

# NOTTINGHAM LAW JOURNAL

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## BOOK REVIEWS

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### JUSTICE, CRIME AND MANAGEMENT

*Darkness and Light - Justice, Crime and Management for Today, A Report for the Howard League*, by DAVID FAULKNER, United Kingdom, The Howard League for Penal Reform, 1996, xi and 69pp., Paperback, £10.00, ISBN 0-903683-29-6

The stated aim of this volume is to “promote a thoughtful and principled debate about the nature and causes of crime; the means of preventing it and mitigating its effects; the purpose, operation and effectiveness of the criminal justice process; and the treatment of offenders”.<sup>1</sup> It would certainly be difficult to imagine a more apposite time for such a debate to be engendered, given the Government’s recent controversial White Paper, *Protecting the Public*,<sup>2</sup> and the current ill-informed media debate about delinquent children and criminality. David Faulkner is certainly well suited to this task. Between 1959 and 1992, he served in the Home Office, becoming Deputy Secretary in charge of the Criminal and Research Statistics Department in 1982, and Principal Establishments Officer in 1990. He is currently a member of the Howard League Council and a Senior Research Associate at the Oxford Centre for Criminological Research. He thus has the benefit of having both practical governmental experience (as The Rt. Hon. Sir Peter Lloyd MP says in his Foreword, “he well understands that faced by a public afraid that law and order is breaking down and a press which fans its fears, governments must give an overriding impression of being tough on crime”) and a more principled academic perspective. His scholarship is impressive and his sources are many and wide-ranging. His bibliography runs from Ashworth to Zedner and covers over six pages.

In undertaking to achieve his aim, David Faulkner takes the reader

<sup>1</sup> D. Faulkner, *Darkness and Light* (The Howard League, 1996), at p. 58.

<sup>2</sup> Home Office, *Protecting the Public. The Government’s Strategy on Crime in England and Wales* Cm. 3190 (HMSO, 1996).

through the gamut of criminal justice issues facing modern British society - from “problem” children and young people, through the prevention and reduction of crime, the position of the victim and the parts played by the police, probation service and prisons, to the role of courts and sentencing policy.

Running as a central theme throughout the whole of this work is the identification of two very distinct views of society, citizenship and criminal justice - the “exclusive” and “inclusive” view. The exclusive view is seen as emphasising personal liberty and individual responsibility but is inclined to disregard the influence of situations and circumstances. It distinguishes between the deserving, self-reliant, law-abiding majority and the “feckless, welfare-dependent and potentially criminal minority”<sup>3</sup> from whom the former need protection. The inclusive view, on the other hand, stresses the capacity and will of individuals to change if given guidance and help. It “looks more towards putting things right for the future than to allocating blame and awarding punishment”.<sup>4</sup> The exclusive or “low trust” view of society, when applied to criminal justice, tends to favour more convictions, the creation of new criminal offences, harsher sentencing and more severe treatment in prisons. The language of “war” on crime is used, criminals being seen as the “enemy”. Faulkner argues that, while such policies may attract “cheap applause”, they have a tendency to make the most vulnerable members of society and those most at risk of offending feel themselves to be the first to be denied its protection, support and respect. He cites Braithwaite<sup>5</sup> with approval. Those who feel that they are excluded from the benefits of citizenship cannot be expected to share its duties and obligations.

The above picture could be criticised as being stereotypical both at an individual and a societal level. In addition, the author’s claim that these attitudes and approaches should not be seen as representing a “right” or “wrong” view of society or of public policy has a slightly hollow ring as it is clear where his sympathies lie. However, his consistent argument in favour of a more inclusive approach across the spectrum of issues of criminal justice is persuasive. To take just one example, the case of young people and criminality, he argues that any serious programme to reduce such criminality should focus on support for parents and children in difficulty and in creating opportunities for young adults. Such programmes will have a chance of affecting the *motivation* of young offenders, whereas programmes to prevent crime by physical means can only ever be of limited value.

<sup>3</sup> D. Faulkner, *op. cit.*, at p. 5.

<sup>4</sup> *Ibid.*

<sup>5</sup> J. Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989).

The author has a keen feel for the historical context. Those quoted include Locke, Blackstone and Sir Richard Mayne and Colonel Rowan, the first Commissioners of the Metropolitan Police in 1829. It is, however, in his summaries of recent developments that Faulkner is particularly informative and illuminating. For example, in Chapter Four, he traces the general development of criminal justice policy over the last thirty years. He argues that one result of the practical managerialism of the 1980s, with its stress on financial efficiency and auditing, was the recognition of the gross inefficiency and ineffectiveness of imprisonment as a method of punishment and the development of supervision in the community as an effective means of reducing reoffending. The Criminal Justice Act 1991 was a logical result of the acceptance by ministers of this approach coupled with the need to give the appearance of being “tough on crime” (resulting in what Cadavino and Dignan have called the “twin track” or “bifurcatory” approach<sup>6</sup>).

The exclusivist backlash, fuelled by sensational media reporting and the Government’s own political difficulties, occurred towards the end of 1992. Attempts to restrain the growth of the prison population and to promote the use of community sentences were abandoned. The recommendations of the widely welcomed Morgan Report<sup>7</sup> were neglected and the aims of the police, set out in the White Paper on Police Reform,<sup>8</sup> concentrated on law enforcement and detection and arrest of criminals at the expense of preventative and community policing roles. These types of development are representative of what Faulkner calls an “instrumental view of justice” - the view that prosecution, conviction and sentence can be used as instruments of social control in themselves. This view, according to Faulkner, is profoundly misguided. In this he is surely right. For, while it must be acknowledged that a balance needs to be struck between “public service” and “crime control”, common sense surely dictates that any programme to bring about a reduction in crime must attack its fundamental causes and the motivation of those at risk of offending. As he says, “changes in law enforcement and the criminal justice process, or in criminal law or the treatment of offenders, are by themselves unlikely to have more than a marginal effect on the general level of crime”.<sup>9</sup>

What solutions does David Faulkner propose? Four main themes emerge as needing to be developed in order to restore confidence to the system. First, the Government, public services and the courts must

<sup>6</sup> M. Cadavino and J. Dignan, *The Penal System: An Introduction* (Sage, 1992).

<sup>7</sup> Home Office, *Safer Communities: The Local Delivery of Crime Prevention through the Partnership Approach: Report of the Standing Conference on Crime Prevention* (HMSO, 1991).

<sup>8</sup> Home Office, *Police Reform*, Cm 2281 (HMSO, 1993).

<sup>9</sup> D. Faulkner, *op. cit.*, at p. 6.

recognise that the system needs to be *accountable* not only centrally but also on a local level. Secondly, the system as a whole must be *co-ordinated* more effectively within itself and with other services whose work is crucial to its success. Thirdly, *structures* need to be established at strategic, managerial and operational levels in order to ensure accountability and co-ordination. Fourthly, as a necessary precondition of the above, the quality of *relationships* between individuals and between organisations involved in the criminal justice system needs to be regarded as paramount.

*Darkness and Light* is a learned and meticulously researched volume. The argument in favour of an approach based on values of inclusion and high trust is eloquently put. In an age when criminal justice policy seems to be governed by populist considerations and short term political expediency, it comes as a welcome voice of principle and reason and deserves to be read widely by all those with an interest in this vitally important area.

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## DIGITAL CASH

*Digital Cash - The Legal Implications*, by CHRIS REED and LARS DAVIES, IT Law Unit, Centre for Commercial Law Studies, Queen Mary & Westfield College, 1996, 30 pp., Paperback, £30.00, ISBN 0-9510664-8-X

Many banks around the world believe that we are "...in the beginning stages of [a] cash-replacement cycle"<sup>1</sup> which will see traditional paper money ousted by digital or electronic cash ("e-cash"). This new medium will, they claim, make transactions easier, cheaper and more secure whilst also heralding a new and lucrative era of commerce across electronic networks. Surprisingly, however, some sceptics are less enthusiastic. They claim that e-cash is "...a mass experiment that could...shake the foundations of global financial systems and even governments".<sup>2</sup> They describe it as "untraceable" and "...impossible to police",<sup>3</sup> and believe that it will lead to "monetary anarchy"<sup>4</sup> which will be enthusiastically embraced by "hi-tech

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<sup>1</sup> R. Crone, "The Future of Money", *Business Week*, 12 June 1995, at p. 20.

<sup>2</sup> *Ibid.*

<sup>3</sup> E. Butler, *The Net*, BBC Television, 5 June 1995.

<sup>4</sup> *Ibid.*