Chapter eight.

punishment and offenders.

Punishment involves some form of pain, discomfort, or generally unpleasant experience. It can take many forms, such as psycho- logical, financial, emotional or physical suffering. It is for this reason that the punishment of crime becomes such a moral dilemma: bringing about debate as to who should have the right to punish others, who decides what is punishable and what is not, and what form punishment should take. What is considered acceptable by society, to what extent this differs between societies or cultures, and how has this changed throughout history will be just some of the topics discussed in this chapter.

history and philosophy of punishment.

The nature of punishment for wrongdoing, just as the nature of crime, changes over time and across cultures. Actions or behaviour which are now acceptable within most Western cultures – for example homosexuality and abortion – were not in the past. Just as crimes have changed, so too have punishments. Now, most people would wince at the thought of punishing someone for blasphemy by tying them to a piece of fencing and dragging them through the streets of the local town, but they may still find the death penalty acceptable, or would think that a community-based penalty for non-payment of a fine is an appropriate punishment. While punishments may change, they are still based on a small number of theories for punishing offenders.

In Anglo-Saxon England, the aim of punishment for crime was to stop physical retaliation by victims’ families. So, if someone killed a man, the murderer had to pay 100 shillings to the victim’s family. It seems that some sort of monetary compensation for loss was preferable to a physical punishment, and only repeat offenders were punished by having part of their body removed or injured in some manner.

In the sixteenth century a London writer, Robert Greene, noted that crime was becoming like entertainment and this meant that more and more often reports of offences and their punishments were appearing in newspapers, journals and chronicles. There were reports of poisoners being boiled in cauldrons, thieves being whipped, rapists being branded, prostitutes being tied to posts with notes declaring their offences pinned to their dresses, debtors being tied backwards to horses and taken around a town, and bigamists being drawn (dragged from place to place on a piece of wood behind a horse) and then burned. The public shaming of offenders played a big part of punishments until the middle of the sixteenth century, but public hangings carried on for a long time after this in the UK and parts of Europe (think about the guillotining of the aristocracy in Revolutionary France), which might also be seen as shameful for the offenders and their families.

Much of the punishment described above is based on retribution. Retribution can take many forms – paying a victim’s family or being shamed for the things that you have done. Shame or guilt and their part in punishment is a key element in Judaism, Christianity and Islam, and there is a clear cross-over within Christian-based cultures between what is ‘sinful’ and what is illegal. If someone has committed a crime, then he or she has to be punished for what he or she has done; for what has gone on in the past. Criminals have to ‘pay’ for what they have done, they ‘owe a debt’ to society or a victim. This is the notion of ‘just deserts’, that offenders are subject to a punishment that is equal to the crime that they have committed. So, a mugger is not likely to be executed, and a murderer is not likely be sentenced to a community penalty. Retributive punishments do enable sentencers to come up with a tariff of punishments which should be implemented equally. All offenders who have committed a drink-driving offence will be given the same sentence; all offenders who have raped another person will be given a similar punishment. However, such retributive punishment demands that someone is to ‘blame’ for a criminal offence and considers that all offenders are equal. Think about whether a woman who has been subjected to twenty years of domestic abuse and kills her husband during an incident is to ‘blame’ in the same way as a woman who kills her husband because she wishes to leave him and be with her lover. Consider whether there is a difference between a shoplifter who steals to feed a drug habit to one who steals to feed his or her children. Retribution is not concerned with whether an offender will change in the future; it is about what someone has done.

Sentencers did not start to think about punishment as a deterrent for offenders until the mid-1800s. Deterring offenders from taking part in crimes, discouraging others from taking part in illegal activities, or putting criminals somewhere that they could not offend again, which will all reduce crime rates, are the key element of reductivism. However, reductivism is often linked to severe penalties for crimes – long prison sentences or capital punishment, which makes this form of punishment a little controversial in some people’s minds. If a twenty-year prison sentence will stop a criminal from stealing again, then so be it. If executing a murderer will make another person stop and think twice about carrying out a crime, then reductivism has been successful. However, this form of punishment relies on a rational thinking- offender for effect. It assumes that an offender will weigh up the pros and cons of committing a crime, decide that the punishment is not worth the gain from the crime and decide not to steal, vandalize, or kill. This form of reasoning, known as Utilitarianism, was developed by the English philosopher Jeremy Bentham during the early 1800s.

During the early 1990s in the UK, much of sentencing policy was based on this concept of deterrence, rather than the rehabilitation of offenders which became popular during the 1950s and 1960s. However, during the later 1990s another element of punishment came to the fore, that of reform or rehabilitation. This is based on getting offenders to consider their past behaviour and think about changing their future behaviour – going from being criminals to law-abiding citizens.

Anglo-American sentencers tend to be eclectic in their development and implementation of punishments. The range of punishments available, and acceptable, are a mixture of the retributive and reductivist.

attitudes and beliefs in punishment.

We are used to the notion of society or the State punishing law- breakers for their wrongdoings, but what do citizens actually think about punishment, and who should be punished? This section explores people’s attitudes towards punishment, what happens when the State does not punish wrongdoers and whether it is right for communities to take the law into their own hands and punish deviants.

There has been a great deal of research conducted by criminologists, sociologists and psychologists exploring attitudes towards punishment, various forms of punishment and sentencing beliefs. Many have found differences between groups, for example based on gender, age, socio-economic status, race, political and religious beliefs. Despite the large volume of research, there are few current theories that attempt to incorporate the findings into one unified theory. An American criminologist, Franklin Zimring (2003), has attempted to draw together historical data, exploring patterns in these data with current research to help him inform theory. He suggests that there are two models of punishment values which he refers to as: ‘due process’ and ‘vigilante tradition’ beliefs. Most people share the beliefs of one of these two categories. Those who believe in due process values believe that offenders are difficult to identify, and this makes policing and punishment difficult. Partly due to concern about not identifying the correct perpetrator and accusing the wrong person of a crime, due process supporters advocate that it is better that ten guilty people go free than one innocent person be punished.

The vigilante tradition model suggests that law, order and policing are the responsibility of the community, partly because of a distrust of the State. Offenders are easily identifiable within the community and are enemies of the community rather than being the community’s own members. Mistakes are not made. Due to this confidence in punishing the correct person, the use of force is encouraged in achieving the communities’ goals. By punishing criminals it allows greater freedom and safety within the community for law-abiding citizens.

Zimring uses historical data to explore the links between vigilante values in America, with its history of lynching. Using data which goes back as far as 1882 he found that the southern states had the highest recorded history of lynching. More recent data also shows that the southern states have the highest rates of justifiable homicides, and the most frequent use of the death penalty. He suggests that this is due to the strong tradition of vigilante values and beliefs held by many US citizens, especially in the southern states.

Advocates of the vigilante tradition often favour the use of the death penalty because of their confidence in their justice system and the belief that mistakes are not made, while advocates of the due process model fear the use of the death penalty because it is an irreversible punishment. While Britain no long allows the death penalty as a punishment for crime, people’s lives can still be ruined if they are wrongfully imprisoned. There have been many highly publicized cases of miscarriages of justice in Britain in the last couple of decades, such as the Birmingham Six, the Guildford Four and the Cardiff Three. Recent cases regarding shaken baby syndrome also bring into question the authority of expert witnesses in court, and the reliability of the criminal justice process. Given the history of miscarriages of justice known to the British public and the dramatic media attention they have received, it is not surprising that most British citizens follow the due process model.

While highly publicized miscarriages of justice concerning those who have been wrongfully imprisoned are of great concern to the public, so too are those cases whereby offenders have not been punished for the crimes they have committed. This is especially difficult when the offender is known to the police, or in some cases the victim or the victim’s family. It is conditions such as these that make vigilantism most likely.

Vigilantism.

Vigilantism is a situation in which a citizen or group of citizens take the law into their own hands. The most common cause for this action is when citizens believe that they cannot get justice through legal means, i.e. through the criminal justice system. Despite the terms ‘vigilante’ and ‘vigilantism’ being used frequently in the media, little attention has been drawn to this issue within academia, even in terms of understanding what this phenomenon actually is. British criminologist, Professor Les Johnston (1996) attempted to provide a definition of vigilantism as a starting point for further investigation. In conceptualizing this phenomenon he suggests that there are six components to vigilante behaviour.

First, he suggests that vigilantism involves some degree of planning and premeditation. This may only be minimal but it is import- ant to distinguish between vigilante behaviour and self-defense. Second, vigilantism is a private and voluntary act. Therefore, it must be carried out by private citizens, not law enforcement agents. However, there are clearly some difficulties here, for example an off-duty police officer who participates in an activity that would normally constitute vigilantism. Third, the activity must have no support or authority from the state and is therefore autonomous. Fourth, it uses threats or force. Fifth, it is a reaction to crime or perceived social deviance (i.e. a crime may not even have been committed, but it is perceived to have taken place). And finally, it contributes to a personal or collective sense of security.

Vigilantes or vigilante groups may be organized in a variety of ways. Mark Button (2002) outlined different types of vigilantism based on the level of organization: the lone vigilante, the semi- organized group and the organized group.

The lone vigilante is best described by the case of Tony Martin who was repeatedly victimized by a group of youths in his remote farmhouse in the countryside. On several occasions youths had broken into his home and despite many calls to the police, Martin did not feel he was being taken seriously. In order to defend him- self, he placed booby-traps around the premises, and kept a gun near his bed. One night two youths broke into the farmhouse and Martin fired several shots in the dark, resulting in the death of one intruder and injuring the second.

Semi-organized groups, as the term implies, are groups of citizens who gather together with little organizational structure. One of the most recent examples of a well-known publicized case in Britain took place in Paulsgrove estate, Portsmouth. In the summer of 2000, an eight-year-old schoolgirl, Sarah Payne, was murdered (elsewhere in the country) by a registered sex offender. Sarah’s parents began campaigning for the sex offender register to be available to the public so that the community would know if there were paedophiles living in the vicinity. The News of the World newspaper then began a campaign of naming and shaming convicted paedophiles. Paulsgrove witnessed riots as local people took to the streets in order to protest about the paedophiles living in their community. These riots ended in violence with at least five innocent families being forced to flee from their homes and two individuals committing suicide. It was also alleged that several names, faces and addresses were incorrect, and so innocent people were being labelled as paedophiles and then hunted down by angry mobs.

There are many examples of organized vigilante groups throughout the world, some more acceptable than others, ranging from the Guardian Angels in New York, set up to protect New Yorkers on subways during the 1980s (when crime was rife and police were perceived to be inadequate), to the Triads of Hong Kong and paramilitaries in Northern Ireland. As can be seen from the examples, groups differ dramatically in their purpose, rationale and methods, all having different focus and consequences.

Vigilantism may take on a more policing-type function, or the form of distributing what is perceived to be an appropriate punishment for the (perceived) crime committed. The punishment may take the form of intimidation and threats, as well as physical suffering. It is a term which often conjures up images of lynch mobs. In the USA a content analysis of newspaper clippings of accounts of 60 lynchings committed between 1899 and 1946 found that the more people in the mob the greater the savagery and viciousness with which they killed their victims.