

American Criminal Justice Philosophy: What's Old—What's New?

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Introduction

Contemporary movements in criminal justice, such as community-oriented policing and certain community corrections strategies, have been portrayed as new innovations, having little historical precedent. While specific programs are genuinely original, criminologists have advocated the importance of proactive and preventive programming for decades. Toward that end, the criminal justice system is currently integrating its adversarial approach to the identification, apprehension, and correction of offenders with an increased service orientation by emphasizing community involvement. As such, criminal justice scholars and activists are encouraging officials to cultivate community partnerships to solicit citizen input.

The following review of literature explores the idea that the underlying objectives of the early American criminal justice system remain largely unaltered. What has changed is public attitudes about crime, police organization, police and public perceptions about each other, and the complex relationship between politics and justice initiatives. Community policing and restorative justice paradigms are briefly discussed. The specifics are less important than the guiding philosophy behind their growing popularity. While the political rhetoric surrounding these “new” programs envisions them as novel approaches, a review of the extant literature suggests that they are nothing more than modern adaptations to earlier innovations. The authors do not intend an exhaustive historical account of either policing or corrections. Instead, they hope to provoke more comprehensive thought by briefly examining criminal justice change from a socio-historical perspective.

Police: A historical review

The impact of European ideals upon early American policing is evident (Uchida, 1993; Walker, 1980; Carter & Radelet, 1999); however, unlike English protocol, original attempts at policing within America were characterized by direct citizen participation. This may be due to philosophical beliefs regarding governmental intervention and the slow, often hesitant, establishment of colonial law enforcement agencies. Colonists were attempting to escape a strong, often tyrannical government; therefore, they natu-

rally valued individual freedom, discretion, and participation. Due to this vacuum in official authority, individuals participated directly in criminal justice activities (Walker, 1980). Uchida (1993: 20) notes that an organized police force was viewed with suspicion due to its potential for “despotic control over citizens and subjects.” However, as the colonies became more permanent and socially complex, the need for a more organized style of policing developed.

An early forerunner of contemporary policing was the night watch system, and as the name suggests, it was nothing more than night-time patrol. New York began experimenting with a night watch as early as 1684 (Walker, 1980; Uchida, 1993; Carter & Radelet, 1999; Lyman, 1999). These sentry men were primarily charged with patrolling the city for fires, suspicious individuals, riots, or other incidents requiring immediate intervention. This system was eventually modified to include a day watch component. Thus, the first forerunner of the modern police force emerged. Walker (1980:59) credits these early attempts with engaging in “preventive patrol,”—arguably, the first attempt at proactive policing within America. Another example of early policing can be found in the use of “frank pledges” which compelled all males twelve years of age and older to serve in a quasi-police role. These were small groups of citizens that vowed to deliver to court any group member committing an unlawful act. According to Uchida (1993: 17), this style of community policing became increasingly popular in England after 1066.

While these two approaches were primarily designed to prevent and control crime, they also served to reinforce the value of community involvement in law enforcement activities. Likewise, when reviewing the early epoch of American policing, it can be seen that police were involved in a wide variety of social service tasks including providing food to the hungry and shelter to the homeless (Uchida, 1993: 22; Kelling & Moore, 1995: 7).

It was during the reform era (beginning in the 1930s), under the direct tutelage of the Federal Bureau of Investigation, that professionalism and technology began to become paramount. The Wickersham Commission, under President Hoover, also advocated changes in policing envisioned as efforts to professionalize law enforcement (Carter & Radelet, 1999; Lyman, 1999). Departments nationwide followed suit and began to adopt a “professional” style of policing. This movement was characterized by a reduction of the social service role and an official emphasis upon crime control and offender apprehension. Therefore, police began to rely upon arrests and percentages of crimes

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cleared to measure effectiveness (Walker, 1980: 191; Kelling & Moore, 1995: 14). This shifted the human approach to a much lesser profile in formalized policing (Kelling & Moore, 1995:12). Walker (1980:135) states that this model remained dominant and unchallenged until the 1970s. However, he has also noted (1980:189), that “while the police role was redefined toward crime fighting, day to day police work increasingly involved miscellaneous services to the public.” Reiss (1971) and Walker (1980) both conclude that during the 1960s, as much as 80 percent of police work was consumed by noncriminal matters. This suggests that even during an era characterized by growing police professionalism and isolation, delivery of informal policing tasks remained the norm.

Contemporary policing issues

Those familiar with the history of American policing are aware of the many challenges inhibiting the effective application of law enforcement. These include organizational (fiscal restraints, staffing problems, and large patrol districts), ethical, and socio-legal problems. Increasingly, police have been placed under closer scrutiny due to high-profile incidents such as the Rodney King beating, the Los Angeles riots, and more recently the flurry of misconduct complaints landing on the New York City Police Department. Substantial criticism has involved the treatment of the young, poor, and those of minority status. These various problems have subjected nearly all police agencies to critical examination in areas of public relations and citizen contact. Likewise, police administrators across America are currently concerned with managing public relations, often accompanied by some degree of community-oriented policing.

The 1970s marked a time in which the public, somewhat dissatisfied with police services, increasingly demanded that the police take a proactive and personal approach toward community issues. This desire is summarized by Meese (1993), who proposes that the police should be more than merely reactive, responding to crimes already committed. It is important that law enforcement develop a proactive posture toward community disorder, social problems, and quality of life issues.

In response, police establishments began to abandon a strict “law enforcement” approach, replacing it with a greater “peace and service” orientation. The latter, of course, embraces a more social service and holistic approach to policing. This shift away from a strict crime control approach to one that encourages citizen involvement in police operations, and police involvement in community activities, has been referred to as strategic, problem solving, and neighborhood oriented policing (Meese, 1993). Kelling and Moore (1995) have noted that this movement signifies a new era, distinguishable from the political and reform eras.

Central to community policing is a belief that the police can more effectively achieve their basic goals of crime prevention and control through the assistance and support of

the community (Meese, 1993). By establishing partnerships with other institutions like families, schools, churches, and neighborhood associations, police potentially widen their ability to identify and solve community problems. This approach envisions the importance of peace-keeping and social service tasks as equal to enforcement activities.

Corrections: A historical review

Many of the major shifts in correctional ideology parallel changes in approaches to law enforcement. Beginning in the 16th century, “workhouses, or houses of correction,” spread widely over northwestern Europe (Shichor, 1995: 23). While little is known about these early institutions and their practices, anecdotal accounts present them as an attempt systematically to address and rectify increasing crime and disorder problems. Walker (1980: 16) adds that these institutions resembled modern prisons in their attempts to rehabilitate the offender and make him or her a productive member of society. Then in 1576, the English Parliament passed an act providing for the establishment of the “bride well” (Shichor, 1995). These institutions were places where vagrants, prostitutes, and offenders were instilled with rehabilitative rationale and provided rudimentary skills training (Welch, 1996: 44). Shichor (1995: 24) identifies these institutions as early forerunners to reformatories and prisons. Likewise, Welch (1996: 44) recounts that these institutions formed the basis for rehabilitative rationale and the work ethic. Philosophical statements like, “It is of little advantage to restrain the bad by punishment, unless you render them good by discipline,” reverberated this sentiment (Walker, 1980: 42). According to Walker (1980: 66), incarceration was meant to rehabilitate the offender through “creating a better environment, separating the individual from harmful influences and subjecting him to a corrective prison discipline of solitude, hard work, and religious study.” Morris (1998: 32) concludes that the penitentiary was intended to reform criminals by “isolating them from each other and other infectious diseases.” Thomas (1987: 60) states that this rehabilitative ideal began to take root in Europe long before the 17th century and the colonization of America. Likewise, he states that an “argument can be made that enthusiasm for rehabilitation as a major objective of penal sanctions dates back to the time of Plato or before” (Thomas, 1987: 91).

Colonial America adopted many of the same European philosophies and practices. However, Walker (1980:12) notes that colonial criminal codes were often more lenient in their punishments than were their English counterparts. This comparative leniency may indicate an early philosophical difference existing between the colonists and England: a perception that English sanctions were more punitive than corrective. Thomas (1987: 66) recognizes this and states that well before the Civil War, sanctions were being applied within America’s prisons with the conviction that they could serve the goal of crime prevention. Toward the end of the 18th century, the penitentiary arose (Shichor, 1995: 26). As the name implies, the penitentiary had as its main objectives

repentance, penitence, and rehabilitation (Shichor, 1995: 26; Walker, 1980: 65).

Much like the blind men of Hindustan who gave despairingly divergent descriptions of an elephant, penologists also maintain individualistic ideals regarding correctional objectives. Most researchers, however, have consistently identified four goals. For example, Barak (1998: 75) lists these goals as revenge, retribution, deterrence, incapacitation, and rehabilitation. Shichor (1995: 65) identifies these same four goals but substitutes retribution for revenge. Wilkinson (1997) identifies the same four, but substitutes vengeance for retribution. Thomas (1987: 51) reduces the number of correctional goals to three, including retribution, crime prevention, and rehabilitation. The designation of correctional objectives suggests only a slight difference in semantics, not in overall philosophy. Morris (1998) notes that whether prisons are considered tools of retribution or rehabilitation, most people believe that they fail to achieve either goal. He states:

Instead, the institution has unintentionally spawned a subculture that is antithetical to both goals—and it has become clear that the beliefs and behavior of inmates are far more likely to be shaped by this subculture than by prison and its programs (Morris, 1998: 8).

Thomas (1987: 85) notes that the life and death struggle of rehabilitative efforts may be the single most pervasive issue that has occurred in corrections over the past decade.

As already observed, one objective of the American correctional system has traditionally been rehabilitation. Historically, a belief in the innate goodness of humanity and one's ability to change have been valued in American correctional policies. This can be seen in the implementation of indeterminate sentencing, probation, and parole (Thomas, 1987: 93). Rehabilitation was strongly emphasized until the early 1970s when the United States began to experience unparalleled increases in crime rates and prison commitments (Shichor, 1995: 9; Blakely, 1997). Morris (1998: 8) observes that, due to overcrowding, correctional facilities are increasingly de-emphasizing their original mandate of offender rehabilitation, focusing instead on maintaining facility control. To manage the ever-increasing inmate population, rehabilitative efforts—which provide ample opportunity for inmate conflict, divert fiscal and personnel resources, and are labor intensive—increasingly become secondary to the orderly operation of the facility (Cullen, Latessa, Burton, & Lombardo, 1993; Thomas, 1995). Conditions associated with overcrowding and the violence that it spawns (Montgomery & Crews, 1998), are increasingly convincing prison officials that a strict model of incapacitation might be necessary. Contemporary correctional efforts appear less concerned with initiating inmate change and more interested in maintaining facility control by limiting opportunities for inmate misconduct. However, amidst the emergence of punitive, crime-control ideology, inmate enhancement and life skills programming remain central to correctional practices.

In the recent past, it appears that, much like the police, corrections has been guided by a strict crime control man-

date. This is reflected in that large segment of society that values incarceration of offenders over the remaining three goals (Blakely, 1997; Briscoe, 1997; Wittenberg, 1997). The current "get tough" response to crime is resulting in a growing reliance upon confinement strictly as a punitive measure (Cullen, Latessa, Burton, & Lombardo, 1993; Blakely, 1997; Briscoe, 1997; Wittenberg, 1997; Montgomery & Crews, 1998). The Congress' "Safe Streets" and "3-Strikes You're Out" bills as well as the President's "War on Crime" and "Get Tough" campaigns clearly indicate a more punitive ideology (Blakely, 1998; Montgomery & Crews, 1998). Additionally, the popularity of "Truth in Sentencing" laws requires offenders to serve increasingly longer terms of confinement (Cowley, 1998; Montgomery & Crews, 1998). In a recent study conducted by Cullen, Latessa, Burton, and Lombardo (1993), rehabilitation was ranked as a secondary goal by a large percentage of prison administrators. Wittenberg (1996: 46) reports that a substantial number of Americans currently prefer punishment to rehabilitation. Thomas (1987: 99) notes that this "get tough" response is culminating in an organized "anti-rehabilitation" trend, emphasizing the protection of society through incapacitation (Shichor, 1995: 10; Montgomery & Crews, 1998).

This apparent shift in goals has prompted Albanese (1996: 558) to state, "We just can't seem to punish enough." Wilkinson (1997: 100) observes that this approach has often been at the expense of both the offender and community. Shichor (1995: 10) states that this movement has culminated in an organized "anti-rehabilitation" trend emphasizing the protection of society through incapacitation. These scholars concur that the current punitive approach within corrections lacks any identifiable objective, other than punishment itself.

Contemporary correctional issues

A new paradigm in criminal justice has recently emerged. The restorative justice paradigm envisions a more proactive criminal justice system emphasizing preventing crime in the early stages, protecting society, and relying on incarceration as a last resort (Hahn, 1998; Bazemore & Umbreit, 1997). This philosophy advocates a more integrated approach to justice, encouraging community, victim, and offender participation. Restorative justice involves long-term commitment to systemic changes (Umbreit, 1995) and builds on existing programs like victim-offender mediation, restitution, community service, and police-community partnerships (Bazemore & Umbreit, 1997; Hahn, 1998).

To pursue rehabilitation again, corrections is currently experimenting with a number of restorative justice programs. At the nucleus of this movement is a belief in an offender's ability to change, and an expectation that offenders will accept responsibility for their actions. In a recent study conducted in Vermont, Gorczyk and Perry (1997: 79) report that 93 percent of that state's population wanted violent offenders to serve their entire sentences with no opportunity for early release. But these same researchers also

found that Vermonters expect the system to operate with specific concern for future behavior. While these findings cannot be generalized nationwide, they may indicate a desire by many for proactive and rehabilitative measures. Maryland, too, has implemented a restorative justice approach to its juvenile justice system. This program has the expressed objectives of increasing "public safety," and offender "accountability," while initiating "rehabilitative" measures (Simms, 1997).

A comparison of proactive policing and proactive corrections

After reviewing the historical objectives of policing and corrections, and current attempts to implement community policing and restorative justice programs, the question persists whether these philosophical approaches are new, or an attempt to return to earlier criminal justice pursuits. While it may initially appear unnecessary to make this determination, there are two compelling reasons to do so. First, a strong grounding in historical precedent is essential for the application of criminal justice and permits contemporary practitioners to make intelligent and informed decisions about crime control strategies and tactics. Secondly, this determination permits contemporary practitioners to further refine their approach to the ever-changing nature of criminal justice. This, in turn, allows for a more informed perspective on the evolution of correctional ideologies.

It appears that the early criminal justice system was originally more forward-looking than its contemporary counterpart. This is evidenced in the early establishment of peacekeeping and rehabilitative goals. While we are less interested in the methods of early justice than in the philosophical basis for their implementation, evidence indicates that early practitioners wished to cultivate a strong interpersonal relationship with society.

Likewise, with the advent of community policing, it appears that American policing is attempting to return to its original functions of public service and crime control. Faced with increasing crime rates during the reform era, police were largely unprepared to address social problems effectively. Therefore, police agencies adopted a defensive position of quick response times and the ready application of force. Rising crime rates also began to drive a wedge between the police and community. Increasingly, the police were being relegated to responding to incidents rather than intervening proactively. This encouraged society to view police efforts as unproductive and uncaring, and police to view communities as uncaring and nonsupportive.

Increasing crime rates and a defensive orientation readily lent itself to an adoption of military-style structuring. As can be expected, this further weakened the peacekeeping mandate of police agencies. Meese (1993) and Walker (1980) have noted the general negative impact of the military structure upon police agencies. Further, the inherent nature of military structuring stifled individual discretion and creative problem-solving techniques. Police departments began to

departmentalize, and internalize operations. Society also began to view government apprehensively. With growing discontent with government and police services, anti-government public sentiment emerged. This was compounded by the unpopularity of the Vietnam war and skyrocketing claims of police brutality.

The increased reliance by police agencies on the automobile also took its toll. Walker (1980) credits the introduction of the automobile with isolating the police officer from the community and ultimately increasing the officer's adversarial relationship with new segments of society. While the car allowed a rapid response to calls for service, it ultimately removed officers from the neighborhood, relegating them to the confines of the cruiser. Motorized patrol demanded that an officer be reactive rather than proactive. Along with the automobile came new forms of communication, which inhibited personalized contact with the public, and instead, encouraged a reliance on other police personnel such as the dispatcher. The dispatcher became the source of information for police personnel and effectively replaced face to face contact with citizenry.

Likewise, corrections, which was largely a victim in this crime control approach, increasingly emphasized incapacitation. With increases in arrests, convictions, and imprisonments, they too were unprepared to continue emphasizing service through treatment programs. Morris (1998: 8) observes, "Instead of concerning themselves with the original purpose of the institution, prison officials are forced to focus almost exclusively on simply keeping control over their wards." Between 1970 and 1995, the number of inmates being housed in state and federal prison more than quintupled (Morris, 1998: 7). This "explosion" led Morris to state: "America's prison populations have been growing at such a rate that prison authorities may soon be forced to post 'no vacancy' signs outside their gates." In an attempt to "tread water," efforts to impart skills and increase education became secondary to the safe management of large inmate populations (Morris, 1998: 8). Because of overcrowding and increases in prison violence, correctional officials increasingly limited or eliminated activities not seen as absolutely necessary. The 1970s and early 1980s became known for prison riots like those that ravaged Attica and the Penitentiary of New Mexico. These and similar events convinced prison officials that a strict model of incapacitation might best suit criminal justice policy. And yet, through all these changes, America's penal system did not totally abandon its original intent, and increasingly began to use terms like "correctional officer," "correctional center," and "departments of corrections." While many argue, like Thomas (1987: 96) that a change in terminology does not necessarily imply a change in practice, this change may indicate an attempt to identify with an overall objective.

Conclusion

The historical record does not support community policing and restorative justice as contemporary innovations, but

as attempts to return to an earlier model of justice emphasizing people, discretion, and a belief in the inherent goodness of humanity. Though criminal justice perspectives have gained and lost momentum due to social change, the symbiotic relationship between the various objectives ensures a criminal justice system that places emphasis on both reactive and proactive strategies. Therefore, contemporary proactive justice is part and parcel of the larger philosophical basis of the modern criminal justice system. In sum, it is the various interpretations of historical events in criminal justice that suggests that what is *old* (proactive or reactive) will eventually become *new*, again and again.

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