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## **<sup>1</sup>Democratic experimentalism and the futures of crime control: resources of hope for democratic times**

Ian Loader and Richard Sparks

“Down the road, it is possible to visualize a kind of social science that would be very different from the one most of us have been practicing: a moral-social science where moral considerations are not repressed or kept apart, but are systematically commingled with analytic argument, without guilt feelings over any lack of integration; where the transition from preaching to proving and back again is performed frequently and with ease; and where moral considerations need no long be smuggled in surreptitiously...but are displayed openly and disarmingly. Such would be, in part, my dream of a social science for our grandchildren.”

Albert Hirschmann, “Social science for our grandchildren”, in *Essays in Trespassing*, 1981

### *Introduction*

The plaintive cry of supporters of lesser English football teams down the ages has been: ‘It’s the hope that kills you’. Riffing on this theme, in one of his cunning but rather dismal espionage stories, the novelist Mick Herron takes this down to another circle of purgatory: ‘It’s knowing it’s the hope that kills you that kills you’ (Herron, 2016: 9).

In recent times, many commentators, not least those writing as professional criminologists in the privileged yet frequently pessimistic circumstances of the global North, have found their view of progressive democratic aspiration blocked by the long shadows of mass incarceration, pervasive surveillance, persistent controversies in policing (such as those concerning stop and search practices) and other seemingly immovable objects. Lately those all-too-obdurate realities in the realm of crime and punishment have been compounded by the increasingly intemperate and divisive tone of electoral politics and political campaigning in general. The return to prominence of a ‘far’ right (whether in its more up to the minute ‘alt-’ version, or in the traditional guises of street-level agitation and violence), and the apparent willingness of some ‘mainstream’ political parties and prominent politicians to court that constituency through projective hostility towards

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migrants and other minorities, has placed authoritarian populism back in the spotlight in many countries. Sometimes it feels that, in a manner somewhat similar to those glum football fans or Herron's rather unsuccessful spies, many members of our tribe – along with other liberal and progressive voices - have been subdued into despondency (D. Brown, 2013).

And why indeed would they not? If crime and punishment are usually quite grim materials, the last few decades have given us no shortage of additional reasons not to be cheerful. Since in consequence many of the most celebrated and persuasive of contemporary commentaries on these subjects have been marked in varying degrees by cynicism or despair it becomes difficult to break step. No one wishes to be accused of naivety. Our own cautiously positive reflections on the future of scholarly engagement in these fields in the closing pages of our book *Public Criminology?* (Loader and Sparks, 2010) were described by one reviewer as "Quixotic" (Hammersley, 2013).

We beg to differ, of course. We do not do so, however, because we are somehow deceived as to the darkness and dangerousness of the world in which we live, or as to the scale, depth and intensity of many of the problems that scholars of crime and punishment confront. The response of despair is by no means ungrounded, unwarranted, or even necessarily disproportionate, though it can on occasion give way to modish forms of hype. There is also, we freely acknowledge, an obligation on critical scholarship to document and expose violence, oppression, abuse, exploitation, obfuscation and ideological mystification wherever it finds them, and they are abundant. So, we begin by sketching a few of these grievous features of the contemporary scene and the nature of some of the responses that they have evoked amongst careful and perceptive observers.

This however is not our primary aim. Indeed, we argue, in itself this would hardly be a contribution because left at that it would simply reiterate the overwhelming content and tone of what have become over the last several decades conventional positions. Rather, the aim here, and throughout our recent work (Loader and Sparks, 2012, 2015, 2017) is to develop the claim lodged at the end of *Public Criminology?*, namely that a 'better politics of crime' is indeed feasible and to outline more closely some of what we understand by this. To be clear, we do not want to 'brand this idea, if by that one means that we want to own the idea of a better politics or stipulate what others should believe by it. Rather, we have

always intended to present an “argument in favour of argument” (Loader and Sparks, 2013), and thereby to suggest that carving out greater space for deliberation and democratic decision-making is in itself intrinsic to what that better politics could be. What we do want to insist upon, however, is that whatever any of us may believe constitutes the better politics in substantive terms, the effort of seeking to define and argue for it is an activity worth pursuing. Against the grain of our times, therefore, we want to present an argument for reaching beyond the crises and disappointments of the present in order to seek to define some more creative possibilities.

In his work in the late 1980s, after almost a decade of the ascendancy of Margaret Thatcher, and not long before his own death, Raymond Williams chose to define his intellectual project as the search for ‘resources of hope’ (Williams, 1988). It is indeed clear that this project sustained him throughout his working life. Some twenty-five years earlier Williams wrote of the hope ‘that [humans] should grow in capacity and power to direct their own lives - by creating democratic institutions, by bringing new sources of energy to human work, and by extending the expression and exchange of experience on which understanding depends’ (Williams, 1962: 125).

In this paper we begin to examine what a form of democratic hope of the kind that Williams envisioned might look like when applied to the possible futures of crime and justice. In so doing we draw upon some vigorous but less-widely consulted traditions of thought – in particular, the ‘democratic experimentalism’ advocated by pragmatist thinkers from Dewey to Unger – in order to argue that, even starting from here, more refreshing and incisive ways of engaging with contemporary problems can be imagined. Within recent democratic theory, some of the most relevant contributions are those that refocus away from the traditional concerns of legitimation through the enhancement of *process* (the emphasis of the ‘procedural justice’ literature, for example) in favour of *participation* at what Murray Bookchin (2000: 346) once called ‘the molecular level’. We argue that arguments for democratic participation can be pressed further than is often acknowledged, and draw upon examples of experimental democratic practice from various parts of the world.

*Beyond Melancholia, in 'Iron Times'*

In an essay originally written in 1999 in honour of Stuart Hall, Wendy Brown argues for resistance to what she terms, following Walter Benjamin, 'Left melancholia'. Brown refers here to what she regards as a form of self-absorbed attachment to the past. It is, she says, a response to present reverses - to the discovery that history is not necessarily on one's side, after all – that dwells in nostalgia, reiterating old slogans, perhaps in increasingly ironic and hopeless form rather than facing the challenge of what to do next. She concludes that:

What emerges is a Left that operates without either a substantive critique of the status quo or a substantive alternative to it. But perhaps even more troubling, it is a Left that has become more attached to its impossibility than to its potential fruitfulness, a Left that is most at home dwelling not in hopefulness but in its own marginality and failure... (1999: 20)

Framed in this way, this does indeed sound like a poor substitute for action. One might, however, extend a bit more charity to those many people who find the question of which way to move increasingly obscure, and who come to feel that pathways towards effective action are often blocked. It far exceeds the scope of this essay, or our own capacities, to document the aversive and dismaying aspects of the present political moment in many parts of the world. One can *almost* become habituated (or, you might say, one can become almost too habituated to it) to a world in which 'public opinion' in rich countries appears to have been divided into opposing blocs of roughly equal size, but in which the activity of politics finds no means of moving beyond the resulting impasse. One can *almost* get used to a circumstance in which complex political and constitutional questions are reduced to yes/no binaries, only to discover that the outcome satisfies no one. One can certainly learn to expect that many urgent public questions, perhaps especially those that concern crime and punishment, will come to be rendered very often in the form of clamorous populisms,

leaving reduced space for thoughtful deliberation, let alone for creative thinking about long-term change. What is apt to induce melancholia, however, is the debilitating awareness that neither you, nor it seems anyone else, seem to have much notion what to do about any of it. Zygmunt Bauman reminds us of Sartre's phrase for things that feel like they might overwhelm you but which are too indefinite yet too pervasive to shake off. Such experiences in Sartre's terms have the quality of *sliminess (le visceux)*: 'If I sink in the slimy I feel that I am going to be lost in it' (Bauman, 2002: 152).

This, evidently, is not the first moment when progressive thought and action has encountered severe and aversive setbacks. Indeed, in many parts of the world, this has been its usual condition (generally with consequences far more dangerous than merely that of being likened to Don Quixote). Writing at just such a moment – when the British 'post-war consensus' was about to fall before the ascendancy of Margaret Thatcher – Stuart Hall and colleagues contemplated what happens when circumstances bring political leadership and cultural authority into particular question:

Such moments signal, not necessarily a revolutionary conjuncture nor the collapse of the state, but rather the coming of 'iron times'. ... Domination will be exercised, in such moments, through a modification in the modes of hegemony; and one of the ways in which this is registered is through a tilt in the operation of the state away from consent and towards the pole of coercion. It is important to note that this does not involve a suspension of the 'normal' exercise of state power - it is not a move towards a fully exceptional form of the state. It is better understood as – to put it paradoxically – an *exceptional moment* in the *normal* form of the late capitalist state. (Hall, et al., 1978: 217)

The kinds of accretions of anxiety contemplated here will not have the discrete and somewhat arbitrary character sometimes associated with the idea of 'moral panic'. Indeed, Hall et al. suggest that one of their concerns is to re-imagine 'moral panic' as 'one of the forms of appearance of a more deep-seated historical crisis' (*op. cit.*: 221). Thus, they suggest, one can sometimes find that a 'succession' of panics around various topics of public

concern give way to a 'mapping together of moral panics into a general panic about social order', one in which there is a 'jumpy and alerted control culture' standing ready to react to signs of trouble. Some elements of our 'jumpy and alerted' culture nowadays appear to include at least the following sightings:

- 1) In the aftermath of the financial crash of 2008, and the decade of austerity that ensued in many countries, a range of social divisions seem to have been exposed and exacerbated. In Britain these include those between 'liberal' metropolitans (now commonly tagged with the epithet 'elite', whether or not the individuals concerned are in fact holders of power in any meaningful sense) and a disparate array of antagonists. The latter are widely held to include those who are older, who reside in suburbs or towns (Jennings et al., 2017), and who are in various ways struggling, 'striving' or otherwise living more precariously than they did before. People in these groups increasingly have attributed to them equally intense resentments towards the elites and towards threatening or underserving others, especially immigrants. Mutual attributions and stereotypes abound. Research on British public opinion following the vote to leave the European Union in June 2016 finds that amongst the clearest predictors of people having voted to leave are their answers to questions on discomfort with multiculturalism and on the general efficacy of political institutions (British Social Attitudes 34, 2017; Menon 2018).
- 2) More generally, and internationally, there arises a clear opportunity for populist political actors to invoke and catalyse fear and resentment. It is all too apparent that this results (especially in the hands of such skilled and ruthless operators as Trump, Orban and Bolsonaro) in an intensely polarized and uncivil political arena. It requires the routine mobilization of hostility towards out-groups, including both domestic political opponents and foreigners; and it calls forth the frequent deployment of rhetoric favouring increased police powers, fewer constraints on the use of lethal force, more incarceration or other kinds of immobilization of enemies, and so on.

- 3) It is in this sense no surprise – albeit paradoxical – that a heightened politics of sovereign authority comes to the fore at a juncture when global forces chronically deplete and obscure the Leviathan’s claim to autonomy, capacity and potency. Bauman argues that under these conditions much politics is display (of patriotic fervour, anger or outrage). These displays come in spasmodic bursts, he suggests, ‘after the pattern of a swarm – a massively copied style of individual behaviour – rather than that of the coordinated conduct of a stable community’ (2002: 7). Bauman’s account thus presciently argues that our need to push seemingly threatening others back is itself an effect of ‘the endemic porosity and frailty of all boundaries’ (*ibid*: 13).
  
- 4) Many of the pathologies and temptations of this scene seem to spring from uncertainty and powerlessness in the face of uncontrollable fluidity, obscurity and incessant change (Beck 2000; Castells 2000). Yet Bauman argues the very politicians who may exploit this situation, and to whom some of us turn to make our countries great again are, for many purposes, bystanders too. They too are, in his view, ‘unprepared and confused’ (2002: 16). The disconcerting prospect is one of feeling oneself to live in a world where ‘everything may happen, yet nothing can be done’ (*ibid*: 17). This fixity is the ironic source, in Bauman’s account, of the seemingly overwhelming temptation on political actors to simplify and to over-bid in respect of crime and security questions.
  
- 5) The idea of the ‘swarm’ is a brilliant premonition of the massive change in discourse and social participation engendered by the internet and especially by social media. It is also all too tempting to assign this too to the doom-laden list of factors on the side of the irrational, the emotive and impulsive, the tribal and divisive in contemporary political culture – and of course the grounds for doing just that are abundant . But there is of course another face to that question – one that would emphasize the scope for empathy, discovery and participation that lies in these formats and the ones that will succeed them. It is on precisely these points that our argument in this paper turns.



It is obvious that moments of populist arousal such as those we have been living through recently are problematic ones for the very idea of rational democratic discourse on topics of high contention, let alone for the influence of forms of knowledge that depart from common sense or that appear tainted by association with progressive politics. For this reason, as we argue below, many earnest and conscientious people working in the fields of criminology, criminal justice and security have at best ambivalent feelings towards democracy, and in particular no great faith in the prospects for democratization in these matters. Our view is that precisely the reverse is the case. Our condition is so serious – and the condition of contemporary democratic institutions so parlous – that nothing can salvage it other than a radical intensification of democratic discourse itself. Identifying the potential spaces for deliberation, and the most appropriate forums for meaningful participation by all those affected by decisions in respect of crime control and punishment (which is everyone), have become in our view the most urgent tasks facing scholarship on these questions now.

#### *Between liberal and radical despair*

It has been a central task of criminologists and other students of crime and punishment over recent decades to document the growth and reach of the penal apparatus and of other aspects of the criminal justice state, especially in the United States, the United Kingdom and other parts of the world, notably in Latin America (Iturralde, 2010; Sozzo, 2016). We are in no doubt that researching and explaining such developments has been and remains a core civic contribution of these fields of work. The most flagrant case, of course, has been that of the United States where the sheer scale of mass incarceration, its specific practices and cultural effects, and its overwhelming racial disproportionality have compelled critical attention. Meanwhile, whilst the notion of mass incarceration itself has often been over-extended and deployed in contexts where its specific application is more dubious, a wider politics of insecurity and severity has resounded through many parts of the world.

Our purpose here is not to rehearse the well-known causes and collateral effects of these developments so much as to note their often-disabling consequences for progressive responses and for creative and future-focused thinking about what is to be done, and especially about practices, institutions, and discourses that might succeed those that

predominate now. The circumstances that we have on various occasions described as involving the *heating-up* of penal politics (see in particular Loader and Sparks, 2010: ch. 3), and of public discourse on crime generally, have thus ironically had a *chilling* effect on the capacity of many observers to intervene or to envision.

Let us then begin by attempting briefly to encapsulate some of the features of this scene that have tended to inhibit those forms of opposition or resistance that might have developed more programmatic alternatives, leading instead to a quite widespread sense of inevitability. For the sake of brevity – and in the hope that it does not seem too arch a device – we might say that many of these inhibitions also take the prefix *in-*. A period in which incarceration at the mass level became relatively naturalized was clearly also one marked by certain *insecurities*. On some views, these had their origins in grand social transformations – the hollowing-out of traditions, national sovereignties and the certainties of place and belonging by globalization and their displacement by an altogether less reliable and more fluid habitat (Giddens, 1990; Bauman, 2002; Ericson, 2007). Commentators influenced by these ideas suggested (correctly, in our view) that these upheavals tended to give rise to a suspicion of *incapacity* on the part of nation-states. In the face of such exposure of their limited powers to influence events or stem global flows of people, images and things they succumbed to the temptation to disguise their structural weakness by demonstrative displays of potency: putting down demonstrations, putting people in prison and other shows of strength (Garland, 1996). This naturally also called into question the authenticity of the politics of crime and punishment. If the real objects of such actions were always in some sense ulterior to their ostensible ones then how could they be other than *insincere*?

Other critics emphasized that the growth of incarceration (and hence an apparent preference for expulsion and incapacitation over the harder work of inclusion or remediation) was often associated with a strategy of *inequality*. Thus, the ideological ascendancy of the ‘free market’ suggested a sharper division between those equipped to thrive (the entrepreneurial, the naturally talented, the confident risk-takers) and the rest. It also implied greater willingness to see them come to widely different fates. The paring back of the welfare state both undermined the institutions that might provide for less aggressive

forms of social intervention and control and refocused its primary attention on security and order (Wacquant, 2009).

For many observers in these and other camps the ground from which to launch any form of defence of criminal justice institutions, and especially of the penal system, would always in any case be both narrow and unstable. Their foundations, especially but not only in the United States, were already riddled by their history of racial injustice; and in many places in the world by the association between the police and anti-democratic regimes and by corruption. Even in the absence of such flagrant abuses, orthodox criminal justice stood accused at best of *ineffectiveness* and at worst of *iniquity*.

Amongst the results of these engagements, we suggest, have been the development of sophisticated, indeed often compellingly persuasive, forms of discourse that are often well designed to comment upon what they observe and to trace its sources and effects but hardly equipped at all to imagine alternatives. We are by no means the first to make such a point. Quite a long time ago John Braithwaite asserted that 'Criminologists are pessimists and cynics' (1992: xx) (a view that is actually quite a lot more sweeping and downright than we would support ourselves). Pat O'Malley notably identified a tendency towards what he termed 'criminologies of catastrophe' (2000). To catastrophize, in O'Malley's view, is to lose nuance and to fail to discern any sense of possibility in current forms of change. Its counterpart, moreover, is nostalgia (if things only go from bad to worse they must by definition have been better in the past). Lucia Zedner (2002) argues that amongst the 'dangers of dystopias' in thinking about crime and punishment is that of slipping from critique to mere commentary, relentlessly piling up the evidence that things really as bad as we always thought and that nothing much can therefore be done.

In our view such dangers take different forms amongst commentators (or critics) of different theoretical outlooks and political commitments. For some of those steeped in critical traditions of criminological inquiry, and related forms of social theory, the very *grandeur* of some of the transformations that they identify can be disabling. One may be able to critique certain aspects of globalization but one can hardly imagine undoing it, any more than one can turn the clock back on 'late modernity' or easily see how to unravel a

'risk society' – or rather perhaps, the claim that one can do this seems to have been appropriated by the populist right with its castigation of liberal 'globalists' and 'cosmopolitans' providing increasingly chilling echoes of the 1930s.

For some of those on the social democratic left, meanwhile, these trends, and more especially the ascendancy of neo-liberalism in both economy and politics, represent epochal defeats (Reiner 2006) and the disappointment of their hopes (even if just lately some may detect the odd straw of change on the wind) (see Loader and Sparks, 2012).

For liberals, arguably, things have been particularly downbeat in recent years. As we explored at some length in *Public Criminology?* (Loader and Sparks 2010: ch. 4) the allegation on the part of many people of liberal and cautiously progressive sensibility has been that no matter how hard they try to introduce evidence and rationality into public discourse on crime and punishment it escapes them. On a fairly mainstream account, the combined influences of public indignation and fear, the endless focus on graphic accounts of victimization and the failings of an indulgent justice system by a sensationalist media, and the reactive, short-term preferences of politicians make progressive change in criminal justice (other than in the deep background, 'by stealth') exceptionally hard to accomplish (see, inter alia, Pettit, 2002) . For those in this camp (and it is a large group – the complaint is resonant and widely felt) things are only made worse by the 'swarming' properties of social media and above all by the rise of sovereigntist populism as an increasingly dominant political posture in the United States, and in various parts of Europe and Latin America.

This is of course a mere sketch. The point, however, is not to substitute it for a more serious history of any one of these developments in either thought or practice, but simply to indicate why the discovery of a better politics of crime is always such hard work. The question that arises for us, here as throughout our work over the last decade or so, is whether the solutions that scholars confronting these dispiriting conditions have so far reached towards are the best ones that can be devised? Our response is that in many cases those proposed solutions are at best limited and compromised, and at worst tend in the wrong directions altogether. There are, however, more promising possibilities out there – the resources of hope of Raymond Williams's vision and our title – but they are a bit further

to seek. They come either from 'outside' criminology or from its radical margins, and their primary focus is not necessarily that of smartening up crime policy so much as revitalizing democratic participation, accountability and debate.

Amongst our objections to the mainstream of criminological responses to the predicaments of a highly-politicized, highly-securitized, high-punishment environment is that they are essentially defensive. Of course, the arguments for adopting a defensive posture when things of value are under attack is entirely intelligible and indeed honourable. If the state's powers to punish breach the bounds of rationality or are disproportionate we should defend reason and proportionality. If police behaviour becomes overbearing, intrusive or flagrantly racist or sexist we should reassert the claims of civility, autonomy and equal treatment. However, as we have argued on a number of occasions (for example Loader and Sparks, 2010; 2015), difficulties arise when our primary response to the heating-up of the political climate in respect of crime and punishment is to cool things down. So it is quite desirable and proper that scholarship should often focus upon questions of police powers, the protections of due process in criminal procedure, the rationality of sentencing, on interim and immediate ways of mitigating the damage of excessive punishment, or on any number of other questions that demand careful documentation and precise analysis. However, the position that we term insulationism is one that wants to remove these intrinsically contentious and impassioned issues from the heat of public combat in order to mitigate the worst effects of emotionalism and political gaming. Our objection to those who argue in this way is that they thereby also inevitably want to reduce the scope of democratic politics and so to convert public, political matters into things that can be decided by technocratic means.

In our view this defensive positioning can be seen as a particular species of contemporary anti-politics (Glaser, 2018), albeit an unusual one in that this term is more often applied to the nativist populism of the likes of Trump and Farage (see, on this, Loader and Sparks, 2017). Insulationism, by contrast, is the anti-politics of liberal expertise. Alongside its evident discomfort with democracy, we argue, its defensiveness leads to a widespread deficit of creativity and imagination.

In the remainder of this paper we argue for a more ambitious and prospective view of the politics of crime control. Our argument is that in the face of (rather than simply despite) the many troubles and reverses in the politics of crime control we may still credibly aspire to the creation of practices and institutions that promote equality, respect and democratic voice (Lerman and Weaver, 2014). It would be central to such developments that they actively enable participation and, wherever possible and to the maximum extent possible, provide not merely for the energetic involvement and consultation of citizens (Stears, 2011; Mayer 2017) but also delegate powers of decision to those affected by their outcomes.

One important antidote to the disillusionment and mistrust implied in anti-politics is the more active form of engaged yet sceptical citizenship action that Rosanvallon calls 'counter-democracy' (Rosanvallon, 2008). Notwithstanding their limited presence in criminology, these ideas have a long and distinguished lineage in pragmatist political thought since Dewey. Amongst the methods of activation favoured by pragmatists is the stance of 'democratic experimentalism', which we understand as a means of resolving the ostensible conflicts between expert knowledge, policy innovation and democratic participation. These propositions require that we abandon the premise that hotter forms of politics ought somehow inherently to be eschewed. Rather we argue that for contemporary citizens, with all the sources of information, opinion and opportunities for expression available to them via social media and other means, only a radically more participatory form of politics has any realistic prospect of restoring democratic legitimacy.

### *In Praise of Democratic Experimentalism*

Our view – one defended now over a longer period than we really care to think – is that whilst criminological theories may not all be political theories they find their enactment and realization, if at all, within the hotly argumentative space of contemporary democratic politics (Loader and Sparks, 2015). This means that the task of identifying their relations with political ideologies properly so-called is not an ancillary activity but an intrinsic part of establishing what it is that they argue for and envision (Loader and Sparks, 2016). If we do not conceive of criminological work as some sort of technicist *antidote* to politics but rather

as a contributory thread within political discourse and debate then under what conditions and in what modes can it best develop that contribution?

The aspect of Burawoy's original formulation of the idea of a public social science (Burawoy, 2005) that we consider to survive the extensive subsequent debates and disagreements – but which is now often forgotten – is that such work is forged in dialogue with constituted publics (including oppositional 'counter-publics' who are already parties to debates, arguments and campaigns on public questions). That means that the role of specialist knowledge-producers can never be confined or reduced to the arbitration of matters of fact alone (as critically important as the data-generating and analysing aspects of their work must be). Rather their civic role and contribution also demands reflection upon and engagement with disputed and contentious "matters of concern" (Latour, 2004).

It is for this reason that we have insisted that the civic disposition demands a commitment to developing spaces of deliberation that enable big public questions such as the future of punishment and crime control to be discussed as fully and freely as possible by everyone who has a stake in them (which is to say, everyone). Our understanding of the criminologist as an under-labourer on behalf of democracy is thus one that sees our work as being necessarily implicated in developing what has been called 'argumentative' (Hoppe 1999) or 'intelligent' (Sanderson 2009) rather than simply 'evidence-based' public policy-making. The under-labouring conception of criminology is committed both to participating within, and to facilitating and extending, institutional spaces that supplement representative politics with inclusive public deliberation about crime and justice matters, whether in local, state, or federal arenas - or across emergent transnational spaces (see further Loader and Sparks, 2015).

Seen in this light it is indeed strange that the pragmatist tradition in political and social thought plays so little explicit part in most accounts of the development of criminological theory and research. On the relatively few occasions that it is discussed the emphasis mostly falls upon pragmatic philosophy's ontological scepticism, especially as embodied in Rorty's critique of the idea of knowledge as a pre- or extra-linguistic mirror of nature' (Wheeldon, 2014). Our interest here, however, is in the pragmatist commitment to

discovery and experimentation as collective, participatory activities. This is centrally what John Dewey termed 'inquiry', understood as 'part of an existential struggle to cope with an objectively precarious but improvable environment' (1929: ???). The (fallible) hope that underpins this is expressed by Dewey thus:

'Democracy is a way of personal life controlled not merely by faith in human nature in general but by faith in the capacity of human beings for intelligent judgement and action if proper conditions are furnished' (Dewey, 1939).

Dewey wrote these words late in his long life, on the threshold of a political upheaval far greater even than those we confront today (see, further, Bernstein 2000). He cleaved to the view that only the renewal and deepening of democracy could begin to confront the challenges of the time:

The depth of the present crisis is due in considerable part to the fact that for a long period we acted as if our democracy were something that perpetuated itself automatically; as if our ancestors had succeeded in setting up a machine that solved the problem of perpetual motion in politics (idem).

Dewey expressly rejects the supposed superiority of what he terms the 'spectator theory of knowledge' but not, crucially, the growth of knowledge as such. On the contrary he affirms that democratic dialogue is the 'precondition for the full application of intelligence to the solution of social problems' (Putnam, 1990: 1671). Here we can barely scratch the surface of the implications of the pragmatist inheritance for criminological argument, and especially for the future development of the relations between expert knowledges, public participation and decision-making. Amongst the things that we seek to retrieve from that tradition are the following:

First, as we hope already to have made clear with reference to Dewey's conception of inquiry, there are intrinsic relations between knowledge and action. The social world is inherently subject to change, some of which flows directly from effortful, intended human agency. One ambition of producing and exchanging knowledge about it is to bring some



further fraction of that world within the ambit of such agency – the position famously described by Albert Hirschmann as ‘possibilism’ (2013). An aspect of the ‘bias for hope’ attributed to the work of Hirschmann and other pragmatists, therefore, is resistance to fatalism in all its forms. As Hirschmann puts it, the aim of knowing the social world is not to succumb to its “majestic inevitability” but to disperse that same sense of the inevitable. Alluding to the aims of his own research on authoritarian political regimes Hirschmann says : “the more thoroughly and multifariously we can account for the establishment of authoritarian regimes [in Latin America], the sooner we will be done with them” (quoted in Walzer, 2013).

Second, there is therefore also a preference for experimentation, in something very like the ordinary sense of trying things out and finding out what happens. However, this form of experimentalism is distinct from – and sometimes, though by no means at all points, directly at odds with – the more technocratic orientations often observed in contemporary experimental criminology (or experimental economics, psychology, and other disciplines). Crucially, Dewey, Hirschmann and other pragmatists present *epistemic* arguments for radical democracy (Festenstein, 2018). The position is grounded in the view that the very complexity and fluidity of social questions demands that responses to wicked problems be informed by the voices of all those whose lives are touched by decisions about them (see further Wagenaar, 2007).

Pragmatists thus hold that whereas specialist knowledge is a vital constituent in democratic decision-making, the idea of expert knowledge alone as decisive is inherently dubious: ‘A class of experts is inevitably so removed from common interests as to become a class with private interests and private knowledge, which in social matters is not knowledge at all.’ (Dewey, 1929: ???). Pragmatists, therefore, are *democratic experimentalists* – and the experimentation that they urge concerns the design of institutions, arrangements and decision-making forums themselves (Knight and Johnson, 2011). In Dewey’s account experimental approaches to inquiry are inherently incompatible with social arrangements that deny the powerless the opportunity to develop and use their capacities and rationalize entrenched privilege. The ramifications of this is that any experimental approach to finding better solutions to crime questions needs to do more than privilege certain methods or forms of knowledge. Rather it requires reconstruction of the institutional preconditions for

the full application of social intelligence to these issues together with an experimentalist orientation to the creation of institutions which can give effect to it (see further Misak, 2013: ch. 7). The question for knowledge-producing communities, therefore (researchers, scholars, analysts, expert practitioners) is how the outcomes of their inquiries are introduced into democratic dialogue, not simply how they are 'utilized'.

Third, there is a clear affinity between pragmatism and what we have elsewhere called democratic egalitarianism (Loader and Sparks, 2012). In the context of crime and social order we understood that to mean the large project of equalizing access to some of the basic goods of social existence, namely the capacity to plan one's life and pursue one's preferences under conditions of sufficient security and safety, and under the shelter of institutions that have adequate regard to individual rights, protect social solidarities and that are democratically accountable on the basis of parity between all their users (Loader and Sparks, 2012: 29-34). In our view, however, the encounter with pragmatist thought serves to emphasize that, when it comes to crime control just as much as to other fields of policy and practice, democratic egalitarians also need to be democrats first and last.

This means that the liberal temptation to insulate crime control institutions behind protective barriers, in order to preserve them from the worst effects of the heat of political battle, must sometimes be overcome. This does not however simply mean exposing them to the unrestrained animus of tabloid headlines and the vituperation of posturing politicians with large Twitter followings – though such exposure may often be unavoidable. Instead it means creating spaces of deliberation in which people affected by the practices and decisions of these institutions (including the most marginalized and heavily victimized groups of people) are able to exercise voice, address one another's concerns and inform decisions.

It is by now well-attested that maximizing deliberative opportunities enables better scrutiny of evidence and produces better decisions than more exclusive processes do, even where the latter feature only accredited experts (Fung and Wright 2003; Flybjerg, 2009). Extensive deliberative justice processes introduce more information, increase the diversity of perspectives and allow dissenting voices to check flocking behaviour (Anderson, 2006). The conscious cultivation of 'democratic listening' enhances the flow and quality of

information, increases adaptive capacity, avoids defects of central coordination, and facilitates cooperative problem-solving (Wagenaar, 2007). More deliberative decision-making procedures stimulate greater common ownership of collective decisions (Flyvbjerg, 2009). To the extent that one key test of legitimacy is 'loser's consent' (Anderson et al., 2005), greater deliberation allows enhanced scope for the explanation of outcomes whilst preserving recognition and esteem for those whose preferences do not carry the day.

*Conclusion: Making and imagining democratic justice*

We have in this paper sketched some of the troubling features of the crime control and punishment landscape in the increasingly demotic political times that we inhabit today. Against that backdrop, we have identified two characteristic responses that recur among informed observers of crime control and punishment. First, a liberal desire to protect hard-won and precarious rights and liberties, and mild and humane practices, by insulating criminal justice institutions from the authoritarian populist rulers and the claims of angry publics. Second, a radical critique of that authoritarian populism and its punitive manifestations that routinely fails to indicate pathways out of existing political and penal arrangements. What these responses share in common is implicit or sometimes express despair about alternative progressive futures for crime control. We have, by contrast, sought to locate certain resources of hope in the pragmatist tradition of social and political thought and sketched the case for democratic experimentalism as a guide to such a preferred future. Such experimentalism seeks not to discover better policies that can be inserted into, or developed by, existing institutions, but instead to make and imagine, and experiment with, institutional arrangements that foster and sustain extended democratic participation in determining how crime and security questions are addressed and resolved.

Like many others who are attracted by the democratic experimentalist vision, we have mainly in this chapter been able to spell out some theoretical arguments to support it. What such a programme is to mean in practice still requires to be properly specified (Sozzo, and not just by us). It is, however, possible to identify some of the basic features of what the practice of democratic experimentalism entails. Let us conclude by briefly identifying two such features.

First, it means taking properly seriously some kind of principle of subsidiarity – delegating to the lowest, most local feasible level whatever can be decided there, and in so doing maximising the opportunities for participation of all those affected by the issue at stake. Much of the hopeful energy found in criminology in recent years has defended restorative justice in something like these terms. Indeed, one genius of John Braithwaite’s approach (for example, Braithwaite, 2015) to restorative justice procedures is to view troubling situations as opportunities for deliberative problem-solving and to see participation in these settings as, in part, an exercise in civic self-education. Albert Dzur (2012) has made the same point about juries. We must however take care not to let restorative justice, still less jury trials, become the sole repository of hope for democratic experimentalist politics in the justice field, nor the limit of its practical ambitions. Indeed, Braithwaite’s later work makes clear that the primary relevance of deliberative work does not lie in process of adjudication within criminal justice at all, as important as these are, but in building spaces for problem-solving and peace-building under stressed and conflictual circumstances. Conversely, therefore the criminology of the affluent but stressed and divided societies of the global North may have much to learn from studies of transitional justice, or of justice alternatives in other peripheralized situations, in which questions of democratic organization have long been understood to be primary (see for example Froestad et al, 2015).

Secondly, we can seek to press further existing practices of public involvement and participation in a range of crime governance institutions. This can be done in a number of ways. Minimally, it can mean insisting on public participation in monitoring and priority-setting as constitutive of what it means to, for example, undertake legitimate policing (Manning, 2010), or run prisons (for example, see Lerman and Weaver, 2016). In our view it is now clear that there is no remedy for the current legitimation problems of criminal justice institutions simply in proceduralizing them. (The converse is also clearly untrue, however – sacrificing the protections of due process in the interests of satisfying some inchoate public ‘demand’ is highly unlikely to achieve any desirable effect, let alone restore lost public confidence.) Rather, contemporary requirements for public legitimacy almost inevitably include forms of ‘proximity’, recognition and emotional intelligence. In this sense the paradox of an allegedly anti-political age is that it continually generates demands for rights

of participation, even if actually securing people's engagement in democratic processes is another, altogether patchier and more problematic matter (see further Rosanvallon, 2011).

In seeking to instil an experimentalist ethos, therefore, we also need to figure out how such participation is best facilitated – something that also entails a willingness to try things out and learn from experience. In this respect, there are models of emergent practice from across the world that can be adapted and extended, such as consensus conferences, crowd-sourcing of policy (Aitamurto and Chen, 2017), and participatory budgeting. There are also examples of such practices being scaled-up for addressing justice questions that extend beyond the local: the citizens' convention that preceded the Irish abortion referendum is but one good example (Laffan, 2018). Selection by lot for citizen juries offers another.

When we start to consider these opportunities for democratic experimentation and for deeper and more continuous public participation, some at least of the obstacles in the way of more intelligent and conceivably more legitimate justice practices begin to look less insuperable. One of the attractions of the pragmatist tradition of thinking on these matters is that it seems surprisingly well-adapted for an age of social media, online voting and other such contemporary developments. Unlike the insulations of yesteryear still craved by despairing liberals, pragmatists may indeed welcome the greater heat generated by these engagements and the passions they bring with them (Unger, 2008). Roberto Unger, for example, argues that many of the apparent fixities of the world – things that we experience as immovable structures – are best thought of as instances of 'frozen politics'. In this sense the challenge for social scientists in aiming to contribute to civic activity is – as perhaps it has always been - to bring together 'the explanation of what exists with the imagination of transformative opportunity' (Unger, 2014).

The condition of our politics of crime and justice in the contemporary world, perhaps especially the North Atlantic quadrant of it, is so grave that there is simply no alternative but to reach for the radical alternative. The alternative that we have begun to sketch here, and which we intend to pursue further and more concretely in future work, is the one offered by the pragmatist orientation towards democratic experimentation in a spirit of whose aim is continually to 'widen the limits of what is or is perceived to be possible' (Hirschman, 2013: 22).

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