

escalatory course. The Thatcher paradox (when for a short period the prison population declined by 10 per cent) is acknowledged as is the overall theme of pragmatism at least until recent times. Cavadino and Dignan have explored many nuances of this territory over several years but it seems, at least to this reviewer, that they have not perhaps fully accepted the extent to which penal policy under New Labour has been shaped almost entirely by a narrow political agenda. In September 1995 this reviewer had a first encounter with Jack Straw MP, the then shadow home secretary. In thanking Mr Straw for his remarks to the annual Howard League conference I observed that it was interesting that he drew strength from the work of James Q. Wilson and George Kelling, given Wilson's close links to the Reagan administration. Leaving the platform, Jack Straw protested to me: 'The trouble with you people from the left . . .' Perhaps less so today, but at the time this struck me as an odd thing to say. Once in government, there was for a while some talk of attempting to limit prison numbers to around 80,000 (the total was 61,000 in 1997) but by 2005–6 it was clear that such efforts had been abandoned. The political discourse on punishment (largely shaped in the Prime Minister's office and encouraged by much of the popular media) combined with the sentencing structure established by the Criminal Justice Act 2003 means that the 100,000 mark may have been passed before the next General Election. Nowhere is this escalatory pattern more evident than with regards to life sentence prisoners. In 1997 the total number of lifers was 3700. In comparative terms, the lifer population in England and Wales accounted in 2004 for some 40 per cent of the total life sentence population across all Council of Europe states. By mid-2006 there were 7,100 life sentence prisoners in England and Wales of whom almost a thousand had received indeterminate sentences of imprisonment for public protection introduced under the act that came into force in April 2005. As Bill Clinton might have said 'It's not about crime, stupid'.

This brief review fails to do full justice to the book's reach, which extends, inter alia, to issues of youth justice and prison privatization. Without doubt, Michael Cavadino and James Dignan's study will find an immediate and pivotal place on the shelves of many scholars. As a teaching tool, especially at graduate-level penal policy, it will have few rivals.

Andrew Rutherford
University of Southampton, UK

Perspectives on punishment: The contours of control, Sarah Armstrong and Lesley McAra (eds). Oxford: Oxford University Press, 2006. 276 pp. £19.99. ISBN 0–19–927877–6.

In August 2006, the British Home Secretary Dr John Reid gave a speech in which he argued that people who did not accept the need for revised security principles and procedures 'just don't get it'. It may well be true that contemporary challenges demand that people re-examine some dearly held assumptions about security and punishment. Thankfully this book will help its readers to 'get' some vital features of emerging frameworks of control that have received slight attention from dominant discourses within government and academia.

The book originates from a conference designed to celebrate the 20th anniversary of the publication of *The power to punish* (Garland and Young, 1983), which marked a seminal moment in the sociology of punishment, although the present work may come to rival it in importance. The editors themselves, in a stimulating opening chapter, review many of the most important social changes that have occurred in the last 20 years. All of these phenomena, including globalization, the growing importance of electronic communication and the ascent of risk, will be familiar to readers. On foot of these changes, the editors cast two challenges to current criminological thinking, namely it is too dominated by the State and by the prison. Punishment tends to be analysed as the prerogative of the State, even when other interests such as communities try to have their say; and punishment is viewed through the lens of imprisonment even when alternatives are being considered. These tendencies limit understanding about how punishment is being addressed to an increasingly diverse *audience*; they hinder awareness of how punishment is no longer simply about securing the internal territory and *borders* of nation-states; and they stunt comprehension about how the changing *architecture* of punishment is changing, as prison is no longer the dominant way of organizing space to achieve control.

One of the distinctive contributions of penality over the last 20 years has been to expand the study of punishment to encompass a broad perspective that asks about its social purposes and functions. Whereas penology dedicates itself to an instrumental analysis of punishment – what works with offenders – penality devotes itself to discovering how punishment registers on an expressive dimension, how it relates to the cultural perceptions of the general public. As a result, penality may reinforce a state-centric view of punishment, since one of the most obvious duties of the State is to attend to the fears of the public. Yet many contributors argue that national populations are no longer the only or even primary audience for the practice of punishment.

The prospect of victimization is frequently believed to be one of the engines of current punitiveness as people demand intervention from the State. Lindsay Farmer contests this position by analysing the Tony Martin case in Britain in which a house-owner was sentenced to life-imprisonment after shooting a burglar (who got three years). The verdict caused a furore and is thought to have provided a basis for recognition of victims' rights. But Farmer shows that there are several different juridical claims being pressed, not all of which are clamouring for people to be given the legal status of victim by the State. Other readings might reject the authority of the State and claim defence as constituted by a pre-political right to survival, akin to a Hobbesian state of nature. Another form of victims' rights would be to vindicate the autonomy of the wronged person without pushing him or her into a state of dependency as occurs in some versions of restorative justice. Farmer concludes that the sociology of punishment has been so concerned with questions about how power is exercised that it has neglected the more philosophical issue of how it is justified. But the growing significance of rights means that the latter kind of issue is becoming inescapable 'in the exercise and justification of penal powers' (p. 66).

The heightened significance of rights is addressed in two further pieces. Evi Girling produces a stimulating piece on European opposition to the death penalty and the light this sheds on contemporary penal sensibilities. By casting people on death row in the USA as 'honorary Europeans', citizens of Europe produce a form of cosmopolitanism

that is at odds with images of the public served up by criminological discourse, ready to indulge in emotive and ostentatious punishments. Rather, the conscious effort to set a morally definitive limit to punishment is a token of 'ostentatious restraint and sympathy for the offenders' (p. 73), that is reminiscent of the early prison reformers of the 19th century and their use of shame as part of a civilizing offensive. Piacentini addresses what Ian Manners has termed the normative power of Europe and its capacity to use, in this instance, the power of human rights to shape conditions in Russian prisons. Following the collapse of communism, most Russian institutions suffered a legitimacy crisis and human rights seemed a viable candidate to fill the void within prisons. A rights discourse operates above the level of individual states but is often realized within them by groups such as non-governmental organizations that are distinct from the State proper. Rights draw attention to sites of 'carceral disgrace' and induce change through shame and the prospect of resources and political integration.

The transplanting of rights signifies that borders are becoming increasingly porous yet this does not mean automatic admission. Loïc Wacquant draws acute comparisons between the over-representation of blacks in American prisons with the detention of foreigners and immigrants in Europe. The imprisonment and expulsion of foreigners serves to cement the image of 'Fortress Europe' and the security of its own indigenous population, in contrast to the thesis of penal cosmopolitanism. By treating the issue of immigration as soluble by a pre-modern practice of banishment, Europe is conforming to an American model of 'criminalization of urban poverty and marginality' (p. 100). But is this comparison absolutely apt? Is there a difference between a state (USA) that disproportionately imprisons its own citizens and ones that decide to exclude foreigners? Is there any country in the world that operates an absolute open-borders policy (universal cosmopolitanism)? If not, then the issue turns on choosing the most humane method of maintaining the sovereignty of borders.

Thomas Mathiesen's chapter demonstrates how penal sanctions are slipping loose from purely domestic concerns and are being activated by trans-national control systems, what he calls *lex vigilatoria*. The Schengen Information System, a database on 'unwanted aliens', and EURODAC, a fingerprinting system designed to prevent dual asylum claims, have arisen with the relaxation of border controls within Europe. Mathiesen claims that these systems are being integrated through data sharing while being decoupled from scrutiny at the national level, but find 'landing-points' in associations of vested interests.

While Wacquant and Mathiesen detail how the re-ordering of borders shapes sanctions, they are also concerned with the internal construction of punishment or its *architecture*. Penalty of the last 20 years has privileged imprisonment as the institutional pinnacle of control, against which many other forms, such as confinement of the mentally ill, could be assessed. Andrew Scull defends the need to analyse 'asylumdom' in its own terms rather than against the backdrop of the prison. By holding on to institutional specificity, one gets a better purchase on how control is produced in particular settings such as mental institutions, through 'pills and a biological aetiology that suggest the existence of technical remedies for life's troubles' (p. 216).

Richard Jones makes explicit use of the concept of architecture that was originally used in work that deals with regulating the Internet. Architecture signifies a way of life that makes some activities desirable and others more difficult to achieve, written into

the code of a social system. Legal sanctions are only one way of achieving desirable ends. Jones suggests that the success of situational crime prevention rests on its capacity to constrain undesirable behaviour while leaving 'law-abiding practices to continue as uninhibited as possible' (p. 193). The converse of this is that sanctions that do not leave a space for freedom are more likely to be subverted, a nice antidote to dystopian predictions of total control.

Malcolm Feeley, in a lovely autobiographical piece, defends the validity of the concept of actuarial justice against those critics who argue that nothing has really changed in the practice of punishment. He recounts how, in the early 1970s, attending classes on tort law made him look afresh at the criminal law: 'minor criminal offences were much like fender benders: both are "problems" to be *managed*, not moral lapses for which one is to be held accountable' (p. 221). Feeley was also interested in pre-trial release for people unable to afford bail. An alternative system was developed by which people with strong ties to the community were released on their own recognizance. By taking an administrative perspective to the issue of who should be released before trial, the issue of a right to bail was completely muffled. Soon, courts began to attach conditions and 'pretrial release became a sort of pretrial probation' (p. 228) except that these people had not been convicted of a crime but were viewed as bearers of risk. Feeley distinguishes between a strong version of actuarial justice, equipped with valid instruments to calibrate and predict risk, and a weak version that is legitimated to deal with risk and override traditional rights. Eventually this weak version will cohere and 'completely transform the criminal process into an administrative system' (p. 231).

One of the criticisms of the actuarial justice thesis is that it neglects the possibility of resistance by practitioners. The weakest links in a system of actuarial justice would be those areas where discretion is strongest. Hutton examines how sentencing practice confounds efforts to place it in an 'objective' schema since the meaning of relevant factors, such as seriousness, are so slippery and context-dependent. Sentencing, for Hutton, occurs in social field in which a judicial *habitus* is established, an unthinking common-sense approach that selects the most 'appropriate' punishment. The decision comes first and justification, if required, comes later. Whether this habitus can be adapted to the kind of sentencing guidelines that Feeley mentions is a tantalizing prospect for future research.

In this context of modernization, the editors insightfully point out that whereas once studies of penal resistance were confined to prisoners, it now encompasses a range of professional interest groups. They too are subject to winds of change whipped up by what Sparks calls the 'politics of insecurity'. Politicians are liable to address fears by reaching for sound-bites yet Sparks refuses to denigrate this as populist rhetoric. Rather he argues that the dizzying increase of media outlets, coupled with the magnified complexity of social problems, makes it almost inevitable that political actors will 'simplify and over-bid in respect of crime and security' (p. 46). This kind of overreach opens the door for more sceptical voices to query governmental attempts to sustain legitimacy. Despite this fractious jostling of claim and counter-claims, a form of governance capable of representing the relevant populace and its interests is essential.

Sparks' chapter broaches a theme that is implicit throughout the book, namely what forms of political authority are best suited to cope with emergent security challenges. This is not the sort of question that is often asked within criminology and it may be that

it could usefully borrow from political science. There has been a slew of research in recent years on the future of democracy and a consistent theme has been the decline of mass political parties as an agent of representative democracy and the exemplar of government (Mair, 2003). Once this is understood many of the developments discussed in this book fall into place. The raising of the political tempo on crime, the increasing importance of NGOs and regulatory agencies, the rise of social movements, the ascendancy of consumerism and managerialism are all connected with the present inability of political parties to articulate and aggregate the interests of voters. Borrowing from political science, the editors aptly term the result 'multi-level governance' as political authority is dispersed to several sites above and below the nation-state that political parties ostensibly govern. The problem is not the one of depoliticization that so many laments for social capital decay but what Rosanvallon (2006) calls the unpolitical, 'the lack of a global understanding of the problems faced in organizing the common good'. Greater democratization has led to a fragmentation of the political yet 'politics cannot exist if actions cannot be established in a unified narrative and presented on single public stage' (Rosanvallon, 2006). The chapter by Downes and Hansen demonstrates how important politics, in this sense, is by showing the ameliorative effect of strong welfare regimes on imprisonment rates. They speculate that the increased marketization of welfare may reverse this trend even in social democratic regimes. If criminology is to stave off the dystopian futures that occasionally afflict it, it must investigate how societies can still register themselves as collectives while recognizing the necessity for greater democratization.

References

- Garland, David and Peter Young (1983) *The power to punish: Contemporary penalty and social analysis*. London: Heinemann Educational.
- Mair, Peter (2003) 'Political parties and democracy: What sort of future?', *Central European Political Science Review* 4(13): 6–20.
- Rosanvallon, Pierre (2006) 'Distrust and democracy', lecture at Bologna University, 9 June. Available at <http://www.arsp.it/PIERRE%20ROSANVALLON%20%20Lecture.pdf>

Barry Vaughan
Institute of Public Administration, Dublin, Ireland

Litigating in the shadow of death: Defense attorneys in capital cases, Welsh S. White. Ann Arbor, MI: University of Michigan Press, 2006. 219 pp. including index. US\$21.95 (pbk). ISBN 047206911X.

Shortly after this book's publication, author Welsh S. White passed away. The work, while sadly the author's last, is a fitting end to a legal career spent explicating the erosion of defendants' rights in the United States. *Litigating in the shadow of death* is a detailed exploration of capital defense attorneys' strategies at trial. Though there is a constant stream of legal and social scientific study of multiple aspects of capital punishment, this is one of the few monographs that focuses on the work of this group – a noticeable gap in the literature, given that the quality of the defense greatly influences whether or not a death sentence is given. The book is best read as a follow-up to Michael Meltsner's