

The Monument Fellowship

# CRIME AND CONSEQUENCE

*What should happen to people who  
commit criminal offences?*

Edited by Anne Fox & Alison Frater

*"I can't think of a better book on a more important subject."*

Freddy Gray, Deputy Editor, *The Spectator*



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commit criminal offences?*

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*“Broad-reaching, forward thinking,  
fascinating and humane: a beacon of a book.”*

Nicci Gerard journalist, campaigner and writer  
(including best selling crime fiction as Nicci French).



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# *ACKNOWLEDGEMENTS*

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This collective volume has been a collective effort and we wouldn't have it any other way. Clinks and the National Criminal Justice Arts Alliance work wherever possible in partnership with others, we believe together we can achieve much more than we ever could alone. We are grateful to the Monument Fellowship for the opportunity to curate this year's book and for access to their networks and contacts from whom the contributions were sourced.

Mark Woodruff and the trustees of The Woolbeding Charity, formerly The Monument Trust have provided unstinting support for our own work and for the joint work of the Monument Fellowship. We are delighted to be able to continue to add to the impressive legacy of the Trust which invested in so many innovations to improve outcomes for people at risk of entry to or already in the criminal justice system, over so many years.

We are indebted to those individuals and organisations who have contributed to this volume from their professional and lived experience. We are also grateful to those who have supported them to do so, including the wonderfully helpful Paula Harriott and Soruche Saajedi of the Prisoner Policy Network at the Prison Reform Trust. They spread the word and made it possible for this volume to benefit from contributions from their network members, people currently in prison. Thanks also go to prison staff and friends and family of people in prison who made it easier for drafts to be sent back and forth. Thanks also go to Matthew Halliday also of the Prison Reform

Trust for reproduction of the graphs from *Prison: the facts – Bromley Briefings Summer 2019*, to Sally Taylor, Fiona Curran, Jo Tapp and the team at Koestler Arts for the reproduction of stunning images from the 2019 UK exhibitions ‘Another Me’ and ‘A Feeling We All Share’ and Sarah Turvey of Prison Reading Groups for the guide to exploring the issues in the book which we’ve been able to include.

Thanks, as with anything we do, are owed to the Clinks staff – especially working in admin, communications and National Criminal Justice Arts Alliance roles. For this project we relied on really helpful and professional external support from the brilliant Claire Annals, for copyediting and proofreading, Mick and Tom Keates for design and Brian Parish for print. They’ve brought all the hard work together in a volume we hope you’ll enjoy reading and will recommend to others.

## ***FOREWORD***

---

*Michael Spurr*

Last year we moved to live in a village for the first time and a few weeks ago I gave a talk for the local community in the village Church entitled ‘Reflections on Crime and Punishment’. The talk was well attended and from the feedback – well received. It wasn’t a talk to promote a particular agenda or to explicitly present a point of view but rather I simply presented facts about the realities of the Criminal Justice System today and reflections on changes that have occurred over the 36 years I have worked in it.

It’s fair to say that most people came along knowing very little about the system and went away surprised and a little shocked about what they learned. They weren’t aware, for example, that sentences today are much longer, harsher and more punitive than at any time since the abolition of capital punishment 50 years ago; they weren’t aware of what actually constitutes a custodial sentence, release arrangements or the licence restrictions placed on individuals following release; and they were amazed by the fact that there are over 7000 prisoners in custody for breach of those licence conditions.

This wasn’t really a surprise. Most people have limited contact with the Criminal Justice System and for entirely understandable reasons give it little thought. The complexities of sentencing in particular are a mystery (including to many who work within the system!) and the execution of the sentence and its impact on individuals is routinely misunderstood or misrepresented in the media. But this isn’t a healthy position for our society.

Over the last two decades there has been a marked shift to what Professor Anthony Bottoms describes as ‘popular punitiveness’. Only a few days ago the Prime Minister promised to bring forward legislation in the Queens Speech to toughen sentences for serious crime. An urgent review of Sentencing is currently being conducted by the Ministry of Justice but the direction of this review and the outcome required has clearly been set already

Of course in any civilised society crime has to be dealt with and most people (including me and almost all offenders I’ve worked with) accept this must include retribution for the offence. Punishment is necessary and important but it should be proportionate (the ‘just deserts’-principle). A Sentencing Review is long overdue (not least to bring transparency to the system) but this requires considered and healthy debate about what constitutes proportionate and effective punishment and how this should be balanced with the other ‘Purposes of Sentencing’ (Deterrence; Public Protection; Reparation; and Rehabilitation) set out explicitly in the 2003 Criminal Justice Act. It requires a thorough analysis of the realities of the current situation and proper public engagement to determine the best way forward. If we are to continue to become ever more punitive as a society we should do so with our eyes open and with a proper understanding of the consequences and costs – both human and financial.

So this thoughtful book of powerful and impactful essays on Crime and its Consequences is highly relevant; current; and timely. An informed debate about our response to crime is desperately needed and this accessible and genuinely stimulating work provides much food for thought. Last night Channel 4 launched its Crime and Punishment series – a ground breaking set of television documentaries produced by Roger Graef filmed over 3 years across all aspects of the Criminal Justice System. It’s aim, like this book, is to stimulate debate about a system which receives little public attention. The series and the book beautifully complement each other and should be required watching/reading for policy makers and politicians.

In my village a number of people have told me how, after my talk, they now see crime, and media coverage of crime, in a new light. One person told me how they responded very differently to the Prime Ministers comments about Sentencing than would otherwise have been the case. This is consistent with research that shows that when members of the public are presented with individual cases they are much less punitive than they may generally be portrayed. In her essay reflecting on the work of the Justice Select Committee (in Section 2 of this book), Gemma Buckland gives an insight into the dilemmas faced by MPs in dealing with socially contentious issues. She suggests that in dealing with Crime and Sentencing Policy a Citizens Assembly to provide an independent set of recommendations to politicians might be a way forward This worked successfully in Ireland with regard to the law on abortion.

I think she makes a strong case. A debate about our societal response to crime is desperately needed and if this allowed to take place in a structured, considered and informed manner then our politicians may be surprised at the outcome.

**Michael Spurr**

Professor in Practice London School of Economics

Formerly – Chief Executive HM Prison and Probation Service,  
(2010–2019)

17 September 2019

# *THE MONUMENT TRUST INTO THE FUTURE*

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*Mark Woodruff*

The Monument Trust's story began in 1965 with a grant for restoring Petworth's Capability Brown landscape from the vantage point of Simon Sainsbury and Stewart Grimshaw's house, The Monument. It came to a close in 2018 after more than five decades. Alongside a legacy in Arts and Heritage (for instance the new Heatherwick Studio silk-route glasshouse at Woolbeding) and Health (such as the new Maggie's Centre in Southampton), the trustees wanted a substantial and concerted effort to crystallise their longstanding concern for a social renewal, especially in how we respond to the conditions that cause crime and thus how we deter people from pathways that lead to offending and instead towards positive and productive future lives. This was how The Monument Fellowship came to be: the collaboration, mutual inspiration and cumulative effect of seven bodies and approaches vital in our experience to making a decisive difference along the journey of people at risk of offending. The Fellowship begins with community resilience and reducing violence (Khulisa UK) and leads on to restorative justice work in the hands of problem-solving police (Restorative Solutions CIC), to support around the courts for tailoring sentences and alternatives to custody that are known to be conducive to rehabilitation and that can assure victims of crime that offending will stop (Centre for Justice Innovation), to the development of prison regimes tuned to desistance and resettlement (The Good Prison, by Lemos & Crane, and the educational child-nurture approach of Diagrama UK for young offenders), to the use of arts as a means of motivating involvement in education and resettlement programmes through creativity (Koestler Arts and National Criminal Justice Arts

Alliance), and the wide network of all the organisations and services working with those in custody and the community to prevent people's offending and promote their reintegration into a resilient society beyond the damage of crime (Clinks).

When I joined the Trust in 2000 I was told two things. First, Simon was conscious that without the right opportunities and conditions anyone could be at risk of offending and finding themselves inside – himself included, if life had been different. Secondly, the over-riding aims were to keep young people out of prison 'and, if they do err, to ensure they never go back'. Perhaps we would put it differently nowadays, but the same problems persist: if we fail to give young people more choices and chances in life from the outset, or if we do not resource the underlying needs for good psychological wellbeing, educational engagement and aspirational prospects for work and family, we have already equipped ourselves with the worst answer to the question we are asking in this third year of the Fellowship. If what should happen to people who commit criminal offences is their consignment in greater number to under-resourced and over-crowded prisons, then we cannot expect the many hopeful and proven interventions we have supported over the last few decades to have the space and depth of impact they need to take their lasting effect. As I write, one prison governor has said that, after years of trying without the necessary mental health interventions and enough resources of staff and money, resettlement programmes do not work, and the state should concentrate on the confinement and punishment of those who keep coming back. So much for the long vaunted slogan, 'Prison Works'. We beg to differ, having seen time and again that prevention, tested and thoroughgoing interventions that meet people where they can be engaged at the moment for change, inspiration to capture people's positive aptitudes and skills, and determined support while people navigate the transition from past crime and custody to life alongside the rest of society – always with an eye to the justice that victims of crime have a right to expect – alter people's outlooks and prospects permanently and steadily bring down reoffending rates, if they are given the time and opportunity to do so.



This is the third annual collection of essays from the Fellowship members, practitioners and others with direct experience of the justice system to assemble practical wisdom as to how it can best serve our society's need for both fair punishment and rehabilitation, so that crimes do not happen again. Previously we had asked what those at risk of offending, prisoners, ex-offenders and prisons need to learn. Next we sought a range of informed opinion and knowledge from the ground on how we can be a less violent society. This year, in view of the prospect of more punitive sanctions despite the lack of evidence that harshness works as a deterrent or scares people straight, let alone appeals to someone wanting to change their lives and seize opportunities for themselves with both hands, we ask what *should* happen to people who commit criminal offences?

No one organisation or individual has the answer. A diverse ecology is needed to thrive because of the range of people and the interventions that can work in their cases. Our stance has thus been to gather together proven interventions, and hopeful approaches that we could test, from the hands of those whose expertise lies in preventing people from entering the criminal justice system in the first place, as well as in preparing people to re-enter society from prison with skills which should help them to desist from crime, strengthening their families and home communities at the same time as preventing victims of further crimes. These all contribute their evidence and insight; some need further investment to be developed and go to scale for wider impact; and some have fallen victim to disinvestment, because of ill judged cuts, anxiety over the balance of risk, or the more retributive attitudes that have been forming in the wider population without all the information needed for a full picture of where the criminal justice system falls short and how we know from experience it can be successful.

As an independent grant-making foundation, The Monument Trust, we hope, was second to none in investing in the approaches that we need to work, giving them encouragement and credibility, space and time, to take root in the system and in turn make their mark in

ever more resilient communities, in which civil society and voluntary organisations are trusted to know what they are doing to prevent crime, to understand the people among them that they have worked with for many years, what works, and what does not. For instance, we have frequently seen where investment in proactive restorative policing in collaboration with local communities prevents harm, resolves disputes, satisfies victims, supports those being reintegrated, and reliably reduces the risk of offending and re-offending by signposting people to more constructive solutions, usually at a lower cost than the justice system and to deeper and lasting effect. The reduction of child arrests by more than two thirds in the last eight years thanks to an advisory partnership between police and the Howard League (an investment in which Monument was particularly proud) shows how harm can be deflected, the supply line of entrants to Young Offender Institutions reduced, and young people directed to the help they can rely on for a better chance at life.

With this third volume, *Crime and Consequence*, we congratulate the Fellows and our many other friends who have contributed their responses to the question – ‘What should happen to those who commit criminal offences?’ Their cumulative insight presents the richness of the ecology we need to nurture and grow for keeping people out of crime and prison, and ensuring they never go back.

**Mark Woodruff**

The Monument Trust 2000–2019

# INTRODUCTION: CRIME AND CONSEQUENCE

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*Anne Fox and Alison Frater*

Ok, so what should we do with people who commit crimes? That question, in this third book from a series prompted by the Monument Trust, is not as simple as it looks, but whether you're an abolitionist or a supporter of harsh punishment, it has to be answered. Contributors to this book recognise that getting it wrong can have unintended consequences. Some sentences make victims feel worse, some contribute to reoffending, some increase the possibility of intergenerational crime. Put simply the answer to the question must be fair, it must also be intelligent.

Our contributors have addressed the question from a range of perspectives and standpoints. They've responded in different and creative ways, through essays, poetry, collective responses; there's even a play. They're writing from many places including a number from prisons.

In this collection, you'll read a variety of views. There are reflections on what does, or should, constitute a criminal offence in the first place and how changes to sentencing practice can seem arbitrary. There are also thoughts on what should happen to specific groups of people who commit crimes, to people who commit specific types of crime and whether we can tailor sentencing practice to each individual and their circumstances.

This range of views fascinates but doesn't surprise us. Crime and the societal responses to it, deserves continued and considered review. We believe that there is insufficient public discourse about what should happen when people commit crime. We also believe that there

is a disappointing lack of heterogeneity in the range of outcomes for people who come before the courts. In England and Wales, despite falling reported crime rates there have been high levels of imprisonment by comparison with comparable European countries. Other options available to the courts are used less frequently than intended by the Acts of Parliament that created them. For example, the use of community sentences has more than halved in less than ten years.<sup>1</sup> In 2018 of 59,000 people who were sent to prison over two thirds had committed a non-violent offence. Almost half were sentenced to serve six months or less even though it is well documented that short sentences have devastating consequences. People lose their jobs and their homes, major factors associated with high rates of reoffending. The Ministry of Justice's own statistics demonstrate the impact of sentence inflation, rather than changes in the nature of crime, as the main factor behind our increasing prison population.

Within this volume we have included essays that provide strong evidence in favour of alternatives to custody and for greater access to restorative justice. There are also calls for equity of access to interventions that are known to be effective in helping people to turn their lives around. Contributors point to programmes that are more rehabilitative in focus, that address the underlying causes of crime, that offer diversion to drug treatment or mental health care and other therapeutic approaches; they highlight the need for better support to be made available to people who will be in prison for a long time. Many authors identify the transforming impact of the arts, how these work to help people imagine a better future, how they rebuild positive relationships with friends and families and provide technical and life skills for re-engagement with communities including job opportunities. Contributors make these calls in the context of increasing pressure on prisons and probation services. They speak on behalf of those they work with including charities and social enterprises, to meet people's needs.

We are moved by discussions of the drivers and determinants of offending behaviour, how stereotypes manifest, how labels stick and

how criminalisation happens. There are contributors who explore the impact of trauma especially prescient with revelations about abuse in children's homes. There are insights into how we respond to children who offend, how criminal records and convictions acquired in childhood can limit future life chances, how we respond to an increasing number of older people in prison and the urgent need to end the scandalous over representation of people with learning difficulties and disabilities in our criminal justice system.

We are grateful to all our contributors for taking the time to set out their views in this collection. We are especially grateful to those who have helped people with lived experience of crime to be able to contribute.

This collection is a call to action from a cross section of well-informed people from all corners of society. Although they vary in views and answers, they are united in their lack of support for the status quo. We invite you to read their contributions, draw your own conclusions and contribute to the debate.

**Anne Fox**, CEO, Clinks

**Alison Frater**, Chair, National Criminal Justice Arts Alliance,  
October 2019



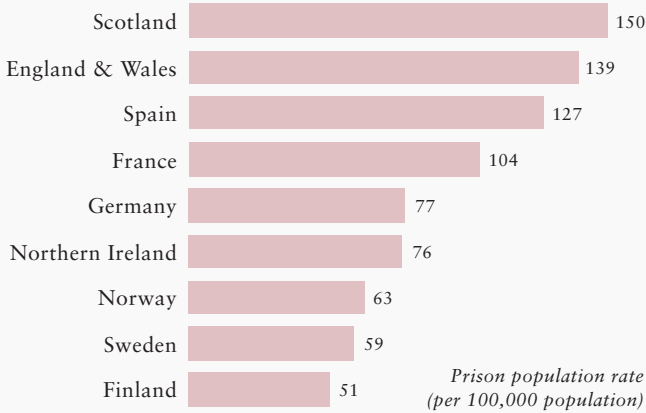
# *SECTION 1*

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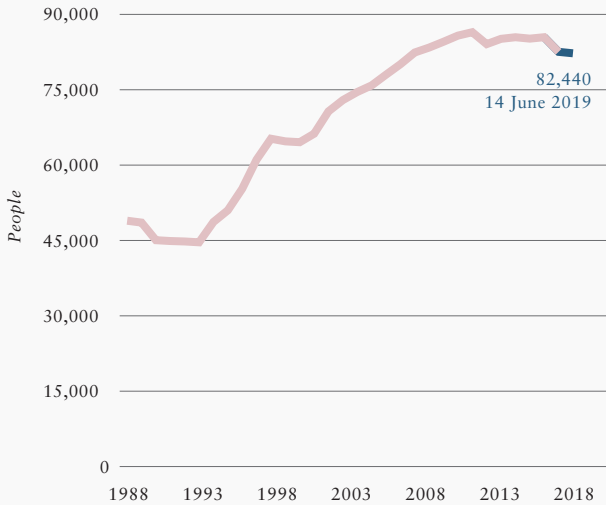
*WHAT HAPPENS TO PEOPLE WHO  
COMMIT CRIMINAL OFFENCES –  
FACTS & FIGURES*

## Sentencing and the use of custody

Scotland and England and Wales have the highest imprisonment rates in western Europe



The prison population has risen by 69% in the last 30 years – but it has fallen in the last two





Yet there is no link between the prison population and levels of crime according to the National Audit Office. International comparisons also show there is no consistent link between the two.

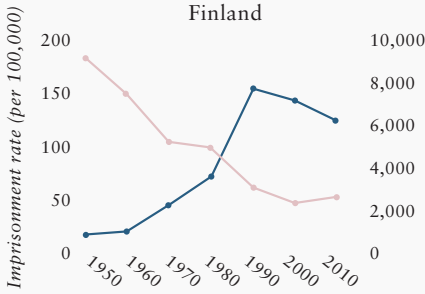


Short prison sentences are less effective than community sentences at reducing reoffending. Community sentences are particularly effective for those who have a large number of previous offences and people with mental health problems. Yet, their use has more than halved in only a decade.

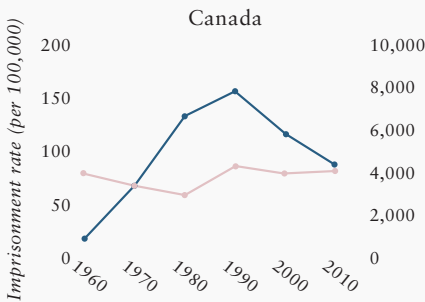
Suspended sentences have risen, but account for only 4% of all sentences – and fell in 2017 & 2018.



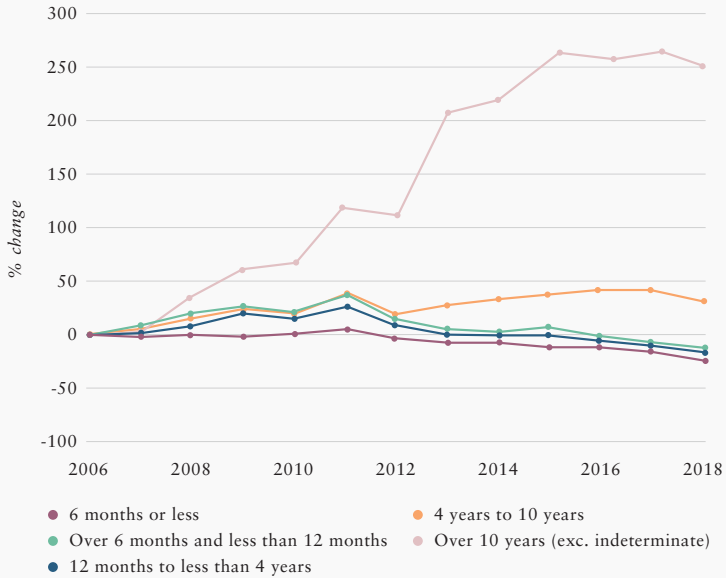
% who reoffend within a year



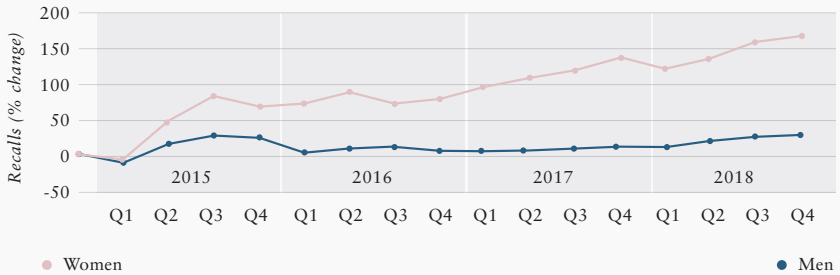
- Prison sentence of less than 12 months
- Community order
- Suspended sentence order



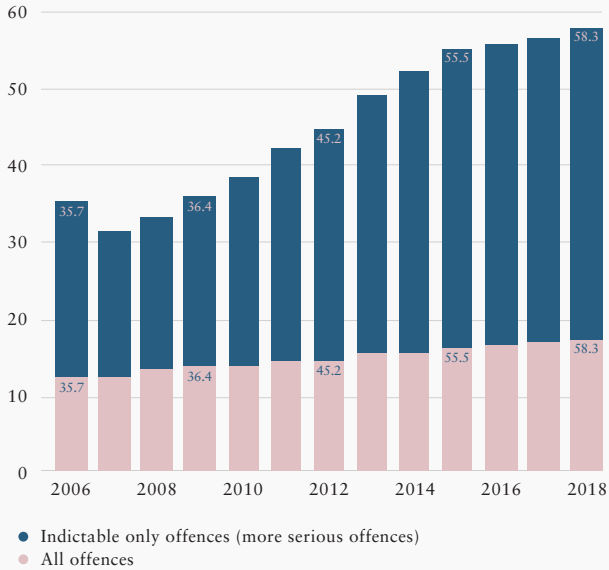
More than three and a half times as many people were sentenced to 10 years or more in 2018 than in 2006.



The number of people recalled back to custody has increased, particularly amongst women.

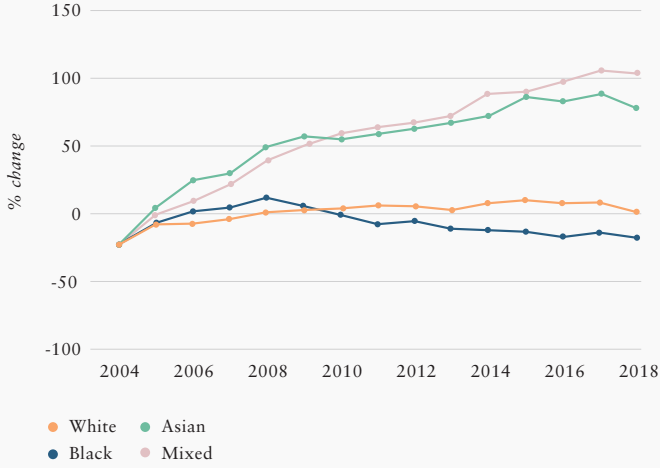


For more serious, indictable offences, the average prison sentence is now 58.3 months – over two years longer than in 2006.

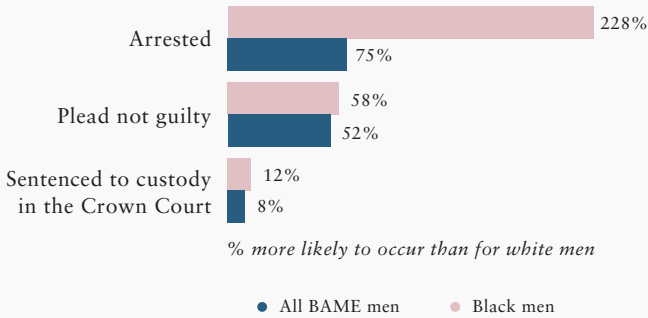


## Black, Asian and minority ethnic people in prison

The number of Asian and mixed ethnicity prisoners has risen sharply since 2004



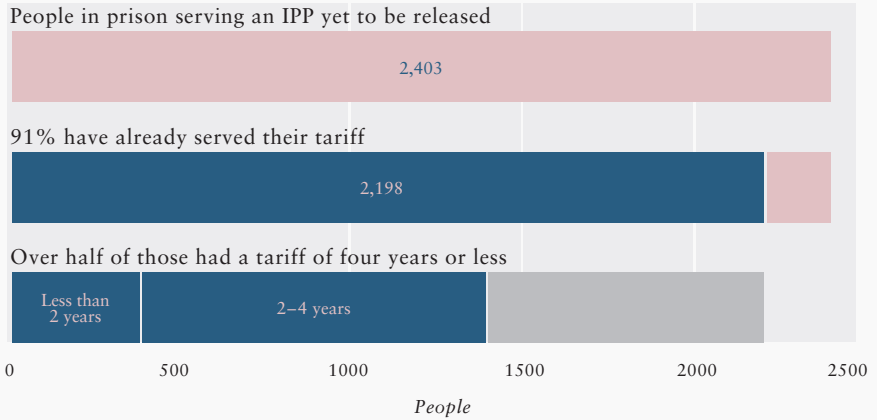
**BAME men are more likely to be arrested, plead not guilty and be sent to prison by the Crown Court than their white counterparts**



## Life and indeterminate sentences

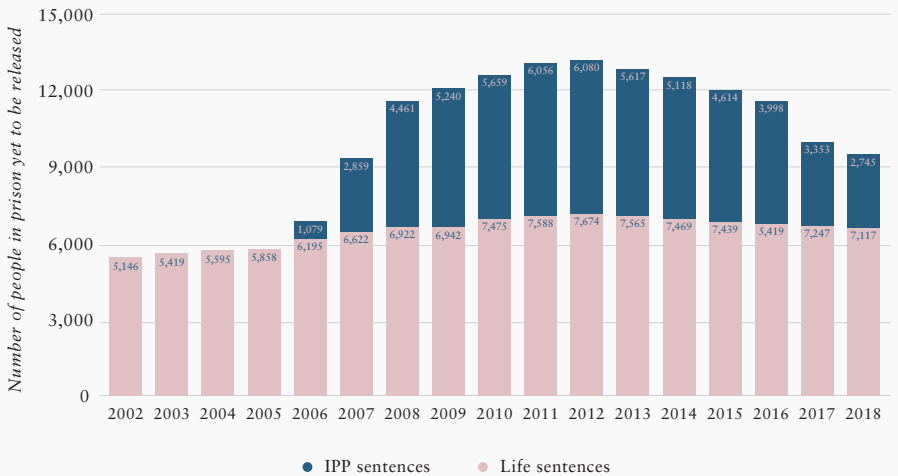
### The legacy of the IPP

Over nine in 10 are stuck in prison beyond tariff



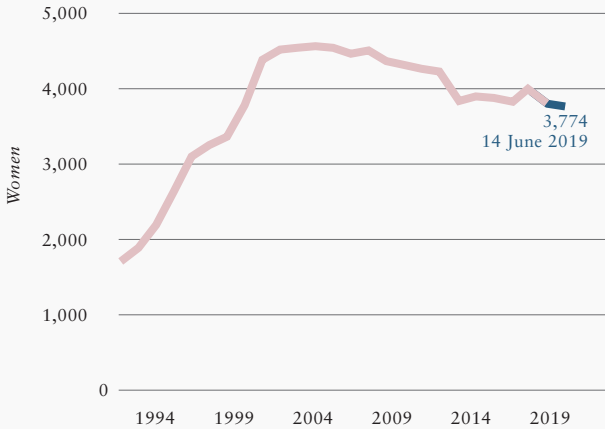
### The growth of indeterminate sentences

Use of indeterminate sentences has risen dramatically in the last decade – but is slowly starting to fall



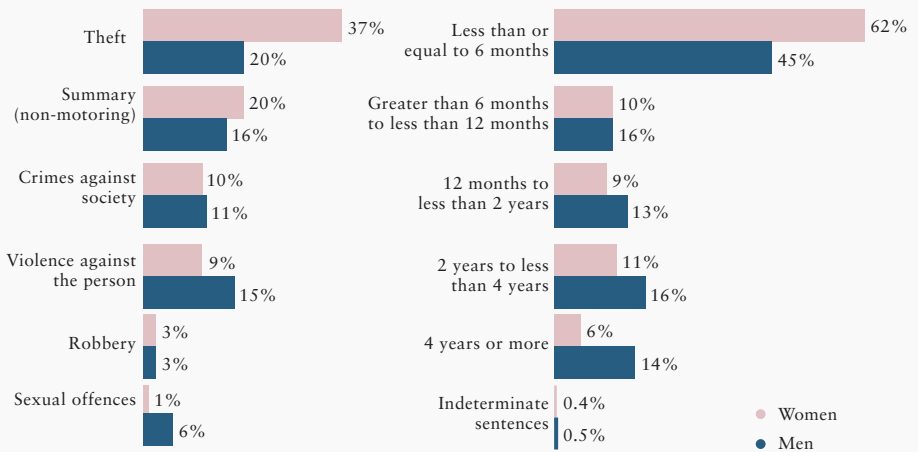
## Women in prison

The number of women in prison has more than doubled since 1993. There are now around 2,200 more women in prison today than there were in 1993.

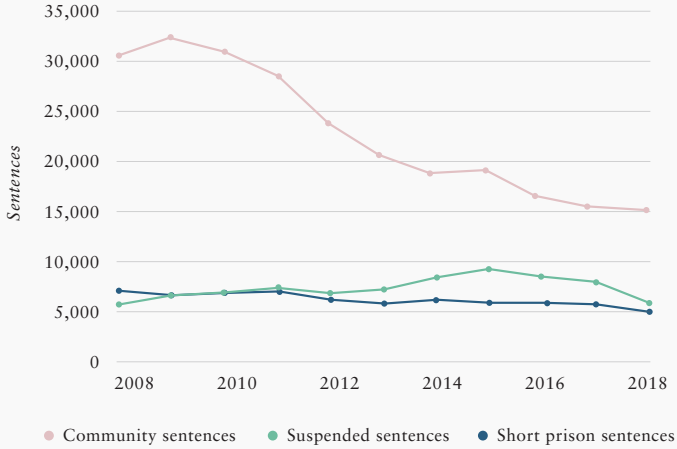


## Women tend to commit less serious offences – many serve prison sentences of less than 12 months.

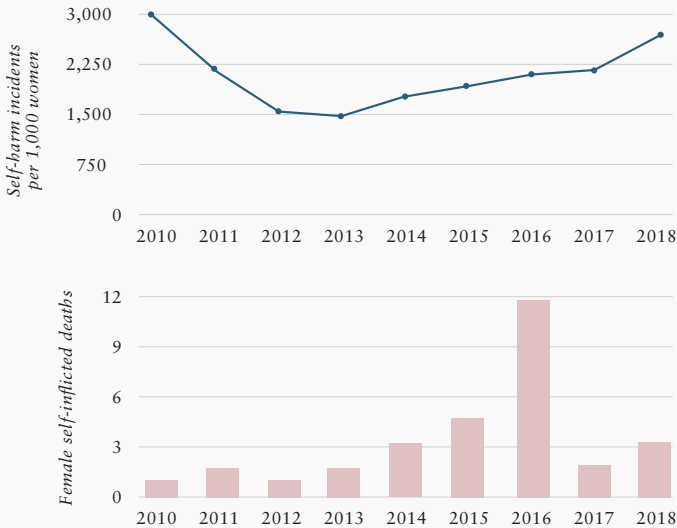
In 2018, people entered prison for committing the following offences and to serve the following sentences



Community sentences for women have halved in a decade—use of suspended sentences has fluctuated, they now account for only 3% of all sentences. Use of short prison sentences has slightly declined

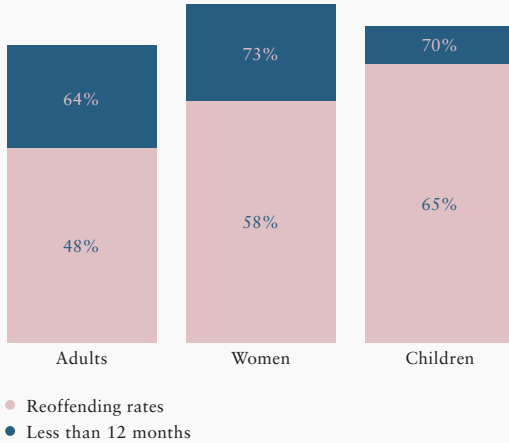


Many women in prison have high levels of mental health need and histories of abuse. Rates of self-harm and self-inflicted deaths have been rising

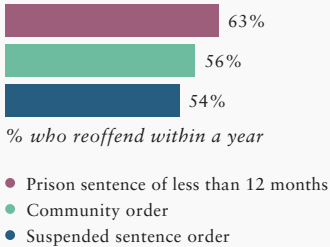


## Rehabilitation and resettlement

Reoffending rates within a year of release are high – for those serving short sentences of less than 12 months the rates are even higher



Short prison sentences have been shown to be less effective at reducing reoffending than community orders for matched offenders



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# *SECTION 2*

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## *UNINTENDED CONSEQUENCES*



## ***RIGHTING WRONGS: THE NEED FOR DIALOGUE***

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*Fergus McNeill*

What should we do with people who commit criminal offences? This age-old question has troubled theologians and philosophers for millennia and much ink has been spilled trying to answer it. I'm not going to try to summarise or analyse these literatures in this short paper – I suspect that those who have commissioned this book of essays are seeking practical answers rather than philosophical responses. That said, there is nothing more practical, I think, than a good theory capable of guiding practice – and the 'should' in the question does invite a moral theory.

But let me start somewhere else. Using the available criminological and sociological evidence, it might be easier to answer a different but related question – What does happen to people who commit criminal offences? Although most offences do not lead to conviction, when they do, our main response seems to be to impose harms on 'offenders'. In a range of different penalties (which we often combine), we diminish and degrade their social status (through conviction), their material resources (through financial penalties and the opportunity costs of other sanctions), their autonomy (through requiring them to submit to forms of supervision and/or treatment) or their liberty (through imprisonment). These are just the intended harms of retributive punishment, also add to the list foreseeable but unintended harms, for example, to their development as people, to their family lives and social ties, to their future prospects, and to their physical and mental health. We can and should also add the reverberating harms suffered by their loved ones.

Thus, the paradox of retributive punishment is that, while in theory it aims at restoring balance by returning harm for harm and removing

illegitimate advantages that offending may have provided, in practice it often damages the capacity of the punished person to live well in the future. So rather than restoring an imagined equilibrium, it exacerbates the social disturbance that crime causes. Though we sometimes talk of punishment as ‘teaching people a lesson’, rather than educating people for a law-abiding and productive future, punishment seems to disable rather than enable, to disintegrate rather than integrate, to injure rather than to remedy.

Partly for these reasons, some prefer rehabilitative responses to offending – responses that are more clearly directed at the project of understanding and addressing whatever lies behind the crime. That said, both in theory and in practice, in exploring and addressing crime’s supposed causes, rehabilitation has tended to focus narrowly on assumed flaws within individuals (or in their immediate social networks of family and friends) – and on correcting these flaws. At its worst, neglecting the role of wider social inequalities in causing crime and in shaping criminalisation and punishment, this kind of approach has ridden roughshod over human or civil rights, even exposing people to much more extensive periods and intrusive forms of social control than their offending might have deserved in the first place. The most thoughtful advocates of retributive approaches, recognised and stressed the harms that punishment causes, have been careful to caution restraint, parsimony and proportionality in the use of penal power. By contrast, where rehabilitationists have thought that they were doing good to people in need and neglected the harms associated with rehabilitation, they have often neglected the need for restraint, carelessly subjecting people to the power of dubious ‘experts’ who claimed to know what was best for them.

These moral problems with rehabilitation highlight the importance of justifying and limiting the use of penal power in whichever ways we choose to use it. Penal power, after all, ultimately on the threat of force; it is underwritten by the possibility of (albeit supposedly legitimate) state violence. In our criminal justice systems, an ‘offender’ who resists may not lawfully be battered, broken and beaten as *punishment*, but their

punishment can include being physically forced into a cell (ultimately a segregation cell) where they will be held against their will. No-one disputes that kidnapping is a violent crime; it can be argued that penal power, at its base, rests on the threat of state-sanctioned kidnapping. It follows – as reflected in the principle of parsimony – that we should only use that power if and when we really must, but determining the answers to these ‘if and when’ questions is not easy. If we are concerned with responding to crime in ways that censure wrongs, communicate our values, and encourage better conduct, a good first question to ask is whether we need to use penal power to achieve these ends? The distinguished Norwegian criminologist, Nils Christie, famously argued that crimes represent conflicts between citizens, that these conflicts are the property of the citizens concerned, and that, in criminal justice, the state steals the conflict from those involved. Both offenders and victims become the fodder in a state-centred project of punishment and social control, resorting too often to formal criminal justice, underwritten by penal power, might then be harming victims and communities as well as ‘offenders’.

An obvious alternative – as suggested by advocates of restorative and reparative approaches – is to mediate the resolution of the conflict through a process of dialogue. If we turn our minds briefly to the ways in which we try to socialise our children, it seems obvious that dialogue is our principal and best mechanism. Good parents, most would agree, respond to their children’s wrongdoing not by immediately imposing suffering on them, but rather by discussing what they did that was wrong, why it was wrong, why they did it, what effects it had on others, why and how they should apologise, and why and how they might make amends. It is through these difficult conversations that our values of behaviour are communicated, justified and reinforced. Of course, in that dialogue, our values might also be challenged. The child might argue back that the norm itself was wrong, or that departing from it was justified in the circumstances. Maybe the parent will be persuaded that they were wrong to impose the rule, or to deny the child the means to abide by it, or in failing to take account of the circumstances.

Bad parents, by contrast, don't listen. They shout. They lose their temper. They lash out. They act like bullies. They rush to the use of force – whether physical or psychological. While this may secure short term control, it stores up problems for the future because rather than producing normative developments it settles for submission and mere obedience, sowing the seeds of resistance.

In good parenting, processes of normative development rest within and rely upon the framework of long-term, loving relationships. We are careful about sustaining the relationships we have with our children. That doesn't mean ignore the wrongs that they do – quite the reverse; love demands and requires that we nurture and sustain constructive, respectful and dialogical relationships with them.

Adult people who have offended are not children and should not be treated as children. But if we want to live in a civil, safe and fair society, then we would do well to note the importance of long-term relationships, of compassion and of dialogue in the ways that we respond to wrongs.

So, my short answer to this complicated question is this. When people offend, we should listen to what they have to say about it. We should talk to them about what they have done, why they have done it and how we might best respond to the wrong. In these kinds of sensitive and challenging conversations, rather than assuming a position of entitlement and moral superiority, we should ourselves expect to be surprised, challenged and corrected. If the dialogue identifies a need for some kind of help to assist the person to function and flourish in the community, then we might explore rehabilitative options. If apology and reparation can be made, then we should also explore those possibilities with all of those concerned. And if we are met with silence or resistance or rejection or violence, perhaps we may need, with regret, to make some use of penal power to impose constraints to protect ourselves and others. But, even then, we should ask ourselves, what were the roots of this silence, resistance, rejection or violence, and have we been complicit somehow in generating it – either because of our response to the offence or because of some earlier wrong that we have neglected to repair.

# **REHABILITATION – A NEW PERSPECTIVE FOR A NEW ERA**

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*Lisa Rowles & Kieran McCartan*

## **Introduction**

This essay focuses on an aligned perspective between criminologist and practitioner. It identifies a shared experience. So many factors critical to helping someone on the path to rehabilitation are common, regardless of offence. A body of research and practice exists that clearly associates childhood deprivation, poverty (physical, mental and emotional) and negative lifestyle factors (poor educational achievement, delinquent peers) to criminality (Cohen, Smailes and Brown, 2004). Together, we explore both Kieran’s academic perspective and Lisa’s evidence-based practical response – borne out of over ten years working with young people for whom incarceration seemed a risk, though not inevitable – to the question posed by this book.

## **A Socio-cultural context of crime**

To better understand how to respond to and prevent crime, we need to consider the what and why. Crimes are a social construct developed and defined within a socio-cultural context. What is considered ‘crime’ changes with location, circumstance, perception and time. Crimes are not fixed, they’re contextual, and the reasons why people commit crimes can change – there’s no set formula for criminality. Currently in the UK, the Home Office (HM Government, 2018) advocates for a holistic approach to understanding and responding to criminality incorporating biological, psychological, neurological and social causations. Recent neuroscientific advances and basic rules of nature vs nurture provide a lens for defining what is possible in terms of rehabilitation and

re-education for a high percentage of those convicted. While criminality is not predetermined, it is however the consequence of a multitude of interrelated factors that may pre-dispose people to anti-social and criminogenic behaviour. Rehabilitation is possible for most, and proactive risk management is possible for others, with the appropriate tools and necessary support.

Firmin's work on 'contextual safeguarding' (Firmin, 2017) paves the way for a concept of 'contextual rehabilitation': a notion recognising both 'exploitative' social networks (gangs, county lines, drugs, knife crime) and the related vulnerabilities (lacking emotional maturity, literacy and resilience) driving criminogenic behaviour. With this lens, returning someone to wider society requires preparation to improve their social emotional capacity and ultimately wellbeing and motivation to be part of society. Without this, rehabilitation intentions are without substance and bound to fail (as is true for so many who breach conditions and are back inside within 14 days of release) (Criminal Justice Joint Inspectorate, 2016).

### **Adverse Childhood Experiences – A community dilemma**

The impact of life experience in anti-social and criminogenic behaviour is well documented (Farrington and Ttofi, 2017). In recent years, we've started to acknowledge the impact of Adverse Childhood Experiences (ACEs) (Scottish Government, 2018) and past trauma and how they can impact future behaviour (Felitti et al., 1998).

The notions underlying ACEs are not new, they're rooted in developmental psychology and ongoing work in criminology of offending (Moffitt, 1993; Farrington and Ttofi, 2017), reinforcing Social Learning Theory and other social, as well as cultural interventions. ACEs are negative experiences that can impact behaviour, health and psychology across the lifespan. ACEs can be direct (sexual abuse, domestic violence, physical abuse, neglect) and/or indirect (dysfunctional households: parental substance abuse, domestic



violence, incarcerated relatives); regardless they can directly impact individual mental/emotional health and brain functioning (Bellis et al., 2014). The relationship between ACEs and negative life outcomes is more correlation than causation. Not everyone experiencing ACEs has a negative outcome. Contextually, individual differences and resilience play a mitigating role, as well as community influences and cultural indicators. However, a growing body of ACEs research demonstrates a link with anti-social behaviour, violent crime, sexual offending and domestic violence (Levenson et al., 2014; GIG Cymru and NHS Wales, 2019; Wilkins et al., 2014; Baglivo et al., 2014).

Underpinning ideas about ACEs are rooted both biologically and socially (nature and nurture), and highlight how ACEs rewire brain structure (Centre for Disease Control, 2019; Metzler et al., 2017); creating a permanent state of arousal (i.e. fight, flight, freeze etc); where we become more impulsive, make poorer decisions and react more, sometimes violently, to our environment (Fox et al., 2014). This ‘malfunctioning’ is the result of conditioning or learning, during early developmental stages, through adverse experiences. We now know (through neuroplasticity) that whilst this learnt behaviour restructures brains of those with ACEs; this behaviour can be unlearned and the brain restructured (Doidge, 2008; Perry, 2009). The impact of ACEs can be reduced through interventions.

Relationships with trusted adults can mitigate some effects of ACEs. In a recent study, an ‘emotionally available adult’ is prefaced as critical to helping young people to make sense of what happened to them and helping to alleviate traumatic symptoms. This approach is termed as ‘social buffering’ and forms part of the critical protective factors that contribute to longer term desistance (Gunnar, 2017). Reducing the impact of ACEs takes time and may not totally eradicate harmful behaviour for everyone. For most, we can expect harm reduction, for many desistance and for some we anticipate risk management, not cure.

Having one ACE or multiple ACEs – as many of us do (Bellis et al., 2015) – doesn't predict anti-social or criminogenic behaviour, it's contextual. A combination of protective factors (resilience, support networks) can stem or accentuate the negative impact of ACEs. Having multiple and complex health issues puts you more at risk of complications but it doesn't mean you can't survive and thrive. We know, for example, that what creates Post Traumatic Stress Disorder (PTSD) in one can engender Post Traumatic Growth (PTG) for another, so situational, cultural and socio-economic indicators create the necessary conditions for someone to commit crime (Mapham, 2012).

Logically, the earlier we introduce holistic, supportive and appropriate social-emotional interventions the greater likelihood of reducing the impact of ACEs and trauma across the lifespan (GIG Cymru and NHS Wales, 2019). As ACEs demonstrate a bio-medical-social-cultural perspective on the aetiology of problematic, anti-social and criminogenic behaviour they should be viewed in that way; not simply as a one-dimensional view of the medicalisation of behaviour.

The impact of ACEs advocates for a trauma informed approach to their management and support (Levenson et al., 2014; GIG Cymru and NHS Wales, 2015; Smith 2018). Being trauma informed means recognising the impact negative adverse conditions have had on the individual and in acknowledging this, providing appropriate support. It's a change of perspective from What's wrong with you? to What happened to you?

A trauma informed lens seeks not to re-traumatise with blame and sanction, but to recognise strengths and skill, build confidence and re-educate – embedding new coping skills to enable recognition and regulation of behaviour. Organisations like Khulisa place the individual at the centre of the process, allowing their voice to be heard and enabling them to move forward at a sustainable pace; promoting desistance, behaviour change, harm reduction and prevention.

Whilst trauma informed approaches sit at the secondary (working with at risk populations) and tertiary (relapse prevention) stages in

public health literature, it's at the quaternary level (a protective barrier around the individual, guarding against the negative impact of being in the system) where it's most effective. This highlights the importance of a contextual lens to rehabilitation (and therefore re-integration into society), which is reliant on understanding the individual and societal context where crime is committed and the associated implications for re-integration, at both micro and macro level.

### **Working contextually with ACEs in practice**

Some might argue ACEs are a rebranding of past interventions and social care/social support mechanisms for at risk populations. The major difference with ACEs is that they're rooted in trauma informed contexts and feed off strength-based research and practice (i.e., Risk Need Responsivity and Good Lives Model). We believe that recognising the impact of ACEs is critical to both prevention and desistance for anti-social and criminogenic behaviour.

There is a growing acknowledgment of ACEs, particularly in Scotland and Wales (Public Health Wales, 2016) where respective governments have researched, invested in and made ACEs a central part of their policy platform (Scottish Children and Families Directorate, 2018; GIG Cymru and NHS Wales, 2015; Smith, 2018). In England and Northern Ireland, the journey is just beginning.

We have been aware of the impact of ACEs, related circumstances (impoverished environments, exploitation, victimisation) and the resulting effects on individual psychosocial development and related brain function for many years. In the past five years alone, we've seen the reduction in resources (funding and therefore people) coupled with an increase in young people with highly complex issues (mental health problems, at risk of exploitation, knife crime, gang-related activity), the impact of 'Spice' (synthetic cannabinoid) and other mind-altering substances. Despite this, during this period, we have continued to run psycho-education programmes (Silence the Violence) for young offenders accompanied increasingly with trauma-informed training for

the adult care-givers that support them (i.e., teachers, prison officers, probation officers, YOT workers, social workers etc). Our (Silence the Violence Together) model looks to provide a sustainable supportive environment where young people can thrive; learning to re-structure their responses to traumatic triggers and be supported in sustaining these behavioural changes by educated professionals, ultimately enabling them to have positive crime-free lives. We have witnessed many transformations in young people over the years. The courage and conviction that young offenders have – despite the challenges they continue to face, without appropriate coping skills yet in place – provides a consistent perspective for what is actually possible with young people.

Our focus is on improving individual coping skills with the specific intention of enhancing social and emotional wellbeing for all (staff and beneficiaries). Our methodology is informed by external and international evidence about the positive impact of Dramatherapy, Restorative Practice, the Good Lives Model (of Desistance) and group work dynamics. Programmes are scaffolded to provide daily rituals, boundaries and activities that align to Dr Bruce Perry's Neurosequential Model (Perry, 2009; Perry, 2006). This approach helps individuals to learn to self-regulate, whilst training staff to learn to self and co-regulate and attend to their own self-care regime. We also look at the development of organisational wellbeing factors. These concurrent activities enable more effective dialogue and create space for relational healing as opposed to re-traumatisation. This holistic approach develops a young person's emotional literacy as well as enabling social buffering through trauma-informed staff, who can act as a protective factor for longer term emotional regulation (Sunderland, 2019; Gunnar, 2017).

Our programmes are evidence-based and we track wellbeing measures for all attendees – both staff and young people. On average, our participants in the criminal justice system are aged 18–24 years. They are mostly imprisoned for serious violence and serious drug

offences; around half have substance abuse issues; a third are referred as victims of violence; and 90% have a history of being physically violent. Around 1 in 3 have diagnosed mental health needs – but our experience is that all participants struggle with their mental health. Despite this, as a result of interventions, up to 60% report an increase in wellbeing, specifically in:

- Levels of motivation and self-worth
- Social and emotional competence
- Resilience and coping

Also, 61% of participants report a reduction in negative well-being, specifically a decrease in states of anxiety and depression. Post-programme 97% of participants reported continued use of the coping skills they learnt on the programme. This data – and evidence from other trauma-informed and person-centred interventions – is obvious proof that we need to provide trauma-informed environments that promote ‘social buffering’ and educate offenders about emotional regulation and other life skills, that they’ve not learnt in their chaotic and traumatic lives thus far.

There’s also a bigger picture to explore at a macro level, in terms of sustainable impact. Recent research into desistance shows: ‘young people who don’t reoffend are the ones who have managed to change the way that they see themselves’ (University of Salford, 2017). Personal perception around identity and self-worth is critical to desistance and has a direct correlation with our individual ability to succeed in securing a job, home and sustaining a crime-free life. We don’t generally achieve this alone – our environment, our community, our ‘context’ is critical.

Combine the positive impact of an effective person-centred intervention on offender wellbeing with provision of trauma-informed training for staff and the context improves exponentially. Now, we create the potential for staff to be ‘emotionally available adults’ – i.e. trauma-informed, with their own self-care regime in place, reducing the

likelihood of compassion fatigue and related toxic stress. This is the ideal context for ‘social buffering’. In this environment, the opportunity to engage a young person’s brain and foster relational health, pro-social skills and habits, is far greater than one of these factors in isolation. Our data shows that 91% of staff confirm that our trauma-informed training is extremely useful in their day to day work. It provides a sustainable positive on-going impact for both staff and those in their care.

The argument for trauma-informed environments as part of a solution to inform desistance and re-educate young people is already documented. In the USA, after implementing a trauma-informed institutional environment in a mental health unit at Framingham facility in Massachusetts, there was:

- 62% decrease in inmate assaults on staff and
- 54% decrease in inmate on inmate assaults
- 60% decline in suicide attempts (Benedict, 2014).

With the current increase in staff assault and suicide in our prison system, anything evidence-based that can be replicated in the UK has to be the way forward. Couple this with the fact that retention remains a problem (almost 2 in 5 officers (39%) leaving the service in 2018 had been in the role less than 2 years) (Prison Reform Trust, 2018); it’s not just the offender that gains from a trauma-informed environment. There is an urgent need for self-care of staff preventing burnout and compassion fatigue. We need to address secondary and vicarious trauma for all those working in our criminal justice system who are exposed to increasingly more complex and harrowing crimes.

## **Conclusion**

We believe we have a social responsibility to re-educate those who commit crime where possible. The ability to improve social and emotional learning – in the pursuit of greater confidence to build crime

free lives that reintegrate more effectively into society – will stem crime levels for so many offenders. These life skills enable all of us to be far more successful in responding to life's inevitable stress (finding a home, a job, looking after family, keeping them safe). Responding to the impact of ACEs and their link to ongoing ill-health is just one part of the equation. The answer to reducing crime has to be a contextual rehabilitation response. We need to consider all systemic factors surrounding an individual's criminogenic behaviour. One size doesn't fit all, and relational issues can only be addressed by considering the wider relationship of the individual to their environment and the system.

# TOWARD BETTER PUNISHMENT

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*Phil Bowen*

## **The need for punishment**

When someone is found guilty of committing a criminal offence, there is a clear and widespread public expectation that the person should be punished (Hough et al., 2013). This involves inflicting some kind of pain or loss ('harsh treatment') and the communication of censure. Anthropological reviews of different cultures and different religious traditions consistently find that the impulse that wrongdoers should be punished is widespread and, perhaps, universal (Renteln, 1990).

Punishment can be justified in a number of ways:

- to incapacitate — to restrict and, at times, deprive an individual of their liberty in order to avoid further harm to others;
- to deter — preventing that individual from repeating the act and to deter others from committing similar crimes;
- to rehabilitate — imposing a punishment may motivate an individual to choose a new path.

All of these — incapacitation, deterrence and rehabilitation — are justifications for punishment only if they achieve the desired outcomes.

## **Retribution and punishment**

Yet, there is another justification for punishment which is not like these:

- retribution – that punishment is *a good in itself*.



Retribution does not seek its justification in future favourable outcomes. For retributionists, setting levels of punishment in order to manage the problem of crime (as required by incapacitation, deterrence and rehabilitation) amounts to ‘using’ people. Instead, retributionists argue that punishment is a moral duty — part of our reciprocal arrangements where the duties individuals ought to obey are also the foundation of our rights. Immanuel Kant’s emphasis on duty and punishment implies that:

... what gives reality to *my* rights is *your* duty to respect them ... I can claim rights only if I am prepared to pay the price, which is the acceptance of the very same duties ... this means that I must accept and endorse the system of punishment without which there would be no law and no lasting community.

SCRUTON, 2001

Retribution theory argues that the criminal law provides a codification of society’s values. Punishment, as censure and harsh treatment, reinforces those value. We punish people, at least in part, because doing so is a necessary part of giving voice to the standards we honour as a community. It is the flip side of the Golden Rule — a way of making clear that you should not treat others in ways that you would not want them to treat you. Retribution also holds that the completion of punishment provides a way for wrongdoers to earn redemption and gain re-acceptance — for to do otherwise would be more punishment than is deserved.

### **Punishment, the public and the reformers dilemma**

In the UK, public attitude surveys have regularly shown that the public do not believe that sentences are long or harsh enough (Hough and Roberts, 1999; Hough, Roberts and Jacobson, 2003; Hough, Roberts, Bradford and Jackson, 2013). This public desire for more punishment stems from a critique that our existing punishments do not ‘fit’ the crime — ‘People have a firm belief in an “eye for an eye”

... They worry that too many people avoid the correct sanction ...' (Transform Justice, 2017). This public desire seems immune to the consistent pattern of 'sentence inflation' over the past 30 years, as sentences have indeed got longer and longer. It has remained constant despite compelling evidence that shows that the public is largely ignorant of actual sentencing practice and despite the evidence that the public consistently underestimates how long current sentences are. (Ironically, when presented with specific case scenarios, many people would impose punishments less harsh than those actually received).

This thirst for more punishment seems at odds with efforts to make the criminal justice system more effective and more humane. Criminal justice reformers (generally a loose gaggle of liberals, progressives, Marxists and misfits) tend to argue that sentencing should be less punitive mainly in order to deliver reductions in re-offending<sup>1</sup> or, in some cases, eschew the concept of punishment altogether as barbaric. The dilemma for reformers though is how to persuasive argue for their vision of a justice system in the face of popular punitive attitudes:

Retributive sentiments tell us that people ought to be punished for their wrongdoings ... So compelling are these intuitions that any approach to punishment that results in a violation of these principles can immediately be called into question for that reason alone.

CANTON, 2017

If we take this retributive dilemma seriously, any reform approach which ignores the question of punishment is likely to be treated with scepticism.

### **Re-thinking retribution and punishment**

One response is to attempt to change how issues of punishment are publicly discussed. By emphasising the reality that crime is largely committed by people in contexts out of their control (such as disadvantages in upbringing, health, economic and social environment),

reformers can ‘reframe’ the public discussion, and lessen the demand for punishment (Transform Justice, 2017). If people are caught in circumstances beyond their control, how can they be said to deserve punishment? Yet arguably this effort merely seeks to side-step the inevitable debate about moral agency and the normative value of crime and punishment which, as we have seen, has wide, perhaps, universal acceptance. Moreover, it does little to provide a different set of policies to change the punishment that are already interwoven into the fabric of our practice — in short, it does not answer the question of *what should happen to people who commit criminal offences*.

Instead, if we consider the foundations on which principled retribution rests, we may arrive at more tangible responses attractive to reformers. Seeing people as ends in themselves, not to be used to achieve better outcomes for all, strongly suggests, for example, that innocent people ought not be punished — they have done nothing to *deserve* it. Therefore, the processes and practices by which we determine innocence and guilt ought to limit punitive censure and treatment. This leads to the conclusion that we need to use incarceration for those awaiting trial as parsimoniously as possible and that it should feel substantially less punitive than being ‘sentenced’. Moreover, we should seriously examine where the line is as to what is a crime. For example, the current debate about the legalisation or, at least, de-criminalisation of cannabis reveals opportunities to re-draw the boundary between what is a crime — and what isn’t and therefore what ought to be punished.

In the same vein, if punishment ought to provide an avenue for individual redemption, are the collateral punishments we already impose when we sentence people truly ‘deserved’? There are over 11 million people in England and Wales who have received and completed their punishments already and yet can find themselves treated unfairly and unnecessarily, especially when it comes to employment, because of their criminal records (Unlock 2019). On what grounds can that be said to be deserved by all of them? How does this provide them the route toward re-acceptance into the moral community that retribution demands?

If reformers aim to reduce the use of prison, serious engagement with how community sentences deliver punishment, consistent with retribution, could also be used for reformist ends. Retribution implies that offenders should be punished in proportion to their wrongdoing. This emphasis on proportionality within retribution can be used as a powerful argument for reducing the sentence lengths of those on community sentences. We know that over 50,000 low to medium risk probationers received community orders of 12 months or longer last year. This ‘stretching’ of community sentences has been one of the consequences of sentencing inflation. But assuming that a longer sentence equals a better sentence is, however, not only misguided, but arguably also disproportionate. It is plausible that a probation system that focused on short community orders, where sanctions and interventions are delivered quickly and are over sooner, may find greater public support than the often long drawn out affair that community sentences can be.

Moreover, it is not hard to see that the retributive insistence that the completion of a punishment should provide a route to re-acceptance is compatible with, rather than in competition with, rehabilitation. In this way, retribution theory provides an additional and strong argument that probation practice should emphasise rehabilitation as the primary way to deliver on redemption:

A fulfilment of a just punishment requires some kind of ending ... once the punishment has been completed people ought to be dealt with on the same basis as others – the achievement, in other words, of legal, social and moral rehabilitation ... probation has a critical part to play in the administration of a retributively just punishment.

CANTON, 2017

A focus on the realities of punishment as perceived by those who are subject to it may well unlock further insights. For example, as the range of potential restrictions electronic monitoring technology can

deliver increases, reformers could emphasise that the restrictions that can be imposed amount to a more keenly felt punishment than small doses of incarceration, while, at the same time, preserving individuals' community ties (a goal of many reform arguments for de-incarceration). Emphasising the *actual experience* of people on tags is likely to offer new and challenging perspectives on the reality of punishment (Nellis, 2016). If we can demonstrate the 'pains' caused by such restrictions on the offender, and contrast these with those of prison sentences, it may offer reformers additional arguments about reducing the use of prison.

More generally, as we better understand the realities of punishment from the *perspective of the punished*, it is likely to suggest we are more parsimonious in our infliction of pain on others. There is plenty of literature that shows that service users can often experience probation interventions that are meant to be helpful as intrusive, while others experience 'punitive' sanctions such as unpaid work as motivating and even enjoyable (McNeill, 2019). The realities of punishment suggest that we cause unintended pain regularly. It may do reformers well to emphasise that *probation* as experienced can be different from that imagined by the public and that intended by judges. *Punishment as experienced* is not just about duration, but about intensity, weight, incidence and uncertainty (McNeill, 2019). Any principled argument for retributive punishment should, as a matter of course, care about reciprocity between the harm caused by the crime and the amount of pain inflicted by its counter-balanced punishment – these new perspectives seem to strongly suggest that we punish too much and too carelessly.

### **Toward better punishment**

It is unclear whether re-thinking the realities of punishment as a way of pushing reform forward will succeed. There remains a deep problem that one person's calculus of deserved punishment may not accord with the next and it is unlikely that we shall ever arrive at the point where we all agree on the punishment a person 'deserves'. In addition,

demonstrating the realities of the pain caused by the full range of punishments we already have rests on giving voice to individuals whose are already marginalised and disregarded in public and policy debate.

Nonetheless, public discussion of punishment that embraces retribution alongside rehabilitation, incapacitation and deterrence would, at least, better reflect the heterogeneity of public attitudes and the multitude of contradictory impulses that exist within our justifications for it. The point here has not been to argue for punishment on retributive grounds alone. Instead, I argue that responses to the ramping up of punishment over the last 30 years may have failed, in part, because reformers have not taken seriously the moral power of retribution.

Re-engaging with retribution theory and the necessity of punishment at least has the advantage of meeting some of the public on their own terms. This re-engagement needs to be no tactical strategy but instead a genuine effort to grapple with the justifications, the experience and the practice of punishment, moving away from a simple technocratic argument about what policies are effective in delivering desirable outcomes. Moving toward better punishment is unavoidably a moral and political argument and an understanding of retribution highlights the limitations it itself imposes upon punishment. It offers a way, in my view, to renew and broaden the arguments for a better justice system that is more legitimate, parsimonious, proportionate, fairer and more effective when people commit criminal offences.

## ***PUNISHING THE MOST VULNERABLE***

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*Sophie Gibson*

Hattie was sexually abused by her father throughout her childhood. She has experienced abusive relationships. In one her abuser persuaded children's services she was an unfit mother, ensuring the removal of two of her children. She suffers from severe and enduring mental health problems. When it all became too much for Hattie, she attempted to take her own life. Hattie was arrested and, because a mental health bed was not available, she was sent to prison 'for her own safety'.

'It wasn't until I committed an offence that I got any help' is a statement made too many times by women who come to Brighton Women's Centre (BWC)'s Inspire service. Inspire supports women in the Criminal Justice System – whether women are referred from Police custody, are on community orders, or being re-settled from prison, their stories share consistent themes. Many have experienced sexual and physical abuse, domestic violence, exploitation, trafficking, mental ill-health and addictions – underpinned by trauma, poverty and inequality. They have often been failed across their life course, first by those meant to care and protect them and then by multiple agencies, thus making them some of the most marginalised, powerless and disadvantaged women in society.

Our dominant narratives prescribe that we should separate offenders from victims yet the vast majority of women who come through our doors have been victims long before they became offenders. Failing to recognise the 'victim' within the 'offender' is a common theme in the use of prison and in many service responses.

When we hear stories about offenders, the narrative places responsibility entirely at the door of individuals. There is a clear purpose in presenting ‘offenders’ in this way. Consciously ignoring the context of peoples’ lives ensures that as a society we do not take a longer, deeper view into the concerning and prevalent structural inequities that frame the lives of too many people in the CJS.

We see structural failings and inequalities most keenly when someone is incarcerated for their ‘own good’ or ‘safety’. In so doing, people are placed in institutions that are not set up to manage the levels of trauma and mental distress presented. In these institutions the focus is on punishment; funding and staffing levels are unable to keep the most vulnerable safe or contain the levels of violence and bullying; there is often inability to provide basic medical care; and women are routinely degraded and dehumanised.

We have come to live in a society where, despite the best efforts of many to make a difference, we still fail many of the most disadvantaged women across their life course – and then punish them for their homelessness, their poverty, their mental ill-health and their traumas.

As a society we hold strong beliefs about the need for retribution: the need to separate those who are ‘good’ from those who are ‘bad’; that prison is a holiday camp; that we need to have even tougher regimes and punishments and that people are just born ‘bad’. Unfortunately, these powerful beliefs are consistently triggered by reactionary statements by those in power. When politicians are seeking high office they immediately resort to being tough on crime, using language that feeds reactionary beliefs. This is further fed by much of the mainstream media, inflaming public attitudes, making it almost impossible to reconcile punishment and the need for revenge with rehabilitation and a commitment to changing behaviour.

Whilst many of those giving sentences recognise the contexts of ‘offenders’ lives they also need ‘to be seen to do justice’ and ‘see to be taking account of the victim’s needs’. In a study conducted for



the Probation Service 94% of victims of crime stated that the most important thing to them was that the offender did not commit the crime again.<sup>1</sup> This suggests that what victims of crime themselves want is for offending to reduce. It is only by working closely in partnership with all agencies involved in the Criminal Justice System that we can support those who commit an offence to move into a more fulfilled life. For most people, 'doing a crime' and 'doing time' go together like bread and butter. What we know is that prison only serves to push people further away from the possibilities of a meaningful life.

If we want the offending to reduce, we need to make it very clear to the wider public and society at large that prison is over-used and doesn't work. Prison is a dead-end street, serving only to further entrench people into lives of disadvantage. Lives which become increasingly difficult to escape and find fulfillment.

The criminal justice system (CJS) is the end of the road for many who have experienced a lifetime of neglect and service failure, who have never had the opportunity to realise their potential and who are then disproportionately punished. Of course, not everyone in the CJS who commits crime falls into this group, and these are not the only people in the system.

Who we punish and who we hold culpable is a concrete representation of our deeply divided, unequal society. We know from looking at those who end up in the CJS that we punish those who are easy to punish – the people who don't have money, influence or powerful friends – the low hanging fruit for enforcement agencies. These are the people who have been at the sharp end of failing institutional processes, often for generations.

We pride ourselves on being an advanced and civilised nation yet the reason that the criminal justice system is the end of the road for so many people in need is because of the inability of services, earlier in the system, to respond effectively to peoples' needs. Essential services are being cut, creating ever greater social exclusion. Rapidly diminishing

resources means that services have increasingly high thresholds, so many people in need are unable to access support, thus widening the chasm of inequality. Systemic failings show up in attempts to gate keep by authorities, meaning people in need are often harshly judged. This reinforces power imbalances and lack of trust in the very services that are meant to be helping.

From Government departments to local authorities, services are commissioned in silos – housing, adult social care, children’s services, health, the DWP, education. Single issue services are ill-equipped to respond to the lives of people experiencing complex and interrelated needs and often their eligibility criteria conflict.

Karen is on a community order and is in an abusive relationship. Her children are currently being looked after as she is deemed ‘unable to keep them safe’. Housing want to place her out of area because of her domestic abuse. If she accepts and is unable to afford the travel to keep contact appointments with her children she is judged as non-engaging by children’s services and risks losing her children. If she refuses accommodation she is judged by housing as being intentionally homeless and is no longer eligible for support.

Karen is fortunate enough to have a case worker to advocate for her to improve her chances of accessing support. If we are to live up to our belief of being a civilised nation, we need to move forward by properly investing in services – improving both human and material resources.

When the seminal Corston Report was published in 2007, it identified how many women in the Criminal Justice System had experienced trauma in the form of childhood abuse, sexual and domestic violence, trafficking and exploitation. The over-representation of care leavers in the CJS suggests that many men as well as women will have experienced trauma.

Being trauma-responsive is essential to ensure people are kept out of the Criminal Justice System. Trauma can have a hugely debilitating impact on people's lives and significantly impairs their ability to function.

Remember Hattie?

When Hattie received a letter from the DWP changing her benefits to Universal Credit leaving her without funds for weeks, her anxiety spiraled out of control, she stopped sleeping and was unable to leave the house, unable to attend appointments and risked being breached, pushing her towards the custody threshold.

We know that trauma responses are typically flight, fight, freeze or flop. Understanding trauma and becoming trauma-responsive requires professionals to understand how trauma is acted out and to take a deep look at how we behave in response to trauma. Trauma was recently described to me as like being kept in a cage with a bear. At our women's centre we work to keep the women out of the cage. When women are triggered, we respond from a place of awareness and understanding. When services don't take account of trauma, trauma survivors are labelled, judged, excluded and criminalised.

Some women come to us having being arrested for 'assaulting a police officer'. When we look at the circumstances of this arrest what we see is that a woman has been in a state of mental distress and, often due to previous abuse, has resisted being touched. When an untrained, often male, officer has come too close, the woman has lashed out.

Until we train professionals how to respond appropriately to mentally unwell people, and adequately fund mental health and therapeutic settings, we will continue to punish traumatised people.

Eleven years after Jean Corston called for a radical and distinct approach for women in the Criminal Justice System, the Government

produced the Female Offender Strategy which supported much of what Corston had called for. Sadly, the rhetoric was not matched by the necessary funding to enable this approach nor was there a much-needed wider public debate in order to understand the structural and systemic inequalities that surround so many people who commit a criminal offence.

Countless reports and research, including the Government's justice data lab, has shown that women's centres are effective at reducing offending and supporting women in turning their lives around. Yet these centres remain dangerously underfunded and some have closed, leaving women unable to access the support they need.

Our work grew out of the Corston Report. It is an integral part of the local Criminal Justice System and works in partnership with other CJS agencies. When women come to us we listen, we place them at the centre of their recovery and we build compassionate relationships supporting them to address the issues that have led to their involvement in the CJS. When women feedback to us they say:

'I was listened to; I wasn't judged; I felt safe; I could trust her [support worker]'.

Our partnership and women-centred approach supports women to build new paths towards positive futures.

We need to ask the question that if we want to live in a society that embraces progress – how have we come to live in a society where we criminalise poverty, homelessness and mental ill-health?

We need to change the stories we tell about offending across the whole of society. If we want to see ourselves as a nation that embraces progress and development, then we need to re-conceptualise what we believe about those who commit a criminal offence.

We need to take a common sense, step-by-step, proactive, problem-solving approach. Reactive, hot headed soundbites like ‘coddling criminals’ only serve to maintain dominant and powerful narratives. These narratives prop up an iniquitous and unfair system whilst hiding personal circumstances and context. These are narratives that place responsibility entirely on the individual without taking account of structural and systemic inequalities.

We need to unpick this stitched-up fabric of society and expose the attitudes, values and beliefs that inform our responses to criminal offences. We need to understand the role of trauma and the impact of systemic inequality and structural disadvantage. It is easy for those in positions of power and privilege to talk about choice because they have lived that reality.

We need to change public attitudes and start telling more informed stories. Stories that help us understand the context of people’s lives. Stories that help us understand that yet more punishment, for people who have had a lifetime of punishment, serves to increase exclusion and the potential for more offending.

We need to work upstream to support people to stay out of the CJS. We need to bring humanity back to services, so that people are seen as people. We need to listen to people who have experience and design our services from granular experience – not through the professional lens of ‘we know best’.

We need to engage in rational dialogue about the purpose of the Criminal Justice System for people who do not pose a danger to society. And we need to ask a fundamental question of the CJS: Do we want revenge or do we want the offending to cease? Locking people up doesn’t reduce offending but loss of a home, loss of income, loss of children and loss of support does significantly increase both need and vulnerability – and with it, increase the likelihood of further offending.

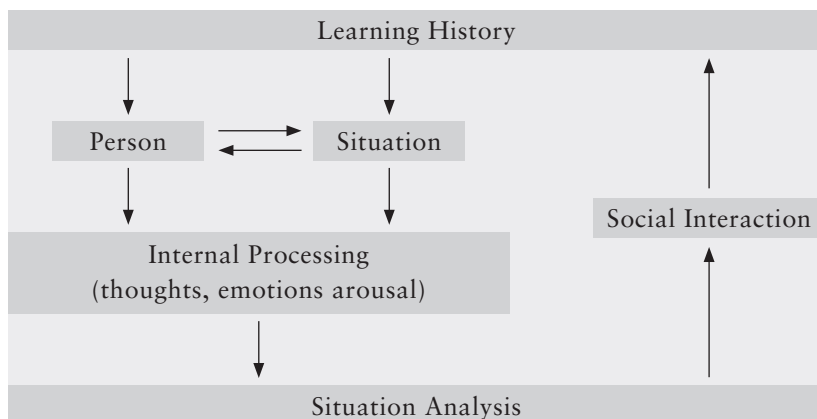
All of this requires us to engage in a deeper, broader and wiser discourse about punishment and rehabilitation, structural inequality, contextual culpability and systems change. When we commit to widening public understanding about the role that personal and socio-economic disadvantage plays in committing crime, we will be in a better place to decide – from an informed position – what should happen to people who commit a criminal offence?

# EXPLORING LEARNING HISTORY TO INFORM SENTENCE PRACTICE

*Mark Humphries*

## Diagram 1:

General Aggression Model adapted from the Building Better Relationships Programme.



## Introduction

This essay proposes that a focus on ‘learning history’ should inform sentencing practice. It uses a model that has been adapted from an Offending Behaviour Programme and argues that there is much to be gained in creating a justice system that works for all, when a thorough examination of all the aspects surrounding the alleged offence, and the person arrested and charged is carried out to the fullest extent.

It is not the intention to give cause for anyone to be able to pass the buck or diminish the seriousness of offending against the rules set by society. In fact it acknowledges that those who offend may, in some cases, deserve a prison sentence. In all circumstances there will be consequences for their actions.

It ought to be said at the start of this piece that it is not the local constabulary that will charge an individual (or group of people) with alleged offence(s) – that is carried out by the Crown Prosecution Service. Charging an alleged offender should only be done after a careful review and examination of all the evidence. Having served some years in custody myself (for offences that I handed myself into the police for), I have come to the conclusion that there are many occasions when charges are laid against people with no consideration of what brought that person into custody.

At the point of arrest a person is taken into custody at a police station, or more recently, a police investigation centre. The arresting officer will tell the custody sergeant why the person has been brought in for questioning and will lay out a very basic overview of what has happened. The custody officer will then take the details of the person in custody and log them into the police information system which will show on record that they are now in the police station.

In my view it is at this point there should be an in-depth process whereby the person held in custody is investigated and not simply the events around the crime that might have been committed. If we are going to see a criminal justice system that works for all then we are in need of a complete overhaul from arrest through to sentencing and on into the prison system.

## **Learning History**

Looking at an individual's learning history explores where they grew up, what was happening in the family home and their social surroundings. The investigation is informed by what level the person was educated



to, who their friends were and how they spent their leisure time. These aspects of a person's life have a major impact – more so than most people realise. How and what we learn is a process that most of us do not pay any attention to throughout our lives – many of us simply absorb the information given, or going on around us, and we let it sink into our thought process so that it is there for recall at a later stage. In fact, from around the age of two years old we are starting to pick up both the positive and negative aspects around us. We will, at this young age, start to look for the things that work and the things that do not. It is not surprising then to hear a child of this age start to say 'no' or 'yes' with conviction. It is at this age that the child starts to 'imitate their parents'.<sup>1</sup> When we have learnt these new skills we will then carry them with us, and we will test them out as we grow. The things that work for us are kept and stored in our brains for developing and adapting; this is true even of negative aspects. If we have learned to respond in a not so pro-social manner, and it gets the result we wanted, it is likely that we will continue to use this method when similar situations arise.

The community that the person grows up in will play a big part in who they turn out to be. If there is little employment, or hope of employment, morale at home and in the community falls. A young person growing up in this community might see things that the adults call acceptable but are not seen that way in society as a whole. There might be incidents of petty crime – stealing to make ends meet, drug-use to get away from the misery caused by the economic situation, and so on. The local schools, whilst employing good staff, might have poor levels of attaining good grades – what is the point of learning if there is no work?

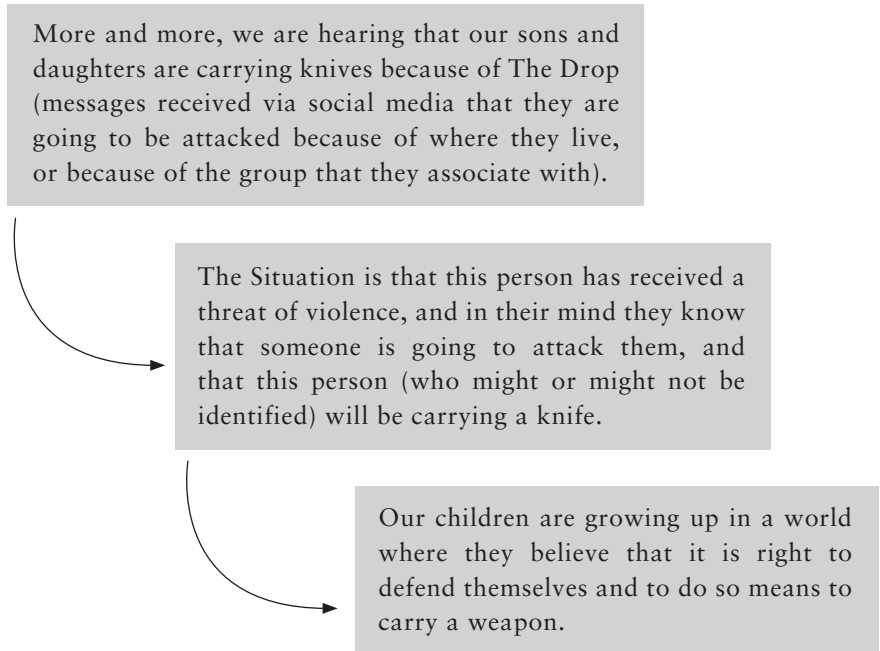
All of this will inform the belief system that we all carry within us, and they become our personal traits. Recent events have seen media reports of young people carrying knives, and this has now become the norm. This group's learning history has informed them that their peers are doing it, so it has become acceptable. Our young people are receiving

mixed messages through social media and their formal education, and we have all seen reports of how this is affecting the mental health of young people in this nation.

Then we need to look at the situation that caused the offence and arrest. During the investigation of the person in custody clinicians should be used to find out what was going on internally – what were the thoughts, emotions and arousal state that caused them to respond in the way that they did. The situation is not necessarily the criminal offence; that is an action that came as a result of the situation. To explain we will return to the knife-carrying, which is an offence in itself:

**Diagram 2:**

A flow chart giving a visual representation of how our young people are responding to social media threats.



The situation informs our emotions. Our youngsters are afraid, but they cannot show it because that will set them up as a further target. Fear is a debilitating emotion which encompasses all kinds of negative influences in our lives. This in turn will raise our arousal state which causes us to respond. This arousal is so strong when it is high that it can power people to do things that they would not normally do. It is the same thing that we read about when people have shown super-human strength in rescuing others, but this time it is in the opposite direction.

We all have an arousal state that controls how we respond to matters at hand – but do we all know how we would respond if our emotions were heightened to a point where we were afraid to walk our streets, or even ride on the bus?

Whilst the examples I've used above are knife related they can be easily transferred to other offences. It is this model that we need to get to grips with and understand if we are going to expect justice for all.

In essence, our Learning History affects the person (which is not the human being, but the personality traits that we are made up of) and the situation. These then inform our Internal Processing which causes the reaction (in this case, that is the act that caused the arrest). We then use our Situation Analysis to see if the reaction gained the outcome that we wanted which informs our Social Interaction, and this in turn, adds more information into our Learning History (see diagram 1).

### **The Current situation**

Once the offender has been found guilty, and prior to sentencing, reports ought to be sort. The Probation Officer will have interviews with the offender and then with other people that have had an influence on or are known to the offender. They will write reports that go before the court. Whilst these reports are fine for what they do, inform the sentencing body after conviction, what I am arguing

for is a system that fully informs the criminal investigation. As I said above, this is not to pass the buck, but it is to ensure that there is a proper understanding of why that person is in custody facing whatever charges come their way.

Initially this is going to be a long, drawn out process – and that will have a cost – but this should be seen as an investment. This investigation will see less people going to prison for short-term sentences (something that HM Government says it wants to happen). It should then identify best practice for the person that has been arrested, and that might mean signposting them to education, support and mentoring agencies. It will, of course, mean that some people end up in prison if the offence(s) were of such a serious nature.

Education, support and mentor agencies will need to have correct and proper facilities to deal with their clients – including employability training where functional skills can be taught and enhanced, sessions on social interaction and where to go for help and advice. It might be that the agencies use material from the Prison Service’s Offending Behaviour Programmes to help their client face up to the roles and responsibilities that they have in life. These programmes, after all, have been beneficial in changing lives and attitudes. Changed attitudes and behaviours reduce offending. Prison education providers, local Mental Health trusts and PIPE (Psychologically Informed Planned Environment) teams might be contracted to carry out some of this work.

Finding a better way forward by exploring ‘learning history’ will benefit both the offender and society. It will enable lives to be lived to the fullest extent without creating further victims.

# THE FALLACY OF REHABILITATION

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*E.R. Smyth*

Crime is a social construct. That isn't – or shouldn't be – a particularly controversial thing to say. The definition of what is or is not a crime is an evolving, organic process seeking both to keep up with technological advances and the shifting of societal norms. Even the most clear-cut examples of the criminalisation of an action deemed, simply, morally wrong, aren't actually that clear cut at all. Homosexual acts, for instance, were viewed by many in this country – and also by the law – as a *moral wrong* and were a criminal offence until comparatively recently. Today in Britain, claiming that homosexuality is a moral wrong would not only put you in a minority, but would also leave you only a few steps from your own criminalisation, should you decide to allow that opinion to affect your treatment of members of the LGBTQ+ community.

Equally uncontroversial is the assertion that those actions which we classify as 'crimes' operate on a spectrum, from heinous to mundane. The serial rapist's crimes operate on a different plane, normatively, from those of the low-income single mother shoplifting a pack of nappies. Both have committed a criminal offence; both, according to societal intuition, *must be punished*. But how? And why?

The Criminal Justice Act of 2003 (S.142) codifies five 'purposes' of sentencing. Sitting proudly atop the list is '... the punishment of offenders'. It is perhaps the case that most of us are so completely conditioned into a retributive mindset – although maybe not the readers of this book ... – that this privileging of the notion of 'punishment'

strikes us as entirely normal. But normal it is not. The other four ‘purposes’ (reduction of crime; reform and rehabilitation; protection of the public; making of reparations) can be relatively easily traced through to their desired (if not actual) outcomes. But can we say the same for punishment?

We have Kant to thank, primarily, for codifying the philosophical framework of retributive justice which holds that an offender *deserves* to be *proportionally punished* for their acts. It’s as simple as that: they *deserve* it; they get their *just deserts*. The sole motive for punishment is to effect *justice*. For those who like their philosophical arguments brief, this is an appealing stance – yet it is unquestionably unsatisfactory to anyone who leans even slightly toward the utilitarian. In this context, that is the notion that through judicious and pragmatic sentencing which sets aside ideas of *just deserts*, we might be able to effect a significant amount of good to a significant number of people.

Let us return to our nappy-stealing mother. Retributively speaking, she has committed an offence and so she must be punished for it. It was not a particularly serious offence and so the punishment will be relatively unburdensome (at least, it may appear so on paper). But both Kant and the authors of the Criminal Justice Act of 2003 agree that punishment is the primary goal of sentencing, and so it must happen. Will she also, though, be deterred from repeating her behaviour? Will she be reformed and rehabilitated by whatever disposal the magistrates see fit to hand down? Will the public be protected from her? Do, in fact, the public *need* protecting from her? Will the nappy manufacturer or the shop from which she took the nappies feel somehow that this punishment, whatever it is, *makes up* for the harm they have suffered at her hand? It would be easy for me to disingenuously create a scenario where the answer to all the above is ‘no’. That would be a cheap shot, so I won’t; but it would only be easy for me to do it, if I wished, because it is not a scenario far removed from the truth. Would a mother who couldn’t afford nappies for her baby really be deterred from stealing again, next time she is desperate? It’s not difficult to imagine a mother prioritising

her baby's wellbeing over her own acquisition of another conviction. These are the problems with which we are left if we cling to Kant's coat-tails and dogmatically preach retributive justice.

But what if we dialled-down the retributivism? What if, instead of looking back at the act of stealing the nappies and calculating the appropriate level of consequent punishment, we looked *forward* to what might be achieved for the good of our desperate mother, of her desperate child, and of a society which would unquestionably benefit from having her as a happy, fulfilled, tax-paying(!) member? 'Aha!' some of you might say, glancing up at the generously proportioned 'K' section of your bookcase, '... that sob story's all well and good, but I note you haven't talked much about the serial rapist you mentioned earlier ...' Good point. Here we find ourselves in dangerous territory, for this is the kind of offence which can unlock the retributivist in even the bloodiest of bleeding-hearts. That same bleeding-heart will then have a problem, because they will quickly realise that they have made a moral judgement: the single mother stealing nappies did what any mother would do – sure, she committed a 'crime', but *morally speaking* it was probably the right thing to do, or at least not the *wrong thing*. The rapist's actions, on the other hand, can be safely defined by most of us as both criminal and *morally wrong*.

In a sense, then, we're back where we started: we have one crime which is unquestionably a moral wrong and one which is rather less so. The thing that unites them, for the moment, is the fact that both trigger a punishment. Our bleeding-heart, then, has a choice. They can decide that as offences become, as it were, more and more morally wrong, the act of punishment becomes more and more appropriate: in short, they acquiesce to the very human urge to *retaliate*. But this is hardly ever a true retributive approach. If we're honest with ourselves, we like the idea of punishing the serial rapist because, deep down, we want them to experience even a little of the pain they have inflicted on others. That is not retribution; that is *revenge*. Their other option is to hold fast to their utilitarian principles and claim that it really doesn't matter

where on the scale of moral wrongness an offence falls: our response to it ought to be the most constructive and positive it could be, and that does not include punishment for its own sake. This position is a brave (and therefore rare) one. It risks being interpreted as a lack of empathy for victims; and as typifying the soft-touch approach which has led to the ‘breakdown in law and order in our society’ (you might like to insert your own rhetoric here).

Professor Nicola Lacey outlines what she refers to as the ‘prisoners’ dilemma’ in her 2008 book of the same title. She hypothesises that, given general elections in this country are won or lost thanks to the decisions of a tiny number of ‘floating voters’, and that since Tony Blair parked his tanks on the Conservative Party’s lawn with his ‘tough on crime’ speech, both parties are locked into a death-spiral of ‘popular punitiveness’ (a phrase coined by Professor Sir Anthony Bottoms), terrified to suggest policies which could be interpreted as ‘soft’ for fear of losing the few, precious votes of those who might tip the balance, but who, like all of us, will always cast that vote in their (perceived) self-interest. Hence the privileging of ‘punishment’ in contemporary political and social discourse. It would seem, then, that the retributive approach is here to stay.

The title of this book is ‘What should happen to people who commit criminal offences?’ *Should*, not *could* – and so I probably need to stop laying out the options and get off the fence. Those of us operating in the world of criminal justice – particularly those in the third sector – can bang on for hours about the evidence-base which demonstrates that punishment-led responses to crime are ineffective. We cannot – we just *cannot* – punish our way out of a problem. At present, the punishments our courts hand down have a raft of secondary effects which, when viewed objectively, result in a system of staggering perversity. We send people to prison, into a place where almost all autonomy and responsibility is removed; we keep them there for as long as it takes to lose a home, a job, and perhaps their closest relationships; we expect rehabilitation and reform to exist in the same space as punishment,



and then we release them with £46 in their pocket, a 20% chance of not knowing where they're going to sleep that night,<sup>1</sup> a criminal record which will make finding employment almost impossible – only to brand them members of a lazy, feckless criminal underclass when they almost inevitably end up back in a cell.

I am not an abolitionist, nor am I much of a bleeding-heart. I am a pragmatist who finds himself asking: when will we have tried a retributive-led system for long enough to know for sure that it doesn't work? When will we look at the number of victims created by a system which fails to rehabilitate those who have offended, and think 'we need to try something else'? When will we recognise that we simply cannot expect a system which professes a commitment to rehabilitation but which privileges a revenge-infused notion of punishment to produce any sort of good outcome other than the fleeting sense of primeval satisfaction that another has experienced some of the pain that they in turn inflicted?

I don't know. But in my mind's eye I see a criminal justice system which accepts that the behaviour of human beings is as unpredictable, appalling, wonderful, as *diverse* as the evidence of our time on this planet would suggest it is, and understands that responses to that behaviour must be just as diverse. Some need to be in prison for the protection of the public; but is anyone beyond redemption? I would argue not, and so prison can – *should* – be a place where even those who have committed the most heinous crimes are worked-with. Perhaps they will never be rehabilitated; perhaps they will never be safe to release: that is a sadness, but it will happen. I would argue, though, that we are simply obliged, as humans, to try to facilitate the rehabilitation of another person, no matter how dreadful their crimes. But at the other end of the spectrum, we need to ask what, really, is achieved by prosecuting our nappy-stealing mother? What benefit to society giving her a criminal record; constructing an enormous additional hurdle to her gaining employment, keeping her accommodation, perhaps even keeping her child? 'None' is a convincing answer. What benefit looking

deeply into the reasons she stole, pointing her towards support and help, and offering a chance to improve her life without the millstone of a criminal record? Legion, for sure – except that this doesn't satisfy society's urge to *punish* – to impose some hardship on someone else to bolster one's own constructed sense of superiority. 'She did a *bad* thing; a thing which I, a *good person*, would never dream of doing. We must *punish* her, lest anyone think she is as *good* as me, or I as *bad* as her'.

A frequent criticism of those pursuing criminal justice reform is that we have the same conversations over and over again; conversations not dissimilar in tone or content to that of this article. These conversations groan under the weight of criticism, but are notably light on suggestions for practical reforms which attend to the political realities of the day. Reform of our criminal justice system, however, does not start with adjusting sentence-lengths by a month or two or, conversely, advocating for the wholesale abolition of prisons. It starts with the tenor of public debate. Research (Roberts and Hough 2011) has shown that when presented with information about specific cases, 'the public' are much less punitive than they are assumed to be by the press and politicians, or appear to be when discussing general trends. Before meaningful reform can be achieved, then, those of us who care about criminal justice need to focus our attentions – collectively and powerfully – on encouraging and facilitating an informed, calm debate about what it is we wish our system of criminal justice to achieve. Then, perhaps, our politicians will be brave enough to break free from the hysterical rhetoric which has dominated the discourse of recent decades, and our criminal justice system might begin edging towards the fair, effective, and efficient system it has the potential to be.

# THE CASE FOR CUSTODY

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*The Tartan Con*

Jail them all I say!

Well that would be everyone's knee jerk reaction. You transgress the law, you go to prison, you get punished, you get released, you get on with your life. Oh! What a wonderful Utopian world that would be, if it were that easy. But in reality, it isn't.

I am not an abolitionist; I believe that there is a place in *society* for prisons. Those who are so very dangerous to others that only segregation from us will protect the public. I am sorry, there is no place for abolitionists in the 21st century.

In saying that we need to look at the root cause for the crime. What were the issues surrounding it? We need to use prison as the *last resort*, not the easy option. We understand that the judiciary are only carrying out the law as it has been passed by parliament. A parliament that you and I voted for, incidentally. However, where a punishment is better meted out in the community for the victim and the public it should be.

We must dig further; we must work with the individual to perhaps show them the way back onto the path that I believe all people want to be on. But a custodial setting is sometimes not the place best suited to do that. A prison is, by its very nature, an oppressive setting and not where a person can be open to change.

Let me be clear though, punishment is the way that we as a society have decided to deal with our miscreants. I don't object to that if the end goal is to ensure that people going back into our society agree to live and abide by its rules. However, punishment does not need to be jail.

We are all aware of the state of our nation's prisons – the degradation, the physical disrepair of the buildings and the stench of despair and hopelessness that emanates from them. We lock people up for more hours per day than we unlock them. We remove from them the ability to change themselves by placing them in cells so very ill-equipped for that very task for which the judiciary sent them down. WE placate them to keep them calm. We put them on courses that WE think will better them without really any interaction with them at all. We believe that WE know better than they. We remove from them the ability to manage their own life by telling them what to do, when to do it and how to do it. I ask you – how can we then expect the person that entered that jail to be any better a human being, free from drugs or free from mental health issues, upon release when we have inflicted this draconian punishment upon them?

I would agree that the prison service tries its best to care for those in its custody and that this is an honourable thing to do. But what does it do to root out the cause of the crime? If the prison service's mandate is to 'rehabilitate' the individual and help them rebuild, surely, we have to start from a solid foundation. If one wishes to build a house and have it last, does one not ensure that the foundations are solid? If you build on faulty foundations the house will crumble in years to come. In custodial terms this means recidivism.

It's simple really, don't jail people if you can find a solution that allows you to deal with them in the community. *Give* them a community order, have them pay their debt to the society they harmed by paying back to that very society. *Do not* remove them from the people that can perhaps assist them in their travel through life – their loved ones.

I am in awe of the good and dedicated prison staff that walk our landings. Although most of them go the 'extra-mile' to help those remanded to their care, they are so very ill equipped to deal with the amount and types of prisoners they face. This, inevitably, means

that people are shoved through the prison gate with £45 (the current discharge grant) and a smile. They have had little or no support whilst being in prison (usually for a small amount of time) and none when they are released.

Many countries in Europe deal with people who commit a crime that would carry a custodial sentence of one year or less and have never come in front of the judiciary before, by suspending their sentence. This is a move that I believe the current Secretary of State for Justice for England and Wales is trying to import into his jurisdiction – as almost a third of those in custody are serving sentences of 12 months or less. I welcome this. But it is not good enough just to pat the person on the back and send them on their merry way. We must work with that person to ensure that they do not enter the criminal justice system again.

I work in prisons nowadays and I am honoured to do so. I come across all walks of life. I meet people who quite simply should not be there. I meet people who are suffering from mental health issues. I meet people who have been sent to jail for no longer than a month. I meet people suffering from substance withdrawal and I meet lost souls. I weep for the souls of the 92 people who took their lives in our jails last year. I weep because perhaps, just perhaps, one of these lives could have been saved by dealing with the person correctly and not just washing our hands of them as is so often the case in today's world.

We as a society have decided to inflict the harshest of punishments on a citizen. We have removed them from us. We then lock them up for upwards of 16 hours per day. After a set period of time we toss them out the door and expect them to be 'reformed members of society'. We then shout and scream when they commit another crime if only to get a roof over their head and a hot meal. We really are a shallow and an ignorant society if we believe that this is how we are supposed to function.

What should happen to people that commit criminal offences? We should remove them from society only if their crime dictates it and we should try to comprehend why they felt the need to commit it in the first place. We should then provide them with the tools they need to turn their life away from crime. We should ensure that when we ‘turf’ them out through the prison gates that they have a roof over their head, they have meaningful employment with a living wage along with the support network so very needed by everyone who finds themselves to be a new member of the community.

It’s our humanitarian obligation is it not?

# ***RELATIONSHIPS ARE ESSENTIAL FOR REHABILITATION***

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*Lord Farmer*

## **Introduction**

Over the last three years I have spent a lot of time talking with people whose actions have led to them being involved in the criminal justice system. I have mainly met them inside prisons or attending community services, but some very courageous individuals have attended roundtable sessions I have held in the House of Lords. I have also consulted extensively with organisations which help offenders overcome the challenging life experiences that contributed to them committing crimes in the first place, to find out why we, as a society, seem to do so badly at preventing reoffending.

Time and again the importance of family, and other relationships, to effective rehabilitation became clear. Whilst prisoners who receive family visits are 39% less likely to reoffend than those who do not, a significant proportion – perhaps as many as half – do not have visits. So, in response to the question, what should happen to people who commit criminal offences, I have concluded that it is in everyone's interests to ensure there is someone in the life of every offender who genuinely cares about what happens to them.

In an earlier book in this series, *Life Beyond Crime*, Positive Justice Gloucestershire's Hilary Peters says:

I have known several prisoners who have changed their lives. They have all said that the very first step is recognising that there is someone who accepts them unconditionally ... suddenly

they feel worthwhile. Then it is worth making the effort to change. That contact is like cracking a shell. The imprisoned person starts to grow ... connecting is always the key.

### **The Farmer Reviews**

The Government asked me to carry out a review on how to strengthen male prisoners' family and other relationships to prevent reoffending and reduce intergenerational crime. This was so well received that an implementation team was set up to activate all my recommendations across the prison estate. Finally, the research that has built up over the last quarter of a century about the importance of relationships to rehabilitation, is affecting what goes on in every prison in the country and the patchiness of good family work is being addressed. Every governor has to develop a strategy to support family and other relationships and submit it for scrutiny – by the Government and also by their peers.

I was then asked to carry out another review looking at the specific needs of the broader group of female offenders in the area of relationships. Although there are only around 4,000 women in prison at any given time, every year more than twice that number enter prison and over 50,000 begin serving sentences in the community, come under probation supervision or are helped by liaison and diversion services. Ministry of Justice research found relationships are female offenders' biggest criminogenic need – if a woman has bad relationships and lacks good relationships this puts her at greater risk of reoffending. The numbers are similarly high for men.

This is a societal issue. A key motivator for my becoming involved in politics, over 12 years ago, was the concerning high levels of family and relationship breakdown in this country and the lack of a government strategy to address it. In whatever way families are structured, the relationships within them have an enduring effect on our lives, for good and for ill.



Centre for Social Justice research, which controlled for factors such as socio-economic grade and ethnicity, found those who experience family breakdown in their childhood or youth are over twice as likely to experience homelessness, be in trouble with the police or spend time in prison.

One of the governors on the female review highlighted to me that because parenting difficulties and other family factors were not addressed in the community, she often saw the third generation of offenders coming through her prison gate. Yet, the broad swathe of government policy seems to pay scant attention to this reality, despite decades of rhetoric from all sides, about being tough on the causes of crime.

To remedy this, as a member of the House of Lords, I have been challenging every department of government to do more to strengthen families. To their credit the Ministry of Justice responded particularly substantively with the two reviews, but this issue needs to be in every departments' business plans: whatever else they try to achieve will be undermined by poorly functioning relationships.

To those who say, 'this sounds like the nanny state', as an instinctive Conservative I respond, 'actually it's the canny state'. Family breakdown is estimated to cost us over £50bn per year: it hampers productivity; is a driver (as well as an effect) of poor mental and physical health; and local authority budgets are stretched to breaking point given how often the state needs to step in to care for people when families cannot.

However, I am under no illusions about the complexity of relationships and the sensitivity with which any family interventions need to be carried out. Returning to prisons and offender policy, I will illustrate this by looking at what it means to take a relational approach in a couple of key areas of family contact – virtual visits and conjugal visits. I will also describe the importance of collecting information about an offender's relationships, particularly when their own narrative is that

there is no one who cares about them and, largely as a result, are at risk of returning to prison or worse.

### **Virtual Visits**

When I carried out the first review, I met one man who had been in prison for well over two decades. He had grown up in the care system and didn't have visitors. I asked him if there was anyone out there for him and he told me he had a grandmother in her 90s who would never be able to make the trip. Others described the difficulties their partners faced making the journey with new babies, or their teenage children who were trying to knuckle down and revise for exams. *Seeing* people who care about them and who they care about, is very important, not least to remind them of their responsibilities, and stop them turning in on themselves.

Video-conferencing technology is already used to connect prisoners with courts to save the costs and inconvenience of transport and I recommended that this be carefully and somewhat sparingly deployed so family members and others who would struggle to visit could still be seen. When it came to the female review, I realized that it was less about reminding women of their family responsibilities and more about helping them do what many craved to do – continue being a primary carer to their children outside. Over half of women in prison have dependent children and only a quarter of them have a partner outside who is looking after them. There are a lot of very anxious mothers in prison. Seeing their children and their children seeing them, far more often than would be possible if they had to make the typically long and difficult journey would greatly help to relieve that anxiety.

I have already described relationships as women's biggest criminogenic need: resuming contact with friends who might be able to support a woman's transition back into the community can be problematic when so much time has elapsed. For this reason, I recommended that virtual visits using video-conferencing technology are available to all women whilst they are being held in prison, not just mothers, as long as there

are no concerns about risk. To this point, the relative smallness of the female estate and the lower risk this population presents, would facilitate some helpful trials in advance of a more ambitious rollout to a greater proportion of men in prison in the future.

I am always willing to take on those who say that access to virtual visits is being soft on crime: if we can reduce reoffending this means fewer victims, lower costs, less strain on our prisons and courts, a greater likelihood that prisoners will be economically productive when they re-enter society and less dependent on welfare.

However, I would also say that we must not only use the yardstick of risk when deciding whether individual men or women in prison should have access to virtual visits. There are lessons to be learned from the family courts, when parents have split up and skype-type technology enables contact. Magistrates have told me that such arrangements can lead to further conflict if not sensitively handled and undermine the person who has day-to-day caring responsibilities for children – who can themselves find regular video calls a burdensome obligation. So, whilst access to skype-type technology could be transformational in very many cases, these virtual visits will need to be managed in a sensitive way. Essentially, the *relational* implications in individual cases need to be properly considered.

### Conjugal visits

I would make a similar point about visiting arrangements which include sexual contact. In countries such as Denmark, efforts to bring ‘normalisation’ to many areas of prison life extends to facilitating this. Whilst such an approach might sound like an obvious corollary to what I say about the importance of family ties running like a golden thread through the processes of prisons, I am distinctly cautious about it.

To set my concerns in a wider policy context, young people in English schools are now being taught Relationships and Sex Education as opposed to Sex and Relationships Education. This is not just

semantics: the Government is rightly keen to send the message that building relationships needs to come before the sex act. Imprisonment necessitates rebuilding the relationship every time a man's partner comes through the door of the visits hall.

Intimacy is not conjured up in an instant. There is often a build-up to the moment and subtle emotional after-effects which need time and attention. This is a couple who have been separated for a relatively long stretch. I worry that rather than normalising family contact, providing private rooms with condoms decontextualizes and belittles the whole act: do we really want to make it possible for prisoners simply to have a 'quickie', to obtain sexual gratification regardless of the mood, or feelings of the other person?

I am deeply concerned that visitors who have undertaken a particularly unromantic journey will be expected to perform as willing sexual partners when they finally arrive at the prison. Consent is profoundly problematised given the pressure not to let one's partner down.

Notwithstanding the availability of condoms, the possibility of a prisoner fathering a child whilst he is behind bars, and with whom he might only have a long-distance relationship, is concerning. For female prisoners conceiving under these conditions there are even more unsettling implications.

When I was looking at the challenges of family contact in the female estate, the stand-out message for me concerning women in prison is that their family relationships, particularly with romantic partners, are often fraught with abuse and ambiguity. I was saddened to hear that prison can be a refuge for many women, an escape from coercive and controlling relationships. How would we know that a woman has a healthy and supportive relationship with a man or other partner travelling to a female prison to share a conjugal visit?

## **Personal Circumstances File**

This brings me onto my final point: knowledge is powerful and the more we know about the significant relationships in the lives of female – and male – offenders, within the bounds of appropriate confidentiality, the more we can help them maintain those which are healthy and safely exit those which are not. In the female review I recommended that when agencies like health, social services, women’s centres and of course the police, come into contact with a woman who is at risk of committing crime or otherwise coming to harm, they are able to open a Personal Circumstances File.

This will belong to her, not the state, and be a record of key aspects of her life, including her supportive relationships, so she isn’t constantly having to recount details which can be painful or difficult to disclose in certain contexts. She might be nervous about revealing she has children, for example, out of a fear they will be removed from her care. However, if agencies do know about them and can share this information with pre-sentence report writers, this can be powerful mitigation against a custodial sentence being given.

In conclusion, relationships matter, but just as these are amongst the most subtle and nuanced aspects of human life, a policy approach that values them must tread carefully, and evince the same traits. A criminal justice system characterised by a relational understanding – which in no way minimise the effects of crime on its many victims – requires cultural change which is neither easy nor quick. However, given that all human beings need relationships to thrive, and those who commit crime often do so because there are gaping holes where healthy and supportive relationships should be, this journey is one we must undertake.

## CONSCIENCE IS LEARNT THROUGH SHAME

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Gerard Lemos

*Many authors have discussed the need for sentencing practice that tailors responses to crimes by addressing the background and issues of the perpetrator the crime. Gerard Lemos reaches further back to explore whether or how our society could stimulate personal conscience even approaching 'shame' as a means for building a stronger moral imperative to reduce offending.*

In my experience most people seem to have an intuitive sense of right and wrong, but a shared unthinking sense of right and wrong is not universal or ubiquitous. So, what are the roots of conscience? They lie in early childhood but are reinforced throughout life by significant relationships – personal and professional; nearby community members; people with power and status and those with invaluable moral authority. The cumulative effect is not only a sense of right and wrong, but also the powerful feeling of shame after a lapse or transgression. Shame is the paradoxical wellspring of remorse, forgiveness and rehabilitation.

### **Conscience instilled in the family**

Throughout early childhood the bulk of signs, signals, warnings, reassurances and restrictions come from parents. Disapproval and sanctions from an adult with whom the child has a warm, trusting relationship and a strong sense of attachment to have by far the greatest impact, building on the underlying sense of security and protection (Bowlby, 1969; Bowlby, 1973; Bowlby, 1988). Consistency over time achieves the strongest reinforcing effect, though every parent

knows how difficult that is. Reinforced messages about dos and don'ts are likely to be absorbed and accepted, so long as they are congruent with the child's own experience of pleasure and pain. After a while, the child intuits these moral opinions as their own. That is the dawn of conscience: the understanding and acceptance of generally held principles of right and wrong as conventions by which the individual should live – and if breached, should feel bad and ashamed about.

There is a special quality of nurturing from grandparents to grandchildren. Grandparents can indulge the pleasures of play, shared excitement and the child's sense of discovery, but the obligations for the child's general well-being and its moral education remains with the parent. Unlike parents they do not see themselves as the ultimate arbiters of good and bad behaviour or right and wrong. To the children grandparents represent unconditional love with fewer restraints than those imposed by parents. The begetting of conscience is primarily the parent's responsibility, but when it comes to consolation, unconditional tenderness and a softer reinforcing sense of adult protection and authority, grandparents play a big part. For the troubled child who had a poor relationship with their parents the significance of stable and loving grandparents cannot be over-estimated, as evident in the many grandmothers who visit youth offending institutions. The parent may note that the grandparent's attitude to the grandchild seems a good deal more mellow and relaxed than that adopted towards them when they were a child. This may lead to some bewilderment and irritation!

Siblings too have their role in the gaining of conscience. Older children are role models, protectors *and* restrainers. The smaller child acquires many habits by unthinking imitation of older children, who are reflecting their own learning gained both by imitation and autonomous reflection. Younger children provide the pleasures of leadership and influence to their older siblings and expect protection, reinforced by parental reminders, from them. Uncles and aunts are also important figures, providing assistance to parents and cousins as playmates. They are also safe havens for children in trouble with their parents.

Uncles and aunts without children of their own take a special interest in their nephews and nieces. Encumbered neither by the need to protect or educate, they can stretch the child's imagination and ambition, harbouring the quiet hope that the child may do more than their parents think they can. The child sees them as alternative adult role models – another way of being, seeing and telling.

As the child enters adolescence parental and family influence wanes and self-determination starts to take hold. Also, external influences from peers, authority figures outside the family such as teachers, clerics or police officers are amplified and strengthened. Those signals, because they come from so many different sources, are intrinsically weaker and less consistent than parental and family messages, obliging the young adult to rely more on what they already 'know', the store of knowledge and experience which has now become intuition, or gut instinct. The strength of a sense of conscience relies on the need everyone has to approve of themselves and their own behaviour as well as enjoying the approval and fearing the sanctions received from others.

Similarly, the young adult with greater autonomous agency can give and receive on a far wider front than a child can. A favour now to a friend or a stranger, may bring an instant return in gratitude, payment or assistance. The return may come later. A small store of credit has been established with that person, which can be called in when needed. Reciprocity readily becomes multilateral. I do you a favour now; someone else does me a favour later; that kind someone else receives a favour from yet another person, who is then a beneficiary of someone else's kindness; and on and on until the web of humanity is all woven together, though the individual exchanges and loops may never be closed. We are bound by our shared commitments and obligations, between individuals and at the largest level, for the survival of our entire species – and at every intermediate stage of relationships and communities.



## Community life teaches conscience

People do not feel so permanently connected to those in their neighbourhood as they do to members of their family. Nevertheless, some obligations do derive from proximity and, in particular, the increased likelihood that proximity brings of repeated, regular encounters. People are likely to moderate the worst aspects of their behaviour towards people whom they will see again and, crucially, to whom they may one day need to turn for help. One-off encounters with strangers can feel like a zero sum game – nothing given, nothing gained. The maximum individual advantage has to be extracted regardless of the price paid by the other person.

Within a neighbourhood there are also authority figures, longer standing residents, police officers, head teachers, clergy and so on, all of whom can claim some authority even over strangers by virtue of their officially-approved role in the community. They too can exert positive influence. People are also now tied into professional associations, sports supporters' clubs and other communities of choice. These exert informal and formal compliance obligations. Members will be expected to adhere to standards and published codes of conduct or professional standards. There will also be other expectations – dress codes, attitudes to language and in particular swearing, attitudes to the opposite sex; a definition of doing the right thing in the right way. Bad behaviour is instinctively recognised and immediately condemned without resort to external authorities. All these relationships, associations and networks, everyone from the family to the work colleague or boss, are potential sources of shame. Shame in the eyes of family members, friends, community leaders, professional colleagues is what people fear and dread, far more than exposure in the media or a trial in court. Shame is a wellspring of self-restraint, which is one of the best crime prevention mechanisms in itself. Shame of this kind is most powerful if expressed by someone whose opinion one respects; that is likely to be someone close. The guiding principle is that the more the wrongdoer respects or admires someone the greater weight their disapproval carries, both as a deterrent and a sanction. Once the wrong is done and

disapprobation expressed, a well-adjusted individual is likely to feel remorse and repentance. In turn expression of that remorse through an apology and a willingness to make amends is likely to make the disapproving other soften their censorious attitude, if not immediately, in due course. The combination of shame followed by repentance are the preconditions for the expression of forgiveness, compassion or mercy. Shame is therefore not an end in itself, designed to humiliate and degrade, but the beginning of a process of reintegration.

### **Reputations destroyed by failures of conscience**

Among communities or work groups with less shared history, and fewer mutual obligations, enunciating shame and encouraging remorse can be more subtle, complex and indirect. The recognition that someone has done wrong can be addressed among a group of other people without the suspected culprit knowing either that anyone else knows what they have done, or that it is the subject of debate and speculation. An individual's reputation can be sinking fast without them knowing. But eventually the consequences will be evident without being explained, as people avoid them, or they feel ostracised. More likely than not, the behaviour of the miscreant will eventually be addressed directly, giving them the opportunity not just to receive an explanation of what is going on, but also to state their case if they feel they have been wrongly accused or gain acknowledgement of extenuating or mitigating circumstances or provocations. The more important the condemning voices are to them, as a friend or a valued professional colleague, the more they will be keen to make amends.

Gossip and intrigue like this are what the anthropologist James C. Scott calls the weapons of the weak: the capacity of the relatively powerless to challenge those around and above them. Countless every day forms of resistance are deployed against superiors whom people feel the need to undermine or challenge. These can be imitated and spread widely within a group. In the context of work, foot-dragging, malingering, dishonesty, pilfering, cheating, non-compliance, minimal

compliance, the pretence of compliance, silently, collusive and covert resistance groups, silent disobedience, absenteeism, slander, sabotage, arson, ridicule, irony and much besides – all constitute a rejection of authority; an expression of disapproval; a tacit reproach. All can be deployed to undermine unwanted, unaccepted or undeserved authority. These forms of resistance are tremendous irritants to the powerful because they are slippery and evanescent. Since they are not seeking to mount a concerted resistance or upheaval, but simply to belittle and undermine, the ringleaders need never show their faces. Suppression needs something to get hold of. The reproached powerful feel enormous frustration at their inability to suppress such behaviour. Frustration is a form of justice in itself.

Those who do wrong with impunity granted by their status – the playground bully, the gang leader, the authoritarian boss, the martinet military leader, the nepotistic politician, the corrupt official – are all brought low by the weapons of the weak without a formal tribunal or court. The condemnation of peers and subordinates is a conviction in itself, which has been administered without due process or the right of representation and reply, condemning the wrongdoer to an unpleasant sentence of unpopularity, isolation and a profound and perhaps irrecoverable loss of reputation and self-esteem.

### **Shame as a force for good conscience**

All these forms of informal shame can elicit a response of humility and remorse. The anger and resentment of the person who feels wronged may be assuaged by expressions of remorse. An apology can restore a sense of equilibrium and create the possibility of renewed harmony. Whatever happened to cause the trouble in the first place will not be forgotten or even forgiven to begin with, but the possibility of a more open communication that may over time start to re-establish trust and a coming together has been initiated. This is what John Braithwaite called ‘re-integrative shame’. This process may start with anger and resentment but that may trigger a reaction that opens a path to remorse

and the expression of regret. An apology can be verified, strengthened and symbolised by an act of restitution – a far better, more social thing than retribution.

If restitution is made, either symbolically, or literally by restoring some of what has been lost, the possibility of forgiveness comes into view. Forgiveness or mercy readily springs from humane compassion and empathy. The wrongdoer, in apologising and making restitution, has gone some way to acknowledging that they can now see what they have done through the eyes of the person who has suffered. The person that suffered the harm or the loss, by feeling and expressing compassion, is similarly recognising the perpetrator's newfound perspective of regret.

A different but equally powerful sequence of events may have the opposite effect, destroying entirely all prospects of reconciliation. Criticism and obloquy relentlessly repeated to all and sundry draws others who may have been unaffected by the original wrong into a circle of disapproval, tipping the balance within a limited social group against the wrongdoer. If all efforts by the perpetrator to express remorse or regret are rebuffed, always rejected and countered with a further denunciation the repentant person realises they gain nothing from regret. It just triggers more of the behaviour their expression of regret is designed to seek to stop. Better from their point of view to give up on regret and return to a hostile posture, rejecting they have done anything wrong and perhaps even motivated by the rejection into doing a further wrong. The cycle of shame-remorse-forgiveness never comes into play. Instead a vicious one way trajectory of shame-rejection-hostility now kicks in. It is not hard to discern where this will end: in a hardened antipathy, a perverse self-pity, a transgressive adoption of outsider ideology and associates and a durable commitment to further offending, for acquisitive reasons but also to strengthen ties with criminal associates and to gain status in their eyes.

Even the most institutionalised, longstanding and formal criminal justice decision-making relies on these anthropological customs and conventions and the self-restraint they instil. Otherwise law

enforcement does not command social acceptance and becomes impossible or tyrannical – easily challenged; readily ignored; all moral authority spent. The knowledge that doing something is wrong and puts an individual in breach of their obligations to others potentially bringing harm back to them eventually saves everyone from a life of outright selfishness and a dog-eat-dog survival of the fittest. Conscience and an acceptance of mutual obligations are the best – ultimately the only – crime prevention strategies.

## ***BRITISH PRISONERS ABROAD***

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*Pauline Crowe*

My work provides me and my colleagues with a unique viewpoint of different cultures and approaches to wrong-doing and imprisonment in over 100 or so countries from every continent. At any one time, we support about 1,100 British people in prison around the world. They are people of all ages and ethnicities, religious and social backgrounds and they are all British citizens.

It is not my intention here to place any less importance on the perspective of victims of crime but my job, and the focus of my essay, is based on my experience of our work with British people detained overseas. Everyone knows that, quite simply put, if you do something wrong there are going to be consequences but depending on which part of the world you are detained in, your experience can be devastating for you and your family.

### **Judicial systems**

Many of the people we work with would openly admit their guilt but we are also aware that many people in prison around the world have not had a fair trial and corruption can be an issue in many places. A criminal offence in one country may be a perfectly legitimate activity in another. We also work with many people detained for years on remand who have got nowhere near a court process. Justice requires victims to have access to legal remedies to gain redress of different types. Corrupt systems, lack of access to justice and overwhelmed and under-funded judicial systems can result in long periods spent on remand in extremely

poor prison conditions as well as clear examples of human rights abuse. Foreign national prisoners in these circumstances are highly vulnerable to the whims of the system and the abuse of their human rights, the British consular service and the attention of Prisoners Abroad may be their only protection when they have no family or friends in the country where they are detained.

### **Cultural differences**

The cultural attitudes to detention and retribution but also deterrence and rehabilitation can differ widely from those in the UK. Under international law, the punishment meted out by courts is supposed to be the deprivation of a person's liberty but the conditions of imprisonment can be considered in some parts of the world as an additional punishment and an element of retribution. Prisons with extra-ordinary levels of overcrowding, squalid conditions, extremely poor sanitation, lack of any medical facilities and internal systems run by gangs are shockingly common in a number of regions. Of course, not everything is entirely bad – in some countries the access to family support is an integral part of the system and is really important for the family unit, but this is also a particular disadvantage for foreign national prisoners who have no-one nearby.

The media is highly influential on a country's cultural attitude to crime and punishment and to public opinion too. Some countries recognise that the causes of crime are the underlying problem and that individuals need to be helped to prevent future reoffending, their presence maintained within the community to support the family unit. At the same time other countries believe that isolation from families and society, breaking down personalities and will power through use of solitary confinement as additional punishments to the deprivation of liberty, is the route to reducing the crime rate. If this was so, the crime rates and prison populations in these countries would be as low as they are in the more liberal Scandinavian countries, but they are not. Additionally, we also need to consider the unintended consequences of

the wider usage of imprisonment – the potential for damage to family structures and to children particularly – the multi-generational impact it creates and therefore the long-term damage to society itself.

We are now going to look at three countries that are very familiar to us but which have rather unexpected and widely differing cultures and approaches to criminality.

**Thailand:** a very popular tourist destination visited by thousands of people every year with large numbers of ex-pats from the UK living there.

However, the prison conditions are poor – extreme overcrowding; little or no food; the sentencing policy results in long periods of imprisonment and includes life sentences and the death penalty. But that hardly portrays the brutal experience that many of our service users report. They will describe being held in a cell with 70 to 100 other people; sharing one or two toilets that are without any privacy; sleeping on the floor with no mattress or pillow in a small space which isn't big enough to roll over; not having health care provision when disease is rife and conditions are squalid.

A significant cultural difference is that the prison system functions by allowing prisoners' families to supply food, clean water and anything else needed e.g. soap, clothing, blanket, etc. Prisons supply nutritionally-poor food that is inadequate for the number of inmates to be fed. Water is often locally sourced and contaminated. If you have no one to bring in supplies and without access to money to buy from others, you can't get fresh food, healthcare or clean water. For foreign nationals who have no family or friends on the outside who can support their existence inside, life becomes precarious very quickly. Even after sentence completion, if being deported, people continue to need this support as they will be detained in immigration detention (where conditions are usually even worse than in prison) indefinitely until they have access to funds to pay for their flight to the UK.



We know that people who have been through this will suffer long term effects on their physical and mental health; they often tell us about their post-traumatic stress symptoms, an inability to cope with regular social interaction, that they are suspicious of others and we see that they can be susceptible to dependency on drugs or alcohol. Such an impact can only have a damaging effect on families and hampers if not actually prevents reintegration and resettlement.

**USA:** a country whose culture is enormously well known throughout the world and is therefore very familiar, especially as we share a language. Thousands of people visit each year but there are also thousands who have emigrated there.

This country locks up more people per capita than any other. Its sentencing policy means that foreign national prisoners serve long sentences with little or no hope of parole; many of the prisons in the country have reputations for violence and yet conditions can vary significantly across state boundaries. However, the shock comes for many of our service users, when they reach the end of their sentence and are told that they will be deported back to the UK away from their families, homes and livelihoods. They usually cannot return – and so despite spending 20, 30, 40 and on occasions even over 60 years out of the UK, they cannot go back for those key milestones in life – to bury their parents, to see their children grow up, to see a sibling marry or to celebrate the arrival of a new baby. These are all things that the rest of us take for granted. For people deported back to the UK, it is a double punishment – they have served their sentence but are now facing the rest of their life in an alien country and away from all they have known – their parents, their children, their homes and livelihoods. To add insult to injury, because they usually have a strong American accent, they will also spend the rest of their lives being asked if they are on holiday here. They will be regarded as foreigners in their own country.

**Japan:** a country which because of its distance remains a less visited destination. But there are still thousands of British visitors each year and quite a number of British people who live and work there.

Culturally, this is a country that is extraordinarily different in its social behaviour compared to the UK. Traditional social etiquette is still enormously strong throughout society which demands conformity in almost all areas of life. To commit a crime is usually seen as being a crime against society. The consequences are severe – long periods of imprisonment which are an opportunity for your behaviour to be re-adjusted. Consequently, the prison regime is very strict with rules that to western eyes, appear to be extremely harsh. Your time in prison is controlled and dictated by the prison rules – that includes eating, sleeping, exercising, working etc. Food is strictly rationed and the calorific allowance is decided by whether your work within the prison involves you sitting down or standing up. The lack of heating in winter has resulted in cases of frost bite. Access to the outside world is very severely restricted, which in some cases has meant that not even letters or reading material has been allowed in.

In addition the language barrier causes extra distress and suffering as a prisoner may be punished for not understanding/obeying the rules. The inability to communicate can result in no conversation for an extended period – there is little or no recognition or indeed care for mental health. It is simply not taken seriously and this can compound the psychological damage that is suffered by foreign national prisoners. The return home is a truly massive adjustment period and many people find it impossible to adjust fully. Reintegration into the family whilst scarred from the experience can lead to relationship breakdown because of the psychological damage. People become alienated from their family and friends – unable to fully explain what they have been through, they cannot adapt to societal expectations of ‘normality’ and may quickly face homelessness as a result.

Prison systems around the world are mostly an accurate reflection of the economic circumstances of a country. Although foreign national prisoners cannot be treated any better than national prisoners, they are often particularly disadvantaged by language barriers, no family nearby to support or visit them and no work prospects within the prison and so no access to money – vital for survival in so many places around the world.

Prisoner's Abroad is part of the Foreign Nationals in Prison and Probation Expert Group of the Confederation of European Probation (CEP) and Europris, which aims to spread examples of best practice of policy and operational, training and management issues in prison and probation across Europe. It is a unique resource of information, experience and contacts in an area of great significance for so many countries that have a high percentage of foreign nationals in their prison populations.

### **What we want and society needs ...**

1. All prisoners should have the critical basics: food, clean water, shelter, access to an English-speaking lawyer, a fair trial, medical support, help to communicate, contact with families and their human rights protected.
2. Access to language-learning support as well as reading material in their native language is vitally important.
3. Prisons should have decent accommodation that is not overcrowded, has proper sanitation, a potable water supply and medical facilities.
4. Prisons should be safe places – the levels of violence, sexual abuse and intimidation around the world completely contradict this premise. It is not good enough and it is simply not too much to expect.
5. Journalists and multi-national media empires should refrain from calling for ever-greater punishments and an increasingly punitive

approach to even the mildest forms of offending. Why are they not demanding ever-higher standards that increase rehabilitation and resettlement and prevent reoffending?

6. Even the most minor forms of offending can damage the future of an individual, unless we reduce the stigma of imprisonment for both the person and their family, we cannot stop the insidious damage it causes.
7. Deportation reviews and appeal processes should consider the needs of the family. Deportation should not be automatic without thought for the consequences for the individual, their family and the society to which they are returning.
8. Prisoner Transfer Agreements (between countries) should promote the option to return a prisoner to the UK in the final year of sentence in order to facilitate reintegration and family contact.
9. Governments should ensure the rule of law and need to refocus the use of tax-payers money to ensure rehabilitation and the lowest possible reoffending rate by addressing the social issues at the root of the causes of crime. More affluent countries could have a greater role and supporting these changes in the less affluent ones.
10. No person leaving prison should face immediate homelessness and destitution – it leaves no option but having to re-offend in order to simply survive.
11. Our focus should be on what it takes to ensure that those who have served their sentence can be helped to become a positive part of the community. The alienation and exclusion created by imprisonment can be a barrier to reintegration both with the family and society generally. It is this that can create inter-generational damage within families.
12. But without a massive cultural shift in all these countries, including the UK, regarding imprisonment – nothing will change.

## (LOVE AND) RESPECT

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*David McGuire*

When people are sentenced for the crimes they commit, what outcome is society really hoping for? Only when prisoners and ex-offenders learn to love their fellow human beings can true restoration be made with themselves, their victims, and the communities from which they came. However, they have often been caught in a system which mitigates against love being fostered – instead human value is degraded and people are de-humanised. This is done through the language used, regimes imposed and an architecture designed for task efficiency instead of human flourishing. Modern English prisons would not stand being tested against Ruskin's seven lamps of architecture criteria for buildings which enhance the wellbeing of people instead of degrading them.

Yet we wonder why violence is prevalent in prisons and re-offending is high. If this was anything but a prison there would be public outcry. Imagine the NHS spending £32,503<sup>1</sup> per patient on a hip replacement and 44.1%<sup>2</sup> failed within a year, requiring the patient to return to hospital for another new hip. The common narrative of lack of staff and old buildings only goes so far in helping us to understand the problem.

So what are the conditions that are needed to foster a sense of love for fellow human beings? To love others, we need to first love ourselves which comes through having our basic needs met, having a sense of purpose and control over our lives and being in relationships with others – fostering self-worth which then enables us to love others and develop mutual respect.

In the 2000s, prisons across Spain were suffering from a lack of engagement and chaotic behaviour. To address this, every establishment was ordered to open a Respect Unit – a co-operative approach to management which aimed to reduce violence and improve outcomes.

Cordoba Prison embraced this challenge and worked with our foundation to significantly advance this pilot. By 2008, the first unit opened and 9 out of 14 units are now run collaboratively by prisoner-led commissions and management working side by side. Serious incidents have plummeted and units are now calm, with high levels of engagement.

The units themselves hold around 120 prisoners with living accommodation on the first and second floors whilst the ground floor was dedicated to ‘living space’ where prisoners can eat, socialise, meet with staff and hold daily prisoner-led unit meetings. Each unit has unfettered access to an outdoor space the size of a five-a-side football pitch which leads to rooms for a library, gym, workshop, classrooms and barber’s shop.

Prisoners are involved in every aspect of daily life, through representation in forums and through prisoner-led commissions for welcoming new inmates; resolving conflict; assisting with legal applications; managing the hygiene of the unit and planning activities. This helps nurture a sense of community and responsibility, giving each member of the unit a purpose.

Places on the units are earned through good behaviour and each member adheres to a strict set of rules – which must be adhered to or risk ‘demotion’ to a standard unit. There is a zero tolerance policy to drugs and physical and verbal violence is forbidden. In addition units must be kept tidy, daily chores are compulsory and attendance of at least three activities a day – which includes education/training and/or therapy – is mandatory.

Units are safe, anxiety is much reduced and a full activity programme helps focus the mind – healthy living, exercise and good hygiene are essential. Bored prisoners are more likely to get anxious, which increases the risk of incidents. We have all realised that violence is directly proportionate to the lack of purposeful activities. Respect units keep people busy to keep their mind off their problems. They are seen as a safe place where people have treatment and can achieve more than just survival.

UNIT MANAGER

A more ordered, homely setting has provided a good way to self manage anxiety and aggression and everyone contributes as a team to the upkeep – working together as a community for mutual benefit.

The manager above went on to say that it was important for prisoners to actively participate in educational workshops, activities, training etc – for example if someone speaks another language, he could teach a language workshop – anyone could participate, not only as a pupil.

Community spirit is further promoted through working together to save resources:

- A clothes bank provides prisoners with the chance to act charitably – passing on their possessions to others who have little.
- Craft workshops develop new skills and provide opportunities to enhance the environment by building furniture and decorations for their unit.
- Each prisoner is also required to contribute a small amount of their money to a communal savings fund used to buy items of benefit to the whole unit.

Behaviour is managed through a point system, with shared responsibility for each group – one person's actions impact on others in the group, which promotes team working and support for one another.

The manager said their main target was providing prisoners with as much independence and responsibility as possible. However, it is not only about individual self management but also group management as everything is achievable through team work, all together as a community.

Interestingly, the units are not for everybody. My colleague observed:

It doesn't suit everyone to manage such an orderly way of life – not everyone can cope with the transition from chaos to living by the rules, but most prefer the advantages offered by the unit. More than 200 prisoners are in paid employment with the highest salary being €600 a month (taxable).

Figures provided by the prison showed that serious incidents had halved two years after the respect units began to be introduced. Reoffending is 30.2%,<sup>3</sup> lower than the 44% reoffending rate of England and Wales.

Our foundation works in the prison deploying social educators (staff with a background in teaching, social work and psychology) who support the prisoners in running the Respect units. We also run 24 of the juvenile prisons which are called re-educational centres. Here the statistics are similar – low incidents inside and low reoffending outside. The model is based on three principles – relationships, cognition and behaviour. The three elements of time, space and activity are carefully planned and the young people have not only purposeful activity but meaningful relationships with the staff who look after them.

What is noticeable in both centres is the relationships with staff, the obvious affection shown and how the whole centre is thoughtful and attentive to the needs of those entrusted to them. It is no wonder that prisoners are able to love themselves, maybe for the first time, providing them with the opportunity to rebuild relationships that were once damaged and respect their fellow humans – including the staff.



So what does this tell us about what should happen to people who commit offences? Helping people who offend to create and contribute to a community helps them practice the tools to integrate into society when they leave custody. In my experience of working to support reintegration we need to start with love and respect – not only for criminal justice systems to treat people with dignity, but to provide people who offend with the opportunity to learn to love and respect each other – and themselves.

# ***APPLYING MONTESSORI PRINCIPLES TO REHABILITATION***

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*Nati Beltrán*

The causes underlying crime are multifaceted and complex. We need a multidisciplinary, systemic approach to address them – one that provides effective, comprehensive and long-lasting solutions that contribute to personal and social transformations and reduce overall rates of violence and reincarceration.

Maria Montessori, a medical doctor specialising in psychiatry and three times Nobel Peace prize nominee, developed an innovative view of normal human development and identified the conditions that facilitate or obstruct it – and the methods to renormalize it when it has strayed. While her work is usually associated with pedagogy for young children, her vision and insights are broader in scope and are being applied to initiatives for people of all ages and beyond schools. Montessori programs regularly see deep and wonderful transformations, and I believe that the Montessori method holds a key to aid our investigations towards a more effective and humanistic prison model.

## **Montessori's views on human nature and development**

Montessori discovered something that is now considered second-nature: that learning and growing occurs as a consequence of concrete experiences with a person's environment. She writes that a person 'adapts the being he is constructing to the conditions of the world around him' (Montessori, 2016, p. 54). Montessori observed that people's true nature often lies hidden below layers of adaptations to adverse environmental conditions,

but that the most noble human attributes appear spontaneously (and consistently) when the environment is modified to meet an individual's inner drives and energies. The key to transformation and 'normal' development is to provide individuals with sufficient opportunities (1) to do meaningful work, (2) to use their intelligence and (3) to contribute to the wellbeing of their community.

The core of Montessori's belief is that, when a person finds in their environment all the elements they need to develop optimally and has the freedom to choose spontaneously, they grow into a well-adapted, well-rounded individual, with a normal psyche (and its characteristics of awareness of themselves and others and self-regulation), being both autonomous and well-adapted to the social group. However, when obstacles to natural development exist (e.g. abuse, a deprived environment, limited stimulation, inadequate levels of challenge, insufficient support, etc.) the individual will manifest behaviours that diverge from this normalcy.

So, if we confine inmates in facilities that don't offer opportunities for purposeful and meaningful work, learning and growth (in short, for genuine personal development), inevitably (and often unknowingly) we create conditions that impede the very transformation we are seeking.

We can now look at the specific development characteristics of young 'offenders' from a Montessori view. The developmental work naturally undertaken by adolescents between the ages of 12 and 18 is to learn how society functions and find their place in it. Through this process they create a map of the moral grounds that will guide them for life. Key aspects of this stage that must be met are the need for self-expression, experimentation and social engagement; the ability to genuinely engage in broader society so as to learn how to live healthily in it, including opportunities to work and earn money; opportunities for philosophising and discussing personal opinions; and perhaps most challengingly, it's a time when risk-taking behaviours are developmentally appropriate.

When the person passes to the next development stage, between the ages of 18 and 24, the developmental work is to become an active member of society. It's the age when our brain finishes maturing, especially in regard to decision-making. It is a challenge for society to accept that human beings' long process of maturation doesn't end until the mid-twenties and that caring environments, guidance and support – even if individuals already live autonomously – are needed for at least that long. Where these developmental needs are unmet, the process of learning to make life-serving decisions can be impaired with costly consequences.

The success of criminal justice ultimately depends on our ability to support individuals to make the internal changes needed to produce the required changes in external behaviour. Individuals need to develop self-awareness, self-control, empathy, a sense of identity and interdependence with their social group and the ability to extrapolate the consequences of their decisions. This new learning is, in fact, a rewiring of the brain's learned adaptations to a history of inadequate developmental environments. But individuals can only learn these skills through experience – from having the opportunity to choose positive actions and restrain from costly ones in meaningful community interactions.

The goal of prisons is to build a community where this development and learning can occur. Although the consequences of criminal action are tragic and costly, the mechanisms that drive them are the same as for any other action. Common inner impulses motivate behaviour choice – from what to eat to whether to pull the trigger. Prison needs to provide a place where individuals learn first to identify and control these impulses, and the related emotions and thoughts that drive them, and then explore different ways to meet the underlying needs.

## Montessori principles in rehabilitation facilities

If society wishes to help delinquents, it must first change their souls and bring about this conversion, [development through concentration]. Otherwise all society will do is to form a society of delinquents; it [will] organize delinquency.

MONTESSORI, 2012, P. 224

If we want to see new behaviours emerge following a custodial sentence, we must create conditions within rehabilitation centres that both foster individual growth and healing, and the development of a social context in which each person can contribute meaningfully to their community. The Montessori approach offers individuals freedom of choice, within well-defined limits, in environments designed to promote growth and development and to support basic human tendencies and needs. Freedom, in this context, must be clearly understood – it is not simply ‘doing as one likes’. Freedom is necessarily tempered by responsibility within the society and it is only meaningful within the natural boundaries that protect all individuals’ needs: one person’s freedom to act cannot impinge on another’s freedom to be safe from harm. This core tenet of harmonious living cannot be ‘taught’, it must be lived and experienced.

Ideally, within the context of imprisonment, we would create a community which functions as normally as possible – a sort of *mini town* – in which we can give each individual opportunities to take on increasing responsibility as they become more independent. We support people but also raise our expectations of them and trust that they will rise to meet these. The underlying ethos must be that it is human nature to be kind, considerate and want to make a contribution when trusted and encouraged, especially when there is meaning in one’s work. This requires treating each person with dignity and respect, with a focus on their potential and in a way that acknowledges and values them but is unencumbered by our perceptions of their past.

The key ingredients of the Montessori approach are the combination of a *prepared environment* and the support persons who create and maintain it. This environment incorporates several key components:

1. Individuals have freedom to choose activities that allow them to practice decision-making and develop greater independence in all areas (holistic).
2. There must be opportunities for purposeful activity which meets the developmental needs and interests of each person. This implies a deep and up-to-date understanding of each individual and their stage of development.
3. From the moment they arrive at the facility, individuals must recognise and feel that they are part of a community in which they can choose to collaborate, contribute, and experience the social consequences of their actions.

The Montessori *guide* is a support person whose responsibility is to support this process of development and transformation, and to create these magical environments that call to positive action.

Life-enhancing environments, of the sort Montessori designed, are places which inspire wonder, exploration and inner and outer connection. They cater to the wholeness of individuals and are adapted to include each user's needs and interests. The whole facility mirrors the Montessori classroom and serves as a 'transformational ground', providing rich opportunities for daily purposeful activity. Inmates are busy from dawn to dusk, with calmer moments interspersed for integration and reflection, in activities that have meaning and a special drive for each person, whether because they provide a crucial service to the community or because they fulfil an inner desire or personal interest. The atmosphere becomes relaxed and safe as individuals are treated with respect, dignity, and trust. Contact with the outdoors and nature is encouraged within the normal running of the facility (e.g. a garden, forest management, animal care, etc.).

Ample options are provided to engage the mind. Montessori understood the close connection between the work of the hands and developing intelligence and her methods are based on practical work that also challenges the mind. In practice, many subjects are not ‘taught’ – learners engage in hands-on activities and draw conclusions. This indirect approach can be particularly useful for those who struggle with traditional educational methods.

Knowledge of the developmental needs as well as each individual’s interests is crucial. Imagine a rehabilitation facility where an inmate’s first contact with staff is taken as an opportunity for staff to learn about that person’s likes and dislikes, interests, life experience and beliefs with true openness and compassion. This information is then used to create a customised plan of development, with the inmate’s input and commitment. Montessori schools encourage this self-assessment, planning and commitment of children from the age of 6–7 years onwards – surely the same can be applied to young people and adults in the prison context.

Moving onward in the incarceration period, business skills and self-management can be practiced so that inmates may work towards financial independence through development of employable skills. Might we even allow inmates to make a meaningful income from their work so that they can learn to use it constructively in a controlled context, and even save in preparation for free life?

Individual work takes on meaning when we belong to a community. Work provides the best opportunities for healthy social cohesion. Residents must have opportunities to do as much as is safely possible, including food preparation, serving, cleaning, caring for themselves, the grounds and the environment.

It is within a community that we perfect our capacity for self-awareness, awareness of others self-control based on our sense of morality and recognition of our own and other peoples’ needs. Dealing

with conflicts within the group, rather than having a solution imposed from above, can have tremendous value. The creation of an internal, inmate-run restorative justice system to manage conflicts can provide much learning in the social arena of feelings, needs and how they motivate actions and can be fulfilled respectfully, as well as restoring relationships when harm has occurred.

For younger inmates, the prison model can be based on Montessori Erdkinders – schools for 12 to 18 year olds that incorporate many of the features described already. There is a focus on helping young people develop a social conscience and understanding of how humans organize themselves in society, as well as self-expression through writing and the arts, cognitive development in ‘traditional’ academic areas and group projects that combine individual interest and community needs, including taking ownership of key aspects of running the facility.

The support person or educator works tirelessly towards aiding each person to develop a sense of trust in themselves (their abilities, their basic human goodness, a positive sense of self, etc.), and also to develop a sense of trust in their environment (‘the world is safe’ and ‘life is worth living’).

If the teacher can really enter into the joy of seeing things being born and growing under his own eyes and can clothe himself in the garment of humility, many delights are reserved for him that are denied to those who assume infallibility and authority.

MONTESSORI, 2007, P. 83

Their task is accomplished by preparing environments and activities to serve global development, which requires deep knowledge about the mechanisms of development of the psyche, cognition, and holistic development, as well as the ability to observe systematically and draw conclusions about each person’s interests and needs, so that they can propose appropriate activities and opportunities. For example, one person might be interested in football, another one in carpentry, yet



another in accounting. Guides or educators also help ‘connect’ the person to the activities, first by showing them how to carry them out and transmitting their excitement, and also by helping scaffold the knowledge or skill by providing adequate levels of challenge and adapting activities when necessary, so each person feels success as well as a healthy dose of challenge daily.

The support person becomes expert at observing behaviours and finding the (always noble) inner energies attempting to be manifested or the inner needs attempting to be met and finding ways to help each person meet them in healthier ways. Montessori encourages us to see and treat individuals as though they are already the potential person they can become, with their most noble attributes present. This is a difficult task for the educator especially when an undesirable behaviour presents itself and yet we find that people continually step up to the opportunity once someone believes in them. We must remove the obstacles which create resistance, or that trigger previous adaptations which are costly to others. Natural consequences to behaviour are the most powerful motivators to change and the educator ensures they are present and carried through. Montessori calls us to see the best in people:

Every unusual response ... furnishes us with a problem to be solved; and every tantrum is the exterior expression of some deep-rooted conflict which is not to be interpreted simply as a defensive mechanism against a hostile environment but a manifestation of a nobler trait seeking to reveal itself.

MONTESSORI, 1972, P. 109

Experience proves that inner transformation follows opportunities for positive engagement of the type just described. Great curiosity and openness are needed from the educator, as well as a great capacity for empathy and compassion. Can we truly de-label individuals, see them through a pristine lens as a whole, intact person in this moment? As much as possible, a new relationship is forged, based on mutual

respect, a partnership where power is shared. Both people learn and grow together. To cater to the wholeness and complexities of the human being, I envision a team of professionals who can observe individuals from all angles and provide a holistic plan of healing and growth, including healing trauma, addressing special learning needs, etc.

My work in *Nonviolent Communication* has led me to believe that a truly systemic, long-lasting solution requires the restoration of relationships in the community where the crime occurred – an area that deserves an article in its own right but should be a consideration for custodial environments.

In an ideal scenario, inmates would also have opportunities to contribute positively to the outer community, such as by raising funds for different causes, donating materials for schools, etc. In order to assure a smooth and successful transition to the outside life, the facility would provide opportunities to try out life outside while providing support – a sort of assisted autonomous living. If the inmate has had dealings with the outer community and the community where he or she will live after the sentence, reinsertion might be facilitated. Ideally, there would also be support for a transitional time after release.

Some organizations such as Diagrama Foundation (a Spanish charity that manages youth custodial centres) or Norwegian Bastøy prison have reached similar conclusions to Montessori's and are having great success in reducing recidivism rates (to as low as 16–20%) and social reinsertion; they provide models of innovative, holistic approaches criminal justice.

## **‘TOUGH ON CRIME’ – WHY BELIEFS SHAPE POLICY**

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*Penelope Gibbs with Anne Fox and Roma Hooper*

The appointment of Prime Minister Boris Johnson marked the return of a “tough on crime” stance in government. As he campaigned for Tory support he referred to our ‘cock-eyed crook-coddling criminal justice system ... to back up the police, you not only need proper resources, but also tough sentencing’ (DAILY TELEGRAPH, 19TH MAY 2019).

Once in power the Prime Minister expressed his disapproval of the automatic release of prisoners who have served half their sentence and set out plans to lock up serious offenders for longer. Priti Patel, the Home Secretary, called for people “to literally feel terror at the thought of committing offences” ([www.dailymail.co.uk/news/article-7316055/I-want-criminals-terrified-says-Priti-Patel-Home-Secretary-restore-confidence-Britain.html](http://www.dailymail.co.uk/news/article-7316055/I-want-criminals-terrified-says-Priti-Patel-Home-Secretary-restore-confidence-Britain.html)).

In May Mr Johnson had invited readers of the Telegraph to fill themselves with righteous anger. This simply encourages many to be angry about the harm done by those who commit crime. Unfortunately, that anger is channelled towards the punishment of individuals rather than towards preventing crime and the causes of crime – poverty, inequality, mental health problems, parental neglect and/or abuse and lack of employment opportunities.

For the past few years now we’ve been finding out how best to frame progressive and rational messages about crime.<sup>1</sup> We need to communicate as powerfully as the Prime Minister to change the

debate and to persuade even him that ROTL (release on temporary licence) serves a public good and that short prison sentences are counter productive.

The starting point for us was to find out what people believed about why people committed crime and how to prevent it. People's beliefs are at the root of all their views and opinions. It's common to blame the media for influencing people's opinions, but beliefs matter far more than tabloid headlines. Beliefs develop from birth and parents, peers, and people in the pub, all play a part in developing them. We commissioned research which found that people in England and Wales believed people who committed crime made an individual rational choice to do so having weighed up the benefit of doing the crime versus the risk of being caught and sanctioned. In fact little crime apart from organised crime and fraud fits this model. There is a large body of evidence that the causes of crime are mainly social and environmental.

If people who commit crime are seen as 'rational actors', then the rational way to deal with crime is to punish perpetrators harshly – as a deterrent and for retribution. The belief that criminal sanctions deter crime is declared regularly by politicians and deterrence is one of the key grounds for sentencing. But there is no evidence that deterrence works, partly because so much crime is spontaneous, fuelled by short term anger, alcohol or drugs.

There is plenty of evidence to show that tougher sentences have little impact on crime. Finland in the 1960s decided to reduce their prison population.<sup>2</sup> They removed nearly all fine defaulters from prison, then reduced the numbers of those imprisoned for theft, drink-driving and other non-violent crimes. Suspended sentences became the norm for first-time offenders who had been given prison sentences of less than two years. Crime did in fact go up significantly from 1960 to the late 1980s, but it went up no more in Finland than in other Scandinavian countries, with low prison populations. Crime also went up steeply in USA where the prison population soared.

In America new tough laws were brought in, the toughest of which was the Californian three strikes rule which was introduced in 1994. It said that anyone convicted of two serious offences would be imprisoned for life on committing their third offence. This third offence did not need to be serious to count, so people ending up serving life sentences after lying on a driving theory test or shoplifting. If deterrent sentencing works, this draconian three strikes law should have prevented anyone affected committing that third crime. But it didn't. An economic study<sup>3</sup> concluded that people on two strikes were only 12.5% less likely to be arrested after the new law than before it. Another study<sup>4</sup> suggested that the threat of punishment might have encouraged two strikers to commit more serious third crimes as ‘rather be hanged for a sheep than a lamb’.

So how should we communicate about why people commit crime? It is tempting to think that evidence and facts persuade. But research suggests not. In the Brexit campaign, voters were deluged with ‘facts’ from both sides – such as that used by the Leave campaign that Britain sends £350 million to the EU every week, omitting that more than half of this came back to the UK in subsidies – but in the end voted according to their deep seated beliefs.<sup>5</sup> So it doesn't matter whether we are pre or post fact. If people have strong beliefs, facts alone are unlikely to sway them – facts are believed only if they fit in with existing beliefs. If facts on their own don't persuade, and beliefs are strong, how can we change the debate? The FrameWorks Institute, which has researched the best ways to communicate about a range of social issues, recommends using values and metaphors and understanding and working with existing beliefs.

A lot of the phrases we use may be backfiring because they trigger and reinforce strong beliefs. In response to former Justice Secretary David Gauke's attempts to abolish short prison sentences the Magistrates' Association tweeted:

We support the MoJ's aims to reduce the use of unnecessary short prison sentences, provided that robust and effective community

alternatives are universally available. Sentences of up to eight weeks should only be available in exceptional circumstances.

Unfortunately, every time anyone uses tough or robust in relation to community sentences it is like a dog whistle for those who support more punishment. If you trigger the belief in punishment, you also trigger support for the ultimate punishment – prison.<sup>6</sup>

If we are to engage in a positive conversation we need to use values – but not the ones we instinctively think work best.

Value for money has often been used to garner support for reducing imprisonment – we should reduce prison numbers because prison is expensive. Why pay so much, we say, when alternatives to prison are so much cheaper and more effective? We have not succeeded in reducing the prison population through this argument. In fact, the government have saved money on prisons but simply by cutting staff, making conditions far worse.

So why have campaigners' sensible arguments fallen on stony ground? Simply because people don't care about saving money when it comes to their own safety, or don't think it's relevant. The FrameWorks Institute have done research<sup>7</sup> which compares the effectiveness of different values in inspiring support for progressive criminal justice reforms focusing more on the prevention of crime and less on punishment. When the researchers posited that fewer people should be punished because it would save money, the public were less supportive of the reform – so promoting a reform because it saved money actually reduced people's support for it.

It's not clear quite why people don't seem to care about saving money on criminal justice. The FrameWorks Institute think it may be because people don't think you can put a price on safety:

Our research shows that people place great importance on personal and community safety and are unwilling to think

about it in financial terms. This contrasts with other social issues, such as mental health, education or the environment.<sup>8</sup>

Another issue where cost effectiveness bombed is in the debate on Brexit – the Leave value, ‘take back control’, won hands down over the attempt to persuade people that membership of the EU was cost effective.

So we know what not to say, but what to say instead? One of the values which worked much better was pragmatism:

We need to use a common sense, step-by-step approach to solving problems and improving our criminal justice system. This means clarifying goals and establishing a set of tasks that we want the system to do, and then creating a criminal justice system that is aligned with these goals. If we focus our attention on creating a step-by-step plan for solving problems, we can decrease crime and improve public safety.<sup>9</sup>

This value increased support for progressive reform and detracted from the fatalism that dominates so much communication about criminal justice (yes mine too). So if you are trying to persuade anyone that our criminal system needs changing try using the argument that it makes pragmatic sense.

The research we commissioned suggested three values really helped get support for progressive criminal justice policies – pragmatism, national progress and human potential. But the jokers in the pack are metaphors. Metaphors are used in everyday speech and encompass a whole story or image in one phrase. One of the metaphors which resonates is justice gears:

If I drove my car in fifth gear most of the time, when the conditions didn’t suit, its performance would be affected. Imprisonment should be the fifth gear of the criminal justice system, with a purpose, for use in certain circumstances. But the car’s been driven in fifth too often.<sup>10</sup>

Above all, if we are to reform our creaking criminal justice system, we need to believe we can do it. The public are already wary of those who promise crime reduction. They don't believe anything can stop 'bad' people committing crime. The sector itself has fallen into the same trap. By highlighting crises in the prisons, and all that is wrong with the system #thelawisbroken, we have unwittingly supported the fatalists.

We shouldn't whitewash the problems there are, but to dispel public fatalism we need to be more positive about society's ability to reduce crime and imprisonment. All problems have a solution. We just need to remember to explain it in our communications.

Shifting the public debate is not about contradicting existing beliefs or blaming anyone for their beliefs. But it's about understanding what people believe and why. It's very easy to trigger people's belief in punishment (nearly half the population support the death penalty<sup>11</sup>), but if we work together we will steadily change the conversation and prepare the ground for policy changes. David Gauke as Lord Chancellor really changed the way he approached communication. His first major speech focused on criminal drug gangs in prisons and the increasing use of psychoactive drugs. He wanted to 'support prisoners to make the right choices and take the right path towards rehabilitation and re-joining society'. But in his final speeches he framed issues very differently:

A strong, dynamic probation system is in all our interests. It will help cut and reduce the number of victims of crime. It will help to turn ex-offenders into productive members of society who contribute to our communities rather than take from them ... Ultimately, this will help us to create a fairer, safer and better society, to the benefit of all of us.

We just need to take the Prime Minister on the same journey.



## ***CRIME: A SIGN OF OUR FAILURE TO ORGANISE FOR THE COMMON GOOD***

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*Teresa Parker*

What has happened to people who commit criminal offences and what should happen to them next? Many point to underlying factors: social injustice, inequality, austerity, as creating an environment in which crime can flourish. Where there is some element of individual choice in the committing of an offence, this only makes it clearer that the drive for personal benefit can overwhelm the drive to serve the common good in our society – and the extremity of need that some find themselves in can overwhelm their usual law-abiding behavior.

Being overwhelmed by need is to be in the power of forces that are often beyond our control or held deep in the human condition. Even where the need for the basics of life is not an issue, the desire for huge bonuses, the self-centered exploitation of natural resources, or the use of violence to force through one's own wishes, are examples of being prey to impulses that are present in all of us. Like violence, and all that leads to war, they are a sign of human weakness.

The Quaker response to the existence of human weakness is to assert that there is in all of us that which is of great worth. Some would express this as 'that of God in everyone' but not all of us use God language. The approach that emerges out of this spiritual belief is summed up in the phrase 'let us see what love can do'. It is to intentionally place the power and impulse to love, concretely, consistently and strategically, alongside the weakness. It is about building 'structural love', to upsize those institutions and systems that build health and humanity.

It is about undoing the harms caused by structural violence. It can be transformative for individuals, society and country.

Our society's current response to crime is to prosecute and punish – despite scant evidence that this can heal, restore and transform individuals and society. We have a model that says the more serious the crime, the greater the punishment. Surely, the more serious the crime, the greater the need for love and empathy and healing. How have we arrived at something so upside down?

We can extricate ourselves from the mindset that punishment works. We can ensure that what happens to people who commit criminal offences does just not pile up more hurt for those they may harm in the future and for themselves. We can stop placing those who harm others in a separate category from the rest of us and we can stop making things happen to them that we wouldn't want to happen to us. We can do this because punishment is so ineffective a deterrent overall. What is learnt from being separated and hurt? To raise the pain threshold, to desensitize, to dismiss others and their rules, to find ways to cope, to find ways to get revenge.

As punishment doesn't work as a deterrent maybe it has some use for those who have been harmed? Does it help them feel better? Only at those times of excruciating anguish when it seems that making someone else feel worse, might work. It doesn't go very far at all to heal the suffering and to help life, after the harm, be lived.

We can redirect all the energy and resources put into the current punitive approach of the UK criminal justice system. There can be the sort of justice for those who have been harmed, that makes a difference to them and their communities.

Transformative Justice, arrived at by Canadian Quakers and others, engages with these questions. It is a vision and a strategy by which the social and political environment that creates crime can be transformed.

The human weakness (at individual, society and state level) that results in crime can be transformed. People who commit criminal offences can be both held accountable for their actions and treated as members of society. We can make changes so that the loss of liberty (where necessary for public protection) does not also mean the loss of safety, health, relationships, purpose and the vote. We do not have to act out of retribution, we can act out of empathy. It has power and we can use it. Life in prison can be as close to normal life as possible so that when people leave, the transition is eased and the risk of return to prison is less likely. These sorts of prisons already exist. They exist in societies where the idea of punishment has less power. We may think that we punish others for wrongdoing but we end up, as with any sort of violence, in harming ourselves by perpetuating the structural and systemic root causes.

Transformative Justice puts an obligation on us. It is an approach that holds together, sometimes in tension, both that which serves the common good (which will include the protection of the public) and kindness and compassion. It insists we act with respect, recognise our own failings and learn. It is hard work emotionally, requires stamina, resilience and the support of allies. It requires us to learn what love and justice may mean to the one who has harmed and those who have been harmed. This means paying close attention to the context, not least because what led up to the harm done might give clues about what would lead away from it. It is to act in the belief that life is precious. To act in ways that degrade or diminish the value of life is not a solution. This would be to try and go forward in reverse gear.

Such a vision is not beyond our capabilities. Currently, policing and punishment is a vote winner. That will need to change, clearly it is not sustainable. Similarly, the way that the criminal justice system provides jobs and attracts money (in a way that education and health services find much harder) will need to change too. None of this is immediately achievable but recalling the changes that have already occurred over

the centuries can be helpful. Prison, for example, was originally a humane alternative, better than flogging or putting to death. Now it is identified as a cause of social injustice, particularly if you are someone with a black or minority ethnic identity. We can, each from a different place and for our own reasons, decide that it will change.

## **TAKING PEOPLE SERIOUSLY: DEBATING MATTERS BEYOND BARS**

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*Jacob Reynolds*

If you were to judge by what you can see in the media, there are only two answers to the question ‘*What should happen to people who commit criminal offences?*’ Either, on the one hand, we should ‘lock them up and throw away the key’ or, on the other, we should do everything we can to rehabilitate people and reduce the use of custodial sentences. People who give the former answer tend to see those who want rehabilitation as being ‘soft on crime’, and people who give the latter answer tend to see the former group as harsh, draconian reactionaries who would happily bring back hanging if they got half a chance.

Of course, these two positions, caricatured as they are, reflect real philosophical disagreements about the nature of crime. One group focuses on the ideas of retribution or deterrence, and so seeks to make punishment the key aspect of what happens to those who commit criminal offences. The other group focuses on rehabilitation or redemption, and so seeks to use the criminal justice system to address the reasons why people commit crime in the first place, and give them the motive and tools to avoid doing so in the future.

Here, I hope to make a rather modest contribution to the debate by showing that, at least in the work of the initiative *Debating Matters: Beyond Bars*, we need not see punishment and rehabilitation as somehow opposed. Instead, we try to bring these two goals together.

Debating Matters is a unique kind of debating competition. It privileges ‘substance over style’: sound arguments and great research over smooth

talking and soundbites. All the topics are from the ‘real world’, such as whether museums should return artefacts taken in colonial times to whether fake news is damaging democracy. It is not a public speaking competition, but an attempt to encourage people to think, and argue, hard and seriously about the key issues of our time. It began as a sixth-form school competition with the ambition of ‘taking young people seriously’: both in terms of involving young people in the key debates of our time, but also taking them seriously enough to have their arguments critiqued by adults who don’t flatter them.

When we conduct the competition in prisons, the same ethos applies. Prisoners are involved in real world political controversies and their arguments and research are put to the test by panels of judges who occupy prominent positions in society. Prisoners are taken seriously and treated like responsible members of civil society. But they are still prisoners – they have committed crimes and are being punished for those crimes. Taking them seriously means keeping these two things firmly in mind: they are being punished and so have to serve their time and demonstrate their desire to rehabilitate, but at the same time they are capable of acting like responsible members of society and should be treated as such.

A great illustration of these two components of taking prisoners seriously was found when prisoners debated whether prisoners should be given the right to vote. Having done their research and engaged in the idea of what voting means and its relationship to being a member of society, a winning team – of prisoners, remember – successfully argued that prisoners should not be allowed to vote. The prisoners argued that prison is a serious punishment that entails the restriction of key rights, voting is one such right and, because it has such a strong connection with being a free citizen engaging in the public sphere, it is certainly the kind of right that should be removed when we imprison people. The prisoners who made the argument took the idea of punishment seriously, and they took *themselves* seriously enough to argue that their crimes meant their rights had to be restricted. Yet because they

did so in such a calm, well researched and intellectually robust fashion, they also demonstrated a commitment to their own rehabilitation.

Taking prisoners seriously therefore means maintaining that, because of what they have done, they deserve to be punished but, as rational adults, they can potentially be rehabilitated and therefore re-join society as full members once more. This is the key insight that we argue should inform our response to the question of what ought to happen to people who commit offences: punishment means taking the offender seriously.

Over recent years, more attention has been paid to the *victim* within the discourse and practise of criminal justice. Under the rubric of ‘victim centred justice’ and similar ideas, the experience and testimony of victims has acquired a new kind of importance. Whatever the changes that have taken place, punishment has always, in a sense, taken the victim seriously by deeming what has happened to them as *wrong* and requiring redress. We are perhaps less familiar with the fact that punishment also takes the *criminals* seriously by recognising them as moral agents who have, through their own choices, done something wrong. When we punish someone, therefore, we recognise them as having agency (thus, one form of mitigating circumstance that may be taken into account when it comes to sentencing is that which highlights how the criminal’s capacity for agency was diminished, such as having a mental illness or being provoked to ‘lose control’). It seems paradoxical, but this line of thought argues that the proper punishment of a criminal is a form of respect. The German philosopher GWF Hegel (1991) put this idea as follows:

In so far as the punishment which [the crime] entails is seen as embodying the criminal’s own right, the criminal is honoured as a rational being.

The criminal is ‘honoured’, that is, deemed worthy of punishment, because in punishing them we recognise them as a rational being who could, and should, have known and acted better.

So far, so philosophical. What is important in this understanding of punishment is that it shows that – contrary to the usual binary opposition between punishment and rehabilitation – punishment *implies* rehabilitation. Naturally, there are many elements to rehabilitation – from showing genuine remorse through to learning skills that could form the basis of a steady job. However, one element of rehabilitation that the idea of ‘taking criminals seriously’ shines some light on is that of citizenship. Part of what it means to respect someone ‘as a rational being’ (to use Hegel’s phrase) is to treat them in ways that demonstrate their capacity to be a full or normal *citizen* once again. In terms of Debating Matters Beyond Bars, this is modelled through having prisoners engage in moral and political topics and take a stand on one side of the argument or another – akin to how regular citizens engage in politics in a democracy.

We hope for this to be a slightly distinctive feature of what we do. The idea of promoting ‘good citizenship’ in and through rehabilitation is of course nothing new. Normally, ‘good citizenship’ has been understood as being a useful and productive member of society. Therefore, people convicted of crimes are encouraged to demonstrate their desire to get a job, to control their emotions, to volunteer in their community, or to turn up to the voting booth. These are laudable aims but this normal understanding of good citizenship has a slightly technical quality: it looks for people to take on certain pre-determined roles or tick certain boxes. In contrast, we understand citizenship in a slightly more classical and political sense. Good citizenship is not just about meeting a set definition of a good citizen (that often amounts to being something like a nice neighbour) but means thinking about and engaging in the key issues that confront us as a society. This ‘classical’ understanding emphasises thought, choice, reflection and judgement – which are by their very nature not pre-determined. One cannot guarantee that a thoughtful, reflective, interesting criminal will get a job or always meet the expectations of the more ‘normal’ understanding of citizenship.



With what I've called 'classical' citizenship, there are no guarantees: all we may end up with is a thoughtful, articulate and politically passionate drug dealer.

Nonetheless, we think this is a hugely important element of rehabilitation because it encourages reflection on what they think the future of society should be. In having to make an argument for a position and say what they believe *should* be the case (the competition usually discourages citing opinion polls or existing law), people in prisons are involved in a kind of public conversation about the future direction of the country. Believing that one is part of society and has an interest in its future is surely an important precondition of re-joining society as a proper citizen. It is in this sense, therefore, that taking prisoners seriously is an important part of the rehabilitation process.

However, it is important to note that because this kind of citizenship and rehabilitation is not pre-determined (there are no guarantees), it is harder to justify within the normal framework where rehabilitation exercises are required to 'prove' their worth in reducing recidivism rates. In an environment of constrained budgets, it is understandable that government wants to ensure the money spent on rehabilitation is well spent. But it would be a misguided, perhaps even inhuman, ambition to therefore conclude that *all* money spent and effort expended must guarantee reduced crime – for that way leads the society of Burgess' *A Clockwork Orange* (Anthony Burgess, 2011).

To conclude, I want to stress that this is not a prescriptive or policy-driven answer to the question of what should happen to those who commit criminal offences. Many policies or initiatives are consistent with the broad outlines of the approach that is used in *Debating Matters: Beyond Bars*. 'Taking people seriously' need not even mean running debating competitions in prisons (though we of course believe it is one good way to demonstrate it). Nonetheless, we have seen that focusing on the idea of taking people seriously illuminates two

important principles that guide what happens to people who commit offences: punishment and rehabilitation.

In the case of punishment, we have good grounds to insist on proper and proportional punishment. Punishment is not simply the expression of a spiteful or angry ‘desire for retribution’<sup>1</sup> but instead a form of treating the offender with the respect owed to a rational creature who can and should know better. Avoiding punishment is not necessarily progressive, it can be an evasion of our responsibility not just to the victim, but to the perpetrator as well.

As we have seen, focusing on the idea of taking people seriously shows that there is no punishment without rehabilitation (just consider the moral improvement in Dostoevsky’s *Crime and Punishment* that occurs only *after* Raskolnikov realises he *must be punished* for his crime) (Dostoevsky, trans. Pevear and Volokhonsky, 1993). Moreover, we see that rehabilitation needs to focus not just on practical or economic issues, but also on the political ideal of citizenship. We don’t just want criminals to re-join society as economic agents, but also as moral and political beings properly engaged in caring about the future of our society.

Thus, the first thing that must happen to people who commit criminal offences is that they must be punished in ways appropriate to their rational agency. But, equally importantly, the second thing that must happen to people who commit criminal offences is that they must be rehabilitated as citizens.

# ***MORE OR LESS?***

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*Rob Allen*

## **Introduction**

In recent decades criminal policy has suffered from ‘the politician’s fallacy’. This is the Whitehall logic first coined 30 years ago in the TV programme ‘Yes Prime Minister’, which argues: We must do something. This is something. Therefore, we must do this.

More often than not, the ‘something’ has involved creating more and more criminal offences and responding more harshly those who commit them. To be fair, the aims of dealing with people who commit crime have long included reform, rehabilitation and reparation to victims. But these ‘Three R’s’ are all too often outranked by punishment, deterrence and the protection of the public. It’s these latter three purposes which usually take priority in decisions about individual cases, new policy developments or the allocation of resources. With public concern about crime at its highest level since 2011,<sup>1</sup> there’s a risk that criminal justice in the 2020s will take a yet more punitive turn.

There are many reasons to be concerned about that prospect:

- the ethical, social and financial costs of punishment;
- the way it bears disproportionately on the poorest and on racial minorities;
- and the basic fact that it does relatively little to reduce crime.

That’s why we need to adopt a very different approach.

## Doing More

There are some activities in the existing system which we need to do much more of.

One is finding out why individuals commit the offences they do and what factors lie behind them. Decisions about how best to respond to a criminal offence need to be informed by a genuine process of social inquiry into the context of what's happened and the best way of addressing it. Probation officers used to prepare detailed and comprehensive social inquiry reports. Today's pre-sentence reports have often become rushed and superficial – seen as a bureaucratic hurdle, to be dispensed with if necessary in the interests of efficiency and speed. Instead, they should be key to enabling the court to identify the right measures to impose in an individual case.

Second, we need to offer more opportunities for people who commit offences to put things right through restorative and reparative measures. There's good evidence that Restorative Justice (RJ) has positive effects by giving victims the chance to tell offenders about the impact of their crime and get an apology. Yet, despite support from successive governments, the proportion of incidents where victims are given the chance to meet the offender halved between 2010 and 2017 to just 4% – this is in spite of the fact that in almost a quarter of incidents victims say they would have accepted an offer to meet the offender. We clearly need to invest more in timely and effective mechanisms for engaging the parties involved and organising restorative activities whether conferences or mediation sessions.

Third, people who persistently commit offences need a much wider range of assistance to change direction with the necessary treatment, help and support available on the required scale – both in custody and in the community. This isn't about developing and accrediting complex new psychological programmes but taking simpler, but more wide ranging, steps – for example, to ensure that life inside prison resembles life outside, where possible, and that people serving jail

terms are encouraged and inspired make changes to their lives and desist from crime.

On the outside, if that's to be a reality, they will often need:

- access to employment or some type of income,
- access to education,
- suitable housing accommodation,
- medical services and addiction treatment services,
- debt counselling
- and supportive relationships

to be able to sustain a new way of life.

In Norway, where the reconviction rates are less than half of those in the UK, these above offers are enshrined in a 'Reintegration Guarantee', to which all the relevant departments and agencies sign up. Not only is that a rarity in the UK – where prisoners have been released with a tent to live in – but the crucial contribution of the voluntary sector is not fully harnessed by the prisons or the probation service.

## Doing Less

To free up the resources to fund these more intensive efforts at RJ, reform and reintegration, there are certain practices which we should be doing less of.

One is the pointless court processing of minor crimes. Almost half a million convictions last year resulted in low level penalties such as fines or discharges. Unlike some diversion measures, such sentences do nothing to rehabilitate offenders or compensate victims.<sup>2</sup>

Second, is remanding defendants in custody when alternatives are available. In 2017, of those who were remanded in custody pending trial or sentence in magistrates' courts, 58% did not go on to be

sentenced to prison – that amounts to over 13,000 people in one year alone – and more than one-quarter of people remanded in custody in the Crown Court did not receive a custodial sentence.<sup>3</sup>

Third, we need to reduce the numbers sentenced to prison and the length of the periods they go for. People are nowadays more likely to be imprisoned, and to serve longer terms, than they were in 2010. This partly results from unanticipated consequences of guidelines produced by the Sentencing Council.<sup>4</sup> The Council has not done nearly enough to challenge increasing sentence lengths, or to give more explicit assistance to courts in determining when offences are so serious that only prison will do. Courts should be encouraged to sentence creatively, with tighter requirements on courts to follow the upper limits of guidelines and the ability to sentence below the range if it is in the interests of problem solving or rehabilitation. The strict requirement for courts to treat previous convictions as an aggravating factor should also be relaxed and the thresholds for breaching supervision maintained at a high level.

Why should we be working harder to keep people out of prison? Because as was said last year – by Police Chiefs no less – ‘it can become a ripe place for criminal education, serious and organised crime, and radicalisation, rather than rehabilitation’.<sup>5</sup>

Finally, we need to limit the extent to which criminal records inhibit prospects of going straight. The MP introducing the Rehabilitation of Offenders Bill in 1974 considered that ‘society, although it seeks to assist the offender more and more in various ways which we welcome, imposes upon him on his release penalties and risks so great that the weak, the easily tempted and the easily disheartened – and even those who are not easily disheartened – may be unable to resist further temptation. The offender is handicapped in finding employment, in finding a place to live and in securing insurance’. How much has really changed?

## Doing Differently

To achieve this new approach the criminal justice system will need to be organised very differently.

We have had specialist courts for children for well over 100 years but emerging knowledge about the way young people develop means a more distinctive approach to young adults into their 20s is now well overdue. Germany and the Netherlands allow those up to 21 to be dealt with in the same way as under 18s and there is a case here for raising the upper age limit of the Youth Court and of the mandate of multi-agency Youth Offending Teams.

At the other end of the age spectrum, the growing numbers of elderly prisoners urgently demand a specialised response. An investigation into an 81-year-old prisoner who died nine months into a four-and-a-half-year sentence found he was accommodated the whole time in the prison's health care centre.<sup>6</sup> Typically, these centres are filled not only with elderly prisoners too frail for normal accommodation but younger ones with high levels of mental distress – but not high enough to merit transfer to hospital settings. A visit to any local prison illustrates the need for a much more differentiated range of institutional and community-based measures to meet the varying needs of people who commit offences.

This is particularly the case for women whose offending relates to their own traumatic experiences and for whom the pathways of prosecution and punishment so often compound rather than resolve their problems. That argument is increasingly accepted in theory but not so its practical implications for our system of criminal proceedings.

For both women and men, we need police and prosecutors to divert more cases – more than half of first-time offenders now go to court rather than receive a caution, compared to one in five ten years ago. Police need to be encouraged to use their discretion and professional skills to resolve minor problems and disputes at the lowest level locally

without the need to take formal action. More first time offenders and cases likely to be dealt with by a discharge or small fine should be dealt with outside court and a suitable range of treatment options (including restorative justice) should be funded so they can be attached to community resolutions and conditional cautions. Probation, which has always sat somewhere between social work and policing, needs to be allowed to rediscover its roots and develop positive partnerships with the voluntary sector based on client need rather than the vagaries of the market.

A Justice Reinvestment approach could ensure that the savings which diversion brings to police, prosecutors and courts are made available to fund local programmes designed to further reduce crime and prevent offending.<sup>7</sup> Much greater elements of the budgets which fund prisons and probation should be devolved with new regional boards comprising local government, PCCs and health authorities given responsibility for commissioning prison places and other community-based supervision programmes. While testing different approaches to achieving this will be needed, as a first step the custodial budget covering adult remands, young adults and women offenders should be considered for devolution to the boards. Boards should be encouraged to use the devolved custodial budget to commission a wider range of custodial, semi custodial and community-based services and facilities to meet the needs of suspects and offenders in their localities, as well as a range of preventive measures.

It's this focus on prevention – and in particular social crime prevention – that is perhaps the most important answer to the question of what to do about crime. For over 100 years there has been considerable support for the notion that it is social policy which represents the best and most effective crime policy. Comparative international research has confirmed that the level of violence can be substantially mitigated or exacerbated by social policy. A young black man in the American state of Louisiana is 150 times as likely to die by homicide as a young black man in France.<sup>8</sup>



We need to change course in how we deal with people who commit offences – but it's the wider economic and social policy choices we make as a country which will have the most significant implications for the nature and extent of the problem.

# THE BUSINESS CASE FOR EMPLOYING PEOPLE WHO HAVE COMMITTED CRIMINAL OFFENCES

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*Anne Fox in conversation with Darren Burns, National Recruitment  
Ambassador, Timpson & Head of the Timpson Foundation*

*In 2002, James Timpson was invited to visit HMP Thorn Cross in Warrington. It was James' first time visiting a prison and he didn't really know what to expect.*

*James, was shown around by a young man named Matt, who was a serving prisoner. Matt was very intelligent and articulate – James thought that he would make a great addition to the Timpson business so gave him a business card and asked him to contact him when he was released.*

*A few months later Matt was released from custody and, true to his word, James offered him a job in a local Timpson store. James realised that if there was one great guy in one prison in the North West, then surely there must be hundreds if not thousands of potentially great candidates, who just needed a second chance. James then began to proactively recruit ex-offenders into the business. Timpson's are now one of the largest employers of ex-offenders in the UK.*

*Matt still works for the business and is one of Timpson's most successful branch managers.*

**AF: Why does Timpson's hire people who have criminal convictions and particularly those who have been to prison?**

**DB:** We engage with ex-offenders for two main reasons. Firstly, is because we believe that it's the right thing to do. Roughly 1/6

of the UK population have a criminal conviction and we just believe as a business that its absolute madness to just throw these people on the scrapheap and assume they're worthless, assume that they've got nothing to offer. While other businesses turn these people down, refuse to engage with them, we step in and offer them a second chance. So we think it's the right thing to do for society because anything we can do to break the offending cycle of somebody committing more offences, means that everybody benefits – our communities, the rest of society is safer, less people will go to prison, families will be able to stay together, so from that point of view, it makes sense.

But the real reason we do it, potentially the most important reason, is because it's good for business because the people we recruit from prison and people with convictions by and large are very loyal, highly productive and make excellent colleagues in the Timpson business.

These people have been turned down again and again by employers, we'll step in and we will give them a chance – we show them that trust. Our foundation colleagues, which is what we call our ex-offender colleagues that we've recruited from prison or have declared a conviction history, are statistically more honest than people we recruit from the streets.

We've been doing this now since 2002 and currently we've got around 650 foundation colleagues, out of our 6,500 employees, working in the business through all different areas of the business. But we stop counting people as foundation colleagues or ex-offenders after two years' service so we actually estimate that we've got more like 1300 people in the business who've been recruited through prison or have declared that they've got a criminal convictions.

**AF: so what do you say to those businesses who say we're not taking those people on?**

DB: I just think it's wrong. I just think people need educating really. I understand why people will think that but I think its lazy

thinking. You can never judge somebody as you never know what their circumstances were at the time of offending but to assume that that person is dishonest and untrustworthy, I just think it's a bit of a stretch really just to assume that someone is worthless for the rest of their lives. As a business we've got lots of evidence so we can prove that it's simply not true. The vast majority of colleagues with offending backgrounds are very honest, highly loyal, highly productive and a great addition to our business.

**AF: As an employer of people then that are more likely to have additional needs and things they might need support with to keep that job and be a great colleague, is there anything extra that you've had to do?**

DB: to be honest with you, the short answer to that is, no. Obviously we're an understanding employer. We do provide extra support and guidance when necessary but for me one of the biggest assets and what makes it possible to employ so many ex-offenders is that it's so normal to us now, this has been embedded in our culture. It's completely normal for us, and for our colleagues in the field who work with people in their branches, to come from these backgrounds. So I speak to lots of other businesses who are keen to get into this space and they really don't know how to start and that's one of their biggest concerns: what do we need to do? is it going to cost extra money: is it going to be very labour intensive, take lots of time? And I'm saying to them – no. But I do realise that we're spoiled, we've been doing this for such a long time that it's just completely normal to us. Overall, we treat people well. The main difference in terms of our recruitment is that having a criminal conviction isn't a bar to employment with Timpson. We create an environment whereby there's no need to lie, there's no need for them to pretend that they haven't got an offending history or they haven't been to prison. It's a completely safe environment for them to talk about it, to discuss it. Certainly, at their interview but more

so when they settle into the business. When they speak to their colleagues, their manager and branch manager, their area manager. We just normalise it so it's not a thing for them. It's not an issue. We employ people who've got great personalities and whilst that's very subjective, for us as a business, a great personality means that they should be great communicators – they can engage with customers, they can give first class customer service, and that's very, very important to us. In terms of retention, we treat people very well. We pay them as much as we can afford as opposed to as little as we can get away with. We've got a whole raft of colleagues' benefits, both financial benefits and welfare benefits and it's very, very much a family business. People are made to feel part of the Timpson family.

**AF: Your retention rate for is 75–80%. Why do you think it is so high especially given the complex needs people leaving prison often have?**

DB: We take on the right people. We take on people who are employment ready. So, we set the bar very high. So the reasons our retention rate is so high is that we've gotten very good at choosing the right people over the years. I spent lots of my time in prison interviewing men and women, for positions on ROTL or for positions in our business post release and it would be remiss of me really to consider somebody for employment with a 20–25 year crack addiction because these people first and foremost need abstinence based recovery, their mental health will need to be sorted out any other complex needs and issues – such as homelessness issues – all these boxes need ticking first before we can come up as an employer and give them a job expecting them to perform well. If somebody's homeless, the last thing they need is a job. First of all they need somewhere to live. They need that stability. Only when they've got stability in their lives, then they should look for employment.

**AF: so the people that you take, there may be people who'd accuse you of cherry picking?**

DB: I don't personally like the term but it's right that we do, we take on people that we consider to be employment ready, job ready. Don't forget that Timpson's are a business not a charity. We are a commercial business so it's my job to select the right people who are going to perform well in our business and go on and do good things, it's not good for anyone to give people opportunities they aren't ready for. It's not fair to us as a business but more importantly it's not fair to the candidates because they're going to mess up – things are going to go wrong, quite badly, quite quickly, causing a huge dent to their confidence and their self-esteem, and quite often they can end up back in custody. So what we believe is that we will go in, we'll identify the right people who we think are ready for the opportunity but it still leaves us with lots and lots of people in custody who aren't employment ready – that's where we believe the third sector organisations need to come in, do lots of work with these people , get them off drugs, sort their mental health out, sort their physical health out, get them in a position whereby they are employment ready.

**AF: From the point of view of the foundation there are some people and some convictions you can't have in your business is that right?**

DB: We've only got three bars to employment with Timpson. The first one is sex offenders, we will not engage with anyone who has committed any sexual offences.

The next offence is arson - we can't get arsonists through our public liability insurance and again I think the implication there is that if these guys were to have a relapse, in one of our large supermarket outlets there's huge potential for loss of life and revenue if they were to start a fire, so it's a no to arsonists.

The third group are those convicted of terrorism offences. Again these are very few and far between. I think in all the years I've been doing this for Timpson I think I've only had two people who've been charged under the terrorism offences act.

But everybody else we'll consider. Very serious offences in some cases but it's important to note that we do a really strict risk assessment and we need to be happy that these people don't pose any risk or threat not only to our existing colleagues but to our customers and the public as well.

People have paid for the crime essentially so they've wiped the slate clean. And also these people are going to get out anyway so if we don't employ them, we're going to be sat next to them on a train, on the bus, they're going to be sat next to us in a pub, so these people are out there. Thousands of people get released from prisons every year so the way we do it it's a much safer bet than just taking people on that we don't know anything about – the people that we take on from prison, that we chat to, that we risk assess, we know everything about them whereas people we take on through the job centre or who walk in just off the street and ask us for a job, arguably we don't know anything about them so it's a safer way to recruit.

**AF: In your experience how important is employment to that rehabilitation journey?**

DB: It's not the be all and end all, but it's absolutely essential. You need a support network – family and friends, someone there to support you, someone to love you, someone to look out for you. You need somewhere safe and comfortable to live and employment. Employment we think is vital but without the other two employment doesn't work. So employment is the third thing in a sequence of things which we believe need to happen to stop people offending and helps them to lead crime free lives.

**AF: what do you think stops other businesses, do you think that they truthfully see it as too risky?**

DB: I think the vast majority of businesses don't do this because of a lack of education basically, but you're right many of them see it as too much of a risk. I do lots of work with other businesses keen to get into this space but they don't really know what to do, they

don't know the terminology. I do lots of myth busting exercises with colleagues in some sizeable businesses and what they'll say is: What if he steals from my handbag? What if he steals my wallet? What if I challenge this guy or this lady for being late or challenge them about this sort of behaviour and they assault me? Can you guarantee me that this is not going to happen? Of course I say no there are no guarantees but I can't guarantee that is going to happen anyway, so I think any employee we have for 20 years could be having an off day and do one of these horrible things, there's no guarantees in life. But I honestly think it comes down to risk and I think that's public perception. I think the average perception of prisons is that they're all dangerous places full of dangerous people, bad people, people essentially that just need locking up and the key thrown away – what we certainly don't want to be doing with them is giving them jobs and opportunities and I think unfortunately too many people think like that.

**AF: So how do we change those perceptions?**

DB: I think there's two ways to do it. I think the first is to introduce them to businesses like us who've made a success of it and we can show them – we've essentially set the example. We can show them countless examples of where we've recruited people from prison and with offending backgrounds and where it's worked well and where they've been a huge asset to our business, so that's one way. The other way is to invite them into a prison. One of the first things I do when I'm asked to help another business out who are keen to get into this space is I'll invite them into one of our prison academies and that's often their first contact with a prisoner or going into a prison – I think half the time their expecting people with two heads, people who are very violent, people who are full of tattoos and couldn't string a sentence together – then they're so surprised when they come in and just find normal people that you'd come across in any walk of life in custody.



**AF: The question that brings all the pieces in this book together is ‘what should happen to people who commit criminal offences?’ From the viewpoint of your role in the Timpson foundation what do you think the answer to that question is?**

DB: I think it absolutely depends. It depends on the case and every case is individual. It depends on the crime. It depends on the circumstances. It depends on the individual person. Personally speaking I think unless it’s a really violent crime, and unless it’s absolutely necessary that society needs protecting from these individuals, I don’t think prison is often the answer. Unfortunately for me in my personal opinion I don’t think our prisons are great at rehabilitating people. I think the vast majority of people that get released aren’t rehabilitated. I don’t think we do anywhere near enough work with them whilst they’re in custody. For that reason alone I think we should look at other methods of disposal, community sentences, abstinence based recovery for those with addiction issues, mental health is a big issue, as is homelessness – so I think all these things need to be looked at before we just lock people up, for long periods in some cases – I just don’t think it’s the way forward. That’s always countered with the fact that there are some dangerous individuals out there who we will need protecting from so there’s always going to be a place for prisons but the vast majority of people I think they could be disposed of either with financial penalties, with community penalties, I think there’s other ways to treat them, other ways to rehabilitate them and again it’s that whole argument of punishment versus rehabilitation. Yes, it’s quite right that people get punished when they offend but once the punishment is delivered then we need to look at how to rehabilitate people and how these people can re-join our societies and lead crime free lives.

# **CRIMINALS IN YOUR FAMILY AND IN YOUR SOCIETY**

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*Bruce Child*

We seemed a model family: working, house-owners, kids at work or in school. However, over decades I'd ignored my partner's and her son's petty drug use, shoplifting and benefit fraud and refused to acknowledge that my relationship with her oldest daughter was illegal. Just as society does when we refuse to see what's in front of us, my family fell apart.

In the middle of this semi-clandestine activity, the middle daughter fell victim to a violent controlling partner and nearly paid the ultimate price when he tried to kill her. Had her attacker's former partners admitted to what had been happening in their relationships he might have received help and my step-daughter, and his other victims, may not have suffered.

From this description you would think us a most dysfunctional family. We weren't. You could have been our neighbours, shared community events or invited us for a meal. You watch TV, some poor interviewee saying, 'we were so shocked. That sort of thing doesn't happen to people like us, in places like this'. But it does and will continue until we accept and confront the fact that criminals live with us and are us.

I caused more harm than I ever could have imagined, my family suffered and society continues to suffer because we refuse to acknowledge both minor and serious crimes. Each of us knew or suspected what was happening. We all observe activities in our wider community, but no-one wants to face the consequences of publicising them.

Everyone of us must accept responsibility and face up to the fact that criminals are not some other species that should be ignored if at all possible and imprisoned if not, but are actually just all of us on a different day or as a result of different experiences and choices. The answer lies inside the community, accept that people make bad choices and work with them to make better ones.

Families and communities want to protect themselves; they know that 'shopping' anyone has consequences – a breadwinner is removed, or your family subjected to public vilification, so you think twice. If a mother thought she was taking her son to hospital to receive treatment she wouldn't hesitate. Knowing that he'll be imprisoned, only associate with other offenders and receive little support – she does think twice.

Integration into society, contacts with family and stable employment are all key to desistance. Putting someone in prison confirms every negative attitude the offender has about himself and alienates him, achieving the opposite. It may solve one problem in the short term, but it really only postpones it and causes many more. Prison may be inevitable in some cases but it mustn't be the automatic response and never on its own.

# WRITING ABOUT THE PERSPECTIVE OF CHILDREN WHOSE PARENTS ARE IMPRISONED

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*Lucy Baldwin*

In the United Kingdom, 320,000 children are affected annually by parental imprisonment alone (Kincaid et al., 2019), meaning a huge number of children are serving a parallel sentence of separation alongside their parents, despite, as they rightly say ‘we have done nothing wrong’ (Our Time Conference, 14th June 2019).<sup>1</sup> Kincaid et al. (2019), revealed 100,000 more children than previously thought are affected by parental imprisonment – if we broaden this to any relative, obviously the numbers of children affected are even greater. It is known that children with a parent in prison are likely to be negatively affected, emotionally, financially, educationally, socially and psychologically (Murray and Farrington, 2005; Beresford, 2018; Baldwin and Epstein, 2017). There is currently no formal recognition of the needs of children affected by parental imprisonment. We are therefore missing golden opportunities in terms of welfare, intergenerational crime prevention – and most importantly support for children and families affected by parental imprisonment. When a mother is imprisoned only five per cent of children remain in their own home, many are displaced to be cared for by local authorities, multiple relatives, fathers, friends (Caddle and Crisp, 1997). Siblings are often separated and visits to see their mums are not always possible due to distance from prisons and cost implications (Baldwin and Epstein, 2017). Many children are located between 60–150 miles away from their mothers and fathers, making visits sometimes impossible. The distances are often greater when it is a mother in prison as there are far fewer women’s prisons than men’s, meaning women are more likely to be further from home.

## **What should happen to people who commit criminal offences?**

This is a huge question, one I spend my working life trying to answer, particularly in relation to mothers who commit crimes. I have tried to answer this question through evidence-based research papers, journal articles, books, book chapters, evidence to Joint Human Rights Committees and to the Ministry of Justice. For this wonderful collection, with a focus on the creative, I thought it would be interesting to answer this question via the voices of children, specifically children affected by parental imprisonment. What do they think ought to happen to people, their mums and their dads if they commit crimes? What does it feel like for them when their parents are sent to prison?

I asked Alex, aged 9 and Evie aged 7, **what they thought should happen when people commit a crime.**

Alex: I think police should give a warning, I don't think the first time someone offends they should go to prison, you can't just get sent to prison straight away, that's not right, but maybe if they do it again, but if they carry on then maybe yes they should go to prison.

**Me: and if it's a mum or a dad?**

Alex: Well I think it depends what they do, if it's a big crime then yeah prison, but if not then a ticket, and if they don't pay it three times then they should go to prison. But if my mum or dad killed someone they should go to prison ... but I don't know how I would feel. I would miss them.

**Me: Evie what do you think?**

Evie: Well I think only really bad people should go to prison, but I think people should have one chance, then if they do it again then yes a crime is bad thing. But I think a mum or dad should only go to prison for one year, but mums are more important than dads so maybe less for them.

**Me: Thank you Alex, Thank you Evie.**

So then I asked, Wilf, aged 14, **what he thought should happen to people who commit crime.**

Wilf: I think this is a complicated question, with a complicated answer. There is no one answer as they are so many different types of crimes. I think it must be awful to be sent to prison, even though the papers say they have TV and good food and stuff, but why shouldn't they? They are humans still. If we are unkind to criminals then surely they are just more likely to commit more crime? Imagine not being able to leave, not to see your mum or dad or your children, that must feel awful, so that's the punishment right? Nothing else bad should happen. I actually think if it's not a violent crime, if it's not a sexual crime, if it's not against children, then I don't really think prison is the best way to deal with crime. We need to find out why they did what they did, how can we help, how can we help them say sorry and see the bad in what they did. We need to talk to them, listen to them and then try to do our best to make sure it doesn't happen again. My cousin went to prison and it was awful for everyone, not just for him, how can that be right if everyone in the family is punished too? What he did wasn't that bad and he regretted it. But my Auntie was worried because he met worse people in there and now she's worried he will get into more crime. If he'd had a fine or had to do that community service then maybe he wouldn't have met them. Now it's just a worry. Sorry I went off on a tangent then. I think people who commit crime should all be treated on a case by case basis and then it be decided what will make them least likely to offend again, and then do that!

**Me: Thank you Wilf.**

A recent publication, a book of poetry, 'Heard and Seen;100 poems written by children and parents affected by imprisonment'(Baldwin and Raikes, 2019),<sup>2</sup> gave children the opportunity to use their own voices, via poetry to say what it feels like to have a parent in prison.

### **What About Me?**

Lock him up, throw away the key they say  
Three meals a day, TV in a room, should be grateful they say  
Visits and Phone call, don't deserve it they say  
But what about me?

He's still my dad whatever  
His sentence is my sentence too  
Punish him and you punish me too

Do I not deserve to see my dad?  
A visit to see he is okay  
A visit to talk about my day  
A visit to have a hug

Do I not deserve to speak to my dad?  
A call to say Hi  
A call to talk about my week  
A call to say 'good night sleep tight'

What about me?

LUKE, AGED 11

### **Always**

Mums gone to prison  
My world has come to an end  
Wishing you were here  
Helping with my fear  
My love never goes mum  
You made me who I am  
I'm always going to love you  
No matter where I am

ZARA, AGED 14

The youngest poet in the collection, perhaps made her feelings known most poignantly:

**I miss my Mum**

I miss my mum  
That's it  
The End

ANNIE, AGED 5

These poems reveal the hidden impact of a prison sentence, so when we ask ourselves this question, 'what should we do with people who commit crimes?', don't we also have to remind ourselves that before we answer this question we must think about the wider impact, absolutely on victims, but also on the families of those convicted, especially the children. Given what we 'know' in terms of the impact on children and the outcomes for children of prisoners, don't we have a responsibility to them, to society as a whole to really think about prison as a last resort? A space reserved only for the minority of offenders who have committed a violent crime?

The first poem in the book is a poem called 'Drifting Away', it was written by a mother, Danielle, who was sentenced to five months in custody for shoplifting/theft, her first time 'in trouble' with the law. Danielle was in an abusive relationship, not untypical of many women who are sent to prison. Her partner limited her access to money and she was not 'allowed' money of her own. Her shoplifting was almost exclusively to provide things for her child, that is not an 'excuse' for her offending, but often, like Wilf suggests, it is very important to understand the context. She had a 13 year old son when she was sent to prison, a year younger than Wilf. He was a sensitive, vulnerable young man, which was not surprising as he had grown up in a house where domestic abuse was a feature. He struggled when his mother was sent to prison and he was left at home with a man who had physically and emotionally hurt his mother. There was no formal assessment of his



needs, in fact there was little awareness that he even existed at all in relation to his mothers offending. There was no formal record of his father as a domestically abusive male.<sup>3</sup> During her sixth week in custody, one night at around midnight, Danielle received a knock on her door to tell her that her son was ‘missing’. A frantic and painful night followed, one where Danielle, alone in her cell, powerless to do anything about it, prayed desperately for the safe return of her son. The morning came, with it a visit from the chaplain and the Governor, her son had been found hanging in the woods near her home. He was 13 years old. He simply could not cope without his mother and, to him, another few weeks felt impossible.

So, although, like Wilf says, when we ask ourselves, ‘*What should happen to people who commit offences?*’, the answer is ‘complicated’. But perhaps we can say, is that what happened to Danielle and her son should not have happened. Danielle’s offence was minor, shoplifting, she was living in a context of abuse, depression and poverty. Did she really need to go to prison? Or, as Wilf said, should there have been more done to understand *why* she offended and what could have been done to help her, to listen to her? Of course there should. Wilf is right and had the criminal justice listened to Wilf or even considered the impact her sentence may have on him, Danielle’s son would probably still be alive today.

The Joint Human Rights Committee, Chaired by Harriet Harman, QC,<sup>4</sup> sat recently and considered expert evidence with regard to the impact of maternal imprisonment. It is looking likely that the committee will direct that dependent children and their needs will, in the future, *require* consideration in the sentencing of their parents (currently Sentencers are *supposed* to follow ‘guidelines’ but in reality compliance with the current guidelines is inconsistent). The impact of a custodial sentence is felt much further than the individual convicted, it is always important to consider the impact on the wider family too, especially the children. In the end they all serve a sentence of separation, a hidden, often unsupported sentence that can trigger all

manner of additional consequences, ironically including additional offending. So, the Joint Human Rights Committee direction will be a welcome one. Children and their needs will be, as they are in the family courts, at the centre of proceedings.

This will sadly come too late for Danielle's son, but will hopefully help inform the answer to the question of, *'What should happen to people who commit offences?'*

## *WHO DEFINES WHAT IS A CRIME?*

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*Dr John Davies*

In considering what should happen to people who commit criminal offences we need to consider how their behaviour or omissions have become declared criminal and, particularly, what harms are consequential to the crime. With our limited law enforcement resources society must prioritise which criminals are to be sought out and brought to justice. In most societies it is the state that claims the sole right to determine what is criminal and what are the sanctions that may be applied to an apprehended criminal. The state also prioritises which criminals are to be pursued while allowing others to be ignored or to be allowed to avoid sanction.

The man who sells weapons to a gang leader for thousands of pounds, to enable violent crimes on the streets may be considered a dangerous reprobate deserving of a life sentence. However, the man who, with the complicity of the state, sells billions of pounds worth of weapons to the murderous leader of a tyrannical state to bomb men, women and children may be considered as a valuable contributor to the economy.

The people who lend the local poor money in unregistered loan-sharking schemes are considered anti-social criminals, yet company directors whose firms charge even greater sums of interest can secure a government licence that allows them to trap the poor in absolute penury without any criminal sanction. Even more alarming are the legal mechanisms that allow multi-national organisations like the World Bank and the International Monetary Fund to keep millions of the world's poor in structural austerity through the use of loans to fund projects that principally benefit elites.

Those who help distant ‘others’ bypass the oppressive feudal systems that stop them negotiating for the true value of their labour in the international labour market are condemned as transnational people smugglers and traffickers. However, those multinational companies and their billionaire owners – who with states’ help contrive the exploitation of the poor in slavery-like sweatshop labour by denying them mobility – are considered the marvellous architects of economic growth and global prosperity.

The legality of the arms trade, the prejudicial and inequitable treatment of the poor and keeping distant others constrained in apartheid like conditions that make them dependent on wage-slavery is a demonstration of how crime is the instrument and plaything of the powerful and privileged.

1. Without the over-production of weapons for immense profits, often by state enterprises, there would not be such a surplus available to be diverted to other criminal activity.
2. Without the structural poverty organised by the states and inflicted on the resource constrained usury and its various harms would be almost unknown.
3. Without states ‘legally’ excluding those who rely on their labour as their principal asset from competing in the world’s labour markets there would be much less slavery.

Justice cannot be administered until the people take back the right to determine ‘crime’ away from the state. Until the state is held to account for its abuses, all other crimes become a means by which to distract people from what should be the universal judicial priority of holding executive and legislative gangsters to account. A criminal state is not qualified nor entitled to demand standards and behaviours that the state itself transgresses on a daily basis.

What should happen to those who commit such crimes needs to be decided by a consensus of those who have suffered the harms they have endorsed. Such an occasion will invite retribution and revenge rather than justice. Hopefully truth and reconciliation will enable us all to acknowledge the consequences of state power and encourage us to dismantle that machinery of abuse rather than co-opt it to our own punitive agenda.

## WHY THE ‘WHY’ MATTERS

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*Judge Alex Calabrese and Amanda Berman*

As the movement of justice reform in the United States has gained traction in recent years at both local and national level, debates have swirled around everything from bail practices to charging decisions, risk assessment, sentencing reform, mass incarceration and more. But at its heart, much of the debate can be boiled down to one question: *What should happen to people who commit criminal offences?* For centuries, the traditional court system’s response has been fairly uniform – determine what happened (by plea or trial), consider the individual’s criminal history (if any), and calculate a corresponding sentence (of course, in some circumstances, the individual may be acquitted entirely). The more serious the charge and more substantial the person’s criminal history, the heftier the sentence.

The flaw with such an approach is that it overlooks the most critical question of all: *Why did this person commit this offence?* Problem-solving courts were developed to address precisely this question, because if we do not address the underlying issues that led someone to commit an offence, how can we expect to change their behavior? The traditional approach to justice has produced high rates of recidivism, lack of confidence in justice, bloated federal, state and local budgets and a trail of unsatisfied victims. The problem-solving approach, in contrast, seeks to identify those underlying issues – such as substance abuse, mental health issues, trauma, unemployment, and so forth – and, where appropriate, use the power of the court to empower the defendant to address those issues.

Once the root causes of the behavior have been identified, the system is then positioned to craft a response to address those issues, while balancing the need for accountability and public safety. To be sure, this is no easy task; but there are principles and practices that have proven to be effective in reducing recidivism while simultaneously promoting confidence in that justice system. These are the same principles that form the foundation of problem-solving courts in our system, and they should inform both the process and the outcome of a case.

### **Who is the accused as a person?**

Our courts have historically been built to process *cases*, rather than to help *people*. They often reduce people to a charge, allowing the mistakes they have made to define them and viewing defendants through an overly simplistic lens that strips them of their humanity, thereby making it easier to mete out punishment and turn a blind eye to the system's failures. Problem-solving courts, in contrast, take a holistic view of the person, acknowledging them for who they are in totality – a father, a daughter, a caretaker, a friend, a mentor, and so on – rather than what they have done. We must start from the premise that anyone who commits an offence is more than that one act, more than a simple charge or docket number or a moment in time. They are a whole person, with a past, present and future; a *past* that has likely been marked by trauma and victimization, including many circumstances beyond their control; a *present* that exists outside of this case, where they are part of a community, with obligations to loved ones or employers, and where they may face enormous instability, pain and stress well beyond this case; and a *future* for which they have hopes and dreams, aspirations and fears. It is within this complex package that every individual arrives at the doorstep of the justice system and must therefore be viewed and treated as such.

It is also critical to acknowledge the defendant's place in community – whether it be their family unit, neighborhood, or other social network, they are a part of a community and that community may have been

disrupted by the harm that was caused, as well as by the removal of this individual through the arrest and subsequent court process. We must endeavor to put ourselves in the shoes of that community or of their loved ones to ask, “*What would I want for my brother/sister/aunt/son/father/etc. if it were them who committed this offence?*” Surely anyone who is asked that question will agree that their loved one must be viewed within the broadest possible scope of who they are, as an individual and as part of a community.

### **How should the accused be treated?**

When we start from the basic premise that every defendant is a whole person and is a part of the community, it allows justice system actors to feel invested in their success, thereby treating the accused with the same dignity and respect that they would want for their own loved ones. That is the essence of procedural justice, also known as procedural fairness, which refers to the perceived fairness and interpersonal treatment someone experiences as they move through the justice system. Rather than focusing on the outcome of the case, procedural justice focuses on how someone experiences the *process*. Decades worth of research indicate that when elements of procedural justice are present, individuals are more likely to comply with court mandates, trust the system, and obey the laws in general. In fact, research has shown that defendants’ willingness to accept court decisions are tied more to their perceptions of the process than the outcomes themselves. This is true regardless of race, gender or socioeconomic status.

So how do we make a better process? Procedural justice research offers some guidance by highlighting the five most critical elements that appear to carry the most weight with defendants:

1. Whether the individual felt they had a *voice* and opportunity to be heard;
2. Whether the individual felt they were treated with dignity and *respect*;



3. Whether the individual felt they *understood* what was going on throughout the proceedings;
4. Whether the individual felt that the decisionmaker(s) in their case were fair and *neutral*; and
5. Whether the individual perceived the court actors as attempting to be *helpful*.

Unfortunately the system as it stands now is rife with procedural *injustice* at every stage: from the moment a court user walks through the door to enter the security screening process, to the confusing legal jargon used in the courtroom, and the frustrations of being bounced around to different courtrooms, judges and attorneys. These injustices have been documented widely and served as the basis of Malcom Feeley's 1979 groundbreaking book, *The Process is the Punishment*. So needless to say, this is not a new phenomenon. Procedural justice provides a promising and refreshing antidote to some of the ills documented in Feeley's book and experienced by many court goers every day around the world. It can be as simple as posting courtroom rules in a respectful and helpful tone; taking an extra moment to explain the proceedings, and the reasoning behind a decision, in plain language; encouraging court users to ask questions and having resources on hand to offer in response; and generally being courteous and respectful. Procedural justice teaches us that if we incorporate these elements into the daily workings of the court system, we can produce better compliance and enhance the legitimacy of the system. As most of these elements relate to the interpersonal treatment of individuals, they can be accomplished with little or no funding, in any courthouse setting – whether a problem-solving court or not.

### **What type of person do we want the accused to be upon returning to their community?**

Given that every individual is part of a community, they will also be returning to their community – which begs the question, *Who do we*

*want the defendant to be upon returning to their community?* Naturally we want them to be productive, safe and connected members of society, who view the system as legitimate and obey the laws and social norms of their community. Therefore, it is only logical that we must provide an intervention that seeks to produce such a result. This requires an investment in the individual whereby they leave the system in a better position than they were going into it. What that looks like will depend on the individual and their needs, but examples might include mental health or trauma counseling, substance abuse treatment, job training, or other services that set the individual up for success and empower them to lead productive and law-abiding lives.

Of course, there may be situations where the system responds with incarceration – but this should be reserved for the most serious of cases and must be the exception, not the rule. As Greg Berman and Julian Adler observed in their recent work (*Start Here: A Road Map to Reducing Mass Incarceration*, 2018), jail is “an accelerant of human misery”, proven to produce even more hardened criminals and providing minimal to no value outside of temporary – and typically very short-term – incapacitation. Those who are sentenced to a term of incarceration, whether short-term or long-term, are released with the same problems they walked in with, only exacerbated by their time in jail. With no tools given to them for success, how can we reasonably expect them to make better decisions upon release?

To get the outcomes we, as a society and as a justice system want, we must make the services and resources readily available to those who need them. Ideally this would include social work professionals onsite who can make assessments in real time, along with appropriate recommendations for services that defendants can be immediately linked to from the moment of release. This might include practical needs, such as linkages to public assistance or housing, or more long-term services such as mental health counseling or substance abuse treatment. Defendants must be made to feel that they are valued and respected by the court system and viewed as a member of the

community. As such, any intervention should also seek to maintain and enhance the defendant's social supports by helping them to connect with those who can be a positive force in their lives moving forward.

### **Avoiding collateral consequences**

Equally as important as providing these tools for success is preventing or minimizing potential barriers to that success. Too often, the justice system fails to consider the myriad consequences that flow from convictions and/or incarceratory sentences. Often referred to as "collateral consequences", the reality is that these consequences are hardly collateral at all. Indeed, they can be just as harmful – if not more so – as the conviction or sentence itself. Justice involvement can impact employment; professional licensing; housing; immigration status; student loan eligibility; and more. In addition, defendants face a heavier burden than ever as information about their criminal history has become widely accessible through the internet, and assurances of confidentiality and sealing are not nearly as reliable as they once were.

It is imperative, therefore, that court actors educate themselves and take into consideration the potential consequences of a conviction or sentence before moving forward with any disposition. In New York, for example, an arrest alone can trigger job suspension and even a plea to a non-criminal offence can trigger consequences beyond the criminal case. If we want to pave the way for a defendant to successfully reintegrate into their community and avoid recycling through the system, we are undermining our own objectives by allowing collateral consequences to build unnecessary roadblocks along the way.

### **What harm has been caused and how can the accused repair that harm?**

The word 'accountability' is used frequently in the criminal justice system, often by prosecutors and judges in the context of justifying a stiffer disposition or punishment. For many, it is another way of

saying: *'You do the crime, you do the time.'* However, accountability can and should mean something different, something that is couched more in terms of *quality* than *quantity* of a response. In other words, accountability should inform the type of response, rather than simply the length of a sentence. It means an individual taking responsibility in a meaningful way for the harm they have caused and participating actively in the healing process to repair that harm. It means acknowledging the past but looking towards the future, for the sake of their own healing as well as for those who have been harmed.

This is an essential element of restorative justice, an approach to justice that has been practiced for centuries, particularly in indigenous cultures around the world. This approach is more victim-centered and focuses on healing more than punishment – healing for those who have been harmed, as well as those who have caused the harm. It empowers victims by giving them a voice and directly holding the person who caused them harm accountable in a way that a prison sentence could not.

At the Red Hook Community Justice Center, our Peacemaking program is modeled on the Native American Navajo nation's approach to justice, which brings together the harmed party and the offender, along with members of the community, who facilitate a circle process that seeks to repair harm and heal the relationship moving forward. In Red Hook, we train volunteers from the community to serve as peacemakers, who participate in the circles to represent the voice of the community. They include residents, business owners, teachers, artists, youth, faith-based leaders, and even local police. With the consent of the victim, defendants participate in the circles, accepting responsibility for the harm they have caused, while also looking towards the future to determine, alongside other circle participants, how to avoid causing such harm again. In between circle sessions, the defendant is expected to work on himself individually, addressing the issues that contributed to the conflict or harm he caused in that case. This is the true meaning of accountability, and it must be contemplated when courts consider how to respond to harm that has been caused in their community.

## Proportionality and Due Process

As discussed above, arming the defendant with the tools for success is paramount; but that need must be balanced against the considerations of proportionality and due process. It may be tempting to address an individual's every need and then require those services to be monitored by the court; but such a slippery slope may lead to net widening, leaving people tangled in the justice system longer than desired, causing even further harm. Therefore, where the charges in the case are relatively minor, courts should mandate only a short-term intervention but support the defendant in addressing the issue on a voluntary basis. For example, community courts – a type of neighborhood-based problem-solving court – offer voluntary services to everyone on a walk-in basis, including those who have completed their mandates or never had a case at all. Using evidence-based approaches such as a risk-need-responsivity model helps to match individual defendants with the most appropriate services, in addition to working with the attorneys to ensure that responses are legally proportionate.

At the Red Hook Community Justice Center, our social work staff uses procedural justice and evidence-based strategies such as motivational interviewing and principles of risk-need-responsivity to engage participants and support them in completing their mandate. Many of these participants choose to engage in voluntary services as well. They understand that our staff will continue to work with them and support them in whatever capacity they are needed, but by offering these services on a voluntary basis, we are able to avoid the danger of net-widening.

A related issue that must be addressed is the need to safeguard due process at every stage of the proceedings. This means that defendants must not be forced into services, nor should they have to choose between accessing services and exercising their constitutional rights. In Red Hook, every defendant has the opportunity to litigate their case through motions, hearing and trial, and still engage in services if they so choose. In fact, the majority of defendants who engage in services

are doing so in a pre-plea posture, an anomaly in the traditional court system. By safeguarding these due process rights, defendants are more likely to take advantage of the services they need while trusting the court and respecting its legitimacy.

## **Conclusion**

The criminal justice system represents the ultimate power of government over the individual. With the enormity of that power, every actor in the justice system – from the judge to the prosecutor, to the defense attorney and beyond – has an obligation to use that power responsibly, with care and with compassion. Every defendant should be treated the same way you would want your mother, father, sister, or brother to be treated – as a person, not a docket number; within the limits of proportionality and due process; and in a manner that puts them back on the road to success so they can rejoin their community in a positive and productive capacity. This will yield a more effective and holistic resolution of the case for the defendant, the community, the victim, the police, the court system and taxpayers. In addition to producing better results, this approach builds confidence in the justice system and treats individuals with the dignity and respect that they deserve.

## ***DEVELOPING A NEW SENSE OF PURPOSE: THE ROLE AND VALUE OF ACCESS TO ARTS AND CULTURE***

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*Richard Ings*

‘Why are they spending all this money on just keeping us locked up when we could be repurposed?’

A group of residents of HMP New Hall, a women’s prison in Yorkshire, are talking about the importance to them of making theatre. Each week, BA and now MA students from York St John University have been coming to run drama workshops with these women and with their prison staff. That regular provision has been enriched by visits from Clean Break Theatre Company, an organisation founded 40 years ago not very far away in the open women’s prison, Askham Grange, and from the Donmar Warehouse, a mainstream London theatre whose partnership with Clean Break resulted in a recent trilogy of all-female Shakespeare plays set in prison and featuring ex-offenders in the cast.

At a time when budgetary pressures have affected many ‘extra-curricular’ activities, in this case including yoga and painting classes, the drama sessions at New Hall have perhaps taken on an even greater significance. From what these women say, the personal impact has been hugely positive. The excitement of acquiring new skills and new ways to express themselves in words, gestures and movement seems to have been translated into a stronger sense of personal agency and self-worth as well as a deeper sense of community with the rest of the group and with staff. It also seems to have opened up the notion of *possibility*: the potential of a different outcome for lives that have gone wrong or where the odds have been stacked against them from the start. Life can be seen as a kind of performance after all, and they might take a

stronger role in writing their own script, and shaping their own role in it, once they have left this place of confinement.

What can this anecdote and others like it offer in answer to the question raised by this book?

As a form of ‘access to the real’, such anecdotes serve to illustrate in a direct, human and specific way what might prove to be generally true of such interventions by artists and cultural workers, including those university drama students, in the carceral space of the criminal justice system. Having invested in such work for many years, the Arts Council recently took stock of what difference these interventions might be making and published a summary of what has so far been learned about their impact.

Current research highlights the strong contribution of the arts as participants seek to develop a new, more positive identity, as well as upon their sense of self-efficacy and agency in the world. The evidence is also clear for the role of the arts in tackling depression and anxiety. This has fed into our ongoing reflections upon this area of practice, and on the reasons for advocating that all those who commit and are convicted of criminal offences should have the opportunity to ‘repurpose’ their lives through engaging in the arts.

Hovering behind this book’s central question is an answering assumption of conviction and punishment, where such a person is ordered to serve either a custodial or a community sentence ‘at Her Majesty’s pleasure’. Prison or its community equivalent is also meant to provide the opportunity for that person to reform and to be rehabilitated, ready to enter society again and not reoffend. The continuing, stubbornly high rate of recidivism emphasises the need for further focus on the rehabilitative function. The 2016 Coates review advocates more effective education provision (including engaging in the creative arts) as a way of preparing those in prison for a law-abiding life ‘through the gate’.



There are more fundamental questions that might be asked here, but it seems clear that there would be great value in helping both public and media to develop a more nuanced attitude towards people serving time. At the celebration of Clean Break's 40th anniversary, held at the Old Bailey last autumn, a member of the company performed a powerful song she had written and then thanked the assembled funders and supporters of the company for believing in her and making a new life after prison possible.

There is a line that can too often be drawn from a life of poverty, mental illness or abuse to a term in the criminal justice system. Do we always strike the right balance between individual responsibility for a crime, and the social conditions that may have shaped its commission? Artists and cultural organisations have to acknowledge these larger questions when they choose to work in the criminal justice system and their interventions can indeed be viewed as a direct or, more often, indirect critique of the inequalities that help to create the conditions for crime.

Their avowed aim is usually to reach out to those individuals caught in the system and engage them in activities that can at least mitigate the conditions they find themselves in, if not open up ways in which they might move beyond them. However, in order to do that, they inevitably have to confront and negotiate with the barriers, physical and otherwise, built into the system itself. These can be summarised as stigma, incarceration and institutionalisation, all of which can militate against lasting rehabilitation and desistance (ceasing to offend).

Many if not most people serving a criminal sentence already bear social stigma – from poverty or low educational attainment to mental illness or disability. That is then compounded by the label of 'offender', the stigma of which can be hard to shake off even after release, when they are often defined as an 'ex-offender'. The physical and social nature of incarceration can also have a significant impact. Even those not held in custody share to some degree the effects of incarceration and the loss

of liberty, which in turn inhibits personal autonomy and development. Finally, the criminal justice system is a complex institution with non-negotiable rules and regulations and set ways of working, again reducing agency and stifling self-expression.

Artists can begin to address these barriers to what one researcher has called the ‘basic human goods’ that any form of detention can block: competence, autonomy and relatedness.

Some years ago, I went to a mixed category prison to see a dance project in action. A group of a dozen or so men of varying ages and physique were moving with grace and purpose around the hall, unembarrassed by our presence. It struck me that this would be an unusual sight on the outside, but that here a community had formed based on trust and commitment. This had been made possible through the relationships that the two commissioned dancers had developed with the men, working neither as therapists nor educators but as fellow artists co-devising this dance piece with them.

Researchers and prison staff often observe that prisoners respond in a different way to an artist than they might with, say, one of the education staff. Their professional status as artists can be highly significant in their impact on participants in such projects, helping to ‘destigmatise’ those labelled as offenders by treating them as normal people. This ‘normalising’ effect can extend to the institution itself, as I discovered when I visited HMP Leicester a year ago.

When Phil Novis arrived as the new governor, he inherited a struggling prison, placed under special measures. Hearing that prison staff were under immense strain, Leicester University offered to send in musicians to stage a concert in the prison. That initial intervention, which succeeded in bringing both residents and staff together, has since blossomed into a much wider artistic programme, including writing workshops and collaborations with the city library service. For the governor, the value of this has been primarily to make the prison a

much pleasanter place to live and work in. Even if (as is often the case) measuring the precise impact on desistance remains challenging, this programme has proven its value in enhancing prison life and culture.

Such examples of good cultural and creative work can be found in places all over the UK, not just in prison settings but in projects with young people at risk of offending or, less often, with people who have come out of prison. However, coverage is not universal and provision is often fragmentary.

# **THE RELATIONSHIP BETWEEN PUBLIC ATTITUDES, POLICY DECISIONS BY GOVERNMENT AND SCRUTINY BY PARLIAMENT**

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*Gemma Buckland*

I share here my experiences during over a decade working for the Justice Select Committee (JSC), documenting some observations about how public attitudes, or perceptions of them, can shape policy decisions and scrutiny by Parliament in relation to what should happen to people who commit criminal offences.

I first encountered the influence of public opinion on justice policy as a Masters student examining the case of the murder of James Bulger in 1993. Following this case, legislation removed the defence that children aged between 11 and 13 were not fully capable of criminal intent. A single grave incident, and resulting public opinion and political reaction, radically changed the law, which some have characterised as a ‘knee jerk’ reaction.<sup>1</sup> There has been little meaningful public or political debate since that time about whether the age of criminal responsibility of 10 remains appropriate. This is despite both international standards declaring that an age of criminal responsibility below 12 is not acceptable and significant advances in understanding psychosocial determinants of criminal behaviour, including the impact of brain development and of adverse childhood experiences.<sup>2</sup> Over the same period there has been a gradual cultural shift within the youth justice system towards a ‘child first, offender second’ approach.

There are many challenges facing Members of Parliament in exercising the significant political courage that would be required to reconsider fundamental questions of justice like these.

## The reality of public life

Members of Parliament wear several different hats. As constituency MPs, politicians face considerable lobbying by their constituents and the local press. MPs are a focal point for victims seeking redress which they may not feel they have got from the criminal justice system. A good politician will make a point of seeking out local victims to offer help, particularly on the relatively rare occasions there are serious offences in their constituency. In some cases, this can lead MPs to argue for tougher sentences. For example, former MP Nick de Bois campaigned successfully for tougher sentencing for knife possession.<sup>3</sup> On the other hand, after several young people were killed in her constituency, Ellie Reeves MP called for a public health approach to be taken to youth crime.<sup>4</sup> Both were Members of the JSC at the time.

In their role on a select committee there is a general expectation – though no obligation – that, collectively, MPs will come to a cross-party consensus about their findings. This can have the effect of moderating more radical positions in their reports. Another effect is to limit the subjects a committee may choose to examine, with a tendency not to focus on those where there are particularly polarised views. It will be interesting to observe how the JSC handles the question of the age of criminal responsibility in its inquiry on youth justice, launched in July 2019.<sup>5</sup>

It can be important to read between the lines of select committee recommendations and conclusions. When reporting on drugs policy in 2012, for example, the Home Affairs Committee (HAC) did not directly recommend decriminalisation but proposed two things which could be the precursor to such an approach.<sup>6</sup> First, that the government should visit Portugal to examine their approach and that they instigate a public debate on the alternatives to the current drugs policy, as part of a Royal Commission. The latter, or other forms of independent review, can be an option for taking the political heat from a potentially controversial issue. Yet the Minister responsible for commissioning such a review often sets the scope, framing any resulting public debate or policy. For example, Charlie Taylor's review

of the youth justice system in 2015–16 explicitly excluded the age of criminal responsibility<sup>7</sup> and Dame Carol Black’s review of drug policy announced by the Home Office in February 2019 excludes changes to the legislative framework, which would preclude decriminalisation.<sup>8</sup> The Health and Social Care Committee launched a broad inquiry on drug policy in the same month. Again, their approach would be worth examining.

It is also not uncommon for Members of the JSC to support their constituents with a campaign to implement harsher sentences on the one hand and argue for more prudent use of imprisonment in committee reports, on the other. Even where there is no direct constituency link, it can be challenging for MPs to argue against apparent public sentiment or to be seen not to act in favour of a new solution to a perceived societal problem, however knee-jerk it might be. MPs have to be seen to be serious about crime as it can be a genuine threat to people’s safety and well-being. Recent examples have included acid attacks, up-skirting, death by driving and stalking and harassment. Accordingly, there is significant pressure to introduce new offences or increase sentences for existing ones, whereas pressure to reduce or remove sentences is rare. Exceptions include the HAC’s work on prostitution<sup>9</sup> and drugs, and the JSC’s work on joint enterprise<sup>10</sup> and sentencing guidelines for drug mules,<sup>11</sup> for example.

### **Reinforcing vs. influencing public attitudes**

The JSC has, on several occasions, highlighted inherent tensions in the various purposes of sentencing.<sup>12</sup> One of the functions of sentencing is of course to indicate how seriously society views a crime. Failing to respond appropriately in Parliament when people become frightened or sickened by a particular crime risks undermining public confidence in the system of public protection and consequently reducing the legitimacy of the criminal justice system. Nevertheless, as the former Chair of the JSC observed frequently, there is a tendency for imprisonment to be seen by both the public and politicians as the primary means of indicating this.<sup>13</sup>

There is also an assumption and accompanying rhetoric that the criminal justice system is the answer to problems we face as a society with crime. The public tend to look to the criminal justice system (and more widely the state) as the solution. The expectation is reinforced by politicians who (to paraphrase) may state, for example, that by building more prisons or funding more police officers, we are keeping you, the public, safe. One result of this is that the justice system has become the primary gateway to services to reduce crime, such as drug or alcohol treatment, rather than them being available as a means of prevention. Yet some of the best provision for reducing crime lies outside the system in schools, children's services, mental health care and within families and the wider community.

Government Ministers can find themselves seemingly constrained in their policymaking as the justice system appearing to fail makes good copy in newspapers. MPs will face campaigns by others within Parliament, in the press, and more widely, who want to label them as 'soft', purely as a political stick to hit them with. If an MP, Committee or witness to an inquiry argues for rehabilitative measures there is a risk of this. Such tensions were highlighted recently during the JSC's Prison Population 2022 inquiry. Witnesses discussed with Members the need for sentences that are effective in reducing crime but also sufficiently 'tough' to be legitimate in the eyes of the public and to demonstrate society's disapproval of crime.<sup>14</sup>

The former Chair of the JSC, Sir Alan (now Lord) Beith, advocated for Parliamentarians to be more assertive about the efficacy of existing approaches to crime, noting that seemingly tough sentences may not also be the most effective in reducing crime.<sup>15</sup> The former Secretary of State, David Gauke, sought to shift public debate on the ineffectiveness of short prison sentences in press articles and major speeches, without making specific policy commitments.<sup>16</sup> In this way it is possible to influence public mood, and potentially also sentencing practice, without changing policy. The Ministry also made operational changes to administrative processes in an effort to reduce the prison population

without resort to legislation or major policy announcements which might have run foul of media or political debate.

While consecutive governments have sought to foster greater rehabilitation in the criminal justice system, they are often selective about what this means in practice. Issues like prisoner voting and the impact of criminal records on future prospects, which in my view are fundamental to rehabilitation, get surprisingly limited airtime in Parliament. This is not solely about the views of the electorate; politicians themselves often have firm personal views as illustrated by former prime minister David Cameron's comments on prisoner voting.<sup>17</sup> More positively, in 2016–17, the then government brought forward legislation which – had there not been a general election – would have provided a statutory purpose to imprisonment which did not include punishment but focused on public protection, safety and security, and reform and rehabilitation. The Bill was not reintroduced and the then Secretary of State for Justice Rt Hon David Lidington MP stated his commitment to achieve the same objectives without resort to legislation.<sup>18</sup> Another example where government has not capitalised on potential opportunity for radical change in circumstances where there may be some political cover is the Supreme Court decision on the unlawfulness of the youth criminal records regime; rather than changing its policy, the government became further entrenched its views and appealed the judgment.<sup>19</sup>

Backtracking on a policy decision is seen as politically unpalatable, even when there is evidence that the approach is not working. For example, it took repeated inquiries from the JSC about the deteriorating performance of prisons, the first of which reported in 2013, before the government took action to acknowledge the impact of staffing cuts on prison safety and reverse them.<sup>20</sup> Similarly, there were numerous highly critical reports on Transforming Rehabilitation, including those of the JSC and the Public Accounts Committee, before the programme was replaced.<sup>21</sup> Government should not be deterred from doing the right thing by the fact that they may have been doing the wrong thing for



fear of the public response. Nevertheless, in these cases there was a distinct absence of general public discourse about the state of prison and probation services.

### **The short-termism of politics**

The relatively short tenure of Ministerial positions, which have been especially short in the Ministry of Justice of late, and the short-termism of politics more broadly, can limit the potential for policy change. Dr Philip Lee made such an observation at a parliamentary event in response to question on whether he would seek to change the age of criminal responsibility. In relation to drug policy, former Deputy Prime Minister Nick Clegg has noted that many politicians agree that reform is necessary but are afraid of the ‘political hassle’ of changing the law.<sup>22</sup> The same could be said for addressing the release of those serving Indeterminate Sentences for Public Protection. The JSC sought to press consecutive justice secretaries to consider legislative change.<sup>23</sup> This has not materialised, although several of them have expressed support for this after having left the post.<sup>24</sup>

The relatively short tenure of government means that complex budgetary matters can be left for a future administration to grapple with. While it’s challenging to admit publicly that there are insufficient funds to run probation or prisons safely, this conundrum could be used as a mechanism for garnering public support for resources to be directed into alternative responses to crime, like family support and drug and alcohol treatment, for example, which can be cheaper and more effective than imprisonment. The Ministry of Justice’s line under consecutive administrations has been that it must provide for the demands placed on it by the justice system. Nevertheless, there are not sufficient resources for this, and the passive approach adopted limits the need to hold challenging conversations with the public about the sentencing regime and the lack of affordability of the current system. An interesting case in point is that when the JSC recommended in its 2010 report on justice reinvestment that Ministers and other Members

of Parliament should seek to reach a consensus on justice policy and to hold a public conversation about the costs of imprisonment and the potential to invest in alternatives without undermining public safety, it did so within a careful, detailed analysis, but some media headlines characterised this as ‘letting people out of prison’.<sup>25</sup>

With the current administration we are faced with a potential ‘punitive turn’ in which responses to crime risk becoming over-politicised. In the absence of a national conversation, I propose that a citizen’s assembly is undertaken to establish clearly the nuances of the views of the public – on questions like the age of criminal responsibility, for example – and the extent to which these can be moderated through careful debate.

# ***THE ABILITY TO HEAL PEOPLE WITHIN OUR CURRENT SYSTEM***

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*Edwina Grosvenor*

Psychiatrist Dr Sandra Bloom uses the word ‘Sanctuary’. A place where injured people – and that includes all of us in one way or another – are able to:

heal through the supportive care of others. Sanctuary is a place where our tendencies toward violence and vengeance have been subdued, where individual and collective powers are used to bring about a better life and a better world. Sanctuary is a place of joy and creative innovation, of sympathy and solace, and of transformation (Bloom et al., 2013).

I believe that this is something that every prison in the world could start moving towards in order to reduce risk and to support healing for the individuals and the system itself.

The criminal justice system, in 2019, is not performing well. Almost everything bad has gone up and almost anything good has gone down. Rates of deaths from natural causes have nearly doubled in the last decade, self-inflicted deaths are over five times more likely in prison than in the general population, rates of self-harm are at the highest levels ever recorded, serious assaults are at the highest levels ever recorded, assaults on staff have more than tripled in the last five years, sexual assaults have more than tripled in the last seven years, nearly 50% of our prisons are rated ‘of concern’ or ‘of serious concern’ by HM Prisons and the Probation Service – the highest level on record. People in prison are spending on average just 30 minutes a day outside. Inspectors have found that conditions in segregation continue to be

poor with no daily access to telephones, showers, time outside for exercise or purposeful activity (Bromley Briefings, 2018). The data is damning.

It is not just the job of the criminal justice system but also of the combined efforts of society to be doing all they can to mitigate risk of offending and reoffending. They need to ensure that the individuals who end up in our prisons have time to address what's driving their particular behaviours and have time to heal in order to make sure they don't harm themselves, prison staff, other prisoners or anyone else once they are released. It is up to the state to lead and to articulate what type of a prison service they want. Should justice be about punishment and retribution alone, or should it be about restoration and reintegration? Would they prefer the Russian gulag type of prison or would they prefer the more forward thinking, effective type of our Scandinavian neighbours?

Can prisons ever be places where people can heal? No matter how bad things are now, I believe they can. I have seen that it is possible. Many prisons manage this and are working hard to turn people's lives around for the better, albeit against brutal odds. The work of HMP Grendon, Britain's only therapeutic jail, is one positive example of many I have seen. Inspectors were:

pleased to find that most men felt safe and secure ... violent incidents remained infrequent ... the prison operated without a segregation unit ... men showed respect towards their living environment ... relationships between staff and prisoners was excellent ... time out of cell was excellent ... (Inspection Report, 2017).

The reconviction rates are encouraging. For those prisoners serving life sentences elsewhere, there is a 24% reoffending rate; at Grendon it is 8%. For non-lifers the reoffending rate is 10% lower at Grendon than elsewhere and, if prisoners complete the therapy which ideally runs for at least 18 months, reoffending is slashed by 20–25% (Sally Weale, 2001).

I remember being very struck during my visit to Halden prison in Norway. Halden is often called the world's most humane maximum security prison. There were many features of this particular prison which showed me prisons don't actually have to be hellish places of violence and pain. Halden is modern, cheerful, it has well appointed facilities, it is peaceful and has a quiet atmosphere. It seemed like a pleasant place to do time but also, crucially, a pleasant place to work. The treatment of inmates at Halden is wholly focused on helping to prepare them for a life after they get out making them less of a reoffending risk upon release. I remember small things that struck me hard – like the fact they didn't let men just sit in front of a mirror in the gym pumping iron, bulking themselves up and building muscle. Big muscles were seen as a way of intimidating others and of course could be used as weapons. They didn't allow tattoos to be on show as this could inflame tensions between differing gangs. They didn't have one type of configuration in the religious room as that was seen to be divisive or preferential to certain religions so they had a large room which could be organised in whichever way was needed for whatever religion or cultural event. They would then project the appropriate religious symbol onto the wall when needed. I was about 25 at the time of the visit and I remember all these sensible things making a huge impact on me. There was respect in the air and I don't mean macho intimidation, fear-based respect but real respect. Staff and inmates alike seemed to respect each other in a way that seemed right. Having said all this, I was reminded by an inmate that I was chatting to that even though Halden was a nice prison it didn't make up for not having your freedom.

Often in prisons, even in really bad prisons, there can be a little oasis of space where healing can take place and this must not be forgotten. The example that stands out for me was my trip to Pelican Bay State Prison, in 2017. It is the only male, supermax, state prison in California. I visited this prison to meet 12 men who were on the Secure Housing Unit (SHU) which is the American term for the segregation unit. The SHU is designed to control the most intractably

violent prisoners by keeping them in rigorously-monitored solitary confinement 22 and a half hours a day, seven days a week, often for years or decades at a time. The men that I met had just finished a trauma informed, gender specific intervention called Beyond Violence (Covington, 2013) I went into the prison with Dr Covington and her researchers in order to hear how the men had got on and to attend their graduation ceremony. The conversation with the men was challenging to say the least, not because they weren't keen to talk but because they were shut behind wire cages so we couldn't see them clearly and we couldn't hear them well. It struck me as cruel and unacceptable that people were still being treated like dogs. During our time with these 12 men it became abundantly clear that they had had their eyes opened to self-discovery. They had started to learn about themselves, about their emotions, why they came to be the people they are, how they ended up in a cage in Pelican Bay. They talked about what a relief it was to have words to communicate their pain, to articulate the emotions of violence, fear, the 'burning inside my chest I feel before I lash out'. A man told me proudly how he is now conscious that the feelings are coming, to recognise them and then to use some of the tools he has been given to control them. He uses mindfulness – an effective way of regulating emotions by using guided imagery, breathing and grounding exercises. I was not expecting to find such a ray of light in the darkest depths of the US prison system. This visit proved to me that any place, any prison can have a space to heal, no matter what size, no matter where. It just comes down to will.

# *SECTION 3*

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*ANSWERING THE  
QUESTION CREATIVELY*





**Construction of a criminal**

Child first offender second  
But that's been overlooked  
Commit the crime you do the time  
No justice for a crook.

Express yourself no limitations  
They label that as art  
Violent rhymes explicit truth, revealing all my fears  
Reveals the haters behind the papers making sure my "art" disappears.

Because the truth is we've been fighting deception  
Then painting an image of this false perfection  
Cause life gets hard when you aren't accepted  
But trust me when I say that they learnt their lesson.

The construction of a young criminal  
Invest in the youth and build our dreams  
Don't let our talent go to waste  
Trust in us and we'll trust in you  
Let's all be something great.

BY TALIA JAY, WRITTEN AND PERFORMED AT THE NATIONAL CRIMINAL  
JUSTICE ARTS ALLIANCE ANNUAL CONFERENCE 27TH FEBRUARY, 2019

## **OUR VOICES SHOULD BE HEARD**

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*A collection of poetry, opinion pieces and creative writing  
from Clean Break Members – women affected by the criminal  
justice system and women living on its fringes.*

### **‘To the Judge’ – Tulisa**

I have always been a loner in the world. Family, thoughts.

So, when I do crime, I feel it’s around people.  
So, I don’t feel alone, if that makes sense.

I used to be a lost soul with a good heart.

Now, I just want to be a found soul.  
I want to be recognised by my good heart.

### **‘The Law is an Ass!’ – Ann**

The rigid application of the law continuously reminds me of the obstinance of an old donkey. Too stupid to be led in any given direction, other than the one in which it so steadfastly stands.

Lo and behold, if the system actually tried to understand the plight of the modern man and woman.

‘I exist, therefore I am.’

The courts see only black and white: you committed this crime, now off to prison you go! Far too often the person’s past, environment, mental health or current circumstances are routinely pushed aside.

What about the two hundred and fifty-six shades of grey?

Why do you treat us all the same?! You see, even in the midst of that vast array of grey, there is an equal number of red, green and blue. Even by definition, white and black are both considered grey too!  
Who knew?!

So, what do I think they should do?

Let's try a different take, an alternative stance.

'I make mistakes, therefore I am.'

Let's look more closely into an individual's circumstance.

A certain man who always upheld the law, suffers crippling depression for years, often losing jobs. He is isolated from his family, no longer sees his peers. He goes to his doctor to ask for help, he's not really listened to, just given a green prescription for some tablets to chase away the blues.

They make him feel even more disconnected; side effects seemingly worse than the original complaint. The doctor prescribes a different brand. When they miserably fail to work, they try him on another, then yet again another. The doctor doesn't try to understand, never once asked him, 'what's going on with you?'. If he had, maybe he would have known, this man has lost his mother!

The cycle continues. He feels his life spiralling out of control. So, he stops going to the doctor, shuts himself off at home. Life is extremely bleak, there is no end in sight, apart from the one he seems to think about often now. Now, he plans to take his own life.

Thank God he doesn't go through with it. You see, he sees it as the coward's way out. Yet neither has the courage to stay – and fight for his own life.

LIMBO

He decides to use alternative ways to medicate, finding small comfort in the temporary escape. Until that fatal night. One time after taking drugs, his mind took him into deep psychosis.

He ended up killing a man, though he didn't even notice.

After a lengthy and costly trial, he was given a psychiatric prognosis. A hereditary illness passed along through his family's generations.

All this could have been avoided.

He is sat in prison now, not knowing what has hit him.

Never a violent man, having to come to terms with the fact that the man he hit is no longer living.

It's not all black and white you see. There are a myriad of colours in between. So, if the system tries harder to support those hurting, I believe there would be a vast reduction in the number of crimes being committed.

If we as a nation learn to look after our vulnerable, give them the help they need, this in turn would enable them to exercise due diligence. It would give them the chance to stay free.

And for those in this actual moment of time, who are standing in the dock, let's think how else we can support them, stop just addressing the problem and never looking at the system.

I believe strongly in my bones we need a forward thinking, courageous unit of care professionals, service users, and the government to come together and unite. Let's create a fairer system to help those in this plight!

[Untitled] – Michaela

Trying to stop the crime  
in a world full of sin and corruption.  
To help others understand their thoughts and fears  
feelings in the life they are living,

dealing, sinning and grieving  
something they are missing,  
but they carry on grinning  
in a system that keeps on missing.  
Failing them.

Institutionalised by their mental state  
in a world full of crime and hate  
lost Government cuts  
cost to the people who need it the most  
they still don't lose hope.

Anyway,  
here is a big toast  
to all the big wigs telling lies and deceit,  
putting labels on the different people they meet  
everyone needs to eat  
why can't you just let them be in peace?  
Stuck in a system  
where crime is all they know  
lost in a black hole  
with no place to call home.

The streets are paved with gold  
still, that does not numb out the cold.  
Still, at least, they have a can to hold  
to get them through tonight's cold.

## Five Doors – Fatima

Curtain rises, music fades in

Fatima:

She danced with the gusto of ancient griots – wisdom, insight,  
and rhythm meet

With bells and beats at her feet  
she shook to inaudible lineage  
connecting  
capturing

her history ... taking no prisoners, no surrender, no retreat ...  
She danced possibilities to her own innate beat  
steady  
raising confidence at her feet

Here heritage and soulfulness could meet  
and build and soften, and build and ease

And rise in hope  
gently prising defeat from all who saw her dance

Anchoring dreams to shorelines  
making hope a reality  
erasing everyday brutality

She danced with the gusto of ancient griots-forwards  
into endless possibilities  
Backwards into monotonous realities  
mixing past with present  
she danced

Verging on breathlessness  
she danced  
into light  
shade  
the joy of Creation  
being made

She danced  
four embers of magnificence  
sparks of enduring humanity  
she leapt in dance

*(Sings) Dance then wherever you may be  
I am the Lord of the dance said she*

*And I'll lead you all, wherever u may be,  
and I'll lead u all in the dance, said she.*

She drops in exhaustion to her knees, arms across her chest.  
Curtain falls.

## **What should happen to people who commit criminal offences? – Inka**

I think people who commit criminal offences should be assessed for background issues and they should be able to state what put them in this state of mind, e.g., housing, mental state, income, support network and if there is any way of avoiding them feeling isolated.

I personally don't think that prison is the answer, as they get to mingle with people who have committed bigger crimes. It may give the individual ideas to live a life of crime with no hope in their future.

When you are lost, it's hard to find an inner peace within you. So, let's try and do better and help others in this situation.

Everyone has a voice, it just takes someone to hear us.

## **The Criminal Justice System – Clare**

There are so many changes needed to make the criminal justice system more effective that it's hard to choose which ones to highlight.

Firstly, there need to be more experts by experience involved in the decision-making process. The Ministry of Justice needs to be less blinkered in its approach and give these experts a voice in all aspects of the service.

Secondly, alternatives to custody should be considered in all cases, except the most serious of cases where imminent danger is perceived. The use of community sentences and women's centres should always be the first port of call. Locking women away and separating them from friends and family prevents the possibility of positive change. The fact that 70% of women are serving six months or less<sup>1</sup> shows the ridiculousness of the current system, which is a massive waste of taxpayer's money.

In addition, education in prisons needs to be more progressive and again, should be led by ex-offenders who understand what is needed to help people progress. A healing, open, creative environment is vital to facilitating learning and change.

More charities and progressive groups need better government funding to really create opportunities and challenge patriarchal viewpoints. Open forums should be held to discuss and encourage debate and produce a range of ideas, which could be implemented to allow a complete radicalisation of the CJS. Unless this happens, the reoffending rate will carry on increasing.

Our voices should be heard.



## [Untitled] – Victoria

I would really like to see facility to prevent re-offending, with different supports in place. For example: accommodation, mental health support, education, training and employment, rehabilitation for drug and alcohol use, benefits, children and family support, emotional support and many more.

All this support can change a negative mind into a positive mind and help a criminal to stay focused. At the moment, the government is not helping the criminal justice system at all. Instead, it is getting worse day by day. More support could be introduced to help prevent crime from ever being committed. Especially for people who are ready to better their lives for good. I personally believe there is a lot that can be done, by both governments and individuals, to reduce crime in our communities.

Being in the criminal justice system myself made me realise how cruel and poor a system it is. No support is in place to help us, instead, the system damaged me in many ways. I was in and out of hospital with severe mental health problems. Many times, I was given the wrong medication, which worsened my health and made me deteriorate. This terrible experience made me realise, we need a better criminal justice system.

A system that the government could consider is to build a training facility where people who want to better their lives can go and live instead of prison. People with short sentences can do a short course with a certified qualification and a promised job on release day. People serving long term sentences can take a longer training course, depending on the individual, and can also do an internship within the training facility and get paid. Some might decide to be a trainer and could teach others with shorter sentences.

Building this facility will help an individual to be a better person.

## Waiting Room – Beverly

Poorly lit, carpeted airless, waiting area, outside a meeting room in Westminster Parliament.

Selena: Why the bloody hell in high summer, doesn't someone open a window in this place? I can't breathe. My hands are trembling. I can't breathe, Mills.

Mills: Use your inhaler.

Selena: I can't find it. I'm gonna have to go home and...

Mills: I have your spare, here. We don't want to repeat The Big Lottery debacle.

Selena: Oh. I forgot you had my spare.

Selena: I can feel a massive migraine starting to take hold. I need to lie down. I wonder if they have a rest room here.

Mills: Would it help if we go through our talk?

Selena: My mouth's gone dry, I don't feel as if I can control my own tongue. Am I slurring my words; I sound drunk don't I? If I walk in there trembling all over and slurring they're gonna think... I'm sorry, I can't do this, Mills.

Mills: I believe society is yearning for this kind of initiative.

Selena: At this moment, I don't hold your optimistic outlook – I'm seeing divisive action highlighted everywhere. All of our institutions are patriarchal in their approach from their founding, forward.

Mills: Yes and that is why we agreed that this approach, this way of being compassionate at a respectful distance towards people who have committed a criminal offence, is definitely a potential balm to the tremendous open wound that the oppressive patriarchal systems have excavated over centuries.

Mills: It's what's needed! I know that, you know that, this is our opportunity to convince the majority, but specifically the minority who weaponise their power, that the long term solution to rectifying offences being committed is to create

a System that spends an initial intensive six months working with each criminalised individual, exploring the actions they took that brought them to choosing the option of criminality.

Selena: Yeah, well I know you said don't worry about this, but still I can see that approach of saying 'choosing the option', is a dangerous posit to use. We know Women in particular charged with a criminal offence will mostly have had little choice. Their options being, receive a beating or do as instructed by a violent or coercive partner, and be under less of a threat of violence in that moment, of crime.

Mills: Okay, yes, there is a danger of people switching off, or their limited knowledge of the lives and experiences of people who have been through the criminal justice system, could lead them back to preconceived ideas and sub-conscious biases could spring to life, but we will be there to talk through, and share examples that Women in particular, have told us. Of their situations, and specifically the lack of consistent sign-posted support, to either stop escalation of the traumatic narrative, or prevent it in the first place.

The other long-term issues of fully enacting Articles 5, 9, and significantly, '... the right to a standard of living adequate for the health and well-being of [herself] and [her] family ...'

Selena: That's 25, right?

Mills: Uh huh.

Selena: The 25th article in the UN Declaration of Human Rights that this country nobly signed up to in 1948, if fully implemented nation-wide would ensure people's basic rights were met on a daily basis.

Mills: (faintly) I feel nauseous. The Women's Room would be two floors down.

Selena: All of this is hugely important, and the articles are the obvious connector to the inter-sectionality of this behemoth of a misguided mission, successive governments have undertaken to ensure that crime is seen to be met with punishment.

Selena: That's it, and we won't be side-tracked to look into the states lack of support for those existing in poverty whilst in paid employment, non-paid work or on substandard benefits.

Mills: (Sighing) Selena, this is all beginning to feel like a massive responsibility. So many Women and their Dependants are relying on us. Waiting for us to come through for them.

Selena: (Concerned) You sound like me, but scarier.

Mills: -

Selena: Lets stand and stretch or something. We've been sitting still forever. These wooden benches are hard enough to send the fear of atrophy through anyone's backside and beyond. Maybe that's why in the 21st century they are still in use here!

Mills: Is that your phone or mine?

Selena: Yours. I didn't think Polystrene's 'Oh Bondage Up Yours!' would be well received.

Mills: It's from Jessica.

Selena: Is she ok?

Mills: (Gently) She says, 'We believe in YOU!!!!!!' Lots of exclamation marks.

Selena: (Hopeful) She's come a long way.

Mills: Trust, trusting anyone, was, probably still is, incredibly difficult for her. That's why we're here. We have to guarantee more outcomes like hers.

Selena: And, no karma talk, right?

Mills: I've promised, already, trust me! This will be a struggle for some to fully take on. We're advocating compassionate justice, replacing draconian, poorly thought through policies in our criminal justice system, which has never focused on creative long-term reflection leading to action, as reform. This way forward does respond to the Buddha's decree, that we as human beings, actively uphold the inherent dignity of all life.

We are in agreement times two. We are not here to come across as ideological air heads ...

Selena: You are so right Mills. We are so right! We park all of that in part two. Because, we are also here to acknowledge the bits of services that do work, for those of us that have been criminalised, and we want to expand on those areas, to effectively create lasting value.

What we have here is enough. We are enough. My breathing has calmed down. Look my hands have stopped shaking, and the migraine has disappeared. And you look more like your 'Millie rights the world' self!

Mills: Just in time, heads up here's the man from the Ministry!  
Do your flies up!

### Friend – Tina Mouzourides

Come. Come with me on a magical trip of re-invention  
I'll take you and show you the way.  
Open your heart and open your mind  
Seek and you shall find  
A journey to find a better you  
I am your magical fairy  
I have been you  
What you've been through  
The bullying  
The drugs  
The loneliness and isolation  
I've been shy  
I cry.  
I've been arrested  
I've been tested  
Do I fight  
Do I flight  
I have a choice  
I have a voice.  
I am now on the mend  
I can be your friend.

## CRIME AND EXPECTATION

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*Ashleigh Nugent*

Just like you I crave for family,  
Community and home.  
A little time to spend alone,  
Be idle, contemplate and roam.  
And yes, I know you have your rules  
And yes, I know I disobeyed.  
But if these needs are never met, please tell me,  
What did you expect?

Did you like it when your mother  
Made you feel like you were worth love,  
When your teacher said you were good;  
Pinned your paintings and your words up?  
Yes, I know that schools need rules  
And yes, I know I disobeyed.  
But if my needs were never met, I think back,  
What did they expect?

Is it thrilling riding log flumes,  
Loop the loop at Alton Towers?  
Does it feel right when a guy  
Who looks just like you holds the powers  
And wears the badge and makes the rules?  
Those rules – I know I disobeyed.  
But if such needs are not met by such rules  
What should we expect?

So, for now, I call these cold walls  
And this broken window home.  
Accept this toxic loneliness  
With no time on my own.  
And I accept that you have rules  
And I know why I disobeyed.  
I understand my needs that went unmet  
I know what you expect.

But unexpectedly in this community  
Of bolts and bars,  
I've learnt what  
Schools refuse to teach:  
Rule breakers, too, are made of stars.  
My character and qualities  
Are worth as much as yours.  
And faith can transform fate  
And make resources of our scars.

You need your rules to feel safe,  
We've made the game, agreed, let's play.  
You find it hard to understand people like me  
And that's okay.

But till the day that every child can strive and thrive and climb  
in woods;  
Until the day all rules affect the rich as much as they do us;  
Until the day that every child can access high class education;  
Until learning draws out wisdom and impedes indoctrination.  
Until work builds opportunities beyond staying alive;  
Until politics and press serve us through truth, not them through lies;  
Until divide and conquer tactics are anathema to leaders;  
Until preachers all agree all peoples, tribes, and gods are equal.  
Until women don't blame men, until black people don't blame whites,  
And until white men learn to read the very histories they write.

Until communities and families and homes, until our minds  
Are apt to act responsible and worthy of what we've designed.

Until that day we have no right to speak of punishment for crime;  
Until that day comes we're required to speak of how to heal lives;  
And we all know that day's a long way off. If you still disagree  
May I suggest you come and meet my friends who live in HMP?

It is not you but me  
Who has made sure my needs are met,  
I did all this and, what is more, survived.

Despite what you expect.



# CREATING IDENTITY THROUGH THE ARTS<sup>1</sup>

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*Re/creations collective:*

*Kristianne Drake, Xavier Fiddes and Dr Ronda Gowland-Pryde*

## **A clearing in the pond**

As a collective of experienced arts practitioners, we discuss how young people in the criminal justice system should be given the opportunity to experience and re-engage in positive, holistic learning experiences. Arts and culture can help young people gain a more rounded learning experience, which not only develops their academic skills but also creativity, self-belief and confidence. This holistic approach developed with Southampton Youth Offending Services, embedding Arts Award, facilitates reflection and an understanding of actions and consequences developing a positive growth mindset around education and arts and culture – something every young person has a right to.

Since 2012, young people at Southampton Youth Offending Services, have been able to participate in a weekly Arts Award programme to help draw them towards more prosocial activities and decrease offending. Delivered alongside other initiatives to address offending behaviour, this programme has enabled young people to engage in a range of art forms and creative experiences and gain a nationally recognised qualification (Arts Award). Those that have participated in the programme have demonstrated how it has positively developed their personal life narratives at moments of life crises (Bocock, 1974), supporting the process of desistance and potential for transformation.

The poems featured – *I AM* and *Hope is...* – created and accompanied by young people's photographs and anonymised quotes about their

experiences of the programme, serve to highlight these changes, moving away from the self-fulfilling prophecy of a ‘young offender’ to a learner, student and ‘young creative’ that has hope for a positive future.

### I AM...

Good at putting on a smile  
A sad song playing on repeat  
Broken  
A fixer  
Ignorant  
Confused by life  
Feeling the weight of responsibility  
Always defying death  
Someone that likes pain – random  
Afraid about what I might miss out on  
A person that lives with ODD & ADHD  
Always dying my hair  
Wondering why  
Very patient  
A student  
Constantly trying to better myself  
A person that likes playing football  
A person who likes observing  
Learning a new skill  
Always recording myself  
A person that loves singing to adverts  
A Mr know-it-all, borderline pretentious.

### I Am ... A Sad Song Playing on Repeat

Often within the youth justice system the word ‘cycle’ is frequently used and this may be correct. We see patterns of repeated behavior that if not addressed, can spiral out of control and lead to much larger consequences in the adult lives of young people. Our aim, through artistic methods, is to give young people a way out of channeling their

energies away from criminal and anti-social behaviour. The majority of the young people on the programme react positively to the idea of using art as a form of expression and given the right tools they can, not only become proud of what they create, but develop ownership and control of it – for some it is the first time they will experience this. This progression through a programme of activities run by our artist educators and arts professionals, give young people a safe space to break free of their repetitive negative thoughts and feelings. This enables them to build the confidence to allow themselves to take control of their expression. In conjunction with the rigorous work of the Youth Offending Team, it helps young people feel happier about their environment and safely let their frustration, sadness and anger out through creative practice.

### **I Am ... Broken**

Many young people known to Southampton Youth Offending Services come from what can be considered as a ‘broken’ family and negative local environment. The anti-social culture they perceive as they progress through their early lives leaves young people reacting against what society would consider a normal balanced lifestyle – meaning they end up on the fringes, lashing out, not being able to fit-in. Most have a deep seated belief that they are broken, however, this just means they have very little self-worth and confidence. The only environment they look up to and respect is one that fuels their fear of not fitting in. They get along in their peer groups by doing the opposite of what is normally expected of them. Although they must accept responsibility for what they do, the majority of time, these anti-social actions are the direct result of being exposed to a negative home and social environment. The biggest worry for these young people are the connotations of not fitting in, being afraid of missing out, so they do all they can, even if this means they’re labeled negatively by society.

### **Am... Learning a New Skill**

Often, young people in the youth justice system have disengaged with formal learning. Most will have left school without any qualifications or work experience. It is recognised that these risk factors attribute to re-offending behaviour (Stephenson and Allen, 2012–13). During the weekly Arts Award programme, young people are supported to re-develop a new label/narrative for themselves and appetite for learning delivered in an informal, personalised context through creative practice. Working directly with arts professionals and artist-educators on a programme which embeds core skills and the Arts Award qualification, young people are inspired and challenged as they become artist-creatives and arts leaders in their own right. Here, ‘education-through-creativity’ (Maslow, 1971) is brought to the forefront, taken outside of the formal learning context both within school and formal offending behaviour training and into a safe, non-judgemental space. For most, the programme becomes a journey or type of rite of passage (van Gennep, 1909, 1960; Turner, 1964), providing opportunities in which to transition from the liminal space of a ‘young offender’ to a student, artist-creative. As one young person commented:

I never really got a GCSE and things like this, I’ve never really sat down and finished – it feels really good. Even if I wasn’t getting anything out of it I would still come ‘cos every week it’s something new.



Credit: Xavier Fiddes



Credit: Xavier Fiddes



Credit: Xavier Fiddes

### Hope Is ...

People Starting to believe in themselves.  
Mufasa not dying one day.  
People playing basketball.  
Looking up to see two aliens.  
Being a team.  
Trees.  
A clearing in the pond.  
Darkness.  
Light.  
Sun.  
Sky.  
A cloud.  
The rain stopping.  
A boy holding a vase with a tadpole in.  
Traveling the world.  
Driving down the west coast of America.  
Living a good life.  
Living until I'm 100.  
Winning the grand national (again).  
Lottery.  
Not breaking my arm again.  
A black pond.  
Leaves.  
Positive children.  
Friends.  
Evening basketball hoops.  
World peace.  
End to racism.

### **Hope is ... People Starting to Believe in Themselves**

Through developing relationships with other partners the weekly programme has led to national collaborations through the Tate Exchange programme. For two years running the partners were invited to bring a group of the young people we were working with and deliver a two day programme of activities. These activities were developed directly with young people rather than it being something they were told they had to do. In the first year they created the Department for Doing Nothing inspired by an excerpt from the Mass Observation Archive Report on Juvenile Delinquency (Willcock, 1949) called Kicking a Can Around. In this chapter, Willcock discusses how young people get in trouble with the law because they have ‘nothing’ to do. Taking this as a starting point with the group, they worked with the artist educators and Youth Offending Team staff to create a board and staffing structure for the department. They then invited the public to join them at their new premises (Tate Exchange) to:

think about doing nothing, produce nothing, investigate nothing and participate in nothing.

For the first time in their lives they were in control, they had something of value to the outside world that they could share and that they were the experts in.

### **Hope is ... A Clearing in the Pond**

Following the success of the Department for Doing Nothing we were invited to return to Tate Exchange to deliver another two days. Building on previous success we returned with the launch of NADA Air the official airline of the Department for Doing Nothing. As part of their development young people (a different group from year 1) spent time at a local museum of aircraft learning about planes. More importantly this broke down barriers of inclusion for them accessing cultural venues. They then went back to their sessions and were inspired to design uniforms, cockpit controls, plane parts that could become arts



based activities once back at Tate. They developed new skills around portrait photography and studio lighting.

Crucially, these opportunities broke down barriers not only for the young people, but with the general public who had their own media-generated preconceived ideas about ‘young offenders’. As participants interacted with the young people, perceptions were challenged during the project about juvenile delinquency and ‘young offenders’:

Such an amazing project. Great to meet people involved and see how it all comes together.

It was good to do nothing productively and talk to the young department officials.

Building strong positive relationships with the ‘outside’ world is important for these young people. It gives them self belief that they have hope and worth for a brighter more positive future. As one young person commented on leaving Tate on the second day:

I never thought I’d do something like this. Thank you. I know now what I want to be when I leave school. I want to work in a business.

### **Hope is ... A Boy Holding a Vase with a Tadpole in**

Through the course of the Arts Award programme, young people develop a new, more positive, self-awareness. This new sense of self opens out alternative perspectives on their lives and situations having been in the youth justice system. With this, brings a certain sense of responsibility in the re-creation of a different life narrative that acknowledges the need for change. Having time to reflect on their behaviour, during the programme, taking part in creative activities and ultimately re-engaging in learning through creativity, the metaphor of ‘a boy holding a vase with a tadpole in’ highlights how it provides young people with a new lens in which to view the world and with it,

responsibility for recognising the impact of their actions, for personal development and growth. By being creative and taking part in arts and culture young people become more reflective on their lives and their place within society, supporting the process of desistance.

I would love to do something with art ... I would like to do this with people, because I've seen how it made me feel, to show 'em I was like you were ... it's made me feel better as a person.

## Conclusion

By exploring key lines from poems: I AM ... A Sad Song Playing on Repeat; I AM ... Broken; I AM ... Learning a New Skill; Hope is ... People Starting to Believe in Themselves; Hope is ... a Clearing in the Pond and Hope is ... A Boy Holding a Vase with a Tadpole in, we consider the question of *what should happen to people that commit criminal offences?* In discussing how the Arts Award programme, conceived as a type of rite of passage, nurtures and inspires the potential for change, we argue that those that commit criminal offences should be supported to re-engage with learning through creativity in order to re-establish a positive identity.

Direct engagement with experienced professional artists and practitioners as well as an underpinning partnership commitment between artists, the arts and cultural sector and youth offending service, creates an environment in which young people can flourish by: providing a sense of respite from difficult personal circumstances; supporting alternative approaches to offending behaviour work; providing space for reflection in a supportive environment; challenging perceptions; improving accessibility of art for young people who have offended and thereby supporting young people's desistance from re-offending behaviour re-adjustment to society. Furthermore, this creates a clearing in the pond out of which emerges the potential for recreation.

## ***THE PLAY IS THE THING ...***

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### *Blackash Organisation*

Extracted from a collaborative response authored by seven ex-offenders contributing as part of a larger on-going longitudinal research project run by the Blackash Organisation into the impact of Prison, the effectiveness of the UK Probation Services and the processes of 'Rehabilitation'.

#### **Characters:**

Georgiana Jeffreys	A traditional tutor in a Prison Education Centre
Jane Keating	A liberal tutor in a Prison Education Centre
Crowther	A prisoner: angry, a man of action
Posner	A prisoner: Crowther's fatalistic side-kick
Dakin	A prisoner: cynical, politically astute
Akthar	A prisoner: Posner's friend in prison
Lockwood	A prisoner: intelligent, well-informed, critical
Timms	A prisoner: compliant, enthusiastic, a follower
Rudge	A prisoner: a man of few words
Scripps	A prisoner: missing in action

## SCENE 1

A prison classroom, a raised dais on which a teacher's desk faces front.

An office chair, with wheels sits behind desk, occupied by a heavy woman (Georgiana Jeffreys). She leaves and returns to this chair at intervals during the scene. To the right four 'pupil' desks – at which sit three male prisoners – arranged in an arc; mirrored to the left, all backlit – all unmoving (to start). Crowther alone is standing, front-and-centre, spot lit to start.

CROWTHER (*Wielding his coffee mug, angry*) Fucking Bitch!  
I seriously hate the bitch... who the Hell does she think she is...?

POSNER (*already vacating his seat – armed with his own mug*)  
Chill mate... she's the teacher and...

CROWTHER So she gets to say what she likes – without fear...  
confident as ever – there is no real challenge –  
because...

POSNER ...This is a bloody prison mate.

CROWTHER And this is where we get asked for our opinions,  
'share your ideas guys' only to get ignored; ideas  
shelved... always shafted...

POSNER ...This is bloody prison mate.

CROWTHER And that fat cow (*gesticulates towards Jeffreys*) calls  
us 'men like you' as if we're all one and the same –  
I ain't no sheep-shagger, not like Timms... but it's  
always 'men like you' and in that tone – that tone...

POSNER ...This is bloody prison mate.

DAKIN (*joining them in the light*) And here power and  
privilege is plain for all to see...  
(*turning to the audience*) this is the fourth-wall,  
that's what the critics call it – and beyond the wall

- exists a different kind of reality... in that World  
(*to the audience*) where you are, the World that  
you inhabit... that's a World where everyone is  
a criminal...
- POSNER Can be a criminal...
- CROWTHER Could become a criminal...
- DAKIN Speeding in your cars, defrauding your bosses,  
paying your workers less than minimum wage...
- POSNER Jumping the red light, hopping on trains, smoking  
some weed; 'it's for personal use only!' – you say!
- CROWTHER Watching the porn, never knowing their ages – their  
working conditions...prying and pictures and getting  
your kicks.
- AKTHAR (*joining them in the light*) Valeting your vehicle...  
by the – boys with black skin, chocolate or caramel  
or... – immigrants...victims
- DAKIN Neglecting your children, feeding them-up, fattening-  
up the national future – leaving your parents alone  
in their old-age, pissing their pants whilst you're out  
at work.
- POSNER Shouting, swearing and abusing the puffs.
- AKTHAR Prying on neighbours, claiming benefits for which  
you're no longer entitled... free prescriptions  
all round.
- CROWTHER Stalking her online – offline and controlling her  
life...at first it was love, just loving – but then come  
the bruises
- LOCKWOOD (*joining them – breaking into the group*) But hold  
on boys...hold fire...for out there (*gestures to the  
audience*) there's just one difference...  
They are the criminals who've not yet been caught.
- CROWTHER And we are the ones who have been!  
(*lights-up*)

- JEFFREYS *(leaving her desk – taking control)* Gentlemen – coffee break is over...return to your seats. We have work to do – or rather you do: Tasks to gain your qualifications, much needed in many cases...coffee cups down now...
- DAKIN *(to Akthar)* I have a degree in Business Management – not that anyone will trust me to work with money again – so a pre-GCSE qualification...certificate in Drama...
- AKTHAR It's better than nothing...
- DAKIN But it ought to be something – not better than nothing...I ain't gonna make it in life as an actor...
- JEFFREYS If you've quite finished gentlemen...Now let me explain...Men like you – of your sort – who did the things you people have done...well we want you to write an essay: this afternoon, whilst I'm away – at my beautiful daughter's graduation, she's about to become...you know...and successful, so very successful – and...  
...A chance for you to share your...views – an opportunity kindly provided...  
Now as you know you're asked to write about your thoughts – those that you may have – regarding the punishment for people who commit crime.
- LOCKWOOD It says...what should happen to people who commit crime Miss Jeffrey's – not 'punishment'.
- JEFFREYS Well, I'm sure you understand what I meant – now as you know I'm away this afternoon, Joan will be covering the lesson, session – we've swapped...
- TIMMS So we might get to do some drama – in the drama class then!
- JEFFREYS Seriously Timms? – There really is no need for the sarcasm – we all know the value of education for

- people – men like you – men who have committed offences...and courses like this, focussing on basic skills are...
- CROWTHER A total bloody waste of time xx.
- AKTHAR Look around you – it doesn't take much to ask – to ask what these guys did on the out! An accounts clerk – in for fraud, a teacher – in for having dirty picture of schoolgirls on his phone, a driving instructor – in for theft, a University student in for underage sex with a fifteen-year-old claiming to be nineteen...
- CROWTHER We've got the basic skills...
- JEFFREYS As I say – Joan is covering the lesson – as I have to attend my daughter's graduation ceremony. She is starting work in a Primary School in September having secured an excellent job – she will make a marvellous teacher...a skill which often seems to run in families – I find.  
But putting that aside – for a moment – I believe, and I'm sure that many of you agree with me...
- CROWTHER And tough shit if we don't...
- JEFFREYS (*ignoring the comment*) I believe that education is the key to reforming prisoners' lives – helping them make well-informed choices and bettering themselves...
- POSNER But they were already fine...just living their lives and just living their lives like everyone else – but got caught...
- JEFFREYS I believe that where education may not be the answer for some – then perhaps we might consider re-education.
- DAKIN A play on words there!

- JEFFREYS        Indeed, re-education – as in psychological therapy – special treatment and perhaps for some medication.
- LOCKWOOD      Excuse me – excuse me Miss Jeffreys – sorry to interrupt the flow, your flow and ideas – your ideas – but are you suggesting that some of us, some of the guys here would be better off on a treatment programme...some kind of course to help with our mental health...our mistaken choices...maybe?
- JEFFREYS        Indeed I am – there is a huge amount of research into the benefits...
- LOCKWOOD      Excuse me – again I’m sorry– but the research which was done with sex offenders, like...(*goes to point out individuals but changes his mind*) some people...
- CROWTHER      But not the goat-shagging perverts...
- LOCKWOOD      The researchers working with sex offenders designed a therapy programme what worked and showed excellent results...
- DAKIN            And rehabilitation...
- JEFFREYS        Exactly, exactly my point...
- LOCKWOOD      But the intervention wasn’t what Probation and the Prison Service actually delivered was it? It wasn’t what the prisoners got – instead they got a poor quality course – made-up of punishment and confessions and...
- CROWTHER      And worse...
- AKTHAR         In groups...
- LOCKWOOD      And without the proper counselling – psychiatrists and professional provision...
- CROWTHER      (*aside*) Big fucking words Lockwood.
- LOCKWOOD      (*ignoring the comment*) And when you go back and look at the original research...the work that was properly done – years ago – in Canada or wherever...?



AKTHAR Finland.

POSNER Norway.

LOOKWOOD When you go back and look at the findings – those academics – those experts said: don't do this course on the cheap – don't add extras – don't focus on the negative stuff – and bloody make sure proper trained professionals are delivering the programme – 'cause otherwise you'll fuck things-up!

CROWTHER And by 'fuck things-up' he means make men worse!

TIMMS Make them sex-offenders do it more!

POSNER The warnings were there – in print!

LOCKWOOD So excuse me Miss Jeffreys if I'm not so sure I want to agree with your excellent – well-made point – that intervention programmes and psychological treatment works...because – it only works if you want to do it properly and there are too many men inside...

CROWTHER Far too many men inside

LOCKWOOD ...for that to be possible...

JEFFREYS Well obviously that is only one point-of-view and you men will have to decide what you wish to believe...has anyone here heard of the phrase 'urban myths' ...perhaps you have – maybe an example...

TIMMS You mean like rats in Kentucky Fried chicken Miss?

JEFFREYS Excellent – yes – urban myths – things that never actually happen, but a rumour seems to spread, rather too readily and with little real evidence and then – before you know it – some people, disreputable people, unreliable individuals – on Twitter – are claiming Government treatment programmes, based on proper Scientific Research didn't work...

And who should you believe...?

TIMMS                    You miss!?

JEFFREYS                Yes – but it was a rhetorical point – Timms – thank you for your support, clearly as a well-qualified, successful teacher – tutor – with massive experience and happily married and with children who are going to be equally successful...

TIMMS                    We should believe you...  
A siren or claxon sounds, three short blasts.

JEFFREYS                Time to return to the Wings...

RUDGE                    Let's go!

All prisoners exit.

## SCENE 2

The same prison classroom, a dais and desk as before. An office chair, which wheels is now on stage, centre-rear. It is occupied by the same heavy woman, with her back to the audience. Desks as before – at which sit prisoners – all backlit – all unmoving (to start). Joan Keating alone is standing, front-and-centre, in a spotlight.

KEATING                The play's the thing where in we'll catch the conscience of the king...and when Hamlet says this...

LOCKWOOD              (*from his seat*) Shakespeare Joan?

KEATING                Yes, when Shakespeare wrote this – for Hamlet – for the character to say...well I think that he's trying to tell us that...drama is a good venue to get your audience thinking...

TIMMS                    (*joining her*) To get us thinking too Joan?

KEATING                Yes...and so – well – I'm suggesting that this afternoon we take the essay...the essay that Georgina set you – and we play around with some ideas... we do a bit of...a bit of improvisation you see...

TIMMS So we get to do some drama...in the drama class?

KEATING Sarcasm is the lowest form of wit Timms – ...Now...  
Who might like to start us off...  
(*Lights up!*)

CROWTHER The question was ‘what should happen to people who  
commit crime’ Joan – but this morning we said it’s  
only really about people who get caught...the rich –

TIMMS ...and powerful and...

CROWTHER Those that fucking interrupt...lots of people get  
away with it so really it’s about the people foolish  
enough to get caught.

POSNER What the man in the street thinks Joan...

KEATING Ahem!

POSNER What the man and woman in the street think – the  
general public is that tough sentencing works well...  
tough on crime and tough on everything else – or  
some such shit – and so really what they’d like...  
I think – and it’s only my opinion...but what I think  
is that in a vote – a poll of public opinion – most  
would want to see hanging or...

AKTHAR Something like an execution – for serious stuff –  
for lots of stuff...

DAKIN ...for things they don’t agree with

CROWTHER ...like sodomy with boys and stuff with goats-n-  
sheep

DAKIN ...like middle-class arrogance and complacency and  
privilege more like!

KEATING Now...now gentlemen...let’s focus on what I thought  
we could do...

DAKIN But if we focus on what you thought we could do  
Joan – with all due respect – what we end-up doing  
is something that you think we should do and not  
something that we want to do...

- AKTHAR           Something that we want to discuss...
- CROWTHER       I reckon we should have a criminal (*he takes a black hessian sack and places it over JEFFREY'S head*)– here – I've found someone – anyone – anonymous for the time being...but we all understand – and here she sits...arrogant, opinionated, hateful...(*He moves the office chair centre stage*)
- AKTHAR           Hurtful, spiteful and mean –
- DAKIN            Totally unaware of her own privilege, her good fortune and the fact that things sometimes can, and do go wrong...now what should we call her – what would you like to call her?
- POSNER           Penelope...Penelope Privilege
- CROWTHER       Ladies and Gentlemen – here before you today sits Penelope Privilege – she argued against restorative justice...she argued against lighter sentences... she argued against rehabilitation and reducing the number of men sent to prison...we have heard the witnesses...Lockwood, Posner and Akthar and now your honour (*gestures to LOCKWOOD*) with your permission
- LOCKWOOD       (*moves his chair to dais as 'judge'*) Granted...
- CROWTHER       ...thank you Sir...with your permission I'd like to call a final expert witness – an eminent psychotherapist, published psychiatrist to inform the jury as to the chances of Penelope changing her view...what Sir are the chances of Ms. Privilege – here before you today – becoming better informed, adapting and learning that current approaches have limited effect...
- LOCKWOOD       Mr. Crowther – perhaps allow your witness to speak.
- CROWTHER       (*deferential*) Your honour...

- DAKIN As a psycho-analyst I have studied many cases such as the one presented here of Penelope Privilege. Her attitude reflects the times in which she was raised... but this is no longer an excuse – people do change and accept that...what we call norms, values and expectations change. Unfortunately some people simply never come to accept that – they remain in a fixed mind-set and that I suppose is her crime...  
*(Whilst he speaks Crowther takes a leather wrist-cuff and locks JEFFREY'S wrists to the handles of her seat)*
- POSNER/AKTHAR Hear! Hear!
- LOCKWOOD Order – order in court...continue...
- DAKIN ...unable to accept alternative approaches and different points-of-view the accused will, I'm afraid to report, based on all my research and previous evidence will become...if I may venture to be so bold – a burden – a burden on society – forever expressing her hostile opinions, spreading her toxic opinions – persuading others to do the same and failing...failing to see the evidence that things may need to change...  
*(Whilst he speaks Crowther takes a leather ankle-cuff and locks JEFFREY'S ankles to the legs of her seat/together)*
- CROWTHER ...by change you mean improve!
- KEATING *(anxious)* Oh my – oh...this is – this is taking a turn – gentlemen perhaps, perhaps if I might stop you... persuade you perhaps...
- LOCKWOOD Silence...order in Court! You – yes you – if you cannot respect the authority of this courtroom I will order you to be removed forthwith – now take your seat Sir...Madam...
- POSNER We cannot allow you Joan – we cannot allow you to try to control what we wish to say...now please

- please show us some respect and let the lads play this out...
- CROWTHER Your testimony – Mr Dakin whilst short and sweet seems to confirm the suspicions I know this jury already have...and – just as a final request Mr Dakin given that there is no hope – no hope at all...for this person – Penelope Privilege – perhaps the outcome you would advocate...(*Crowther takes a leather collar and puts this around JEFFREY'S neck*)
- DAKIN Execution! The simple solution...She is incapable of ever understanding that her own position could be wrong – could be changed – could be better – she will forever hold her views and as such she no longer plays a valid role in our Society...
- LOCKWOOD If the foreman of the jury would like to stand... (*TIMMS stands*) You Sir have heard the evidence here today – you have heard how Penelope Privilege retained unacceptable, old-fashioned, out-dated and out-moded views regarding the Justice System and worse – far worse – how she will never change... and so now we must hear your verdict...
- KEATING What about her defence?
- AKTHAR Defence! Defence? What fool asks questions like that...?
- POSNER There is no defence – just excuses...
- CROWTHER Excuses for her crimes...her childhood – her upbringing – her social status – her employment – her mental well-being...all just excuses...(*whilst speaking he is attaching an electric cable to the office chair*)
- LOCKWOOD And so to your verdict Sir...
- TIMMS Oh – we find her guilty your Honour – Guilty as charged!

LOCKWOOD    And so Penelope Privilege – you have been found guilty of crimes against reason – and it has been shown without any doubt that you are unable to adapt, to adopt a more open-minded position, your reluctance to chance means I have but one option open to me in determining your sentence today...

AKTHAR        (*excited*) Wire-up the chair...plug her in!

TIMMS         (*very excited*) Plug her in and turn up the voltage...

CROWTHER    (*angry and excited*) We want to see that bitch fry!

RUDGE         And let that be a deterrent – a deterrent to you all!

Blackout

## *KILLING THE MORNING*

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*David Kendall*

In this essay David Kendall talks about the value of writing in prisons: developing skills, for enabling prisoners to reconnect with family and for supporting rehabilitation and resettlement.

The first words you read in prison are unlikely to be poetry. They will be instructions, warnings and information someone else has decided you will need.

Working with young people in schools it can be hard to engage them in the written word if they can't see the results of what that extra effort would bring. It might bring more GCSEs, which might give a better job, but if it feels as if those jobs belong to another, imagined, world it is abstract and meaningless.

Within prison it's the same times ten. Your contact with the written word will generally be for official purposes and you will be expected to respond in ways that may, or may not, make sense to you. The education block is often separate from the rest of the prison. Here you might see art created by other prisoners, motivational posters and basic literacy classes. There could be a creative writing class, or a reading group in the library, and a tiny minority of the prison population will collect in these spaces.

'I've got two mattresses now and my sleep has much improved.'  
I wrote that in my letter to the wife. I tell her only the good things. I tell her my cleaning job gets me out and about. Gives me more canteen money. I tell her that Joe has made air



conditioning from a fan and a wet towel. She's not to worry about me in this heat wave. All positive. I don't tell her that in each hour between the clock striking I've gone out of my life a thousand times, changed it, and none of those changes land me back here – where a torch is shone in my face, where the distressed and the pissed-off kick at the doors. (HMP Bristol)

I've taught many writing workshops. They are generally small, often intense. You can hear and share many things within such a workshop. They can end with students asking for a reading list or like once, when a man solemnly shook my hand and thanked me for 'killing the morning'. Writing allows you to put a claim on your experience and makes you own that time.

In the ideal prison you would be given a choice of books on arrival, non-fiction, history, thriller, or whatever. A book to get your head straight. This is not just about giving a book; it is giving reading a higher profile within the prison from the start.<sup>1</sup>

The prison library is an oasis for many – if you can reach it. DVDs are often more popular than book lending but the two things are not mutually exclusive. There is an awful lot of time to kill in prison, and few tools to achieve that. Could you read your way though your sentence? Sure, a few months, but year after year? One lifer told me, on the way to the library, he'd almost given up on books. He'd read so many and what more could they give him? This from a habitual reader. Most people coming into prison will not be habitual readers, not because of the often-quoted literacy deficit amongst prisoners, but because most people in the country are not habitual readers. Indeed the average person in the UK reads four books per year. If we want to engage people in the written word then we have to accept that for most of us that would be a big leap.

Lets look at the prison gym for a comparison. Clearly we want people to be fit, healthy and also visibly strong. The gym is incredibly popular in every prison I visit. People organise their time around it and staff

ensure it remains available. Gym always seems least likely to be cancelled. Perhaps we need to think why gym is so popular when we think about making the written word relevant. The gym is seen as valuable. Even to those who had never bothered on the outside. Staff also see it as useful and will use it during their lunch breaks.

There are other ways in which gym becomes important in prison life.

Gym also:

- Takes you inward/away from prison.
- Gives you attainable goals and rewards.
- Allows socialisation across boundaries and social groups.

To ensure writing is seen as important in a similar way, not just for the few, it needs to be relevant, excellent and inclusive.

Scottish prisons have found success in embedding literacy and numeracy skills into a range of exciting projects, whether the centenary of the First World War, or planning a Mars Space Station. By partnering with outside universities the work is given a distinction beyond the usual college certificates.<sup>2</sup>

Writing needs that sense of importance and relevance. The work of the men should be on display in the visitors centre for families to see. This can be semi permanent, but it could also be projected onto a blank wall. Writing here can reflect a person's change, or a sense of narrative voice. One student I worked with was keen to develop his writing skills because:

I want to show that judge, the one who said I was this horrible person, I'm not like that. I know it's mad. He'll never see it but that's what makes me write. I want to show I'm not that person he described.

Another student when writing a letter to his younger self just looked on in amazement at what was now pouring through his pen. He'd never given himself time to reflect before.

With writing a student can take control of their own narrative. Decide how they want to project themselves out at the world. Increasing their skills in rap, poetry, fiction and non-fiction is going to help them create a better sense of who they are for others.

Facing likely self-employment on release they are going to need writing to find work. They are going to have to create a self that people will employ and, by writing down that version of themselves, they will strengthen their sense of that self.

About the prison there are so many uses for writing: recipes in the catering workshops, nature writing in the gardens. If there was a print shop in the prison then all of this writing could be brought into different publications. Seeing work go into print is a good motivator and editing, and other production skills relevant to outside work, could be learnt.

One of the strongest motivators for prisoners is maintaining contact with their families, particularly their children. This is the 'golden thread' to 'rehabilitation' often talked about but rarely central to a prison's working. Projects that enable prisoners to create something relevant and meaningful for their families are very popular. An example is a project at HMP Wormwood Scrubs. Making it Up enables the men to create a storybook for their families. They are supported, given a special blank book with cutouts, which they decide how to incorporate into their story. Why I think it works is that it is the prisoner that makes the story relevant to their family, it is meaningful – not only because of the story tailored to each family but because of the time and effort taken. Generally the prisoners are not experienced in either drawing or writing but will put in the time and effort for their families. As it's for their families they will check spellings and improve their

writing because that improves the gift to their family. The work put in is validated, not by teachers, but by those held most dear.

Yes it was the most lovely story. Yes! Shocked at how he had obviously taken time to think about what \*\*\*\*\* would like to read. (Family member on visit)

Everyone in the workshop creates a book, facilitators included. As facilitator you might think it's more important to be offering help to the participants, but you can do this and also get on with your own book. This acts as a leveller in a group where there will be mixed abilities and encourages a supportive atmosphere. It also means you are in the same thought-space as the rest of the group. If you're finding the room stifling, and concentration hard, so are they.

Events such as a 'literature' festival such as Pinned Up offers the chance to reach deeper into the prison. The committee is made up of staff and prisoners, and prisoners write letters to the speakers they wish to have as part of the programme.<sup>3</sup> There is much competition to see who can entice the best speakers with their letter-writing skills. Festival events can engage a much wider audience with books. Pinned Up gets 30–40% of prisoners to one or more of its events. There is a need to get the numbers. Only when a sizable number of prisoners are engaged in writing projects will people be able to take their work back to their cells with pride. Rather than saying 'I'll leave it with you. It's madness up there'. In the ideal prison there would be projects running where you could engage in writing without necessarily committing to 'being a writer'.

An exhibition<sup>4</sup> where prisoners' tattoos were combined with their thoughts on memory and identity gained a lot of interest from those who would not normally attend a writing workshop. The fact that the exhibition only needed short pieces of writing allowed them to hone their words and spend time on meaning rather than trying to fill the page.

I was an angry man and I blamed my god  
For deaths and all misfortune. But it wasn't Him  
But my perception within, of why these awful things happen  
I prayed in church, for all I was worth and then I  
Recognised god – he's the one that never listens

(HMP ERLESTOKE)

The fact that the exhibition was at Salisbury Cathedral gave the contributors pride, that friends and family could see their work.

This essay shows the value of engaging prisoners in writing and the impact it can have on their families. To truly give writing a chance in the prison environment, it can't be occasional projects, or a once a year festival. It needs to be visible, relevant and loaded with the potential for change. You will be able to see it marked by the queue, the sense of purpose. Just like the gym.

# **MAKING IT OUT OF PRISON – DESIGNING FOR CHANGE THROUGH ‘MAKING’**

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*Lorraine Gamman and Adam Thorpe*

‘Making it’, succeeding after leaving prison, could have a relationship to actually ‘making’ in prison. Numerous studies show that art and design education and some types of prison industries training contribute positively to desistance – ‘the process by which someone who was committing crime ceases to offend’ (Shapland et al., 2016; see also Bilby et al., 2013; Caulfield, 2018; Gamman and Thorpe, 2018). Making things, is central to human activity and can help build useful skills and resilience in all people. In rehabilitation it can aid a move towards developing non-criminal identities and crime-free lives (Sennett, 2008). Given that the UK put more people in prison than any other European country (Council of Europe, 2015) and the dire state of the criminal justice system (Howard League, 2017), there is an urgent need for change. In our view, now is the time to deliver a pedagogic shift to facilitate more ‘learning through doing’ within the criminal justice system, as well as outside of it. Especially as it is reported (Utely, 2019) that, at the time of writing the Secretary of State for Justice is quietly spearheading a radical shake-up of the broken prison system, suggesting government receptivity to prototyping and testing innovation.

‘Making’ and ‘hands-on’ approaches to education appear to offer a bridge to learning for those who are failed by our school education system. As Ken Robinson (2010) has pointed out schools can kill creativity. Those excluded from school may go on to explore the dark side of creativity and are at increased risk of embracing criminality (see also Cropley et al., 2010; Gamman and Thorpe 2010).

Many critics such as Richard Sennett (2008), Matthew Crawford (2010), Mark Frauenfelder (2010) David Gauntlett (2011), Tim Ingold (2013) Peter Korn (2013), and the UK's National Criminal Justice Arts Alliance, argue that engagement with different types of art and *making* involves learning new skills, and positive processes of self-actualisation and identity formation. There is a long history of evidence supporting this. Notable contributions include evaluations commissioned by the National Criminal Justice Arts Alliance (NCJAA), producing many case studies linking arts and crafts to the development of skills and attributes important to achieving a better life outside prison; a process of behavioural change explained by the 'desistance paradigm' (Maruna and LaBel, 2010).

Review of any human-made environment quickly establishes that making things and habitats has always been part of human existence and human thinking. As Richard Sennett's book *The Craftsman* (2008, p.8) makes clear, the work of the hand has informed not just the shape of human society but the shape of the human mind, people learn about themselves through the things they make. Sennett's arguments about 'making' are compelling. He emphasises the importance of connecting heart, head and hands. He notes that making is accessible to virtually *all* and that nearly anyone can become a good craftsman. More important is his assertion that learning to work well enables people to go on to govern themselves and to become good citizens. Here, Sennett promotes the Enlightenment assumption that craft abilities are innate and widely distributed. When rightly stimulated and trained, they allow everyone to become makers, leading to the emergence of makers and craftsmen as knowledgeable, respected, public persons.

Ultimately the process is about more than generating objects because it introduces connections, learning and understandings about civic life that provides significant additional learning to those engaging in making. For example, making may help prisoners develop new transferable skills and habits can evolve into sustaining habits (Sennett, 2008). He suggests these habits establish a rhythm between problem

solving and problem finding and perhaps can support all individuals in dealing with the challenges that life brings.

Access to ‘making’ workshops in prison already offers a significant and embodied form of holistic and creative rehabilitation, particularly for men less likely than women to seek out therapy. Those who learn new skills, do relatively well in prison and are more likely to develop redemptive and restorative narratives that have transformative consequences on their future actions (Presser and Sandberg, 2016; Gavrielides, 2015). Such effects are important because personal transition relies on individuals wanting to change and identifying with that aim. To continue along pathways of embodied transformation people need practical assistance to continue making when released. This assistance is not often forthcoming, but it could be. Developed at scale, making could offer alternatives to prison and early release from prison. With appropriate safeguards and support (e.g. ‘on tag’) ‘returning citizens’ could attend maker spaces or pursue art and design diploma courses to continue their learning. In the community this would enable people to make connections, relational and operational, that central to reintegration and resettlement. Such new opportunities are likely to be more positively effective and significantly cheaper, than imprisonment.

If there was political appetite to pilot such an experiment, these programmes and platforms could be set up by diverse institutions including universities in partnership with the probation services and local authorities who could offer ‘makerspaces’ aimed at helping prisoners gain both vocational and life skills outside prison. This kind of innovative learning would prepare for work in the creative industries and build adaptability and resilience for a constantly changing employment landscape. Unsettled geographic and cultural contexts, as well as the future impact on work of Artificial Intelligence (West, 2018) will compound current challenges around employment and doubtless create new challenges for everyone, not just returning citizens. Current predictions estimate that 59% of businesses could be automated in



the next five years (Redwood Software and Sapio, 2017). Frey and Osborne (2013) suggest that 47% of jobs are at risk of automation. Future employment scenarios, in general, do little to reassure against current concerns about precarious employment prospects including the growth in zero hours contracts disproportionately affecting the most vulnerable. All this underpins the importance of delivering diverse and resilient skills.

Making things might seem an unlikely place to begin to re-educate those in prison or to offer those in danger of entering the criminal justice system an alternative path. But, in our view, it could provide much needed opportunities, especially for young people. A recent Unison study (2016) found that an estimated £387m has been cut from youth services by local authorities from 2010 to 2016, with the average council in London having its youth services budget cut by nearly £1m per year, an average of 3%. This contrasts alarmingly with the marked rise in gang and knife crime in the UK, in the same period. Perhaps it is no surprise that the difference between young people's career aspirations and the reality of their experience is greater today than ever before (ONS, 2018) – and not in a good way. Action is needed.

What might these spaces for change-making and 'making for change' look like? Who would be involved? How might they be resourced? And what is the role of art and design and higher education? It starts with a new vision of platforms and programmes for life-long education.

*Imagine a creative co-working space, inspired by community centres, fab labs, maker spaces and arts centres.*

*Imagine a shared space where people who live and work nearby – including community groups, staff and students from nearby universities, arts organisations, local government support services, businesses, schools, youth groups, seniors, and ex-offenders – can come together to build relationships and partnerships.*

*Imagine a place where participants can develop knowledge and skills, share perspectives on personal, local and global concerns and collaborate to address them.*

*Imagine a place that has the tools and resources needed to support personal fulfilment and development, leading ultimately to the emergence of community resilience and social cohesion through creative collaboration.*

Such spaces could be delivered by multi-stakeholder coalitions, universities working in partnership with government, business and civil society to deliver quadruple helix innovation.<sup>1</sup> These creative partnerships and collaborations are essential for addressing *together* the complex challenges we face as a society. Our vision of these new spaces *for learning together by doing together*, and the collaborative activities they host, will afford both ‘bonding’ and ‘bridging’ (Gittel and Vidal, 1998) for participants. Bonding refers to the way individuals can build social capital *within* groups. Bridging describes the formation of social capital *between* groups, of differing characteristics. Putnam (2000) suggests bonding is good for getting by whilst bridging is good for getting ahead. Here, spaces for change can benefit and build the resilience of individuals and communities.

Sustainability of maker spaces is ultimately derived from the synergies they offer in realising different agendas of all the actors involved and available resources. *Universities* benefit from the co-creation and delivery of new pedagogic products and pathways, experiential learning opportunities for students and research opportunities for staff. *Businesses* benefit from opportunities for open innovation and future skills development amongst potential employees. *Communities* benefit from social cohesion and well-being.

Further improvements are possible. Bringing support services into maker spaces could also help to optimise local government efficiency and effectiveness. A ‘one stop shop’ agenda linked to service delivery

could increase access to health and social services avoiding the need for visiting multiple sites and appointments. People leaving prison often cite their difficulty in finding help with housing or benefits as a reason for recidivism. 'Going straight' is abandoned because it feels impossible to achieve.

Progress towards this vision is real. At the British Library, a community hub for creative collaboration and social innovation is being explored by the Public Collaboration Lab and CSM Public in partnership with community leaders Somers Town Community Association, Global Generation, Camden Council and developers Stanhope. Innovators at London College of Fashion, are delivering the Better Lives programme at Poplarworks and across East London. Both initiatives offer opportunities for participation in creative action learning exchange focused on finding new ways to increase life chances for individuals and reduce crime.

## *AN ALARM FOR EVERY OCCASION*

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*Sean Bw Parker*

In Princetown we luxuriate  
With an alarm for every occasion  
Right now there is an unblinking tone,  
A persistent and insistent ring  
Hinting at offender terminated

By his desert or own hand  
Unlike the harsh, boomeranging squawk  
Around the guards' belts  
One press of distress and fifteen guards  
From neighbouring spurs descend  
Like Bonanza in officers' stripes

Some days there is a mournful wail  
Like a peacock on repeat  
Unsourced and flailing  
It pings banshee-like around the hall  
Could be fire, could be attention

Grabbed by needy misfits  
Unrelenting in joggers  
Hitting their one button, or  
Kicking their door in impotent rage  
Railing against their state-imposed cage  
Communicating concocted panic  
Gradually, understandably, ignored.

# *SECTION 4*

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## *ALTERNATIVES TO PRISON*



# ***DIVERTING CHILDREN FROM THE CRIMINAL JUSTICE SYSTEM***

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*Carmen Robin-D’Cruz*

## **Introduction**

Children get into trouble with the law for a whole range of reasons. Most are simply doing what comes naturally to people at their age — pushing boundaries, making choices without thinking through the consequences, acting up among their peers. Unfortunately, the consequences of being caught, arrested and convicted can be serious, affecting future education and employment opportunities. Moreover, evidence shows that the formal criminal justice system processing of children can have an unwelcome ‘backfire’ effect – making them more, not less, likely to reoffend. Instead, the evidence shows that point-of-arrest youth diversion is a better way of addressing low-level criminal behaviour, reducing reoffending, lowering costs and generating better outcomes for children.

Most commonly led by Youth Offending Teams (YOTs) – local-authority coordinated partnerships made up of representatives from social services, health, education, probation and police – youth diversion schemes operate for under-18s in a variety of models across England and Wales. Eligible children are assessed following an arrest and matched with voluntary interventions designed to reduce reoffending. Where children suitably engage with this programming, their original case is discontinued and they can emerge without a formal criminal disposal. With its compelling evidence base, strong financial case, and years of successful operation in some areas, youth diversion is a vital tool in responding to children who commit criminal offences.

### **The backfire effect of formal processing**

Many years of large-scale criminological research have determined that there are clear patterns of offending tied to levels of maturity (Hirschi and Gottfredson, 1983; Moffitt, 1993; Bottoms, 2006). This body of research has observed that, across a wide range of jurisdictions, offending behaviour (both detected and self-reported) peaks in the mid-teens before dropping steeply at the onset of young adulthood, then declining more slowly. This phenomenon is known in the research literature as the age-crime curve. While a small number of children's offending will continue long into their adulthood, the vast majority are essentially law-abiding children who are temporarily drawn into adolescent delinquency and who quickly grow out of this phase as developmental maturity proceeds and self-control improves.

In other words, children tend to grow out of crime. However, evidence shows that formal criminal justice system processing can arrest this process, leading to more crime. An international meta-analysis, based on a major systematic review of 29 outcomes studies, involving more than 7,300 children over 35 years, represents the most comprehensive analysis to date of the impact of formal justice system processing. This study concluded that formal processing 'appears to not have a crime control effect, and across all measures, appears to increase delinquency. This was true across measures of prevalence, incidence, severity, and self-report'. It highlighted that, 'rather than providing a public safety benefit, processing a juvenile through the system appears to have a negative or backfire effect' (Petrosino, Turpin-Petrosino and Guckenberger, 2010).

Turning to the British evidence base, The Edinburgh Study of Youth Transitions and Crime, an ongoing research programme involving more than 4,000 children in Scotland, found that children brought to a court hearing are nearly twice as likely to admit engaging in serious offending in the following year as children (with matched backgrounds and comparable prior self-reported offending behaviour) who did not face a court hearing (McAra and McVie, 2007). This is complemented by a



research study of youth offending in Northamptonshire which found that prosecution increased the likelihood of reoffending, even when controlling for personal and offence characteristics (Kemp et al., 2002).

### **The evidence for youth diversion**

The evidence base consistently demonstrates that when similar groups of children – comparable in demographics, offences and offending histories – are matched and one group is formally processed while the other is diverted, the diversion groups do better. A 2018 systematic review of youth diversion schemes – covering 19 high-quality evaluations from the USA, Canada, Australia and the UK – pointed to a 6% lower reoffending rate for diverted children compared with those processed in the standard way (Wilson et al., 2018). This finding is mirrored in the UK evidence base. The Edinburgh study states that the best approach to reducing reoffending by children is a policy of ‘maximum diversion’ – an approach featuring the minimum possible formal intervention coupled with diversion to programming outside the justice system (McAra and McVie, 2010). One of the four key ‘facts’ about youth crime, which emerged from the study, is that ‘diversionary strategies facilitate the desistance process’ (McAra and McVie, 2013).

In England and Wales, available evidence suggests positive reoffending outcomes associated with youth diversion. The Youth Restorative Intervention, a diversion scheme operating in Surrey, was found to produce lower reoffending than a historical control group (Mackie et al., 2014). A Welsh diversion programme, Bureau, also reported lower re-arrest and reconviction rates for children receiving a non-criminalising disposal rather than a formal disposal (Haines et al., 2013).

Youth diversion works because it avoids children feeling labelled as ‘criminals’ by the justice system (Schur, 1973) and because it seeks to minimise and, in many cases, eliminate children’s contact with negative peer pressure. If not avoided, these contacts may imprint impressionable children with new negative attitudes and behaviours, and may increase the risk of continued offending (Wilson and Hoge,

2013). Additionally, youth diversion avoids the collateral consequences of formal processing, such as interference with education, training and employment (including school exclusion and future labour market consequences of carrying a criminal record). These collateral consequences can impede rehabilitation well beyond the end of the direct punishment imposed.

### **The cost effectiveness of youth diversion**

Fortunately, as well as delivering better outcomes for children, youth diversion is also more cost effective than standard system processing. There are at least three ways in which schemes can produce economic benefits. First, through ‘immediate’ cost avoidance. By averting formal justice system contact – whether it be an out of court disposal or a court case – youth diversion avoids the costs associated with formal processing. Through acceleration of the time frame in which police can pass low level cases to youth diversion schemes and re-focus on dealing with more serious work, diversion offers efficiency benefits. Furthermore, diverting low-level offenders frees up capacity to effectively deal with the more persistent, serious young offenders through formal channels. Schemes we at the Centre for Justice Innovation have worked with estimate that their operation has reduced the burden on the police by 15–35% for diverted cases.

Second, through reducing reoffending as compared to standard processing. Youth diversion has been shown to produce better long-term outcomes, including comparative reductions in recidivism. The aforementioned international meta-analysis concluded that ‘the crime reduction benefit associated with the diversion programme would likely persuade any cost-benefit analysis to favour the implementation of diversion programmes’ (Petrosino et al., 2010).

Third, through facilitating earlier access to support for health, mental health, or other social service needs. Many youth diversion schemes include an assessment which may lead to earlier referrals to services to address unmet needs, including physical, emotional, and mental

health needs known to be both over-represented and under-addressed in youth justice-involved children. Addressing these emergent needs earlier, before they develop further, is preferable and cost-effective.

## Good practice in youth diversion

In *Valuing youth diversion: a toolkit for practitioners*, we at the Centre for Justice Innovation highlight effective practice principles – covering eligibility criteria right through to outcomes and monitoring – which reflect our interpretation of what research and good practice suggest good youth diversion looks like (Centre for Justice Innovation, 2016). These are based on three core principles:

1. **Minimise labelling** – youth diversion schemes should take all reasonable steps to avoid stigmatising the children they work with, and to prevent them from forming deviant or delinquent identities that may interfere with their development (for example, in education).
2. **Avoid net-widening** – youth diversion schemes should ensure that they operate as an alternative to the formal justice system, rather than as a supplement to it. Diversion should only be for children who would otherwise be dealt with formally in the criminal justice system.
3. **Do not overdose children** – youth diversion schemes should offer therapeutic and targeted programming. For most diverted children, this will generally be a light touch and informal.

We have come across excellent practice in our work with schemes, including a process flowchart for police to facilitate quick and appropriate referrals; and quarterly ‘score cards’ with a breakdown of the relevant data and a case study to help maintain partner buy-in. Our mapping of youth diversion in England and Wales highlighted some great practice too (Centre for Justice Innovation, 2019). For example, we were pleased to see in-house expertise informing tailored interventions for children and a focus on ensuring victim satisfaction

through restitution and restorative justice. Despite not being a statutory function, and therefore precariously funded, we found that the vast majority of YOTs offer point-of-arrest youth diversion, recognising it as key in fulfilling the principal aim of the youth justice system: to prevent offending.

As an initiative of the Center for Court Innovation, a not-for-profit organisation in New York that has been at the vanguard of justice reform in the USA since 1995, we also look to good practice from further afield. Project Reset, a diversion scheme offering a constructive approach to minor crime that is proportionate, effective and restorative is a good example of this.<sup>1</sup> It gives people the opportunity to avoid court and a criminal record by engaging in community-based programming. Starting as a pilot for 16- and 17-year olds, Project Reset's strong outcomes have since seen it rolled out to serve people of all ages. A recent evaluation indicates positive scheme impacts overall, including reduced reoffending, better case outcomes, and positive perceptions among the children taking part. The children had fewer new arrests and spent longer periods without experiencing a new arrest (Dalve and Cadoff, 2019).

## **Conclusion**

Children come into contact with the justice system every day, often for unwise but relatively minor behaviour. A large body of research suggests that for most children, minor offending behaviour should not be met with prolonged and deepening justice system involvement. This is where youth diversion comes in. Backed by a compelling evidence base, a strong financial case, and years of successful operation in some areas, it represents an effective alternative to formal criminal justice processing for low-level offending by children and young people. It reduces reoffending, lowers costs and generates better outcomes for children. Youth diversion is vital in responding to children who commit criminal offences in a way that fulfils the principal aim of the youth justice system, to prevent offending. The pressing task remains to ensure it is funded and invested in accordingly.

## **WHAT? DO YOU MEAN NO PRISONS?**

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*Charlotte Weinberg and Deborah H. Drake*

Abolition is a complex notion related to much more than prison and criminal justice (Drake and Scott, 2018). It's a set of networked ideas that require the acceptance of the notion that criminality (as we know it) is more than an individual act; it is a collective responsibility. Locating the disturbance represented by a crime in an individual may be instantly gratifying and allows a sense of 'justice' or vengeance or retribution to be enacted on a victim's behalf. But, if we are able to think about acts of harm in a wider context, putting individuals in prison becomes less significant as the responsibility for crime must be taken by more than one person. We are all implicated in the state of our nations and we are all involved in the social and cultural norms we promote and accept. Who do we judge, for what, why and how? How do we interact with people we disagree with and how do we use punishment in our own lives? Although overwhelming structural change will be required to bring down monolithic institutions, small, internal shifts can contribute massively to imagining a new way of life.

We begin with an illustrative example:

A young woman (let's call her Sandra) is charged with committing a violent act upon a stranger. Sandra has been drinking since 4 p.m. when she left her grandma's funeral. She was brought up by her grandma, gave up college to look after her and cared for her until she died. Now, Sandra has learned she may have to leave the house she has lived in for 20 years because the council have said it is too big for her as

a single person. Sandra is concerned she may not qualify for a one bedroom flat as she is a single, unemployed person, not in education or training.

...

The morning after her arrest, Sandra is bailed to report to court in six weeks' time. Having a pending criminal charge for a violent offence will affect Sandra's employment opportunities and her chances of returning to college. She may be sentenced to custody as the injuries to the man she hurt are serious. Sandra is told he may lose the sight in one eye and she is devastated. She had no intention of causing harm. She is distraught about her unexplained and uncharacteristic violent outburst...

EDITED EXCERPT FROM WEINBERG, 2014: 13, REPRINTED WITH PERMISSION.

The criminal justice system grinds into action when seemingly private troubles of individuals suddenly become public problems. In the case of someone like Sandra, however, it is evident in her story that her so-called 'private' troubles are inextricably intertwined with public problems – those of housing, family relationships, caring responsibilities, education, training and employment, support for independent living and secure income, for example. Criminal justice systems are the means by which the rule of law is upheld, interpreted and applied (Drake, 2018). In the operation of this process, there is, inevitably, an artificially defined and restricted narration of the situation(s) that led to the 'troubles'. The stories that are told in police interviews and court rooms are necessarily partial, partisan and often inequitably extracted and presented – both from the perspective of the accused and the aggrieved. The criminal justice system seeks to determine responsibility and intent, to allocate blame and to prescribe and deliver punishment. Such goals only allow the story of the problem to be told in particular ways. They also close down the possibility of developing a wider understanding of how a problem emerged and what needs to happen for the individuals concerned in the light of what has transpired (Menkel-Meadow, 1996), as is so richly evident in Sandra's story above.

### **Making it up ... Imagining alternative approaches and responses some guiding principles to re-framing cultural ideas of crime**

There is a wealth of evidence that criminal justice systems focus disproportionately on certain segments of the population. Reiman and Leighton (2017), exposes the ways in which the criminal justice system actively works against the rights of marginalised populations and preserves the rights and privileges of the majority. Though the book is now in its 11th edition the problems of Western criminal justice systems remain unchanged; but it is not within the criminal justice system that racism, sexism, endemic levels of poverty and other indicators of social disadvantage suddenly emerge. The criminal justice system is a reflection of broader social inequalities and prejudices. Changing this reflection is a monumental challenge. Some of the guiding principles needed to facilitate such change include (but are not limited to):

- An increased emphasis on systems and structures that encourage greater social justice (or a more equal distribution of social burdens and benefits). How could Sandra's experience and circumstances have been considered by a system aiming to care for citizens rather than punish them?
- Protections of individual freedom, so long as they do not result in harms or limits on the freedom of other social members. Could Sandra's situation have been prevented earlier?
- Systems of protection that seek only to preserve safety and not inflict further or new harms. Could Sandra and her victim have been engaged in community-led, restorative processes that might have enabled them both to heal from the incident?
- A more open way of exploring and seeking to understand harms caused, that takes into account a wider range of factors than just individual actions. Is it possible that legislation and policy could aim to enhance opportunities for care, compassion and accountability?

## **Lessons from psychodynamic and systems theory that shed light on the shadows cast by criminal justice approaches**

‘Are people invariably ... guided by reason rather than ... by passion or impulse?’ Amartya Sen raises this question as part of his investigation into ‘ideas of justice’ (2010: 178). Sen is considering the issue in terms of economic policy, in this instance, but his question can be equally well applied to the title of this book. Do people commit crime simply because they deem it to be the best action, or are they impulsively, uncontrollably swept into action? Alternatively, are neither of these descriptions fair or sufficient to describe the complexity of human or ‘criminal’ behaviours (or indeed the construction of what is deemed criminal)?

In his genre-breaking article on prison life, Jason Smith (2019) opens up a broader way of thinking about individual action by shifting the narrative away from the well-known prison parlance of ‘family ties’ to the broader image of ‘family trees’. Smith’s shift of perspective away from the prison narrative that gives lip-service to family ties yet consistently ignores their importance and meaning in structuring the lives of individuals, links to the internationally renowned work of Papadopoulos (2002, 2015) with refugees. Papadopoulos has developed a range of terms, methods and approaches for working with people who have experienced extreme trauma and personal and structural violence (Papadopoulos, 2015; Papadopoulos and Gionakis, 2018). He draws together the work of Bowlby and the ‘secure base’ (2005), Bion (2014) and the importance of understanding one’s place in the world and a range of other psychological theorists who have all located ‘home’ as a pivotal space for personal and human development. Situating the individual within a wider network of processes and functions that includes home, family and the wider social matrix within which we all operate, illuminates the fact that the criminal justice system focuses only on a tiny fraction of a person’s life.

Smith’s (2019) idea of a family tree generates imagery of roots, branches, trunk, bark, leaves, and fruit to remind the reader that it is



an entire ecosystem that generates an identity. When lost or separated from the 'tree' (however that is defined for an individual), people may well experience what Papadopoulos calls 'nostalgic disorientation' (2002: 18). Such ideas remind us that each time there is a conflict between human beings, multiple factors have come into play that have converged into a single moment. The criminal justice system seeks only to understand 'the moment', but the influences that led up to it can be myriad and are often entirely left out.

### **The slow but sure path towards a new, imagined future for preventing and responding to 'crime', transgression and social problems.**

In the complex environment of the criminal justice system, it is important to remember the depth of entrenched understanding of existing processes of 'law and order' and the vast range of organisations, sectors, industries and groups involved. There are arguments that range between 'reform' and 'abolition', all worthy of thoughtful consideration. Working within and between the spaces of prison, community, individual and collective in therapeutic ways can be a step towards structural change for people and institutions.

Weinberg and Nwosu (2018) show how Safe Ground have taken the work of Papadopoulos and operationalised it in the prison context. Developing the idea of 'domestic dislocation' (p. 40) and working within the 'liminality of the space in which dislocated people often reside' (p. 41). Weinberg and Nwosu (2018) have argued that the giving and receiving of care are political acts (p. 42) as is the perpetration, experience and punishment of criminal and violent events. Safe Ground programmes aim to respond to what Ruth Gilmore describes as the 'state violence' of prison, by generating meaningful, anti-violent spaces inside the prison walls (Gilmore, 2019; see also Kushner, 2019). Their work within prisons focuses on the individual and collective capacity for change at structural and personal levels, through the experience of caring relationships, the politics of Rogers' (1957) 'unconditional

regard' and the process of commitment and integrity in action. In terms of structural impact, their work engages with Officers at all levels to consider their own roles and practices – the ways in which authority and punishment pervade and influence their personal lives as well as their professional safety or security.

Jason Smith is a Safe Ground alumnus. His creative and poignant words show a flavour of the transformative potential that can lie dormant for years behind prison walls. He poetically argues:

If an institution can be ascribed to a parent child relationship, how do we describe effects of actions or inactions to address underlying issues of children in their care who have previously spoken through negative behaviours, and just what are the responsibilities of a parent to both the child and society?

If it takes a village to raise a child then by extension in the topology of a world community what are the responsibilities of all other parents/institutions to underprivileged, traumatised and disadvantaged parts of its body?

SMITH, 2019: 18

Safe Ground's work with Jason is not responsible for creating in him such evident capacity to think transformatively. However, it did provide him with one positive outlet through which to unleash this potential. It begins from the premise that that no two people are the same, no set of circumstances are the same and no single response to any situation can be the same (Weinberg, 2011). Justice is a concept designed to affect the whole with impossible impacts on the 'individual'. Recognising this is the first step. Working within this broken system to challenge and change it, as Safe Ground and others do, is the second. Perhaps the third is engaging a public debate that can consider justice separately to punishment and crime as a collective concern rather than an individual act.

## **Conclusion**

From an abolitionist perspective, the question underpinning this book is one of the hardest questions to answer because it asks what should happen if everything else remains the same. It still assumes an individualised problem and response. Questioning the foundations of criminal justice is an essential step in re-thinking how society might better prevent and respond to law-breaking.

## ***PUTTING THE COMMUNITY BACK INTO PAYBACK***

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*Dave Nicholson*

If someone robs me, I want my money back; plus a bit of compensation for the pain and inconvenience caused. What I don't want is to pay thousands of pounds to keep them in prison. That way I pay for their crime instead of them. They should just pay me back and give me some compensation and that'd teach them not to do it again.<sup>1</sup>

JAY, EX-CELL JUSTICE SOLUTIONS

People who commit criminal offences should pay back: not through a just measure of pain in prison but through a just measure of payback in the community. They should pay back, not in the currency of pain, but in the hard cash of compensation and the hard work of rehabilitation.

The idea is not new. Compensation for the victim and rehabilitative payback to the community, in ways decided by the community, was the default position for dealing with most people who committed criminal offences in many pre- and early modern societies, including our own.

Now it's on the way back – we see it in Restorative Justice schemes as well as the more mainstream Community Payback and compensation orders. But in order to realise payback's full potential as a just and credible alternative to prison, there are three radical changes we need to make to the existing system – changes that will put the community back into payback and back in control of justice. These changes are already underway in an embryonic but uncoordinated way in this country, as well as many other parts of the world, so it would be more

a radical change to the way the system delivers justice than a radical change to the system itself. It would mean creating a system that delivers justice for victims through compensation and rehabilitation for the people who commit crime to teach them not to do it again.

Firstly, we need to fully implement the recommendations of the 2008 Scottish Prison Commission throughout all the jurisdictions of the UK. Secondly, we need to build into the court and sentencing process the principles of community sentencing seen in the American Teen Courts. Thirdly, we need to bring an overhauled Community Payback service out of the wings of the criminal justice system and make it the default position for dealing with most people who commit criminal offences. To do that it needs re-designing and re-branding as ‘Community Custody’ – putting most people who commit criminal offences in the custody of the community rather than the custody of prison.

The Scottish Commission recommended that prison should be reserved for people whose offences are so serious that no other way of dealing with them will do, particularly those who pose a significant threat of serious harm to the public. Secondly it recommended that paying back in the community should become the default position for dealing with most people who commit criminal offences.

Payback for the Scottish Commission means finding constructive ways to compensate or repair the harms caused by crime. It involves making good to the victim as well as to the community. This might be through financial payment, or work to enable financial payment to be made, unpaid work of benefit to the victim or the community, engaging in rehabilitative work or some combination of these and other approaches. Ultimately, one of the best ways for people who commit crime to pay back is by turning their lives around and not committing crime again.

The Scottish Commission recommended the payback process should involve a three-stage approach to sentencing. In stage one, the judge makes a judgement about the level of penalty required by the offence

with information from the prosecution and defence. By implication, this is no business of Probation or Community Payback staff or any other criminal justice professionals or community representatives; rather, it is a legal judgement about the appropriate level of penalty. But stage two considers what kind of payback, what form of reparation, is appropriate and this requires a dialogue not just between the judge and Probation and Community Payback staff, but also one that actively engages the offender and any other relevant community stakeholders in the original offence, including, where appropriate, the victim themselves. In other words, it involves the wider community more fully in deciding the sentence – taking the law into their own hands. Stage three involves checking up on the progress of paying back through the establishment of a particular kind of ‘progress court’ where judges who are specially trained to understand issues around compliance and around desistance from crime would have mechanisms at their disposal for handling setbacks and lapses without undue recourse to prison. This court would also have the power to reward compliance and positive progress through early discharge or the lightening of restrictions.

The American Teen Courts take this community sentencing process a stage further by involving a judge-facilitated panel of the guilty party’s peers in considering what form of payback and reparation is appropriate – community sentencing by the community as the way of dealing with people who commit criminal offences. These Teen Courts (sometimes called youth courts or peer courts) are problem-solving courts within the juvenile justice system where teens charged with certain types of offences can be sentenced by a jury of same-aged peers, literally taking the law into their own hands. Their purpose is to provide an alternative disposition for juveniles who have committed a delinquent act, have committed a minor offence, or have been charged with a misdemeanour, and are otherwise eligible for diversion. Depending on their training, community support, and agreements with traditional court systems, most teen or youth courts are recognized as valid, legal venues for the process of hearing cases, sentencing and sentence fulfilment.

Putting the community back into payback would involve incorporating these community sentencing principles and practices into the Scottish Commission's proposals. But it would also involve redesigning and re-branding the delivery of Community Payback as a form of 'Community Custody'.

If I have to fight for custody of my kids, I'm not fighting for the right to lock them up, I'm fighting for the right to bring them up and keep them safe on the straight and narrow ...

DEE, EX-CELL JUSTICE SOLUTIONS

The community should similarly act in *loco parentis* with most people who commit criminal offences. Prison is not the only form of custody. Historically many people who have committed criminal offences have been put into the custody of the community in a variety of ways – the custody of their family 'to keep them safe on the straight and narrow', the custody of a voluntary organisation to 'advise, assist and befriend' them, or the custody of an employer, enabling them to payback their victims and live a 'good and useful life'.

It is the custody of an employer that concerns us. Existing Community Payback practice involves unpaid work placements with voluntary sector employers, charities, social enterprises and co-operatives. The sentence is thus served in the 'custody' of those employers. The wider community is also currently involved in suggesting work that might be done by people sentenced to Community Payback. In Italy this is taken a stage further by providing unpaid work placements in the custody of social co-operatives that are directly owned by the community and which offer paid, transitional employment on successful completion of the unpaid work. These community-owned co-operatives enable people sentenced to payback both to pay back to victims and the community as well as to turn their lives round and become much less likely to reoffend by getting back into meaningful employment. By 'owning' the sentence in this way, the community takes payback and the law into its own hands by taking those who have committed criminal offences into its own custody.

But why a co-operative? Co-operatives with membership of all the stakeholders involved in dealing with crime (including those who have committed it) can generate the social capital that research suggests supports desistance from future offending. At the heart of the concept of co-operation is participation by individuals in a common endeavour, through membership of an association. In the context of supporting desistance, that very participation is itself an ingredient of the therapeutic process: being a member of a bespoke ‘society’ for individuals aimed at promoting desistance becomes a step along the pathway towards, and preparation for, a more successful membership of the wider society itself.

In a UK context this opens up possibilities of widening the scope of Community Payback to include unpaid work in such a bespoke ‘society’ or community-owned co-operative, where the monetary value of the unpaid work is paid direct to victims as reparation for the original crime (or to victims’ charities or even as a contribution to the costs of the rehabilitation of people who have committed crime). On successful completion of the payback, paid employment in the co-operative would then be made available to those who need it, together with support for entering mainstream employment, thus providing a rehabilitative role for community payback as well as a reparative role and adding value to its punitive bite as a ‘fine on time’.

But why a specifically *community*-owned co-operative? Why a community-owned bespoke ‘society’? There are different relevant groups, or constituencies in the community who all have a legitimate, if sometimes competing, interest in the successful delivery and outcomes of Community Payback:

- those sentenced to payback,
- those who have sentenced them,
- those supervising their payback,
- victims, and the families,



- friends and communities of both those sentenced to payback and their victims.

In a number of other public services, such as health, social care and housing, a similar range of different voices needs to be heard in order to work out what is best for the wider public and community benefit and to resolve issues for the organisation. A multi-constituency community-ownership approach has been adopted in these other public services to fundamentally change the way the service operates for the better. The same should apply to Community Payback.

Community Payback, and before that Community Service, has long been the Cinderella of the Probation Service. To bring it centre stage at yet another time of Probation reorganisation will require reorganisation of its ownership, management and delivery along such multi-constituency, social co-operative lines of community ownership – putting the community back into payback and in so doing take the law into its own hands.

Moreover, the efficacy of prison, particularly short prison sentences, is increasingly called into question by both the Ministry of Justice and Parliament. Calls for ‘tougher community sentences’ are seen as the best alternative as they are thought to have greater credibility with the community and to be more effective in reducing reoffending. But they are rarely designed with payback to victims in mind and it’s seldom spelt out exactly what ‘tougher’ means. Community sentencing of people who commit criminal offences to the custody of community owned co-operatives would provide the hard cash of compensation for victims and the hard work of rehabilitation for perpetrators. This would spell out much more clearly what ‘tougher’ means and would be much fairer for both victims and those who have committed offences.

So, what should happen to most people who have committed criminal offences? They should pay back to their victims and to the community in a way, and to an extent, determined by their victims and the community,

and through a system owned and run by the community. That way we can all take the law into our own hands and put the community back into payback.

## ***CHILD TO PARENT VIOLENCE: RESTORATIVE SOLUTIONS***

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*Gary Stephenson*

Arguably the area of domestic violence is one where whole system support is most needed to address crimes or the risk of crime. Families and relationships are complex and domestic violence has many victims. The unintended consequences of single interventions is considerable. Restorative solutions offers a more integrated and inclusive approach involving both perpetrators and victims in finding lasting solutions. We use the example of child to parent violence to illustrate the methods, which can be applied to a range of situations. Police call outs to those families on the programme has reduced significantly which means that the burden on many other agencies will have reduced and young people are being kept out of custody or care. Many academic studies have proved that going into custody or care at a young age leads to further criminality during their lifetime (Laming/Prison Reform Trust, 2016).

The issue of Domestic Violence/Abuse is not a new phenomenon and significant progress has been made over a number of years in addressing what has been a hidden problem though it has to be accepted that more work is still needed in order to rid us of the blight of such a cruel and crushing crime. The following extract from a paper published by the Home Office on Adolescent to parent Violence/Abuse (APVA) what we describe as child to parent violence (CTPV) sets out the context of the problem.

Within domestic violence/domestic abuse there is a growing level of interest in what is still, a largely under reported and very much a hidden problem – child to parent violence in the home.

HOME OFFICE, 2016

There is currently no legal definition of adolescent to parent violence and abuse. However, it is increasingly recognised as a form of domestic violence and abuse (Wilcox, 2012) and, depending on the age of the child, it may fall under the government's official definition of domestic violence and abuse (Home Office, 2013).

It is important to recognise that APVA is likely to involve a pattern of behaviour. This can include physical violence from an adolescent towards a parent and a number of different types of abusive behaviours, including damage to property, emotional abuse, and economic/financial abuse. Violence and abuse can occur together or separately. Abusive behaviours can encompass, but are not limited to, humiliating language and threats, belittling a parent, damage to property and stealing from a parent and heightened sexualised behaviours. Patterns of coercive control are often seen in cases of APVA, but some families might experience episodes of explosive physical violence from their adolescent with fewer controlling, abusive behaviours (Condry and Miles 2015). Although practitioners may be required to respond to a single incident of APVA, it is important to gain an understanding of the pattern of behaviour behind an incident and the history of the relationship between the young person and the parent. It is also important to understand the pattern of behaviour in the family unit; siblings may also be abused or be abusive. There may also be a history of domestic abuse, or current domestic abuse occurring between the parents of the young person. It is important to recognise the effects APVA may have on both the parent and the young person and to establish trust and support for both (Home Office, 2016).

Restorative Solutions CIC (RSCIC), with the continued support of the Office of the Police and Crime Commissioner (OPCC) for Cumbria and the Home Office (HO), have developed what we believe is an innovative approach child to parent violence in the home.

The approach has been developed by taking the American Step Up programme designed by Lilly Anderson and Greg Rout (2012), then through a process of trial and error the model was adapted to address

the needs of families in the UK. This meant adapting the sessions availability to suit the needs of families in the UK, the two-hour sessions were held at four in the afternoon in order to accommodate the schooling of the perpetrator and the siblings. Early sessions were based on establishing trust and confidence in the facilitators, statutory agencies were reluctant to refer cases to the programme. A lot of work had to be done to make them aware of the benefits of the programme and a good amount of time and effort was spent in establishing relationships with the other agencies, overtime these relationships have been built which has led to an increase in the number of referrals from other agencies.

The aim is to support families experiencing child to parent violence in the home and is underpinned by restorative practice in order to encourage accountability, family safety and conflict resolution to repair harm and restore family relationships. The programme has worked with children as young as eight years of age. The restorative element is critical to the programme, by taking a restorative approach the facilitator's can be non-judgemental; the participants are allowed to be reflective and take responsibility for their own actions and behaviour. Initially the perpetrator group and the parents are treated separately then when the time is judged to be right they are brought together to discuss the consequences of their actions and agree a way forward.

Families use a combination of restorative practice as previously described and cognitive behavioural skills which allows the individual to focus on the negative thoughts and teaches them how to challenge them and change their negative behaviour. These combined approaches are designed to help young people desist from the use of violent and abusive behaviours and teach them nonviolent, respectful, ways of communicating and resolving conflict with other family members. The model takes a whole family approach which means that the solution to the problem lies within the family unit and does not focus entirely upon the perpetrator, the whole family is equipped with the skills to cope and take responsibility at the end of the programme.

The programme has been designed to be delivered by practitioners experienced in working restoratively with young people and families in diverse and difficult situations, such as lone parenting, substance or drug misuse, harmful sexual behaviour, absenteeism or exclusion from school, adverse childhood experiences. The aim initially was to reduce police repeat call outs to families who were suffering from the problem of child to parent violence. Apart from addressing the violence and abuse occurring behind closed doors, the approach has the added significant benefit of preventing the young perpetrator from going into custody or care.

### **Case study 1**

T is a 15 year old male. He lives with mum and his sister who is aged 17. T was referred to us by school. Mum states that T is very abusive at home, both verbally and physically. T does not socialise much with his peers and instead he very rarely leaves the house. His school attendance is poor and mum is facing the threat of a fine because of this. Mum says that mornings are a big problem because T often refuses to get out of bed. T spends much of his time playing computer games. Mum has confiscated his computer. However, he has reacted violently and recovered it.

There are no problems with his behaviour in school apart from his poor attendance. T has a large physical build and mum says that she can feel intimidated by him. T and mum attended most of the family sessions. They engaged well and despite being reluctant to talk at first, T opened up and admitted that his behaviour was unacceptable. T and mum signed a behaviour contract and a Time Out contract. According to mum and T their relationship has improved since starting the programme.

### **The focus of the programme is to**

- Address young people's behaviour in the home.
- Support parents/carers or family members who have been the victims of violence and abuse.
- Support young people to change disrespectful to respectful behaviour.
- Improve relationships in the home with parents/cares and other family members.
- Learn strategies to calm down and improve communication at home.
- Improve family safety to make the home a safe place for everyone
- Support young people to become accountable for their behaviour, by being honest about violent or abusive behaviours.
- Encourage understanding of the effects of behaviours on others and self.
- Learn how to take responsibility for own behaviour.
- Learn how to take time out from angry situations.
- Learn the difference between disrespectful and respectful communication.
- Learn how to use respectful communication, even when you are upset or angry.
- Learn how to problem solve with the family.
- Understand that you choose your behaviour and can choose to stay nonviolent.

### **Structure of the Restore Families Programme**

The programme covers 21 main subject areas and additional sessions. Initial assessment of family needs will determine the length of the programme for each family. The programme can be delivered in blocks from 8 sessions to 21 sessions according to group needs. Sessions can be completed in the recommended order or as most relevant to the group. With smaller groups some sessions can be combined. Material

can be adapted and made relevant to family needs. The needs of both young people and parents are addressed through joint workshops and separate parent and young people's groups. One to one support can also be offered as required. Although this resource is recommended to be used in a group work context, individual sessions can also be used to support and address relevant issues on a one to one basis.

## **Outcomes**

During the pilot phase in Cumbria, which commenced in 2016, the OPCC conducted their own research into demand on police services and recidivism, the analysis showed a Reduction in demand: prior to the programme 86% of perpetrator's on the programme were involved in police call outs prior to attending the intervention. This compares to 14% post intervention (OPCC Cumbria Analysis 2018).<sup>1</sup>

At the end of the programme we asked participants some questions to ascertain the benefit of the programme for them:

### **How has your relationship with your parent changed since you started the programme?**

‘It's gone a bit better, I've not been making her cry like I used to. Sorry.’

‘I find it easier to understand them (parents) a bit more and how they feel about me.’

### **What have you changed in your behaviour to contribute to improvement in your behaviour?**

‘I have been less violent towards other family members.’

‘I've changed in the way I act and kick off.’

### **What did you do to change your behaviour?**

‘I decided to listen more and I am more respectful to Mum.’

‘Go to my calm place when I get angry or upset.’



**If you hadn't made these changes, what would your relationship with your family members be like today?**

'I don't want to be homeless or in prison.'

'I am really glad I came, because if I didn't I would be in care.'

Those attending the programme also provided the following feedback:

'I enjoy being a proper family and enjoying time as a family. If we had not been in Restore Families I'd probably have had nothing to do with my family. If I'd carried on acting how I was acting I'd have ended up in a home.'

PARTICIPANT

## **Conclusion**

The Restore Families programme provides a promising approach to what is a hidden problem in our family homes. Our experience shows us that the problem is not exclusive to any social domain, the issue manifests itself in all levels of the social strata. The problem cuts across many different agencies and organisations whose involvement and engagement are critical to the programmes success. The real strength is in the engagement with the family as a whole, the refined model now works on a needs basis some families are well equipped after eight sessions some take much longer. It is recognised that the violent or abusive behaviour can be a consequence of many other complex factors or issues which are affecting the family unit.

The issue of Child to Parent Violence will not go away, unfortunately it seems to have been a problem that has not had the prevalence it should have, many agencies are just not equipped to respond to the problem and responses tend to be the traditional route of taking the young person into custody or care which does not solve the problem as one former senior police Chief said 'we cannot simply arrest our way out of the problem'. The issue needs more national prominence, little research has been undertaken when compared to Domestic Violence/

abuse between adults. The issue of Child to parent Violence seems to be the poor relation in the Domestic Violence/Abuse and Troubled Families arena, yet if the behaviour can be recognised and addressed at an early stage so many other societal benefits will follow.

# *THE CASE FOR DECRIMINALISATION*

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*Mark Alexander*

Man was born free, but he is everywhere in chains

ROUSSEAU

## **Reconceptualising crime**

What is ‘crime’? Our immediate response might be to define it in accordance with what we would consider to be immoral, wrong or harmful to others. Yet there are many things which meet these criteria that aren’t in fact against the law (extra-marital affairs or some forms of air pollution might be good examples). On closer inspection, we find that crimes ‘are not “given” or “natural” categories’ at all, but rather ‘vary from place to place and from time to time’ with astonishing diversity between different cultures and jurisdictions (Garland, 1990). That other countries criminalise heresy, homosexuality and abortion reminds us that ‘crime’ is a social construct, defined by politicians and enforced by judges.

British politics has tended to fetishize crime to such an extent over recent decades that it has become the ‘preferred context for governance’ (Garland, 1996). As politicians ‘scramble to appease an angry and frightened constituency that they may have helped to create in the first place’, our Parliament has succumbed to a fever of hyperactive legislation (Loader, 2006). Between 1997 and 2015, for example, more than 5,373 new ‘crimes’ were enacted (Loader, 2006; Aitken and Macshane, 2015). But this ‘war on crime’ is gravely, perhaps knowingly and cynically, misconceived. Since 1995, overall crime – both here (Home Office, 2017) and across Europe (National Audit Office, 2012)

– has been steadily falling every year, and yet two-thirds of the public remain convinced that it is on the rise (National Audit Office, 2012). Academics have termed this anomaly the ‘reassurance gap’, a gap that would seem easy enough to plug if only parliamentarians and the mass media focused their attention upon facts rather than buying into the demonising rhetoric of ‘law and order’.

The outcome of all this legislation, however, has been a 70% increase in our prison population – more than two-thirds of whom haven’t committed violent crimes. For more serious offences like murder, the average sentence has almost doubled since 2003 (Alex Hewson and Emily Knight, 2018).

None of this is sensible or sustainable in the long run. When one considers the question ‘What should happen to people who commit criminal offences?’, our first response should be that there are simply too many ‘crimes’. We can only reverse this punitive tide through a policy of decriminalisation, recognising that we have become too quick to label people – particularly young people – as ‘criminal’. Generating a vast cohort of disaffected and alienated individuals seems manifestly counter-productive (David Downes, 1992). We desperately need to pause to consider what good this kind of mass stigmatisation actually does for our society as a whole. Adapting John Stuart Mill’s formulation, the state should only criminalise those acts capable of causing serious harm to others (John Stuart Mill, 2010). Any intervention beyond this represents an illegitimate incursion upon liberal values.

Our second reaction ought to be that – of the remaining crimes that meet Mill’s test – far too many are punishable by imprisonment. In the majority of cases, non-custodial alternatives would be more appropriate. When we consider that a two-year community order costs the same as a six-week prison sentence, we can start to appreciate just how much more can be achieved with the limited resources available to us (National Audit Office, 2012). The Netherlands and Estonia have achieved 43% and 35% reductions in their respective

prison populations between 2005 and 2015 through depenalisation projects of this kind (Council of Europe, 2016), while overall crime rates continue falling in both countries (Cynthia Tavares and Geoffrey Thomas, 2010). Latvia's recent introduction of electronic monitoring as an alternative to imprisonment has contributed to a similar 29% drop over the same period, whilst across the Atlantic, half of all American states have closed entire prisons down (Garland et al., 2014) – more than 20 in Michigan alone (Clear and Schrantz, 2011) – simply by abolishing the 'three-strike' rule or eliminating mandatory minimum terms. Tens of millions of dollars in state expenditure have been saved and countless lives redeemed.

Locking people up should be our last resort when all else has failed, not a knee-jerk reaction.

## ***ENCOURAGE OR PUNISH? THE VIEW OF A PRISONER***

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*Steve Shill*

Bang 'em up!  
Throw away the key!  
Bring back the death penalty!

The comments above, and similar, were voiced by serving prisoners. That may come as a surprise to some people.

Locking people up does not work. We know this because they keep coming back. Prisoners are people who want the right punishments too.

After the old style mental asylums were closed, prisons have ended up looking after people who perhaps needed that help. When anyone commits a crime a rigorous mental health assessment should be carried out – the threshold of what constitutes mental illness needs lowering.

People on indeterminate sentences are subject to huge scrutiny regarding their mental health and personality disorders but are usually diagnosed in prison after conviction. Their health should be established before trial and although these results should not mean justice is avoided it would at least assist in directing someone towards punishment or treatment. This approach will help society in the long run as it will mean less crime and no more of the 'revolving doors' we have at the moment.

A harsher side of punishment is also supported by prisoners. That is to double a sentence each time someone is found guilty of a similar offence. This soon becomes a deterrent.

Crime perpetrated within prison is something serving prisoners feel should be dealt with severely. If you are found guilty of a crime, in a court of law, committed in prison and you are a determinate sentenced prisoner then your sentence should alter to a discretionary life sentence. This would deter both the smuggling of phones and drugs and the taking of drugs. Violence would decrease. The Governors of prisons need to be encouraged to press outside charges against prisoners.

For first time offenders in the community a different approach is advocated. Sentences of 12 months or less should be banned. If an unemployed person breaks the law they should do community work for their benefits – this could even extend to working overseas helping to build schools or hospitals in poverty stricken countries, in return for the offender not losing their accommodation at home, to help give a perspective on their own life and build self-esteem. This sense of pride and achievement would increase if the possibility of a permanent employed position was realistic upon return.

A pathway to the Armed Forces as a viable career could change lives. Where someone could work towards that goal instead of a sentence, although the last word on eligibility should be with the Armed Forces.

If the offender is already employed they should continue their job, which maintains family ties, but a calculated percentage of their wages should go to the victim or a charity supporting victims. If that job is deliberately lost to avoid paying the victim/charity then a two year prison sentence should replace the order.

Restorative Justice and Therapy need expanding and the pathway to them needs to be clear for every offender and victim. These things are emotionally challenging and are shown to have significantly positive results. These things are available but are difficult to access.

Prison should not be the first option.

## **CHANGE OUR ATTITUDE, CHANGE OUR APPROACH**

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*Neil Wilson*

For every action we take there is a consequence; and for committing a criminal offence the consequence, more often than not, is prison. Is this right? Our criminal justice system, supported by punitive social attitudes (and proliferated by the public, the media, the police, CPS and amplified through social media), says rightly so – resulting in around 50,000 people incarcerated every year. Of these, 19,000 are for theft, 6,000 for assault, 4,000 are for public order and 2,000 are for drug related offences.<sup>1</sup> Overall there are nearly 90,000 people in prison in the UK of which 71% had committed a ‘non-violent’ crime, with 47% sentenced to less than 6 months<sup>2</sup> at a cost of £2.3 billion a year and a further £15 billion a year in re-offending costs (with 48% of all sentences re-convicted within 1 year of release<sup>3</sup>). We have the highest imprisonment rate in Western Europe, which is being sustained by over using prison for non-serious and persistent crime and a failure to break re-offending, at huge cost.

Imprisonment, especially for short sentences, only serves to create many, and potentially long lasting, catastrophic consequences for the offender, society and the state. Dependence on the welfare state (benefits), living with (mental) health issues, temptation to re-offend, lack of family/friends, stability and support and feeling disconnected from society.

Imprisonment isn’t working for non-serious and persistent crime – so if it doesn’t work, change it! For these types of crimes (and those with a sentence of up to 2 years) give the offenders a ‘presumptive’ sentence



(similar to that operated in Scotland) where they are bound to taking part in offender rehabilitation programmes in the community to address the offending, its seriousness, the issues leading to and contributing to the offence, the impact on victims and others and provides the 'tools' to help them make better decisions rather than the wrong decisions which could trigger re-offending. Restorative justice would be integral to this to ensure offenders have the opportunity to engage in dialogue with the victim(s) to repair harm, develop understanding and forgiveness and find a positive way forward.

The primary focus becomes one of keeping people in the fabric of society, with lots of positive benefits to the offender, society, the victim(s) and the state. Huge cost savings for imprisonment (at least £1bn a year), criminal justice costs (£8 for every £1 spent on restorative justice<sup>4</sup>) and health and welfare benefits. Should the offender not take an active part in the offender rehabilitation programme then the 'presumptive' sentence would become custodian.

This will only happen if there is a fundamental change in our approach, attitudes, prejudices and long held negative values to the consequences of those who commit crime, coupled with significant change to the sentencing for offences.

# ***LET THE PUNISHMENT FIT THE CRIMINAL***

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*Ben Leapman*

It was the title character in Gilbert and Sullivan's *Mikado* who came up with the call to 'let the punishment fit the crime'.

More than a century on, courts in England and Wales are handing out sentences which are not tailored to fit, but increasingly off-the-peg.

Parliament fixes the maximum penalties for every type of offence. Until recently, judges sentenced each offender using their judgement – the clue was in the name.

Then the late 1990s and 2000s saw the introduction of strict sentencing guidelines, reducing punishment to box-ticking: if the robbery was unarmed in daylight that's X years in prison, if it was at knifepoint during the night that's Y. The offender's background makes little difference.

What is prison for? The 2003 Criminal Justice Act set out five purposes to:

1. punish,
2. deter,
3. rehabilitate,
4. protect the public and
5. repay victims.

Since sentencing guidelines came in, sentence lengths – and the prison population – have risen sharply. Yet according to police recorded crime figures, the overall offending rate has barely changed whilst violent offending has risen sharply. Reoffending remains at around 50%. Prison isn't working.<sup>1</sup>

*I'd scrap the guidelines. Instead of basing sentences on details of crimes committed, I'd make them fit the criminal by asking two questions: How can we best prevent this person from reoffending? and How does their being at liberty or behind bars impact on the lives of others?*

For habitual low-level criminals this may mean longer sentences, to allow time for rehabilitation and give the public a break from their offending. But others don't need to be jailed at all.

The public sees non-custodial sentences as soft. Yet I see three ways new technology is making them more effective and more palatable.

1. Search engines and record checks mean that for an offender of previously good character, merely having a conviction has become a life-blighting punishment in itself.
2. Satellite tracking allows targeted home detention. Around 200,000 children a year lose a parent to prison. A high-tech tag could let a single mum or dad out of their home just twice a day, for the school run.
3. Tracking could transform unpaid work orders. Currently these involve disinterested, unskilled offenders painting village halls. As a long-term prisoner, many of my fellow inmates were experienced craftsmen or professionals deemed low risk. I'd sentence them to live at home while working unpaid for charities under the satellite's eye.

Directing more offenders away from prison would cut overcrowding and allow more rehabilitation for those who remain – more offending

behaviour courses and more workshops run jointly with outside employers. I'd designate one prison a national 'learning campus' where able, committed prisoners would be taught degrees or diplomas full time.

*Everyone wants to prevent re-offending, yet the things which help an ex-con go straight – home, job, family ties – are the things you lose when you're sent down.*

The Mikado found innovative ways to let the punishment fit the crime, including sentencing a billiards shark to play with a wonky table and cue. Can today's legislators and judges be as innovative?

# *SECTION 5*

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*IMAGES FROM 'ANOTHER ME'  
AND 'A FEELING WE ALL SHARE' –  
KOESTLER ARTS EXHIBITIONS IN 2019*



*5th Element*, The Spinney (secure mental health unit),  
First-time Entrant Award for Painting, 2019  
Image courtesy of Koestler Arts



*Sleep Eat Repeat* (part of a triptych), Heatherwood Court Hospital, Portrait, 2019

Image courtesy of Koestler Arts



*The Test*, HM Prison Greenock, Highly Commended Award for Painting, 2019

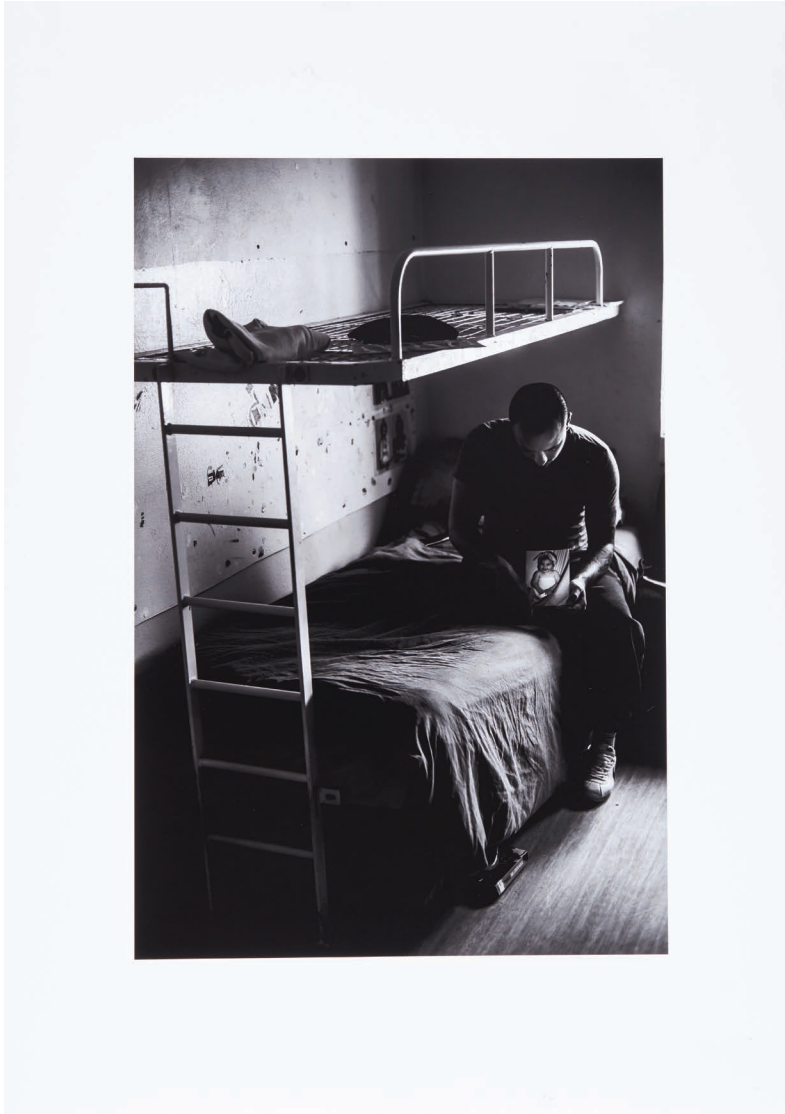
Image courtesy of Koestler Arts





*Nitrouonites: Future Fossils & Hi Man*, Camden & Islington Probation,  
Highly Comended Award for Sculpture, 2019

Image courtesy of Koestler Arts



*Group 1*, Guernsey Prison, Platinum Award for Photography, 2019

Image courtesy of Koestler Arts



*Bust*, Koestler Arts Mentoring Scheme, Ceramics, 2019  
The Monument Trust Scholar 2016  
Image courtesy of Koestler Arts



*The Power of Community*, HM Prison Littlehey, Bronze Award for Sculpture, 2019  
Image courtesy of Koestler Arts



*Another Chapter*, HM Prison Peterborough, Gold Award for Themed Category: Interlude, 2019

Image courtesy of Koestler Arts



*Parole Board - Hear Me I've Got Something I'd Like to Say,*  
HM Prison Warren Hill, Silver Award for Arts Project, 2019

Image courtesy of Koestler Arts

# *SECTION 6*

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*NOT ALL CRIMES AND NOT ALL WHO  
COMMIT THEM ARE THE SAME*





## **OFFENCES COMMITTED BY WOMEN: RECOGNISE THE ROLE OF ABUSE**

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*Dame Vera Baird*

Committing minor offences lands women in custody. Yet most women in prison are victims of more serious crimes than those of which they're convicted. It is vital that the detail of what they have suffered is put before the courts in every case and that the courts have regard to the fact that they are victims when considering sentencing. There is a further and developing argument that more serious crimes committed against women such as coercive control in a domestic abuse setting or being groomed ought to provide their victims with an actual defence to some levels of offending, analogous to the similar defence for victims of modern slavery.

Prison Reform Trust research (*There's a Reason We're in Trouble* 2018) shows that 57% of women prisoners have suffered from domestic violence and 53% from sexual and emotional abuse. The report identifies strong links between those kinds of abuse, coercive relationships and women's offending. They can get trapped in a vicious cycle of victimisation and criminal activity.

Many women told researchers about offending over long periods of time under duress from a partner to support his drug use. Many reported being arrested by police for reacting to a partner who had been the primary aggressor, in particular when they were too afraid to support proceedings against him. And women can turn to drugs and alcohol themselves, as a way of coping with abuse, sometimes with the consequence of being criminalised. Yet many women report that no reference was made to their abuse when sentence was being considered.

As the Ministry of Justice now seems to accept, short sentences of imprisonment for women involved in this cycle cannot tackle the causes of their behaviour. They simply break down family and community links and make re-offending more likely.

It is estimated that six in ten women in prison have dependent children and that 17,000 children a year are separated from their mothers through incarceration. Fewer than 5% of those children remain in their own homes until her release. These are likely to be children who have already been living with abuse and now face the removal of their mother and the breakup of their home. Abuse and family breakdown are two recognised adverse experiences for a child, each adding to the other to increase the risk of poor development.

The reaction of the criminal justice agencies is critical to breaking this cycle for women and children. Where police and local services work with specialist women's support services they build their understanding and can intervene early and divert women, reducing reoffending and improving family outcomes.

A further issue to be considered in this context is the extent to which domestic abuse ought to be treated as more than a mitigation for offending and become a defence. Offences committed when the victim/defendant was coercively controlled or groomed may mean that they did not act under their own free will.

Section 45 of the Modern Slavery Act 2015 provides a defence for victims of trafficking and slavery who commit any of the crimes set out in a schedule to the Act if those crimes were done under compulsion attributable to slavery or exploitation and if a reasonable person in the same situation with the same characteristics would have no realistic alternative to doing the same.

Sammy Woodhouse is a young woman who was groomed and coercively controlled over a long period by a man who was later sentenced to 35

years imprisonment. She was convicted of three offences whilst under his control and is campaigning to be able to argue that her free will was undermined in a similar way to that of a victim of modern slavery and she is not legally guilty. Victims of domestic abuse by coercive and controlling behaviour might make a similar point. It is a commonplace that if a victim does offend under duress, the perpetrator/groomer threatens to report her to police to reinforce his control.

Any change would require legislation and would be likely to apply only to minor offences making a defence available for consideration by a jury or a magistrate's court on a case by case basis. However, that might be sufficient to save many of the women in the PRT research from the short sentences for minor offences which currently beset their lives and those of their children.

## ***OLDER MEN IN PRISON: TIME TO THINK DIFFERENTLY?***

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*Louise Ridley*

It is hard for any visitor to prison to ignore the ageing population that stands (or sits) before them. Prisoners pushing other prisoners in wheelchairs, assisting each other in negotiating the narrow prison corridors and landings, carrying food for those who cannot get to the servery or fail to get there in time, as the journey there presents far too many challenges. In addition to the problems created by the physical environment, there is also a palpable feeling of ‘loss’ amongst this population. Loss of all the things that other older people may take for granted: children, grandchildren, families, employment, homes and, most of all, their futures. Unlike the younger men who may look towards the end of their sentence to a better future, older men often fear the future and release from prison. Many of these older men are coming to prison for the first time in their later years. The ‘institutional shock’ felt by older men entering prison for the first time is difficult to describe or put into words. Nearly all men in prison aged over 80 were sentenced to prison when they were in their 70s. This is an account of a multi-agency initiative developed at one prison in northern England that recognised the uniqueness of older prisoners, modified the regime and made changes to the physical environment.

A greater number of older people are being sent to prison than has previously been the case. By 2016, the number of prisoners aged 50 or over was 161% higher than it was in 2002. In 2018 the MOJ (Ministry of Justice, 2018) identified 13,636 (approximately 16% of the current prison population of England and Wales) people in prison aged over 50 – 3,328 of this age group were over 60 and 1,701 were over the age

of 70. Predictions are that the over 70 age group will grow by 35% by 2020. This group, of mostly men, represent a problem to the prison service; a service that is more used to dealing with issues presented by younger prisoners. Unlike young men, older male prisoners' adaption to the prison environment is complicated and rife with problems that both prisons and prison staff are unable to provide responses to. Prisoners' chaotic and unhealthy lifestyles prior to custody, and the experience of imprisonment, speed up elements of the ageing process. Thus, it is well recorded that older prisoners tend to have chronic health disorders and disabilities that are typical of those 10 years older.

In addition to the absence of a national strategy for dealing with older prisoners, there is also a lack of clarity over what constitutes an 'older' person in prison. Neither HMPPS nor the MOJ uses any age to define a prisoner as 'older'. This does not create strong foundations on which to proceed and to respond to the challenges posed by the growing number of older prisoners. Consequently, charities and advocacy groups generally argue that any prisoner over 50 should be defined as 'old', and Her Majesty's Chief Inspector of Prisons defines those over 50 as 'old'. There has been a patchy response to the needs of older prisoners across the prison estate.

The growth of the older prisoner population is the result of a number of factors: society as a whole is ageing, but we have also seen an increase in the length of sentences served by offenders, a growth in the number of older offenders sentenced to custody for historic sexual offences sometimes committed many years earlier, lower tolerance by courts of deviant behaviour by older people and therefore a greater readiness to imprison them, general changes in sentencing policy, and increased levels of imprisonment for breach of license conditions. For these reasons this growing population comprises four distinct groups:

1. first-time prisoners serving a long sentence;
2. first-time prisoners serving a short sentence;

3. repeat offenders with recurring experiences of custody; and
4. long-term or intermediate sentence prisoners who have grown old in prison (Prison Reform Trust, 2016).

It appears that the growth in older people entering our prisons has taken those at the MOJ and HMPPS, by surprise. This, despite the fact, that this is a phenomenon being experienced by most of the Western world.

In 2011 HMP Northumberland, a large category C training prison, set up the Older Prisoners Strategic Working Group in response to concerns arising from the increase in the number of men over 50 entering the prison. My involvement stemmed from other work that I was carrying out at the time in the prison. Initially, the strategic working group consisted mainly of prison staff and the chaplaincy. It was difficult to keep people engaged in the working group as other demands and changing roles meant that staff moved on and often there was no replacement provided. The growth in the number of older prisoners entering the prison system coincided with a significant reduction in the funding of prisons. It was, at times, a challenge to keep the plight of this group of prisoners at the forefront of priorities when allocating prison staff to attend meetings and make changes in the prison.

Prisoner representation at the strategic working group became vital to the success of this project. Initially, there was reluctance from the prisoners to voice concerns or raise issues; indeed, the Prison Inspectorate once described older men in prisons as 'old and quiet'. Their fear of the alien prison environment makes them reluctant to speak out and they rarely make a fuss, opting to simply just get on with their sentence and try and stay safe. However, in this instance, the prisoners involved gradually developed trust in the strategic group as they were able to see that the basis for this development had their best interests at its heart.

Initial changes to the prison environment focused on a residential unit where a significant number of older prisoners were located. This residential unit was identified as a safe environment for older men and initiatives to improve both the physical environment and well-being were gradually introduced. Initially, small improvements were made – a library area with comfortable seating and fish tanks was introduced, duvets and thermal underwear were provided, catalogues with clothing suitable for older men were issued, improvements were made to the access points of outside areas to accommodate wheelchair users, and seating was installed to exercise areas. Discussions around times of unlocking for this population took place, and what type and age of prisoner should be located on this residential unit.

I was able to carry out a small research project to get a better understanding of the concerns and needs of this group of men. Bear in mind the wide range of ages and abilities within this ageing population – men who had worked all their lives and were able to offer skills not often associated with those in prison, to men who had learning disabilities and had little idea how to negotiate the foreign terrain of the prison wing. Results revealed a complex set of concerns and issues from prisoners who had diverse backgrounds and very different life experiences:

- trepidation regarding imprisonment and what was expected of them
- anxiety over their futures on release
- lack of information regarding the process of leaving the prison
- major concerns regarding their health and access to health care whilst in prison
- isolation and lack of purposeful activity in prison
- many men never left the unit, some even their cells, which was greatly impacting both their health and well-being
- prisoners were supporting the most vulnerable men and trying to represent their needs.

It was clear that current resources could not meet the needs of this group of men. Age UK became a member of the strategic working group and secured funding to employ a project worker and develop a day centre that would be run in the prison. This initially was a pilot, but it was clear from the outset that the day centre provided not only an opportunity for men to leave their cells, but also allowed them to socialise in an environment outside of the residential unit and engage in activities that increased their sense of well-being and belonging. It took time for the men to engage with the activities and time was also needed for staff to gain the trust of this group of prisoners.

The project worker is in the prison two full days a week and runs two day centre sessions and two gym sessions for men over the age of 50. Forty men attend the day centre and it is evident how important this time is for socialising, supporting each other and engaging in activities that would not be possible on the residential unit. There is a waiting list and each week the session is oversubscribed. Prisoners are encouraged to be active partners, who take ownership of elements of the projects (e.g. for taking responsibility for activities and coming up with ideas for new activities such as carpet bowls and darts). This ownership enables delivery of the type of activities prisoners want. The project worker's role has included challenging older prisoners with activities that they may not have considered (e.g. salsa drums and seated exercise) and organising external speakers. The prisoners themselves are consulted about the day centre activities that should be delivered, to ensure these remain focused on issues they regard as important. Consultation with prisoners was crucial to increasing levels of participation in its early stages – it helped to dispel prisoner misconceptions, based on informal word of mouth, and promoted engagement. Attention is also paid to ensuring prisoners are told why certain developments were not possible.

The development of the strategic group has enabled prison staff, prisoners, and the charity and university representatives to identify



issues, action plan and review progress. Discussions at the strategic group were instrumental in prioritising action to minimise the time older prisoners were locked in their cells and other important developments. The Age UK project worker provides a liaison function between prison staff and older prisoners.

For this project to be successful, there has been a commitment from the wider prison:

- senior prison management and key prison officers had the desire to improve the regime for older prisoners
- the creation of a committed officer lead for older prisoners has been important to ensure the coordination of activities by the different stakeholders
- the prison has made office space available to the project worker for the conduction of one-to-one release planning work with prisoners, which included information about ongoing support available from Age UK upon release
- gym staff have also engaged with the project worker to develop bespoke gym provision.

Working in collaboration was, at times, challenging. It was a learning curve for partners to appreciate how difficult it is to make changes within the prison environment. The need to secure agreement for specific actions, gain appropriate authorisations and then implement decisions took time and was frustrating for all concerned. Things move very slowly in prison, even getting the basics in place – after months of waiting for duvets, they arrived during the hottest summer on record.

The project is now funded by NHS England (Health and Justice) and is being developed into two further prisons in the North East of England. There is still much more to strive for and many more developments that could be implemented, given time and financial support. The most recent inspection of HMP Northumberland noted that older men

responded positively to the regime offered, which the Chief Inspector of Prisons described as ‘an excellent environment for older men, in which a constructive culture of mutual support had been fostered’ (HMCIP, 2017).

The growth in the older prison population has created challenges and dilemmas for the prison system. Without a national strategy to guide practitioners, responses have been piecemeal and do not appear to have fully addressed these challenges and dilemmas. Partnership working, involving the Prison Service, other statutory agencies, the voluntary sector, higher education institutions and prisoners themselves, will not resolve the problems identified with imprisoning older men. This project suggests collaboration can be a beneficial approach, if used in a way that takes account of the unique nature of the prison environment. It enables wiser solutions to be developed to better meet the challenges posed by older prisoners. However, the many moral questions raised as a result of the imprisonment of the older offender must be aired. There is constant difficulty in balancing fairness with humanity in the justice system – and this is perhaps most keenly felt when discussing the plight of the older man sent to prison. It is the humanity that should be kept in mind when reading this discussion and inform future strategies and thinking.

## **WHAT SHOULD HAPPEN TO PEOPLE WHO COMMIT MURDER?**

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*Ben Crewe, Susie Hulley, Serena Wright*

In the absence of capital punishment, depriving people of their liberty for a very long time is the most extreme sanction that the state can impose. Recent decades have seen a very significant increase in the number of individuals who have been given such sanctions. When the Advisory Committee on the Penal System reported in 1968 on the prison regime for long-term prisoners in conditions of maximum security, only 168 people were serving custodial terms of longer than 10 years – sentences that were considered by the Committee to be ‘very long’ (Radzinowicz, 1968: 5). A decade later, a Home Office report, looking specifically at life-sentenced prisoners in England and Wales, found that only two ‘lifers’ had served more than 15 years of continuous custody, while only six had served over 12 years (Smith and Brown, 1979). Moreover, it was estimated that only ‘[a] handful of prisoners sentenced under the Official Secrets Act or in connection with the 1964 mail train robbery will have to remain continuously in custody for over 15 years’ (Radzinowicz, 1968: 6).

Such sentences have become commonplace and remarkably unremarkable. In 2003, in England and Wales, the average minimum period to be served for mandatory life sentences (excluding whole-life tariffs) was 12.5 years – a striking figure in itself when considered against the numbers above. By 2013, however, the average had increased very sharply, to over 21 years (Freedom of Information request 89346). At the end of December 2018, there were 3,624 prisoners with life sentences with tariffs of 10–20 years and 1,862 with tariffs of greater than 20 years (including whole life tariffs) (Ministry

of Justice, 2019). At the level of policy and legislation, a number of factors help to explain this growth, including:

- the initial creation of the tariff system for life-sentenced prisoners, in which prisoners must serve a minimum term in custody – with a clear retributive component – before being considered for release;
- the introduction of an increasing range of mandatory life sentences, such as the ‘two-strike’ life sentence for adults convicted of a second serious violent or sexual offence;
- the increase in the minimum tariffs that judges are obliged to consider as the ‘starting point’ for forms of murder involving a knife ‘taken to the scene’ of the offence or firearms (currently 25 years and 30 years respectively for adults);
- and the rise in the use of ‘joint enterprise’ in prosecutions for murder and other serious offence, which allows for multiple persons to be held liable for a single offence.

The result of these developments is that a growing number of men and women are serving the kinds of sentences that, until recently, were not only highly unusual but were also considered to be barely survivable.

Such measures are, in part, related to changes in the frequency of serious offending. A recent (2019) report from the Office for National Statistics notes that the number of homicides increased from around 300 per year in the early 1960s to more than 800 per year in the early years of the current century, peaking in the year ending March 2003. Whether or not increasing sentence lengths reflects changes in the *nature* of serious offending is harder to decipher, but is certainly questionable: while the number of homicides committed using a sharp instrument has increased in recent years, murders via shooting and burning have decreased in frequency. The implication is that the increase in the number of people serving very long sentences for murder results, in part, from a shift towards a more retributive logic, whose objective is to punish *more severely* on behalf of the public.

While people involved in sentencing policy could always benefit from closer encounters with those who are subjected to their decisions, retributive arguments are difficult to counter through empirical evidence alone. At a certain point, disagreements between those who think that murderers are wicked and irredeemable, and deserve to face maximal forms of state reprisal, and those who believe in more merciful responses, are intractable. Yet there are good grounds for believing that public opinion in relation to sentencing is considerably more nuanced than politicians tend to assert (see, for example, Fitz-Gibbon, 2012; Mitchell and Roberts, 2011). In any case, if the aim of punitive sentencing is to satiate the hunger for vengeance or reflect the legitimate anger of the bereaved, in the end, it seems fanciful and simplistic to trust that these sentiments can be assuaged through policy responses alone (see Victim Support, 2010). Here, the question is whether any sentence length can heal the trauma of victimhood or satisfy the urge to punish, let alone how these drives should be balanced against the humanity and enduring rights of perpetrators.

Research undertaken with long-term prisoners themselves provides very useful insight into the question of what should be done both *to* and *for* people who are convicted of murder. Many men and women serving life sentences describe their conviction as a valuable ‘lesson’ or ‘wake-up call’, and those who do not dispute their guilt rarely minimise the enormity of their actions. In other words, very few individuals who consider themselves guilty of murder are proud of, or indifferent to, what they have done, or question the right of the state to impose upon them a severe form of punishment. Indeed, following an initial period characterised by distress and denial, most perpetrators of homicide are highly remorseful and describe the process of coming to terms with their feelings of shame about what they have done as more burdensome than the sentence length itself. However, most draw attention to the excessive and dehumanising nature of the amount of time they are required to serve. When asked what period of imprisonment would achieve and sustain ‘reform’, they consistently identify a decade or so as the optimum period, before the sanction becomes counter-productive:

I did what I did, so I deserve to be punished for it, basically, so I deserve to be here, [but] I don't feel I deserve 19 years. I don't think that amount of time is good for anybody, really. If you can't rehabilitate someone after 10 years, then there's no hope for them, really.

CURTIS<sup>1</sup>

I think jail has done good for me. But, like, it gets to the point where you think, 'This is too long, this'. Now [having served 10 years], I'm at a good stage where I could get out and I know I could do well, and I could stay out. But in seven years' time, I don't know.

KENNY

Such statements are consistent with a considerable body of evidence that suggests that longer sentences produce little 'marginal benefit', in terms of future offending and, if anything, might lead to increased recidivism (see Loughran et al., 2009; Gendreau et al., 1999; Baay et al., 2012). When viewed according to these kinds of measures the sentence lengths for murder in England and Wales are essentially wasteful, in that they expend something that is of value – put bluntly, human life – carelessly, extravagantly, or to no purpose. At the very least, they confuse the purpose of the penal sanction and undermine its rehabilitative objectives:

Don't say 'we're putting you in jail to rehabilitate you'. Because 30-years-to-life don't go with the word 'rehabilitation'. Because that's no hope. Do you understand?

*Is that what it felt like: no hope?*

Of course! [...] Because everything that you know, you're taken away from anyway. [...] And you just [sighs]... it just felt harsh. Cos at the end of the day I was a kid. Do you know what I mean? I was a kid.

MOHAMMED

Mohammed's comments about hope are significant. To get through their sentence, life-sentenced prisoners need some sense of meaning that enables them to see beyond the endless and repetitive 'present'. Most often, they identify family and religious faith as their main sources of purpose and motivation, often indicating that, without them, they might not be able to survive their experience. Likewise, people serving very long sentences for murder need a way of putting their lives and actions within a broader framework of understanding. Typically, they specify educational activities, systems of faith and forms of psychotherapy as the means by which they are better able to understand and 'improve' themselves, come to terms with what they have done, and locate some kind of direction as they navigate many years of confinement. As well as offering means of escape and diversion (including the possibility of transcending time, for example, through ritual, meditative and immersive activity), all have the potential to provide the basis for identity change or a kind of ethical scaffold that helps to deal with feelings of shame and answer the kinds of existential questions that imprisonment for murder produces: 'what kind of person am I? Why have I ended up here? What does it mean to be a human being, and to be involved in the death of another human being? What will I become?' For a large proportion of lifers, addressing these questions becomes the overarching preoccupation of their time in custody.

Providing resources that help life-sentenced prisoners to address these questions is all the more important, given the state in which many enter custody. During the early phase of confinement, feelings of anger, confusion and unresolved shame produce high levels of emotional instability. It is easy to see the appeal to such prisoners of simplistic ideologies that seem to explain their circumstances, justify their resentment, and fulfil many of their needs – for example, for love and meaning (see Liebling et al., 2011) – that long-term imprisonment can otherwise extinguish. One of the risks of the discourse of simply 'settling' or – more egregiously – 'parking' long-term prisoners during the early years of their sentence is that, if the prison system fails to provide meaningful engagement and activity, then more extreme and destructive belief systems will fill the gaps.

Relatedly, many prisoners convicted of murder start their sentences in need of intense psychological support. Many are traumatised by what they have seen or done in the course of their involvement in a murder. Often, they describe or exhibit symptoms that are consistent with post-traumatic stress disorder, including dissociation, numbness and intrusive recollections (e.g. flashbacks and nightmares). Others are thrown into a state of acute turmoil by the nature of the sentence itself, which ‘dislocates’ prisoners from their social and family networks, their sense of who they are and the future that they had anticipated. In time, most prisoners overcome such feelings, but they are given little assistance in doing so.

Once they are further into their sentences, many are motivated to ‘give something back’, either to a younger generation of lifers at the starting point of their prison terms or to society at large. Many become Listeners (in-prison Samaritans), take counselling courses, or involve themselves in schemes designed to impress upon schoolchildren the perils of crime (see Irwin, 2009; Herbert, 2018). A large proportion express a desire to work with young offenders on release. These motivations are directly connected to feelings of remorse and are expressed in a language of redemption: a way of making amends, proving moral worth, leaving a legacy that might supersede the act of murder that otherwise defined them and preventing others from making the same mistakes:

All I can do is I can take the positives from this situation. A person of 19 years old died, you know, and I can never ever take that back. [...] The only thing I can do is change, make myself a better person, and obviously try and affect people in beneficial ways. [...] I have to make something happen, you know, like a shining star come out of something bleak and black.

STEPHEN

So, what should happen to people who commit murder? Unless the goal is merely to extract extreme retribution – a goal that hardly covers a nation in moral glory – they should serve significantly less time in



custody than they currently do. This outcome could be brought about through changes in sentencing guidelines (including a reduction in the use of mandatory life sentences and a change in the terminology used to describe secondary offenders), supported by a clearheaded argument that sentence deflation would simply bring us in line with other European nations and with sentence lengths considered appropriate only a few years ago. While in prison, they should be offered:

- a greater level of psychological and therapeutic support to deal with their circumstances;
- they should have more avenues for openly discussing their offence, outside risk-based frameworks;
- they should be given more regular and meaningful contact with family members, for example, through in-cell telephones, Skype calls and extended family visits;
- they should have greater access to the kinds of educational, cultural, spiritual and therapeutic activities that can provide ‘narrative lifeboats’, or resources for personal change;
- and they should be given opportunities to act on their drive to redeem themselves, for example, through mentoring programmes and charitable activities both in prison and the community.

These are relatively modest suggestions, which would have more-than-modest outcomes.

## **THE IMPACT OF CRIMINAL RECORDS FROM OUR YOUTH: THE CASE FOR CHANGE**

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*Anne Fox in conversation with Christopher Stacey, co-director of Unlock*

**AF:** The question of this book is ‘What should happen to people who commit criminal offences?’ I’m especially interested in your view as to what should happen to people who commit offences when they are under 25.

**CS:** We’ve done a lot of work on the problem of historical criminal records that people received in their youth – with a particular focus on looking at those on the edge of adulthood (late teens/early 20s) and working with other organisations that focus specifically on the treatment of children.

We should be avoiding wherever possible imposing criminal records on people, especially young people. Criminal records cause lifelong problems for people. We should give people the least intrusive disposal as possible but ultimately people should be held to account for their actions and therefore the sentence somebody receives is an important part of what we should do in response, but that should go hand in hand with having an endpoint to that sentence.

**AF:** How and why might criminal records be harmful?

**CS:** They are harmful in that they persist in people’s lives often for the rest of their lives and in multiple ways in their life. The most obvious impact is in relation to future employment but those areas of life in which a criminal record has impact on are multiple and varied, including volunteering, getting housing, buying insurance,

travelling abroad, claiming compensation as victim of crime – none of these things were part of the original sentence that somebody was given.

**AF: Do people understand the lifelong impact at the time at which they've committed the offence and are being dealt with by the police etc?**

CS: What we see in the people who contact us is these issues continue to play out years later, often decades after the conviction is given, and were never set out to people at the time of conviction because of the way things have changed in that time. For example, if someone was given a fine 20 years ago, that impact has changed and gotten increasingly more difficult for them. It's only in the last 20 years or so that criminal records in their formal capacity have really been utilised by organisations like employers, volunteering organisations, insurers, partly as a result of the way the system has developed in that way. For example, if you go back to the Soham murders in 2002, what flowed from that was a criminal records regime that entered into people's lives in a way that hadn't happened before. There were movements in motion to introduce a system and in the intervening period the 1997 police act established the legal framework for criminal records checks. If you were to pick a moment, it was that moment of him and what he did, that brought into sharp focus the need for having criminal record checks. Despite the fact that Ian Huntley never had a criminal conviction or a caution. Up until that point, the idea that employers etc. would get access to your records wasn't an issue. In an interesting way, that timeline also coincides with the establishment of Unlock as a charity – not long after the talk about criminal records checks was on the table. The charity was set up to reflect a problem that was getting greater.

**AF: So it was getting greater but the Soham murders catapulted it into stratosphere?**

CS: Yes.

**AF: How has the problem been getting greater in last 20 years?**

CS: If you simply look at the number of criminal records checks they've been increasing year on year – currently there are about 4 million per year, in the early years it was 1 million – therefore, it impacts a higher the number of people. It's also important to consider a time in the early nineties in which people were being brought into the CJS insofar as receiving formal disposals, cautions and minor convictions, where now, particularly for young people, they might be less likely to be dealt with in the same way. The decrease in young people brought into the formal part of the CJS is now having a positive impact on those young people diverted away from that part of the system through the use of other disposals, but there remains a significant legacy issue where people have arguably been over-criminalised in the past.

We still give criminal records unnecessarily but we're better than we were 10–15 years ago. But that historical process has caused people now in their adulthood feeling the effect of their old criminal record. I think that points to a real issue in that what we may have accepted in public policy terms is we shouldn't be saddling young people with a lifelong sentence, but we have saddled people with them in the past and what should we do with that. That plays out in the number of people who contact us and the impact it's having – convictions that are decades old. There has yet to be a solution that's focused on this group of people. We need to learn the lessons from having created those problems and make sure we both avoid repeating those problems with people coming through the system now and we also look at the way the criminal records regime works to try to rectify those issues of people who have been put in that situation because of the way the systems did work.

**AF: Why should the problem be rectified?**

CS: What we know is that people find that their criminal record from decades ago feels like a life sentence and that it locks

people out from future employment, promotion, participation in society through volunteering, things like that. We don't yet know the economic cost of that but we do know it has a significant personal impact on people. There is a general sense of a feeling of hopelessness, a feeling of depression, a feeling of anxiety. What that leads to is a personal feeling they cannot do a lot of things and behind that it does often mean that they are not able to do certain things, because of the way in which that information is handled by others. For example only yesterday I was made aware of a case where someone had worked for the last 20 years, went to prison as a teenager, out for 20 years, employed for 12 in another job, and got a new job. The employer did a criminal records check and as soon as the employer was told there was something on there, they took the view that because the check was 'not clean' they wouldn't take that person on. This was not a role in a sensitive area or industry. We're quite used to people feeling ashamed and worried about their past and we can do what we can do about motivating people to speak about their past but it is a reality that there is significant stigma and a significant amount of discrimination against people who have any type of criminal record.

**AF: What's the remedy then?**

CS: Right now what's worth highlighting is that in January 2019 the government's criminal records regime, and particularly what gets disclosed on standard or enhanced criminal record checks, came under spotlight of the Supreme Court and the court ruled that the government criminal records regime was unlawful in two respects. Firstly that youth cautions should not be disclosed. They are supposed to be rehabilitative and not punitive. Secondly, that the 'multiple conviction rule', the part of the rules which say that if you have 2 or more convictions you have to disclose them all, that is not lawful. The Supreme Court found this rule is not necessary or proportionate because it applies 'irrespective of the nature of the offences, of their similarity, of the number of

occasions involved or of the intervals of time separating them'. What Unlock essentially is saying is that the government needs to respond to those specific elements and that it's not appropriate for those affected by that judgment to have to wait for any broader review of criminal records. But there have been a number of other criticisms of the criminal records regime and the government has postponed dealing with them until the outcome of this case and so we think it's important that they now consider the regime as a whole and commit to a wider review of the system.

**AF: What would you have the scope of that review be?**

CS: It needs to take into account the entire criminal records regime, how it works, what its purposes are and what the outcomes of that are. The Rehabilitation of Offenders Act 1974 is over 45 years old, it doesn't apply to anyone that has been sentenced to more than four years in prison, and for those that it does apply to we need to make sure it is effective at protecting them from discrimination. In particular we think that the system needs to be much more proportionate and have an element of flexibility in it to allow for people who can demonstrate that they have changed their lives that they shouldn't be saddled with a criminal record for the rest of their life.

**AF: Should there be different systems for people who go through prison and parole, demonstrating their rehabilitation, to those for people disposed of otherwise?**

CS: The parole system looks at individual cases, looks at risks and makes a decision. I don't think that what we're talking about is something the parole system would be able to incorporate. What we're talking about is some kind of mechanism in the community that would allow a decision to be made that said 'this person no longer needs to disclose their criminal record'. What's critical to me is a system that is flexible. The criminal records system we have

at the moment is based on fixed rigid rules and that doesn't reflect the way in which people's lives play out.

To date we've never presented a specific preferred option, but instead highlight other systems which are better than what we have got; e.g. France – where you apply to a court and ask for your criminal record to be sealed. In Northern Ireland they have an automatic review of whether to include disclosure of childhood convictions. What we have done is to say that the current system is creating bad outcomes, there are better ways of doing this and there needs to be a discretionary system where you allow for a bit more flexibility than what we have in the current system. There should be some discretion at the margins to make sure there is proportionality.

**AF: Should there be a different type of system for different types of crime?**

CS: Fundamentally I don't think there should be and I think it's dangerous to seek to separate out different groups of people. People who commit crime are many and varied and our responses to different parts of that needs to be different in many different ways. But when looking at the aftermath of that in relation to criminal records and disclosure we need to avoid arbitrary categorisation.

**AF: What would you say to the argument that people should be treated differently if they are a low risk shoplifter to the serial murderer or high-risk sex offender?**

CS: This is about what happens to the criminal records regime and disclosure and what we do when they are a transformed citizen and have served their sentence.

What I would say the criminal records regime needs to do is that whenever those people become law abiding citizens and their past criminal records are no longer relevant to what they go on to in the future. We need to have a public debate about the purpose of our criminal records regime.

The current system, under the Rehabilitation of Offenders Act, is based on the sentence that someone receives, rather than the offence they commit. So it is possible for a sexual offence to become 'spent' under that legislation after a period in the community crime-free, and subject to that then not have to disclose it for most jobs (although it would still need to be disclosed for roles working with children and vulnerable groups). The legislation establishes the seriousness of the offence based on the sentence received and that is probably the best model to have.

**AF: Are there implications for sentencing and treating people in the criminal justice system on how criminal records are treated later on?**

CS: There are implications because the impact of your criminal record directly flows from the sentence you receive. Whereas there is an argument that those two things should be separate. Particularly if we're seeing sentences not just as punitive but as rehabilitate, it might be a good thing to be able to give people certain sentences because it might be the right thing for them in terms of supporting them. However, it's really important to recognise and understand that in public policy terms a criminal record is a significant thing and it has a significant impact and we should use it as an intervention of last resort. In a similar way to how we should prison as a last resort.

**AF: Can anyone currently avoid a criminal record?**

CS: Going through the court processes, save for being found not guilty there will be an outcome, and that will form part of a person's criminal record for the rest of their life. You've got schemes that divert people to things like community resolutions, e.g. Checkpoint in Durham, which fundamentally avoid formal CRs.

However, we have to be careful with diversionary schemes. They have to be genuine diversion to achieve the objective of avoiding the stigma of a criminal record. For example, although a caution is better than a conviction in some respects, it still forms



part of a person's criminal record. We should be doing more for those people who accept that they did something wrong but where it's in everyone's best interest not to put the person through the formal CJS in dealing with that because what we're trying to focus on is that it doesn't happen again, rather than simply tag them with a criminal record for life.

**AF: Should people get clean slates?**

CS: Fundamentally we believe that people who have been through the CJS should have opportunity at some point to have a clean slate. That doesn't really exist in any format at the moment. There is a long-standing belief that the Rehabilitation of Offenders Act allows people to have a second chance, to not be discriminated against because of their criminal record. But in practice that doesn't happen, there are a huge number of exceptions to that legislation. In the last five years alone there were over 2.25 million youth criminal records disclosed on standard and enhanced DBS checks that were over 15 years old. That shows that we don't have a system whereby people are given clean slates.

**AF: What should trigger the cleaning of someone's slate?**

CS: Time is a strong indicator for why somebody should be able to get a clean slate but it shouldn't be the only one necessarily. In practice time could be the ultimate determining factor but if you do x, y, z you could get to it also. What time gives you the ability to do is to link that back to risks of reoffending etc. Research shows after about seven years people are no more at risk of committing offences than those without a criminal record.<sup>1</sup>

# WHAT SHOULD HAPPEN TO PEOPLE WHO COMMIT SEXUAL OFFENCES?

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*Lynn Saunders and Belinda Winder*

There are approximately 13,500 people currently in prison in England and Wales serving a sentence for a sexual offence – comprising approximately 19% of the overall prison population (MoJ, 2019). This percentage has grown significantly since the early 1990s when 10% of the prison population was made up of people with a sexual conviction (MoJ, 2016). The overwhelming majority are men (98%) (MoJ, 2010). There are also 54,000 people living in the community who are required to register with the police, as a result of the Sex Offences Act 1997, because they have committed a sexual offence. A further, unknown, number who committed a sexual offence before 1997 are not required to register. In the last 12 months, the UK police recorded over 150,000 sexual offences (ONS, 2019) and it is estimated that there may be over 50,000 people under investigation for a sexual offence at any one time. There are a number of explanations for this rise. Public attitudes to sexual offending have changed and people are now more likely to report sexual crimes, the number of possible imprisonable sexual offences has increased (CPS, 2019) prison sentences are longer (ONS, 2019) and the proportion of people prosecuted and serving sentences for historic sexual offences has grown (ONS, 2018).

## **Public/media response**

The reaction of the public, arguably fuelled by the media, to people convicted (or indeed suspected) of committing sexual offences is often severe, with calls for extreme punishments and/or restrictions on the liberty of people convicted of sexual offences. These views are often

based on the perception that people convicted of sexual offences are a homogenous group, stereotypically the predator kidnapping random children from the street and sexually abusing them. Many child safety campaigns have focussed on the risks of ‘stranger danger’, when in fact evidence suggests that the vast majority of sexual offences are committed by people known to their victim (ONS, 2018). There are also a wide range of sexual offences and possible victims: Women, men, children, animals, and both contact and non-contact (and mixed) offences. Offences can be committed overtly, covertly, can involve coercion or grooming of victims. The risks of reoffending of individuals convicted of sexual offences varies widely from very low negligible risk of reoffending to high or very high. The level of risk changes dependant on a number of factors, for example the age and gender of the victim and the age at first conviction of the offender. However, the overall reoffending rate is far lower than many people realise – research has demonstrated the percentage of people committing a further sexual offence after having been punished for a sexual offence is approximately 10% (Mews, Di Bella and Purver, 2017).

The public and media perception of this group has resulted in changes to both the law and administrative process to increase surveillance and monitoring of those convicted of or in some cases simply suspected of sexual offending. These restrictions include curfews, polygraph testing, exclusion zones and GPS monitoring. Many of these restrictions are generic and typically result in significant disadvantage when an individual is released from prison. Often people have difficulty in obtaining suitable employment and housing, they are unable to practice their faith and the rejection and social isolation they face can cause significant trauma and distress.

### **What should happen?**

Politics and emotion need to be detached from the decision-making processes about the best way to reduce the reoffending rate of people with sexual convictions, and to contribute to the prevention of

first-time offences. This should not happen at the expense of services for survivors and victims, but rather there should be a joined-up approach in considering the best way to reduce the harm that sexual abuse causes. A key part of this will be to prevent sexual offending and reoffending, but a significant element of what is needed is to support survivors and victims. It should also be remembered that a proportion of perpetrators have themselves been abused, and that early intervention is always more humane and can be significantly more effective than retrospective help. When we consider that a high proportion of sexual offences are carried out by people who have not previously come to the attention of the Criminal Justice System, it becomes evident that understanding how and why people end up perpetrating sexual abuse is so important. Punitive responses (from the CJS, the media and so on) will not prevent sexual abuse happening. Indeed, such a response is more likely to exacerbate sexual reoffending in socially isolated individuals who have been rejected from society. We need to build up the evidence base of what works in reducing reoffending, and we need to (as a society) find ways in which people with sexual convictions can find a purposeful existence and build a meaningful life if we wish to cut the reoffending rate even further.

### **What do we do?**

Our charity aims to prevent sexual (re)offending by providing a range of different services to provide support with the aim of preventing further victims of sexual crime. We work closely with police and probation colleagues to ensure that licence conditions and restrictions are complied with.

These projects are centred on what we know, from research evidence, works to prevent further offending and reduces the risk of harm to others. All the projects are evaluated in terms of both process and outcomes (Byrne, Winder, Blagden and Lievesley, 2018). The prison-based Circles of Support (PCoSA) was the first of its kind where four trained volunteers work with a Core Member (the ex-prisoner) for a

period of 18 months to two years to help re-establish themselves in the community safely after their release from prison. A Community Circles project provides support to people with sexual convictions who have already been released into the community, also utilising volunteers but not initially based in the prison. The Circles model was expanded to include a project for young people (aged 10–18) and then two prevention projects, one for young people and another for adults with sexually harmful thoughts who were not yet part of the criminal justice process (the Aurora Project).

The final project, the Corbett Centre for Prisoner Reintegration, opened in February 2019 and provided a range of services to support the successful rehabilitation of people leaving prison and returning to the community. These include cooking, budgeting, laundry and job search skills together with opportunities to practice their faith, learn new skills and socialise safely with others. It is staffed by a centre manager and a group of trained volunteers. The Corbett Centre is being evaluated in terms of both process (how it is run) and outcomes (does it help people reintegrate into society and reduce reoffending?). It is envisaged that franchises of the Corbett Centre will be set up in other areas of the UK, pending the evaluation of the initiative.

## Conclusions

There is little help in the community for people with sexual convictions post-release. What help there is (Circles of Support and Accountability, the Corbett Centre for Prisoner Reintegration) face numerous hurdles themselves in delivering services and support for this hated, feared and excluded group. Where people are supportive of such post-release issues, the organisations delivering them nonetheless encounter the Not In My Backyard (NIMBY) phenomenon (Dear, 1992). This is problematic since emotional and social isolation contribute to reoffending. The wider community needs to understand that people with sexual convictions are first and foremost people and who can,

for the most part, be managed safely in the community. Providing they have appropriate support not only from statutory and voluntary organisations, but from the community itself.

## *YOUNG PEOPLE, ARTS AND JUSTICE*

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*Alison Frater*

The setting was the National Criminal Justice Arts Alliance (NCJAA) annual conference. After a morning of discussion and debate, and a lunchtime taste of bright blue, sun-dazzling sky, delegates plunged back into the dark of Birmingham's Crescent Theatre.

The conference was due to address a panel of young people on the question of 'what should happen after a young person is convicted?' – presented as part of the NCJAA's contribution to the Monument Fellowship's annual debate. But first on was a performance of Verona Road, a retelling of Romeo and Juliet by Intermission Youth Theatre Company (Intermission), and there was a buzz of anticipation around the theatre.

In the end, the Monument Fellowship debate was delayed by rapturous applause for Intermission. It didn't matter because the performance turned out to be a great springboard for the discussion and although delegates kept returning to talk about Intermission and Verona Road, the young panel came up with the answers...

\* \* \*

The annual conference had kicked off with a formal panel in the morning, with the aim of providing delegates with a background on the government's vision for arts and youth justice and how this affected investment. It turned out to be a tough ask.

Speakers had been invited with responsibility for national youth justice policy, commissioning police and crime prevention and supporting local community arts and music. The presentations did, as expected, provide useful context, but the discussion felt out of step with the experience of many young people represented. Knife crime was headlining the news that week and the city had suffered three deaths in the last fortnight.

At least one member of the panel abandoned his prepared speech because of a strong personal sense that, given the tragedy of recent days, more radical solutions were needed – and subsequent concerns raised by the audience about diversity and racial bias in the criminal justice system couldn't be answered.

A change of pace in workshops that followed raised the energy. As the morning went on, a stronger narrative emerged. It was about the power of creativity – artists and arts organisations can inspire ideas and debate, can provide safe places for expression and learning, and can create an inclusive platform for everyone's art and culture.

Then, in the afternoon, Shakespeare arrived.

Magic from *Intermission's* translation of *Romeo and Juliet* brought meaning to the lives that had been previously difficult to articulate. The intense, moving performance from an all-black cast spoke directly to a diverse audience. But it was also unsettling. It cast a light onto the structural causes of crime and, above all, the performance illuminated the authenticity of youth. As the young lovers Romeo and Juliet stood staring at each other, balcony to garden, you could feel them – strong-willed, passionate, yearning to find a way out. Could love really be forbidden?

Discussing the play afterwards among the panel of young people, members of the cast said:

Shakespeare was writing about love, of course he was.  
The tragedy is that the play is actually about death and the



destructiveness of violence. It talks about what happens in a place where the rulers encourage certain interests over others.

Where adults and those in power create a toxic environment, children and young people get caught up and are criminalised, becoming victims. There was the start of the answer to the question.

‘It might be Shakespeare,’ one panel member said, ‘but these things still happen.’ So what to do with people who commit crimes? ‘Use the arts as a reveal – to explore, explain, enlighten and protect.’

Young people hold the answers and the panel shared their own experiences. They described how they often felt left out of conversations in their own local communities. They did get invited to public meetings, but only once bad things had already happened and there was already no way back. They worried about cuts to youth services but also about being misunderstood. A lack of clarity around relationships with local services, community leaders and the police led to feelings of being disempowered and unvalued.

There were some positive initiatives, but there was also mistrust. They were unhappy about being watched, especially when there was any kind of gathering, even just to play music. The simple act of getting together and having fun seemed to arouse all sorts of suspicion. Indeed, a youth music venue had just been closed down.

‘Don’t arrest music,’ they said, ‘art has the power to enable young people to be open to positive change.’

The panel talked of the importance of a platform to express themselves. That means ‘listening to what’s happening for young people, hearing different points of view and involving them in deciding what should happen next.’ They argued for intervening long before a person faces conviction, with empathy and opportunities: ‘even something small makes a big difference because someone believes in you, wants to give you a chance.’

‘Everyone’s different’, they said. When asked what should happen when a young person gets in to trouble, they said ‘you need to invest in people’.

Finally, and perhaps most loudly, they told us that ‘role models are crucial’. Everyone agreed with that and it brought us back to Verona Road – the artistic director of Intermission was the role model who had made the difference.

## **YOU'RE NEVER REALLY FREE UNTIL YOUR MIND IS FREE**

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*Dawn Harrison*

The Gemima Project was born from a conversation about a local heritage venue, the Arbeia Roman Fort in South Tyneside. The venue wasn't being accessed by women on current probation orders, despite being on their doorstep. When asked, the women told me they didn't feel they belonged there – that they were excluded from 'these kind of places' which 'weren't for them'. They also told me that supervised contact with their children often took place in venues like fast food outlets – and their children would often get bored because of the lack of things to do.

I began to think about how we could work from the outside in: bringing women who felt excluded, or excluded themselves, into places of culture and heritage as alternative spaces to hold their contact sessions in.

I contacted Tyne and Wear Archives and Museums, a group of local museums and galleries. Arbeia Roman fort in South Shields is famous for the discovery of the remains of a Roman goddess figurine. Working with Archives and Museums staff, the women involved in the hub started looking at Goddesses: who made them, what qualities they represented and their legacies. The insight prompted the group to ask themselves, what did they want to be remembered for? This led to a lot of reflection about their own lives, particularly the behaviours they didn't want to be remembered for. This discussion set the foundations for their core belief in the possibility of change.

The women decided they wanted to design their own modern-day Goddess – Gemima. Starting life as a six-foot paper collage, she carried

with her small but significant hurts – representative of the women’s pain. She also held items representing change, such as a butterfly signifying the women’s belief in the possibility of evolution. The women also gave her a crystal ball – because if they could have seen into the future then they may have made different choices. The collage generated a short but powerful collective story where the women spoke of courage and endurance – the first time they had started using language which moved on from crime and punishment. They were telling their story through Gemima and it didn’t hurt so much anymore. They were sharing experiences and gaining strength.

Suddenly a sense of pride was emerging, in the work they had produced and the learning they were leading. Together, we realised that they had shown courage in designing their Goddess. However, despite this progress the women still described themselves as not ‘worthy enough’ for cultural spaces. They kept telling me nobody would want to hear their story. I kept challenging this – and each time I introduced another art form or venue to explore.

The boundaries were beginning to break down and the women were starting to believe that their stories should be told.

This change in mind set highlighted the therapeutic nature of the work. I noticed their language and behaviour changing – they were using more positive words, walking a bit taller and attendance at the hub reached a real high.

The women asked if it was possible that they were art installations in their own environments. If an object can change an environment by its presence, and these women certainly had plenty of presence, then imagine the impact they could have?

I decided to take them to experience the full impact of some large installations and to a really different place from South Shields. Securing funding from South Tyneside Culture Spring programme, I contacted the Kielder Forestry Commission to arrange a curator-led tour of art

installations in Kielder Forest, Northumberland. The women were gobsmacked when they were told that they were going exploring – the levels of excitement were beyond anything I'd anticipated.

This was a significant turning point for the group. Not only was a cultural organisation making a statement that these women were 'worthy' of the experience but the group themselves mirrored the space they were in. Their behaviour was fascinating.

As people who have expressed suspicion of new experiences and unfamiliar environments they initially approached the installations with caution. Then I watched as they ran towards one particular piece – a large wooden head – climbing inside and viewing the world through its eyes. They were touching, smelling and asking questions, their curiosity being actively encouraged by the curator.

As they sat on the reclining chair sculptures at the edge of the reservoir one woman commented that they were suddenly very small. I asked if she had ever felt large? This led to discussions around feeling exposed and 'very visible' in their own environments.

Following this the women took part in an artist-led workshop at The Customs House, a cultural venue in South Tyneside. The artist involved encouraged the women to consider that art is personal and therefore means different things to everyone. They were different in this workshop, there was a confidence that wasn't there before. The artist asked them to take part in drawing activities and where there had previously been hesitation, there was now willingness and excitement.

The group were in control now and driving their learning together and there was a tangible sense of Gemima being a special part of them. They would get the collage out and just lie it over the table while they were taking part in the session. The women were so invested in what they had achieved, Gemima was a part of them – they had shared their story and been encouraged to do so.

I contacted BALTIC, the UK's largest contemporary art institution based in Gateshead, and told the story of Gemima. They offered to work with the group, inviting them into the space and to work with an artist to transform Gemima's story into an animation.

When I told the women that BALTIC wanted to work with them, the room lit up with excitement. But whilst they were confident in their own abilities, there was still caution about judgements that 'the type of people' who visit art galleries may make about them. The women weren't walking around with 'offender' signs above their heads, but they were used to carrying guilt and shame which felt visible.

The women visited BALTIC to work on a logo for Gemima, which they printed onto t-shirts. The logo put a stamp of ownership on the project and it made her theirs. This reinforced the idea that they had become part of an elite group – the type of people who go to places such as art galleries and take part in cultural activities. Artists each and every one of them, every effort was taken to ensure the women would feel welcome and they did. The women's attitudes were changing, they weren't intimidated any more, their voices were being heard and they were responding to this. They were finally coming inside.

Seeds were planted at this stage. They had told the story of Gemima but how would it feel to tell something more personal, their own story? The group ran with this and the conversations reverted back to the idea of what they wanted to be remembered for. They made reference to Gemima being something their children and parents could have pride in and reflected that they had no idea that probation would be like this.

The women also took part in a book making session which detailed their own stories. There was a noticeable difference in their approach – in the endings of the books their lives weren't over. Their offending behaviours did not define them but were a part of their journey, a chapter in their narrative.

BALTIC arranged for an animation specialist to come to the hub to bring Gemima to life. The women did everything from designing the clay models to narrating the voice-over. There was a launch for the animation, which all the women attended along with their probation officers to witness how far they had come in their probation journey. The animation was on display, with the women's own books, in the adult library at BALTIC for six weeks. The feedback was that people were visibly moved after seeing the women's work.

On the day of the launch one of the women couldn't attend. During the opening speech the women received a text from her saying she was standing outside crying. The women went and got her, she came inside and they all offered a hug, a cuppa, an appreciation of what she had been through. Together they made it okay for her to bring her pain – the pain they all knew – into BALTIC with her.

A journey begins and a shift in attitudes occurs. As 'offenders' the women had lost their cultural identity. They had become used to being done to, not with, to being excluded, not included. The women shared their whole stories and in doing so their whole selves. We didn't avoid difficult hurts, this enabled progression in attitudes and behaviours. The women started to become themselves again and arts, culture and heritage proved to be great vehicles for the journey.

The women are now equipped with tools, language, a positive outlook and raised aspirations. Through Gemima, their hurts were moved just far enough away to allow them to reflect and begin to heal. This, in turn, promoted a change in their behaviour and attitudes – about themselves and what they now expected from life. The progression was not about moving on to education courses or gaining employment, it was about psychologically moving on from powerful emotional pain. The women who took part in the Gemima project have since moved on to work or education. As far as we know, no one has reoffended. I firmly believe this was because they were provided with a rich cultural bed of experience from which they grew.

So, what should happen to women who commit criminal offences? They need to be given spaces, places and tools which allow reflection and promote change. As proven with the Gemima Project, a creative approach – in the right environment and with the right partners – does just this.

To see the story of Gemima visit:  
[www.youtube.com/watch?v=9o5nhYBvrYA](http://www.youtube.com/watch?v=9o5nhYBvrYA)

Gemima the Goddess of Positivity – for all those who chose to follow in her trainers...



## ***PEOPLE WITH SPEECH, LANGUAGE AND COMMUNICATION NEEDS: ARE COURTS FAIR?***

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*Kim Turner*

‘Don’t worry Miss, it’s not serious.’

In the middle of our session, working on developing the ability to sequence a story in a logical manner, it became clear that the young man had pleaded guilty to an offence he couldn’t have committed. I wasn’t quite sure I’d understood correctly so I checked this out with him. He confirmed I’d understood correctly but he felt it wasn’t serious because there were lots of other things that he had done and hadn’t been caught for. Even so, I asked why would he plead guilty when he wasn’t. He declared that he didn’t understand anything that was said in court and it was always the same anyway – ‘Blah, blah, blah, guilty!’ – so there was no point.

Although this young man didn’t consider it to be serious, I consider it a very serious issue that people could be pleading guilty to offences they have not committed simply because they don’t understand the court proceedings. Working as a speech and language therapist in the criminal justice system over the last 10 years I have repeatedly been told by individuals that they have found court difficult due to a number of issues, such as:

- the language used – vocabulary, grammar, amount and not forgetting Latin!
- being worried that they won’t understand the questions they will be asked
- feeling embarrassed about how they will be perceived because of how they talk.

A central tenet of our system is fair and equitable access to justice. I would argue that individuals with speech, language and communication needs (SLCN) are not currently receiving equitable access and this is indeed very serious. It is serious for the individual as they are facing a potentially life-changing situation with possible lifelong ramifications. It is serious for the victim if they are unable to represent themselves in a way which conveys their experience or convinces the court of the impact upon their life, or if the perpetrator in their case remains at large. It is also a serious issue for the wider society if our justice system does not work for a significant percentage of the population.

International research (Anderson, Hawes and Snow, 2016) has repeatedly found that people in contact with the criminal justice system have significantly higher levels of SLCN than the general population (50%+ rather than 5–7% in the general population). These SLCN may be associated with another condition, such as autism and/or learning disabilities, or more often exist on their own. Research has shown these individuals have difficulties in a number of areas; higher levels of hearing impairment, less clear speech, difficulties expressing themselves through language, understanding language, lower literacy skills and difficulties following the ‘rules’ of everyday conversation. The vast majority of these individuals have lived with their SLCN for their whole life and may have become very adept at masking their difficulties, often unknowingly. They are, however, often seen as uncooperative, rude or ignorant rather than people in need of support. Behaviour is seen and addressed while the underlying communication difficulties go unnoticed. In fact, the evidence suggests that three quarters of individuals with these difficulties go unrecognised before they are in contact with the criminal justice system. SLCN are often referred to as a ‘hidden disability’; really hard to recognise and therefore difficult to support.

Even for trained professionals recognising SLCN is complex. Justice professionals have little or no training in this area. SLCN *are* really difficult to identify but it is crucial that we are looking out for them

in individuals accessing the justice system as the consequences of not doing so are potentially life changing. There is a huge language load at each step through the system:

- Providing a coherent account at the Police station.
- Recalling and repeating that account to your defence team and then again at court, often months apart.
- Navigating new vocabulary and new styles of interaction with new people.
- Simply learning the titles and roles of all the professionals involved in a case can be an onerous task.

Most people can generally learn and retain a new word after hearing and using it around 10 times, whereas people with SLCN may need to hear and use the word over 100 times before it is firmly lodged in their memory (Nash and Donaldson, 2005). If the legal team can identify any SLCN prior to the court case starting then support can be sought. Evidently this is far easier where pre-existing records are available or SLCN are associated with a more widely understood condition such as autism.

Court is a stressful situation for most and stress can have a negative effect on communication abilities. When we are highly stressed our ability to retain and recall information can become impaired, it can also affect our ability to express ourselves clearly. We may stumble over our words or miss out crucial parts of the story. This may then be interpreted by others as lying, trying to cover your tracks rather than stress. Stress layered on top of SLCN and a new, complex highly verbally mediated, adversarial environment makes for a very difficult experience.

Where support is available, too often there is inequity in the system. Victims and witnesses are allowed to access an intermediary to support their communication. The same law exists for defendants but it has yet

to be enacted and therefore getting this support is more difficult. Even for victims and witnesses who are identified as requiring an intermediary a large percentage end up ‘unmatched’ and enter court without help. I recently conducted an assessment with a 50 year old man who had been in and out of prison over the last 20 years. There were a number of court reports from professionals stating that he would be unable to access the trial without support yet he never had an intermediary. From the assessment I conducted he had language skills below the age of criminal responsibility. We are clear that a seven year old cannot be expected to fully understand the court process yet we expect a 50 year old with the language skills of a seven year old to do so?

Even when all parties are aware that an individual has SLCN it doesn’t mean they will automatically know how to alter their language in order to support the individual. Brendan O’Mahony (2012) describes a court case in which he acted as an intermediary. A particular challenge was three questions rolled in to one:

‘Did she ask you or did you tell her or did it happen in some other way?’

On the surface all of these words look simple enough and it is not overly long BUT the mental gymnastics required to answer the question are immense. There are three questions: Which to answer first? What would a yes or no response mean? Can I even remember all of the parts?

Criminal Practice Directions state that:

The court should ensure, so far as practicable, that the whole trial is conducted in clear language that the defendant can understand and that evidence in chief and cross-examination are conducted using questions that are short and clear.

“EWCA CRIM 1567,” 2015, P. 19

Whilst this is a laudable statement, modifications required to ensure that each individual with SLCN can understand will differ and the adversarial nature of the court case requires complex questions to be asked. It is

difficult for anyone to make modifications to their normal communication style (spend the day trying not to use a phrase you frequently employ and you'll see just how difficult it is!). Changes are easily forgotten when there are a million other thoughts going through your mind. Training for all professionals working in court should instil 'clear language' from day one for everyone. Court language is strewn with complex constructions; tag questions, double negatives, multi-part questions, long complex narratives which make it very difficult to navigate.

It is not feasible to believe that an intermediary could be provided for every individual with identified SLCN, let alone those with unidentified SLCN. Indeed a recent ruling has suggested an increase in the threshold for defendants to access support from an intermediary. However, professionals do have access to other potential routes to provide support. It is suggested that a Ground Rules Hearing (GRH) is 'good practice where a witness or defendant has communication needs'. 'Sadly, when I delivered training to a large group of magistrates less than a third were aware of this option. A GRH, prior to the case starting, allows a space to discuss the client's SLCN and what level of language would be understood and clear. Even if a GRH is known about and the SLCN identified would the professionals also be aware that support is available to guide these modifications? The advocates 'Gateway Toolkits' are an excellent, but underused resource.

On one occasion I was called to reception in the YOI. A young man had arrived and was distraught. He didn't appear to understand what was going on. Devastatingly for him in his distress and confusion, he thought he had been acquitted and the court van was simply giving him a lift home. That was why, he reasoned, he was the last one in the van. He had, in fact, been sentenced to four years. It is clear that he had not understood court proceedings.

Can we say he had fair and equitable access to justice?

# **CRIME AND CRIMINALISING YOUNG PEOPLE**

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*Anne Fox in conversation with  
Enver Solomon – CEO, Just for Kids Law*

**AF: What do we know about levels of crime committed by children?**

ES: This is a really important and interesting question because the public perception – fuelled by newspaper headlines, especially around street crime and knife crime – is that the involvement of children in crime is widespread and on the rise. The reality is if you look at government data – data based on public surveys and police data – the overall level of crime committed by children has been declining. There is no evidence that children are committing more crime today than they were 10, 15, 20 years ago. However, one specific area – serious violent crime, in particular crime involving the use of knives – has been increasing and that leads to a perception that the level of crime is more serious than was previously.

**AF: Serious youth violence and knife crime is a dominant political and media issue right now – how serious is it?**

ES: It is serious in certain parts of the country and certain communities – London, Manchester, Birmingham – and we can't deny that and have to recognise it. Police data does show that possession of knives by young people is a concern. I don't think there should be a moral panic though. It's not a national crisis as it's not taking place everywhere across the country but in certain areas it's a serious issue. We have to acknowledge that weapons are being used to resolve conflict between children and young people, leading to serious fatalities.

**AF: How should we respond to serious youth violence and knife crime in particular?**

ES: We have to take it seriously. We have to realise the devastating impact it has on families when a young person loses their life.

We need to understand why children feel the need to carry a knife or why they would use it against another young person.

What we know from the evidence is young people carry knives to protect themselves as they don't feel safe. They don't feel safe because they too read the headlines about serious violence so don't feel safe walking around in their communities.

We need to understand why it's happening.

We then need to understand why knives are being used to settle conflict in so-called gang disputes – disputes related to drugs – and why so-called gangs are using children.

There was a recent shocking BBC report from Liverpool which said children were being paid £500 to murder another person with a knife. Scores are settled in a very violent way and children are encouraged to do so too. Children are being victimised as a consequence – it needs to be understood as the victimisation of children. It's really positive that in some cases it is being seen as a form of criminal exploitation and these children and young people are being seen as victims – in the way that young women and girls who were sexually exploited and that they were seen as powerless victims who were groomed by criminals. But I would say children who are involved in violent crime are still primarily seen by agencies such as the Crown Prosecution Service and the police as offenders first and victims second.

We need to understand that these children are victims first and their offending behaviour is driven by very serious victimisation.

We need a welfare response that recognises that they need to be seen as a victim of abuse and coercion and they need to be safeguarded and protected from those who are seeking to control and exploit them.

**AF: Are we criminalising children unnecessarily?**

ES: Yes, children are being criminalised unnecessarily – we know how children are being used as pawns to operate the lower rungs of very sophisticated organised crime involving drugs. Equally children are being criminalised in other ways often by social media and inappropriate sharing of sexual content. Because of the nature of social media – indecent images can easily be taken. If it is shared on social media it's seen as a very serious matter. Police are being called out to deal with what should be seen as innocent childhood behaviour – contacting the police can lead to a cycle of criminalisation.

Schools criminalise in other ways – for example children with learning difficulties, disabilities and, for example, autism can get involved in conflict in a school playground and end up being charged with ABH or GBH, serious offences – they don't know what's happening because they don't understand what they are being told. To criminalise such behaviour is a totally inappropriate disproportionate response which won't provide reparation to the victim.

**AF: We've recently seen announcements that "revenge porn" will now be a crime. Are you concerned in this context that children and young people will be criminalised for behaviour they may not realise is a crime?**

ES: Absolutely, it's about understanding children and young people under 18 and how they behave. Their level of maturity is very different and it needs to be taken into account and understood. If we start to criminalise them, it doesn't repair the harm. If you talk to police about this, they recognise the solution is in education and in how children are informed and encouraged to understand the consequences of their behaviour. The CJS is being used as a blunt system to address it when it should be addressed through education and by parents. It's really positive that there's now a requirement for Sex and Relationships Education to be part of the



school curriculum – it's through these mechanisms, rather than through dragging children in to the CJS that we'll find the solution to such behaviours.

As soon as a child or young person commits an offence they will have a criminal record that will stay with them for life. It has serious consequences for their future life opportunities and it remains a stigma that they carry for the rest of their lives. It really goes back to the question of whether we should criminalise childhood behaviours.

**AF: Do we differentiate between juvenile or adult committed crimes? Is GBH for example always treated the same in terms of how the CJS responds to the offender regardless of age?**

ES: We don't really differentiate but we should. First of all there's the age of criminal responsibility but also there's the issue of consent and the extent to which children are aware and the extent to which professionals are encouraged to use discretion and divert certain behaviours away from the CJS as that's the more appropriate way to resolve the matter in front of them. There has been, in recent years, greater use of discretion by police officers and other – also the numbers of children and young people coming into the CJS for first time has fallen. Police targets for offences brought to justice have been taken away. There is still a presumption that police action and prosecution should be taken rather than a presumption that children and young people should not be criminalised. That presumption could be taken away in legislation but there are a number of steps to be taken first – most importantly to increase the age of criminal responsibility to a much higher age in line with other countries, England's is 10 but Scotland's is 12. In European countries it's higher, for example in Germany it is 14 and in Portugal it is 16. The age which would remove all these behaviours out of the CJS and deal with them appropriately is, in my view, 16. The UN Committee on the rights of the child has recommended raising it to at least 14.

**AF: If criminalisation of childish behaviour continues how do we equip children and young people so that they don't end up being criminalised?**

ES: It goes to whether we perceive these things as acts of criminal behaviour or acts of exploration, acts of testing boundaries, these are all behaviours that children and young people do. Evidence demonstrates that the teenage brain is more likely to seek out behaviours that are thrill seeking. That isn't unusual and I think at the moment we too readily criminalise these behaviours. The police are called and they literally have no choice but to record it.

We need to have a greater understanding of the evidence about what constitutes childhood behaviour and how it is most appropriate for agencies and parents to respond to it.

**AF: We're having this conversation at a time when we're seeing a rise in conservative and traditional values entering back into the debate especially in relation to parental rights and education – e.g. protests by parents regarding inclusion of issues of sexuality in SRE. What would you say to those who would say we're exposing children to more risk and we should protect their innocence?**

ES: The reality is you can't protect children from the world around them. We know from our work at Just for Kids Law as children get older it has an impact on their life in different ways. Their home relationships can be more testing and more difficult. Young people going out and exploring the world can't be prevented from seeking risk taking behaviours that might have a serious impact on others. It's how we respond to those behaviours that matters.

We don't have to radically change the legal framework overnight, there are lots of things that can be done that are really important. For example, a young person should have specialist legal representation by lawyers who are trained in working with children and young people, but we don't have an accreditation system that recognises that specific skill. It's often junior lawyers at the start of their career who get to represent children and that can lead to poor outcomes.

Children are not recognised by the criminal justice agencies as being distinct from adults with specific needs. I was talking to a senior police officer recently and when a call comes in about a crime committed by a child it goes to the same call handler as any other crime. What would happen if it went to a different call handler with an understanding that children are different to adults, that recognises their different level of maturity and understanding? Just by doing that you could get a different outcome. There isn't recognition that children are different and need a different response.

**AF: What do we know about the profile of those children caught up in the criminal justice system?**

ES: It's a really interesting question. If you look at data from children in prison they're:

- more likely to have been classified as a child in need or in contact with the social care system,
- more likely to have been excluded from school,
- more likely to have an undiagnosed learning disability or learning difficulty,
- more likely to have been looked after by the state.

So that shows us that children who have experienced a great level of adversity in their lives, who have had to come through more challenges, are often more likely to come into contact with the CJS.

It's interesting to reflect that there are an awful lot of children from well off backgrounds, who have committed quite serious crime – for example, who used drugs (we've had recent admissions of drug use by high profile politicians) – but they don't come into the CJS for a number of reasons. It's more often children who face more complex issues, who are from disadvantaged, poorer backgrounds, who come into the criminal justice system.

**AF: is it children who were already failed through other public services and systems who are then coming into the CJS?**

ES: Yes, you've summed it up quite nicely. If you look at the data, and track back through the life of the individual young people represented in the data and the contact they've had with agencies – more often than not there's a catalogue of missed opportunities where those children were in contact with social services or agencies but action was not taken to protect them or look after them.

There was a case a number of years ago where two brothers in Doncaster took a child and committed horrendous violent acts against that child. The judge described their childhoods as being toxic. The fact that their childhoods had been toxic was the reason they did what they did. Agencies knew them, had been in contact with them on multiple occasions and many opportunities to take action to support them were missed.

We see this with children and young people we work with at Just for Kids Law – for example, older teenagers who should have been taken into care but aren't due to gatekeeping access to support by Local Authorities – they're perceived as soon becoming adults, less vulnerable, more able, there is no serious attempt to understand the trauma in their lives.

**AF: Are these children then being dealt with too harshly or not?**

ES: There are two things going on – too often when a child commits a crime they're seen as an offender first not as a child with a whole range of welfare needs.

And then for teenagers in particular, who are seen as more able to look after themselves and more threatening, there's no recognition that they're still a child with a need to be responded to differently from adults – not only by CJS but also by the social care system which should be protecting them, safeguarding them and looking after them.

**AF: The numbers of children in prison have declined – what does that tell us?**

ES: That's a really interesting question – there's not been enough research done to understand why there's been a decline. There are a succession of decision-making processes which lead to a child ending up in prison custody and what has happened is that decision-making appears to have changed at critical points. Diversion of children away from the CJS is a factor; removal of police force offences brought to justice targets is a factor; recognition around increasing costs of use of custody is a factor; and recognition that custody needs to be used sparingly because of costs is a factor – so a range of factors are contributing to the decline.

Also, it's become less of a political issue. When Tony Blair was PM law and order was a major issue and so-called juvenile crime was seen as a matter of great political concern. That's not been the case since 2010 with the coalition and then Conservative governments – this has provided the backdrop and so contributed to fewer children being sent to prison, which has to be a positive thing.

The concern is now that those children in custody are those who present with greater complexity and vulnerability which means we need to ask whether or not the CJS is designed to deal with them. CJS professionals are not equipped to deal with childhood trauma and children presenting with very complex needs. That is really significant because it means child prisons are not going to be able to rehabilitate children. Also, it's important to note that the vast majority of children are not in custody for long periods. Prisons don't have them in that environment for long enough to work with them on a long term basis with the kind of multi-disciplinary skills and approach that is needed and when they are released from custody they are effectively spewed out the other end with very little support and even less support when they turn 18.

**AF: do we recognise that YOIs need to be rehabilitative?**

ES: To be fair to the YJB they have tried to develop units for very vulnerable children, but the problem is we can't reform a system that's fundamentally broken because it's not designed to meet the needs of very vulnerable children. I've come to the conclusion, having worked on youth justice issues for many years, that we can't reform custody for children – its fundamentally broken and trying to reform it, mend it, give it a different name isn't going to work. The current secure estate isn't working – we need to start again with different ways to support children.

For example, there are high levels of violence in Feltham YOI. We're putting these children together in an institution where there has been violence for many years and do we really expect it will do anything positive for them?

We need to think again. The prison estate for children needs to be abolished and be replaced by something which looks very different.

**AF: Do you think any child should ever be sent to prison?**

ES: As prisons are currently constructed – no – however, there are circumstances when a child needs to be removed from the community to reduce the risk of harm to themselves and others – this might need to be some kind of secure setting.

**AF: If you were to reform the current approach to dealing with children what would you do and why?**

ES: I'd invest in Multi Disciplinary Teams (MTDs), I'd think much more creatively – it wouldn't leave communities any more at risk or less safe.

I think there are a number of reforms within the current system you could easily introduce:

- specialist legal representation for children
- closing the gap between the criminal courts and family courts by learning from the children hearing system in Scotland which is based on welfare panels
- we could look at the rules around how police record offences when called out to a child and not require them to record all offences but enable them to divert children to social services.

Then on the more radical end (not necessarily so radical in my view):

- we should review the age of criminal responsibility and increase it,
- radically reform the criminal records system for children and young people,
- abolish the current youth custodial estate,
- create a new approach to how we respond to those children who pose a serious risk to themselves and others – establishing therapeutic based institutions to support them, a fundamental change in policy.

None of these will affect the level of crime committed by children but will provide a more child centred response to crime.

# **TRANSGENDER IN THE 21ST CENTURY PRISON SYSTEM**

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*Sarah-Jane Baker*

Although the Ministry of Justice believes that the current transgender prison population is approximately 130, this number only reflects those prisoners who are confident enough to be openly transgender within a sometimes hostile prison environment.

My own extensive research<sup>1</sup> uncovered a hidden transgender population in both male and female prisons that numbers almost 1200 with most admitting that they were too afraid to reveal their gender identity not only to other prisoners, but often their own families too.

Unfortunately, most openly transgender prisoners find themselves placed on vulnerable prisoner wings because their safety cannot be guaranteed if they are placed on 'normal' location. It is not just prisoners who frequently object to 'living' with us but some prison staff too. There are plans to open transgender wings within some female jails with one (half of the segregation unit) being in H.M.P. Downview in Sutton Surrey.

It would appear that 'female to male' transgender prisoners seem to encounter less transphobic violence in female prisons and choose to remain in the female estate instead of opting to male prisons to serve their sentences.

Before 2011, we were not allowed to be openly transgender within 'macho' male prisons and we would find ourselves hidden away on prison hospital wings or in segregation units. Since 2011 and the



introduction of a Prison Service Order to ‘manage’ us, hypothetically, we were legally allowed to dress ‘in role’ which is a standard requirement of Gender Identity Clinics for those of us on the NHS Pathway.

Although our prisons have undoubtedly become more enlightened in recent years regarding the diversity of their prisoners, many transgender prisoners are still demonized, suffer from sexual abuse, receive transphobic comments and are sometimes seen as making a ‘lifestyle choice’. Some prison staff and prisoners, through no fault of their own, are ignorant or uninformed as to what it means to be transgender. The right-wing media outlets still make fun of us, portraying us as weirdos, deviants and a threat to the ‘natural’ order of prison hierarchy.

To date, three transgender prisoners are acknowledged by The Ministry of Justice to have committed suicide because of transphobic attacks from other prisoners and bigoted treatment from prison officers.<sup>2</sup>

However, on a more positive note, the emotional support and kindness that I have received from the majority of prison staff and prisoners during my many years behind prison bars has been invaluable in reinforcing my faith in human nature. Being transgender in prison has not only been frightening on many occasions when I have been raped, stabbed, slashed with razor blades and scalded with boiling water mixed with sugar, it has often been spiritually uplifting it has often been spiritually uplifting and very funny at times. A good sense of humour is essential if you choose to wear a frock, make-up and heels in an oppressive prison environment where violence, fear and hatred is often an accepted norm. Love your life, love others and be kind to yourselves.

I would suggest that the process used to assess and place transgender prisoners within the British jails is, in theory, adequate – although a more hands-on input from gender identity specialists would be welcomed. The complex case boards are currently available to extensively examine the cases of transgender prisoners whose risk to the public was so high that they could not be managed in the community.

Unfortunately, a complex case board can only make a recommendation as to the allocation of a prisoner. A transwoman seeking a transfer to the female estate would need the approval of the Head of female prisons. Recently, because of sexual assaults/inappropriate behaviour by transwomen transferred to female prisons, it is very difficult for any more of these transfers to take place, although at present we are offered the opportunity to be transferred to transgender wings in one female prison, HMP Downview.

However, there has been much opposition to placing transwomen in female segregation units that have been split in half to make an extra 'transgender wing' where transwomen must 'live' – although they will have access to many facilities used by genetic female prisoners e.g. gym, education, workshops, library etc. To date, outside HMP Downview, there have already been two public protests by placard carrying transexclusionary radical feminist groups who feel that 'men pretending to be women' are being allowed to infiltrate women's safe spaces.

I fear that for many years to come the treatment of trans prisoners will continue to be both a political hot potato and a moral and ethical minefield.

# ***HATE CRIME: RESTORATIVE SOLUTIONS***

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*Tehmina Kazi*

## **Hate crime in the UK**

### *Background*

Hate crime is defined as:

any criminal offence which is perceived, by the victim or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic.

This common definition was agreed in 2007 by the police, Crown Prosecution Service, Prison Service (now the National Offender Management Service) and other agencies that make up the criminal justice system. There are five centrally monitored ‘strands’ of hate crime: race or ethnicity; religion or beliefs; sexual orientation; disability; and transgender identity. Not only are these categories recognised in the criminal law framework, but they also comprise five of the nine characteristics protected in civil law. These are referred to as ‘protected characteristics’ in the Equality Act 2010<sup>1</sup> and protect the holders of such characteristics from discrimination in the civil law (non-criminal) space.

It is important to note that race hate crime can include any group defined by race, colour, nationality or ethnic or national origin, including groups like this in the UK (such as Welsh people and Gypsy or Irish Travellers). It automatically includes a person who is targeted because they are an asylum seeker or refugee – as this is intrinsically

linked to their ethnicity and origins. Both majority groups and minority groups are covered by the relevant legislation.

This means that offences with a xenophobic element (such as graffiti targeting certain nationalities) can be recorded as race hate crimes by the police. In addition, offences may be motivated by hatred towards a characteristic that is not centrally monitored and does not even fall within the range of protected characteristics in civil law. A good example of this would be membership of certain subcultures, such as Goths.

### *Statistics*

In 2017/18, there were 94,098 hate crime offences recorded by the police in England and Wales, an increase of 17% compared with the previous year.<sup>2</sup>

When disaggregated by equality strands, the following hate crime numbers were recorded: 71,251 (76%) race hate crimes; 11,638 (12%) sexual orientation hate crimes; 8,336 (9%) religious hate crimes; 7,226 (8%) disability hate crimes; and 1,651 (2%) transgender hate crimes.<sup>3</sup>

This continues the upward trend in recent years with the number of hate crimes recorded by the police having more than doubled since 2012/13 (from 42,255 to 94,098 offences, an increase of 123%). There have been spikes in hate crime following certain events such as the EU Referendum of 2016 and the Christchurch attacks of 2019. There have also been improvements in how the police record hate crime: recent research indicates that police forces have been actively seeking to encourage victims to report hate crimes, but practices vary at a local level.<sup>4</sup>

### *The impact of hate crime upon victims*

Victims of hate crime are twice as likely to suffer from anxiety, fear and difficulty sleeping than victims of most other types of crime.<sup>5</sup> This

is because hate crime cuts to the heart of their very identity. Becoming a victim of hate crime can also compound feelings of isolation, especially where repeat victimisation occurs, and in instances where the victim already feels excluded from mainstream society. Only one third of hate crime victims are satisfied with police handling of the incident. This compares with three quarters of crime victims in general. It is also important to note the communitarian impact of hate crimes: they threaten the group the victim belongs to, as well as the particular individual.

*The different challenges experienced by hate crime victims who have different protected characteristics, in terms of barriers to reporting*

As a result of Why me?'s Restorative Justice outreach work with community groups in London, Lancashire, Cambridgeshire and Avon and Somerset, we have gathered evidence on sub-categories of crime experienced by particular communities, as well as equality strand-specific barriers to reporting hate crime. For instance, 'mate crime', where the victim of a learning disability hate crime considers the perpetrators to be their friends, is a particular concern among this group. Sexual crimes were also a particular issue with this group, since victims were selected for their vulnerability. Police would often struggle to communicate effectively with people who had learning disabilities, whether they happened to be victims of crime or witnesses. This led to frequent misunderstandings, which only served to increase victims' distress. This is where people with learning disabilities felt that Restorative Justice could play a particularly strong role: it would help them build relationships with these statutory agencies and provide them with further communication options, such as making a video or receiving a letter from the offender.

Black and Minority Ethnic (BAME) groups felt that Restorative Justice Services needed to have strong grassroots engagement with BAME communities affected by hate crime. This would help to build sufficient

trust among the affected communities, some of whom were already marginalised and felt that their reports of hate crimes would not be taken seriously in any event.

Feedback from faith communities showed that Restorative Justice awareness events should be structured around faith-based rituals and community events, such as community iftars (events where fasts are broken during the Islamic month of Ramadan).

## Victims

### *What do victims want?*

It is clear that hate crimes have a significant impact not only on victims, but on fellow members of particular communities who share the same protected characteristic as the victim. For instance, members of a Muslim community in a particular locality may feel intimidated when one of their number is attacked, and that they are all ‘fair game’ in some way.

Therefore, the sentence uplift available for hate crime offences has a number of benefits. It inspires trust and confidence among hate crime victims and reassures them that their experiences will be taken seriously. This is particularly pertinent because of the increased barriers to reporting that hate crime victims face. The uplift is also useful in symbolic terms, because it represents society’s rejection of crimes motivated by bias.

However, hate crimes are extremely difficult to prosecute successfully. For instance, the conviction rate for disability hate crimes is as low as 1%, according to MENCAP.<sup>6</sup> Moreover, even if a tougher sentence is dispensed for the perpetrator, it will not repair the harm caused by the hate crime or challenge the perpetrator’s prejudice – which is exactly what hate crime victims want and need.

As the Sussex Hate Crime Project showed:

... respondents were more supportive of RJ interventions than prison sentences in response to hate crimes. The majority of respondents would rather have RJ than an enhanced jail term and, for LGB&T respondents in particular, RJ was thought to be much more beneficial to both victims and offenders.<sup>7</sup>

The Restorative Justice process enables the prejudices held by the offender to be explored and challenged openly, yet safely. In many cases, these prejudices are then eliminated. This process also allows victims to express their feelings and to question the perpetrators' motives. This in turn can help the victim to realise that they were not to blame for their victimisation. In a successful Restorative Justice process, they can also obtain assurances from the offender that they will not be re-victimised.

#### *How much influence do victims have over the process?*

Our research shows that many hate crimes are not reported: people absorb the harm and see it as 'part of life'. Often, they stated they did not view the justice system as one which worked for them, but one that was best avoided. Embarrassment, shame, exposure and fear were all factors which reduced the likelihood of reporting to authorities, as well as the people affected being time poor.

For example, Alan Anstead, Co-ordinator of the UK Race and Europe Network, reported that Hertfordshire GATE set up a reporting website for Gypsy, Roma and Traveller victims of race hate crime.<sup>8</sup> The site has had over 100 reports. Of these, 80% did not report the incident to the police.<sup>9</sup> This is a testament to the lack of agency that many people feel they have when navigating the criminal justice system. If there was greater awareness of Restorative Justice as an option, Why me? believes that hate crime reporting rates would go up.

## Benefits

*What are the benefits of Restorative Justice for victims of hate crime?*

Professor Mark Walters' research suggests that Restorative Justice could improve the emotional wellbeing of hate crime victims.<sup>10</sup> This backs up previous Government research, which has shown that Restorative Justice can result in 85% victim satisfaction rates as a whole.<sup>11</sup> Since hate crimes are known to have a greater impact on victims than other types of crime, it is all the more crucial to give them an active role in terms of how the offence is addressed. One of the defining features of Restorative Justice is that it is victim-led.

Restorative Justice also has proven benefits for offenders and society as a whole, including a 14% reduction in the frequency of re-offending.<sup>12</sup> In hate crime cases, it is particularly important for offenders to see the consequences of their actions, either face-to-face or through another method like letter-writing. The process enables them to see their victims as individuals with unique life stories.

Finally, at a time where there are significant divisions between communities, Restorative Justice can help to heal these divisions and challenge the prejudices that underpin various forms of hate crime. The vast majority of people find hate crime abhorrent and would feel reassured to know of the existence of safe and effective responses like Restorative Justice.

## Obstacles

*Concerns by anti-hate crime groups*

Certain anti-hate crime groups, such as The Monitoring Group, have been critical of Restorative Justice techniques for hate crime. This is primarily for two reasons. Firstly, because they think there is a possibility of causing re-victimisation by bringing victims and offenders



together via Restorative Justice meetings, and secondly because they feel it is a ‘soft option’ for hate crime victims.

Professor Mark Austin Walters<sup>13</sup> carried out significant interviews with victims and practitioners, which debunked these myths. During the entire study, only one victim stated that they experienced a sense of re-victimisation during a restorative intervention – and it was the facilitating police officer rather than the young offender who had been accused of treating the victim unfairly. Re-victimisation is rare in Restorative Justice, precisely because this form of dialogue is based on the values of restoration, voluntarism, neutrality, safety, accessibility and respect.<sup>14</sup> Further, Restorative Justice facilitators undergo thorough training and use risk assessments, backed up by case management procedures and safety policies.<sup>15</sup>

Far from being seen as a ‘soft option’, police forces (such as Cheshire) report that many offenders find it difficult to take responsibility and face up to the impact of their crimes in a Restorative Justice process. Further, listening to the victims’ perception of the crime can also be an uncomfortable experience for the offender. But once these initial hurdles are overcome, the results can be life-changing for the offender too.

*Adherence to best practice as a response to potential victimisation and concerns that Restorative Justice trivialises hate crime*

Why me?’s own experience has shown that Restorative Justice practitioners must have a very good knowledge and understanding of particular types of prejudice and discrimination, in order to be sensitive to the dynamics that underpin hate crime cases. In addition, they must prepare participants for difficult questions expressed in meetings and ascertain whether offenders would re-vocalise any prejudices they might hold in direct meetings. A good Restorative Justice facilitator will always set ground rules, always manage expectations and risk, including signs of coercive control. All supporters would be prepared in a similar way.

### *Crown Prosecution Service policy on hate crime with Out of Court Disposals: postcode lottery*

The Crown Prosecution Service policy on the use of hate crime with Out of Court Disposals (OOCs) is that it is available where police consider it appropriate. Like charities such as the Monitoring Group and GALOP, they want police and prosecutors to take hate crime seriously and are tentative about the use of OOC for hate crime cases as a result. However, in many cases, OOC and the use of Restorative Justice can suit the victim better and reduce re-offending rates.

Further, the CPS policy states that incidents have to cross the threshold of criminal action. This means either a conditional caution or community resolution with some element of Restorative Justice.<sup>16</sup>

## **Restorative justice and sentencing**

### *Restorative justice as part of a prison sentence*

The use of restorative justice in cases of hate crime already has support from statutory agencies. MOPAC's Hate Crime Reduction Strategy for London supports its use, noting that it is used alongside traditional criminal justice processes.

Restorative Justice can take place at any stage of the criminal justice process, including after conviction. Part 2 of Schedule 16 to the Crime and Courts Act 2013 inserts a new section 1ZA into the Powers of Criminal Courts (Sentencing) Act 2000 which makes it explicit that the courts can use their existing power to defer sentence post-conviction to allow for a Restorative Justice activity to take place, by imposing a Restorative Justice requirement.<sup>17</sup> Alternatively, the court might adjourn sentence to allow for a Restorative Justice activity to take place.

### *Restorative justice as part of an out of court disposal*

Sections 7 and 8 of the Code for Crown Prosecutors provide guidance to Prosecutors on alternatives to prosecution for adults and youths, including conditional cautions. In addition, Standard 3 of the CPS Casework Quality Standards (CQS) stipulates that out-of-court disposals will be used as alternatives to prosecution, where appropriate, to gain speedy reparation for victims and to rehabilitate or punish offenders.<sup>18</sup>

In relation to adult offenders, prosecutors are most likely (although not exclusively) to come into contact with Restorative Justice when considering the use of reparative conditions as part of a conditional caution.

### **Conclusion**

The UK has seen a sustained rise in hate crimes over the past ten years, with spikes after specific incidents such as terrorist attacks. There is good evidence to suggest that Restorative Justice can repair the harm caused by individual hate crimes and hate incidents. On a broader scale, it can help to challenge the prejudices that underpin various forms of hate crime and mend divisions between communities, because it humanises the victim to the offender. There should be much greater awareness of Restorative Justice for hate crime victims across the UK, at all stages of the criminal justice process.

## WHAT SHOULD HAPPEN TO MUSLIM WOMEN WHO COMMIT CRIMINAL OFFENCES?

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*Sofia Buncy*

One cannot provide any meaningful answer to the question of what should happen to Muslim women who commit criminal offences without first understanding the context in which these women may have committed an offence or may have been coerced to do so through circumstances or other individuals. The word Muslim does not infer these women may be deserving of a special set of treatments outside of their female peers but alludes to a particular identity, often complex, multifaceted and at times a challenging label within the system and community to uphold post-prison.

Over the course of our desistance work with Muslim women we have become more and more aware, through the case studies of our beneficiaries, of the inherent inequalities in the British Criminal Justice System (CJS) when it comes to the treatment of BAME communities.

From our own research into Muslim Women in Prison,<sup>1</sup> a common thread is that they report being coerced into crime by a 'male hand' or that they became embroiled in a larger family crime and kept silent for the sake of 'family honour'. From my experience of working with Muslim women over the last six years, both in prisons and the community, what strikes me is the lack of visibility, the silence around the understanding of women's offending, its context and a sense of disconnection with their social group. It is evident from our community led desistance work that many of the women are not habitual offenders.

Muslim women prisoners experience multiple disadvantages based on their gender, culture, race and faith. Unique to their plight is how these

factors are accentuated by constructs such as ‘family honour’, faith and socio-cultural expectations. Their situation is further exacerbated by inherent inequalities in the system and an absence of culturally informed support services within the criminal justice system. Understanding these constructs and how they impact on Muslim women prisoners is an essential pre-requisite to addressing a complex and unique set of dynamics surrounding the histories, criminality, incarceration and post prison progression of Muslim women. There is a need to address gaps in understanding about these issues in order to provide better advice and support – and to identify better alternatives to prison for Muslim women who commit crimes.

Our project works with a great many Muslim women who keep their convictions hidden almost up until the sentencing stage due to shame and embarrassment. There are variances in family support, with pressure points being placed by extended family and community as well as the stark absence in community-based practical help and guidance. This, married with a lack of English skills, the complex CJS language, low self-esteem and a fear of bias in the judicial system when being sentenced, compounds their difficulty in reaching out for help. Muslim women need:

- Community based desistance support, specialist community support – Independent help and support on their options and how to navigate through the CJS system. Unfortunately, this is not available through the current CJS set up.
- Language support – Where women do not understand the CJS language they require support to ‘decode’ that. Something which the Muslim Women in Prison Project offers.
- Culturally competent support through all the stages of CJS – This would require training and ensuring the CJS is reflective, inclusive and aware of the particular challenges facing Muslim women entering the system.
- Better links with CJS and community – The current lack of interaction between the two is leaving a void in the knowledge bank of both sides.

- Better BAME representation of CJS staff across the board at all levels, more equality and culturally informed training for staff, better engagement with BAME communities.
- Representation with the judiciary – Current lack of context within the Judiciary is causing a bias in sentencing.

Sending women to prison is not the only, and may indeed be the least effective, route to enable effective rehabilitation. In our experience of working with Muslim women, where women are given short-term sentences (for example for poverty related crimes), the impact of this is often more detrimental for their mental and emotional wellbeing and the resulting scars also affect their children and families, sometimes beyond repair. Within the context of Muslim women, the stigma of being in prison, even for a short while, is much more intense and detrimental because of the cultural shame which surrounds it, thus affecting their chances of return to communities, families, prospects of marriage, linkages with children and generally their standing in the family and the community.

Muslim women in prison often claim damage to family relationships due to incarceration, not understanding the prison system, being frightened of asking for help for the fear of being refused or fear of appearing to be weak. They often fear not being understood or being misunderstood or accused of asking for a specialist treatment. The fear of this type of hostility from the prison staff prevents them from not pursuing their legitimate needs. Lack of timely support can be very important. For example, one of our women related the fact that she was not told about the baby unit in prison and hence she had to leave her two month old child 'on the outside'. Another told us about the fact that she had to pray using her towel and was not given a prayer mat for several weeks. Some Muslim women wanting to wear hijab were also reluctant to do so for fear of being labeled as extremist. These may seem like trivial needs but the timeliness and the implementation of these is so crucial to the adjustment and state of mind of Muslim women prisoners and their willingness to reach out for help.

These fears and hurdles can be mitigated through the prison management having a better understanding of the faith, cultural and community context and what makes Muslim women different from other BAME women. The needs of the prison staff could also be addressed through training and better community / prison links which at the present are in short supply.

Lack of family support is a major concern for Muslim women. The importance of family links in supporting rehabilitation has been well documented by the recent Farmer review.<sup>2</sup> However once again, despite evidence, the particular fragility and dynamics of BAME families were overlooked, suggesting a lack of appreciation of BAME women and Muslim women by those at the helm of such enquiries.

Prisons, and those providing services in prisons, may feel pushed out of their remit to try understand Muslim family and community dynamics or that they don't have sufficient community links so don't do anything because of the fear of getting things wrong. Where we have been able to provide this support prisons have found this useful in adding to their learning and understanding of particular challenges and experience of Muslim women. MWIP has also worked with prisons to organise faith festivals within prisons, not only for Muslim women prisoners but events where staff and other prisoners can take part in order to generate friendship and awareness.

A number of well documented reports such as the Corston Review (2007)<sup>3</sup> identified that BME women were further disadvantaged than other groups 'by racial discrimination, stigma, isolation, cultural differences, language barriers and lack of employment skills'. The 2017 Prison Reform Trust report<sup>4</sup> also highlights the lack of data as a significant problem and the challenges faced by BAME and white women in the CJS including exposure to domestic and /or sexual abuse, problematic substance abuse and the probability that they have primary care of dependent children. But there are clear disparities in that BAME women are more likely to be remanded or sentenced to custody, more

likely to plead not guilty, have less access to mental health support in prison and experience more discrimination from prisoners and staff. In addition, there is acute stigma for Asian and Muslim women from their own communities on release from prison and a lack of specialist organisations working with women from minority ethnic groups.

The Young Review into improving outcomes for young black and/ or Muslim men in the criminal justice system by Baroness Lola Young in 2014,<sup>5</sup> and the 2017 Lammy Review<sup>6</sup> also highlights inherent inequalities and the disproportionate number of BAME women being sentenced and the harshness of sentencing compared to other groups.

All this has resulted in:

- Culturally ill-informed and inappropriate support services for Muslim women in the criminal justice system.
- Absence of a voice in local, regional and national forums where policies and strategies are decided.
- Absence of culturally-informed practitioners within the mainstream providers.
- A lack of investment in community-led desistance support which has deprived the BAME community sector of its capacity.

Paramount to addressing systematic and inherent inequalities in the systems means there are no short cuts. The issues around BAME representation in the CJS and allied agencies is crucial. Cultural diversity and competency within our prisons is equally critical in creating a culture of understanding and responsive support for Muslim women. Building the knowledge and skills of those in the sector to enhance their understanding and appreciation of the challenges and difficulties facing Muslim and other BAME women is vital to overcoming the sense of marginalization which Muslim women feel.

To conclude, equality has to take a central space within the debate around BAME women and within that Muslim women. Thus far, there



have been fleeting references and this is a peripheral issue rather than these women being a core focus of any deliberations around women in the CJS.

Some change has happened and debates have been sparked as part of the work being carried out. However, the sector still feels it is seen and treated as marginal to the CJS space. There has to be a radical shift in the culture of the CJS if they are to find solutions to the complex needs of BAME women who experience a particular dynamic. This, of course, requires proper investment and an equal and fair collaboration with the third sector, particularly with BAME providers, for the skills, insights and competence which they bring to a solution focused approach.

# TACKLING THE CRIMINALISATION OF CHILDHOOD NEURODEVELOPMENTAL DISABILITY

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*Professor Nathan Hughes*

As stated in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, any decision as to what should happen to a young person who commits a crime must be ‘in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile’ (17.1(a))(UN General Assembly, 1985). One key set of such needs are those related to childhood neurodevelopmental impairment.

Childhood neurodevelopmental impairment can occur when the development of the brain and nervous system is negatively affected by genetics, birth trauma, traumatic brain injury, illness, or severe nutritional or emotional deprivation, resulting in a range of functional difficulties (Patel et al., 2011), including in relation to:

*Cognition:* acquiring, understanding and applying knowledge, including skills related to learning, memory, attention, evaluation, or reasoning;

*Executive functioning:* undertaking complex goal-oriented thought and action, including the initiation, planning and sequencing of tasks, concentration, responsivity to novel or changing circumstances, and the self-regulation of contextually appropriate behaviour;

*Emotional functioning:* withdrawal, anxiety, impulsivity, regulating and expressing emotions, such as difficulties in restraining emotional reactions, or understanding the emotions of others;

*Communication:* speech, expressive language or receptive language.

There is a growing weight of evidence to suggest that young people experiencing such neurodevelopmental difficulties are at far greater risk of involvement in criminal justice systems, suggesting greater risk of criminality and criminalisation. The table below summarises a range of studies illustrating the high prevalence of diagnosable neurodevelopmental disorders among young people in custodial institutions globally. Whilst this data clearly requires careful interpretation, given the methodological and analytical challenges in combining and comparing studies with varied definitions, measures, populations and national policy contexts (Hughes et al., 2012), the evidence available suggests that a substantial proportion of young people in criminal justice custody are affected by significant cognitive, socioemotional or communication difficulties. What's more, rates of neurodevelopmental disorders underestimate the proportion of young people affected by significant functional difficulties that do not meet criteria for clinical diagnosis. For example, between 32% and 50% of young people in custody report experiencing a childhood traumatic brain injury, whereby a significant loss of consciousness due to a blow to the head causes ongoing problems with cognition, emotion, and/or communication (Hughes et al., 2015). This compares to 5–24% within the general population; a disparity that is seemingly more pronounced as the severity of the injury increases.

**Table. Definition and prevalence of childhood neurodevelopmental disorders (derived from Hughes et al., 2012; 2016)**

Neurodevelopmental disorder	Definition	Prevalence rates among young people in the general population	Prevalence rates among young people in custody
<b>Learning / Intellectual Disability</b>	Deficits in: cognitive capacity (measured by an IQ score of less than 70); and adaptive functioning (significant difficulties with everyday tasks).	2–4%	23–32%
<b>Fetal alcohol spectrum disorder</b>	Reduced height, weight, or head circumference; characteristic facial features; deficits in executive functioning, memory, cognition, intelligence, attention, and/or motor skills; resulting from prenatal alcohol exposure due to maternal consumption during pregnancy	0.1–5%	
	11–21%		
<b>Communication impairment</b>	Problems with speech, language or hearing that significantly impact upon an individual’s academic achievement or day-to-day social interactions. Includes:		
<b>expressive and receptive language; speech sound disorder; and stuttering.</b>	5–7%	60–90%	
<b>Attention-deficit / hyperactivity disorder</b>	Persistence in multiple symptoms of inattention, hyperactivity and impulsivity	2–9%	12%

An understanding of the day-to-day experience of these difficulties offers insight into the diverse and complex ways in which they might give rise to the expression of aggressive or antisocial behaviour in particular social contexts, including those in which childhood offending typically occurs. For example:

- Poor social communication may result in difficulties in understanding and expressing emotions, including through non-verbal communication techniques, and therefore the use of challenging behaviour as a means to communicate emotions (Ryan et al., 2013). Poor social communication is also associated with difficulties in developing coping strategies and understanding the perspective of others (Brownlie et al., 2004; Snow and Powell, 2011).
- Challenges in peer group formation, and associated susceptibility to bullying and victimisation, and negative peer pressure to engage in crime have been found to be associated with cognitive impairments (Baldry et al., 2011) and developmental language difficulties (Botting and Conti-Ramsden, 2000; Conti-Ramsden and Botting, 2004).
- Deficits in executive functioning are known to influence certain forms of antisocial behaviour by ‘decreasing behavioral inhibition, impairing the ability to anticipate behavioral consequences and assess punishment and reward, [and/or] damaging the capability to generate socially appropriate behavior in challenging contexts’ (Ogilvie et al., 2011: 1064). Such deficits have been particularly associated with aggressive behaviour (Giancola et al., 2001; De Brito et al., 2013).

This brief indicative list illustrates that, whilst young people with significant neurodevelopmental difficulties may commit crime for exactly the same reasons as other young people, there may also be certain additional triggers or particular patterns of behaviour related to the social experience of these difficulties. Understanding and

addressing offending behaviour therefore requires an awareness of, and response to, these potential difficulties.

It is therefore necessary to question the appropriateness of current youth justice interventions to address offending behaviour among young people with neurodevelopmental impairments if the underlying causes of that behaviour are not adequately understood or responded to. The disproportionate prevalence of neurodevelopmental disorders in youth custodial populations indicates the failure of criminal justice systems in this regard. Inadequate assessment and screening tools (Harrington and Bailey, 2005) and insufficient knowledge or training regarding the expression of neurodevelopmental impairment (McKenzie et al., 2000) leads to poor recognition of impairment and a failure of services to identify and appropriately support those with a neurodevelopmental impairment (Hayes, 2002). Specialist service provision within the youth justice system is limited (Talbot, 2010). Instead young people with neurodevelopmental impairment are typically subject to generic youth justice interventions which assume typical levels of verbal and cognitive competence and are intended to ‘tap important metacognitive skills, that is, “thinking about one’s own thinking”, so that unhelpful beliefs can be identified and modified’ (Snow and Powell, 2012: 4). Such approaches may therefore be inappropriate for some young people with neurodevelopmental impairment, leading to difficulties engaging with and completing court orders, and therefore an increased risk of breach and return to court for further sentencing – which typically means a higher dosage of the same type of intervention.

Consideration must also be given to the disabling processes that increase the risk of criminalisation of young people with neurodevelopmental impairments. In the presence of such impairment, cognitive functioning may not correspond to the levels expected at the age of criminal responsibility, or therefore match the inherent assumptions about capacity to engage in the legal process at a certain age (Baldry et al., 2018). Language and communication difficulties can also pose barriers

to engaging with the forensic interview techniques typically used by the police and during cross-examination in court, especially if asked to tell one's story out of chronological order, with repeat questioning about specific details. This can result in terse and unelaborated responses, often accompanied by poor body language (Snow and Powell, 2011). If unrecognised as related to communication, such difficulties are in danger of being interpreted as attitudinal or behavioural, and therefore affecting the decision-making of police and court professionals (Snow et al., 2012). Recognition of the practices that can lead to potential criminalization gives sufficient impetus for generic reform that is not reliant on effective clinical assessment of complex neurodevelopmental difficulties. An emerging understanding of the prevalence and potential impact of neurodevelopmental difficulties, even when undiagnosed, suggests a need for criminal justice practices that do not assume normative communication skills or cognition, and therefore support better engagement and access to justice for all young people.

In summary then, this weight of evidence regarding the prevalence of neurodevelopmental impairment among young people in our criminal justice system and its potential to impact upon offending behaviour, access to justice, and the effectiveness of interventions clearly demonstrates that any discussion as to what should happen to a young person who commits a crime must understand and address potential experiences of disability and discrimination.

## ***SAINTS AND SINNERS: UK VETERANS IN THE CRIMINAL JUSTICE SYSTEM***

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*Tony Wright*

Lord Ashcroft, wrote in the ‘The Veterans’ *Transition Review* in 2014 that the majority of military personnel make a successful transition back to civilian life. Whilst this is a true and accurate assessment for many, there are a small but considerable number of former of military service personnel that do unfortunately end up involved with the UK Criminal Justice System (CJS).

It is a matter of conjecture, if experiences during military service lead to some veterans becoming involved with the CJS. Post Traumatic Stress Disorder or difficulties associated with transition, adjustment, identity and assimilation may be causal factors but it is clear further research is needed along with accurate identification of veterans entering the CJS to test this hypothesis.

Veterans involved with the UK CJS are still, to some degree, a hidden population, with estimates ranging from between 3.5%–17% of those incarcerated within the UK Prison system. Similarly, there is very little accurate data in relation to those Veterans subject to Community Based Probation Orders or at point of arrest. Whilst progress has been made over the last 10 years to try and ascertain accurate statistical data relating to this CJS subgroup more needs to be done. Several organisations have made claim to outstanding reductions in offending behavior after establishing Veteran Centric projects to address this unmet need. Yet, it remains a ‘postcode lottery’ as to how CJS involved veterans are able to access services given that such interventions are piecemeal, lack adequate and sustained funding or independent



scrutiny. Sadly, there is no overarching strategy or system in place to evaluate the effectiveness of these interventions in reducing offending behavior in either the short or long term.

In 2011 I travelled to the USA for a six week period, thanks to a Winston Churchill Memorial Trust Travelling Fellowship, researching and comparing services available to US military Veterans and their UK counterparts. I was very keen to visit Buffalo Veterans Court in New York which was established in 2008, by Judge Robert Russell, to address the multiple complex needs of the Veterans appearing before the Court. The majority had issues directly related to homelessness, social exclusion, substance misuse and diagnosed and/or undiagnosed associated mental health difficulties.

The basic premise of a Veterans Treatment Court is that it is a ‘special court’ which is charged with trying cases of minor offenses which involve Veterans – particularly those diagnosed with service-related illnesses or difficulties related to their adjusting to life as a civilian. Judge Russell and his multi-disciplinary Court team had the foresight to create a Veteran Specific Treatment Court utilising the multi-disciplinary Court team’s expertise in addressing complex issues, in the already established Drug Court and Mental Health Courts. All US States now have Drug Courts processing 150,000 individuals via the 3,454 specialist Courts.<sup>1,2</sup> The National Association of Drug Court Professionals (NADCP) annually facilitate a Drug Court Conference in Partnership with Justice for Vets. Justice for Vets was established in 2010 as a division of the National Association of Drug Court Professionals, a 501(c)3 non-profit organisation based in Alexandria, Virginia. They have helped establish over 200 Veterans Treatment Courts and trained over 3,000 Court staff. In addition, Justice for Vets has conducted 16 volunteer veteran mentor boot camp training events, serving 1,000 veteran mentors representing 125 communities across 30 states. Justice for Vets is dedicated to transforming the way the justice system identifies, assesses and treats Veterans. It is committed to ensuring that no veteran is left behind by providing training and

technical assistance to help communities bring together local, state, and federal resources to directly serve veterans involved in the Justice System due to mental health disorders, trauma, and substance use.

Judge Russell and the team of trained Court mentors are able to provide empathetic support, advice, camaraderie and the ability to ‘accompany and chaperone’ veterans to any appointments directed by the Court – such as, Drug and Alcohol testing appointments, housing, hospital or attendance at recovery groups. The mentors then report back to the Judge at pre-arranged reviews, where achievements are celebrated or sanctions imposed. In the event of non compliance the Judge has the power to send the veteran to prison or extend/adapt the programme to meet their needs. This person centred approach also facilitates the possibility, on successful completion of the programme that their criminal record is wiped clean and/or they may be invited to join the Court team by becoming a Veteran Court Mentor.

On 15th October 2013 I visited Pulaski County Veterans Docket in Little Rock Arkansas with a small group of UK veterans who were part of a Veterans Exchange programme that I had organised so that veterans on both sides of the Atlantic could meet and share best practice.

We were honoured to meet and talk with Judge Mary Spencer McGowan who presided over both the Adult Drug Court and the newly established Veterans’ Treatment Court at Pulaski County Court in Little Rock Arkansas. She kindly agreed for the group to observe the Court process and we were able to watch as a Veteran was initiated into the programme. The Pulaski Court differed from the Buffalo Veterans Court in that it did not have a team of Veteran Court Mentors available to support the veterans and drug testing results and progress reports were provided by the incumbent Drug Court Officer. This veterans Court evolved after it was recognised that a significant number of Veterans subject to Adult Drug Court requirements were in need of additional support. The identified Veterans were then transferred to the Veterans Docket to see if a Veteran Centric approach

would impact on reducing reoffending rates. As such, it operated one afternoon a month in order for it to assess demand. Its similarities to the Buffalo Treatment Court was limited to its offering regular drug testing and support via a Probation Officer to ensure compliance. The Pulaski County Veterans Services Officer (CVSO) role has recently been created to counsel and assist veterans and their dependents by helping them access entitlements and benefits from the Department of Veterans Affairs. The Pulaski County Judge appoints the CVSO to carry out these assessments on behalf of the Court.

In 2017 we were invited to visit the Fairfax County Veterans Treatment Docket in Virginia by Don Northcutt who coordinated the Veterans Court Docket. This Court was established by Circuit Court Judge Penny Azcarate, herself a Marine Corp Veteran. She had observed an increase in the number of Veterans returning from Combat Operations in Iraq and Afghanistan many appearing before her in Court. She established the Court to address the unique issues facing Combat Veterans. Many were struggling to cope with post-traumatic stress disorder and/or traumatic brain injury. The Court Supervised Treatment Programme is intensive in nature and requires significant commitment from participants. Veterans are required to appear in Court twice each month and progress reports from the Court Support Team are discussed, covering issues such as attendance at treatment appointments, drug test results and compliance with probation staff. To promote reparation and the importance of being of service to others Veterans are expected to complete 100 hours of Community Service as part of the order.

Captain Steve Elbert, of the Fairfax County Sheriff's Department, is one of the senior officers at the jail and reports on all arrested individuals identified as veterans. He submits names and personal numbers to the Veterans Justice Outreach Specialist (an MSW) from the VA; the info is checked against the VA database. All positive IDs are reviewed by Probation and the Coordinator. The veteran and/or attorney are contacted to consider the Veterans Docket. All cases are discussed with

the Commonwealth's Attorney's office for approval. Veteran Court Mentors also support the Veteran throughout the 18 to 24-month programme by acting as role model, coach, mentor, advocate and advisor. Sadly, there isn't a lot of empirical research data available as to the effectiveness of Veteran Treatment Courts in reducing offending, but I am reliably informed that there are several multisite evaluations going on at this time which will hopefully deliver results in the next year or so.

In the UK, the National Probation Service were responsible for monitoring the compliance of problematic drug users involved with the CJS. Many were made subject to Drug Treatment and Testing Orders (DTTO). The DTTO fell out of favour and has since been replaced with a Drug Rehabilitation Requirement (DRR) which allows open ended prescribing without cessation. Abstinence as a goal is not even mentioned as an objective. There is very little support for Veterans involved with the Criminal Justice System and whilst some regions have tried to create Veterans Champions within both the Probation Service and Community Rehabilitation Company (CRC's) there is little access to skilled or appropriate psychotherapeutic interventions. In recent years it has been acknowledged that Veterans Awareness Training should be mandatory for those involved in delivering welfare support services to former service personnel, especially those working in the Prison Service, Police, NHS and staff in the homeless and care sectors.

Veterans Treatment Courts facilitate care coordination and promote the concept of collective responsibility via Court directed bespoke packages of support for veterans and their families. As alluded to earlier, the issues facing many veterans are multiple and complex and require a professional 'person centred' case management approach in order to address issues such as drug and alcohol dependency, chronic social exclusion, poor mental health, relationship dysfunction and breakdown, anger management, loneliness, homelessness and a sense of disconnect with significant others and society.

The adaptation and introduction of a Veterans Treatment Court model in the UK Criminal Justice System is not beyond the realms of possibility given the expertise inherent in both the military service charity sector, Court and Probation Service. To date the Ministry of Justice has shown little interest in exploring alternative options for Veterans involved with the CJS. An intensive intervention that breaks new ground by training and utilising Veteran Court Peer Mentors, whilst simultaneously ensuring low risk offenders are kept out of the Prison system, so that their needs are met whilst living in the community rather than when serving custodial sentences can only be a 'force for good' and a dedicated Veterans Treatment Court approach would go a long way to meet the needs of former service personnel.

Regrettably, some Veterans report feeling safe in Prison, in most instances, this can be put down to institutionalisation. There are several Veterans accommodation projects in existence and whilst such projects undoubtedly alleviate and reduce homelessness, in my opinion such institutions delay the inevitable transition that must take place for a veteran to fully assimilate back into to the civilian life.

It should be relatively simple to identify a supportive Judge, preferably one that has served in the Military to facilitate a process where a collaborative of service charities; for example, representatives from military charities, the Police, Probation Service, National Health Service and Mental Health specialists are in Court on a given day to agree, design and provide a comprehensive and holistic, wrap around support service for any veteran involved with the Criminal Justice System. Services with the necessary expertise currently exist but lack leadership and coordination to be truly effective, by pooling their skills the chances of having a positive outcome for the Veteran offender could be greatly improved.

In summary, it is my view that all service related organisations could work 'shoulder to shoulder' to provide the best support to veterans involved with the CJS and support them to adapt to life after military

service, ensuring that they can live worthwhile lives filled with passion, purpose, service, connection and growth. The piloting of an adapted Veteran Court model is long overdue and should be implemented at the earliest opportunity.

## *ALL EQUAL BEFORE THE LAW*

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*Simon Kenny*

There are a group of prisoners who feel they are an underclass in the British prison system. They are Foreign National Offenders (FNOs) – defined as not holding a British Passport, even if they’re entitled to one. FNOs serving more than 12 months are subject to what is described in the UK Borders Act 2007 as ‘automatic deportation’. Those FNOs are treated quite differently from British prisoners. Many are sent to special prisons (set up for the convenience of the Home Office<sup>1</sup>) which have a 100% Foreign National population.

The term ‘Foreign National Offender’<sup>2</sup> is a very broad term. It includes Windrush immigrants, EU and EAA Citizens who have Treaty rights, refugees, asylum seekers and victims of modern slavery. Many will fall into the statutory exceptions to the automatic deportation rules. Usually their cases are not resolved until the end of their sentence or even afterwards. In the latter case they may find themselves kept in a Detention Centre for a further period. Eventually many FNOs are released into the community.<sup>3</sup>

Some examples from the population at HMP Maidstone illustrate the issue:

- One inmate here came from a Commonwealth country with his family in 1976 as a 2 year old, but was designated a foreign national.
- European Citizens who have lived in the UK for many years and have British spouses and children born here.

- A young boy on my wing saw his family murdered in his home country. Fleeing the war zone, he was sold into modern (sex) slavery, before escaping and seeking refuge in the UK. With a few weeks to go to the end of his sentence, it is now conceded that he will not (indeed cannot) be deported but will simply be released without any preparation for life on the outside.

Those in Foreign National prisons are greatly disadvantaged compared to prisoners in other British jails. Access to training, education, distance learning and resettlement services are all more limited. Sentence Plans include requirements to attend courses designed to address the causes of their offending but these are not made available to them. Transfers to open prison and the availability of release on temporary licence (ROTL), – especially home leave – are extremely difficult to achieve. We are subject to such stringent criteria that almost all prisoners are denied these opportunities. At HMP Maidstone not a single prisoner was transferred to the open estate for a period of five years between 2014–2019.

So, what should happen to us as Foreign National Offenders who commit offences? We say that, as we are serving our sentences in the UK, we should be treated the same as British prisoners and not be given favourable treatment. We should have the same opportunities for resettlement and rehabilitation.



# WHAT SHOULD HAPPEN TO PEOPLE WHO COMMIT CRIMINAL OFFENCES?: EXPLORING THE ISSUES

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*Sarah Turvey*

This book is a large and diverse collection with a wide range of approaches and contributors: academics, teachers, artists, project leaders and people at the sharp end of criminal justice. The challenge now is to involve all of us in dialogue with each other.

The creative writing and artwork in the book are powerful testimony to the way the arts enable people to express their experience of criminal justice and to question it. The opening lines of Ashleigh Nugent's poem 'Crime and Expectation' confront the reader: 'Just like you I crave for family,/Community and home'. The final lines assert individual agency and achievement despite the expectations of others. What is perhaps most unsettling for the reader is the possibility that I am in fact the 'you' addressed:

It is not you but me  
Who has made sure my needs are met,  
I did all this and, what is more, survived.  
Despite what you expect.

Books too can make us reflect on ourselves, other people and the world. In his piece 'What should happen to people who commit murder?', Ben Crewe talks about the need felt by lifers in prison to find a way of putting their lives and actions within a broader framework of understanding. They look for:

an ethical scaffold that helps to deal with feelings of shame and answer the kinds of existential questions that imprisonment for

murder produces: ‘what kind of person am I? Why have I ended up here? What does it mean to be a human being, and to be involved in the death of another human being? What will I become?’ For a large proportion of lifers, addressing these questions becomes the overarching preoccupation of their time in custody.

These are very close to the questions raised by members of a prison reading group in a recent discussion of *The Librarian of Auschwitz*. One prisoner wrote afterwards:

The discussion pushed us up against a wall of introspection. A female hairdresser from Bavaria turned Nazi, turned executioner – an everyday German who in another era would have remained so. We ask: who are we? what are we capable of? It’s a profound question.

Many of the essays in this collection are demanding, engaged in complex conceptual arguments around the contested terrain of what should happen to people who commit crimes. Some of the contributors invoke difficult and troubling philosophical ideas such as those of Kant and Hegel about the connection between punishment and human agency and the possibility that punishment could be a moral good.

To help prisoners take part in these debates, we need to promote and extend analytic initiatives in prison alongside self-expressive ones. In his essay ‘Taking Offenders Seriously: Debating Matters Beyond Bars’ Jacob Reynolds outlines a prison project that tries to do this:

Debating Matters is a unique kind of debating competition. It privileges ‘substance over style’: sound arguments and great research over smooth talking and soundbites. All the topics are from the ‘real world’, such as whether museums should return artefacts taken in colonial times to whether fake news is damaging democracy. It is not a public speaking competition, but an attempt to encourage people to think, and argue, hard and seriously about the key issues of our time.

There is also a growing number of philosophy groups in prisons, some formal courses with university accreditation, others informal reading groups. The King's College London outreach project is one example [www.kcl.ac.uk/artshums/depts/philosophy/research/philosophy-in-prison](http://www.kcl.ac.uk/artshums/depts/philosophy/research/philosophy-in-prison). Andy West is one of the tutors on the course and also a senior specialist at the Philosophy Foundation. His 2018 essay 'Battles against hope: philosophy in prison' provides a fascinating and persuasive account of the possibilities of philosophical thinking with prisoners. ([www.unbound.com/boundless/2018/12/03/battles-against-hope-philosophy-in-prison/](http://www.unbound.com/boundless/2018/12/03/battles-against-hope-philosophy-in-prison/).)

The Prisoners' Education Trust supports an expanding number of prison/university collaborations in its Prison University Partnerships in Learning (PUPiL) network. The stated aim is 'to bring universities, and often university students, into prisons to teach and/or learn alongside prisoners' through a variety of collaborative models. The website offers further information and a directory of existing partnerships and the subjects taught [www.prisonerseducation.org.uk/what-we-do/work-with-universities/prison-university-partnerships-in-learning/](http://www.prisonerseducation.org.uk/what-we-do/work-with-universities/prison-university-partnerships-in-learning/).

If we really want to answer 'What should happen to people who commit criminal offences?' we need to be alert to all the approaches in this book and we need to help make them available to people who are the focus of the question. We need research centres for criminology, Clean Break, Prison Reading Groups, Koestler Arts, the Blackash Organisation, Debating Matters and all the other programmes and ideas that feature in this book.

### **Sarah Turvey**

Director

Prison Reading Groups (PRG)

[www.prisonreadinggroups.org.uk](http://www.prisonreadinggroups.org.uk)

PRG is part of Give a Book [www.giveabook.org.uk](http://www.giveabook.org.uk)





# *CONTRIBUTORS*

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**Mark Alexander** LL.B. (Hons) LL.M. *Longford Trust Patrick Pakenham Award winner, 2016* Mark is a former Rugby School and King's College London student who was imprisoned in 2010 at the age of 22. He has since completed both his undergraduate and postgraduate law degrees in prison with the University of London, as well as achieving Grade 8 Piano and a DipABRSM in singing. Mark received the Longford Trust's Patrick Pakenham scholarship award in 2016 and is a member of British Convict Criminology and the Prisoner Policy Network.

**Rob Allen** is an independent researcher, having been director of the International Centre for Prison Studies and held senior roles at NACRO and the Esmee Fairbairn Foundation where he ran the Rethinking Crime and Punishment initiative. A former Chair of Clinks, Rob writes a regular blog at <https://reformingprisons.blogspot.com/>

**Dame Vera Baird** – is the Victims' Commissioner (VC) for England and Wales, responsible for championing the interests of crime victims and witnesses and reviewing the operation of the Victims Code of Practice (the Code). Dame Vera was Police and Crime Commissioner for Northumbria from 2012–2019 and served as Labour MP for Redcar from 2001 to 2010. She was a Government Minister from 2006 to 2010 and Solicitor General from 2007 to 2010 – the House of Common's most senior law officer. In 2017 she was appointed Dame Commander of the Order of the British Empire (DBE) for services to women and equality. She's also the only honorary woman member of the Durham Miners' Association as well as a Patron of charities RESPECT, Operation Encompass and Action After Fatal Domestic Abuse.

**Sarah-Jane Baker** is an award winning violinist, poet, artist and author of *Life Imprisonment: An unofficial guide* and *Transgender behind prison walls*. Having now served 30 years of her life sentence, Sarah Jane is currently the world's longest serving transgender prisoner. (@Lifersarah on twitter)

**Lucy Baldwin**, MA. Dip. SW. BA. (Hons). FRSA FHEA is a former social worker and probation officer, she has been a Senior Lecturer/Researcher at De Montfort University for over 15 years. Her main research interests relate to the impact of imprisonment on mothers and their children.

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**Blackash Organisation** undertakes diverse research projects, working from a Queer theoretical perspective. They aim to give a voice to marginalised groups, support social intervention, coaching, counselling and aim to challenge prejudice and preconceived ideas. Their work is collaboratively authored; seven contributors (including ex-offenders) made this piece possible. The co-ordinator was Rob Jones.



**Phil Bowen** is Director of the Centre for Justice Innovation. As Director he sets and leads the work and overall strategy of the Centre. Prior to being Director, Phil spent the majority of his career in the British civil service. He worked for the Home Office and Ministry of Justice, before working at HM Treasury and Cabinet Office as a delivery adviser to the Prime Minister on criminal justice reform. During his time in the civil service, he spent 14 months on secondment to the Center for Court Innovation in New York, working at Bronx Community Solutions.

**Gemma Buckland** is the director of Do It Justice, a research and advocacy consultancy, founded in March 2019. Between 2007 and 2019 she was an advisor to the Justice Select Committee in the UK Parliament. She led their influential inquiries on prisons, probation, crime reduction, and the treatment of both young adults and women in the criminal justice system. She formerly worked as a policy adviser in the voluntary sector and a social researcher in academia. She has an MSc in Criminal Justice Policy from the London School of Economics.

**Sofia Buncy**, is one of the UK's leading practitioners and thought leaders in the experiences of Muslim women in the Criminal Justice System. She is the ground-breaking researcher and co-author of the 2014 report titled *Muslim Women in Prison – Second Chance: Fresh Horizons*, the first ever report into the experiences of Muslim women in British prisons. In her efforts to drive forward equality and grassroots based solutions Sofia has co-authored a second report in July 2019; *Sisters in Desistance: Community based solutions for Muslim women post-prison*.

**Darren Burns** is the National Recruitment Ambassador for the Timpson Group. He specialises in both the recruitment and retention of ex-offenders and others who face barriers to employment. Darren also fosters relationships with many UK prisons and organisations such as police and probation services. He also manages the Timpson prison training academies, and has responsibility for overseeing the transition from custody and into the workplace. He is passionate about diversity and inclusion and also provides consultancy services for other business,

helping to manage risk and set up processes, as well as helping to educate others on the benefit of employing ex-offenders and other marginalised groups. As a former Police Officer, his experience of working in some of the most challenging parts of the UK enables him to help break the offending cycle and ensure marginalised groups can find employment.

**Hon. Alex M. Calabrese** has been the Presiding Judge of the Red Hook Community Justice Center since the court's opening in April of 2000. Red Hook is a one-judge court covering 230,000 people and the most comprehensive community court in the United States, designed to produce more meaningful and holistic case resolutions. The Red Hook Community Justice Center has received the 2006 Problem-Solver Award from the American Bar Association, the 2008 NCJA Outstanding Program Award, the 2013 Robin Hood Heroes Award and the 2014 CEI Education Award. Judge Calabrese was awarded an honorary doctorate degree in 2019 from John Jay College of Criminal Justice.

**The Tartan Con** is the pseudonym used by an ex-prisoner who was sentenced to 7 years 6 months in custody. He was resident in a number of prisons throughout his detention and since his release spends his time working within the Criminal Justice Sector advocating prisoner rights.

**Clean Break** is a women's theatre company, established by two women prisoners in 1979. Its vision is of a society where women can reach their full potential free from criminalisation. They pursue this vision through creating bold, adventurous theatre with women's voices at its heart.

**Bruce Child** is now retired, always employed since dropping out of university, lifelong active sportsman, interested in raising his adopted family, DIY and classic cars. His offences relate to a consensual sexual relationship with his older step-daughter, he now realises he engineered. Having destroyed his family life he now wishes to do anything possible to prevent others making similar mistakes.

**Ben Crewe** is Deputy Director of the Prisons Research Centre at the Institute of Criminology, University of Cambridge. He is interested in

all aspects of prison life, including prison management, staff-prisoner relationships, public and private sector imprisonment, penal power, and prisoner social life. He is the author of *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*, as well as a number of edited collections.

**Pauline Crowe** OBE has spent over 30 years working in the voluntary sector in regional, national and international organisations and joined Prisoners Abroad as Chief Executive in 2003. She was awarded an OBE in 2007 and given a Freedom of the City of London in 2019. Prisoners Abroad saves people's lives and changes futures by providing humanitarian aid, advice and emotional support to British people detained overseas, to their families and friends and when they return to the UK at the end of their sentence.

**Dr John Davies** is a criminal academic and social activist with historic links to various anarco-syndicalist movements. He remains committed to non-violent civil resistance to prejudicial immigration and labour market controls. He is looking forward to spending time with his grand-daughters when he leaves prison.

**Carmen Robin-D'Cruz** is Research Officer at the Centre for Justice Innovation. She works to research, develop and test new approaches to justice system practice. She studied Law at University College London and has a Bachelor of Civil Law from the University of Oxford.

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**Michael Farmer** became a member of the House of Lords in 2014 after working for half a century in the global metal markets. He is a committed Christian whose experiences growing up in difficult family circumstances inform his work with the Government to ensure their policies strengthen families and relationships.

**Anne Fox** is CEO of Clinks, the infrastructure charity supporting voluntary organisations working in the criminal justice system in England and Wales. She has worked in the voluntary and community sector in the UK and Republic of Ireland in campaigning, policy, public affairs and communications roles since 1998, the same year Clinks was founded.

**Alison Frater** is the chair of the National Criminal Justice Arts Alliance. Alison is an academic and independent public health consultant and a visiting professor at Royal Holloway, University of London. She has worked in senior public health roles and in lead roles in the voluntary sector, and has published widely in professional journals, press and media – with a focus on advocacy for social justice and a strong interest in the arts.

**Lorraine Gamman** is Professor of Design at Central Saint Martins, University of Arts London where in 1999 she founded (and continues to direct) the Design Against Crime Research Centre. She is currently Principal Investigator on the Cell Furniture Project (2018–2020) funded by Ministry of Justice.

**Sophie Gibson** is Partnerships and Development manager at Brighton Women's Centre. She has spent the last 15 years working with and leading services for women with complex needs. Her main interests are in the importance of gendered approaches, trauma responsive services and systems change.

**Penelope Gibbs** worked in radio production and at the BBC before being inspired to influence social in the third sector. She set up the Voluntary Action Media Unit at TimeBank before joining the Prison Reform Trust to run Out of Trouble – a five year campaign to reduce child and youth imprisonment. Under her watch the number of children in prison in the UK fell by a third.

In 2012 Penelope set up Transform Justice a charity which promotes change by generating research and evidence to show how the system

works and how it could be improved, and by persuading the public to support those changes and practitioners and politicians to make them.

**Edwina Grosvenor** is a prison philanthropist. She is one of the founders of the Clink Restaurant chain and Founder and Chair of her own organisation One Small Thing which works alongside staff and residents in the prison system in order to highlight the importance of a trauma informed, gender specific approach.

**Dawn Harrison** is a Senior Interventions Coordinator for Changing Lives in the North East of England. She has extensive experience of community engagement, particularly in the field of criminal justice. Dawn is known for her creative thinking, motivating people to reclaim more positive identities using arts, culture and heritage, thereby ensuring their voices are not lost. This is something she is committed to and will continue to grow.

**Roma Hooper** OBE helped establish the UK's first prison radio station and then became the first voluntary sector coordinator at HMYOI Feltham. In 2006 Roma established the Prison Radio Association and is now Chair of the PRA. She is also Chair of Spark Inside and Clinks, a trustee of the Comedy School, an advisor to Switchback and an ambassador for Tempus Novo.

**Nathan Hughes** is Professor of Adolescent Health and Justice, and Head of the Department of Sociological Studies at the University of Sheffield. Nathan's research considers the processes of criminalisation of young people effected by neurodevelopmental impairment, and the implications for policy and practice reform.

**Susie Hulley** is a Senior Research Associate at the Institute of Criminology, University of Cambridge. She is interested in how young people are affected by the criminal justice system, particularly their experiences of criminalisation and imprisonment. Her recent work focuses on the application of 'joint enterprise' by criminal justice practitioners (police and lawyers) and the impact of this legal doctrine on young people.

**Mark Humphries** is a life sentenced prisoner who now lives in the community and is employed by a prison education provider. In custody he changed his life so much that he was released with a new career path as a writer and poet.

**Richard Ings** has been a funder, writer, researcher and consultant in the arts for over thirty years. As an independent consultant, he has worked for trusts and foundations and a wide range of arts organisations, evaluating the social and educational impact of projects where artists work with disadvantaged groups. Richard now works at Arts Council England, leading on its cultural work in the health and criminal justice sectors in London. In November 2018 he produced a rapid summary of evidence for the impact of arts and culture on health and criminal justice which can be found here [www.artscouncil.org.uk/publication/arts-and-culture-health-and-wellbeing-and-criminal-justice-system-summary-evidence](http://www.artscouncil.org.uk/publication/arts-and-culture-health-and-wellbeing-and-criminal-justice-system-summary-evidence)

**Talia Jay** is a young writer from the West Midlands. Her poetry and lyrics create meaningful pieces inspired by the experiences of life. Talia wrote *Construction of a criminal* as a live response to the National Criminal Justice Arts Alliance's 2019 conference on young people, arts and criminal justice.

**Tehmina Kazi** is the Development Officer for Why me? She is responsible for the development of restorative justice with communities and individuals affected by hate crime in Greater London. From 2016 to 2018, she was a policy and advocacy officer for CESCO, an alliance of 18 equality and human rights groups in Cork, Ireland, which involved policy work and casework on hate crime. From 2009 to 2016, she was the director of British Muslims for Secular Democracy, a registered charity set up to challenge both anti-Muslim sentiment and extremism. She has also completed project work for English PEN, the Equality and Human Rights Commission and the People's Vote campaign (on the impact of Brexit upon BAME communities, specifically with regard to hate crime).

**David Kendall** is founder and co-director of Pinned Up – a two-week literature festival created with and for prisoners. Over the last 20 years he has worked on writing and reading projects in prisons, and outside with other marginalised groups. He is Patron of Reading at HMP Erlestoke.

**Simon Kenny**, is 69 years old and was sent to prison in 2017 as a first-time offender. Born in Australia, he emigrated to UK in 1973. He spent 21 months in one prison working as a Peer Worker, Listener, Chairman of Prison Council and was given the High Sherriff of Kent's Award for outstanding contribution. He is currently writing about peer workers and their benefits to prisons.

**Ben Leapman** is a former *Sunday Telegraph* and *Evening Standard* journalist, covering politics and home affairs. He was one of three investigative reporters whose Freedom of Information case triggered the 2009 MPs' expenses scandal. He later served five years in prison for an offence he maintains his innocence of.

**Gerard Lemos** CMG was described by *Community Care* magazine as 'one of the UK's leading thinkers on social policy'. His books include *The Good Prison: Conscience, Crime and Punishment*, *The End of the Chinese Dream: Why Chinese people fear the future* (published by Yale University Press) and *The Communities We Have Lost and Can Regain* (co-authored with the late Lord Michael Young). He has held many public appointments including as a non-executive director of the Crown Prosecution Service and chair of the Council of the University of York. He is currently a non-executive director of Her Majesty's Prison & Probation Service. In 2017 he edited the first Monument Fellowship book *Life Beyond Crime*.

**Kieran McCartan** is a Professor of Criminology at the University of the West of England (UK), an adjunct at Queensland University of Technology (Australia) and a visiting fellow at the University of Huddersfield (UK). Professor McCartan has a track record of public, academic and professional engagement on criminological issues, including the origins and causes of sexual abuse, and societal responses to people convicted of sexual offences.

Professor McCartan has a number of academic outputs, including, over 100 academic publications (including, journal articles, books, book chapters, external research reports and professional/practitioner publications); over 120 blogs; generated over 1/2 million pounds in external research funding; and has given over 170 external presentations (including, conference papers and invited keynotes); and has taken part in over 40 media interviews nationally as well as internationally. Professor McCartan is the International Chair on the executive committee of ATSA; the media/impact representative and a board member of NOTA; Research Chair and board member for Circles Europe; a member of Confederation of European Probation working Group on sexual offences; and currently advising and drafting recommendations on the assessment, management, and integration of people who have committed sexual offences for the Council of Europe.

**David McGuire** worked with young people in conflict with the law in Spain for eight years before moving to Kent in 2008 to set up Diagrama Foundation UK which now has over 170 staff delivering services to vulnerable people. David is a member of the International Juvenile Justice Observatory which shares and promotes good practice and regularly contributes to international conferences.

**Fergus McNeill** is Professor of Criminology and Social Work at the University of Glasgow, where he works in the Scottish Centre for Crime and Justice Research and in Sociology.

**Dave Nicholson** is a former Probation Officer, currently Director of Ex-Cell Justice Solutions, a co-operative of people with lived experience of the Criminal Justice System, campaigning for a fairer justice system and developing innovative justice solutions for victims and people who commit criminal offences.

**Ashleigh Nugent** is a writer and performer. He uses creativity to inspire prisoners through RiseUp CiC. His latest piece, *Locks*, is a semi-autobiographical novel and one-man show. The novel has won two awards so far; the show debuted at Live Theatre in Newcastle in March 2019 to rave audience reviews.



**Sean Parker** was born in Exeter in 1975, first poem published in the Carmarthen Journal in 1995. He lived in Istanbul for a decade as a writer, musician and teacher until 2014, where he gave the TED talk ‘Stammering and creativity’. He released six books and eleven albums before trial in 2018, regarding which he is PMI (Prisoner Maintaining Innocence).

**Teresa Parker** is a British Quaker and works on their Crime, community and justice programme. Her varied career has involved geophysics, mental health, a boat business and managing a human rights programme in the Middle East. Interests include volunteering on a farm, festivals and textile crafts.

**Re/Creations Collective** have been working together since 2007 to deliver high quality arts and cultural experiences to the most vulnerable and at-risk young people.

**Kristianne Drake** is a practising artist using photography and spoken word. She has exhibited nationally and internationally and has had her work published. She holds a first-class honours and Masters in Photography.

**Dr Ronda Gowland-Pryde** is an award-winning independent engagement and research consultant for the arts and cultural sector and a Visiting Academic at the University of Southampton.

**Xavier Fiddes** is an artist educator and successful commercial photographer in London. He has nearly 15 years of experience in promotional imagery and has worked with a number of multi-national brands.

**Jacob Reynolds** is the external affairs manager at the boi, an educational and citizenship charity, and partnerships manager at the Academy of Ideas. He previously worked in strategy consulting, but his background is in moral and political philosophy.

**Louise Ridley** began her working career working as a teacher in prison. Despite numerous jobs, resettlement of ex-prisoners, project worker with Mind and working with homeless adolescents, her passion is prison. Her

current job as Senior Lecturer in Criminology allows her to teach, write and research about prisons.

**Lisa Rowles** is Khulisa's Director of Innovation and Evidence. Khulisa provided both social and emotional wellbeing programmes for young people and trauma-informed training for sector professionals. As such, the impact of relational and developmental trauma on brain and body has become an area of specific interest for Lisa. She studied extensively in coaching and mentoring, psychology, neuro-linguistic programming, Dramatherapy, psychotherapeutic counselling and therapeutic supervision.

**Lynn Saunders OBE** is a co-founder, and Chair of the Safer Living Foundation charity. She has been the Governing Governor of HMP Whatton for 11 years and has worked with people with sexual convictions for over 30 years.

**Steve Shill** This is Steve's first (last) time in prison. He's been in since 2006. He's 49. He's worked in call centres, the Ministry of Defence and managed pubs. Society has to work properly to stop prisons being necessary. Until that happens, we have to try something different.

**Enver Solomon** has worked in senior roles in the children's and criminal justice sectors. He has produced various reports and co-edited books for Policy Press on safeguarding, youth justice and prevention. He has lectured on the MA in Child Studies at King's College and contributed to the Masters programme in Criminology.

**Edward R. Smyth** works in Business Development for the Forward Trust and is a Board Fellow at Spark Inside. A graduate of the University of Durham, he also holds an MSc in Criminology & Criminal Justice from Oxford. His first book – co-authored with the Rev'd Jonathan Aitken – is forthcoming.

**Christopher Stacey** is co-director of Unlock, an independent award-winning charity that provides a voice and support for people with convictions who are facing stigma and obstacles because of their criminal

record. He leads the charity's policy and advocacy work, and oversees the charity's activities, projects and communications.

**Gary Stephenson** is Executive Chair of Restorative Solutions CIC, committed to developing and progressing innovative restorative approaches and services in the public sector and communities. With a B.A. (Hons) in Public Administration and an M.Sc. Investigative Psychology Gary has managed a number of national programmes aimed at implementing and developing restorative practice in a diverse range of sectors. He has advised Government and Police in Estonia, has given evidence to the Justice Select Committee and has had a number of articles published on Restorative justice. Gary has been instrumental in developing a restorative approach to child to parent violence in the home.

**Adam Thorpe** is Professor of Socially Responsive Design at Central Saint Martins College, University of the Arts London (UAL). He is Co Director of the Design Against Crime Research Centre and Coordinator of the UAL DESIS Lab (Design for Social Innovation and Sustainability). He is Principal Investigator of the Public Collaboration Lab delivered in partnership with London Borough of Camden, focused on participatory design for service, social and policy innovation at a local level. His research activities are practice-based and explore the role of design in meeting societal goals and challenges.

**Kim Turner** is a highly experienced speech and language therapist (SLT) who has worked in the criminal justice system for over 10 years. She has just completed her doctorate which investigated how speech and language therapy services are delivered in YOIs. Kim is currently working as an SLT in the adult prison estate and as a research associate at the University of Sheffield. Her research projects are based in court, police and prison settings exploring how vulnerable individuals access these services.

**Charlotte Weinberg** is the director of Safe Ground. Her work has been published in a variety of publications such as: Gender and Development (Oxfam) Jun 06, *Martha and Alberto, this is not a love story – Using Soap*

*Opera to prevent HIV in Nicaragua*; and ‘Thinking Home’ in Bojana Petric and Sanja Bahun (2019) *Interdisciplinary Dialogues* (Bloomsbury). Charlie is the Chair of the Centre for Crime and Justice Studies.

**Neil Wilson** is a serving prisoner who has experienced various aspects of the justice system; the prejudices, attitudes and inefficiencies in government organisations, and the failings of both the systems and government organisations to effectively support a normal life beyond crime.

**Professor Belinda Winder** is Co-Head of the Sexual Offences, Crime and Misconduct Research Unit (SOCAMRU) in the Department of Psychology at Nottingham Trent University. She is a co-founder, Vice-Chair and trustee of the Safer Living Foundation charity.

**Serena Wright** is a Lecturer in Criminology and Researcher in the Department of Law and Criminology at Royal Holloway, University of London. Prior to this, she was a Research Associate at the Prisons Research Centre at the Institute of Criminology, University of Cambridge. Her research on prisons and penology has focused chiefly on long-term, life imprisonment, but also extends to short-term sentences and ‘frustrated desistance’, particularly among women. She is particularly interested in the intersection between trauma, addiction, and criminalisation, and between health, gender and criminal justice.

**Tony Wright** is a qualified registered Social Worker, Probation Officer and former Home Office Adviser and founder of multi-award-winning Veterans charity Forward Assist. Over the course of 35 years of professional practice, filled with passion and purpose, he has worked tirelessly to empower and improve the health and well-being outcomes of individuals with multiple complex needs in both the statutory and voluntary sector. See [www.forward-assist.com](http://www.forward-assist.com).

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Lisa Rowles and Kieran McCartan

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## **Toward better punishment**

**Phil Bowen**

### **Note**

<sup>1</sup> Reformers take this view in general because the evidence base suggests that (i) over punishment can delay desistance from crime; and (ii) the evidence behind deterrence tends to show that the fear of longer sentencing does not deter future offending. In short, reformers tend to see a less punitive system as one more likely to deliver reductions in re-offending.

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## **Punishing the most vulnerable**

**Sophie Gibson**

### **Note**

<sup>1</sup> Ministry of Justice (16 November 2007) Victims of Crime want punishment but not always prison at: [www.probation.homeoffice.gov.uk/output/Page391.asp](http://www.probation.homeoffice.gov.uk/output/Page391.asp)

## **Exploring learning history to inform sentence practice**

**Mark Humphries**

### **Note**

<sup>1</sup> see [www.parents.com/toddlers-preschoolers/development/growth/developmental-milestones-age-two/](http://www.parents.com/toddlers-preschoolers/development/growth/developmental-milestones-age-two/)

## **The fallacy of rehabilitation**

**E.R. Smyth**

### **Note**

<sup>1</sup> HM Chief Inspector of Probation Report p. 65 [www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/03/HMI-Probation-Chief-Inspectors-Report.pdf](http://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/03/HMI-Probation-Chief-Inspectors-Report.pdf)



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<sup>1</sup> Average cost per prisoner bed in Male category B prison (Costs per place and costs per prisoner by individual prison National Offender Management Service Annual Report and Accounts 2015-16 Management Information Addendum, Ministry of Justice Information Release. Published 27 October 2016).

<sup>2</sup> Proven Reoffending Statistics Quarterly Bulletin, July 2014 to June 2015 (Ministry of Justice, 27th April 2017).

<sup>3</sup> [www.cejfe.gencat.cat/web/.content/home/receerca/cataleg/crono/2015/taxa\\_reincidencia\\_2014/prison\\_recividism\\_rate\\_executive\\_report.pdf](http://www.cejfe.gencat.cat/web/.content/home/receerca/cataleg/crono/2015/taxa_reincidencia_2014/prison_recividism_rate_executive_report.pdf)

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## Resources

*Association Montessori Internationale.*

*Center for Nonviolent Communication.*

## ‘Tough on crime’ – why beliefs shape policy Penelope Gibbs with Anne Fox and Roma Hooper

### Notes

- <sup>1</sup> Transform Justice has worked with Clinks, the Criminal Justice Alliance and the Standing Committee for Youth Justice. The FrameWorks Institute, an International NGO designed and executed the research.
- <sup>2</sup> [www.sentencingproject.org/wp-content/uploads/2015/11/Fewer-Prisoners-Less-Crime-A-Tale-of-Three-States.pdf](http://www.sentencingproject.org/wp-content/uploads/2015/11/Fewer-Prisoners-Less-Crime-A-Tale-of-Three-States.pdf)
- <sup>3</sup> [www.escholarship.org/uc/item/1n48f1rj](http://www.escholarship.org/uc/item/1n48f1rj)
- <sup>4</sup> See Tom Gash’s book *Criminal* <http://tomgash.com/criminal/>
- <sup>5</sup> Susan Banducci and Dan Stevens (2016), ‘Myth versus fact: are we living in a post-factual democracy in EU Referendum Analysis 2016: Media’, Voters and the Campaign Early reflections from leading UK academics, Edited by: Daniel Jackson, Einar Thorsen and Dominic Wring, pp. 22–23. <http://eprints.bournemouth.ac.uk/24337/1/EU%20Referendum%20Analysis%202016%20-%20Jackson%20Thorsen%20and%20Wring%20v1.pdf>
- <sup>6</sup> It’s also counter-productive to refer to choice, agency or personal responsibility in relation to those who are trying to move on from crime. All these words trigger the belief that it’s all about the individual – that someone who chose to commit crime needs to choose to stop.
- <sup>7</sup> [www.transformjustice.org.uk/wp-content/uploads/2016/08/UKCJ\\_MM\\_July\\_2016\\_Final-1-2.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2016/08/UKCJ_MM_July_2016_Final-1-2.pdf)
- <sup>8</sup> *ibid.*
- <sup>9</sup> *Ibid.*
- <sup>10</sup> Anne Fox, writing in *The Times Red Box* in 2018.
- <sup>11</sup> [www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-32/ukip.aspx](http://www.bsa.natcen.ac.uk/latest-report/british-social-attitudes-32/ukip.aspx)

## Taking people seriously: Debating Matters Beyond Bars Jacob Reynolds

### Note

- <sup>1</sup> For more on this theme see the philosopher Martha Nussbaum in *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford, OUP, 2016).

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- GWF Hegel, *Elements of the Philosophy of Right*, Ed. Allen W. Wood, Trans. H. B. Nisbet (Cambridge, CUP, 1991) p.126 (SS100).

## More or Less? Rob Allen

### Notes

- <sup>1</sup> [www.ipsos.com/ipsos-mori/en-uk/concern-about-crime-and-immigration-increase-while-worry-about-brexite-remains-high](http://www.ipsos.com/ipsos-mori/en-uk/concern-about-crime-and-immigration-increase-while-worry-about-brexite-remains-high)

- <sup>2</sup> [www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017\\_Less-is-more.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017_Less-is-more.pdf)
- <sup>3</sup> [www.transformjustice.org.uk/wp-content/uploads/2018/03/TJ\\_March2018report.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2018/03/TJ_March2018report.pdf)
- <sup>4</sup> [www.transformjustice.org.uk/wp-content/uploads/2016/12/TJ-DEC-9.12.16.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2016/12/TJ-DEC-9.12.16.pdf)
- <sup>5</sup> [www.reformingprisons.blogspot.com/2018/01/prisons-solution-to-crime-or-part-of.html](http://www.reformingprisons.blogspot.com/2018/01/prisons-solution-to-crime-or-part-of.html)
- <sup>6</sup> [www.s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2014/07/H185-13-death-of-a-male-prisoner-winchester-23-02-2013.pdf](http://www.s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhjkjmgw/uploads/2014/07/H185-13-death-of-a-male-prisoner-winchester-23-02-2013.pdf)
- <sup>7</sup> [www.transformjustice.org.uk/wp-content/uploads/2015/12/TRANSFORM-JUSTICE-REHABILITATION-DEVOLUTION.pdf](http://www.transformjustice.org.uk/wp-content/uploads/2015/12/TRANSFORM-JUSTICE-REHABILITATION-DEVOLUTION.pdf)
- <sup>8</sup> Elliot Currie (2009). The roots of danger: violent crime in global perspective [www.worldcat.org/title/roots-of-danger-violent-crime-in-global-perspective/oclc/178292363](http://www.worldcat.org/title/roots-of-danger-violent-crime-in-global-perspective/oclc/178292363)

## Writing about the perspective of children whose parents are imprisoned

### Lucy Baldwin

#### Notes

- <sup>1</sup> A day long conference in Westminster jointly organised by the children-led organisation ‘My Time’ and the charity Children Heard and Seen (CHAS), who both support children affected by parental imprisonment.
- <sup>2</sup> Published by Waterside Press available to order here [www.watersidepress.co.uk/acatalog/Seen-Heard-Poems-Prisons-9781909976429.html](http://www.watersidepress.co.uk/acatalog/Seen-Heard-Poems-Prisons-9781909976429.html) all royalties will go to organisations supporting children of prisoners.
- <sup>3</sup> We know that domestic abuse often goes unreported – a woman may experience violence on average 37 times before it is reported to the police One in four women experience domestic abuse, two women every week die as a result of domestic violence, less than 24% of domestic violence is reported to the police, (Women’s Refuge). Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) recorded a total of 201,656 child protection referrals as a result of domestic abuse-related incidents in the year ending March 2018 [www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018](http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018)
- <sup>4</sup> You can read written evidence here, also find links to Parliament live where you can see the evidence provided in person by panels of ‘expert’ witnesses. [www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/right-to-family-life-inquiry-17-19/](http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/right-to-family-life-inquiry-17-19/)
- <sup>5</sup> In relation to mothers and their children the following guidelines should apply; [www.penalreform.org/resource/united-nations-bangkok-rules-women-offenders-prisoners-short/](http://www.penalreform.org/resource/united-nations-bangkok-rules-women-offenders-prisoners-short/) the same principles should apply to fathers with sole care of dependent children.

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Penal Reform [www.penalreform.org/resource/united-nations-bangkok-rules-women-offenders-prisoners-short/](http://www.penalreform.org/resource/united-nations-bangkok-rules-women-offenders-prisoners-short/)

## The relationship between public attitudes, policy decisions by government and scrutiny by parliament

Gemma Buckland

### Notes

<sup>1</sup> See for example, 'The James Bulger case should not set the age of criminal responsibility' <http://theconversation.com/the-james-bulger-case-should-not-set-the-age-of-criminal-responsibility-91342>; Asquith, S. 'Children, Crime and Society', in Malcolm Hill and Jane Aldgate (eds), *Child Welfare Services: Developments in Law, Policy, Practice, and Research*, p. 82.

<sup>2</sup> United Nations Committee on the Rights of the Child, *Children's Rights in Juvenile Justice*, 2007; The Royal Society, Neuroscience and the Law, December 2011, p.13–14; Scottish Government, What have ACEs got to do with Justice?, May 2018.

<sup>3</sup> [www.enfieldindependent.co.uk/news/9128137.mp-nick-de-bois-calls-for-knife-carrying-youngsters-to-get-automatic-jail-sentence/](http://www.enfieldindependent.co.uk/news/9128137.mp-nick-de-bois-calls-for-knife-carrying-youngsters-to-get-automatic-jail-sentence/); <https://www.thetottenhamindependent.co.uk/news/9672223.mp-nick-de-bois-delighted-with-anti-knife-crime-law/>

<sup>4</sup> [www.elliereeves.com/news/knife-crime](http://www.elliereeves.com/news/knife-crime)

<sup>5</sup> See [www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2017/children-young-people-custody-inquiry-17-19/](http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2017/children-young-people-custody-inquiry-17-19/)

<sup>6</sup> [www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/184/184.pdf](http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/184/184.pdf)

<sup>7</sup> [www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/461529/youth-justice-review-terms-of-reference.pdf](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461529/youth-justice-review-terms-of-reference.pdf)

<sup>8</sup> [www.gov.uk/government/publications/independent-review-of-drugs-terms-of-reference/independent-review-of-drugs-terms-of-reference](http://www.gov.uk/government/publications/independent-review-of-drugs-terms-of-reference/independent-review-of-drugs-terms-of-reference)

<sup>9</sup> [www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf](http://www.publications.parliament.uk/pa/cm201617/cmselect/cmhaff/26/26.pdf)

<sup>10</sup> [www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1597/1597.pdf](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1597/1597.pdf); <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/310/310.pdf>

<sup>11</sup> [www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1211/121103.htm#a1](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/1211/121103.htm#a1)

- <sup>12</sup> See for example, Towards Effective Sentencing; Cutting crime: the case for justice reinvestment; *Prison reform: Part 1 of the Prisons and Courts Bill; Prison population 2022: planning for the future.*
- <sup>13</sup> Sir Alan Beith MP, Address to the All Party Parliamentary Group on Penal Affairs, March 2015; [www.civilserviceworld.com/profile-alan-beith](http://www.civilserviceworld.com/profile-alan-beith)
- <sup>14</sup> [www.publications.parliament.uk/pa/cm201719/cmselect/cmjust/483/483.pdf](http://www.publications.parliament.uk/pa/cm201719/cmselect/cmjust/483/483.pdf), para 242.
- <sup>15</sup> See for example Sir Alan Beith MP, Address to the All Party Parliamentary Group on Penal Affairs, March 2015; Cutting crime: the case for justice reinvestment [www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9402.htm](http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/9402.htm)
- <sup>16</sup> See for example Ministry of Justice, Beyond prison, redefining punishment: David Gauke speech, 18 February 2019.
- <sup>17</sup> *The Times* reported on 3 November 2010 that the then Prime Minister had said that the thought of prisoners voting made him feel “physically ill”.
- <sup>18</sup> [www.publications.parliament.uk/pa/cm201719/cmselect/cmjust/491/491.pdf](http://www.publications.parliament.uk/pa/cm201719/cmselect/cmjust/491/491.pdf)
- <sup>19</sup> [www.publications.parliament.uk/pa/cm201719/cmselect/cmjust/416/416.pdf](http://www.publications.parliament.uk/pa/cm201719/cmselect/cmjust/416/416.pdf); [www.bbc.co.uk/news/uk-47054647](http://www.bbc.co.uk/news/uk-47054647)
- <sup>20</sup> Prisons: planning and policies; Prison Safety; Prison population 2022: planning for the future.
- <sup>21</sup> [www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/1004/1004.pdf](http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/1004/1004.pdf); <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/482/482.pdf>; <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/897/897.pdf>; <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1747/1747.pdf>
- <sup>22</sup> [www.theguardian.com/politics/2018/jan/10/changing-drug-laws-too-much-hassle-for-tories-says-nick-clegg](http://www.theguardian.com/politics/2018/jan/10/changing-drug-laws-too-much-hassle-for-tories-says-nick-clegg) 10 Jan 2018.
- <sup>23</sup> Justice Committee, Oral evidence: Work of the Parole Board, HC 415 18 October 2017, Q80 and Q86; Justice Committee, *Oral evidence: Legal Aid, Sentencing and Punishment of Offenders Act 2012*, HC 2094, 3 April 2019, Q26–30.
- <sup>24</sup> [www.theguardian.com/society/2016/may/30/absurd-defunct-prison-scheme-ken-clarke-james-ward-jail-mental-health](http://www.theguardian.com/society/2016/may/30/absurd-defunct-prison-scheme-ken-clarke-james-ward-jail-mental-health); 2016 Longford Lecture, Michael Gove – *What’s really criminal about our justice system*, 16 November 2016.
- <sup>25</sup> [www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf](http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf) See for example [www.telegraph.co.uk/news/uknews/law-and-order/7004829/Prison-may-not-be-a-perfect-solution-but-its-all-we-have.html](http://www.telegraph.co.uk/news/uknews/law-and-order/7004829/Prison-may-not-be-a-perfect-solution-but-its-all-we-have.html)

## The ability to heal people within our current system

Edwina Grosvenor

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## **Our Voices should be heard (poetry, plays, text)**

### **Clean Break members**

Note

<sup>1</sup> Women in Prison – [www.womeninprison.org.uk/research/key-facts.php](http://www.womeninprison.org.uk/research/key-facts.php)

## **Creating Identity through the arts**

### **Re/creations collective: Kristianne Drake, Xavier Fiddes and Dr Ronda Gowland-Pryde**

Note

<sup>1</sup> With thanks to Southampton Youth Offending Service.

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## **Killing the morning**

### **David Kendall**

Notes

<sup>1</sup> This does actually happen in a number of prisons through the charity Give A Book.

<sup>2</sup> [www.ec.europa.eu/epale/en/blog/prison-education-hard-cell-part-1](http://www.ec.europa.eu/epale/en/blog/prison-education-hard-cell-part-1)

<sup>3</sup> [www.insidetime.org/could-we-really-host-a-festival-in-prison/](http://www.insidetime.org/could-we-really-host-a-festival-in-prison/) see also <https://www.bigissue.com/latest/the-legacy-of-penned-up-how-prison-literacy-changed-my-life/>

<sup>4</sup> [www.theartsinwiltshire.wordpress.com/2018/01/05/guest-blog-every-picture-david-kendall-talks-about-the-recent-body-of-writing-exhibition-at-salisbury-cathedral/](http://www.theartsinwiltshire.wordpress.com/2018/01/05/guest-blog-every-picture-david-kendall-talks-about-the-recent-body-of-writing-exhibition-at-salisbury-cathedral/)

## **Making it out of prison – designing for change through ‘making’**

### **Lorraine Gammon and Adam Thorpe**

Note

<sup>1</sup> Quadruple Helix Innovation also known as Open Innovation 2.0, refers to an approach to innovation that integrates the interests, expertise and resources of government, university, industry and community/citizens (Carayannis and Campbell, 2009; Yawson, 2009).

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## Diverting children from the criminal justice system

Carmen Robin-D'Cruz

### Note

<sup>1</sup> See [www.courtinnovation.org/programs/project-reset](http://www.courtinnovation.org/programs/project-reset)

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## What? Do you mean no prisons?

Charlotte Weinberg and Deborah H. Drake

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## Putting the community back into payback

Dave Nicholson

### Note

<sup>1</sup> Ex-Cell Justice Solutions is a newly established co-operative of people with lived experience of the Criminal Justice System, campaigning for a fairer justice system and developing innovative justice solutions for victims and people who commit criminal offences.

## Child to parent violence: Restorative solutions

Gary Stephenson

### Note

<sup>1</sup> [www.cumbria-pcc.gov.uk/wp-content/uploads/2018/06/017-2018-Effectiveness-of-Governance-Arrangements-for-OPCC-2017-18-Covering-Decision-Paper.pdf-COMBINED.pdf](http://www.cumbria-pcc.gov.uk/wp-content/uploads/2018/06/017-2018-Effectiveness-of-Governance-Arrangements-for-OPCC-2017-18-Covering-Decision-Paper.pdf-COMBINED.pdf)

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## The case for decriminalisation

Mark Alexander

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## **Change our attitude, change our approach**

**Neil Wilson**

### Notes

- <sup>1</sup> '50,000 offenders will avoid jail sentences', *Daily Telegraph*, Wednesday 3rd April 2019.
- <sup>2</sup> Table A2.7 and A2.9, MOJ (2018) *Offender Management Statistics: Prison Receptions 2017*.
- <sup>3</sup> Table C1a and C2a, MOJ (2018) 'Proven reoffending statistics, Apr to Jun 2016', p. 14 of *Prison: The Facts*, Bromley Briefings, Summer 2018.
- <sup>4</sup> Joanna Shepland et al. (2008).

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## **Let the punishment fit the criminal**

**Ben Leapman**

### Note

- <sup>1</sup> Figures for this piece derived from MOJ Criminal Justice series (for sentence lengths), MOJ Offender Management Statistics series (for prison population, ONS Crime in England and Wales: Year Ending March 2019 (for police recorded crime figures) and Prison Reform Trust Bromley Briefings Summer 2018 (for reoffending figures).

## **Older men in prison: time to start thinking differently?**

**Louise Ridley**

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## **What should happen to people who commit murder?**

**Ben Crewe, Susie Hulley, Serena Wright**

### Note

- <sup>1</sup> All names used in this chapter are pseudonyms.

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## The impact of criminal records from our youth: The case for change Anne Fox in conversation with Christopher Stacey, co-director of Unlock

## Note

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## What should happen to people who commit sexual offences?

Lynn Saunders and Belinda Winder

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## People with speech, language and communication needs: Are courts fair?

Kim Turner

### Notes

<sup>1</sup> [www.theadvocatesgateway.org/images/toolkits/1-ground-rules-hearings-and-the-fair-treatment-of-vulnerable-people-in-court-2016.pdf](http://www.theadvocatesgateway.org/images/toolkits/1-ground-rules-hearings-and-the-fair-treatment-of-vulnerable-people-in-court-2016.pdf)

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RADLD – Raising Awareness of Developmental Language Disorder [www.radld.org/](http://www.radld.org/)

Royal College of Speech and Language Therapists, justice e-learning modules 'The Box' [www.rcslt.org/learning/the-box-training](http://www.rcslt.org/learning/the-box-training)

## Transgender in the 21st Century Prison System

Sarah-Jane Baker

### Notes

- <sup>1</sup> I sent questionnaires to 100 openly transgender prisoners in both male and female prisons the UK, Northern Ireland, the Channel Islands and the Isle of Man. Each of these prisoners photocopied their questionnaires and passed them to other prisoners, including those attending LGBT+ support groups in prisons. Each questionnaire contained 50 questions with the aim of an unbiased insight into the transprisoner population and the everyday experience of each individual. Both positives and negatives were sought and each questionnaire provided a space for each person to highlight issues of concern. I received 1176 completed questionnaires, including 43 personal letters from transgender prisoners who were hiding their gender status from friends and families. There were also 6 letters from the parents of transgender prisoners, highlighting concerns for their son/daughter's safety and welfare.
- <sup>2</sup> This is my opinion based on the inquest information after the suicides of the victims. I had been in contact via letter with all of these prisoners. Their experiences reflected those of most transprisoners. Our main issues were when we are attacked, both physically and verbally, our trans status was always hidden by staff so our assaults were not classed as transphobia = we suspected to avoid bad press.

## Hate crime: Restorative solutions

Tehmina Kazi

### Notes

- <sup>1</sup> [www.legislation.gov.uk/ukpga/2010/15/contents](http://www.legislation.gov.uk/ukpga/2010/15/contents)
- <sup>2</sup> [www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/748598/hate-crime-1718-hosb2018.pdf](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748598/hate-crime-1718-hosb2018.pdf)
- <sup>3</sup> It is possible for a hate crime offence to have more than one motivating factor which is why the above numbers sum to more than 94,098 and the proportions to more than 100 per cent.
- <sup>4</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), 2018.
- <sup>5</sup> Corcoran, H., Lader, D., and Smith, K. (2015). Hate Crime, England and Wales, 2014/2015. Retrieved from [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/467366/hosb0515.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf)
- <sup>6</sup> [www.mencap.org.uk/blog/four-things-you-probably-didnt-know-about-disability-hate-crime](http://www.mencap.org.uk/blog/four-things-you-probably-didnt-know-about-disability-hate-crime)
- <sup>7</sup> Paterson, Jennifer, Walters, Mark A, Brown, Rupert and Fearn, Harriet (2018) *The Sussex Hate Crime Project: final report*. Project Report. University of Sussex. [www.sro.sussex.ac.uk/id/eprint/73458/](http://www.sro.sussex.ac.uk/id/eprint/73458/)
- <sup>8</sup> [www.reportracismGRT.com](http://www.reportracismGRT.com).
- <sup>9</sup> Anstead, Alan (2017) 'Is Restorative Justice a solution to the growing problem of hate crime?' [www.humanrights.brightblue.org.uk/blog-1/2017/4/13/is-restorative-justice-a-solution-to-the-growing-problem-of-hate-crime](http://www.humanrights.brightblue.org.uk/blog-1/2017/4/13/is-restorative-justice-a-solution-to-the-growing-problem-of-hate-crime)
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- <sup>12</sup> Ministry of Justice (2010). *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*. [www.restorativejustice.org.uk/sites/default/files/resources/files/Breaking%20the%20cycle%20effective%20punishment%2C%20rehabilitation%20and%20sentencing%20of%20offenders.pdf](http://www.restorativejustice.org.uk/sites/default/files/resources/files/Breaking%20the%20cycle%20effective%20punishment%2C%20rehabilitation%20and%20sentencing%20of%20offenders.pdf)
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- <sup>16</sup> Crown Prosecution Service Legal Guidance on Restorative Justice. [www.cps.gov.uk/legal-guidance/restorative-justice](http://www.cps.gov.uk/legal-guidance/restorative-justice)
- <sup>17</sup> Ministry of Justice (2014), Pre-sentence Restorative Justice. [www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/312426/pre-sentence-restorative-justice.pdf](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/312426/pre-sentence-restorative-justice.pdf)
- <sup>18</sup> Crown Prosecution Service Casework Quality Standards. [www.cps.gov.uk/publication/casework-quality-standards](http://www.cps.gov.uk/publication/casework-quality-standards)

## What should happen to Muslim women who commit criminal offences?

Sofia Buncy

### Notes

- <sup>1</sup> Buncy, S. and Ahmed, I. (2014), *Muslim Women in Prison*, Second Chance: Fresh Horizons, Huddersfield: HPCA.
- <sup>2</sup> [www.gov.uk/government/publications/farmer-review-for-women](http://www.gov.uk/government/publications/farmer-review-for-women)
- <sup>3</sup> [www.webarchive.nationalarchives.gov.uk/20130206102659/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf](http://www.webarchive.nationalarchives.gov.uk/20130206102659/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf)
- <sup>4</sup> Counted Out: Black Asian and minority ethnic women in the CJS [www.prisonreformtrust.org.uk/Portals/0/Documents/Counted%20Out.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Counted%20Out.pdf)
- <sup>5</sup> [www.equalcjs.org.uk/sites/default/files/articles/clinks\\_young-review\\_report\\_dec2014.pdf](http://www.equalcjs.org.uk/sites/default/files/articles/clinks_young-review_report_dec2014.pdf)
- <sup>6</sup> [www.gov.uk/government/publications/lammy-review-final-report](http://www.gov.uk/government/publications/lammy-review-final-report)

## Tackling the criminalisation of childhood neurodevelopmental disability

Professor Nathan Hughes

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## **Saints and Sinners: UK veterans in the criminal justice system**

**Tony Wright**

### Notes

<sup>1</sup> American University School of Public Affairs Justice Programs Office (2016).

<sup>2</sup> National Drug Court Resource Center. [www.ndcrc.org/database/](http://www.ndcrc.org/database/) (retrieved March 5, 2019).

## **All equal before the law**

**Simon Kenny**

### Notes

<sup>1</sup> PSI 01/2015.

<sup>2</sup> FNOs comprise 11% of the prison population but 20% of suicides (Bromley Factfile).

<sup>3</sup> HMIP Report for HMP Maidstone 2019 shows 19% of prisoners there are not in the end deported. This translates to about 175 prisoners each year.

Crime & Consequence – what should happen to people who commit criminal offences? is a collection of essays and creative reflections on an important question in our society. Contributors offer their lived and professional experience of the criminal justice system to offer answers which get to the heart of the matter. They explore how best to ensure that societal responses to crime tackle the causes and consequences. They make a strong case for investment in alternatives to prison and in a range of interventions and approaches which may better solve some of the underlying issues. Above all this collection invites the reader to think about the question and to consider their own role in being part of the answer.

The book includes: a foreword from Michael Spurr, formerly Chief Executive HM Prison and Probation Service, and contributions from academics, experienced practitioners from public and voluntary services from the UK, Spain and the USA and those who have committed crime and been through the system. Contributions cover a range of stages at which a person can have contact with the criminal justice system including point of arrest, community sentences and what does and should happen when people are sent to and released from prison. Reflections are shared on how we might better address specific types of crimes or treat different groups of people who commit them.

This collection is the third in a series of books curated by The Monument Fellowship; eight organisations funded by The Monument Trust to work together to make a sustained, cumulative and transformative change to the journey of individuals through our justice system. The members of the fellowship are: The Centre for Justice Innovation, Clinks, the Diagrama Foundation UK, Khulisa UK, Koestler Arts, Lemos and Crane: The Good Prison, The National Criminal Justice Arts Alliance and Restorative Solutions CIC.

*“This brilliant book poses a simple question that haunts our society: what to do with people who commit crimes? The answers it suggests are engaging, smart, varied, come from several different directions and most definitely worth reading.”*

Ian Birrell - former speechwriter to David Cameron & Contributing editor *The Mail on Sunday*

*“A rich mix of perspectives about crime and criminalisation, this book raises crucial questions about the intended and the unintended consequences of prisons. It deserves to be widely read.”*

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