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Inclusion and Exclusion within and beyond the Prison: Exploring the Punishment of Men Convicted of Sex Offences in England & Wales and Norway

Comment

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Overview

1. Duff's Cosy Utopia: The Genius of this Paper
2. Conceptual Dyads Worth Drawing Out:
 - a) Desistance-Focussed Retribution: Reform vs. Rehabilitation;
 - b) The 'Centaur State': Punitiveness vs. Managerialism
 - c) Inclusionary Control and Performative Reform: Pain vs. Humanity



1. Duff's Cosy Utopia

- Can Duff's communicative model be applied descriptively? Duff (2003: 304, emphasis added) thought not:

[...I]**t would be a callously bad joke** to suggest that much of what is inflicted under the name of 'punishment' in our existing systems **is or even seriously aspires to be this kind of respectful moral communication.** [...W]hat I have sketched here as an account of punishment **is not meant to provide either a description or a justification of our existing practices.**

- Does this disbar penological adoption of Duff's prospects? Schinkel, 2014 – empirical evidence of the **failure to achieve Duff's model!**



1. Duff's Cosy Utopia

- However, Duff's "rational reconstruction" (*cf.* Duff and Green, 2011) has always been a very cosy utopia, close to the existing *status quo*.
- His 'liberal community' (Duff, 2001), is close to an ideal type of Britishness, and cannot seriously imagine wider socio-political reform because it assumes an essentially British society underpinning criminal justice (Honderich, 2005: 201-204).
- Its potential role as a **comparative** and **evaluative** framework has therefore been so far untested – but this paper puts it to just such a use!
- It reveals, *inter alia*, a series of interesting conceptual dyads...



2(a) Conceptual Dyads I: Reform vs. Rehabilitation

- Duff's (2001) reform is 'moral', individual, and communicative;
- Contemporary orthodox rehabilitative theory is characterised by a 'social' focus, contextual, and actuarial.
- Mapping different forms of rehabilitation (cf. McNeill, 2012; Canton, 2018):
 - **Moral Rehabilitation** – Reform – Norwegian emphasis?
 - **Judicial Rehabilitation** – Resettlement – Norwegian emphasis
 - **Psychological Rehabilitation** – Treatment – E&W emphasis?
 - **Social Rehabilitation** – Risk Management – E&W emphasis



2(a) Conceptual Dyads I: Reform vs. Rehabilitation

Duff's (2001) reform is 'moral' individual and communicative

- In a sense, Norway's approach of 'laissez-faire inclusion' is **liberal-retributive** – focussing on moral censure and judicial rehabilitation – the trial exorcises the (formal) blame.
- By contrast, Anglo-Welsh 'interventionist exclusion' is **authoritarian-rehabilitative** – focussing on quarantining (perceived) risk and treating its causes (in that order...).
- How do we reconcile this with the typical classification of E&W as a neoliberal, hyper-individualist hellscape, and Norway as a paternalistic social democracy (e.g. Lacey, 2008)?



2(b) Conceptual Dyads II: Punitiveness vs. Managerialism

- Wacquant (2009: 312, original emphasis) and the 'centaur state':

[...N]eoliberalism brings about, not the shrinking of the state, but the erection of a *centaur state*: liberal at the top, paternalistic at the bottom, which presents very different faces at the two ends of the social hierarchy...

- Anglophone criminology has tended to lump punitiveness and managerialism together, blaming (apropos of nothing) retributivism for the excesses of both (cf. Hayes, fc).
- However, this obscures the expansionist and authoritarian tendencies of actuarial, 'late modern' rehabilitation (Robinson, 2008; Schept, 2015; McNeill, 2018).



2(b) Conceptual Dyads II: Punitiveness vs. Managerialism

- Wacziarg (2000: 212, original emphasis) and the 'contour state':
- Levins and Mjåland identify some of the ways in which managerialism, **as well as** punitiveness, can lead to penal State excesses!
 - In comparison to Norway, England and Wales is **both** punitive **and** managerial – causing an absence of meaning and the frustration of risk-averse control.
 - By contrast, Norway is **retributive** instead of punitive, and **communicative** rather than managerial, which accounts for its 'laissez-faire inclusionary' approaches (at least as regards sexual offences).
 - However, importantly, this does not make the Norwegian experience meaningful or successful!



2(c) Conceptual Dyads III: Pain vs. Humanity

- Community as Agent and Opponent of Rehabilitation – Desistance and Networks of Support (cf. Nugent and Schinkel, 2016).
- The Paradox of ‘Inclusionary Control’ (Tomczak and Thompson, 2019): The authoritarian State includes, but is not inclusionary; the liberal State is inclusionary but does not include.
- Does communication need pain (cf. Sexton, 2015)? Can censure be achieved without the infliction of pain? Is the pursuit of humane imprisonment really just an admission of the necessity of prison abolition?



2(c) Conceptual Dyads III: Pain vs. Humanity

- Community as Agent and Opponent of Rehabilitation – Desistance

The purpose [of prison] is both, for me and for the community, is stating that [what I did] is not acceptable behaviour. And I completely agree with that.

- Bertram, M Wing Bergen.

- **Question:** To what extent can we trust, methodologically, that “Bertram’s” testimony is accurate here, and not just the performance of reform?
- **Subsidiary Question:** To what extent should the penal system care, so long as Bertram *does* perform?

humane imprisonment really just an admission of the necessity of prison abolition?

Concluding questions

1. How can you meaningfully compare experiences in two state jurisdictions when the state isn't the only powerful actor?
2. Why is Norway less interventionist with people convicted of sex offences than with people convicted of drugs offences?
3. Is it possible for punishment to be inclusionary? What about imprisonment?



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