

SEX CRIME AND THE NEW PUNITIVENESS

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A sex offender is released from prison. Instead of going to his home address he is provided with a cell in his local police station where he stays voluntarily because his safety from angry neighbours cannot be guaranteed. A sex offender is released from prison. Although he is not under any parole restrictions, he volunteers to be subjected to electronic surveillance by the police, to avoid being taken into "protective custody". A sex offender is released from prison. Instead of returning to his home he is committed to a mental institution on the grounds that he is suffering from a "mental abnormality" and there is therefore a risk that he will commit more crime. A sex offender is released from prison. On his return home, he has to register with his local police, who in turn must notify neighbours, schools, child care organisations, provide a telephone 'hotline' for the public to call in case of suspicion and so on (the exact nature of this notification will be determined by the risk rating given to the particular offender). A sex offender comes to the end of his prison term. Instead of being released from prison he is detained there indefinitely because a panel of experts judge him to be at risk of reoffending on release. A sex offender applies for parole: he may be granted this, but only after he agrees to undergo surgical or chemical castration.

All these are examples taken from new measures of penal control directed at sex crime and sex offenders, or are proposals to do the same, which have recently emerged across English-based societies. They are to be found predominantly in the United States, but also to degrees in Britain, Canada, Australia and New Zealand.¹ At first glance, what these measures would seem to spell out is our long established hostility towards such crimes and criminals. It appears that what we are seeing in these examples is actually nothing new: more a replay of existing penal severity towards a group of offenders who have committed crimes we judge to be of the worst kind - including rape, torture, kidnap, and sometimes murder of women and children. That we should be able to find such a concentration of measures at the present time may also indicate that these crimes are themselves significantly escalating² - hence the urgency of the current strategies.

However, I want to contest such assumptions in this article. What I want to suggest instead is that the current round of initiatives against sex criminals represents something more than a replay of traditional hostilities to that group - and is something more than a set of responses to the trends in such crimes. Instead, they seem to be reflective of a new punitiveness which is not just confined to sex offenders: these measures are part of a broader set of penal arrangements. What lies behind them, I will argue, are the political and social changes of the last two decades or so that have taken place across modern societies. These changes have unleashed forces that are now channelling us towards a new punitiveness. A new culture of intolerance informs the way in which this is beginning to take shape. One of the consequences of this is that, in a range of ways, the direction of legal punishment seems to be moving beyond the established parameters that had hitherto been set for it in modern society and is prepared to draw on crime control strategies that have more affinity with premodern or non-modern societies. To sustain this argument, I will first examine the cultural framework that seems to underpin the development of modern punishment; second, I will then examine the particular significance of the indeterminate prison sentence and its application to sex criminals; third, I will trace in the dimensions of what seems to be a new penal punitiveness; fourth the reasons for this new punitiveness will be considered.

Punishment and Modern Society

To understand this new punitive approach to crime control, the general framework of punishment in modern society and the particular place for the punishment of sex offenders within it needs to be explored. For nearly two centuries now, the way in which we punish offenders has been informed by certain cultural values and normative standards. As such, the penal framework that has thereby been established forms one of the distinguishing features between modern societies and those that belong more to the premodern or nonmodern world of today. Over this period it has come to be the case in modern society that we no longer expect to find punishments that are designed to inflict pain on the human body; we no longer expect to find community participation in the administration and infliction of punishment; we no longer expect to find punishment taking place in the public domain; and we no longer expect that, in such societies, punishment will be arbitrary, excessive and unending. Instead, we expect punishment which takes such forms in the prehistory of the modern world (see, for example, Foucault 1978; Spierenburg 1984); or, alternatively, as we look beyond the current parameters of modern society, it is to be found in non-modern forms of social organization: punishments by stoning and amputation, punishments of both a corporal and capital nature that are to be found, for example, in Islamic and Third World societies; and the arbitrary and indeterminate nature of imprisonment and exile to the gulags in those countries that until very recently made up the Eastern bloc. Equally, for many decades in this century, the presence in the middle of Moscow of the Cheka building, the KGB headquarters, rather than some prestigious shopping mall which would be the expectation in any Western city, told us so much about life behind the Iron Curtain, in contrast to life in the 'free world.' In these respects, punishment in modern society came to be seen as one of the ways in which it was possible to distinguish such countries from those of the premodern or non-modern world: it helped to give modern societies a quality of civility, tolerance and respect for individual liberties and freedoms that were lacking elsewhere, as the way in which offenders were punished and controlled outside of modern society confirmed.

In contrast to what is found in these other forms of social organization, the framework of punishment in the modern world can be seen as incorporating the following themes. First, from around the early nineteenth century, punishment became predominantly carceral rather than corporeal in nature and at the same time largely faded from public view (Foucault 1978). We see this process at work in the dwindling use of corporal and capital punishments and also, from this time onwards, their increasingly restricted public visibility (see Masur 1989; Radzinowicz 1948); and we see this process at work in other aspects of punishment that were initially performed in public but which eventually came to be 'curtained off', as it were - the performance of prisoners on public works being one example of this; and we see this process at work in prison development itself. From being at the centre of the modern city in the mid nineteenth century, by the end of it we increasingly find prisons being relocated to the outlying environs of the modern world (Evans 1984; Pratt 1998). Furthermore, changes in architectural design meant that prisons began to lose the gothic trappings (and the explicit message they gave to onlookers) with which they had been associated during the nineteenth century. They took on, instead, a virtually anonymous, unnoticeable form. In place of the Victorian prison which had haunted the urban landscape, we see from the history of English prison development, the introduction of 'open prisons' in the 1930s ('there were no walls, not even a boundary fence - the men sleeping in wooden huts, and the boundaries designated, if at all, by whitewash marks on the trees', Jones & Cornes 1973, p. 5). This was then followed in the postwar period by the conversion of disused army camps and country houses of the upper classes, the one being no longer necessary, the other being no longer economically

viable. And in the 1960s, we see the introduction of a form of architecture so bland that it gave away no terrors at all to its onlookers, as Sparks and Al (1995) were to write on a later visit to two such institutions of that period: "both were built in architectural styles which deliberately moved away from the traditional English Victorian 'galleried' prison ... externally, like other modern high security prisons [they] present the passer-by with a somewhat blank appearance" (p. 101). It is, nonetheless, recognized that the privatization of modern punishment was by no means a unilinear phenomenon - the continuity of the chain gangs in the Southern United States until the 1950s for example stands in contrast. However, at a very general level, it does seem possible to see this theme working its way through the modern penal framework - to the point where it only became possible for the general public to 'imagine' the prison, so little real knowledge did they have of it (Bender 1987).

Second, and in conjunction with these moves to curtain off penal affairs, modern punishment has come to be administered almost exclusively by criminal justice experts of one kind or another who belong to bureaucratic organizations and are charged with overall responsibility for its management. Modern punishment is thus meant to be imposed in a careful, planned and recorded degree, without unnecessary and undue suffering - and not before an audience (or at least, an extremely restricted and carefully selected audience made up of penal professionals, for the most part). The calculated planning of punishment - to match with some exactitude the specificity of punishment set out in the penal codes drawn up in the post-Enlightenment era rather than it being left to public whim as to how much pain to inflict on the body of the offender - gave these penal experts a crucial role in its determination and calculation. Prison officials were the first such experts and they were later joined by those from probation. During the course of the twentieth century, but particularly in the post 1945 period, those whom Donzelot (1979) has called "psy-professionals" - psychiatrists and psychologists who were called on to pronounce upon both the mental state of offenders and the likely effects of particular sanctions on them - began to infiltrate the administration of criminal justice. As such, the role of these psy-experts was gradually enlarged from advising on matters of criminal responsibility to making adjudications on punishment (Johnstone 1997). Indeed, they provided 'the cues' by which the penal system in general took on its rehabilitative and therapeutic hue from around the 1930s (see Dession 1937-8). More generally, the influence of these various experts also meant that punishment came to be calculated and ordered according to principles of scientific knowledge rather than more emotive public sentiment: punishment was meant to be productive and utilitarian - what kinds of sanction would lead to the most significant decline in reconviction rates - rather than vengeful and destructive. In such ways punishment in the modern world came to be associated with the 'grand narrative' of reform, progress and humanitarianism (see Radzinowicz 1991, p. 423).

Third, we find the steady amelioration of penal sanctions over much of the modern period. Certainly, for a good part of the 19th century, punishment was dominated by the less eligibility principle. This directed the terms of its rationalization and ensured that punishment itself matched the political economy of the time. Less eligibility meant that those who broke the law would still suffer, in prison especially, in comparison to some prison conditions today, but it now had to be a controlled suffering which bore little if any remnants of those more spectacular modalities of suffering that premodern punishment could conjure up (see, for example, Foucault 1978; Spierenburg 1984). Suffering, like most other aspects of penal life at this time was to be planned and measured: the imposition of over-suffering was itself strictly frowned upon - it did not fit the rationalization of punishment nor the sentiments that drove it - leading to "that characteristic ideology of Victorian punishment which held that

the prison could perfect a system of discipline at once unimpeachably humane and unremittingly severe" (Sparks 1996, p. 84). However, for much of the twentieth century, less eligibility came to fade into the background of penal development as the more ameliorative welfare sanction (Garland 1985) gained strength and support, certainly amongst the penal authorities and bureaucracies. Prison rules and regulations were increasingly liberalized; prison itself was increasingly regarded as a last resort and a range of legislative barriers were placed in front of it to prevent its excessive use. In place of prison, for many groups of offenders, we begin to find an array of sanctions designed to act as alternatives to custody; for others, a channel was opened up into the mental health arena, increasingly so during the 1950s and 1960s, as a more appropriate venue for those who broke the law than the penal system (Pratt 1997); and for still another group mental health and penal systems forged together a sanction that could incorporate both modalities of regulation: a probation order with a condition of psychiatric treatment, for example.

Fourth, we find the sanitization of penal language: from the late nineteenth century, pejorative denunciations give way to more neutral, objective 'scientific' opinion. Mr. Justice Stephen's (1883) exhortation that criminals should be "hated" gives way to a view first finding expression in criminal anthropology, that such creatures were deficient and irrational. In contrast to the commitment to individual responsibility in nineteenth century liberal penalty to date, it was now thought that they could not help themselves, even if, initially, this still meant they were outcasts from society at large. But by the early 20th century, such ideas had begun to change. Instead, of being seen as beyond society, either by their own choice or their biological deficiencies (Tallack 1889, for example, had referred to habitual criminals as "wild beasts"), it was gradually recognized that criminals should no longer be permanently expelled. Instead, the modern state had a duty to rehabilitate them, as it did its other sick or deficient citizens: "upon a certain age, every criminal may be regarded as potentially a good citizen ... it is the duty of the State at least to try to effect a cure" (Ruggles-Brise 1921, p. 87). Indeed, the more it came to be recognized that the State had such a duty, the more the division between the criminal and the rest of society came to be blurred, and the more condemnations of him lost their moral and emotive overtones, as he became a subject to be restored to full citizenship rather than an enemy to be excluded. As the Head of the English Prison Commission, Sir Lionel Fox (1952) eventually put the matter, "we must avoid the pitfall of treating crime and sin as synonymous terms, and confusing the criminal law with a code of ethics ... the prevention of crime in the widest sense calls for action in many fields outside that of the penal system" (p. 5). By now, the previous imagery of wild beasts is replaced by concepts of inadequacy and depictions of unfulfilled lives: "the man who commits [crime] is almost certainly one who cannot lead a fully satisfying life, adequately expressing his personality. He is a man in need of treatment: of psychiatric or medical attention or guidance into new fields of work and opportunity where he can be in harmony with conventions of behaviour we all accept" (Howard 1960, p. 128). Indeed, it was almost as if those who broke the law were only the innocent victims of a malfunctioning society: "they have certainly injured their fellows, but perhaps society has unwittingly injured them" (Glover 1956, p. 267). It was on this basis that Menninger (1968) was to write of "the crime of punishment."

The penal culture of modernity thus came to set the parameters of how it was possible to punish, to the point where sanctions that did not fit within it began to be phased out, and were relegated to a place in our pre-modern history or non-modern present. The parameters of the modern also ensured that some new ventures in punishment became either stillborn, as it were, or were given only a very short life because they went beyond the limits of how it was possible to punish in the modern world: electric shocks, for example, and cold water douches,

both of which were proposed by Enrico Ferri (1906), one of the leading voices in the new penology of the late nineteenth century, never formally materialized. Surgical castration, sterilization and lobotomization all gained small footholds in the range of penal sanctions available in modern society in the first half of the twentieth century, only for themselves to be vigorously rejected, as their non-modern consequences, associations and effects became manifest (see, for example, Battaglini 1914/15; Sutherland 1908; on sterilization and castration in Nazi Germany, see Giles 1992; on penal sterilization in the United States see Friedman 1993; in Scandinavia, see Hurvitz and Christiansen 1983). In modern society, punishments targeted at the human body, no matter how meticulous the level of surgical skill that they involved, progressively faded from the legitimate array of sanctions.

The Indeterminate Prison Sentence and the Management of Risk

At the same time, the evolution of the penal framework, the values it embraced, and the characteristics it assumed, had a certain political utility in addition to it being in line with cultural sensitivities. The moves to ameliorate penal sanctions, the faith in and commitment to criminal justice experts to provide the answers to crime problems had a clear affinity with the political commitment to welfarism that became manifest, to a greater or lesser extent across these societies from the late nineteenth century to around the early 1970s. Welfarism, with its commitment to inclusivity and equality of opportunity established a modality of governing which gave the State increasing power to assist, regulate and control the lives of its subjects; in return, it would provide forms of social insurance against the risks of various kinds that its citizens faced. Thus welfarism began to insure against the risks from poverty, ill-health and unemployment. In the penal arena, it was prepared to provide insurance against risks from repeat offenders, those who were not legally insane but whose propensity to repeat their crimes demonstrated a certain lack of sanity as well, particularly those who seemed to endanger that which was most valued in modern society - and against whom the modern penal framework seemed to have no answer.

Around the turn of this century, the indeterminate prison sentence was introduced across most of these societies as a residual measure of penal control, as an example of special powers the State was prepared to invoke to manage particular kinds of risks, lying at the boundaries of modern punishment since by its very nature it seemed to run against most of the influences that had hitherto informed its development. And by the same token, we find the language in which such offenders were addressed amongst the most resistant to the more widespread ameliorative changes taking place ("it is the professional criminal who is the greatest menace to society, and who, to gratify indefensible acquisitive propensities will, to attain his object of plunder, stick at nothing ...", Sutherland 1908, p. 79).

Initially these laws were drafted in general terms although applied in the main to petty property offenders since it was this group, in the non-consumerist, non-insured society of the early twentieth century who were thought to constitute the greatest crime risks. What we then find, however, in the more immediate prewar and postwar period is that they were targeted more specifically against sex criminals - particularly those who were thought to endanger children. The comments of Pollens (1938) are typical of the time:

In the case of sex criminals, the 1500 yearly arrests in New York do not even tell part of the story. A rash on the skin requires not only treatment to remove it ... sex crimes are merely the superficial rash on our civilisation. They are mere symptoms indicative of an underlying condition which produces not only sex

crimes but many other symptoms not usually associated with sex disorders. This problem of psycho-sexual abnormalities is not only tied up with and is at the root of many individual maladjustments not primarily sexual on the surface, but is at the bottom of many sociological and political problems (p. 21).

The United States sexual psychopath laws, allowing for confinement in a mental institution for the kind of a person one was judged to be, followed by a further sentence, in the event of a recovery, for the crime one had committed, have become the most well-known of these provisions. However, there were broadly parallel measures introduced or given consideration across these other societies. What is also now clear is that these provisions, along with more broadly drafted indeterminate sentence legislation, were hardly ever used (Tenney 1962). There remained a residual suspicion of them on the part of the legal profession precisely because they seemed to be based around penal powers to be found in totalitarian rather than modern societies - indeed it was only in the former that such powers of detention were ever used to any significant extent (Morris 1951, Wolff 1993). But not only this. By the mid 1950s the circumstances surrounding the introduction of these measures - the value placed on the wellbeing of children in a period of population decline, the conflation in psy-knowledge of homosexuality and paedophilia (see, for example, Friedlander 1947; Norwood East 1946), and the more general homophobic atmosphere generated by McCarthyism and Cold War tensions³ - had begun to change. The population of Western society was not going to be extinguished as the post war baby boom confirmed; psy-knowledge began to recognize the differences between homosexuals and paedophiles (see Glover 1960; Parr 1958); the homophobic atmosphere warmed to an extent. One of the results of these changes was that even the formal language of punishment towards this group of offenders began to change. From being the subject of hysterical invective and suspicion, even this group of offenders now came to be regarded more as pitiful and inadequate rather than dangerous and out of control. As Ploscowe (1960) maintained:

These [sexual psychopath] laws were passed to provide a means for dealing with dangerous, repetitive, mentally abnormal sex offenders. Unfortunately, the vagueness of the definition contained in these statutes has obscured this basic underlying purpose. There are large numbers of sex offenders who engage in compulsive repetitive sexual acts, which may be crimes, who may be mentally abnormal but who are not dangerous. The transvestite, the exhibitionist, the frotteur, the homosexual who masturbates another in the privacy of his bedroom or in a public toilet, the "peeping tom" - are typical of large numbers of sex offenders who are threatened with long-term incarceration by present [laws] (p. 223).

Overall, then, the sexual psychopath era, with the vilification of sex criminals perhaps reaching new heights, was very much a passing moment in the evolution of modern welfare societies. By the early 1960s, the risks they were designed to guard against were thought to have significantly diminished. What we find by this point is a growing culture of tolerance and social solidarity as broad commitment to the political rationalities of welfarism reached probably their highwater mark. Indeed, with such guarantees of security and the minimization of risks of all kinds that this political commitment brought about, the very presence of such laws and the powers they invoked was increasingly questioned (see Hammond & Chayen 1963; Tappan 1957). The issue then related to how far the limits of tolerance could be expanded: amidst a range of liberal reforms that affected sexual conduct and other aspects of personal life, even paedophile groups, with the shadow cast by sexual psychopath laws removed, began to assert the legitimacy of their inclinations and sexual identity (see, for example, Brongersma 1988; O'Carroll 1980). The

Paedophile Information Exchange (P.I.E.), established in London in the mid 1970s (although certainly not without controversy) was intended as a forum for such individuals, where, while not quite a form of "coming out", it would be possible for them to give mutual support to each other, and where they need feel no shame about the proclamation their sexual interests.

The New Punitiveness

However, some two decades later, such a culture of tolerance, as it now seems from this distance, appears to be receding against the force of a new punitiveness. What is new about the new punitiveness is that, first, it invokes a new set of strategies against sex offenders, particularly those who have committed such crimes against women and children. As the overall thrust of the introductory examples suggests, sex offenders are being pursued and punished with even more vigour than in the sexual psychopath era. It still might be thought, though, that current sexual predator legislation is clearly a direct descendant of the sexual psychopath laws in the sense that such measures allow for detention on the basis of one's criminal classification, in addition to the sentence imposed for one's crime - and, as we saw from the third of our introductory examples, these new laws allow for civil confinement after completion of the prison term. However, the most significant difference between the two sets of laws appears to be that the criteria of 'mental abnormality' as the grounds for this special confinement rather than 'psychopathy' as before will make it easier to implement these measures, the burden of proof being that much easier. Again, to facilitate the pursuit of these criminals, basic civil liberties can be removed if it is now thought that the risk they pose is of an order to warrant this - and without any undue anxiety, it would seem, save for some residual opposition from the legal profession. As we see in the formulation of Megan's Law and its derivatives, basic individual rights to privacy are overruled in favour of broader communitarian rights of notification and publicity. As President Clinton himself said when signing the former legislation:

We respect people's rights but today America proclaims there is no greater right than a parent's right to raise a child in safety and love ... America warns - if you dare to prey on our children, the law will follow you wherever you go, state to state, town to town (Office of the Press Secretary, The White House, 25 July 1995).

Changes in the assessment processes of criminality (particularly as regards the parole adjudications) from clinical diagnosis of individual needs to actuarial prediction of risk in recent years complements the changing balance of penal values and decision making. While such methods of actuarial prediction have been present in many aspects of risk assessment for the best part of a century now, their recent entry to the criminal justice arena is of considerable importance: it is not simply that it is only now that there is a technology available to allow such calculations to be made (see Mannheim & Wilkins 1955), or that this form of expertise supercedes the by now tarnished method of clinical diagnosis (see Coccozza & Steadman 1974). By the adaptation of this knowledge, actuarialism fits a criminal justice framework which is prepared to move away from its protection of individual rights: "the language of rights [gives] way to the language of administration. The quest for individually focused justice [is] superceded by a concern with the management of risk-segregated populations" (Simon & Feeley 1995, p. 163). By the same token, the emphasis on surveillance in the community (usually with the assistance of electronic monitoring) rather than the provision of treatment is again a pointer to the more punitive, relentlessly suspicious and untrusting response to sex criminals.

Furthermore, as with the provisions of Megan's Law and similar legislation, as with the informal actions and initiatives taken by groups of local citizens, what these measures seem to reflect is a new involvement by the public in the process of punishment. Indeed, the changes that these measures herald seem likely to constitute a significant refiguring of the modernist penal constellation. Here, it is as if the bureaucrats and penal professionals have been shifted to more of a fringe role in penal administration: what now seems to be taking place is some sort of implicit convergence of interests between government and people - penal policy increasingly bears the imprint of "the popularization of crime politics" (Bottoms 1995). Hitherto, it was as if the criminal justice experts had effectively regarded criminal populations as their own and provided a shield between them and the public (thereby protecting the one from the other). Now, though, in the wake of the post 1970s collapse of faith in such expertise to provide 'results' this shield seems to be slipping: angry publics demand the right to have knowledge of such criminals, and the right to have them removed from their own communities, if they seem to pose any further threat. And, when the State will not provide such accessible knowledge in the form of a national paedophile index, then the private sector may be able to fill this gap. In New Zealand, the 1996 Paedophile and Sex Offender Index has been recently published (Coddington 1996) containing names, addresses, offence and sentence of all New Zealand sex offenders over the previous five years. It is designed, says its author, to fill the absence in that country of any equivalent of Megan's Law: "this book has been compiled from media reports going back to about 1990, covering those sex offenders who were not granted name suppression" (ibid 1996, p. 7). We have clearly come a long way in a short time from that point in the 1970s when those involved in P.I.E. were not concerned about hiding their identity. Now such sexual identities are increasingly being made available for all to see - but certainly not to tolerate.

The second feature of this new punitiveness is that the measures it has invoked against sex criminals are part of a more far reaching shift in penal development whereby we see a marked departure from the taken for granted route it had followed in modern society for at least a century. The principles that had erstwhile guided it, the characteristics that came to be associated with it - the privatization and professionalization of punishment, the amelioration of penal sanctions and the sanitization of penal language - are, to a greater or lesser extent being replaced by a new culture of punishment. This allows for the development of a range of initiatives that, even just a decade or so ago, might well have been 'unthinkable' - in so far as the new initiatives seem to have more affinity with the penal arrangements of premodern or non-modern societies. In these respects, another crucial point of departure from the sexual psychopath era, is that rather than being seen as some reserve extra penal power where the rights of a few citizens in western societies could be suspended on the grounds of the exceptional risk that they posed, this new punitiveness is now much more extensive: it is beginning to permeate the entire penal fabric. For example, the moves which undercut the civil liberties of sex criminals are part of a more general range of measures being introduced across modern justice systems: curfews restricting the night time movement of large number of young people in particular areas have been introduced, or are planned to be introduced across the United States, Britain and New Zealand. There is nothing new, of course, about restricting the movements of the population or segments of it, particularly during the night. Such measures have a long history. They were commonplace during the Middle Ages, especially in cities taken in war, as a means of enforcing control over the local population. But essentially they have come to have associations with non-modern societies, societies where the normal rights of passage and liberties to be found in the West simply do not apply, or have been suspended because of civil emergency or some such matter. Western democracies, almost by definition, are not supposed to have 'states of

emergencies', thereby, at least in the past, making such extra-legal powers superfluous - at least until now. In Australia, there are examples of laws targeted at named individuals in the manner of premodern law making practices (see the Victorian Community Protection Act 1990), rather than drafted in terms of their application to the population at large, and which allow for indefinite detention of these named individuals; and laws which allow for offenders to be resentenced rather than released when their prison term comes to an end (New South Wales Sentencing Act Amendment Act 1990). What we can see from trends such as these is an emerging pattern of penal development whereby hitherto taken for granted rights and freedoms - of sex criminals and a range of other law breakers - can be suspended or removed, with little apparent concern outside the legal profession and some civil liberties groups.

Again, the new involvement of the public in formal and informal measures against sex criminals is also to be found in initiatives directed at other groups of criminals. These measures are designed to put punishment back into the public domain where onlookers can ridicule and humiliate. In Northern Territory (Australia), the Punitive Work Order of 1996 involves offenders wearing a "protective" black and orange bib while performing community service type work. But it is also clear that this clothing is meant to do more than simply offer protection from industrial hazards and so on. As the Northern Territory Attorney-General explained the matter:

Those serving a punitive work order will be clearly obvious to the rest of the community. They will be identifiable as Punitive Work Offenders either by wearing a special uniform or some other label. *It is meant to be a punishment that shames the guilty person* (Ministerial Statement on the Criminal Justice System and Victims of Crime , August 20 1996, my italics).

Here, we are clearly a world away from the considerable care taken to ensure the anonymity of those offenders sentenced to community service programmes in the 1970s and 1980s (Pease & McWilliams 1983; Young 1979), where, as well, it was intended (admittedly *inter alia*) that this work would act in a kind of therapeutic way on them, rather than embarrass and humiliate them. In contrast, the Northern Territory Attorney-General justifies the Punitive Work Order by claiming that "from my discussions ... the community [want] to see the punishment so that it is both a warning and deterrent to others and a shameful experience for the offender" (Ministerial Statement on the Criminal Justice System and Victims of Crime, August 20 1996). This form of shaming punishment has also crept into the penal spectrum of Western Australia, with parents and children being made to clean up graffiti and vandalism before a public audience (Blagg 1997). The reintroduction of chain gangs in the last couple of years or so in some American states is also reflective of this trend, as are the more *de facto* initiatives that would seem to have strong community support in other jurisdictions: the publication of names, addresses and photographs of known criminals or returning ex-prisoners in local police-community news bulletins, for example. In such examples, the deliberate shaming of individual offenders resurfaces in Western penalty after a break of around some two centuries (see Foucault 1978; Spierenburg 1984).

The reintroduction of castration in some United States jurisdictions as a prerequisite for sex offenders to be granted parole should be seen in conjunction with the resurgence of the death penalty in that country, as the legal and cultural prohibitions on punishment on the human body are broken down. The moves to have sex criminals detained permanently or indefinitely have parallels with similar provisions aimed at a broader range of offenders who also demonstrate a pattern of persistent offending. The United States 'Three strikes' laws, which first found their way onto the statute book in 1994 have been in the forefront of these measures. It is not only sex

criminals whose propensity to repeat their crimes can now lead to indefinite imprisonment, but a much broader group of criminals, including those whose records may involve only a history of minor property rather than serious personal crime. These measures will, indeed, already be having a significant impact on prison levels. But having a high prison population is no longer the source of shame for a modern society that it was some two decades or so ago (that was then the place of shame in the moral economy of modern punishment): instead it becomes an emblem of political virility, something to be proclaimed rather than be embarrassed about ("Prison Works", was the pronouncement of British Home Secretary 1995⁴), or it is blandly written into Corrections / Justice department plans, as if it is some uncontrollable law of nature (see, for example, [New Zealand] Department of Justice 1995) rather than hidden away (rather as a nightmare too awful too awful to contemplate) or glossed over with the ameliorist penal rhetoric of the welfare bureaucracies. Pride, rather than shame, accompanies these new developments. Their very unpleasantness, as we see, for example, in the Boot Camp literature (Mathios 1991), has become something to boast about.

Punishment, Insecurity and Intolerance

Why should it be, though, that this new punitiveness is beginning to take such a hold on the penal framework at the present time? To begin to answer this question, it would seem important to situate these penal developments in the context of the profound economic and social changes that have taken place in Western society over the course of the last two decades or so. At the most general level, these changes are reflective of the shift in political rationalities from welfarism to neoliberalism over this period, with huge implications in relation to how individuals might expect to live their everyday lives, and how everyday life itself was to be governed. By the early 1970s, welfarism, notwithstanding the security and inclusivity it had been able to provide for citizens in modern society, was increasingly seen as ineffectual and outmoded. If it had succeeded (to a degree) in not allowing many of its citizens to fall through the various safety nets it had been able to provide, then at the same time, particularly in right wing caricatures of it (see, for example, Friedman 1980), it was as if it did not allow many to jump free from it altogether and decide the course of their lives for themselves. In this sense, then, in addition to the way in which its very economic viability which was increasingly called into question at this time, it also came to be seen as a form of entrapment. It was as if welfare influenced systems of governance stifled individual enterprise and choice while at the same time favouring unworthy members of society - its criminals, for example, because of the seemingly excessive lenience and ineffectiveness in the way in which its penal measures had been allowed to develop, with criminal justice experts at the helm. From thereon, much of the economic and social policy of modern society bears the imprint of neoliberal political rationalities which were framed (ideologically) around freedom of choice and reward of enterprise for its worthy citizens with a less significant role for the state to play in the determination and conduct of everyday life. Now, there would, as it were, be government "at a distance" (Miller & Rose 1990), as individuals were given increasing 'ownership' of decision-making that impinged on the course of their lives. At one level this brought with it new found freedoms and opportunities as the homogeneous cultural framework of postwar welfare society came to be broken down: new opportunities for women in particular became available as normative social horizons for them were extended beyond domesticity and into a more pluralistic world of career opportunities and public visibility. In these respects, 'taking care of oneself' - one of the most significant political catchphrases of the 1990s - is both empowering and threatening. It addresses on the one hand all those forms of conduct and etiquette aimed at perfecting personal appearance and wellbeing that are now available to us; but on the other hand, it represents the way individuals (rather than the state) have been given responsibility for an increasing array of risk management.

The new found freedoms and opportunities, again, for women in particular, thereby bring with them additional risks and insecurities. As Karp and Al (1991) write:

The downside however to the urbane life in cities lies in this same phenomenon; that is, a world in which one frequently encounters strangers on public streets, in restaurants, and shops is a world that poses questions about possible dangers and personal harm. In this regard, women are particularly disadvantaged by both the larger cultural traditions of Western societies and the special structures within which such fears are shaped and nourished (p. 147).

A growing sense of uncertainty and insecurity is brought home by the fragmentation of previously embedded cultural practices: if domesticity, for example, had been a form of entrapment for so many women in welfare society, at least the world then had a certainty and permanence to it. If very many more women have now been given the opportunity to move beyond the domestic realm in post-1970s society, there is little by way of the traditional support structures to be found in the private, domestic world that had hitherto been their most expected location. Entry into the public domain comes with a price - increased vulnerability and anxiety.

These sentiments are then fuelled by the development of mass communications which more pervasively and clamorously highlights the presence of those problem groups thought most likely to endanger our security. The changing social fabric, the greater transience of populations and relationships has inevitably led to a greater reliance on such remote sources of information for risk assessment rather than the more traditional sources such as family, kin and neighbours. In these respects, the individual brutal sex crime now has consequences that extend far beyond the grief and devastation it brings to the victim and their family. Such risks become globalized, what can happen to Megan Kanfa in New Jersey becomes understood as a frightening possibility of everyday life for the families of children in London, Sydney and so on. By the same token, new sources of crime information - university-organized crime surveys, independent victim surveys, self-report studies, telephone surveys, surveys for women's magazines and so on - supersede or compete with the official crime statistics and, on account of the claims they make, seem to further enlarge the risks we face, as does the intensified publicity surrounding high profile sex offender cases. Whatever our real levels of risk may be of becoming a crime victim, particularly a victim of sex crime, risk and its attendant fears become all encompassing and begin to order the conduct of our everyday life. And it has been the coalescence of these diverse contingencies of the last two decades, taking place right across economic and social life, that help shape the new punitiveness.

In a world in which everything now seems possible, nowhere now seems safe. Monsters seem to lurk behind the gloss and glitter that neoliberal systems of governance have pasted onto everyday life. New crimes and new measures of penal control address this increased vulnerability and insecurity - particularly as this relates to women and children and also the political economy of victimization. On the one hand, potential victims have to safeguard themselves - failure to do so may lead to them being blamed for not acting with sufficient prudence and responsibility (Stanko 1990). On the other, it is recognized that there can be no defence against the unpredictable, randomized attack of the monster. As such, against the fears that monsters may creep surreptitiously into our locality and prey on its most vulnerable members, we find the thrust of and motivation behind Megan's Law: "if Megan Kanka's parents had been aware of the history of the man who lived across the street from them, they would have been able to warn Megan. They believe, and I believe, that little Megan would

be alive today. This legislation is meant to protect other young lives" (142 Cong Rec H. 4451, p. 43, cited by Simon 1997, p. 18). Against the fears that we may be attacked and assaulted in our homes by the monsters who lurk in the shadows of everyday life, we find the thrust of new crimes such as "home invasion"⁵, and new strategies of self protection, directed particularly at women:

Police want people to create strongrooms in their houses to barricade themselves away from intruders ... "for women living alone or people not in close proximity to their neighbours, it is often safer to barricade yourself in a room than venture outside where there may be other offenders" [said a police spokesman] (*The Dominion*, 4 May 1998).

Then there are all the fears of being harassed, followed, pestered and possibly much worse in both public and private life - hence the new laws on 'stalking.' Furthermore, this fearfulness seems likely to only reduce any sensitivity to the suffering of those who face incapacitation in the new penal arrangements. Instead, it encourages the introduction of laws that are likely to provide exactly this.

The demand for such measures becomes all the more insistent as a result of us being told that we must 'take care of ourselves.' Indeed, it is almost as if the centralized state has conceded defeat on a number of social problems, including crime; or, at least, it no longer claims to have all the solutions to them (Garland 1996). We must look for these elsewhere. The sense of 'culture shock' brought on by this kind of 'structural unravelling' (Mennell 1990) not only leads to individual citizens providing for their own security in a range of ways, but also seems likely to lead to popular support for tougher measures against those who would put this at risk (prison is seen as a way of at least guaranteeing public safety) and, paradoxically, for a stronger central authority. To maintain the freedoms and standard of living that modern society can now provide for a good many of its subjects, to maintain its avowed commitment to rewarding the productive members of the community, to maintain, as part of the 1990s political equation, its determination to devolve responsibility for the management of large aspects of everyday life onto ordinary citizens, modern society increasingly has to shore up these arrangements by resorting to non-Western and non-modern modalities of punishing. One way of achieving this, that we now see in the United States, is to have imprisonment levels that far exceed those of former totalitarian societies in the Eastern bloc. Another way to achieve this is by the suspension and denial of some of the taken for granted juridical and penal rights that the new penal initiatives make possible. Such measures no longer offend our cultural sensitivities, as they might have done during the welfare era, when the state was more prepared to attend to aspects of risk management on our behalf and thereby avoid recourse to extra-penal powers to do this. Now, in this new era of intolerance and social division, such measures help to unite communities against the often mythical monsters who seem likely to put our security at risk.

That these new measures would seem to have had biggest impact in the United States should be of no surprise if my argument holds water: aside from all the political, social and cultural factors that account for local penal differences, neo-liberalism has taken the strongest hold in that country, whereas welfarism was always the least established modality of governing when compared to similar modern societies. Indeed, what seems to be a general law in the political economy of punishment is that the more a central authority retreats from the governance of everyday life, the more its former residual powers of control and punishment are invoked to bolster its authority (Garland 1996); and the more they begin to occupy a central place in penal development.

Notes

1. See, for example, Megan's Law in the United States, which after the murder of seven year old Megan Kanka by her neighbour, a recently released sex offender, prompted the development of 'the right to know' by local communities. In Florida, "the public can call the number 1-888-FLPREDATOR, 24 hours per day, seven days per week to request information about predators living in their communities around the state" (www.fdle.state.fl.us). The United States has also the sexual predator laws (discussed in more detail later). In Canada, legislation targeted at sex criminals and other "high risk offenders" strengthens existing indefinite detention provisions (see Bill CF-55, <http://canada.justice.gc.ca/News/Communiques/1>). Most of the proposals are to be found in England, and even in countries such as New Zealand, where there have been none, the new strategies and understanding of this group are still evident: "police warn of sex predators: 'two dangerous sexual predators are living in the New Plymouth area', police have warned. The men's photos had been sent to all schools in the area" (*The Dominion*, 25 September 1997).
2. Yet in most of these societies, such crimes, along with crime trends in general have at least stabilised in the last few years, and in some, such as the United states, are actually declining.
3. At the height of the Cold War, homosexuals were thought not only to endanger youth but also national security; either actively, as in the case of the British spies, Burgess and McLean (see Weeks 1977), or by laying themselves open to blackmail by foreign agents (see Cory 1953).
4. It was claimed that prison 'worked' in the sense that while its inmates were held in it, they could not commit crimes against the rest of society.
5. This is the term by which burglary of a dwelling house in Tasmania (Australia) is popularly known. The Tasmanian Criminal Code was amended by Act No3 / 1997 to make "burglary of a place ordinarily used for human habitation" aggravated burglary and punishable by 21 years imprisonment.

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