the working class
- Others have claimed prison serves some deeper purpose or serves ideological functions
- Perhaps prison is retained for its failures rather than in spite of them

Persistence of prison

- Desire to exclude
- Following the decline of the death penalty and transportation, prison is the only available and culturally accepted means of doing this
- Almost all other sanctions require the offender to do something – which they may fail to do
- Walking away from court looks like 'getting away with it'
- How can we: the misery of prison is invisible

‘ … it may simply be that once it was actually built the massive infrastructure of imprisonment represents an investment (in terms of buildings, administrative structures, and professional careers) which is too costly to give up but is sufficiently flexible to adapt itself to the various penal policies which would come into vogue. The prison may thus be retained for all sorts of reasons – punitiveness, economy, or a plain lack of any functional alternative – which have little to do with any latent success as effective control or political strategy. ‘ (Garland)

Limitations of the Penal System

"... we are tempted to adopt barbarous measures out of disappointment, or foolish ones of out despair, simply because we fail to achieve what we have no right to hope for in the first place." (Hyman Gross)

Safer societies are achieved by social justice, equality and fair opportunities – not by coercion, suppression and exclusion

Prisons of the Future

1. What do we think prisons will be like?
2. What do we think prisons *ought* to be like?
3. What will shape their future and how can those factors be influenced?

What do we think prisons will be like?

- Huge question!
- Penal policy and practice ‘relatively autonomous’
- Social, economic, political and cultural influences, inter-related in complex ways - inherently unpredictable

What *should* punishment be like?

- Anticipates a time when offender will be fully reinstated: Has some sort of conclusion or ending
- Is socially inclusive
- Is administered with an awareness that the offender is one of us, not an 'other'
- Constantly seeks legitimacy – with the offender and with others
- Is sparing with 'hard treatment' and coercion – which lead to resentment and continuing estrangement
- Where possible involves the victim as well as the offender in exploring how amends might be made

What *should* prison be like?

- Small
- Local
- Rehabilitative in ethos

Threats

- The rise and rise of ‘risk-thinking’
- Inertia / Habit
- Commerce and other vested interests
- Proliferation of ‘alternatives ‘
- Proposals should be assessed for their tendencies to strengthen / weaken the place of prison in penal culture
- And by whether they expand or diminish the reach of the criminal justice system

Summary

- If we wish to make a difference to the prisons of the future, we need a vision of what they ought to be like
- … and an appreciation of the influences that may resist or support our efforts to accomplish change
- Punishment always engages the emotions (ours as well) and there are limits to the extent to which penal policy can be led by evidence or reasoning
- Different purposes are set for punishment and it is not clear that they could all be achieved or that they are compatible with one another
- The tragedy of punishment – politically and emotionally inescapable yet unable to achieve the purposes set for it

Thank you!

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