



BOOK REVIEWS

*Declan Roche**

THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY

By David Garland

Oxford University Press, Oxford, 2001

300 pp

ISBN 0 19 829937 0

The political wisdom of the times is that it is only a brave politician who goes soft on crime. Brave — perhaps even foolish — when the public demand that punishment should be prolonged and unpleasant, and when the concepts of rehabilitation, reconciliation and reintegration appear to be subservient to the principle that offenders should get what they deserve. What is so surprising about this political climate is its contrast with the one that preceded it. As recently as 1970, politicians devoted themselves to the task of trying to reform offenders, not punish them. This prompts the question, what caused such a sudden and dramatic about-face in crime control?

It is this question that David Garland tackles in his most recent book, *The Culture of Control: Crime and Social Order in Contemporary Society*. An analysis of crime control in the USA and the UK, much of the book is devoted to charting and unpacking these two countries' conspicuous u-turns in crime control policies over the last thirty years. Garland explains how policies such as mandatory sentencing and zero tolerance policing came to be so widely adopted, as well as explaining

* PhD (ANU); Lecturer in Law, London School of Economics.

how quite different measures, such as restorative justice, manage to survive in such punitive times.

Garland begins his analysis by building up a picture of crime control prior to the 1970s. He describes what he calls the ‘penal-welfare’ structure, in which the innovations of the twentieth century – such as rehabilitation, welfare and criminological expertise – were combined with the older liberal legalism of due process and proportionate punishment. As Garland argues ‘[w]ith its roots in the 1890s and its most vigorous developments in [the] 1950s and 1960s, penal-welfarism was, by 1970, the established policy framework in both Britain and America. Its basic axiom [was] that penal measures ought, where possible, to be rehabilitative interventions rather than negative, retributive punishments.’¹

During the 1970s, however, this was all to change. Standard accounts of the dramatic shift that followed focus on the publication of a number of academic critiques that drew attention to the discriminatory and oppressive treatment of offenders under discretionary rehabilitative programs. In addition, a growing body of work began to question the effectiveness of rehabilitative treatments. The notion that ‘nothing works’, originally used in relation to prison-based treatment programs, came to be used in relation to penal measures generally and then eventually to the criminal justice system as a whole. The pervading sense of failure was fuelled by findings such as that of the English Home Office that the average police officer comes across a street crime in progress only once every eight years.²

Garland carefully describes these critiques but then also – and this is the novelty of Garland’s account – goes further, identifying the underlying factors that explain why these critiques met with such a receptive audience, and also why the resulting policies looked nothing like those intended by the critiques. Garland explains why ‘[o]ver time, the liberal concern with just deserts, proportionality and minimizing penal coercion gave way to more hard-line policies of deterrence, predictive restraint and incapacitation, and eventually, to expressive, exemplary sentencing and mass imprisonment – policies that were completely at odds with the principles and intentions of the original liberal reformers’.³ The argument Garland develops is that these critiques occurred at the cusp of a social transition, with the critiques emanating from the end of an era dominated by welfare state policies and social democratic politics, but the response belonging to a different political and cultural context, one that led to the election of Ronald Reagan and Margaret Thatcher. Put simply, one era launched the critique, while another delivered the response. Garland identifies the factors that produced this social transition as well as their

¹ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2001) 34.

² Ibid 62.

³ Ibid 61.

consequences for crime control and the welfare state. In particular he identifies five interrelated factors: the modernising dynamic of capitalist production and market exchange; changes in the structure of the family and the household; changes in social ecology and demography; the social impact of electronic mass media; and the democratisation of social life and culture.

Combined, these changes had a marked effect on the crime rate. As well as increasing the opportunities to commit crime (eg in the consumer boom of the post-war decades families bought motor cars and televisions, portable and valuable goods that quickly became targets of theft), these changes also weakened the informal means of preventing crime. Garland explains how areas became less peopled, and thus less supervised: ‘shops increasingly became “self-service”, densely populated neighbourhoods were replaced by sprawling suburban tracts or anonymous tower blocks, down-town areas became entertainment centres with no residents, and more and more well-stocked houses were left empty during the day while both wives and husbands went out to work’.⁴ ‘At more or less the same time’, Garland explains,

there was a questioning of traditional authorities, a relaxation of the norms governing conduct in the realm of sexuality and drug-use, and the spread of a more ‘permissive’, ‘expressive’ style of child rearing. For some sections of the population, especially the emerging voices of the new youth culture, ‘deviance’ came to be a badge of freedom, and ‘conformity’ a sign of dull, normalized repression.⁵

When combined with ‘the arrival of a large cohort of teenage males – the age group most prone to criminal behaviour’, the result was a sustained increase in the level of crime from the 1960s through to the 1980s, an increase which the criminal justice system was unable to combat.

Garland also traces the effects of these changes on welfare institutions, identifying a number of elements that led to an attack on the welfare state. As the welfare state became bigger, Garland argues, it discovered more and more problems, became ever more bureaucratic and unresponsive, and faced a public whose expectations about the standard of life it should enjoy were ever increasing. Garland’s argument here is that the welfare state, one of the engines that helped drive economic growth and open up a new culture of liberal individualism and social democracy, became a victim of its own success: ‘As collective memories of depression, mass unemployment and destitution began to fade, the state appeared to many to be the problem rather than the solution.’⁶

⁴ Ibid 91.

⁵ Ibid.

⁶ Ibid 94.

It was on the back of these rising crime rates and increasing disenchantment with the welfare state that the governments of Ronald Reagan and Margaret Thatcher were elected. They were swept into office on the promise to dismantle big government and turn back the permissive culture of the 1960s and 1970s. From this point onwards Garland argues that the US and UK have witnessed a distinctive bifurcation of crime control policy between the policies adopted by politicians on the one hand, and the less visible, ‘behind the scenes’ measures adopted by criminal justice system professionals on the other. Faced with rising crime and the state’s limited ability to control it, Garland’s argument is that the responses favoured by politicians, characterised by their punitive, exclusionary and retributive nature, involve a form of evasion and denial that contrasts sharply with the rationality and creativity embodied in the responses of administrative actors within the criminal justice system.

A diverse range of measures comprise what Garland calls the ‘adaptive responses’ of criminal justice system administrators, including the privatisation of some aspects of the criminal justice system, the move toward community policing, the use of measures designed to divert offenders from the criminal justice system (such as restorative justice programs), and the adoption of victim support programs. The ‘non-adaptive’ responses of political actors are of a very different nature: zero-tolerance policing; mandatory sentences; Megan’s law; paedophile registers; sentencing grids; and the reintroduction of children’s prisons. In relation to these measures Garland argues that: ‘Their capacity to control future crime, though always loudly asserted, is often doubtful and in any case is less important than their immediate ability to enact public sentiment, to provide an instant response, to function as a retaliatory measure that can stand as an achievement in itself.’⁷

This careful elaboration of how US and the UK crime control policy came to be the way it is makes for a wonderful book. As insightful as it is beautifully written, it is an absorbing read for the general and specialist reader alike. Indeed, its liveliness and readability puts to shame the assumption that academic writing must be difficult and inaccessible to be good. In case this praise appear too extravagant, consider the jacket endorsement of Jonathan Simon, Professor of Law at Miami Law School: ‘The most important book on the sociology of punishment and social control since Foucault’s *Discipline and Punish*’!

Certainly it is difficult to find fault with this book. I would raise two points, less criticisms than questions. The first is whether the analysis is applicable to Australia. On this point, Garland carefully sets up his argument in such a way as to put it beyond criticism. In the book’s introduction he says that he makes ‘no claim that the pattern of developments to be found in these two societies is universal’ but

7

Ibid 133.

that the underlying structural tendencies lead him ‘to suppose that many of the underlying problems and insecurities are, or soon will be, familiar to other late modern societies, even if their cultural and political responses and social trajectories turn out to be quite different’.⁸

In many respects, of course, Garland’s analysis does apply to Australia, a country which has had its own share of ‘non-adaptive responses’. Perhaps this is illustrated most strikingly in the enactment of mandatory sentencing laws in the Northern Territory and Western Australia. But it is also evident in other measures, such as legislative changes to expand police powers to move on and search people (see for example the *Children (Protection and Parental Responsibility) Act 1997* (NSW)) that show the influence of zero-tolerance approaches to policing. A more general illustration is the way in which election campaigns frequently become law and order auctions, with each party vying to be seen as the toughest on crime.

The difference, however, is that this is not the whole story. Australia retains a different quality of debate, one in which the range of solutions is more open, and which, from time to time, include the adaptive responses that Garland says are confined to the ‘behind the scenes’ administration in the US and the UK. The most recent example is the defeat of mandatory sentencing at the ballot box in the Northern Territory. It is also illustrated by the highly public opening of a shooting gallery in New South Wales, the establishment of drug courts and the adoption of restorative justice legislation in a number of jurisdictions. Going a little further back one can see important differences between public health policies in Australia and the US during the 1980s. While Reagan’s government was declaring war on drugs, Bob Hawke’s was handing out free condoms and syringes, pursuing a policy of harm minimisation. And although it might be argued that the more recent failure to implement a heroin trial illustrates the narrowness of public debate, one could equally argue that the fact a trial is even publicly considered illustrates its breadth.

If this is the case, why has Australia been able to maintain a more adaptive approach in its public debate? Why is it that Australia has not moved as far in the same direction as the US and the UK? That is a topic deserving of its own book, but as an initial observation it seems that the differences are long standing. For example, in contrast to the stigmatising and procedurally unjust treatment of slaves in the US, John Braithwaite identifies in Australia’s early colonial history the ‘mutually reinforcing policies of reintegration and procedural justice’ that famously allowed two convicts to sue their ship’s captain for the loss of their luggage, and one of them to later become Chief Constable of Sydney.⁹ Braithwaite argues that

⁸ Ibid 7.

⁹ John Braithwaite, ‘Crime in a Convict Republic’ (2001) 64 *Modern Law Review* 11. For an account of the Kables story see David Neal, *The Rule of Law in a Penal Colony: Law and Power in Early New South Wales* (1991) 1–9.

these policies partly explain why Australia by the end of the nineteenth century, as well as being a patriarchal and racist society, was also ‘a low crime society and perhaps as prosperous and egalitarian as any society in the world, certainly in terms of workers’ wages, which were higher than in the US and Britain’.¹⁰

A second question that arises from Garland’s book is: what is to be done? One of the most depressing aspects of Garland’s analysis is its implications for representative democracy. According to Garland’s thesis, it is representative democracy that produces vengeful, exclusionary and ineffective ‘solutions’ to crime control, while the administrators, freer from the constraints of public opinion, devise more creative and sometimes more humane, solutions. If this is the case, can an acceptable role for representative democracy be salvaged? Optimistic democrats commonly blame politicians and the media for whipping up law and order hysteria, but Garland considers that the problems run deeper, arguing that it is a mistake to think ‘that the voting public is easily led and infinitely malleable, that mass support for “law and order” policies can be conjured up from nothing, or that newspapers and television can create and sustain a mass audience for crime stories without certain social and psychological conditions being already in place’.¹¹ Garland may be right, but arguably he also sells short a growing body of research, gathered from public surveys,¹² deliberative polls¹³ and other deliberative forums such as restorative justice meetings between victims, offenders and their communities,¹⁴ which suggests that the public can be less punitive and more empathetic when they are given more information and the opportunity to deliberate. Enriched by these and other sorts of deliberative processes, representative democracy may yet be capable of transcending the punitive politics so eloquently described by Garland.

¹⁰ Braithwaite, above n 9, 49.

¹¹ Garland, above n 1, 146.

¹² See for example Anthony Doob and Julian Roberts, ‘Public Punitiveness and Public Knowledge of the Facts: Some Canadian Surveys’ in Nigel Walker and Mike Hough (eds), *Sentencing and the Public* (1988) 111–33 and Mike Hough and Julian Roberts, ‘Sentencing Trends in Britain: Public Knowledge and Public Opinion’ (1999) 1 *Punishment and Society* 11.

¹³ See James Fishkin, *The Voice of the People* (1995).

¹⁴ See for example Heather Strang, ‘Justice for Victims of Young Offenders: The Centrality of Emotional Harm and Restoration’ in Allison Morris and Gabrielle Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (2001) 184–193.