

Community Issues in Criminal Justice

*“The ruthless pursuit of
profit creates a
criminogenic society.”*

Robert K. Merton
1938



Can Tough on Crime Policies Give Us Safe Communities?

“Safe communities” and “tough on crime” initiatives seem to have moved to the top (or at least close to the top) of the agendas of the federal government of Canada, and a number of provincial governments. This is, at least partly, a good thing insofar as safe communities are the very *raison d’être* of John Howard Societies in Alberta and across Canada. Hundreds of staff and thousands of volunteers from John Howard Societies are working 24/7 to make our communities safer. But they are doing so by focusing on rehabilitation of offenders, and promoting preventative measures in the community based primarily on the principals of *crime prevention through social development* [CPSD].

The other part of this dichotomy, “tough on crime”, is in fact a misnomer – **everything that is talked about, and proposed by way of criminal legislation and policy is not directed at “getting tough on crime”, but rather, is directed at “getting tough on offenders”.** These are very different things:

- *“Tough on crime” is little more than a cliché that amounts to a political or social philosophy;*
- *“Tough on offenders” is symbolical, but has never achieved the result of making communities safer.*

So what do we mean when we say that getting tough on offenders is “symbolical”? The pre-eminent contemporary American scholar of criminal justice is Professor Franklin E. Zimring. He is, among other things, the William G. Simon Professor of Law at the University of California at Berkeley, and the first Wolfen Distinguished Scholar at the University of California. In his book, Three Strikes and You’re Out in California: Punishment and Democracy, he says this:

[There is] the . . . assumption that virtually all issues of punishment policy can be reduced to a zero-sum competition between crime victims and criminal offenders. Whether the question is prison terms for burglars, registration of sex offenders, or recreational facilities in state prisons, the notion of zero-sum competition asks the voter to decide the issue by choosing between offenders and their victims. The implicit assumption is that anything that is bad for offenders must be beneficial to victims. As a matter of utilitarian reasoning this approach has little merit, but as political rhetoric it is both versatile and appealing. Once every policy question becomes a status competition, the appropriate result is a foregone conclusion. Instead of calculating costs and benefits, all citizens must do is choose sides

The rhetorical versatility of this conception is quite astonishing. No punishment is too extreme if anything that hurts offenders benefits victims.

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Tough on Crime... con't.

If the motivation behind public support for enhanced punishment is a symbolical denunciation of criminals and crime, this need to make a symbolic stand may not be closely linked to any particular set of outcomes¹.

In other words, the current debate on criminal justice in Canada is really nothing more than political rhetoric couched in symbology.

Further, if there can be said to be a theoretical foundation for this, it cannot be found anywhere other than the various theories of *offender deficit*. The theories in all their many guises, boil down to the proposition that “there is something lacking in those that offend – they are somehow different from, and lesser than, those that do not offend”².

“They were born to offend!”

With that as a foundation, the whole question of how to address crime, and those that commit crimes, is now framed within the context of the individual offender and the response to that offender³.

The entire theoretical framework that approaches understanding crime from a systemic or structural perspective is at best ignored, and at worst dismissed. Even though it was the subsequent scientific work in these areas that absolutely proved that theories of offender deficit are invalid in providing any kind of scientifically demonstrable explanation for crime and criminals.

This is not the forum to go through all the different theories that have a structural or systemic focus. A consideration of one such theory – *strain theory*, serves to illuminate how such theories provide an alternative framework for analysis of crime.

In 1938, Robert K. Merton published “Social Structure and Anomie” in the October issue of the *American Sociological Review* 3 (pp. 672-682).

In this paper, he presented his theory that:

“ . . . crime is a symptom of the gap between culturally prescribed aspirations and the socially structured means for realizing those aspirations.”⁴

When Society legitimizes certain goals and aspirations, and indeed encourages the populace to aspire to those goals and aspirations (such as “unlimited wealth”), those for whom there are societal and structural barriers to the attainment of those goals and fulfillment of those aspirations through legitimate means are thereby “encouraged” to obtain those goals aspirations by illegitimate means.

Really, that’s what organized crime is all about – the acquisition of money and power, but through illegitimate means.

Our society daily sends a message, sometimes subtle, sometimes not so subtle, that:

- *It’s all about the individual, and never about the community;*
- *It’s all about material possessions and status; and*
- *It’s all about doing what you can do, not what you ought to do.*

Blatant examples abound in the popular and mass media, but there are other ways the message is delivered that give it the *imprimatur* of official sanction.

The current affordable housing crisis in Alberta serves to provide an example of the subtle ways that this message is delivered. Quite simply, for all to see, there are (albeit a minority of) landlords who are taking advantage of the near 0% vacancy rates to increase rents by 200% - 300% and more. They are “doing what they can do” in this market at this time, and

¹ Zimring, Franklin E., Hawkins, Gordon, & Kamin, Stephen; Three Strikes and You’re Out in California, (2001) Oxford University Press, New York, p. 223 ff. The reference is specifically to the political situation in California in the early to mid 1990s, but the rhetoric in Canada today bears a remarkable resemblance to the rhetoric taking place in California at that time.

² Likely the first to advance such a theory was Lombroso in the late 1800s (and whom we have mentioned in previous Issues of **The Reporter**). Pretty well all Introductory Criminology texts have a section devoted to discussion of these theories; see for example, Linden, Rick, Criminology: A Canadian Perspective 5th (2004) Thomson Nelson, Toronto, cap. 7, “*Early theories of Criminology*”.

³ Ironically, if one is developing policy guided by the theory that offenders are “born to offend”, whether explicitly or implicitly, then the whole notion of “tough on crime” as a deterrent is illogical and irrelevant.

⁴ Linden *supra* p.294

Tough on Crime... con't.

despite calls from a plethora of constituencies, the Alberta government continues to insist that it will not institute any form of rent regulation or control. The message to all and sundry is clear – doing what you can do (and get away with) is not only acceptable, it's at the very foundation of our social system – the so-called “free market” system.

In a very real sense, it's quite remarkable that the vast majority of the population doesn't completely buy into this message. Most citizens do care (admittedly in varying degrees) about the health of their community, and don't put their personal gain ahead of all else, at the expense of any others.

Most of the time, most people do what they ought to do, not what they can do (and think they can get away with).

Still, within the ranks of those with power and authority, those one might reasonably expect to set the standard of community-mindedness and doing what ought to be done, it has now become almost a daily occurrence that someone is found to have used their position of power and authority to advanced their personal gain (or agenda) by doing what (they think they) can do, rather than what they ought to do. And that brings us full circle, because in a very real sense, **a policy agenda that amounts to getting tough on offenders is equivalent to a policy agenda of doing what you can do to offenders, not what you ought to do to offenders. And it is most certainly the very antithesis of doing what you can do, or indeed ought to do for offenders.**

Why would we do anything for offenders?

So long as one is caught up in the rhetoric of “tough on crime”, and the zero-sum game of “offenders v. victims”, there is no reason to do anything for offenders, and every reason to do something to them (i.e.: harm them). So we come back to the question of whether, at the end of the day, such a course of action will have any impact on making our communities safer.

Criminologist Peter MacNaughton-Smith, as

quoted by Professor Michael Jackson in *Justice Behind the Walls* (at page 22)⁵, comments on the history of penal policy and its probable impact in making communities safer:

*Criminals are wicked (and we are rather good) but they are not really wicked, they're sick (so I suppose that we are not really good, we're just healthy) and in any case it doesn't matter which they are because the things they do are dangerous and inconvenient (and what everyone else does is always safer and more convenient) and we have to teach them a lesson, which they won't learn because they're incorrigible, and we have to integrate them back into the community, and also symbolize society's rejection of them. The young ones are the worst and we must spare them the shame of being treated like real criminals. Now some of these clichés may well be true, or well not be, but they cannot be true all at once; we shall not believe anyone who asserts too many of them together. They are rather like proverbs: you can find whatever you want. Which ones the powerful members of society believe are true will surely make a difference to what society does; yet **human society as a whole, over nearly all of its geography and history, has done very similar things in the name of the law and has offered whatever reasons happen to be in fashion at the time. When the reasons change and the activity remains, the reasons begin to look like excuses . . .** In our own age (perhaps it is the age of mystification) the reasons advanced almost proudly in self-contradictory pairs such as justice and rehabilitation. But as George Bernard Shaw says:*

*“now if you are to punish a man retributively you must injure him. If you are to reform him you must improve him. And men are not improved by injuries. To propose to punish and reform by the same operation is exactly the same as if you were to take a man suffering from pneumonia and attempt to combine punitive and curative treatments. Arguing that a man with pneumonia is a danger to the community, and that he need not catch it if he takes proper care of his health, you resolve that he shall have a severe lesson, both to punish him for his negligence and pulmonary weakness and to deter others from following his example. You therefore strip him naked, and in that condition stand him all night in the snow. But as you admit the duty of restoring him to health if possible, and discharging him with sound lungs, you engage a doctor to superintend the punishment and administer cough lozenges made as unpleasant to the taste as possible so as not to pamper the culprit. A board of commissioners ordering such treatment would prove thereby that either they were imbeciles or else that they were hotly in earnest about punishing the patient and not in the least in earnest about curing him”. (P. MacNaughton-Smith, *Permission to be Slightly Free* [Ottawa: Minister of Supply and Services Canada, 1976] at 30 – 32)*

⁵ Jackson, Michael, *Justice Behind the Walls: Human Rights in Canadian Prisons*, (2002) Vancouver. Emphasis added.

The John Howard Society of Alberta

Annual General Meeting 2007

The Society's Annual General Meeting will be held Saturday, June 9th, 2007
at the Coast Edmonton Plaza Hotel located at:
10155-105 Street, Edmonton, AB
from 1:30 p.m. to 3:00 p.m.

We welcome everyone to attend.
Hope to see you there!

RSVP Bev Tweedle @ (780) 423-4878 by June 5th, 2007

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The John Howard Society of Alberta is an agency composed of citizens in Alberta who are interested in criminal justice reform and preventing crime in our communities. We recognize that dealing with crime is the responsibility of the community as well as public agencies.

We gratefully accept donations to help offset the costs of our efforts in criminal justice reform and crime prevention. Donations are income tax deductible.

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