

Punishment, Payback and Public Opinion

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- Vengeance, punishment and forgiveness
- Punishment or alternatives to punishment?
- Constructive punishment or ‘merely punitive punishment’? (Duff, 2003)
- A concern for justice or a concern for effectiveness?
- Punishment in conditions of insecurity
 - Trust, confidence and leniency
- The locus of punishment and the historical accident of the centrality of the prison in the public mind

Payback in Casey (2008)

- ‘Engaging Communities in Fighting Crime’
 - A solution to perceived problems of public confidence in criminal justice and community penalties...
 - Community service re-branded (again) as ‘community payback’
 - CP to be more visible and more demanding; not something the general public would chose to do themselves (i.e. painful or punishing)
 - Offenders doing payback should wear bibs identifying them as such (i.e. shaming)

Payback in McLeish (2008)

- ‘In essence, payback means finding **constructive** ways to **compensate or repair harms** caused by crime. It involves making good to the victim and/or the community. This might be through financial payment, unpaid work, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, one of the best ways for offenders to pay back is by turning their lives around’ (Scottish Prisons Commission, 2008: 3.28, emphasis added).

Payback in McLeish (2008)

- **Stage 1: The level of payback**
 - A proportionality threshold (justice comes first)
- **Stage 2: The form(s) of payback**
 - Relevant, constructive and immediate
 - Restitutive, reparative, rehabilitative, restrictive
 - Bespoke payback?
 - Rehabilitation as payback? To and for whom?
- **Stage 3: The progress of payback**
 - Not just enforcement; also encouragement

Understanding the public'(s') opinion(s)

- There is no public opinion
- The myth of the punitive public
 - Retribution, reparation, rehabilitation
- BCS (2007): only 20% think probation (in E&W) is doing a good job
- Ignorance of what it involves:
 - “I don’t think probation means anything to many people” (Allen and Hough, 2007)
 - A common finding around the world
- So what to do about it?

Two (or three) strategies (Maruna and King, forthcoming)

- Ignore the public, leave it to the experts
- Cognitive strategies: Educate the public
 - But the evidence that cognitive strategies address deep-seated attitudes about punishment is limited; like it or not ‘evidence’ - in and of itself - does not persuade
- Emotive strategies: Affective justice
 - Emerging evidence suggests we need to understand the emotional needs (in social and cultural context) that underpin attitudes to punishment
 - The promise of belief in ‘redeemability’?
- Sending the right signals (Bottoms and Wilson, 2004)

Casey's Payback vs. McLeish's Payback?

- 'Casey is absolutely right to utilise emotive appeals to the public in order to increase public confidence in the criminal justice system. Justice is, at its heart, an emotional, symbolic process, not simply a matter of effectiveness and efficiency. However, if Casey's purpose was to increase confidence in community interventions, then she drew on the exact wrong emotions. Desires for revenge and retribution, anger, bitterness and moral indignation are powerful emotive forces, but they do not raise confidence in probation work -- just the opposite. To do that, one would want to tap in to other, equally cherished, emotive values, such as the widely shared belief in redemption, the need for second chances, and beliefs that all people can change' (Maruna and King, forthcoming).