

Introduction

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Two kinds of images have dominated our discussion of crime and the treatment of criminals. First, we see criminals in overcrowded jails, rioting and even killing in desperate attempts to draw attention to their plight. This is part of the reality of crime: prisoners die in jail; they are raped; they are assaulted; they are controlled by others, or if they are lucky, they are left to rot in uninterrupted and prolonged idleness.

But there is also a gentler picture. In his *Autobiography of a Super-Tramp*, W. H. Davies described how he and other tramps ensured that, at the onset of a harsh winter, they were brought in from the cold by being put into cosy jails, there to be fed and fattened until warmer weather arrived. In that way they never have to breathe the cold air of freedom. For many law-abiding citizens, the reality of prison-life today is similar to Davies' experience: prison is a place where criminals live in comfort with all the modern amenities.

Whenever there is an increase in crime rates, or a perceived increase, it is the account of prisoners and other offenders living in relative comfort, while their victims and the victims' families have suffered or continue to suffer, which drives the general public and law-and-order politicians to clamour for harsher penalties. Attempts to justify more severe punishment usually appeal to some theory of just deserts or to debatable empirical claims about the good effects of long periods of imprisonment in reducing crime. But is there a coherent theory of retribution which supports the notion of just deserts? Is retribution significantly different from revenge? On the other hand, is a purely forward-looking utilitarian defence of punishment compatible with the requirements of justice, including the prohibition from punishing the innocent and from inflicting disproportionate punishment?

Interest in these issues connects us with the views of earlier philosophers, such as Kant, Bentham, and Nietzsche, whose works, and their contemporary relevance, are the subjects of continuing reinterpretation. In search of justifications for punishment, we may however be led to different perspectives from those provided by traditional retributive and utilitarian theories, and to reevaluate traditional forms of punishment. Is punishment in general, and imprisonment in particular, the best solution to the persisting problem of serious crime?

Finally, there is a methodological issue about how to test theories of punishment. Do we proceed by first constructing an ideal theory, abstracting away the complexities and complications of the real world,

or do we start with actual criminal justice practices which, as Pittman argues, 'themselves serve to constitute and reproduce' the division between the 'guilty' and the 'innocent' which many theories take as preinstitutional?