

Punishment: A Common Good?

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Do our penal practices contribute to the common good, or do we need to think more carefully about our response to crime? Patrick Riordan SJ asks if and what society gains from the punishment of offenders, particularly when it comes to imprisonment, and suggests that to give a full answer to that question we need to start by asking another one: who benefits?

Who benefits when Joe is sent to prison for 18 months for robbery? Who benefits when Alison is locked up for 9 months for shoplifting at Marks & Spencer? This is a curious question – who benefits?

Do Joe and Alison gain anything from their time inside? Their sentences are too short for any training or education to take effect, even if such were on offer. Incarceration can be detrimental to prisoners, and ineffective: leaving them locked up for a significant part of their days, without stimulus or interaction to enable them to break out of well-worn mental processes – perhaps of self-hatred, self-justification, paranoia, or aggression – is not a recipe for personal change. Placing them in the company of others convicted of similar offences can also be to push them further in a direction which does not promise to be beneficial.

Do the families, partners or children of Joe and Alison benefit from their absence? Perhaps, on occasion, we have to admit that temporarily they do, when freed from the oppressive presence of an abusive, violent person, possibly suffering from addiction. But for the most part, it is to be expected that families are worse off for the absence of a member.

What about the victim of the robbery, what do they get out of it? How does M&S benefit?

This question should remain with us as an irritant, provoking other questions and concerns which demand answers. If 'no benefit' is the conclusion to every

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question, then we should surely be obliged to revise our practices.

Our penal practices are complex. Punishment by imprisonment, fine, community service or some combination, comes at the end of a series of practices in response to crime. The suspect of crime has to be pursued, apprehended and prosecuted, and then tried, defended, convicted, and sentenced. After sentencing, the punishment is

applied. None of these processes is simple or straightforward, but it is important to look at the whole series as the context in which we consider punishment.

I want to apply to the whole series, and then to punishment in particular, the question I posed at the start: who benefits? This question has been raised and discussed in relation to the trial process in particular. When we ask such a question, we are demonstrating a concern for the common good, a concern for the authentic fulfilment of every person and of every community; or in the language of Popes Paul VI and Benedict XVI, a concern for the development of every person, and of the whole person (*Populorum progressio, Caritas in veritate*).

Concern for the common good means that we view society according to two criteria: there should be no arbitrary exclusion of any person or any group from a share in the benefits and goods we pursue together in society; and there should be no arbitrary exclusion of any dimension of the human good from consideration when we reflect on what we want to achieve together.

Our commitment to the common good therefore leads us to question the benefits of our penal process.

One relevant benefit to consider is learning: growth in knowledge and comprehension. Someone who discovers something, who learns something new, has benefited. Who does the learning in our trial system? Who achieves mastery of information, and processes it and takes a position, thereby realising and demonstrating competence and skill? In our systems, it is typically the professional prosecutors and defenders, magistrates and judges who do the learning. The knowledge of the law, the mastery of a particular brief, the development of clever stratagems in cross examination, prosecution or defence, are all the prerogative of a small subsection of the population, and many of those directly affected by the proceedings do not actually share in this community of knowledge and competence. And worse again, not only are the victims of crime or the families of the accused often excluded from the professional discourse, they are often told that their perspective and their concerns are irrelevant or insignificant.

I should be careful not to exaggerate. Increasingly, efforts are made to include the voice of victims through victim impact statements, and there is also, for example, potential for the accused to provide evidence of mitigating circumstances. In the 'restorative justice' movement, for instance, efforts are made to arrange victim-offender mediation, in which the perpetrators and victims of crime are brought together in supervised meetings. There is potential for both parties to discover something about the criminal event and its significance in both their lives, and in some cases there can be a healing of the victim's persistent trauma, and a growth in the offender's awareness of the harm he or she has inflicted.

The direction of development here is towards greater inclusivity; from a situation where the professionalisation of the legal actors confined participation to a few, towards the inclusion of other affected persons. But how far should development go: how inclusive, ideally, should the process be, and what would a more inclusive process look like? I am abstracting here from questions of practicability and affordability, but the common good perspective wants no one to be excluded arbitrarily and as such we should seek the widest possible inclusivity.

As has been touched on already, there are several groups involved in or affected by the justice system – victims, families of convicts, the convicted criminals themselves, police or probation officers, concerned citizens, healthcare professionals. But when it comes to representing the needs and interests of these parties, is it only a matter of advocacy on behalf of one or other group, or can there be advocacy on behalf of the whole, the common good?

We are often told that 'society benefits' from the punishment of offenders, and some politicians driven on by media campaigns advocate harsher treatment of those sent for punishment so that the benefit to society would be even greater. But is it true that society benefits when Joe or Alison are sent to prison?

One way of attempting the justification of punishment is labelled the 'social defence' or 'incapacitation' theory. When violent people are locked up, when dangerous drivers have their driving licences taken from them, their capacity to do further harm is reduced, for a time. Society is protected, and to that extent benefits from the practice of punishment. Another version of the answer that 'society benefits' says that punishment has a deterrent effect, reducing the crime rate. No less than the social defence theory, the claims of deterrence can be examined empirically. While hardliners demanding stiffer sentences appeal to their deterrent effect, research suggests that it is not the threatened punishment which actually deters, but the likelihood of apprehension and successful prosecution. The shoplifter, the mugger, is more likely to calculate his or her chances of being caught than to consider the nature of the punishment, which is much further down the line and can be prevented by all sorts of chance occurrences such as technicalities in the prosecution.

Looking at these two readings of the answer that 'society benefits', we notice a common element: the people being punished are not considered as belonging to the society receiving the benefit. *They* are punished for their wrongdoing and *others* benefit, supposedly, by being better protected and at reduced risk of being victims of crime. So whatever goods might be in question here, whatever benefits, they are not *common* goods. They do not include the goods of the punished persons, Joe and Alison.

Maybe it does not have to be like that. Other interpretations of the ‘society benefits’ answer might be more successful. For instance, pointing to the symbolic dimensions of sentencing and punishment, some commentators highlight the fact that society’s law and values are vindicated, justice is done and is seen to be done, and that has the benefit of reinforcing social cohesion.

With this argument we return to the good of learning. Values, meaning, the sense of what unites a society, do not exist in a library or a database, but in persons who are capable of knowing and willing. Society’s values may be vindicated, but again we need to think carefully about who we are referring to when we talk about ‘society’. Are these values in which Joe and Alison share, even if only inchoately? Or, if they do not already share in them, can their conviction, sentencing and punishment facilitate their acquisition of these values?

The shared values by which the solidarity of society is sustained are indeed common goods, goods in common. And punishment can be a good for all, a common good, if it successfully communicates shared values to those whose actions violated them.

Maybe this seems like idealism or utopianism; however, the previous sentence contained a big ‘if’. We are aware how slim the chances are that our penal system will inculcate and reinforce the sharing by all, including our fellow citizens being punished, in collective meanings and values. Slim, because so much else works against it.

A major counter force is precisely the widespread attitude that through this punishment, society is protected and secured against individuals who are seen primarily not as *members of society*, but as *threats to society*. This divisive effect of this way of thinking shatters a sense of communality. The result is that a double and contradictory message is given: we say to those we convict and sentence both, ‘we want you to share with us in our values and sense of belonging together’ and, ‘we see you as a threat to our society’s security and wellbeing’. Both have a place, but without considerable effort and investment of resources to make the first a reality, the second message will always override it.

Another major counter force is the prevalence of other messages that society communicates to those who are candidates for crime. Any sign that the penal process intends to foster solidarity is contradicted by the experience of exclusion on so many levels. The high correlation between crime, especially crime against property, and social deprivation should make us wonder about the perspectives of those who typically resort to crime. Poverty, lack of educational achievement and the disadvantages arising from troubled familial relationships can all contribute to a sense of missing out and not having a stake in social prosperity. It would not be surprising, then, if many of those from deprived backgrounds who are sent to prison experience their sentence as another gesture of rejection and further exclusion. Effective communication in such circumstances requires more than the lofty words about vindicating society’s values and restoring the balance of fairness among all its members. There can be a big difference between what is said and what is heard.

The two criteria for the common good – that nobody should be excluded from the benefits of society, and that human flourishing ought not to be excluded from the aims of society – when applied to the context of our penal system, require of us both advocacy on behalf of the excluded, the marginalized and forgotten, and an effort to say what the whole is, beyond a summation of the parts. We have to be able to speak about those elusive values of society: the vision of development and complete fulfilment of every person and the whole person.

In advocacy on behalf of any individual or group, the risk is that the whole becomes invisible as the interests of one part are placed in competition with the interests of another part. If punishment is seen as protecting one part against the threat posed by another part, the need to foster and secure the whole is forgotten.

How do we speak of that whole? We need a public articulation of the benefits and burdens, rights and duties, which are essential to our membership of society. It is clear that we cannot rely on a shared understanding of these matters. All the more reason, then, to encourage a public debate on these issues. We need to know what it is that holds us together.

Whatever are the shared meanings and commitments which hold together our social order, when understood as a balance of benefits and burdens they are easily undermined by media comment and populist political grandstanding which underlines divisiveness, difference, 'us' vs. 'them'.

But of course, a shared understanding of the common good would not be sufficient on its own to guarantee the justifiability of our penal system. Until our espoused values are translated into effective programmes to incorporate Joe and Alison into the balance of benefits and burdens which constitutes our society, our penal policy will continue to be dominated by the objective of protecting those who are included in the social fabric from those who are effectively excluded.

That is why the presence of Christian men and women accompanying Joe and Alison and their families and many others like them makes it evident that there is a solidarity more fundamental than any divisions. While there is always the danger of mere lip service to espoused values, especially in the hollowness of political rhetoric, the truth of our common humanity and of our goods in common is affirmed in action with and on behalf of the excluded.

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