

Crime and Social Justice
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Law and Order in the 1980's
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One of the more fruitful areas of study engaged in by criminologists has been the relationship between the economy and social control. *Crime and Social Justice*, now in its eighth year of publication, has played no small part in developing this field. Issue number 15 has particular significance in that it is devoted solely to an analysis of the decisive shift to the right in criminal justice policies and practice that has occurred in the United States and elsewhere in recent years. The aim, according to the editors, is to "understand the totality of this shift in criminal justice and to analyze its relationship to broader changes in the political economy." (p1).

Various elements of the change in social control in the United States are identified, most notably an increase in the severity of penal discipline and a deterioration of conditions within prisons, an increase in the imprisoned and legally supervised population, an attempt to criminalize behaviour that is not currently subject to criminal sanctions and deregulation of intelligence agencies.

While *Crime and Social Justice* provides excellent documentation of recent trends in criminal justice practices, a fundamental weakness of several of the articles is the use of strident polemicism, often to the detriment of rigorous analysis. This is an important criticism, for as Alan Hunt has recently argued, "Polemicism directly and unreflectively inserts into the *theoretical* discourse the polemical terms employed" (Hunt 1980: 38) with the result that the discussion usually remains at the level of assertion.

This is evident in the opening article by John Horton which is intended to serve as the theoretical introduction to the other contributions with respect to the relationship between "law and order" policies and changes in the political economy. The argument essentially is that the developments in social control policies and practices are part of "austerity capitalism" whereby opportunities for extended capital accumulation are increased at the expense of the working class. Although reference is made to the state's response to the current economic crisis, it is surprising to note the absence of any discussion of the theories that have been

developed to explain the causes of economic crises in the context of state activity.

The author states (p 9) that it is not his intention to take a position on the exact cause of the crisis (though he later refers (p 11) to "the crisis created by mobility of transnational capital". However, it can be argued that different theories and explanations of economic crisis demand different responses by the state, such that an examination of these theories (*eg* Wright 1978; Castells 1980) is an essential first step toward formulating the necessary framework within which to site changes in social control practices instituted by the state.

Furthermore, Horton refers to the current "supply-side" economic policies of the United States as part of austerity capitalism without indicating the contradictions inherent in such policies; namely attempting to stimulate the economy by cutting taxes while at the same time attempting to control inflation by a restrictive monetary policy which results in high interest rates and slower economic growth. The situation is exacerbated by large increases in defence spending with inflationary consequences. If one posits a direct nexus between the economy and social control, economic policies with the contradictory impact must affect the analysis undertaken.

Despite these criticisms, the strength of the article lies in the graphic details Horton provides on the shift to the right in the United States. The author stresses that crime control is only one area currently undergoing dramatic change and in this respect there has occurred an attack on trade unions, large reductions in social welfare payments and services and repeal of federal regulations designed to protect consumers and the environment.

Perhaps Horton could have drawn on the work of O'Connor (1973) who has suggested that the state in capitalist society must fulfil the two basic functions of accumulation and legitimation; yet these are often contradictory in that state intervention to assist the private appropriation of profit may undermine the legitimacy of the state as a neutral institution. Applying the United States' experience as outlined by Horton to this thesis, it can be seen that policies such as weakening the power of trade unions, lowering taxation and minimising government regulations are directly aimed at encouraging investment and profitability, *ie* fulfilling the first function specified by O'Connor. Yet if there occurs a consequent loss of legitimation as the state intervenes to assist the process of capital accumulation in times of economic crisis, this may explain, at least in part, the trend to more repressive criminal justice policies as a means of maintaining social control.

Of course, it needs to be emphasized that one of the more significant features of the capitalist state is the wide popular support it commands while at the same time engaging in increasingly repressive crime control practices. Stuart Hall, in a recent article, has attempted to provide an explanation for this.

The themes of crime and social delinquency, articulated through the discourses of popular morality, touch the direct experiences, the anxieties and uncertainties of ordinary people. . . This articulation forms the bridge between the real material sources of popular discontent and their representation, through specific ideological forces and campaigns, as the general need for a "disciplined society". It has, as its principal effect, the awakening of popular support for a restoration of order through imposition: the basis of a populist "Law and

Order" campaign. This in turn, has given a wide legitimacy to the tilt of the balance within the operations of the state towards the "coercive" pole, whilst preserving its popular legitimacy." (Hall 1980: 172-73)

The most thoughtful article in *Crime and Social Justice* is by John Hylton who seeks to answer the question whether there has occurred a major departure from traditional penal practices in that institutional programs are being replaced by community programs. Hylton further examines the effect of community programs on the size of the correctional system. The data for the analysis is drawn from a case study of the Canadian province of Saskatchewan.

It has been argued that offenders treated in community programs would recidivate less often than offenders who were institutionalized with the result that the total number of offenders under the supervision of the correctional system is reduced. In fact, Hylton concludes that throughout the period under study (1962-79) "both the number of persons under supervision of the correctional system and the proportion of the total provincial population under supervision increased dramatically" (p22) and it was the increased use of community programs in Saskatchewan that provided the means by which the correctional system expanded.

According to Hylton, two factors are decisive in this process. First, with high rates of unemployment and the marginalization of large numbers of the labour force, there is a strong need for state involvement in domestic pacification and control. Secondly, constraints on state expenditure necessitate that such control be as cost effective as possible. Community based strategies for supervision which are relatively inexpensive when compared to incarceration are, therefore, increasingly employed. "Community correctional programs make an expansion of state involvement in social control activities economically viable" (p26).

The article by Hylton is a reflection of the extensive debate that is now taking place on the relationship between changing historic economic forces and forms of discipline and punishment (eg Ignatieff 1978; Melossi and Pavarini 1981). At the same time, Hylton's comments on the rate of employment and imprisonment derive support from recent United States' studies which indicate that the rate of unemployment is a strong predictor of prison populations (Yeager 1979).

It is worthwhile commenting briefly on the situation in Australia as a comparison with the overseas studies already referred to. Australia, founded as a convict colony, does provide an interesting study with an overall historical decline in imprisonment rates. Braithwaite (1980) suggests, however, that within this general decline it is possible to perceive rises in imprisonment rates corresponding to economic crises and increased unemployment. Such a correlation is evident during the Great Depression of 1929-33.

With respect to Hylton's observation on the issue of community corrections versus imprisonment, the Australian evidence is that while there are double the number of persons on probation compared to actual prisoners¹ there has occurred a significant increase in the imprisonment rate since 1975 with prisoners classed as "long-term" constituting an increased proportion of the general prison population (Wardlaw and Biles 1980). The evidence suggests that there is less emphasis on community correction programs in Australia than there is in some overseas countries and that in recent years the use of imprisonment has become more wide-spread, representing in part a hardening of attitudes to punishment on the part

of judicial officers (Law Reform Commission 1980: 31).

The major part of *Crime and Social Justice* is a forum section which consists of nine short articles including a reprint of an address by Warren Burger, Chief Justice of the United States Supreme Court on "crime and punishment". What worries Burger is that society "provides massive safeguards for accused persons . . . yet fails to provide elementary protection for its decent, law-abiding citizens" (p44). The solution, according to the Chief Justice, is to increase the number of enforcement officers, tighten the bail laws by incorporating the element of future dangerousness, and limit available appeal procedures.

These proposals may well herald actual legislative changes in the United States. In August, 1981, the report of the Administration's *Task Force on Violent Crime* chaired by Illinois Republican James Thompson, and former Attorney-General Griffin Bell, was made public. Three of the recommendations in the report are that *habeas corpus* petitions be limited, judges be allowed to consider the dangerousness of a defendant in determining whether bail should be granted, and the "exclusionary rule" (whereby illegally obtained evidence is inadmissible in court) have more limited application. The Task Force suggested that evidence obtained illegally should be admitted if the police could show they were acting "in good faith" when the evidence was seized.

Of the remaining articles in the forum sections, all are topical and informative yet several are too short to do complete justice to the issue they are covering. This is a result of the methodology employed, for the intention behind the forum is to cover a wide range of topics from women's rights to the politics of the right. However, despite this intention, the reader is in some cases left wishing for more analysis.

Two short articles of interest detail current crime control policies and practice in Scandinavia and New Zealand. Thomas Mathiesen argues that in Scandinavia there has occurred an increase in use of both traditional imprisonment and non-custodial punishment while David Williams, writing about New Zealand, provides data which indicates a trend towards longer prison sentences and an increase in the percentage of Maori prisoners well in excess of their proportion of the total New Zealand population. This is similar to Australia where it is well known that aborigines have disproportionate contact with the Australian criminal justice system (Clifford 1981).

An important contribution in *Crime and Social Justice* is the article by six authors, five of whom are prisoners, which documents recent changes in prison conditions. The authors identify several trends which have had an impact on conditions in Illinois prisons. The first is termed "fiscal trends" and in this respect there has been a decrease in the resources available for prison services, educational and vocational programs and basic amenities. Secondly, the authors show how "legislative trends" (for example the replacement of indeterminate sentencing with mandatory sentences) has not only increased the total prison population but also increased the ethnic composition as a proportion of the total Illinois prison population. By combining their own experience with the judicious use of statistics, the authors provide the necessary empirical backdrop for other articles contained in the journal.

Referring once again to the Australian situation, another similarity to the United States, apart from the increase in the rate of imprisonment which has taken place

in recent years is the growth in strength of police forces. In Australia there has been an increase of almost 50 per cent in the number of police in all jurisdictions during the decade 1968-78. Employing statistics showing the number of police per 100,000 persons, the increase was from 171 to 213 (Australian Bureau of Statistics 1980: 208). If one is seeking to draw a correlation between economic crises and increasing social control it is interesting to observe that Grabosky (1977: 38) in his historical study of crime in New South Wales notes the sudden increase in police numbers during the Great Depression.

One other similarity with the United States is the importance attached to security agencies. In Australia, this has involved official inquiries into terrorism recommending the streamlining of intelligence agencies (Hope 1979), rapid funding increases for the Australian Security Intelligence Organisation and the Australian Secret Intelligence Service (in the order of 60 per cent since 1978-79, as stated in the Commonwealth Budget Papers) and finally, a High Court decision that the functions of A.S.I.O. are not subject to judicial review (*The Church of Scientology Inc. v The Honourable Mr Justice Woodward, Director of the Australian Security Intelligence Organisation* (1980) 54 ALJR 542).

With these developments in mind, what is particularly noticeable about the various articles in *Crime and Social Justice* is that they represent, to echo the editors, an urgent call to action: a recognition of the immediate threat to hard won civil liberties. This is a welcome change from the pessimism of some writers who apparently reject the value of struggle for civil liberties:

[T]he legal form is a specifically "bourgeois" form; those who would simultaneously uphold this form and condemn the capitalist mode of production which "perverts" it simply fail to grasp that the part they uphold is inextricably tied to the very system they condemn. (Balbus 1977: 580).

Crime and Social Justice has performed a valuable task in documenting changes in social control in recent years and locating this in the context of a general conservative movement in government policies. At the same time it examines the underlying economic and political conditions of these changes. The evidence for Australia strongly supports an important theme of the journal — that the shift to the right in criminal justice policies is a global phenomenon.

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Endnotes

1. Probation is of course only one of many forms of community correction programs which include community service and work orders. The statistics concerning probation are contained in Australian Institute of Criminology (1981) which shows 19,823 persons on probation as at September, 1981.

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