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Book Review – Preventive Justice

Andrew Ashworth, Lucia Zedner, **Preventive Justice**, Oxford: Oxford University Press, 2014, 306pp, hb £50.00.

Preventive Justice is an impressive book that, from the start, sets to itself a series of very bold aims that it then turns to pursue with the usual care and determination that are characteristic of its two authors. Departing from the realisation that, although preventive endeavours are ubiquitous, ‘they have yet to be mapped, analysed, or rationalized’, the main declared aim of the book ‘is to reassess the foundations for the range of coercive measures that states now take in the name of prevention’ (1). The main premise that supports the need for such reassessing is the notorious lack of normative theorising on what the authors call ‘coercive preventive measures’ in legal academic literature, especially in comparison with the vast work done with regards to ‘the rationales for and limitations on state punishment’ (1). In order to bridge this gap, Ashworth and Zedner deploy a thorough investigation of the historical, political, and legal bases of the current framework of coercive preventive measures, on which they ground a detailed taxonomy of such measures, which cover from pre-trial preventive measures, to preventive criminal offences, to preventive measures related to public health and immigration.

The first two chapters of the book set the normative framework through which the array of preventive measures is going to be analysed and rationalised. The first chapter discusses the scope of the project as well as the main conceptual bases of its analytical framework. One of the most important contributions of the book to the current debate on prevention and security is to acknowledge and to expose in a detailed and historically-informed way the role that prevention has in the formation, development and legitimation of the modern liberal state from its very inception, arising from the state’s duty to protect its citizens from harm. In doing so, Ashworth and Zedner are directly facing a common problem in contemporary literature on prevention and security, which is that of seeing the turn to prevention of the last 30 years as something anomalous, unprecedented and, ultimately, contrary to the aims of liberal society. In exposing the ubiquity of prevention not only in the current legal environment but also in the history of modern societies, the authors therefore challenge the ‘newness’ of these concerns and decide to focus instead on the need to provide this legitimate concern of the liberal state with a principled normative framework.

Chapter 2 goes on to examine in detail the historical origins of the preventive state, using a wealth of sources in order to problematize the claim that prevention constitutes a new paradigm in the state’s deployment of its duty to protect, highlighting that it ‘underplays the degree to which criminal justice institutions were predicated upon and continued to have an important preventive element’ (49). Special attention in this chapter is given both to the importance of prevention in the work of modern

and liberal theorists, such as Bentham and Mill, and legal commentators such as Blackstone, and to several landmarks in the historical development of the preventive endeavour in Britain, from the establishment of the first police force to the preventive character of the welfare state.

After establishing the analytical and historical frameworks of its discussion of preventive justice, the book then embarks on its thorough taxonomy of preventive measures. Chapter 3 deals with pre-trial preventive measures such as stop-and-search powers and pre-trial detention; chapter 4 examines the broad framework of preventive measures, focusing particularly on the ASBO; chapter 5 explores the framework of preventive criminal offences, detailing no less than eight different ways in which criminal offences can detract from its orthodox harm + culpability model; chapter 6 discusses the problematic issue of risk assessment in the criminal justice process, particularly highlighting the role of the criminal court in such assessments; chapter 7 analyses the issue of preventive detention; chapter 8 focuses on counterterrorism laws and security measures, and their link with criminal law and justice; chapter 9 engages with the very interesting area of preventive measures related to issues of public health, such as contagious conditions and mental disorders; and chapter 10 debates the very topical area of prevention with regards to immigration laws. Each of these chapters has a threefold purpose: to establish the bases for its taxonomic classification; to pursue a critical examination of that particular group of preventive measures, including a critical assessment of their development and rationales; and ‘a concerted effort to articulate appropriate guiding values and limiting principles’ (250), both to that particular set of measures and to preventive justice in general.

The book’s final chapter rescues and re-instates the importance of its project of preventive justice. At the core of this project lies a double concern, of on the one hand acknowledging the importance and pervasiveness of the state’s duty to protect and its corresponding concern with prevention and security, and on the other hand maintaining that this duty to protect must be upheld alongside ‘a duty of justice, that is, a duty to respect the rights of individuals’ (257). In doing so, Ashworth and Zedner make it clear that there is an obvious tension between these two duties, and express concern that the usual outcome of this tension is for the preventive endeavour to trump and thus side-line the need to respect individual justice. In order to remedy this imbalance, the authors call for a principled approach to prevention, and as a result the second aim of the last chapter is to provide another taxonomy: that of a list of principles which, the authors hope, can provide the basis for an ongoing project of preventive justice.

The main limitation that can be attributed to *Preventive Justice* is perhaps that the dichotomy between the normative framework of punishment and that of prevention, set from the very beginning, at the same time as it provides the main theoretical basis for the book’s critique of preventive measures, also inevitably restrains it. Although this dichotomy, particularly with regards to the justification of punishment in itself, is at times criticised in the book as one ‘that modern observers are perhaps too quick to assume’ (29), there is throughout the book an undeniable sense that the project of preventive justice is, in essence, an attempt to extend the principles of punitive justice over into the

framework of prevention. The normative primacy given to the principles identified with punishment over the rationales commonly given to prevention engenders two problems with regards to a critical analysis of the framework of preventive justice. The first is that this focus prevents the book from analysing in further detail the normative bases of the preventive endeavour, that is, the extent to which preventive measures derive their force not only from the perceived need for security, but also from the fact that such need appears legitimate and justified in a liberal polity – sometimes grounded on the same need to respect individual liberty that lies at the core of individual justice. Granted, the authors acknowledge that the tension between liberty and security has its origins in a paradox within the idea of liberty itself (257); nevertheless, they don't seem to acknowledge the extent to which this paradox limits and problematizes the scope of the project of preventive justice.

The second problem is that, in sustaining this hierarchy between punishment and prevention, the authors downplay the extent to which their critique of the preventive endeavour reveals and highlights problems in the framework of punishment itself. The very historical analysis carried out in the book, in exposing the ubiquity of prevention and its indissociable relation with the liberal state, implies that problems identified with the current preventive turn cannot be dissociated from problems and limitations inherent to liberal law itself, including its liberal model of criminal law (cf. A. Ashworth, L. Zedner, 'Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions' (2008) 2(1) *Criminal Law and Philosophy*, 21-51). In assuming that the principles and procedures inherent to the liberal model are not themselves problematic, or part of the problem, but rather only the basis for a solution to the unprincipled character of prevention, the authors end up preserving the very dichotomy which they criticise or set out to remedy. In contrast with the rigorous historical, theoretical and doctrinal investigation of preventive measures undertaken in the book, the lack of a more reflexive dialogue between punishment and prevention arguably fails to take an invaluable opportunity to engage more deeply with the relations between the two.

This is of course not to say that the normative framework grounded on the need for individual justice and extended by the book to the framework of prevention is without value or relevance; quite the contrary. In times of social insecurity such as those currently experienced by advanced liberal societies, it is more important than ever to re-vindicate and reinforce the importance of values such as justice, responsibility and trust, and *Preventive Justice* is an impressive and unprecedented contribution to legal and criminal justice scholarship in this regard. The book represents a strong and, hopefully, unavoidable step towards a serious and critical appreciation of the role of prevention both in law and in liberal society more broadly which, as the authors appropriately stress, 'cannot afford to stop here' (267).

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