

Conclusion

In the introduction we referred to two issues which would concern us throughout the book: we would consider attempts to combine forward and backward looking positions, to reconcile backward looking concepts with policy objectives: we would consider how far the backward looking position could retain its self-defined identity while confronting a range of key problems thrown up by the operation of criminal law.

We have seen that attempts at 'synthesis' founder. Floud and Young's treatment of the 'dangerous' offender in Chapter 1 is not based on principles which would preclude (as they would wish to) the preventive confinement of non-offenders. In Chapter 2 Dworkin's 'principles' seek to allow a reference to morally desirable conclusions to be combined with predictability, with a pre-given standard. The result is, however, to posit two 'sources' of law, heterogeneous in character, by definition unpredictable in effect.

Our second major theme was the investigation of the effects on the backward looking stance of confronting a series of key questions. In Chapters 1 and 4 we saw how far an emphasis on culpability sits uneasily with the idea of a 'limit to law'. Again in Chapters 3 and 4 we saw the variegated forces which push a backward looking stance towards 'individualisation in a uniqueness form', to a 'world without rules'.

Theorists of the criminal law have found what we have called a consistent forward looking position fraught with dangers, as inconsistent with 'justice', as unduly coercive. The alternatives devised have been, broadly speaking, encompassed by an attempt at synthesis of forward and backward looking stances and by a 'new retributivism'. We have seen how fragile the theoretical underpinnings of both positions are.