

3. Social Planning for Penal Systems

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SUMMARY

The paper considers the choices open to governments in less developed countries in respect, of, first, the types of activities which should be classified as crimes, and secondly, the action which should be taken to deal with crime. It suggests the questions which should be asked in arriving at decisions in this field. In particular, it considers the suitability of the policies of the richer countries to the needs and circumstances of the poorer countries. Finally, it discusses some general issues in the field of social planning. These include the disciplines involved in arriving at decisions, the choices open to the decision-maker, the nature of social policies and the role of the social planner.

THE GENERAL PROBLEM

We may define crime as action in breach of a country's criminal law. The amount of crime which a community experiences will depend, first, on the definition of crime employed by that society (i.e. the conduct covered by the criminal law) and secondly, on the social, economic and other factors leading to conduct of the type included in the definition. Thus, certain societies do not define the killing of an adulterous wife as murder; in others, large areas of private enterprise are classified as criminal. Again, some societies may experience more robbery, murder or swindling than others. Many poor countries do, however, have a number of penal problems in common:

- (a) In many poor countries (as indeed in certain Western countries), growing urbanization has weakened the force of established channels of social control on undesired conduct, and has therefore increased the burden on the organized penal system.
- (b) Growing unemployment in many poor countries and a high proportion of young people (typically the most crime-prone age group) increase the risk of certain types of offence, including offences against property, violence, and activities which might be described as political offences.
- (c) There is typically a shortage of resources to devote to penal provisions. Poor countries cannot afford arrangements which involve heavy calls on finance or trained social workers.
- (d) In many poor countries, the gap between rich and poor, or between privileged and non-privileged, is very wide. In so far as penal systems are operated by the privileged in the community, the sanctions of public opinion on which the law in Western countries depends for its effectiveness may be largely absent.

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The decisions which poor countries take and the policies they pursue will be governed by these factors, and their reactions to these situations may themselves be influenced by them. A government faced with massive unemployment resulting in violence and a threat to property may well be tempted to meet the problem by the use of repressive penal measures, this outcome is the more likely as the economic and social gap between governors and governed becomes wider. In the light of these problems, governments of poor countries have to make decisions concerning, first, the types of conduct which should be classed as crimes, and secondly, the treatment given to persons convicted of crimes.

TYPES OF CONDUCT

As was pointed out thirty years ago by Thorsten Sellin: 'The criminal law may be regarded as in part a body of rules, which prohibit specific forms of conduct and indicate punishments for violations. The character of these rules, the kind or type of conduct they prohibit, the nature of the sanction attached to their violation, etc. depend upon the character and interests of those groups in the population which influence legislation. In some States these groups may comprise the majority, in others a minority, but the social values which receive the protection of the criminal law are ultimately those which are treasured by dominant interest groups.'¹

Thus the kinds of behaviour which penal systems are intended to control will vary from one society to another according to that society's economic and social structure, and the ideology and moral principles of its dominant groups. Thus an established, stable, wealthy and bourgeois society will attempt to restrict different kinds of conduct from those restricted by a poor, rapidly changing, unstable, theocratic society with important feudal elements. Again, the line drawn between conduct which meets with social disapproval and conduct which is subject to penal action will be drawn differently from one society to another.

In Britain, Nigel Walker has summarized the purpose of the penal system as follows:

1. The protection of the person against intentional violence and cruelty.
2. The protection of the person against some forms of unintended harm
3. The protection of easily persuadable people against the exploitation of their persons or property.
4. The prevention of acts which are regarded as unnatural.
5. The prevention of other acts which, if performed in public, are likely to shock people.
6. The discouragement of behaviour which might provoke disorder.
7. The protection of property.
8. The prevention of inconvenience.
9. The collection of revenue.
10. The defence of the realm.²

This list presumably describes the purposes of those people who are responsible for the system. But the penal system is the result of a series of decisions—legislative, administrative and legal—over hundreds of years. To talk about the 'purposes' of all these decisions is hardly meaningful. There is, however, a sense in which we can define the function of a system by what

it actually does. This can most readily be discovered from an analysis of the relevant statistics—in this case the criminal statistics. In England and Wales in 1966, out of 233,000 persons found guilty of indictable offences (i.e. roughly the more seriously regarded offences involving liability to heavier penalties), 203,500, or 87 per cent, were guilty of offences against property, including breaking and entering, fraud and false pretences, larceny and receiving. Only 16,000 persons, or 7 per cent, were guilty of violence against the person; 5,600, or 2 per cent of sexual offences; and 7,700, or 3 per cent, of all other offences. Of those found guilty of non-indictable offences (i.e. roughly the less seriously regarded offences dealt with by lower courts), totalling 1,213,000, some 944,000, or 78 per cent, were guilty of traffic offences; 74,000, or 6 per cent, were guilty of drunkenness or other offences against the liquor laws; and the remaining 16 per cent were guilty of a wide variety of offences. Thus in practice serious crime is essentially crime against property, with violence against the person a very poor second. Minor offences are principally traffic offences. Other 'free enterprise' industrial countries show a similar pattern, although in some (e.g. the United States) violence is relatively more important. These figures reflect a comparatively wealthy community with a high regard for property and a large number of motor cars.

The British figures are also significant for what they omit. Penal provisions in aid of the political and social purposes of government, of particular religious or philosophical opinions, or of a wide variety of socially approved conduct are either non-existent or very limited in their scope. This is somewhat less true in other Western countries, where there may be laws against divorce, contraception, or the propagation of particular political or religious views. In this sense, and from this one point of view, Britain is essentially a secular country with a high degree of acceptance of non-conformity.

The British system (and to a large extent the systems of other Western countries) places the protection of property first in its list of priorities, and has little concern with the use of penal provisions for the enforcement of political, economic and social policies. Indeed, proposals to use the penal system for such purposes normally encounter strong opposition and when measures of this kind are approved by Parliament they are inadequately or patchily enforced. How suitable is this emphasis on the protection of property to the conditions of poor countries? The following points appear to be relevant:

- (a) As we have pointed out, the distribution of income and wealth is typically far more unequal in poor than in rich countries. Although a penal system primarily concerned with the protection of property has a clear class bias in rich countries, property is sufficiently widely distributed for this bias to fall within acceptable limits. In poor countries, however, this class bias is far more open and less easy to defend. Where, as not uncommonly happens, the law enforcement agencies concentrate on protecting the property of the rich and do nothing to protect that little property which the poor possess, the penal system can command little public support outside the privileged sections of the community.
- (b) On the other hand, if policy is designed to promote economic growth through the private sector, and reliance is placed on mea-

asures to encourage private investment, such investment may well be discouraged if property is not secure. Those with the means to invest will prefer to export capital rather than to invest in local productive enterprise.

- (c) It could, however, be argued that a lack of security for property could help to discourage luxury expenditure and increase savings. If, therefore, the machinery exists for channelling private savings into public investment, a measure of insecurity for private property need not be damaging in terms of economic growth.

Probably of greater interest to poor countries is the prospect of using the penal system to promote particular economic, social and political ends. Governments facing the immense difficulties and frustrations involved in creating new political communities and promoting economic and social progress may feel the need to adopt short-cut methods, and in particular to bring categories of conduct within the scope of the penal system. In this way the system can be used in a positive way—to promote actively desired ends—rather than in a negative way by merely discouraging undesirable conduct. It could perhaps be argued that a negative penal system is satisfactory in a society where the social framework is comparatively stable and where the initiative for economic growth can reliably be expected to come from the private sector. It is less satisfactory in a society undergoing rapid social and political change, and where the government is expected to provide the framework and much of the initiative for economic growth. This latter attitude is common enough in socialist countries and was by no means unknown under colonial systems. It is especially tempting for the governments of independent, poor countries to think along these lines.

Certain economic policies are already enforced by the use of penal provisions in both rich and poor countries. Import controls, tariffs, exchange controls and other measures are designed to protect local industry or the balance of payments. Such laws are of varying effectiveness in poor countries, and indeed some of them appear to be less an element in the penal system than a source of income for officials. There are, however, many other aspects of economic and social policy where the penal system could theoretically be of use. Governments might consider that policies for agricultural improvement (e.g. anti-erosion measures, the use of improved seed and better cultivation practices) could be legally enforced, as of course is already the case with land reform in many countries. The law is occasionally used to support policies aiming at the control of wages and prices, of such groups as immigrant traders or moneylenders, and of the rate and structure of urbanization. There are many other fields in which the penal system could aid particular social, political and economic policies.

In considering the desirability of using the penal system for such purposes, the following are among the questions that should be considered.

- (a) What is its cost/effectiveness? If the government wishes to improve the standards of cultivation of peasant farmers, is this more efficiently done through using the machinery of the police, the courts and the available legal sanctions than by using other means such as propaganda or the establishment of financial and marketing institutions?

- (b) Is there a full understanding of the situation which it is hoped to improve? If the causes of particular forms of peasant behaviour are lack of technical means or obstructive social relations, penal action may be ineffective. Similarly, if people migrate to the towns in anticipation of the higher potential income they could earn there (in spite of urban unemployment), laws to restrict the process will be evaded.
- (c) Is the use of the penal system for such purposes likely to be socially divisive? This is a clear possibility where the administration of the law is in the hands of an elite, and where the laws are intended to influence the behaviour of the mass of the people.
- (d) What will be the effect of the use of such arrangements on channels of communication in the community? For example, will peasants pay less or more attention to agricultural extension workers if the advice they give is supported by law? Will the government be less or more well informed about the wishes and views of the people affected by their policies if these policies are supported by legal provisions?

The mere formulation of questions of this kind suggests that the use of the penal system for the enforcement of particular policies may be a somewhat less simple process than it appears to be at first sight.

PENAL METHODS

Penal systems have various, not entirely consistent, stated purposes. These may include retribution (the 'punishment' of the offender), restitution or compensation to the victims of crime, deterrence, the prevention of crime (by removing the potential offender from situations in which he can commit crimes), the expression of the revulsion of the community against crime, and the reform of the offender. In practice, the purpose of any particular penal act may be a confusion of several of these partly incompatible aims. At the same time, the means which any penal system establishes tend by a process of goal displacement to become ends in themselves. Thus prisons, which may have been established to reform criminals or deter from crime, tend to acquire as their principal aim maintaining the prison rules and keeping prisoners locked up. The emphasis which will be placed on these various purposes varies from one society to another. More humanitarian communities may stress the reform of the offender, and may rule out the harshest penalties such as torture or capital punishment. Other communities may lay greater stress on deterrence and punishment. Apart from these differences of attitude, countries are governed in their penal policies by their resources—both human and financial—and the institutions which already exist. Since purposes, resources and institutions differ widely, it is not possible to lay down general rules about which are the 'best' penal systems. It is, however, possible to consider some of the implications of various types of action open to the authorities, in the particular circumstances of poor countries.

One of the features of colonialism was the wholesale transference of penal systems from the metropolitan country to the colony, where they were superimposed on traditional arrangements for dealing with offenders. Many ex-British colonies, for example, possess the whole super-structure of fines, probation services, prisons and so on; these may operate side by

side with more traditional arrangements, which may deal with minor offences or conduct falling outside the imported classification of offences. In the present context we may ignore traditional systems, since most of the resources used by penal systems are normally in the imported sector, and it is this sector that is generally used to deal with those offences which are more seriously regarded by governments. It is, therefore, useful to consider the relevance of the kinds of penalties which are applied in Western countries to the conditions of poor countries. We now consider these various methods in turn.

The more serious crimes in most Western countries are usually dealt with by imprisonment. In Britain, this is the result of historical accident; during the nineteenth century, growing humanitarian feeling and practical difficulties made sentences of death or transportation formerly much used, increasingly impracticable. Much of the thinking of the time was Benthamite in inspiration (Bentham himself had taken an interest in the subject) and the 'new model prisons' which were established from the 1840s onwards laid greater stress on deterrence and reform than on retribution for crime. Unfortunately, the planners of the time lacked certain categories of both sociological and psychological insight. Prisoners were kept for years in solitary confinement with occasional visits from chaplains in the hope that meditation and uplift would lead to reform. The theories of the time have long been abandoned, but the institutions which were established under their influence still persist, and have indeed been transplanted widely to other countries.

In societies like Britain today, the advantage of the prison system is that it keeps potential offenders away from situations in which they can commit crimes, as long as they are actually in prison. Prison may also have some deterrent effect on certain kinds of potential offender. Middle-class people in particular may be deterred by the prospect of going to jail (although they may be equally deterred by the prospect of getting their names in the newspapers).

On the other hand, there is little evidence that prison has any reformatory effect, and indeed, in so far as prisoners become institutionalized (or 'prisonised' to use the term of Terence and Pauline Morris),³ they may become less fitted for living in the outside world. The very existence of prisons leads to the need for comprehensive after-care treatment—measures designed to undo the harm done to the offender by being sent to prison. In cost/benefit terms, prisons are extremely expensive for what they set out to achieve. In England and Wales, the average annual cost of keeping a man in prison in 1966 was £750; the annually amortized cost of producing one prison place was £172. The average productivity of men in prison was well under 10 per cent of the average productivity of men outside prison. Quite apart from the fact that most prisoners' wives are also in receipt of national assistance, there is the impact of imprisonment on family life and personal relations.

How relevant are these objections to the circumstances in under-developed countries? There is no evidence to suggest that prisons are superior in 'reforming' offenders (i.e. making them less likely to commit offences) in poor than in rich countries, although the types of training provided in prison in poor countries may be more useful in helping the ex-prisoner to get a job than their equivalent in rich countries. In so far as the deterrent effects of prison rest, first, on social disapproval of people

who have been in prison, and secondly, on the degree to which actual living conditions inside prisons are inferior to those outside, these effects will probably be weaker in poor than in rich countries (several nutritional studies show that poor people eat better in Indian prisons than in Indian slums). There remain, however, the possible deterrent effects of the deprivation of liberty and the loss of family life. The absolute costs of running prisons may be less in poor countries, but relative to average income in the community, they are usually higher. Thus in Uganda in 1966, the recurrent expenditure on prisons was about £110 per prisoner (taking the average prison population), or about three times the income per head of the country. The proportion in Tanzania was of the same order. In the U.K. the proportion in 1966 was 1.3:1. On the other hand, the loss of production to the community in the poorer country is likely to be less. Indeed, it is possible that the productivity of people in prison is greater than the average of those outside. The opportunity cost in terms of output foregone in the community at large may be very small or negative. Thus, the balance of advantage and disadvantage of the prison system will be different in poor countries from that in rich countries. It is, however, by no means obvious that if countries in Africa and Asia had to start their penal systems on first principles (without having originally imported the prison system in its present form from the West) they would employ prisons for this purpose.

Less serious offences in many Western countries are dealt with by fines. These are easier and less costly to administer (and, of course, can even be a source of income), and their deterrent effect can be as great as that of imprisonment if they are set at a realistically judged level in relation to the offender's income. But they can be highly regressive in their impact, especially in poor countries where incomes are more unequal. Such a regressive effect is more probable if fixed maximum fines are incorporated in laws or regulations. Even if fines were fixed at a particular proportion of income, they would still weigh more heavily on poor people than on rich people; rich people normally pay fines out of savings, while poor people pay them out of income. A fine may thus operate so as to reduce consumption by the poor, but may have no such effect for the rich. A further difficulty is that many offences against property occur because the offender has no resources; in such circumstances, clearly, fines are totally impracticable.

The other method of treating offenders which has been increasingly used in America and Britain in recent years has been probation. Recent studies suggest that this is little more effective as a reformatory measure than imprisonment, but it does have the negative advantage that it keeps people out of prison. It is, however, particularly costly in terms of trained manpower. If a country has heavy requirements for trained social workers to meet, problems arising out of say, urbanization, it may consider that it can get a better pay-off in welfare terms by using such workers to deal with these wider problems than it can by using them in the treatment of offenders. A decision must be taken on the resources which can be spared for this work, and different countries may well arrive at different conclusions about the best balance between what might be described as the preventive and the curative approach to the problem.

The foregoing line of argument suggests that the methods for the treatment of offenders which have been taken from the West have substan-

tial disadvantages in the conditions of poor countries. It may, therefore, be worth considering alternative approaches, some of which have been used in various countries.

- (a) *Public Works.* In many countries, convict labour has been used for public works such as road building. In countries with growing unemployment, such methods become increasingly impracticable, especially if the unemployed are able to exert any political pressure. If, however, there are public works which would not be carried out if the market wage-rate were to be paid, it could be argued that such work would be genuinely additional and would not affect the unemployed. But such cases will be rare, especially in countries where the wage for unskilled labour is little above the subsistence level, and where it must, therefore, cost little less to employ convict labour than free labour.
- (b) *Restitution.* This has been very little used in Western penal systems. It has, however, a number of advantages. It compensates the victim of crime—somebody who is ignored under most penal systems (in spite of small-scale schemes which have been introduced in recent years in countries such as the U.K.). It is claimed that it brings home to the offender the implications of his offence, and thus has some “reformatory” effect. There are, however, a number of difficulties. If the offender has no resources, it is impractical, and would lead to inequity as between one victim and another. Its reformatory effect is doubtful in situations where the offender sees no reason to feel any sense of community with the victim.
- (c) *Public condemnation.* This has been used in countries (e.g. China) where the penal system has avowed social purposes which are (or are hoped to be) shared by the community at large. In such a situation, publicly expressed disapproval for certain types of conduct might well prove an effective sanction. It would, however, be less effective where the purpose of the penal system appears to be to protect the interests of a small group of privileged or wealthy people.

Thus the problem of penal sanctions is inseparable from that of the type of society in which the sanctions operate. It is the main burden of this article, however, to suggest that every poor country might consider the particular kinds of penal action it uses with the following questions in mind:

- (a) What is the sanction designed to do?
- (b) How effective is it in doing it?
- (c) How expensive is it in terms of the scarce resources (financial, human and other) available?
- (d) What are its social implications, e.g. in terms of equity, social relations and so on?

SOME GENERAL CONCLUSIONS

The following discussion raises questions of wider interest in the field of social planning as these relate to penal systems.

First, the problem area with which we are concerned is neither social, economic nor political. It can best be described as a field in which decisions are taken and where the expertise of a number of disciplines may be rele-

vant in reaching sensible conclusions. Thus the decision-maker who is concerned to reduce the incidence of crime may draw on the economist (for cost/effectiveness analysis); the sociologist (for assessing the social implications of particular measures); the social psychologist (for an analysis of the psychological elements in crime); and so on. The decision-maker must know what the various disciplines have to offer and be prepared to use their skills.

Second, many of the decisions which appear to be taken in the penal field might be better described as pseudo-decisions—that is, the probable consequences of the action do not correspond to its stated intention. Thus, if a government were to decide to enforce better agricultural practices through the operation of the penal system, it would pass laws to that end. But what would happen would depend on the local law enforcement agencies, whose conduct might be predicted if sufficient were known about their relations with the peasants, their attitudes to their superiors and their jobs, and so on. The final effect might thus be a transfer of wealth from the peasants to the police, or no action at all, rather than greater agricultural output. Frequently, however, decisions are taken without such predictions about their probable effects.

Third, the range of choices theoretically open to the decision-maker is frequently wider than it may appear at first sight. Choices can be made covering the role of the penal system in total social policy, the definition of offences and the purposes and types of penal action. In practice, however, the range of choices which will present themselves in any particular situation is limited by a number of severe constraints. These include the attitudes of the dominant interest groups, the resources which are (or are thought to be) available, the habits of mind of the decision-maker, and the nature of existing institutions. This last is of particular importance; if prisons exist, decisions will be made on the assumption that they will continue to exist. The prison system will continue merely because it is there already.

Finally, the purposes of those involved in the penal system are not clear, simple or universal. Their lack of clarity is apparent from the confusions about the purpose of particular penal methods. They are not simple in that *individual* people or groups may (and usually do) have more than one purpose, and these purposes may be at least partly incompatible. They are not universal in so far as *different* people or groups may have different and partly incompatible purposes. Thus a rich man may wish to protect his property (a desire which he may identify vaguely with the 'national interest') while maintaining political stability and presenting an image of benevolence to himself and others. A poor man may wish to get enough to eat so as to remain alive, while at the same time keeping out of jail. A policeman may wish to obtain promotion by presenting an image of efficiency to his superiors, but at the same time may not wish to offend the people among whom he has to live. The civil servant may want a quiet life with a pension at the end of it. The 'planner' himself does not occupy a detached position outside and above these contradictions. He is part of the total structure and has a particular place in it. Somebody pays him and gives him his instructions; he has a particular level of income and standard of living; he is a member of a particular social class. His particular views of the purpose of the penal system are thus no more clear, simple or universal than anybody else's. Frequently, however, the plan-

ner is unaware of these limitations; he may regard his own picture of the purposes of the penal system as universal truths. In this he resembles those old colonialists who brought what they considered to be absolute truth and eternal values to their colonies, but in practice merely transferred the institutions and values of their own societies into a wholly different context.

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