

PRISON SERVICE JOURNAL

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Victor L Shammass is based in the Department of Sociology and Human Geography at University of Oslo, Norway.

Chris Potter is ROTL Policy Developer for the Ministry of Justice (MoJ); he was interviewed on 12 November 2014 by **Chris Gundersen** Head of Casework and Operational Support to the Deputy Director for Public Sector Prisons.

Sara Pennington is Governor of HMP Stanford Hill and is interviewed by **Dr Ben Crewe** who is Deputy Director of the Prison Research Centre at the Institute of Criminology, University of Cambridge.

Dr Andy Aresti is a Lecturer at University of Westminster and has previously served a prison sentence. He is interviewed by **Dr Sacha Darke**, Senior Lecturer at University of Westminster.

Dr Leonidas K Cheliotis, is an Assistant Professor in Criminology at the Department of Social Policy, London School of Economics and Political Science.

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Rt. Hon. Sir Alan Beith, M.P. has been a Member of Parliament since 1973. Between 1992 and 2003, he was Deputy Leader of the Liberal Democrats and he has been Chair of the House of Commons Justice Committee since 2007.

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Editorial Comment

Prison Service Journal has a long and productive partnership with the Perrie Lectures Committee. Each year, articles are published based upon the annual lectures. This is a partnership of which the *Prison Service Journal* is proud.

The Perrie Lectures is an annual event which has the purpose of stimulating dialogue between criminal justice organisations, the voluntary sector and all those with an academic, legal or practical interest in offenders and their families. It is hoped that the event will contribute towards improving the care of offenders, and advancing penal policy, in its broadest sense. These are aspirations that are shared by *Prison Service Journal*. The Lectures are named in honour of Bill Perrie, who retired from the Prison Service in 1978. He worked as a prison governor for 32 years, latterly at HMPs Hull, Long Lartin, and Birmingham. He was noted for his contribution to the development of hostels, working out schemes, and regimes for long term prisoners.

The 2014 Lectures took the title of 'Making sense of life sentences'. As Dr Nicola Padfield, from University of Cambridge, explains, there are many different forms of indeterminate sentence now available to the courts and prisoners serving such sentences now make up 16 per cent of the population. This increase is partly accounted for by the expansion in the use of the sentence through new measures such as indeterminate sentences for public protection. However, the growth also reflects longer tariffs, or minimum terms for those sentenced and more restrictive approaches to decisions about release made by the Parole Board. Distinguished Liberal Democrat politician and Chair of the Justice Select Committee, Sir Alan Beith MP, makes a challenging contribution to this debate. He is careful to avoid polemic but draws upon a wide range of parliamentary and expert reports in order to question the current approach to life sentences. He asks whether the laws on homicide should be reformed, whether sentencing should be reviewed, whether prison interventions should be strengthened and whether post-release supervision is effective. He concludes by questioning whether the criminal justice system is the best way to promote community safety or whether other approaches should be taken. Despite the measured and considered nature of this contribution, it undoubtedly poses some challenging questions. Lucy Gampell draws upon her experience as a Parole Board member and former Director of Action for Prisoners' Families to make a case for strengthening rehabilitative interventions for life sentence prisoners and support for their families, both in custody and after release.

This edition also includes an interview with Juliet Lyons, Director of the Prison Reform Trust, who was the recipient of the Perrie Award. This award has been presented annually since 1995 to the person the Perrie Lectures Committee consider to have done most to promote an understanding of the work of the Prison Service and pushed forward the development of penal policy.

This edition of *Prison Service Journal* also focuses on the topic of open prisons and release on temporary license. These issues rose in public prominence following a series of serious offences committed by prisoners on ROTL in 2013. This has brought a greater degree of public scrutiny and raised questions about the practice and even the purpose of open prisons. This is touched upon by some of the Perrie Lecture contributors but is also explored from a number of perspectives in articles and interviews. Two high quality international academic papers, from Victor Shammass and Dr. Leonidas Cheliotis, examine the nature of control and order in open prisons and on temporary release. Without the physical controls that exist in other prisons, these institutions develop forms of control which are both instrumental (there are rewards and punishments attached to compliance) and normative (values of conformity and trust are fostered so that prisoners self-regulate). The interviews, with a policy maker, a prison governor and an ex-prisoner, discuss the recent events and subsequent changes, in England and Wales, but also the wider value of open prisons.

These articles and interviews raise important questions about the balance between public protection and rehabilitation. They illuminate the role of open prisons as a means of reforming prisoners, ameliorating the harms of imprisonment and promoting desistance through trust and responsibility. However, these also sit in relationship to other pressures that exist in the contemporary world. This includes greater concern about risk, such as anxiety about crime and prisons. Solutions are often seen in greater punitiveness, harsher sentences and less facilities for those incarcerated. Further, the private sector and technology are often looked to for the answers. These pressures can all be detected at play in the current debates about open prisons and temporary release. This edition does not set out to offer definitive answers to those questions, if indeed that were even possible, but it does intend to open up these issues and offer an opportunity for reflection and debate.

A prison without walls:

Alternative incarceration in the late age of social democracy

Victor L Shammās is based in the Department of Sociology and Human Geography at University of Oslo, Norway.

The Nordic societies have concocted a series of alternative penal measures to correct and control criminal offenders. Chief among these is the open prison. In Norway prison administrators regularly channel around one-third of the incarcerated population into minimum-security, open prisons. Here inmates enjoy greater autonomy and freedom of movement, more meaningful work, and increased opportunities for immersion in ordinary society. While open prisons are significantly less expensive to operate than higher-security facilities, largely thanks to the fact that they require fewer security personnel to control the prison population, it remains a contentious issue whether such prisons are better at rehabilitating offenders and delivering reduced recidivism rates. What seems certain, however, is that such prisons are uniquely suited to disciplining and controlling prison populations, crucially, by giving inmates something to lose and then threatening to take it away. Maximum-security prisons, on the other hand, are unable to produce fine-grained gradations of incentives and disincentives to regulate inmate behavior for the simple reason that inmates there have practically nothing to lose. This is perhaps the fundamental disciplinary innovation of the open prison: it corrects, in some sense, because many inmates learn to desire to be corrected.

Introduction

The United States has witnessed a spectacular boom in prison populations over the past four decades, peaking at some 2.3 million persons behind bars by the early 2010s, and Western Europe continues to converge on its trans-Atlantic counterpart with rising prison populations and increasingly severe conditions of confinement. Austerity policies will likely make matters worse: by creating fertile conditions for the commission of crime, by reducing the funds available to the public sector. But in the face of the seemingly unstoppable

tide of proliferating punishment, a few select northern European societies — Denmark, Norway, and Sweden — have seemingly withstood this veritable ‘punitive turn.’ The Nordic countries have relatively low prison population rates: around 70 inmates per 100,000 persons, that is, *one half* of England and Wales’ rate of incarceration and *one-tenth* of the US imprisonment rate.¹ The Nordic societies’ prison populations are spread far and wide in relatively small institutions: Norway’s *entire* prison population could be contained in California’s San Quentin State Prison. Fewer than 4,000 inmates are spread out across 44 separate correctional institutions, making Norway’s prisons almost comically petite (the smallest jail holds 12 persons),² particularly when compared with the carceral behemoths of North America, like the people-processing plant that is Los Angeles Men’s Central Jail (with a capacity of more than 5,000 inmates) or Miami’s bloated Pre-Trial Detention Center (with its approximately 1,700 beds). Indeed, prison size matters: evidence suggests that smaller prisons (fewer than 50 prisoners) make for higher staff satisfaction, which could plausibly have beneficial effects on inmates’ quality of life.³ Suggestive of a relative absence of punitive sentiments in the legal system and general population, Norway’s prison sentences are relatively short: around two months on average.

In Norway, around one-third of prison beds are located in minimum-security, ‘open’ prisons. Inmates receive quite generous welfare benefits. All inmates who work or study are paid around 300 Norwegian krone (around £28) per working week — certainly not sufficient to live comfortably in a society that has a high cost of living, but enough to buy snacks, phone credits, and tobacco from the commissary — and it is very nearly lavish when compared with England’s minimum rates of prisoner’s pay, a meager £4 per week for prisoners who work (or £2.50 per week paid to inmates who are willing to work but for whom no work is made available, an allowance rate widely ridiculed *excessively generous*, as ‘unbelievable’ and ‘hugely offensive to taxpayers,’ as consisting of a ‘handout for doing

1. Walmsley, R. (2013) *World Prison Population List (Tenth Edition)*. International Centre for Prison Studies. http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf
2. Norwegian Correctional Services (2012) ‘Norges Kriminalomsorg i et nøtteskall’ [Norway’s Correctional Services summarized]. <http://www.kriminalomsorgen.no/getfile.php/2086478.823.rftwuuerux/2.tertia+2012%5B1%5D.pdf>
3. Johnsen, B., P. K. Granheim, and J. Helgesen (2011) ‘Exceptional prison conditions and the quality of life: Prison size and prison culture in Norwegian closed prisons’, *European Journal of Criminology*, 8(6): 515-29.

nothing,' by right-wing politicians and pundits when the program was revealed in the *Daily Mail*.⁴ By this simple metric alone, and correcting for differences in price levels, Norway's prisons are nearly ten times more generous than those operated by Her Majesty's Prison Service.⁵ On the whole, the Nordic prison systems seem to perform well, at least within the narrow parameters set by the state bureaucracy: between 20 and 30 percent of released convicts were convicted of additional crimes within a two-year follow-up period in a study conducted in Denmark, Norway, and Sweden.⁶ While such statistics are notoriously difficult to compare, a UK Ministry of Justice showed that nearly 40 percent of a released cohort of offenders had re-offended after two years.⁷

No doubt these characteristics have sparked the curiosity and imagination of progressive and liberal elements in the United States and Europe. As an American theologian who visited Aarhus, Denmark in the early 2000s commented, 'Many Americans have felt that the social justice of our dreams has come true in Denmark. The streets are safe and clean, everybody seems to have decent clothing, healthy food and a nice home.'⁸ The ambulatory scholar could have substituted Norway or Sweden for Denmark and added the prison system to their catalog of virtues. Indeed, there is no shortage of paeans to Nordic punishment in the world press. *Time Magazine* judged Norway to have constructed the 'world's most humane prison.'⁹ A recent documentary sees a former warden of a New York prison, James Conway, tour four separate prisons in Norway, playing on the dramatic disparities between US mass incarceration and Nordic penal tolerance. At one point, Conway remarks, 'I'm having a hard time believing that I'm in a prison.'¹⁰

Still, there are good reasons to be skeptical of rose-tinted portrayals of what is at heart the deepest

intrusion into personal liberty that a state can commit next to the death penalty. Imprisonment remains a powerful instrument of state coercion. In reality, the prison that the *Time* reporters described was a high-security facility with as imposing a set of concrete walls as any maximum-security facility found elsewhere in the world; inmates were still locked up for large portions of the day, and they were still kept at a distance from the world outside. The nearly mythical qualities that many political reformers ascribe to far-away societies always contains an element of the quixotic; romanticized representations are frequently infused with Orientalizing tendencies (the belief in an essential difference between us and them), threatening to derail what may be worthy instincts in the producers of those representations. To make political reforms work means taking heed of the *realities* of those representations and the *contexts* that made the dreamed-of policies realistic in their host societies.

Writing on the export of leftist ideology from China to the West in the postwar era, Andrew Ross observes, 'No one would reasonably dispute that Maoism was received in the West in a highly idealized version.' Continuing, Ross notes, 'What we think of as Maoism was often far removed from how the Chinese themselves experienced [Mao's] shifting body of doctrine.'¹¹ With only slight exaggeration one could draw parallels to the probable success of attempts to export prison policy from northern Europe to the rest of the world. Those who wish to import the Nordic prison system to their own societies face two essential challenges: First, that their representations and understandings of the actual mechanics of those prison systems are flawed and faulty as a result of their lack of immersion in the societies that their energies are directed toward. To take but two examples: journalistic representations are deficient because journalists spend

4. Dolan, Andy (2010) 'Prisoners paid hundreds of pounds in unemployment benefits to sit in their cells.' *The Daily Mail*, 8 March 2010. <http://www.dailymail.co.uk/news/article-1256166/Prisoners-paid-unemployment-benefits-sit-cells.html>
5. I assume that prisoners are paid no more than the minimum employed rate. In reality some English prisoners may have the opportunity to seek higher-paid work. For instance, in 2012 *The Guardian* reported that a number of Category D prisoners at HMP Prescoed had worked in a nearby call center for £3 a day. This would make the Norwegian prison system only approximately twice as generous as its Atlantic neighbor. On the other hand, Norwegian prisoners are also in a position earn additional wages and allowances, including childcare benefits and higher daily wages for skilled or technically challenging jobs, which, if taken into account, would further widen the gap between the two prison systems. For details on prisoner's pay in England and Wales, see HM Prison Service (2004) 'Prison Service Order 4460 — Prisoner's Pay', http://www.justice.gov.uk/downloads/offenders/psipso/psio_PSO_4460_prisoners_pay.doc.
6. Graunbøl, H. M. et al. (2010) *Retur: En nordisk undersøgelse af recidiv blandt klienter i kriminalforsorgen*. Oslo: Norwegian Correctional Services. p. 25.
7. Ministry of Justice UK (2012) '2012 compendium of re-offending statistics and analysis.' Ministry of Justice Statistics Bulletin, 12 July 2012. p. 4. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278126/2012-compendium-reoffending-stats-analysis.pdf.
8. Saarinen, R. (2003). 'The surplus of evil in welfare society: contemporary Scandinavian crime fiction', *Dialog*, 42(2): 131-35.
9. Adams, W. L. (2010) 'Norway builds the world's most humane prison', *Time*, 10 May 2010. <http://content.time.com/time/magazine/article/0,9171,1986002,00.html>
10. Sterbenz, C. (2014) 'An American warden visited a Norwegian prison, and he couldn't believe what he saw', *BusinessInsider.com*, 20 October 2014. <http://www.businessinsider.com/an-american-warden-visited-a-norwegian-prison—and-he-couldnt-believe-what-he-saw-2014-10>
11. Ross, Andrew (2009) *Nice Work If You Can Get It: Life and Labor in Precarious Times*. New York and London: New York University Press. pp. 64-65.

too little time getting into and around the 'belly of the beast' to produce honest knowledge, or their representations are skewed by the logic of the press; bureaucratic representations are liable to glamorize the facts on the ground in the interests of protecting the prestige of the state. Second, their vision may be excessively substantialist and insufficiently relational: as Guthrie reminds us, 'Men and societies differ widely, and so therefore do their needs.'¹² It is impossible to understand the Nordic prison system without reference to the existence of a *tolerant penal culture* and the *political economy of universalist social democracy*. Piecemeal reforms of the prison system based on an accurate appraisal of Nordic realities may be possible in some limited sense: for instance, one might experiment with raising inmate allowances in English prisons, which would lower levels of conflict and violence, and raise the quality of life for inmates therein.¹³ However, even such fragmentary improvements are likely to be unsettled by the animus of the polity and particular politicians.

Ultimately, what makes the Nordic prison systems unique is not the mundane regularities and empirical details of their institutions. Rather, it lies, on the one hand, in the web of *popular mentalities* that envelops the process of punishment, those collective representations that construct and construe both crime and punishment in particular ways; on the other hand, in the *structure of the welfare state*, particularly the generous and universalist character of the assistive and social wings of the state that regularly generate low levels of unemployment, equitable access to educational opportunities, public housing, healthcare, and so on.¹⁴ To imitate punishment Nordic-style is to buy into a whole package of welfare state solutions: quite probably, one cannot construct Nordic-style tolerant, humanist punishment without also buying into the entirety of social democracy at the same time.

In the autumn of 2011, I spent three months visiting *Prison Island*, a Norwegian open prison widely regarded as the crown jewel of the nation's penal system. In some ways, it was easy to forget that Prison Island was a prison at all. At first glance, it seemed so strangely mundane. One arrived by way of ferry, walked along a gravel path for about half a mile, along an avenue of trees. Fields surrounded one on all sides where wholesome staple crops were grown and tended. Dotted around the island were a number of small wooden houses where inmates lived in groups of four to six persons. Beyond the fields lay the sea. Much of the island was dotted with trees. There was a path running along the edge of the island, and inmates could be seen running along the path for exercise at night. As one approached the main square, a large chapel built around the *fin de siècle* became apparent, surrounded by the white-painted school building, a low red stable where horses were kept, and the two-story main barracks where the guards spent most of their time. Inmates walked or rode their bicycles as they moved to and fro between their homes, workplaces, and school classes.

Perhaps the fundamental features of this institution were the degree of *permeability and porousness* of its boundaries to the world outside, evidenced in part by the great regularity of contacts it maintained with ordinary society. There was a constant coming and going of visitors, journalists, social workers, lawyers, construction workers, and correctional staff. Inmates enjoyed spectacular — albeit gloomy, in the depths of stormy autumn — views of the constantly roiling sea and the nearby littoral communities with their luminous homes and alluring sense of ordinariness, a constant outlook that was nevertheless tinged with a certain bittersweet flavor for a number of inmates because of

12. Guthrie, W. K. C. (1969) *A History of Greek Philosophy: Volume 3, The Fifth Century Enlightenment*. Cambridge: Cambridge University Press. p. 187.

13. Kirkup, James (2010) 'Prisoners to earn minimum wage', *The Telegraph*, 5 October 2010. <http://www.telegraph.co.uk/news/politics/8042568/Prisoners-to-earn-minimum-wage.html>

14. This point was noted by Loïc Wacquant, who cogently argues that decarceration in the United States will only succeed if the 'urban wastelands where race, class, and the penal state meet and mesh' are improved through concerted public spending on 'schools, social services, health care and...drug and alcohol rehabilitation,' that is to say, the 'reconstruction of the economic and social capacities of the state.' See Wacquant, L. (2010) 'Class, race and hyperincarceration in revanchist America', *Daedalus*, 139(3): 74-90.

the promises outstretched that those same panoramas somehow failed to deliver on. Here, then, was a prison that at first glance had all the appearances of a non-prison. And yet a prison it remained.

Around half of the new entrants to the prison resided in one of two dormitory-style brick buildings, while the other half lived in small wooden houses dotted around the island, where they were largely left alone to work out domestic living arrangements with a handful of fellow inmate residents. Most inmates were gainfully employed or pursued various educational opportunities: pursuing a high school diploma, university-level qualifications, and so on. A privileged few were allowed to work as shipmates on the ferry running between the prison and the mainland. This was a coveted position because the inmates were shown a great deal of trust: it would have been comparatively easy for them to escape the prison altogether when the ferry lay in dock. On the other hand, most prisoners, with a minimum of effort, could have escaped the prison. Few doors were locked. After completing fieldwork, I learned that an inmate had escaped in a stolen canoe. But by and large, inmates did not escape. And why would they? In tightly woven, modern societies, an outstanding arrest warrant makes life difficult if not impossible to live comfortably, as Alice Goffman's study of fugitive men 'on the run' convincingly demonstrates.¹⁵ As one inmate said, 'If you wanted to escape you could just run away. But then you'll never get it over with. Be done with it, that's what I've got on my mind. That's my goal. Complete my sentence so I can start over again. Go back to school.' Open prisons may look easy to escape — and in some sense they are owing to the comparative paucity of physical security measures — but beyond the prison lies a 'surveillant society' ready to effect tasks previously carried out by high concrete walls, steel doors, and grated windows.¹⁶

Many inmates in Norway are permitted eighteen days of home leave per year, and those with parental responsibilities are typically granted thirty days' worth of leave per year. This meant that a certain amount of flux in the prison population was not uncommon. Also, it was not uncommon for a few prisoners every week to travel to nearby towns for dental or medical

appointments, or to buy clothes, toiletries, and other necessities, typically under the supervision of prison staff. The reasoning behind such frequent exchanges between the prison and the world outside was that the prison was by design meant to act as a *last stop* before the convicted offender was released into the community for good. Typically, inmates had served at least half their sentence in a higher-security institution. Therefore, open prisons were meant to act as *socialization machines*, in the parlance of the prison guards, to reacquaint inmates with some the routines and normalcy of humdrum life. Inmates had their own peculiar language to describe the suffering and sorrow perpetrated on their minds and bodies by long months or years spent behind bars in closed prisons: they were

tormented by 'sentencing injuries' (*soningsskade*), a term with its own peculiar and wistful musicality when pronounced with the rough, working-class vernacular that most of the Norwegian inmates spoke.

Such sentencing injuries are probably familiar to all observers of maximum-security prisons in modern societies: a loss of autonomy, the breaking of the independent will, a certain social awkwardness, the gradual normalization of the strangeness of institutional time (its curious temporal rhythms, exemplified by the fact that most meals are consumed at inordinately early times, dinner being served at 2

pm in places, for instance). It is precisely all those little things — the alien gestures, the sweaty palms, the dread and fear of crowds, loud noises, and traffic sounds — that make the released ex-convict a difficult-to-integrate subject. Quitting addiction, gaining access to housing or a non-criminal peer group, and finding a stable job: these are all important components in prisoner reentry, certainly, but so is the ability to handle the routines of daily life and the ability to get a corporal and cognitive grasp on the way a modern society feels.

So goes the reasoning of the Norwegian Correctional Services, in any event, which notes that most inmates at the outset of their prison sentences will 'start off strict,' that is, be confined under strict measures of control, but who will then have to be reacquainted with normalcy before being let loose on society again: transferring inmates to open prisons is

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university-level
qualifications, and
so on.

15. Goffman, Alice (2014) *On the Run: Fugitive Life in an American City*. Chicago: University of Chicago Press.

16. Mathiesen, Thomas (2013) *Towards a Surveillant Society: The Rise of Surveillance Systems in Europe*. Hampshire: Waterside Press.

'based on the need for a gradual resetting from prison to total freedom.'¹⁷ No doubt there is a tyrannical potential in such 'resetting.' Rehabilitation, a 'return to competence,' wins its legitimacy from the axiom that the fault of the offender's offence lies with the offender alone.¹⁸ In Norway's open prisons, however, it is quite readily admitted that the crucial task is to correct those injuries perpetrated by the closed, higher-security wing of the prison system. By and large, Prison Island, with its quaint historic buildings, its ecological farming techniques, and its apparently relaxed conviviality, impressed most visitors with all the apparent opportunities to carry out the task of rehabilitation in a most agreeable manner.

For instance, one inmate described how he landed a prison job in the horse stables. The prison kept a stable of five horses to carry out practical tasks: collecting garbage from the various houses or plowing the fields in the harvesting season, for instance. Perhaps more important than the practical labor the horses carried out was the *emotional* labor they carried out vis-à-vis inmates: to calm them unsettled and to teach them the value of compassion and nurture. The inmate thoroughly enjoyed the equestrian labors he had been assigned. 'I like being in here best of all,' he said. 'You might say that riding the horses, collecting the garbage and all that, that isn't very interesting to me. What's important is that I can work in here with the horses, make sure they have enough water and food, that they're being treated properly, that the animals are being cared for. That's what matters to me.' Clearly, then, such pursuits could have a deeply soothing effect. The stables were a very soothing place. There was a kind of quiet, contemplative affection in the air as he showed me the room where they stored the hay in bales stacked up to the ceiling, the sweet and rotten smell of drying grass and horse manure pervading the air. He showed me how one should approach a horse — 'You should approach him sideways' — and to let the horse know that you are approaching by talking to it. Quietly, he rubbed the horse's sides as he explained all the steps involved in caring for the animal. Such work certainly

As the legal scholar
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seems more meaningful than the stultifying monotony that more traditional prisons have to offer, a boon that is not entirely unimportant. As the legal scholar Franklin Zimring acutely observes on the nature of daily life in most prisons, 'The leading public health problem in prison is boredom.'¹⁹

The Concealed Discipline of Permissiveness

Not everyone sees it this way. In a 1976 talk on alternatives to imprisonment, Michel Foucault took a distrustful view of open prisons, arguing that 'new methods that try to punish without imprisonment are basically a new and more efficient way of re-implementing the older functions of the carceral.'²⁰ Certainly, there were improvements inherent in such experiments: inmates, 'though forced to work of course, were not subject to the usual kind of stupid, uninteresting, mind-numbing, humiliating, unpaid labour.' Rather, it was 'proper, real, useful work,' Foucault argued. Like on Prison Island, these early experiments in punishment emphasized 'reintegration into society' through two mechanisms: first, by encouraging visits from families and friends, including constructing visiting centers in the fashion of a 'small hotel or boarding house' so that the inmate could 'make love with their wives or girlfriends'; second, by offering leaves of absence so that the inmate could rub up against the reality of society with greater ease and frequency. But on the whole, Foucault believed such experiments were condemned to fulfill the original ambitions of the prison in an essentially unaltered form: Sweden's attempts to construct alternatives to prison in the 1970s were 'not so much alternatives as quite simply attempts to ensure through different kinds of mechanisms and set-ups the functions that up to then have been those of prisons themselves.' Prison Island seemed no exception.²¹ This strangely un-prison-like prison nevertheless contained two crucial elements that displayed its subterranean disciplinary potential in ways that a brief encounter with its institutional features — as journalists and

17. The quotations are excerpted from a primer produced by Ila Detention and Security Prison, a penal institution outside the capital city of Oslo in Norway: <http://www.ilafengsel.no/sikkerhetsnivaene.html>.

18. Mathiesen, Thomas (2006) *Prison on Trial*. Winchester: Waterside Press. p. 28

19. Brown, Patricia Leigh (2014) 'Inmates' newspaper covers a world behind San Quentin's walls', *The New York Times*, 20 May 2014. <http://www.nytimes.com/2014/05/21/us/inmates-newspaper-covers-a-world-behind-san-quentins-walls.html>

20. Foucault, Michel ([1976] 2006) 'Alternatives to the prison.' *Theory, Culture & Society*, 26(6): 12-24.

21. For a detailed elaboration of this argument: Shammass, Victor L. (2014) 'The pains of freedom: Assessing the ambiguity of Scandinavian penal exceptionalism on Norway's Prison Island.' *Punishment & Society*, 16(1): 104-123.

official visitors are likely to engage in — might not reveal.

First, there was the potential for conflict ingrained in the very fabric of the society of captives. One of the downsides to constructing a tight-knit community of prisoners was that inmates *rubbed up against each other*, plaguing one another with irksome personal habits and the temptations of substance use or illicit attitudes that threatened to derail the ideal of ‘sentencing progression.’ One inmate, Joseph, described how he enjoyed the comparative anonymity of the dormitories where he resided the first months of his stay on Prison Island. However, the prison required that prisoners gradually transitioned over into one of the smaller houses where they would live with a select handful of other inmates. This troubled him to no end. Living in the dorms, he said, ‘you are living on your own. You don’t have to have anything to do with anybody. When it’s your time to clean, you clean. But when you live in a house, you come out in the morning, you share one bathroom, maybe you want to use the toilet, and then you have to wait. It’s too intimate, you know.’ Intimacy was dangerous because it was potential closeness to the wrong type of people: poor influences and disreputable persons.

Mikel, another inmate, described the dangers of hanging out with the wrong crowd: ‘Yeah, you have to be very careful. Make sure you move with good people, you know, nice people, you understand. That’s very important.’ A third inmate described how he had become embroiled in a messy conflict in his house since he lived with housemates who were inconsiderate of his personal space; they broke a number of rules: playing music too loudly, smoking cigarettes indoors, and violating the nightly curfew. Such infractions could be punished swiftly by the guards should they so choose. His fear, perhaps not entirely unfounded, was that the guards, were they to crack down on the infractions, might not bother to investigate who the culprits were, or rather interpret the entire house as consisting of ‘troublemakers’ who could not be trusted to make their ways in the comparatively liberal prison environment. They might therefore ‘get sent,’ prisoner idiom for a forcible transfer back to a higher-security, closed prison. Getting up close and personal with other prisoners was therefore *risky*: staying in the comparative luxury of an open prison gave them

something to lose, and the community of captives could potentially lead them to lose that privilege.

Second, the prison officers maintained a toolbox of disciplinary instruments to establish incentives for behavior deemed worthy and disincentives for assumedly disruptive behavior. Despite the fact that inmates were free to move around on the island, certain rules existed to regulate their behavior. After 11 pm a curfew was in force, and while inmates were not locked in at night, they were expected to remain inside their houses after nightfall. Officers went on inspection rounds at night to ensure that all persons were accounted for, and, more informally, to ensure that illicit activities were not taking place. Any drug use or alcohol consumption was strictly prohibited, and inmates could be made to deliver urine samples at random. Daily roll

calls were widely viewed as an intrusive element in their daily lives: three times a day inmates were made to line up outside the guards’ barracks and submit to ‘The Count,’ as it was known colloquially. Breaking the rules could result in a strike against one’s personal record, and three strikes would more likely than not land one back on the mainland in a higher-security prison. Serious infractions, like getting involved in a fight, would probably entail automatic suspension. On the whole, in 2011, a total of 29 inmates were sent back to closed prison for breaking prison rules,

around twenty percent of the total number of inmates that passed through Prison Island that year.²²

The constant threat of ‘getting sent,’ that is, facing expulsion from the island and transfer to a higher-security facility, had a certain severe effect on the corrigible population of convicts. Mario explained how getting sent could happen abruptly:

Now my pal, one of them, he was sent to [closed prison] yesterday. I didn’t even know. I thought I was going to meet him today, and then I don’t see him at all and they tell me, ‘No, he got sent.’ Like, what the fuck? He was smoking [cigarettes] in his room and he’d placed a sock over one of the smoke detectors. It’s the kind of small stuff you don’t think about, right. It’s really just petty stuff, but with big consequences. Yeah, yeah, if you start a fire then you’ll risk the lives of 15 guys, so that’s fair enough. But like, just that little

22. Private correspondence, deputy prison warden. January 2012.

thing. I think I would have almost started crying if I'd been caught over something like that and gotten sent. Oh, damn! I mean, I can see the reason why they're doing it, and I understand that it's a fire hazard and all of that stuff, but it's like, it doesn't take much.

When I reminded Mario that he too was wont to covering the smoke detector with a plastic bag in his own room when he wanted to smoke cigarettes, he grew excited. 'Yeah, I *did* think about that when I heard, like, 'Oh shit, lucky that I didn't get sent,' right, 'or that they didn't see it.' He made sure to take down the plastic bag each night, he said, and so implied that he was smarter than the inmate who got sent, but he admitted that it was still 'easily done, fucking up on that tiny stuff that you really don't think about.'

Contemplating the hypothetical situation of getting booted off the island, Mario realized that an expulsion would carry dire consequences for his life chances, particularly as he was about to transition over into a halfway house and start a civilian job outside the prison while completing the remainder of his sentence. 'If I'd been sent to closed [prison] now, I could really just forget about the job and the halfway house, and even my wife and everything, right.' Getting sent was a process largely bereft of means of redress. In this way the prison guards managed to maintain some semblance of order on the island, crucially, *by giving inmates something to lose* and then *threatening to take it away*. All too often, such fine-grained gradations of incentives and disincentives are not possible to construct in facilities at higher security levels for the simple reason that *inmates there have practically nothing to lose*. This is perhaps the fundamental disciplinary innovation of the open prison: it corrects, in some sense, because many inmates learn to desire to be corrected.

One of the great advantages of open prisons is that they are comparatively inexpensive to run. A recent survey by the Norwegian Ministry of Justice suggested

that the costs of running an open prison were three-quarters that of operating a closed prison.²³ Open prisons are cheaper to operate because they require fewer guards. On Prison Island, for instance, a skeleton crew of around five guards was kept on duty until the next morning. While few convincing studies have surfaced that examine the effects of minimum-security imprisonment on recidivism rates, proponents of the open prison argue that lower re-offending rates entail additional fiscal and social benefits.

The fact is, however, that we simply do not know whether open prisons 'work,' that is, in the realist sense, whether they rehabilitate more effectively and cause less damage to their charges. Even if studies were to show that released offenders from an open prison committed less crime than those released from higher-security prisons, their findings would be highly uncertain unless they were to take into account the not inconsiderable degree of social filtration that goes into selecting entrants deemed suitable to live and remain in the open prison. A reasonable hunch is that, given a scarcity of places in open prison, persons who are deemed worthy to stay in an open prison are likely to be precisely those persons who would make out rather well regardless of their penal environs, due to their particular social characteristics, resources, and dispositions. What is more, the fact that we do not know what works is indicative of the intense lack of interest most societies have in their penal institutions. For the most part they remain out of sight, out of mind.

While the Nordic societies operate seemingly benevolent and benign prisons, perhaps more so than any other society in the world and at any time in recent centuries, they too operate on a great deal of faith: a belief that these truly are places of correction, of doing good. To counter that certainty, one might suggest that the prison arrives far too late to make much of a positive difference in anyone's life. If true, it is both a profoundly depressing and invigorating insight. Its implications are clear: what matters most of all is the world beyond the prison walls.

23. Norwegian Ministry of Justice (2008) *Straff som virker — mindre kriminalitet — tryggere samfunn*. Oslo: Norwegian Ministry of Justice. <http://www.regjeringen.no/nn/dep/jd/dokument/proposisjonar-og-meldingar/stortingsmeldingar/2007-2008/stmeld-nr-37-2007-2008-/20.html?id=527862>.

Open Prisons:

A Policy-maker's Perspective

Chris Potter is ROTL Policy Developer for the Ministry of Justice (MoJ); he was interviewed on 12 November 2014 by Chris Gundersen Head of Casework and Operational Support to the Deputy Director for Public Sector Prisons.

CG: Can you describe your career to date?

CP: I joined the Home Office in 1989 and have worked on immigration and mentally disordered offender casework, firearms licensing, police cautioning and court bail and procedure policy, as well as on the policy for Multi-agency public protection arrangements (MAPPA). Since 2010, I have been the lead MoJ policy developer on ROTL (release on temporary licence)

CG What is ROTL?

CP: ROTL is the mechanism by which prisoners towards the end of their custodial sentence are authorised to undertake activities outside the establishment that have a clear resettlement or rehabilitative purpose. Examples may include day release to attend a place of employment or overnight release to build family ties. It can also allow compassionate release, for example to attend a funeral.

CG: I understand NOMS is currently implementing actions from a review of ROTL policy, what prompted this?

CP: In July 2013 a series of serious offences were committed in the community by offenders on ROTL from open prisons. Chris Grayling, the Secretary of State for Justice, commissioned an internal investigation of each case by the National Offender Management Service (NOMS) and an independent review of each case by the Chief Inspector of Prisons (HMCIP). He also commissioned a full review of ROTL policy and practice. The Secretary of State decided that an immediate review was required to ensure that current practice was fit for purpose and could hold public confidence.

CG: What form did the review take?

CP: It was an internal review which started with an analysis of the existing data and included structured interviews with key stakeholders and practitioners across a number of prisons, Open prisons, in the main, because that is where most ROTL takes place. Recommendations from the NOMS internal investigations and HMCIP reviews were also taken into consideration to produce proposals for reform for the Secretary of State to consider. Implementation of the ROTL review recommendations has been overseen by a steering group chaired by the Deputy Director of Public Sector Prisons and comprising senior civil servants from NOMS and MoJ plus senior practitioners.

CG: What did the review conclude?

CP: Chris Grayling announced the review findings in a written ministerial statement to Parliament on 10 March 2014. The review concluded there remained a strong case for operating ROTL despite high profile incidents. Compliance with ROTL remains extremely high at over 99 per cent.. Mr Grayling stated 'It (ROTL) will continue to play an important role in public protection by ensuring that offenders are tested in the community under strict conditions before being released. It also provides a valuable means of helping prisoners prepare for resettlement...for example by finding work or rebuilding links with families which helps...reduce reoffending'.

The review found three main areas of weakness. There was concern that a uniform approach to managing all prisoners meant risk management was no more robust for the highest risk cohort. There was confusion about the purpose of ROTL leading the reviewers to conclude that granting ROTL had become 'a presumption in the open estate'. Finally the team found inconsistencies in the way ROTL was operating across the estate.

Mr Grayling announced his action plan for addressing these weaknesses which involved a new Restricted ROTL regime for serious offenders, a new approach removing the presumption to ROTL and plans to electronically monitor prisoners on ROTL when the technology became available.

CG: How was the review received and what happened next?

CP: The review was well received as despite the challenging timescale for completion and media and public scrutiny it had been robust and did not attempt to hide procedural weaknesses. Unfortunately any confidence the review instilled risk being undermined by further high profile offences including the case of Michael Wheatley (dubbed 'skull cracker' in some media reports) who failed to return from ROTL and committed a bank robbery.

In May Mr Grayling acted to bring forward elements of ROTL Review actions. Measures taken then included early introduction of restricted ROTL and a ban on progression to open conditions for any prisoners with a history of abscond, escape or failure during the current offence.

CG: What has happened since May?

CP: Consolidated interim guidance was issued to prisons on 11 August 2014. The interim guidance introduced Restricted ROTL. Such prisoners could not be released until they are in open conditions and had a psychologist-led case file review. Both board recommendation and decision have to be at a more senior level (governor or deputy for the actual decision) and monitoring checks are stepped up in Restricted ROTL cases.

In addition, the purpose of ROTL was clarified and guidance expressly stated arrival into open conditions would not automatically confer an immediate entitlement to ROTL. ROTL events must have a clear resettlement purpose and the onus will be on prisoners to initiate the process by applying rather than it being automatically triggered at a predefined point in sentence. Prisoners will be required to demonstrate the resettlement value as part of their application.

CG: What are the next steps and what are we now seeking to achieve?

CP: The changes implemented in May and consolidated in August form the basis of a new ROTL

policy due to be issued as a Prison Service Instruction (PSI) in early 2015. The aim of the new PSI is to ensure a focus on public safety in all ROTL decisions and to improve the quality of ROTL by ensuring every release has a clear rehabilitative focus. Through removing inconsistency and the presumption to granting ROTL, the system will better balance the need to support the prisoner to reduce their risk of reoffending with the need to protect the public.

CG: What does this mean for prisoners and their families?

CP: We accept that as a result of the changes there will be less ROTL, some prisoners will have to wait longer to take it, and a very small number with an abscond history will not be able to take ROTL at all. We appreciate that this will be unwelcome for many prisoners and their families but specific consideration has been given to ensure that the impact is not disproportionate. Throughout the whole process of the review and implementation, we have never lost sight of the contribution that ROTL may make to successful resettlement provided it is properly focussed and an informed approach to risk assessment is taken.



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Open Prisons:

A Governor's Perspective

Sara Pennington is Governor of HMP Stanford Hill and is interviewed by Dr Ben Crewe who is Deputy Director of the Prisons Research Centre at the Institute of Criminology, University of Cambridge.

BC: How has the role of being a governor of an open prison changed since you've been in post?

SP: I came into post just over a year ago, which was about the time when all the changes started to snowball, and I think the role has changed in terms of we're much more centre of stage, high-profile. I think in the past the open prisons were a bit overlooked. And now I think it's recognised — the importance of the work that we do and the level of the risk that's being managed.

BC: Can you say a bit about what it's been like for you to govern an open prison at a time of increased scrutiny and political attention?

SP: Well, we've been under quite considerable media spotlight. The staff have remained very professional, and when dealing with risk we've had to stay focused, and not be pressured in becoming too risk-averse. And sometimes there will be failings, so we just need to ensure we always follow due process, and that decisions are always reasonable and defensible. But as I said, while there's been more scrutiny, and we've got a higher profile, that's actually been a positive thing, in that the value of the work that we do and the risk that we're carrying is now fully recognised. Personally, I find governing an open prison very rewarding as it's at this stage in an offender's journey that you can really make a difference through the right preparation prior to release.

BC: And what's it like for you personally to live with risk. Do you take the worries home with you?

SP: Managing an open prison is very different to managing a closed prison. It's just as demanding, but in different ways. As you say, you are carrying a huge amount of risk without the comforting source of physical barriers such as a fence to confine people. So yes, sometimes it does play on your mind, and when you're signing off risk assessments, there is a huge amount of responsibility there. But you just have to manage risk sensibly and not be risk-averse, because that's not what risk management is about. And home ... I am always on call, particularly at the weekends. [And] if people are going to fail [to return from temporary release] you normally find out on a Saturday evening, just when you're about to go out, you know, it does encroach on your personal life. But that's the job you signed up for, and that's fine with me.

BC: Can you tell me how you've managed all of the changes to ROTL?

SP: There's been a huge amount of hard work and commitment from the staff. A lot of the changes that have been brought in have been with immediate effect, which has required a new way of thinking, but very quickly. And there's been a big increase in the workload, and we've really had to think in depth about risk management, at a much higher level than we've been accustomed to. And I think that's involved a lot of skilling up and training of staff. Previously we'd have the ROTL risk assessment board, and it might take five minutes for an offender. But now it's truly multi-disciplinary and it can take at least half an hour per prisoner. But what's really added to the value and the quality of the work has been the seconded probation staff. Because they much better understand risk in the community, and they've been able to share their knowledge with us. We've also had to communicate the changes very carefully with offenders, because with the changes that have come in there have been a lot of rumours, so we've had to be very mindful not to destabilise the prison, and the risk of increasing absconds. So for example we produce a weekly newsletter for prisoners, so we can communicate the ROTL changes in a digestible form, and respond to their questions. We also have group sessions for offenders, to answer their queries individually when the new instructions come out, so that's been a very important part of managing all these changes. It's all about changing the culture: no longer is ROTL a right, no longer is it presumptive. It's now a privilege, so communicating that to both prisoners and staff has been very important. Things such as a town visit, or a home leave, no longer exist. A prisoner has to submit a detailed plan for each resettlement day release, or release on overnight resettlement, and that has to clearly link with the purpose of their ROTL, to the sentence plan, and a resettlement goal. And that's been a big change.

BC: Have you had any kickback from prisoners? Has there been much hostility to all of the changes that you've brought about?

SP: Obviously, prisoners are not very happy, because, as I said, they feel that this is their right, [i.e.] they arrive at open prison and they can go out on day release, that's been customary practice. But personally

we've not had hostility. I think they understand that it's come from ministers, and I think they also understand the reason why, they understand that all these changes have been brought in following the three serious cases of reoffending the summer before last. That triggered the ROTL review. And they also understand what happened in May, when we had a high-profile offender go out and commit an armed robbery. So they understand very much why we've brought in these changes. That's not to say they like them [but] personally we haven't had hostility.

BC: What about staff? Have they embraced these changes? How easy have they found it to move towards a different system?

SP: It's been a huge amount of work, and the way in which staff have adapted and taken on board these changes is really commendable, in particular for the offender supervisors that were previously operational senior officers, who have now taken on the dual role of being offender supervisor and senior officer. In Standford Hill many of them had spent most of their career just on the landings, and to be expected to learn how to fill in an OASYS, to understand about all of the OM processes, that's a lot of work for them to do and yet now they are much more confident, and many say that they get more satisfaction from that aspect of their role, rather than the work on the wings. But it has been a huge cultural change for them too.

BC: Can you say something about how your population has changed as a result of some of the recent policy changes?

SP: Well I think that the population of open prisons has changed in general over recent years, and we have more indeterminate sentence prisoners, which reflects the population in prisons as a whole. So we have many more serious, violent offenders. In terms of how the ROTL changes have affected our population, there is now the rule that if an offender has previously absconded or failed on ROTL during the current sentence they can no longer be in an open prison. So

some people have had to go back to closed, and we no longer get those offenders coming to an open prison. Also, because of the backlog of OASYS in closed prisons, we have had some spaces, and we've had an influx of prisoners serving less than twelve months, because they don't need to have an OASYS document completed, and that's not really the population that we cater for, because there's not a lot that we can do for offenders who are serving less than twelve months.

BC: Does it feel as though the purpose of the open estate is changing, and if so can you say something about what you think the role of the open prison now is?

SP: I hope it doesn't change the purpose of an open prison. Personally I feel the purpose of an open prison is really to resettle offenders who are of higher risk, and have spent a longer time in custody, because they need more opportunity to reintegrate effectively with the community. And there is evidence that shows that if a lifer, for example, is released from an open prison they're three times less likely to reoffend than if they're released from a closed prison. But obviously with the new rules we have to manage risk much more closely. I think that's a good thing, but it's a question of getting the balance right between protecting the public and enabling resettlement. I think we need to embed the new changes and not lose sight of that.

One other thing worth acknowledging is that the benchmark for open prisons has actually reflected the increase in workload that the changes in ROTL have brought about. We're much better resourced in the OMU in terms of offender supervisors and have additional prison officers for escorts and spot checks on offenders out on temporary release. We've also got an extra Custodial Manager, more psychology input, caseworkers and seconded probation officers. Whereas in the rest of the estate there's generally been reductions in staff numbers, our benchmark has increased the level of staffing.

Open prisons:

An ex-prisoner perspective

Dr Andy Aresti is a Lecturer at University of Westminster and has previously served a prison sentence. He is interviewed by Dr Sacha Darke, Senior Lecturer at University of Westminster¹.

SD: Which open prison did you go to, how long you were there, and what was your experience of the prison?

AA: I started off in a category B prison, Pentonville I was there for eight or nine months, then went to a category C for a month or so before I ended up going to a category D prison. I went to a resettlement unit in HMP Rochester. This was in the late 1990s.

In terms of the regime, there was a month lock down so they assessed you. During that time you had to stay inside, then after that, as long as everything was fine and you weren't a risk you started to go out. I went out and worked in the community five days a week as a volunteer at a centre for adults with learning difficulties or physical disabilities. I was leaving the prison at eight or nine in the morning until four or five in the afternoon. It was a contrast to what I was used to, even in the C category prison I was shut within four walls. Psychologically it was a massive difference. For the first hour I went out, it was all a bit weird because I hadn't been out of closed doors for nine months. Even though it was only nine months, it was still quite weird seeing traffic again for the first time and crossing the road with cars coming speeding along. For a few minutes it was really a surreal experience.

You get a greater level of freedom in an open prison. For any prisoner, it is preparing you for coming back into the community. When you go to an open prison you might have a year or more of your sentence so you do need that adjustment time, you do need to have something in the middle, between being in a closed prison and then coming straight out.

SD: Do you think there should be more spaces within open prisons, beyond the current 5 per cent or so of the prison population?

AA: Definitely. I understand that there's always an element of risk but then I always think that if you don't take any risk then, we are going to get more authoritarian, punish people longer and we are going to make people worse. You need to give people that space to readjust to life back in the community.

SD: Do you think part of that process includes being in a more relaxed atmosphere? Did you get on better with other prisoners, and with staff?

AA: Definitely. You haven't got that tension. At the resettlement unit I was in, the staff called you by your first

name whereas obviously in the B cat and the C cat they called you by your prison number or your surname. That informality relaxes things. You're going out into the community, so things are totally different. You wear your own clothes and you have a lot more independence and a lot more responsibility.

In a B cat, everything is done for you really — they open your doors, they shut your doors, they open the gate, they take you down to dinner, they open the gate for education — whereas with an open prison, you get much more freedom, so you take responsibility and are independent. For me, it wasn't that long, a year and a half in total, but for someone that has been inside for 10 years, they lose a lot of that independence so it's really important to get back onto that road to reintegration.

SD: And so allow you to 'reskill' yourself, so to speak?

AA: Yes in some ways. I could imagine that for people who have been in longer than me that would be right. Why do people go back to prison? In some cases because they can't handle life outside, so you do need to prepare them for life outside. Especially people that have done long sentences.

SD: Undoing some of the damage that has been done?

AA: Exactly. Prison is not a nice place. Everything is taken away from you — your identity, your relationships. Whether people deserve to be there or not is a different question. The point is about the function of prisons, what is the point? They strip away a lot from people, and then our expectation is that they are going to come out rehabilitated. But they are the most vulnerable people and you have damaged them even more. Surely you should have somewhere in the middle or at the end of that process where people can readjust and try and reintegrate into society.

SD: I would now like to turn attention to your experiences of studying in higher education. I believe you started an access course while you were in prison.

SD: Was the prison administration supportive in your ambitions?

AA: It was, definitely. I remember a few staff who were really supportive. They helped me with the application, the funding and a couple of them had kids

1. The authors would like to thank Ashmina Rahman, undergraduate student at University of Westminster, and research assistant for British Convict criminology, for transcribing the interview.

that were going to universities, so we'd talk about it and what they were doing and what universities they were going to. I'd never have got that at a closed prison. An open prison has a different sort of environment, more positive. The staff were generally always positive, trying to help you reintegrate and help you to shift from being involved in crime to getting a job. In the last few months, it was part of the regime that you actually go out and work and earn money. On a Friday I was coming down to White City to do the access course, then Monday to Thursday I was coming up to Holloway and working in a dress factory. I was earning money from that and that was going into an account, so that when I came out at the end they'd give me my cheque for whatever amount had been saved up. Of course a lot of people come out without any money and they get a discharge grant, they haven't got a job and they get some booze or drugs, whereas with the savings from work, you have got a few grand and it's a bit of a start, something to help you through. Some people actually stayed on at the jobs that they were employed in that last three months. That is so positive, so beneficial.

There is always going to be an element of risk in anything you do. In my experience of being at that open prison for nine months, there were maybe three people that messed up in different ways, by getting drunk or whatever. Alright, they couldn't cope, but no one else was getting involved in any sort of deviant behaviour or crime. I knew everyone there, and they were all getting their heads down and doing positive stuff.

At the open prisons they were having things like family days and you could see your family on a town visit or home leave, so you were rewarded for your behaviour which makes sense to me.

SD: Were you able to take books back to the prison to study in the evening or at the weekend?

AA: Yes. I had loads of books there. It was totally different than in Pentonville. There all my books had to come through the education department. In the open prison it was different. If I needed to bring in books there was never a problem. They search your bags when you come back from a home leave, but in general, it is all very relaxed, less formal and less restrictive. It makes you think actually, if you live in an environment where everyone's checking you and there is a lot of surveillance, that is not good for you psychologically, so it's not going to motivate you to want to change your life.

SD: So, however supportive a prison education department might be in acquiring books, you still

think it is important for a prisoner going out to study to be responsible, and be trusted, to bring back study materials.

AA: It's a big obstacle in the desistance process. When I was in an open prison there were a lot of people that had kids and were married, I was married as well and had a kid. So we were thinking do I really want to be doing this or do I actually want to be doing the right thing and providing for my family? You've got to give them some space and freedom and you've got to have some faith and trust in people. That is what open prison does, it is a way of saying we trust you but if you take the piss you'll be right back where you started in a B cat. It's really important for people to take that responsibility and if they mess up they're going to ruin it for their families as well.

SD: I would like to conclude the interview with a discussion of your experience of day and home release, in particular how important they were to you, and whether the amount of release you were granted was sufficient.

AA: I would say I wanted more, who wouldn't say they wanted more home release? At the end of the day, I think they had it about right. They're so important for maintaining relationships. Everyone looked forward to their home releases and day releases, they are instrumental in that process of reintegration. If someone is in Pentonville for five years and then they come straight out and they're living back with their partner and their kids, that's a recipe for disaster as far as I'm concerned. You need that time to re-establish those links but also just getting used to being with people again like your partner, to that intimacy that you haven't had.

SD: As you know, in spring this year there were a number of major media stories regarding lifers who had absconded from open prisons, one of whom was later allowed further home release. The Ministry of Justice has since proposed to change the processes and to require prisoners to wear electronic tags while on temporary release.

AA: We live in this risk society. You need to give people freedom. What has happened to trust? If people don't think they are trusted, they are going to have the opposite reaction. Who wants to go home to be with their kids their partner and have to have a tag on? It's more about social control and adversity to risk. There's always going to be someone that messes up, but why should 99 per cent of people that are actually doing alright suffer for the 1 per cent that are messing it up?

The staff were generally always positive, trying to help you reintegrate and help you to shift from being involved in crime to getting a job.

Managing 'Administrative Inconvenience': The Political Economy of Temporary Release

Dr Leonidas K Cheliotis is an Assistant Professor in Criminology at the Department of Social Policy, London School of Economics and Political Science.

Shrouded in rhetoric of the rehabilitative and humanitarianist varieties, early release schemes for prisoners have historically been hostage to conservative control imperatives. This may be understood in two seemingly contradictory but eventually complementary senses. On the one hand, early release schemes have typically been deployed as no- or low-cost tools for curbing prison overcrowding and as 'carrot-and-stick' mechanisms of incentivising orderly behaviour amongst prisoners. Both are functions which Rothman¹ characterises under the catchall term 'administrative convenience'. On the other hand, owing to politico-economic considerations by elites in office, harsh legal and practical restrictions have commonly been placed upon the granting of early release. This has resulted in what may be termed 'administrative inconvenience', not simply in the sense of crippling the capacity of early release schemes to bring down overcrowding, but also in that resentment amongst prisoners for the lack of promised rewards in exchange for compliant conduct, often combined with frustration over degrading conditions of captivity, has eroded the effectiveness of early release as a means of pre-empting prison unrest.

Focusing specifically on temporary release schemes, this article explains how prisoner compliance may still be pursued in the absence of concrete rewards by way of transferring the incentivising properties of temporary release itself onto praise extended to prisoners for observing prison rules and regulations. The article concludes that the gains made for prison order through this process can at best be transitory; an outcome, however, which actually helps promote the broader politico-economic interests to which early release in general and temporary release in particular are usually subjugated.

External functions, internal problems

The last three decades have witnessed an immense growth in the use of imprisonment in a large and ever-

increasing number of jurisdictions around the world, affecting especially low-income groups and ethnoracial minorities. At least partly as a consequence of this, living conditions inside prison establishments have also generally deteriorated. Although public opinion has often been largely supportive of these penal policies and practices, both state and public punitiveness have typically been disproportionately high by comparison with what has purportedly caused them; that is, crime rates.

The apparent paradox is resolved once one considers the politico-economic functions performed by imprisonment. For example, the looming prospect of imprisonment for minor infractions, and under harsh conditions at that, has served to intensify the exploitability of the most marginalised segments of the population in a highly volatile labour market, forcing them to accept any available condition of work in the free community, in accordance with what is known in pertinent literature as the 'less eligibility' principle. At the same time, the expanded use of imprisonment has been deployed by governing parties as a convenient cathartic remedy for a range of discontents amongst the broader public, from heightened corporeal and ontological anxieties that are themselves the outcome of neoliberal socio-economic policies promoted by the parties in question, to increased anger with corrupt political elites. In this case, the poor conditions of imprisonment may be said to have helped unconsciously mitigate the pains of downward mobility and falling living standards for the average citizen, reassuring him or her that they still enjoy material advantages over those on the fringes of society. The point here is not so much that prisoners are held under conditions that remain inferior to those found in free society, as the principle of 'less eligibility' stipulates, but rather that free society itself tends to interpret the substandard conditions of imprisonment in terms of personal and in-group superiority — as a form of 'more eligibility', as it were.²

Such external functions of the prison system, however, are not without internal costs for prison establishments themselves, insofar as severe conditions of imprisonment have contributed to a rise in the frequency and seriousness of incidents of non-compliance by

1. Rothman, D. (1980) *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. New York: Aldine de Gruyter.
2. See further Cheliotis, L. K. (2013) 'Behind the Veil of Philoxenia: The Politics of Immigration Detention in Greece', *European Journal of Criminology* 10(6): 725-745, and Cheliotis, L. K. (2013) 'Neoliberal Capitalism and Middle-Class Punitiveness: Bringing Erich Fromm's 'Materialistic Psychoanalysis' to Penology', *Punishment & Society* 15(3): 247-273.

prisoners, including large-scale unrest and riots. The question this article explores is how prison officials seek to achieve order on the landings. Albeit far from absent, physical force cannot be relied upon as a solution, partly due to human rights obligations, but mainly because of relatively low staffing and security levels which may place officers themselves at risk within the prison. Officers are thus impelled to pursue other, 'softer' strategies aimed at eliciting cooperation from prisoners. A key means by which they do so is through offering the prospect of temporary release (known in the US as 'furlough') in exchange for compliant conduct. Given, however, that the granting of temporary release is tightly restricted by the punitive environment outside prisons, it is a puzzle how prisoner compliance may actually be realised through this scheme.

Drawing on Erving Goffman's classic work on prison order and the role of temporary release, this article develops a novel argument that helps to explain how compliance might be achieved, at least to some degree, in the absence of concrete rewards and without necessarily requiring a cognitive shift on the part of the prisoner. To examine how this might work in practice, the article proceeds to summarise findings from fieldwork undertaken in a Greek male prison, suggesting that officers engaged in efforts to transfer the incentivising properties of temporary release itself onto praise they extended to prisoners for observing prison rules and regulations. The content of such praise in this case entailed references to the ideal of a tamed masculinity that is embodied in the traditional Greek notion of *philotimo* or honour; a finding which strengthens the limited body of research that has to date identified the pacifying potential of masculine identities in prisons. As the article goes on to underline, however, any gains made for order through this process have at best been transitory, although such outcomes do not necessarily undermine, and may indeed support, the broader politico-economic functions of imprisonment.

Prison Order through Temporary Release: The Conventional View

In what follows, I have been persistent in avoiding the use of such phrases as 'maintaining' or 'securing

order', for they connote the possibility of an undisturbed state of tranquility that stands in marked contrast with the intrinsically volatile environment of the prison institution. Indeed, if asked to describe the social organisation of prisons, where humans are held against their will under conditions designed to cause pain, most insiders would subscribe to Roy King's observation that 'the control problem — of how to maintain 'good order and discipline' — is inherent and endemic'.³ This is not to deny that some version of order exists in prisons, but rather to emphasise that prison order is a matter of degree, manifesting itself variably across different times and spaces, depending on a range of factors.⁴ What prison authorities are actually struggling to achieve, then, is the *maximisation* of order in light of the circumstances at hand.

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The particular ways in which the authorities seek to maximise order inside prisons are similarly contingent upon a host of considerations. Legal restrictions and financial constraints on staffing levels, for example, often work to limit the exercise of naked force, thus pushing the officialdom to pursue order through cooperation with prisoners. Variations in penal ideology, moreover, are thought to influence whether cooperation itself is sought on the basis of prisoners' instrumental compliance or their active consent following a cognitive shift. The remainder of this article focuses on the pursuit of prison order through prisoners' own cooperation. Particular attention is paid to the possibility of temporary release as a practical means to this effect, revealing that prisoner compliance can be sought on a basis other than either pure instrumentality or consent, although temporary release has previously been credited with the capacity to bring about each of these conditions as well.

To start illustrating my point, let me first engage heuristically with some key ideas from Erving Goffman's work on prison order and the role of temporary release. Goffman⁵ has famously coined the term 'mortification processes' to describe what he sees as the systematic efforts of the prison institution to strip newly convicted offenders of their sense of self with the dual aim of punishing and controlling them. Until then, Goffman maintains, the self is defined in terms of distinctive ways of life, discretionary decisions, and support from

3. King, R. (1985) 'Control in Prisons', in M. Maguire, J. Vagg and R. Morgan (eds) *Accountability and Prisons: Opening up a Closed World*, pp. 187-203. London and New York: Tavistock, p.187.

4. See for example Adler, M. and B. Longhurst (1994) *Discourse, Power and Justice: Towards a New Sociology of Imprisonment*. London: Routledge; Jacobs, J. (1977) *Stateville: The Penitentiary in Mass Society*. Chicago: The University of Chicago Press.

5. Goffman, E. (1961) *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. Harmondsworth: Penguin.

'significant others'. Now, however, the self is fully subjected to the dictates of the prison regime. To this goal an array of mechanisms are put into effect, ranging from verbal discrediting and removing possessions with which prisoners have identified themselves, to disrupting contact with the outside world. Prisoners, Goffman goes on to argue, are also subjected to an omnipresent authority that seeks to judge and regulate all aspects of their institutional life at its own whim. Within that context, 'misbehaviours in one sphere of life [may be] held against one's standing in other spheres'.⁶ Although here the institution may seek to impose order by using physical punishment against deviant prisoners,⁷ Goffman provides an account of how prison authorities try to draw prisoners into quiescence by other means.

Goffman gives especial emphasis to what he terms the 'privilege system' as this may help pre-empt not only individual disruption, but also, and most importantly, collective outbursts amongst prisoners. At the same time that mortification processes are in progress, Goffman elaborates, prisoners are given a range of formal and informal instructions as to how to reorganise themselves and rise to an achieved status, thereby having their attention drawn away from group affiliations within the prison walls. Broadly speaking, these instructions provide for a set of coveted privileges, which are held out in exchange for disciplined custodial behaviour. Conversely, breaching the rules of prescribed institutional conduct entails the temporary or permanent withdrawal of privileges, or even the abrogation of the right to earn them. Temporary release is a crucial privilege in this system. Whilst prisoners engage in what Goffman calls a 'release binge fantasy', or 'recitals of what one will do during leave', certain acts of compliance with the rules and regulations of the prison institution come to be identified as means of lessening the stay behind bars.⁸ Prison authorities, in other words, hope to elicit

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conformity from prisoners through manipulating their eagerness for civilian life, as this is most fully realisable in the prospect of release, even if for brief periods of time.⁹

At first glance, the role Goffman attributes to temporary release does not differ from the idea behind the earliest recorded pre-release scheme, introduced by Captain Alexander Maconochie at the British penal colony on Norfolk Island back in the 1840s. Maconochie envisaged imprisonment as a graduated series of steps that would move prisoners from an initial period of confinement to a stage of private employment in the community under a 'ticket-of-leave', meted out in exchange for good conduct and labour productivity. Yet Maconochie's model, which soon after inspired Sir Walter

Crofton's 'intermediate prison' in Ireland, was premised on the assumption that the prison could perform both a custodial and a rehabilitative function; that it could not only guarantee public protection by way of incapacitating lawbreakers, but also render them capable of eventually leading constructive, law-abiding lives in free-world settings. Although temporary release incentivised prisoner conformity and promoted institutional order, this was meant to be part of the rehabilitative process, not an end in itself.¹⁰ The disciplinary function Maconochie reserved for temporary release thus resembles what Foucault describes in *Discipline and Punish*¹¹ as the prison's effort to 'correct'

offenders in the sense of permanently 'fine-tuning' their moral values and cognitive operations, whereas Goffman only talks about a superficial form of control over prisoners with the short-term aim of institutional order.

The logic underlying Goffman's account is, in fact, akin to Skinnerian behaviourism. According to Skinner,¹² compliance can be accomplished by being paired with the presentation of a pleasant stimulus, which takes on the role of a 'positive reinforcer'. By contrast, the withdrawal of pleasant stimuli and the reinstatement of unpleasant

6. Ibid p.76.

7. See for example Scraton, P., Sim, J. and P. Skidmore (1991) *Prisons under Protest*. Milton Keynes: Open University Press.

8. Goffman (1961) se n.5, p.77.

9. See also Glaser, D. (1964) *The Effectiveness of a Prison and Parole System*. Indianapolis: Bobbs-Merrill; Mathiesen, T. (1965) *The Defences of the Weak: A Sociological Study of a Norwegian Correctional Institution*. London: Tavistock; Messinger, S. (1969) 'Issues in the Study of the Social System of Prison Inmates', *Issues in Criminology* 4: 133-141; Powelson, H. and Bendix, R. (1951) 'Psychiatry in Prisons', *Psychiatry* 14 (1): 73-86; and King, R. and K. McDermott (1995) *The State of Our Prisons*. Oxford: Clarendon Press.

10. See further Barry, J. (1958) *Alexander Maconochie of Norfolk Island: A Study of a Pioneer in Penal Reform*. Melbourne: Oxford University Press.

11. Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison*. Harmondsworth: Penguin.

12. Skinner, B. (1938) *The Behavior of Organisms: An Experimental Analysis*. New York: Appleton-Century-Crofts.

ones are said to operate in a punitive fashion, as 'negative reinforcers', decreasing the probability that disobedience will occur again. A key practical problem with Goffman's analysis of the privilege system inside prisons, as much as with the Skinnerian behaviourism that lies implicit in it, is that important reinforcers may be only partially available or even wholly unavailable in the first instance. Temporary release is arguably the most paradigmatic case in point in that the level of its actual deployment is usually inversely proportional to how coveted it is amongst prisoners, as a result of restrictions posed by exogenous factors such as party-political interests and punitive public opinion.

The Role of Symbolic Rewards

Whether consciously or otherwise, prison officials often appear to seek solution in what more recent psychological work has described as a process of behavioural modification that does not merely entail the presentation of an inherently rewarding stimulus (the 'primary reinforcer'), but also systematically incorporates the association of that stimulus with communicative gestures of acknowledgement of a certain type of attribute (the 'secondary reinforcer'), the latter gradually assuming all reinforcing properties, albeit without necessarily provoking any deep cognitive change.¹³ Goffman at best only alludes to this process

when he explains how prisoners are encouraged to outgrow their 'ascribed' status of degradation and rather strive towards an 'achieved' status of recognition in the eyes of the officialdom.

Subsequent accounts of the prison institution have revealed official efforts to incentivise prisoner compliance where it is given symbolic recognition as an indicator of 'responsibilised' character. The focus of these accounts, however, has been restricted to positive characterological

As Campbell has argued, *philotimo* or honour 'as the recognised integrity and value of the individual personality is profoundly important to Greeks, whether they are peasants or cabinet ministers'.

assessments by the authorities as a necessary prerequisite for prisoners to attain more tangible rewards such as home leave or parole, whether in the context of a 'carrot-and-stick' system aimed to elicit instrumental compliance or as part of a 're-education' process in Foucault's sense of the term.^{14,15} What is thus missed is the potential role of favourable official attributions of character as 'secondary reinforcers' that enhance prisoner compliance in the relative absence of tangible rewards themselves; a form of compliance that is not ideological even though it can only have limited grounding in instrumentality.

Part of my work on the use of temporary release in Greece has sought to specify the content, identify the mechanics, but also evaluate the actual effectiveness of such a 'secondary reinforcer'. Fieldwork conducted in the early 2000s in a male prison southwest of Athens revealed an ongoing effort on the part of the authorities to promote prison order by transferring the incentivising properties of temporary release itself onto recognitions of prisoners' embodiment of the traditional Greek concept of *philotimo* or honour. That honour should be deployed as a means of holding prisoners in check appears paradoxical inasmuch as the prison works to dishonour those it keeps confined within its walls,¹⁶ thereby also pushing them towards alternative forms of honourability defined and attained in opposition to institutional structures.¹⁷ The paradox is resolved, however, as soon as *philotimo* is understood in its proper cultural context.

As Campbell¹⁸ has argued, *philotimo* or honour 'as the recognised integrity and value of the individual personality is profoundly important to Greeks, whether they are peasants or cabinet ministers'. A basic ingredient of *philotimo* is manliness, a concept which connotes not only physical strength and the condition of being

13. See further Schwartz, B. and D. Reisberg (1991) *Learning and Memory*. New York: W. W. Norton.

14. See for example Cheliotis, L. K. (2006) 'Demystifying Risk Management: A Process Evaluation of the Prisoners' Home Leave Scheme in Greece', *Criminology & Criminal Justice* 6(2): 163-195; Crewe, B. (2009) *The Prisoner Society: Power, Adaptation, and Social Life in an English Prison*. Oxford: Clarendon Press; Rothman, D. (1980) *Conscience and Convenience: The Asylum and its Alternatives in Progressive America*. New York: Aldine de Gruyter; and Toch, H. (1988) 'Rewarding Convicted Offenders', *Federal Probation* 52 (2): 42-48.

15. In the former case, 'responsibility' is just another descriptor of compliance, whereas in the latter case it connotes the cognitive and other skills that may be acquired through acculturation into compliance during custody.

16. Wacquant, L. (2001) 'Deadly Symbiosis: When Ghetto and Prison Meet and Mesh', *Punishment & Society* 3(1): 95-133.

17. See for example Sykes, G. and S. L. Messinger (1960) 'The Inmate Social System', in R. A. Cloward et al. (eds) *Theoretical Studies in the Social Organisation of the Prison*, pp. 5-19. New York: Social Science Research Council; also Sabo, D., T. A. Kupers and W. London (2001) *Prison Masculinities*. Philadelphia: Temple University Press.

18. Campbell, J. K. (1964) *Honour, Family and Patronage: A Study of Institutions and Moral Values in a Greek Mountain Community*. Oxford: Clarendon Press, p.41.

courageous, but also 'the ability of a man to do something efficient and effective about the problems and dangers which surround him ... whilst disciplin[ing] animal strength and passions'.¹⁹ Campbell's understanding of composed manliness as an integral component of *philotimo* is of vital importance for it breaks with widely accepted stereotypes that cast masculine honour solely in terms of virulent aggression, thus also anticipating later scholarship that has sought to reveal the inherently contested nature of the concept, including the role it may play in bringing various manifestations of violence to a halt.

The politico-economic benefits of 'administrative inconvenience'

Sooner or later, however, the limits to the language of *philotimo* as a mechanism of prisoner control were bound to be laid bare by the restricted use of temporary release itself. That is to say, practical restrictions in the granting of temporary release, whether in terms of the number of prisoners released or the promptness and frequency of their release, eventually gave rise to feelings of resentment amongst the majority of hopeful prisoners. It is not simply that recognition of one's individual worth was in itself inadequate as a long-term substitute for temporary release; the moral weight of masculine honour that was attached to compliance made the authorities' failure to grant the earned reward of temporary release all the more egregious. Ultimately, in fact, resentment helped

to undermine rates of prisoner compliance itself: unrest and even riots were becoming evermore frequent in the prison, with the underuse and unfair administration of temporary release being consistently one of protesting prisoners' key grievances, alongside degrading physical conditions of confinement and inadequate medical provision.²⁰

It should nevertheless be recognised that persistent or even intensified 'administrative inconvenience' for prison establishments is not incompatible with, and may in fact help promote, broader politico-economic projects. In Greece, for example, prisoner unrest and rioting have commonly been evoked in mainstream political and public discourse to lend retrospective justification to stereotypical representations of prisoners as untameable and incorrigible, thereby also helping to rationalise recourse to continuing and intensified punitiveness against them. There is no doubt this has made matters worse for prison administrators and officers in that it has created a cycle of disorder within prison walls. Beyond the confines of the prison, however, the punitive policies and practices facilitated by the repeated surfacing of violent prisoner imagery have supported important symbolic and material functions in the political arena and social life in Greece, from the politically convenient cathartic discharge of socio-economic insecurities amongst the public to the sustenance of an exploitable labour force.²¹ It turns out that the external, politico-economic functions of the prison may give rise to internal, institutional strain through which they can be reproduced.

19. Ibid p.145-6.

20. See further Cheliotis, L. K. (2012) 'Suffering at the Hands of the State: Conditions of Imprisonment and Prisoner Health in Contemporary Greece', *European Journal of Criminology* 9(1): 3-22; and Cheliotis, L. K. (2014) 'Order through Honour: Masculinity and the Use of Temporary Release in a Greek Prison', *South Atlantic Quarterly* 113(3): 529-545.

21. See further Cheliotis, L. K. and S. Xenakis (2010) 'What's Neoliberalism Got to Do With It? Towards a Political Economy of Punishment in Greece', *Criminology and Criminal Justice* 10(4): 353-373; Cheliotis, L. K. and S. Xenakis (2011) 'Crime, Fear of Crime and Punitiveness', in L. K. Cheliotis and S. Xenakis (eds) *Crime and Punishment in Contemporary Greece: International Comparative Perspectives*, pp. 1-43. Oxford: Peter Lang AG; and Xenakis, S. and L. K. Cheliotis (2013) 'Crime and Economic Downturn: The Complexity of Crime and Crime Politics in Greece since 2009', *British Journal of Criminology* 53(5): 719-745.

Perrie Lectures 2014: Life Sentences in Law and Practice

Dr Nicola Padfield.

The Perrie Lectures 2014 invite us to make sense of life sentences. We cannot easily make sense of them: the law is I believe far too complex, and the detail and complexity clouds what should be more important issues. In practice, I suspect that this complexity adds to the cost (and inhumanity?) of the system. It may be valuable to be able to stand back and to consider the reality, the law and practice, of life sentences. I shall try to give a flavour of the complexity of the law, but also of nature of the sentence as a whole. The offender has not escaped his life sentence until he (or, more rarely, she) has

- ☐ served their 'tariff' or minimum term AND
- ☐ persuaded the Parole Board to direct his release AND
- ☐ survived the license period (or periods of license, if recalled)
- ☐ AND been 'signed off' — a possibility for those on IPP (though none have yet achieved this), but not for others.

My theme is that the law is unnecessarily and unhelpfully complex. For a start, although it appears to be impossible to verify this, I believe that there are at present in prison people serving eleven different forms of life sentence (and probably many others who have been transferred back to England to serve different forms of indeterminate sentences imposed by courts abroad?):

The eleven different 'life sentences' being served today:

- (i) *The life sentence for murder*: this sentence has been mandatory for many decades, but the way that the sentence is constructed has changed dramatically in recent years. The minimum term, or tariff, fixed by the sentencing judge is now calculated following the strict rules of s 269 and Schedule 21 Criminal Justice Act (CJA) 2003. These rigid statutory 'starting points' have been amended twice in the last ten years. The result of these changes has been a significant lengthening of minimum terms, which helps explain why the length of time that murderers are serving has

grown significantly. Having identified the starting point (whole life for some offenders, 30 years, 25 years, or 15 years for other adults; 12 years for those under 18), the sentencing judge then takes into account a host of other aggravating and mitigating factors before fixing the minimum term. As we shall see, once fixed, the minimum term is what it says: a rigid term that the offender must serve before the Parole Board will consider directing the release of the offender.

- (ii) *The automatic life sentence (the 1997-2005 version)*: this was introduced by s. 2 of the Crime (Sentences) Act 1997 for anyone convicted of a second serious offence, unless there were exceptional circumstances permitting the court not to take that course. Section 2 was replaced by s. 109 of the Powers of the Criminal Courts (Sentencing) Act (PCC(S)A) 2000. After the Human Rights Act 1998 came into force, decisions of the Court of Appeal changed the way this sentence was applied significantly, introducing a little flexibility, and then, a decade later, the sentence was abolished (for those sentenced after 4 April 2005: see CJA 2003, Sch.37(7) para.1).

- (iii) *The discretionary life sentence*: 'dangerous' offenders have long been liable to be sentenced to a discretionary life sentence if they commit a very serious offence.¹ This was (and is) at the discretion of the trial judge. There has been much guidance by the Court of Appeal, but the *Hodgson* criteria ((1967) 52 Cr App R 113) still apply:

When the following conditions are satisfied, a sentence of life imprisonment is in our opinion justified: (1) where the offence or offences are in themselves grave enough to require a very long sentence; (2) where it appears from the nature of the offences or from the defendant's history that he is a person of unstable character likely to commit such offences in the future; and (3) where if the offences are committed the consequences to others may be specially injurious, as in the case of sexual offences or crimes of violence.

1. For a freely available report on the dangers of the concept of 'dangerousness', see Padfield, N (2011) *The sentencing, management and treatment of 'dangerous' offenders: Final Report*, European Committee on Crime Problems: [http://www.coe.int/t/dghl/standardsetting/cdpc/PC-GR-DD/PC-CP\(2010\)10%20rev%205_E%20_vs%2026%2001%2011_%20%20THE%20SENTENCING%20MANAGEMENT%20AND%20TREATMENT%20OF%20DANGEROUS%20OFFENDERS.pdf](http://www.coe.int/t/dghl/standardsetting/cdpc/PC-GR-DD/PC-CP(2010)10%20rev%205_E%20_vs%2026%2001%2011_%20%20THE%20SENTENCING%20MANAGEMENT%20AND%20TREATMENT%20OF%20DANGEROUS%20OFFENDERS.pdf);

After the introduction of IPP (see (vi) below), it appeared that the discretionary life sentence was becoming obsolete. But now IPP has been abolished, there will probably once again be a space for the discretionary life sentence (in the gaps that (vii) below does not come to fill).

(iv) *The CJA 2003 discretionary life sentence: s.225* CJA 2003 created a discretionary life sentence applicable to those convicted of a very long list of 'specified' violent and sexual offences, to be found in Schedule 15 of that Act. The Court of Appeal in *Saunders* [2013] EWCA Crim 1027 seemed to think that it was no longer necessary to distinguish (iii) and (iv), but this is not correct: as the late great David Thomas QC pointed out (in a commentary to *Cardwell* [2012] EWCA Crim 3030, at [2013] Crim LR 508), (iii) may well still be available to a court dealing with a non-specified offence (e.g. a grave Class A drug dealing or importation offence). But clearly a discretionary life sentence under the 2003 Act is available only on conviction for a 'specified offence'.

(v) *Detention during Her Majesty's Pleasure*: the mandatory life sentence imposed on offenders who commit murder when under the age of 18 (see s. 90 PCC(S)A 2000 for the current statutory formulation).

(vi) *Detention for life*: this is the maximum sentence for a person aged 10 or over but under 18, who is convicted of offences for which a discretionary life sentence may be passed on a person over 21.

(vii) *Custody for life*: imposed on offenders under the age of 21 but over the age of 18 when they commit murder (see s. 93 PCC(S)A 2000).

(viii) *Custody for life as a discretionary sentence: s 94* PCC(S)A 2000 makes it clear that custody for life may also be imposed as a discretionary sentence. Although this provision was repealed by the Criminal Justice and Court Services Act 2000 Sch.8 para.1, this repealing provision has never been brought into force! Young adult offenders sentenced to custody for life appear to be treated in the same way as other adult lifers.

(ix) *Imprisonment for Public Protection (IPP)*: this was introduced, from 4 April 2005, by s. 225 CJA 2003, originally imposed more or less automatically whenever a person was convicted of any one of a very large number of offences designated as 'serious specified offences' (i.e. one of the long list of sexual and violent offences listed in Schedule 15 of the Act punishable by a

possible sentence of more than 10 years imprisonment) and the court considered there to be a significant risk of serious harm to members of the public by the commission of a further 'specified offence'. The risk of serious harm had to be assumed in cases where the person had previously been convicted of a 'relevant offence'. Sentencing judges were given much more discretion in the application of the rules by amendments in the Criminal Justice and Immigration Act 2008, with effect from 14 July 2008. Perhaps surprisingly, given this sensible reform, IPP was subsequently abolished by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012, for offences sentenced after 3 December 2012, and replaced with (xi) below.

(x) *Detention for Public Protection (DPP)*: the IPP for offenders under the age of 18. This was always rather more flexible than the original 2003 provisions for adults (see (ix)).

(xi) *The automatic life sentence for a second 'listed' offence*: this was created by s. 122 LASPOA 2012, which adds a new s. 224A into the CJA 2003. In effect it applies only for offences committed after 3 December 2012. We now have a new 'two strikes' policy (see (ii) above for a predecessor). This is a semi-mandatory sentence for anyone convicted of a second 'listed' serious sexual or violent crime. Part of this complex provision reads:

(2) The court must impose a sentence of imprisonment for life unless the court is of the opinion that there are particular circumstances which —

(a) relate to the offence, to the previous offence referred to in subsection (4) or to the offender, and

(b) would make it unjust to do so in all the circumstances.

(3) The sentence condition is that, but for this section, the court would, in compliance with sections 152(2) and 153(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A.

(4) The previous offence condition is that —

(a) at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B ('the previous offence'), and

(b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.

(5) A life sentence is relevant for the purposes of subsection (4)(b) if—

(a) the offender was not eligible for release during the first 5 years of the sentence, or

(b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.

The Court of Appeal in *Saunders* (above) described this as a statutory life sentence where ‘there is a discretionary power in the court to disapply what would otherwise be a provision requiring an obligatory sentence’ (at para 7)! Clearly, it is not easy to see when and how judges will apply it. As I say, I have been unable to find a way of identifying which ‘lifers’ are serving which of these different variations. Are records held? Would it be possible to identify the number of prisoners in each category?

What does this mean in practice?

The number of prisoners sentenced to an indeterminate sentence of imprisonment has increased dramatically over recent years. Such prisoners now make up about 16 per cent of the prison population, compared with only 9 per cent in 1995.² Not only are there many more lifers, their minimum terms are much longer and the total period they remain inside, subject to the cautious decision-making of the Parole Board is, of course, even longer.³ Let me try and explain why I think the complexity of the current system does not help us to understand the underlying justification for such a system.

Fixing the tariff or minimum term

For whichever category of life sentence, the judge now fixes the tariff.⁴ In all cases, the tariff is designed to be the ‘punishment’ part of the sentence — the period which the lifer must serve before being considered for release. This tariff is rigid and inflexible. And although the length is somewhat unpredictable, the average tariff does appear to be growing:

Average length of minimum term period imposed for mandatory life sentence prisoners (excluding whole life sentences), 2003-2013⁵

Year	Average length (years)
2003	12.5
2004	14.5
2005	15.9
2006	17.1
2007	15.6
2008	17.8
2009	17.5
2010	18.9
2011	18.8
2012	20.4
2013	21.1

The number of prisoners sentenced to an indeterminate sentence of imprisonment has increased dramatically over recent years.

One explanation for this growth is the ‘starting points’ introduced in the Criminal Justice Act 2003: whole life, 30 years, 25 years, 15 years..... The number of ‘whole life tariffs’ is also creeping up. To my mind, it is shocking that those faced with a ‘whole life tariff’ have no possibility of release apart from the highly exceptional compassionate release on the grounds of terminal illness. In *Vinter v UK* [2013] 34 B.H.R.C. 605, the Grand Chamber of the European Court of Human Rights held that even a ‘whole life’

prisoner is entitled to know what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. By a majority of 16-1, they held that this applies from the moment the sentence is imposed. Thus the majority say (at para 122):

Although the requisite review is a prospective event necessarily subsequent to the passing of the sentence, a whole life prisoner should not be obliged to wait and serve an indeterminate number of years of his sentence before he can raise the complaint that the legal conditions attaching to his sentence fail to comply with the requirements of Article 3 [the prohibition on torture and ‘inhuman or degrading treatment or punishment’] in this regard. This would be contrary both to legal certainty and to the general principles on victim status within the

2. See *HMI Probation and HMI Prisons (2013)* A joint inspection of life sentence prisoners.

3. See Padfield, N (2002) *Beyond the Tariff: Human rights and the release of life sentence prisoners* (Willan).

4. Some sentencing remarks are available on www.judiciary.gov.uk. But generally data on life sentences is difficult to access.

5. Data obtained from Ministry of Justice by Jonathan Bild, Freedom of Information Request 89346, 7 April 2014, for his PhD on the mandatory life sentence.

meaning of that term in Article 34 of the Convention. Furthermore, in cases where the sentence, on imposition, is irreducible under domestic law, it would be capricious to expect the prisoner to work towards his own rehabilitation without knowing whether, at an unspecified, future date, a mechanism might be introduced which would allow him, on the basis of that rehabilitation, to be considered for release. A whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with Article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration.

But our domestic Court of Appeal does not agree. In *Newell and McLoughlin* [2014] EWCA Crim 188 they upheld the legality of the whole law tariff as currently organised. One important question to consider is why the 'minimum term' has become such a rigid period of time which cannot shrink. Why cannot very long tariffs be reviewed? In *R (Smith) v Secretary of State for the Home Department* [2005] UKHL 51, the House of Lords held that HMP detainees (i.e. those sentenced as children) whose tariffs have not expired, are entitled to periodic reviews of progress in custody with the possibility of reduction in tariff. It seems to me that there are strong theoretical and practical reasons for allowing a process of review for all tariffs, particularly very long tariffs.⁶ We return to the right to hope, or the right to rehabilitation, later on.

'Back-door' sentencing

What happens once the lifer, of whatever category, is inside prison? Life sentence prisoners are treated somewhat differently within the prison estate to other prisoners, in part because of the length of time that they are likely to serve, but also because the Parole Board is responsible for deciding when and if they will be released from prison. They are currently known within the system as ISPs (Indeterminate Sentence Prisoners) and are 'managed' from NOMS, where Public Protection Casework Section has the following functions⁷: -

- ❑ to monitor the whole Parole Board review process for all indeterminate sentenced prisoners — lifers and IPP;

- ❑ to ensure Parole Board reviews are carried out at the appropriate time;
- ❑ to consider individual recommendations in those cases where the Parole Board panel has recommended the transfer of an ISP from closed to open conditions;
- ❑ to consider and, where appropriate, refer cases to the Parole Board for advice on the question of an ISP's continued suitability for open conditions (and any other matters affecting release);
- ❑ to monitor the progress of ISP licensees in the community including recall to custody and cancellation of supervision;
- ❑ to liaise with the Prison Service on operational ISP policy development.

The relationship between the PPCS and the Parole Board is complex. Perhaps shockingly many prisoners appear to see no distinction.⁸ The Parole Board was created in 1968 as an advisory body, and it has evolved over the years to become a quasi-independent body which now makes the decision when and if a lifer should be released. The test for release, currently to be found in s. 28(6)(b) of the Crime (Sentences) Act 1997 applies to all life sentence prisoners for whom a minimum term has been fixed:

(6) The Parole Board shall not give a direction under subsection (5) above with respect to a life prisoner to whom this section applies unless —

(a) the Secretary of State has referred the prisoner's case to the Board; and

(b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

Controversially, the Secretary of State still maintains the right to issue Directions to the Board: see s. 32(6) CJA 1991. The 2004 Directions specify that

The test to be applied by the Parole Board in satisfying itself that it is no longer necessary for the protection of the public that the prisoner should be confined, is whether the lifer's level of risk to the life and limb of others is considered to be more than minimal.

There are many questions to be considered here. For example, should the criteria for imposing a particular sentence line up with, or match, the criteria for release? Is it fair that, although a prisoner could only be sentenced to IPP if he posed a significant risk of serious harm, he should not be released until that risk had been reduced to 'minimal'? This question was recently reconsidered in *R (Sturnham) v Secretary of State for Justice* [2013] UKSC

6. See also Van zyl Smit et al, 'Whole Life Sentences and the tide of European Human Rights Jurisprudence: What is to be done?' (2014) *Human Rights Law Review* 59-84; and my work cited at fn 7 below: French courts can and do reduce the *periode de surete* (or minimum term).

7. See PSO 4700, chapter 1.

8. Padfield, N. (2013) *Understanding recall 2011* (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2201039)

23 and 47. The issue had previously been raised in *R v Smith* [2011] UKSC 37, of which decision Lord Mance in *Sturnham* rather endearingly says 'I am far from satisfied that it can be regarded as the last word'. Tellingly, Lord Mance says that in *Smith*, the primary issue was whether it was '*legitimate*' (italics added) to pass a sentence of IPP for armed robbery and possession of a firearm on a career criminal who had already been recalled to prison to serve the remainder of a previous life sentence, also imposed for armed robbery. There is a growing literature on legitimacy, and I would argue that for reasons of legitimacy, it is vital that prisoners understand the system which is being imposed on them. Yet, disappointingly, in *Sturnham*, the Supreme Court held that the test to be applied by the Parole Board when considering whether to direct release on licence from IPP need not match the test applied by the sentencing judge when imposing the sentence of IPP in the first place. The two tests are substantially different, and the Court held that there was no reason why the scheme shouldn't involve a more difficult hurdle for release than it imposed for the imposition of IPP.

Whether or not this is fair is one question. Another is the burden of proof. Surely it should be for the state to prove the necessity for post-tariff detention, not for the prisoner to show that it is safe to release him? Currently it seems as though the prisoner has to prove that it is appropriate to release him — and that surely contravenes the right to liberty found in Article 5 of the European Convention on Human Rights. Then there is the question of the 'independence' of the Parole Board. In *R. (Brooke) v Parole Board* [2008] EWCA Civ 29; [2008] 1 W.L.R. 1950 the Court of Appeal was clear that the Parole Board as currently constituted did not constitute an independent court or tribunal and it appeared that the then Government had accepted this decision. A Ministry of Justice Consultation paper on *The Future of Parole* (Consultation Paper 14/09) invited comment on the way ahead: should the Parole Board be part of the court or the tribunal service? (Now an academic question, since the two have now been fused!). But sadly the issue seems to have been forgotten since the last election.⁹

The right to an oral hearing before the Parole Board has also been highly contested. It would appear that the Government's position has been driven by questions of cost. But it seems to me obvious that a prisoner who is being detained post tariff deserves an oral hearing before a court or tribunal. The courts agree. In the latest of very

many cases on the subject, *Osborn and Booth v Parole Board* [2013] UKSC61, the Supreme Court unanimously allowed the appeals of three prisoners. They held that the removal of the 'right' to an oral hearing in the Parole Board (Amendment) Rules 2009 (S.I. 2009/408) was not lawful. Fascinatingly, the decision was grounded in the common law, and not on the jurisprudence of the European Court of Human Rights. The Court held that 'common law standards of procedural fairness' require the Parole Board to hold an oral hearing whenever fairness to prisoner requires such a hearing, in light of the facts of the case and the importance of what is at stake. Interestingly, the Court's concern was for the practical importance of fairness: Lord Reed pointed out that one of the virtues of procedurally fair decision-making is that it is liable to result in better decisions, by ensuring that decision-maker receives all relevant information and that it is properly tested. He stressed the need to avoid the sense of injustice which the prisoner will otherwise feel:

... it seems to me obvious that a prisoner who is being detained post tariff deserves an oral hearing before a court or tribunal.

justice is intuitively understood to require a procedure which pays due respect to persons whose rights are significantly affected by decisions taken in the exercise of administrative or judicial functions (at para 68).

Unusually, the Court discusses the impact of prisoners' feelings of injustice on their motivation and respect for authority:

The potential implications for the prospects of rehabilitation, and ultimately for public safety, are evident (at para 70).

Given the recent abolition of legal aid for many prison cases, it is worth noting that the Supreme Court was clear that a prisoner may be entitled to an oral hearing not only when the Board is deciding whether or not to recommend his release or transfer to open conditions, but also when they are considering other aspects of their treatment:

In the context of parole, where the costs of an inaccurate risk assessment may be high (whether the consequence is the continued imprisonment of a prisoner who could safely have been released, or re-offending in the community by a prisoner who could not), procedures which involve an immediate cost but contribute to better decision-making are in reality less costly than they may appear (para 72).

The Board should not give way to the temptation to discount the significance of matters which are disputed by the prisoner in order to avoid the trouble and expense of an oral hearing (para 91).

9. See Padfield, N. (2011) 'Amending the Parole Board Rules: a sticking plaster response?' *Public Law* 691-698.

The right to rehabilitation?

I may have lost some readers with this legal detail. There are floods of individual cases which challenge the minutiae of this complex legal framework. To me, the opportunity to challenge the rules is essential. But we may miss the forest by only looking at the individual trees, branches or twigs. We lawyers are only slowly edging towards recognising the importance of the right to rehabilitation: something which lies at the heart of many European and international standards, and indeed at the heart of the Prison Rules. Perhaps eventually, the decisions of the courts will prove useful here too. In *R (Walker, Wells, Lee, James) v Secretary of State for Justice (Parole Board intervening)*; *Wells v Parole Board* [2010] 1 AC 553 the Minister of Justice acknowledged that he was in breach of his public law duties by failing to provide appropriate courses and other rehabilitative services for lifers. However, the House of Lords held that even though the prisoners were unable to demonstrate their safety for release because the courses they were required to undertake were not available, their continued detention was not unlawful at common law. The European Court of Human Rights in *James, Lee, Wells v UK* (4th section, ECHR, 18 Sept 2012) (2013) 56 EHRR 12 went further saying that 'lack of resources, planning and realistic consideration of the impact of the sentencing scheme introduced in 2005' meant there was indeed a breach of Article 5 of the European Convention on Human Rights.

These are contested areas of law, of course. There would be great benefit in an updated Prison Act. I suggest that the Government brings upon itself some of the enormous cost of legal aid by making laws which are so complex and so difficult for anyone to understand or to apply. Much of the cost of litigation is not down to prisoners and their lawyers, but down to the Government introducing rules which may seem unfair and which they then choose to defend at vast expense before the courts. A fairer and better system, a system which was easier to challenge, would save money. Would the best way to secure improvements be to give prisoners the right to a regular review by a court or tribunal? Or a personal officer who understands (and who is rewarded for understanding) the rules and the importance of prioritizing the offender's rights? I have argued elsewhere that we should consider the French system of sentence review courts.¹⁰ Without this independent review, can we really be confident that the system operates fairly? Should we tolerate such an enormously high number of prisoners serving indeterminate sentences? These questions need wide debate.

This is not the occasion to focus only on complex areas of law. Rule 3 of the Prison Rules 1999 is, I hope, not controversial: 'The purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life'. Are lifers adequately encouraged and assisted? The period that a prisoner serves in prison is a crucial period which leads, for most, very slowly and uncertainly towards release. The help they get in prison is particularly important for lifers, whose release dates are uncertain and discretionary. I would encourage the Prison Service and its staff to ask itself many more practical (and even moral?) questions:

- ☐ Does it, the Prison Service and its staff, do its utmost to get people out on tariff completion?
- ☐ Are post-tariff lifers treated appropriately?
- ☐ Do all staff know and worry about who is post-tariff?
- ☐ What is appropriate treatment for someone who has completed the 'deserved' or punishment part of their sentence?
- ☐ Do prisoners know (understand?) that staff really want to get them out on tariff?
- ☐ Are staff proud of 'their' lifers achievements?
- ☐ Are they disappointed if they can't write a report which strongly recommends release, on tariff?
- ☐ Are probation staff really focused on getting lifers out?¹¹

Please add your own! Am I right to be surprised that the prison system still appears not to acknowledge, or sometimes even not to notice, the fundamental status change which occurs when a lifer becomes post-tariff? They are then being detained simply because of the risk of re-offending: they have by then served the sentence fixed for 'punishment'. They should surely be detained in a way which recognises this important status change? There should be an anxious determination to move the prisoner onwards, and out.

The public (which is all of us) are entitled to reasonable public protection — but not absolute public protection, and that right of the public to reasonable public protection has to be carefully balanced against the offender's rights: a right to liberty, once they have served their sentence, and, I would argue, too, a right to rehabilitation. The current law is too complex and too costly. It puts too little value on human rights and human dignity. There is a growing literature on the reality of prisoners' experiences.¹² I welcome the opportunity to contribute to a much wider public debate.

10. Padfield, N. (2011) 'An Entente Cordiale in Sentencing?' 175 *Criminal Law & Justice Weekly* (available at SSRN: <http://ssrn.com/abstract=2239618> or <http://dx.doi.org/10.2139/ssrn.2239618>)

11. Another subject very understudied: an unusual perspective is to be found in Gelsthorpe, L., Padfield, N. and Phillips, J. (2012) *Deaths on Probation: an analysis of data regarding people dying under probation supervision* Howard League for Penal Reform.

12. See for example, Appleton, C. (2010) *Life after Life Imprisonment*; Padfield, N. (2013) *Understanding recall 2011* (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2201039)

Perrie Lectures 2014:

Reforming Life Sentences

Rt. Hon. Sir Alan Beith, M.P. has been a Member of Parliament since 1973. Between 1992 and 2003, he was Deputy Leader of the Liberal Democrats and he has been Chair of the House of Commons Justice Committee since 2007.¹

It must have been an optimist who decided on the title 'Making sense of life sentences'? — I don't think we can. The life sentence involves trying to reconcile incompatible objectives:

(1)The desire to embody in law a different punishment by which society asserts that it is wrong to take the life of another. 'Thou shalt not kill';

(2)The realisation that some murders and murderers are very much worse than others;

(3)The realisation that some crimes, and some instances of repeat offending, are at least as serious and culpable as some murders, and perhaps more so;

(4)The idea that 'life should mean life';

(5)The contrasting reality that there is a wide range of actual sentences served, with an average of 14 years for mandatory life sentences and 9 years for non-mandatory;

(6)The fact that some sentences are for life because that is what the law requires, while others represent the considered view of the court that life is the appropriate sentence;

(7)And as if that wasn't enough, we had Indeterminate Sentences for Public Protection, which could turn out to be longer and closer to 'life' than many life sentences!

It is a mess, and nobody dares to clear up the mess. There is the fear that it would be breaking a commitment made when the death penalty was abolished nearly 50 years ago; and the fear that it would be presented and attacked as 'being soft on murder', or on repeat serious offences.

The Mandatory Life Sentence

Mandatory life sentences for murder were introduced by the Homicide Act 1957 as a concession to Members who were uneasy about the suspension of the death penalty.² The later Murder (Abolition of the Death Penalty) Act 1965 which abolished capital punishment, initially for five years and permanently upon renewal in 1969,³ also imposed a mandatory life sentence for murder.⁴

A mandatory sentence presents particular problems for courts sentencing offenders for murder. Murder is contrary to common law, and can be defined as the unlawful killing of a human being resulting from a) an intention to kill or b) an intention to cause grievous bodily harm.⁵ The problems presented by the combination of an offence encompassing a wide variation in culpability which incurred a mandatory sentence had been considered by the courts during the sixteenth and seventeenth centuries when the death penalty was the required sentence for murder. The solution adopted was the creation of a 'partial defence' where, if the defendant could show provocation, he or she could be convicted of manslaughter instead, an offence for which the court had discretion over sentencing. The Homicide Act 1957 sought to further mitigate the potential problems by placing provocation on a statutory footing⁶ and introducing diminished responsibility⁷ and killing 'in pursuance of a suicide pact'.⁸ The partial defences have presented problems for the courts, not least the definition of 'provocation' and its application to women who have suffered extreme and long-term domestic violence⁹ and in

1. I am indebted to Hannah Stewart, Committee Legal Specialist to the House of Commons Justice Committee, for her extensive help in the preparation of this lecture.
2. Mitchell, B. and Rivers, J. (2012) *Exploring the Mandatory Life Sentence* Oxford: Hart.
3. Murder (Abolition of the Death Penalty) Act 1965 left the capital punishment in place for high treason; piracy involving murder or GBH ('piracy with violence'); espionage or setting fire to dockyards.
4. S. 1(1) Murder (Abolition of the Death Penalty) Act 1965.
5. Modern paraphrase of 'Murder is when a [person]...unlawfully killeth...any reasonable creature in *rerum natura* under the Queen's peace with malice aforethought...' (Derived from Coke's *Institutes*, 3 Co Inst 47).
6. Section 3 Homicide Act 1957.
7. Section 2 Homicide Act 1957.
8. Section 4 Homicide Act 1957.
9. Provocation was originally held to only apply to people who 'snapped' and reacted immediately to the relevant provocation. This approach was overturned in the 1992 case of *R v Ahluwalia* [1992] in which the defendant who had suffered extreme violence from her husband over a long period burnt him to death as he slept. It should be noted that the conviction in *Ahluwalia* was not overturned on the basis of provocation, which was not found on the facts of the case despite the change in law, but on the grounds diminished responsibility which had not been raised at trial.

the consideration of 'mercy killings' for example of a very ill and suffering spouse or child. Mandatory life sentences, like the death penalty could encourage the treatment of some murders as if they were manslaughter.

It has been argued, most recently by Professors Barry Mitchell and Julian Rivers,¹⁰ that the mandatory life sentence violates the principle of proportionality which is key in sentencing. Mitchell and Rivers argue that proportionality is dependent on community views; sentences should reflect, at least in part, the opinions of society on the gravity of a crime and the culpability of the offender. Well-informed members of the public, they contend, do not actually support the mandatory life sentence when given detailed scenarios upon which to comment, including killings in the course of other serious felonies, such as burglary and robbery; killings that resulted from various confrontations, including those between business partners, lovers, and friends; and the killing of a severely disabled child by a distraught parent. The results of their research led the authors to conclude that there was 'no evidence of overwhelming or widespread public support for automatically sending all convicted murderers to life imprisonment', although there was support for mandatory life sentences in more serious murder scenarios.¹¹

In 2006 a Law Commission report concluded that the law on homicide required significant clarification and should be placed on a statutory footing.¹² The report proposed that the offence of murder should be split into 'first' and 'second' degrees together with a new definition of manslaughter.

- ❑ First degree murder, which would continue to attract a mandatory life sentence, would be confined to unlawful killings committed with an intention to kill and unlawful killings committed with an intent to cause serious injury where the killer was aware that his or her conduct involved a serious risk of causing death.
- ❑ Second-degree murder would encompass unlawful killings committed with an intent to cause serious harm and unlawful killings

intended to cause injury or fear or risk of injury where the killer was aware that his or her conduct involved a serious risk of causing death. It would also include cases which would constitute first degree murder but for the fact that the accused successfully pleads provocation, diminished responsibility or that he or she had killed pursuant to a suicide pact. Second degree murder would attract a discretionary life sentence.

- ❑ Manslaughter would cover unlawful killings caused by acts of gross negligence and unlawful killings caused by a criminal act that was intended to cause injury or by a criminal act foreseen as involving a serious risk of causing some injury. Manslaughter would also attract a discretionary life sentence.

These proposals received support from a number of academics, legal practitioners and human rights groups, primarily on the grounds that the single sentencing option of a mandatory life sentence is too inflexible to reflect the broad range of conduct that murder can encompass.¹³ In response the Government said it remained committed to mandatory life sentences for murder, given its status as 'a unique crime of particular moral and social significance'.

In its green paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*,¹⁴ published in December 2010, the current Government indicated that it would look at 'simplifying' the current legislation on murder sentencing, although it emphasised it had 'no intention of abolishing the mandatory life sentence'. However, no substantive simplification or reform of the murder sentencing framework has so far followed, nor has there been any indication that this will be forthcoming in the near future.

It has been suggested that the best way to reform mandatory sentences is to give greater discretion to the courts in determining tariffs (referencing for this?). However this does not necessarily resolve the issue as, even in cases where the offender's culpability may be greatly reduced and a short tariff imposed, he or she

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10. Mitchell and Rivers (2012) see n.2.

11. Ibid. The research was conducted on behalf of the Nuffield Foundation.

12. The Law Commission (2006) *Murder, Manslaughter and Infanticide*, Project 6 of the Ninth Programme of Law Reform: Homicide.

13. Ibid.

14. Ministry of Justice (2011) *Breaking the Cycle: Government Response*, Cm 8070.

will remain on licence for life; able to be recalled to prison at any time. The burden of being on licence should not be underestimated. The Law Commission commented:

*If a life sentence has to be passed on an offender with no previous criminal record who was driven to kill on the spur of the moment by very grave provocation, the sentence that must be passed will have a 'topsy-turvy' character. The offender will, on current guidelines, be required to spend perhaps only two to four years in prison for the offence because of the gravity of the provocation and the fact that he or she acted spontaneously. Yet, when released from prison, he or she will then remain on licence, liable to be recalled to prison for, perhaps, another 40 years or more.*¹⁵

An offender is most likely to be recalled to prison for a breach of licence conditions or following arrest on suspicion of committing a further offence. Potentially therefore, a person who has been on licence and of good behaviour for many years may be recalled following an allegation that the police or probation later find to be wholly false.

Tariffs

The setting of the minimum terms for murderers has proved to be a challenge for successive Home Secretaries. Initially minimum terms were set by the Home Secretary but this was held to be incompatible with the requirement for all sentencing decisions to be taken by an independent and impartial tribunal under Article 6 of the European Convention on Human Rights.¹⁶ The then Home Secretary, David Blunkett MP, seems to have been reluctant to relinquish control of minimum terms, possibly as a result of the media furore over the impending release of Myra Hindley.¹⁷ Potentially intending to exert some political control over the setting of tariffs, the Home Secretary tabled an amendment to the Criminal Justice Bill being considered in parliament which required courts to give due regard to sentencing guidelines. The same Bill also

contained guidelines on minimum terms. The relevant starting points are:

- ❑ Whole life tariffs for exceptionally serious murders such as the premeditated killings of the murders of two or more people, sexual or sadistic child murders or political murders;
- ❑ 30 year minimum terms for particularly serious cases such as murders of police or prison officers (the present Government is seeking to amend this to a whole life tariff), murders involving firearms, sexual or sadistic killings or murders where the victim was targeted due to his or her race or sexual orientation;
- ❑ 15 year minimum term for murders not falling within either of the above two categories.¹⁸

These guidelines appear to have increased the length of time those sentenced to life imprisonment serve in prison custody.

In its consultation on the *Breaking the Cycle* Green Paper the current Government commented that Schedule 21 to the 2003 Act was 'based on ill-thought out and overly prescriptive policy' and was 'badly in need of reform'.¹⁹ However, in its response to the consultation the only reference to sentencing for murder was: 'Mandatory life sentences for murder are an essential part of the sentencing framework. There

are no plans to change this.'

Mandatory life sentences for murder are an essential part of the sentencing framework. There are no plans to change this.

Challenges arising from the increase in the numbers of life sentenced prisoners

Life and indeterminate sentences are costly for the State, both in terms of the length of time spent in prison and the 'offending behaviour work' prisoners have to do to show the Parole Board that their risk to the public has been sufficiently reduced to allow their release on licence. The Parole Board also has to consider applications by life-sentenced prisoners for a move to open prison conditions, usually, although not invariably a few years before a suitable prisoner's minimum term expires (mandated at 48 months)?. The Board relies on reports from the Probation Service in making an assessment, Clare Bassett, Parole Board CEO, told the Committee:

15. The Law Commission (2006) see n.12 para. 2.131.

16. *R(Anderson) v Secretary of State for the Home Department* [2003] 1 AC 837.

17. Hindley died before release <http://www.theguardian.com/uk/2002/nov/15/ukcrime4> 16 November 2002.

18. Schedule 21, Criminal Justice Act 2003.

19. Ministry of Justice (2011) see n.14.

...our experience would be that where you have a very good, engaged offender manager, [Parole Board risk assessment] works really well. Where you have an offender manager who has a very high workload, is spread a bit thin and has not even met the prisoner until the morning of the hearing, for example — which is not uncommon — then it is very difficult.²⁰

Evidence to the Committee from the Parole Board itself noted the pressures they were under, significantly increased by the Supreme Court's decision in *Osborn and others v Parole Board*²¹ which held that the fair trial rights under Article 5(4) of the European Convention on Human Rights required a greater number of life-sentence and indeterminate sentence prisoners be offered oral hearings on applications for release post-tariff or for a move to an open prison. The Parole Board estimates that '[they are]...now faced with the colossal challenge of increasing [our] oral hearing capacity from 4,500 a year to closer to 14,000 a year...'²²

Discretionary life sentences and indeterminate sentences require considerable resources even before sentence is handed down because the court will require detailed pre-sentence reports in order to make a proper assessment whether the risk posed by the offender requires this type of sentence. The Committee noted in *Towards Effective Sentencing*:

The system of Imprisonment for Public Protection sentences presupposes a rigorous risk assessment prior to sentencing so as to put the sentencing judge in a position to make an informed and reliable decision on the risk to the public an offender poses. Robust pre-sentence assessment procedures need to be put in place to allow the reformed system of Imprisonment for Public Protection sentences to work in the way Parliament intends. We believe that, in order to be

*effective, Imprisonment for Public Protection sentences require the judge to be provided with a pre-sentence report including a comprehensive risk assessment. We believe that the Government needs to make adequate resource provision for these purposes.*²³

The resource requirements of monitoring life-sentence prisoners post-release are also significant. The Committee concluded in its report *Towards Effective Sentencing* that '*Resources are a fundamental issue in delivering an effective sentencing strategy.*'²⁴

Life sentences also, inevitably, mean an increase in the number of older prisoners who are likely to have greater health and mobility needs. In its inquiry into older prisoners the Committee concluded:

*Older prisoners have needs that are distinct from the rest of prisoner population by virtue of their severity. Such severity warrants specific means of addressing those needs...*²⁵

The growth of the older prison population and the severity of the needs of that population, warrant a national strategy in order to provide for them effectively.

*Some prisons hold high numbers of older people in their establishments and have the incentive to develop an effective older prisoner policy and regime. Others do not, and the older prisoners who are held in these prisons are more likely to receive inequitable treatment as a result.*²⁶

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The Inspectorate Report

In September 2013 the Joint Report by the Probation and Prison Inspectors²⁷ highlighted issues about the management of life sentence prisoners. Key points included:

20. Q17 13 December 2013.

21. [2013] UKSC 61.

22. Parole Board submission to the Justice Committee December 2013.

23. Justice Committee (2008) *Towards effective sentencing* London: The Stationary Office p.27-8.

24. Ibid p.3.

25. Justice Committee (2013) *Older prisoners* London: The Stationary Office para. 134.

26. Ibid para. 136.

27. HMI Probation and HMI Prisons (2013) *A joint inspection of life sentence prisoners* London: HMI Probation.

*Despite the time it took to reach the point to transfer to open prison, life sentence prisoners were not well prepared for this significant transition... Preparation for release relied heavily on the use of release on temporary licence, rather than interventions such as courses on life skills.*²⁸

There were criticisms of pre-release assessment procedures, and an over-use of approved premises for those with lower levels of risk. In Category C prisons life sentenced prisoners generally completed offending behaviour courses; however there were some obvious gaps in opportunities offered — partly because IPP prisoners with expired tariffs got priority for scarce places. Inspectors concluded that ‘Regimes in open prisons offered insufficient opportunities for prisoners to address their offending behaviour’.²⁹

There were many things that were commended, and I have quoted these criticisms in order to illustrate some of the particular practical difficulties presented by life sentence prisoners.

I would also draw attention to the key recommendation to NOMS, that they should ‘use the opportunity offered by the Transforming Rehabilitation strategy to reassess how life sentence prisoners are managed in both custody and the community’,³⁰ so as to ensure that the right services to promote rehabilitation were used: and that there should be more analysis of ‘the underlying motivation and triggers for the original offence’ so as to improve the risk assessment.

The public debate on life sentences

The public attitude to life sentences presents difficulties for any programme of reform. Though Rivers and Mitchell’s research for the Nuffield Foundation cited above indicates potential support for change, public debate is almost wholly confined to media reports on notorious cases. These tend to reduce the debate to salacious headlines such as ‘life should mean life’ with little or no regard to the context of the case with the consequence that evidence pertinent to the

issue is ignored. The recent furore over absconders from open prison is an example. On 3 May 2014 Michael Wheatley, an armed robber serving 13 life sentences, absconded while on day release.

The disappearance of Mr Wheatley, referred to as ‘Skull-cracker’ in the media, triggered an avalanche of press about absconds despite the fact figures from the Ministry of Justice show absconding from open prisons has declined in recent years; from a high of 1,300 in 2003-04 to 204 in 2012-13. As noted by the *Guardian* ‘...in every year this century, Home Office figures show that 99.9 per cent of releases on licence ended with offenders returning as required. It must not be ignored that between six and seventeen sentenced murderers have absconded each year since 2006-07 however of these only one remains at large. This is one person too many however it should not precipitate or be used to justify a mischievous policy panic about open prisons a couple of days before the local elections.’³¹

The Committee identified public confidence as a fundamental issue in *Towards Effective Sentencing* but concluded:

*The Government has failed to provide the information and leadership required to facilitate an informed public debate, while the media climate for such debate often depends on isolated discussion of particular cases which inhibits calm consideration.*³²

Governments have to lead and cannot merely follow what may in any case be an over-simplistic picture of public opinion. Governments are responsible for keeping their citizens sage, and for spending taxpayers’ money wisely and carefully. That requires rational analysis of policy, and in this field it means assessing whether we are keeping some people in prison unnecessarily, whether we could release funds from custody to crime prevention, whether we are wasting money on post custody supervision of certain offenders released on licence with a very low risk of reoffending, and whether courts are unduly restricted from imposing appropriate and effective sentences.

That is a task for Parliament after the next election.

28. Ibid p.6.

29. Ibid p.8.

30. Ibid p.9.

31. <http://www.theguardian.com/commentisfree/2014/may/19/editorial-in-praise-of-open-prisons>

32. Justice Committee (2008) see n.23 p.3.

Perrie Lectures 2014:

Life sentences in custody and beyond

Lucy Gampell OBE is an independent Member of the Parole Board and President of Children of Prisoners' Europe.

This year's Perrie Lecture considered the difficult challenge of life sentence prisoners and, in doing so, asked the following questions which I will attempt to answer over the course of this article:

- ❑ How can we safely and accurately risk assess for release on temporary licence?
- ❑ How can we successfully manage the growing number of elderly life sentenced prisoners?
- ❑ When is it safe to release?
- ❑ How can life sentenced prisoners be safely managed, supervised and monitored in the community?
- ❑ How can we support life sentenced prisoners to live a productive and law abiding life in the future?

In this article I will be drawing on my professional experience of working for over 20 years to redress the negative impact of imprisonment on children and families of prisoners and from my current position as an Independent Member of the Parole Board. However all views expressed are from a personal perspective and do not necessarily reflect the policies or views of the Parole Board.

My starting point for considering the overarching theme however was to ask the question as to who it is that needs to make sense of life sentences; for me this breaks down into four main stakeholders: the prisoner; the victim; the public; and the prisoner's family. Each one of these has a specific need to understand the sentence and, perhaps most importantly, what is meant by the minimum tariff. Whilst I will not dwell on public perceptions and the needs of victims in any great detail, I do consider that more needs to be done to properly explain the sentence so as to allay common misconceptions that the minimum tariff is, in fact, the sentence and that a life sentence means precisely that. This is particularly important for victims of crime who need to feel that justice has been done and often only take in the minimum tariff when the sentence is handed down. Whilst Judges, when delivering their sentence, do set this out to the defendant, it is often not taken in by either the defendant or the victim and is frequently misrepresented by the media.

There are many examples where the media jumps on 'light' sentences which are in fact life sentences with a relatively short minimum tariff; in my view this is one of the reasons for the significant increase we have seen in tariff lengths for serious offences in recent years as political rhetoric has ratcheted up sentence lengths. In the worst cases we have seen political interference and rushed statements of policy change that can have significant consequences — most recently with the media and political furore over life sentence prisoners being out on temporary release from open prisons (ROTL). The most serious of these was the case of Michael Wheatley, known throughout the press coverage as 'skull cracker', where much was made of why it was possible that a man serving 13 life sentences was 'free to wander in and out of an open prison' describing the situation as 'ludicrous'.¹ In the ensuing days the press went to town on other cases of prisoners who had absconded from open conditions leading to the Government announcing draconian measures that will have serious consequences for large numbers of prisoners who will now not be able to return to open conditions. The Government's decision however was made swiftly, in order to appease the media and perceived public outcry with little serious analysis of the problems or the impact of their proposed policy — both in terms of protecting the public and facilitating the resettlement of prisoners, many of whom have spent many years in closed conditions and need the gradual resettlement offered through open prisons. For many lifers the move to open conditions after many years in custody is quite a shock and some find they just cannot cope first time, but succeed when given a second chance there.

Returning to the issue of life sentence prisoners we need to understand the scale of the problem. There has been a steady increase in the number of lifers, while the overall indeterminate population increased rapidly after indeterminate sentences for public protection (IPP) were introduced in 2005. However, the rate of year-on-year growth in indeterminate sentences has slowed considerably following the changes introduced in the Criminal Justice and Immigration Act (CJIA) 2008 which

1. See <http://www.express.co.uk/news/uk/475097/The-saga-of-Skull-Cracker-How-Michael-Wheatley-became-UK-s-Most-Wanted> accessed on 14 October 2014.

Ministry of Justice Prison Population figures 31 March 2013 – 31 March 2014²

Indeterminate Sentence for Public Protection	Tariff expiry date (TED)			
	TED not passed	TED passed	TED not available	Total
Tariff length ^(a)				
Less than 2 years	13	941	0	954
2 years to less than or equal to 4 years	320	2,011	0	2,331
Greater than 4 years to less than or equal to 6 years	589	570	0	1,159
Greater than 6 years to less than or equal to 10 years	608	53	0	661
Greater than 10 years	89	0	0	89
Tariff length not available ^(b)	0	0	12	12
Total	1,619	3,575	12	5,206
Life (all variations)^(c)				
Tariff length ⁽¹⁾	TED not passed	TED passed	TED not available	Total
Less than or equal to 10 years	399	1,606	0	2,005
Greater than 10 years to less than or equal to 20 years	3,075	922	0	3,997
Greater than 20 years	1,143	38	0	1,181
Whole life	48	0	0	48
Tariff length not available ⁽²⁾	0	0	188	188
Total	4,665	2,566	188	7,419

(a) Tariff length is the time between date of sentence and tariff expiry date and does not take into account any time served on remand.

(b) Includes cases where a confirmed tariff expiry date has yet to be received and any unmatched records.

(c) Includes mandatory, discretionary, automatic life sentences and those relating to young adults and juveniles held in prison custody.

restricted the use of IPPs. As of 31st March 2014 there were 85,265 people in prison, of these 12,625 were serving some form of life sentence, including IPPs.

The table above shows that over half of all IPPs have a tariff of less than 4 years and 954 have a tariff of under 2 years; under 100 have a tariff of over 10 years all of whom are therefore still pre-tariff. With regards to those sentenced to life, over half of all lifers (3,997) have a tariff of between 10 and 20 years; 1143 have a tariff of more than 20 years and just 48 people are serving whole life sentences with no chance of parole.

For prisoners and their families, the indefinite nature of the sentence with no release date is hard to comprehend:

we got stressed by not knowing the date he was coming home. We thought we did and then it changed and then he just turned up.³

There is a lack of information or explanation given to prisoners after sentence (particularly IPPs) and this is something I believe the Prison Service needs to take greater responsibility for. In the past 4 years as a member of the Parole Board I have come across countless IPPs who did not understand that they were

serving a form of life sentence and would not be released at their tariff for a considerable period into their sentence; some found out from other prisoners, some by seeing it on their file and some from their Offender Supervisor (OS), but lots did not have it properly explained to them on induction and many prisoners have stated that they only fully understood the nature of the sentence (and the role of the Parole Board) when being interviewed by their OS in preparation for their first parole hearing. This is not acceptable practice and it is incumbent on the Prison Service to ensure that all those serving IPPs and life sentences have their sentence clearly explained to them on induction so that they fully understand the role of the sentence plan in enabling them to progress in such a way that when they come up for consideration by the Parole Board they are in the best possible position for a positive decision. Partly as a result of this, some prisoners are not ready for progression at their first review by the Parole Board (which takes place pre-tariff), often resulting in a negative decision made on the papers; I will be returning to the detail of oral hearings and the Parole Board decision.

For families too, this lack of clarity causes a huge amount of unnecessary distress and anxiety with

2. Data Sources and Quality: These figures have been drawn from Ministry of Justice administrative IT systems which, as with any large scale recording system, are subject to possible errors with data entry and processing.

3. Action for Prisoners Families (2006) *Who's Guilty – Young People with a Prisoner in the Family* London: Action for Prisoners' Families.

children of prisoners' particularly badly affected; some young people never recover from this early trauma with children of prisoners being twice as likely to experience behavioural or mental health problems. Arguably of most importance to children is being told the truth about where their parent has gone, and when asked what will help them to cope, children and young people consistently state that being given information, support and child-focussed visits makes a huge difference.⁴

Yet all of this should be afforded to children of prisoners; they are rights enshrined in the articles of the United Nations Convention on the Rights of the Child (CRC) and, as signatories to the Convention, the UK government should be doing more to uphold its obligations to children. In particular the CRC provides children with:

- ❑ the right to be **free from discrimination**, including where such discrimination might be consequences of the status and actions of their parents (Art.2);
- ❑ protection of the **best interest of the child** (Art. 3);
- ❑ the right to have **direct and frequent contact with parents** from whom the child is separated (Art. 9);
- ❑ the right to **express his or her views** and to be heard in matters affecting their situation (Art. 12);
- ❑ the right to **protection of their family life and their privacy** (Art.16).
- ❑ the right to **protection from any physical or psychological harm or violence** (Art. 19)

When applied specifically to children of imprisoned parents the rights of the child should require that the child:

- ❑ has a right to be informed about what is going on and where their parent is;
- ❑ has the right to see his/her imprisoned parent(s) on a regular basis and in a manner that respects his/her physical and moral integrity;
- ❑ has a right to be assisted by public authorities that have the obligation to facilitate his/her contact with the imprisoned parent(s).

The findings of two recent studies undertaken in Europe⁵ confirm that, whilst all European Union countries are signatories to the CRC, their rights are largely ignored in practice. The most fundamental right to be in contact with a separated parent is often undermined by restrictions imposed on the prisoner's contact with the outside world or by the imprisoned parent themselves denying their child access to visit

(often without taking into account how this must feel for their child), or the child's carer not wanting to take them to visit the prisoner. Children in their own capacity are seldom in a position to claim their rights, either because they do not know they have such rights or because they have nowhere to address their claim — unlike prisoners who do of course, frequently take cases arguing for their right to family life under Article 8 of the European Convention on Human Rights (incorporated in UK law through the Human Rights Act). There are however countless examples of good practice of work to address the needs of children of prisoners, often initiated by voluntary sector organisations both in UK and across Europe, ensuring that children (and the family as whole) are able to maintain contact with their family member in prison and it is something that would be easy to rectify through improved information and support. The need for early information and for the child to understand the meaning of the sentence is especially important in the cases of IPP and lifers where there will be so much uncertainty ahead. This could be done through inviting the family to an induction visit where the sentence is explained to them by a officer or NGO worker, enabling families to visit the cell (as happens in Northern Ireland) or by having family contact workers in all prisons (as happens in Scotland and N Ireland). In Norway every prison has a children's ombudsman making sure that children visiting receive appropriate treatment and support.

Not only is this important for the children of prisoners, but, improving and sustaining family support will assist in the resettlement of lifers. We know that prisoners with stable, positive family relationships have a better chance of successful resettlement and are less likely to re-offend on release, but not surprisingly family breakdown increases with the length of sentence. Many lifers have no close family support experienced dysfunctional and often negative childhoods and lengthy imprisonment strains those they do have. Those most likely to stay in contact are mothers, though grandmothers and siblings too play an important role in supporting lifers; and more IPPs will retain the support of their partner and children. The ability to retain family contact is compounded by:

- ❑ distance from home (particularly early in sentence if held in the dispersal estate)
- ❑ difficulties with travel and the cost of visiting and maintaining contact — and it continues to be a concern that many families who should be eligible to reclaim the costs of the travel under the Assisted Prison Visits scheme

4. Jones et al (2012) *Children of Prisoners – Interventions and mitigations to strengthen mental health* available at <http://eprints.hud.ac.uk/18019/>

5. Sharff-Smith, P. and Gampell, L. (2011) *Children of Imprisoned Parents* available at http://www.academia.edu/4550506/Children_of_Impisoned_Parents

remain unaware of it or, for some reason do not take up the scheme.

- ❑ the often more austere and security focus on visits at High Security prisons, as a result of which some prisoners do not want their family members and children to visit — or the carer may not want to take the child on a visit.
- ❑ Family shame at the crime committed
- ❑ Prison moves — which are often necessary in order for the prisoner to access offending behaviour programmes that are increasingly few and far between (eg. SOTP, HRP, SCP, RESOLVE).⁶

Delays in accessing courses are arguably the most significant factor in prisoners being over-tariff as the absence of a lifer undertaking core risk reduction work is a major issue for the Parole Board when deciding on progression. All of this presents challenges for the prison estate, particularly at a time of ever-increasing budget cuts, focus on security and targets and the contracting out of so many services being delivered to prisoners. However, in order for prisoners to progress it is the Prison Service's duty to provide them with the programmes and opportunities to enable them to address and reduce their risk. Whilst the Parole Board may take the flack for the backlog and negative decisions, our duty is the protection of the public and much as we may feel some sympathy for lifers who are significantly post tariff, this cannot be a reason for progression. This is another area where prison staff and the Offender Manager (OM) need to be clear with prisoners so that they are not misled into believing that they should be progressed just because they are post-tariff and is something that it seems staff themselves do not perhaps fully understand. Similarly prison staff (and the OS in particular) should, in my view, do more to work with long-term lifers who have become stuck in the system and appear forgotten about. In my work at the Parole Board I sadly come

across lifers who seem not to want to be released — like a man I assessed recently who has been inside for 40 years and had spent the last 21 years in the same prison making no progress as he is not engaging in his sentence plan. He seemed to have been all but forgotten about and had not had an oral hearing for years due to the lack of support for progression or evidence of change. He lacked any community support or

resettlement plan and for him, prison probably appears the best option. Until recently the Parole Board was sending very few such cases to an oral hearing but following the Supreme Court judgement of *Osborn, Booth & Reilly v The Parole Board* (2013 UKSC 61) more prisoners are now being granted an oral hearing in the interests of fairness, even if it may seem unlikely that they will be granted a progressive move. The downside of this judgement is however already being felt by IPPs and lifers whose reviews are being significantly delayed due to the unprecedented increase in determinate sentence prisoner oral hearings (mainly those who have been recalled to prison).

Parole Board figures show that the number of cases being heard at an oral hearing has increased significantly from 2009-10 and 2013-14. The table below gives the number of oral hearings held over the 5 years from 2009-10 to 2013-14 however in summary:

- ❑ In 2009-10 895 lifer and 851 IPP cases were considered at an oral hearing;
- ❑ In 2013-14 1161 lifer and 1564 IPP cases were considered at an oral hearing.
- ❑ Of these in 2009-10 49 per cent of lifers and 46 per cent of IPPs were progressed either to open conditions or release
- ❑ In 2013-14 this had increased to 73 per cent of lifers and 79 per cent of IPPs being progressed.

At the same time the number of cases concluded negatively on the papers also decreased from 942 lifers and 1359 IPPs in 2009-10, to 653 lifers and 993 IPPs in 2013-14 (see table below).

At the same time, my personal view is that the Parole Board needs to look more imaginatively for evidence of a reduction in risk acknowledging that many lifers will not meet the criteria for the 'high end' accredited programmes that address violence and

Oral Hearings ⁷		Life			IPP		
		Negative	Open	Release	Negative	Open	Release
Review	2009 / 10	455	311	129	459	325	67
	2010 / 11	338	579	263	430	607	135
	2011 / 12	300	463	311	402	628	395
	2012 / 13	241	481	397	347	656	469
	2013 / 14	313	469	379	323	740	501
Recall	2009 / 10	41	n/a	43	2	n/a	1
	2010 / 11	65	7	67	9	3	5
	2011 / 12	43	28	42	24	16	29
	2012 / 13	33	8	57	16	6	42
	2013 / 14	46	21	78	45	23	94

As a result of the UKSC judgement these figures will be far higher for the current year (2014-15).

6. See <http://www.justice.gov.uk/offenders/before-after-release/obp> accessed on 14 October 2014.

7. Table taken from The Parole Board (2014) *Annual Report and Accounts 2013-14* London: the Parole Board.

sexual offending in particular. There is substantial evidence on the importance of protective factors in reducing re-offending and learning from research into desistance should enable us to make valid assessments of risk without someone necessarily having undertaken an accredited programme. The difficulty we face in making such decisions however, is being confident that a change that appears evident within the confines of prison, is likely to endure when the person is back out in the community — something we can never be certain of.

Whilst the Parole Board does make negative decisions on the papers (without an oral hearing) any decision for 'release' in respect of lifers/IPP's has to be made after a rigorous risk assessment undertaken at an oral hearing. In the majority of lifer/IPP cases, prisoners will not progress to open conditions without their case being referred to the Parole Board, however there are a few exceptional cases where the Secretary of State for Justice can approve a transfer to open conditions without the prisoner going through the usual Parole Board risk assessment — these are known as Guittard cases following another High Court ruling.⁸ From my experience, I consider that the decision whether to progress someone to open conditions is often the hardest decision we have to make on the Board and is, in many ways, more significant than the release decision — although it probably does not feel that way to the prisoner. In progressing someone to open, the panel has to be satisfied that all core risk reduction work has been undertaken and that the prisoner has evidenced a reduction in risk whereby their risk is considered low enough to be managed in open conditions. We undertake a rigorous risk assessment to explore the issues and remaining risk. Where a lifer is in denial the process of assessing risk is particularly challenging but it does not preclude progression or release. The panel has to work on the basis of guilt and will need to understand the context in which the offence occurred and to look for evidence to reassure it that such circumstances are unlikely to repeat themselves and that the prisoner's behaviour and insight indicates little evidence of ongoing risk. However, it is not the case that compliant custodial behaviour (particularly in closed conditions) is in itself

I consider that the decision whether to progress someone to open conditions is often the hardest decision we have to make on the Board and is, in many ways, more significant than the release decision . . .

sufficient evidence of a reduction in risk, especially if the case of sex offenders or when the offender's profile is one where the offending and/or use of violence was largely instrumental.

Significantly, in decisions relating to a move to open conditions, the Parole Board only has the power to recommend the transfer and it is for the Secretary of State to direct it. This leads to the risk of interference and is a challenge which is likely to increase with the new restrictions on prisoners who have absconded returning to open prison and arrangements for ROTLs. It is also a particular issue for foreign national prisoners who are perceived to be at risk of absconding from open. The importance of a period in open in easing

those who have been inside a long time cannot be over-estimated, but we may need to look for alternatives and only time will tell whether the new 'resettlement plus' model will meet their needs. Many lifers are so institutionalised that the transition to open is too overwhelming due to the lack of support and structure they find there, and, in order for them to succeed, more psychological and pastoral support is needed in open prisons. The role of prison staff cannot be over-estimated in helping lifers prepare for release and gain the self-belief that can help them succeed. Another problem is that the ageing population of lifers means that many are post retirement age by

the time they are eligible for release and will not be able to benefit from community work or resettlement ROTLs. Instead they will need very gradual and supported reintegration though intensive work to help them build up a support network and a resettlement plan. Furthermore, the relationship between the OM and the prisoner is crucial but currently very unpredictable with the changes to the Probation Service. Additionally, many lifers have no meaningful connection to the Probation area they fall under (which is linked to where they committed the crime) and often are not in a prison near to it, presenting additional challenges for their effective resettlement and at times a barrier to release as it is difficult for the OM to put together an appropriate risk management plan. The lack of Approved Premises and suitable accommodation options, especially for older prisoners or those with mental health problems, and the difficulties in accessing

8. R (on the application of Guittard) v Secretary of State for Justice [2009] EWHC 2951 (Admin).

specialist support (e.g. psychological support) are also challenges when release decisions are being considered.

Following release, the Parole Board also has responsibility for decisions regarding lifers and IPPs who have been recalled, but the numbers concerned (as the table above shows) are relatively low and recall is rarely, thankfully, due to the committal of a further serious offence but is more likely to be linked to relapse into alcohol or drug misuse or for failing to comply with their licence conditions.

Over 1,000 of all prisoners serving an indeterminate sentence are foreign nationals presenting particular challenges for resettlement and release — including the parole process and their suitability for open conditions. Many of these prisoners will now be automatically repatriated on tariff expiry under the Tariff Expired Removal Scheme (TERS) introduced under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The scheme allows indeterminate foreign national prisoners (FNPs) who are confirmed by Immigration Enforcement to be liable to removal from the UK and to be removed from prison and the country upon, or any date after, the expiry of their tariff without reference to the Parole Board. TERS is mandatory and all eligible foreign national prisoners liable to removal must be considered by the Public Protection Casework Section (PPCS) for removal under the scheme. PPCS will inform the holding prison and the prisoner's OM about the prisoner's current immigration status and it is the OM's responsibility to liaise with the prison and the prisoner about the implications of the decision and ensure that victims are kept informed via the Victim Liaison Unit. Removal of eligible FNPs should occur on the expiry of their tariff or as soon afterwards as possible, however, delays in decisions and uncertainty over eligibility mean that some FNPs still go through the parole process. Whilst many indeterminate FNPs are

content to be removed, others have family — including children — living in the UK and may appeal the decision.

With regards the family, considerably more involvement is needed to truly prepare everyone for release as it is never easy for a prisoner to return to the family home after a long absence. Whilst they may have been gradually reintegrated through overnight ROTLs, expectations may be unrealistic and it is crucial that the OM has contact with family members to discuss their understanding of release, licence conditions and whether they would be alert to possible signs of increasing risk. If the plan is to release someone to Approved Premises again the family may need to understand why they cannot return home immediately. Initiatives such as Lifer pre-release days, family group conferencing pre and post release, and the use of a Family House for ROTLs (as in Denmark and Norway) can make a huge difference. Whilst most decisions for release are generally made once the lifer is in the open estate, release can be direct from closed — usually to Approved Premises and occasionally to residential rehabilitation.

In conclusion, in order to make sense of life sentences we need first and foremost to be able to understand the person behind the index offence. In order to give lifers the best chance of successful resettlement I believe there needs to be a radical rethink of how lifers and IPPs are managed, with greater consideration of the time someone has to serve until their tariff expiry date, at what stage in their sentence they should complete accredited programmes and what age they will be at that point so that a realistic plan can be worked towards. This requires a structured and personalised sentence plan that begins at remand and provides quality information and support to both the prisoner and, where possible, family members throughout custody and crucially after release.

Reviews

Book Review

Inside Immigration Detention

By Mary Bosworth

Publisher: Oxford University Press
(2014)

ISBN: 978-0199675470 (Hardback)

978-0198722571 (Paperback)

Price: £60.00 (Hardback) £29.99
(Paperback)

Immigration detention has expanded rapidly over the last two decades. From a couple of hundred places in the early 1990s, today there are around 3000 people detained in immigration removal centres. This is an expanded and seemingly permanent feature of the carceral landscape in the UK. It has arisen during a period which has seen greater movement of people in an increasingly interconnected, globalised world, where developments in communications, transportation, commerce and international law have facilitated migration. Whilst this has brought many economic and cultural benefits, it has also been accompanied by fear and anxiety. Consequently, debates about migration have become heated and polarised. Academics have engaged with the control of migration, often critically. Discussions have explored the relationship to power and inequality; economic, racial and gendered. They have also revealed how this is situated within the political economy, particularly the dominant neo-liberal paradigm. However, what has been absent from previous studies is ethnographic material examining the everyday experience of immigration detention. It is this gap that is filled by Professor Mary Bosworth's impressive work.

This book is based on extensive fieldwork conducted over nearly two years and encompassing 250

detainee surveys, 500 interviews with detainees, 130 with staff, and 2400 hours of observation. These are indeed big numbers. What Professor Bosworth does with this material is to craft a challenging, sensitive and profound account of a largely hidden institution.

Immigration detention is itself saturated in uncertainty. The detention population includes both those convicted of criminal offences and those who have not been convicted, the detention is indeterminate, and the operating processes draw upon those of the prison, whilst also having clear differences (such as access to IT and mobile telephony). The institution exists in the shadow of the prison and has not fully developed its own distinct objective and purpose. For those being detained and those imposing the detention, Professor Bosworth reveals how uncertainty pervades their lives. The notions of nationality and identity, which are fundamental to constructions of citizenship, belonging and migration, are shown to be unstable and complex. Many detainees have long-standing connections and have spent many years in the UK, so for both staff and prisoners, the legitimacy of detention and removal is not self-evident. Detainees also experience particular distress from the indeterminacy of their confinement and the difficulty in seeking support. For many in removal centres, they do not have the light that comes at the end of the tunnel in prison sentences, instead: 'in contrast to prisons, where most prisoners look forward to their release date, most of those interviewed were afraid of the endpoint of their detention' (p.127). In addition, they suffer from the pains of institutional

control, including reduced autonomy and trust in everyday issues such as food and healthcare. Staff also feel uncertain about their role, often seeing it as less rewarding and having diminished status in comparison to that of prison staff.

The most profound and moving aspects of Professor Bosworth's work is where she explores the humanisation and de-humanisation of personal interactions, relationships and connections. She describes how the bureaucratic processes enable distance and denial. In particular, decisions about individual detainees are often taken by case workers who are remote from the centres and rarely have direct interactions with those they are making decisions about. In addition, those working directly with detainees, as they do not have control over key aspects of their case, are powerless and can evade responsibility. Nevertheless, there are moments and spaces where those barriers are broken down and human connection is established. That is sometimes in recreational and cultural activities, but can also arise where particular circumstances elicit empathy. These moments can be uncomfortable as it erodes the structures that enable the act of detention. Professor Bosworth describes the emotional texture of detention as being characterised by 'estrangement' where those enacting confinement are estranged from those they confine, viewing them as 'the other', whilst they also have to become estranged from their own feelings, hardening themselves to the pains of detention.

This book asks some challenging questions. For immigration detention specifically, it

asserts that we 'must uncouple detention from the criminal justice imagination and generate new ideas and language to understand them' (p19), in other words it must step out from the shadow of the prison. This raises questions for practitioners, policy makers and researchers about what kind of institution it could or should be. It also confronts migration policy more broadly and how it reflects the processes of social control; 'Under conditions of mass mobility, we must be wary of letting fears about economic resources or concerns about social cohesion overcome our commitment to humane ideals' (p.223). Migration policy cannot be seen in isolation, it is a reflection of the society in which we live and has implications for citizens as well as those denied citizenship.

Professor Bosworth has produced the most extensive account yet of the inner life of removal centres. It is an important work that reveals a previously hidden world and opens up new ways of thinking about this. It is uncomfortable and challenging, enlightening and moving. It is an essential book for all of those with an interest in migration and detention.

Dr Jamie Bennett is Governor of HMP Grendon & Springhill.

Book Review

A Good Man Inside — Diary of a White Collar Prisoner

By Will Phillips

Publisher: Waterside Press (2014)

ISBN 978-1-909976-03-0

Price: £9.95

In 2010 songwriter and performer Will Phillips was sentenced to prison for what he rather evasively describes as 'white collar crimes' (p. 95). Seeing himself

as a family man with a respectable life, Phillips was shocked by the severity of his sentence and the conditions he found in prison. In order to 'remain positive . . . to avoid drowning in . . . negativity' (p. 17) he committed to write a diary of his time in custody. Phillips intended a no-frills, contemporaneous description of the world around him. The result is a series of diary entries which are vivid and honest.

Descriptions of 'cigarette burnt . . . blood stained sheets', 'a mattress thinner than a water biscuit' (p. 18) and the graphic descriptions of food and noise starkly reflect his initial shock of imprisonment. As he becomes more familiar with prison, Phillips' descriptions become more reflective and humorous; referencing cell to cell conversations via toilet pipes, toasting bread over a flaming toilet roll and a utilities company trying to sell gas to remand prisoners in their 'new residence'.

Phillips' finds writing cathartic, relaying humorous stories to escape growing anxieties and depression. He candidly describes the tension caused by his inactivity and absence of family contact. He struggles to suppress fears about his partner's fidelity and the stability of his family ties and becomes increasingly tense as visits go badly, his appeal fails and Christmas looms. He admits, 'Incarceration has taken away . . . my pride and confidence. Time and again I've . . . doubted her commitment . . . every time . . . she was having some fun I . . . tried to steal her happiness' (p. 88).

Unfortunately although his circumstances draw sympathy, Phillips frustrates by offering no indication of remorse. He is quick to highlight the rehabilitative responsibility of prison staff and is critical of the effect incarceration has had upon him. However he accepts no personal responsibility, portraying himself as a passive agent in this process — the product

of a failing prison system and a solicitor's apathetic approach to his defence. Phillips fails to offer mitigation or explanation for his offending. There is a respectable argument that prison should be reserved for the most serious offenders but Phillips' romanticised portrayal of being 'the good man inside' and attempts to distance himself from 'dangerous proper criminals' (p. 20) alienate the reader and damage his credibility.

Phillips' diary offers an insight into his experience of being imprisoned but the insight he provides is limited. The absence of background narrative to link entries means the book is too shallow to expand understanding. While it may be unfair to criticise a diary for being a set of personal reflections, it is not unreasonable to expect a diarist who chooses to publish those reflections to provide a connection with the reader. While Phillips' account is therefore valuable as a personal reflection it feels like an opportunity missed, a failure to deliver on a promising idea.

Chris Gundersen is Operations Manager and Head of Casework to the Deputy Director of Public Sector Prisons.

Book Review

Doing Probation Work

By Rob. C Mawby and Anne Worrall

Publisher: Routledge (2013)

ISBN-13 978-0415540285

Price: £88.99 (hardback)

This is one of nine books Routledge has published in its series 'frontiers of criminal justice' (others include books on sex offenders, youth justice, women and punishment, policing and a study contrasting 'Anglophone excess and Nordic

exceptionalism'). The authors of this book have backgrounds in the studies of policing and women offenders as well as probation, with Mawby now working in the Department of Criminology at Leicester University and Worrall as a Professor of Criminology at Keele. This study is a timely consideration of the role of the probation work as the world of probation undergoes its most radical reformation since its inception just over 100 years ago.

The authors describe the book as being 'about probation workers and their occupational cultures' (p. 1). It is based on interviews with 60 probation workers, ranging from some who trained in the 1960s to others who were recruited by Probation Trusts. Using this qualitative approach the authors seek to challenge the view that probation work is in decline. They cite Mair and Burke who see probation has having 'lost its roots, its traditions, its culture, its professionalism.'¹ Mawby and Worrall counter this by arguing that notwithstanding the 'predominant penal discourse of 'offender management' (p. 1) the concept of probation endures and has real professional meaning.

Central to their argument is that there are three types of probation worker whom they describe as 'lifers', 'second careerists' and 'offender managers'. 'Lifers' are probation workers who are often, first generation university-educated, idealistic people who joined probation at a young age. 'Second careerists' are those who come to probation after a career elsewhere; and 'offender managers' are mainly those who joined after 1997 and who see probation work as one of a number of jobs they will do in the course of their lives. Common to

all three types, the authors identify a shared belief in the value of working with offenders in the community, fundamentally a belief that offenders can change. The authors also identify in all three types, which they recognise cannot definitively describe every probation worker, a common recognition of the importance of public protection and the rights of victims.

The book looks in some detail about the practical aspects of doing probation work — including the 'tyranny of the computer' (p. 43) and the places in which it is done (from offices of various sorts to offenders' and victims' homes). They identify the difficulty probation workers have in finding time to reflect on their work as well as the diverse nature of the work. Perhaps most interestingly though is the consideration given to the partnership role of probation. This will be of particular relevance as the implications become apparent of the transfer of the 21 Community Rehabilitation Companies (the CRCs, the former parts of Probation Trusts which managed medium and lower risk offenders and delivered programme and community payback) to private and voluntary sector bodies. In a chapter which looks at the changing relationship with the courts, police and prisons, the book provides a helpful analysis of core partnerships which it will be important to hold in mind as the consequences of the reorganisation of probation into the National Probation Service and the 21 CRCs becomes apparent.

In this chapter, the authors use the five-stage typology of partnership which Davidson² devised. This approach sees the first and least well developed stage of partnership as being

characterised as 'communication'; the second and third stages ('cooperation' and 'coordination', that is of work and activities); and the fourth and fifth ('federation' and 'merger') as different levels of organisational integration. The authors conclude that probation's relationship with the courts, which was characterised as 'federation', is now at just 'cooperation'. In contrast probation's relationships with police and prisons are seen to be stronger. Probation's relationship with the police, which the authors discern was at the 'communication' stage (characterised at times by 'mutually suspicion'), is now at the fourth stage of 'federation', due largely to initiatives such as Integrated Offender Management and Multi-Agency Public Protection Arrangements. Probation's relationship with prisons, which traditionally was patchy and characterised as being at the stage of 'cooperation' is also seen as being close to 'federation' — and one wonders with the incorporation of the National Probation Service into the National Offender Management Service whether merger is far away.

The book provides a revealing reflection on a very important aspect of work with offenders and victims which the changes to the organisation and the function of probation could obscure. It is important that practitioners as much as policy makers continue such reflection during the changes which the 'Transforming Rehabilitation' programme is bringing about. The book also provides an insight for probation's partners — not just colleagues who work in the courts, in police and prison but the variety of bodies which will take over the CRCs too. Although this is a short

1. Mair, G. & Burke, L. (2012), *'Redemption, Rehabilitation and Risk Management: A History of Probation,'* Abingdon: Routledge p. 192.
2. Davidson, S. (1976) *'Planning and coordination of social services in multi-organisational contexts,'* Social Services Review, 50: 117-37

book, at around 150 pages, it offers insightful reflections into probation's occupational culture over the years and would provide thought-provoking observations for academics, probation workers and wider criminal justice professionals.

Kelly Richards joined what was South Wales Probation in 2002 and is currently managing a High Risk of Harm Project in an Integrated Offender Management (IOM) Development Team in Wales.

Book Review

Shades of Deviance. A primer on crime, deviance and social harm

Edited by Rowland Atkinson

Publisher: Routledge (2014)

ISBN: 978-0-415-73323-6

(Hardback) 978-0-415-73323-6
(Paperback)

Price: £86.00 (Hardback) £16.99
(Paperback)

Shades of Deviance is a collection of 56 short reports which all relate to the notion of crime and deviance. It is a unique and interesting book which introduces the reader to the concept of what is deviant behaviour and tests their boundary of knowledge in the subject. Covering acts of deviance from paedophilia to cyber-crime, terrorism to sadomasochism and joy riding to tattoos, the accounts are short, sharp and thought provoking and are intended to act as an introduction to the world of criminology, criminal behaviour and social science as a whole.

This book is an absorbing read. It is presented in a manner which grips its audience and does not let go until the last page. Each chapter is presented by a well informed and often prominent expert from around the world, allowing their

knowledge to entice and captivate those who read it. This is where the unique style of the book comes to the fore; it is a short book, it covers a wide and varying range of deviant behaviours, but it is the way in which the authors have captured their chosen area so precisely and concisely which makes it a must have title.

The format of the book is broken into seven themes of deviance: Acts of Transgression; Subcultures and deviating Social Codes; Technological Change and New Opportunities for Harm; Changing Social Attitudes and Perceptions of Social Problems; Invisible and Contested Harms; Attacks on Social Difference: Hate and Culture; Global Problems of Violence and Human Harm. Each theme incorporates a particular act of deviance relating to it, allowing a flow of narrative and thought. Acts of deviancy such as fire setting or white collar crime are obvious behaviours which attract the deviant label and their inclusion warranted within. It is only when these crimes are situated amongst chapters which include smoking and fashion, does the reader start to understand that deviant behaviour is a multi-faceted and fascinating topic.

The aim of the book is therefore based upon a simple premise: to introduce deviance and deviant behaviour in a contemporary and thought provoking manner. For example, the aforementioned chapter on smoking (chapter 29) shows how *Shades of Deviance* is not afraid to tackle modern day transgressions, even when they are still legal:

'Trapped in a web of exploitation by the tobacco industry and vilification due to contemporary health sensibilities, smokers rapidly sink to the bottom...of twenty-first-century 'hierarchies of credibility'. It thus seems rather unlikely that smokers huddled outside offices

and bars globally will shake their positions as modern-day deviants.' (p.126)

The labelling of disabled people as deviant (chapter 39) takes the realms of dealing with taboo subjects further and provokes debate, assumptions and a stirring of mixed feelings, like no other passage in the entire book. Here deviancy is not pointed towards those who are afflicted; rather it suggests that disabled people are seen as deviants by others. It is the reaction of others towards disabled people (such as hate crimes or discrimination) which is of interest to the criminological fraternity whilst highlighting how others who are *deemed* less fortunate, are singled out because they are different. Deviancy is not always as straight forward as it may seem.

Shades of Deviance never loses its focus, it never shies away from a gritty or contested argument and it never allows the reader to lose interest. It is fast paced, moving and emotional. It is based in the here and now of the social world, without forgetting how we got here.

Darren Woodward is a Prison Officer at HMP Hull and a PhD Student at the University of Hull.

Book Review

Juvenile Offending

Edited by Thom Brooks

Publisher: Ashgate

ISBN: 978-1-4094-5123-5

Price: £105.00 (Hardback)

This collection of essays is one of five forming a series entitled Crime and Punishment: Critical Essays in Legal Philosophy. All have been edited by Thom Brooks from the University of Durham and previous collections have covered Retribution, Deterrence, Shame Punishment and Sentencing. The

aim of the series is to bring together some of the most influential articles from eminent international authors around the given theme. *Juvenile Offending* comprises of eleven such essays, drawn from the previous decade of research, and organised into further subdivided themes. The broad aims of this book are to examine why we should, and how we practically can, treat Juvenile Offenders differently to adults.

The book is split into four broad themes; Youth Offending and Risk Factors, Punishment and Juvenile Offenders, Juvenile Offending and Sentencing, and Youth Offenders and Restorative Justice. Juvenile Offending and Sentencing is the largest section in terms of number of essays, and the focus on sentencing is something that is central to most of these 'influential' texts.

Interestingly, Brooks is not attempting to pull together a strong argument for a single ideological approach to Juvenile Offending. This is made abundantly clear in his choice of essays that form the first three chapters and two parts of the book. In a well argued article Stephen Case and Kevin Haines deconstruct some well established and highly respected studies that attempt to identify universal risk

factors for youth offending including, amongst many others, the Understanding and Preventing Youth Crime review¹ by David P. Farrington. They conclude that due to the extent of the weak methodological and analytical quality of these studies it is impossible to conclude whether universal risk factors exist.

This is immediately juxtaposed with an article from Monica Barry that argues that Youth should be a recognised developmental stage between adults (who have full legal responsibilities) and children (who have no legal responsibilities). Barry argues that Young People are caught between these two extremes and should be appropriately recognised as such if interventions are to work. Brooks includes a third article, authored by himself, which extends some of Barry's assertions by arguing for a universal risk factor that is not limited to juveniles, but extends to adults as well. Brooks' key risk factor for offending is not unemployment, finance or accommodation but actually centres on whether the individual feels that they have a stake in society.

The main section on sentencing explores issues such as

age-related sentencing, the impact of deterrence sentencing on juveniles, how the US juvenile system should be reformed and issues of juveniles subjected to adult trials and punishments. Finally, the book includes a group of essays that explore Restorative Justice in a juvenile setting. These include examining Restorative Justice in Northern Ireland, tackling the problem of juveniles' apparent preference of court as opposed to restorative justice conferences, and the potential for restorative justice to build on the inroads it has made in low level offending.

The book, and indeed the series, aims to be a thematic easy reference guide of the most influential essays for use by the general public, students, practitioners and academics. The essays selected are incredibly interesting and relevant, as well as providing a well rounded view of approaches to addressing juvenile offending. I believe that it does achieve its aims and would recommend it as a valuable read to anyone studying, working or simply interested in juvenile offending.

Paul Crossey is Head of Young People at HMYOI Feltham.

1. Farrington, D.P. (1996) *Understanding and Preventing Youth Crime*. York: Joseph Rowntree Foundation.

Interview: Juliet Lyon

*Juliet Lyon CBE is director of the Prison Reform Trust (PRT), she is interviewed by **Paul Addicott**, Head of Safer Prisons, Equalities and Healthcare Provision at HMP Highdown.*

Juliet Lyon CBE is director of the Prison Reform Trust (PRT). On commission to the Prison Service, she produced the first specialist training for staff working with young people and with women in custody. She worked for fifteen years in mental health, managing Richmond Fellowship halfway houses, and in education, first as teacher in charge of a psychiatric unit school and then as head of community education in a comprehensive. Up to 2010 Juliet was a Women's National Commissioner for England and Wales. She is currently secretary general of Penal Reform International and vice president of the British Association for Counselling and Psychotherapy.

PA: Lifers were the focus of the Perrie Lectures, 'making sense of life sentences', what are your views of this subject?

JL: We have seen sentences get longer and longer in an increasingly punitive climate together with a greater use of mandatory sentencing. There are many more people now serving life sentences in this country. These sentences mean different things to different people. For the general public, many still feel cheated and think that life should mean life. One version of honesty in sentencing would be, not more whole life tariffs, but a proper public explanation of what a life sentence means from time in prison through to lifelong supervision in the community.

The challenge for staff is: 'how do you make sense of this sentence?' When you have people in custody for so long, how do you help them face it and move through it to resettlement? How do you prepare them for release when resources are so limited?

Can you bring meaning to that well-worn phrase 'doing time'?

PA: Can you foresee further challenges for the whole life sentence?

JL: It is important for everyone, prisoners and staff, to have a degree of hope. We were disappointed at PRT that the whole life legal challenge did not succeed. No-one is pressing for immediate release, nor even eventual release necessarily. But in a fair and humane penal system there should be some degree of hope that after a period of time there would be an opportunity for review. The sense that, even if it is in 25 years time, there will be that look again, at progress being made or any effort to make reparation.

We would expect that there will be other challenges, as we are so out of step with other countries. For example, even in Russia they do have a review period for life sentences after 25 years; it is standard for most countries.

PA: Have you done any work on the locations of lifer prisoners and type of establishment they reside in?

JL: PRT's advice and information service responds to over 6,000 prisoners, their families and staff members each year. We find that we have contact from a disproportionate number of prisoners serving long sentences because of the situation they find themselves in and the time they have to contact us. For some people, being near home matters more than anything else, even if you are not in a well equipped lifer unit or prison, being near home and family is important. Whereas other prisoners only see benefit from something that is more carefully planned, being in a group of lifers and seeing progress within that group.

What I think is difficult at the moment is to give due regard to any one individual. The service is under such a huge amount of pressure, and it is difficult to do what you want to be able to do. For example, given increasing numbers of older prisoners and lifers growing old in prison, establishing Disability Liaison Officers (DLO) was a brilliant idea and serves a useful purpose. But now most DLO's are at the very best a shared resource amongst other tasks, which can make it difficult to respond properly to people with a range of needs. What will be interesting is the Care Act requires the new involvement of local social care services. This could make almost the same degree of difference as when the NHS took over prison health, so it could be a useful catalyst for change.

PA: You have touched on some of the challenges faced by the service owing to our benchmarking exercise with an aim to make efficiency savings across the estate to keep the service within the Public Sector. The 'New Ways of Working' (NWOW) can make it difficult to deliver the quality best practice that has been built up, with an emphasis on doing things differently, with less resource. In your experience it has worked well having that dedicated Officer, can you think of any different approaches we could explore to make the new way work.

JL: I am under no illusions that the prison service is facing really draconian cuts, and difficult decisions are having to be made. I suppose the last thing we want to see is the progress we have seen since the Woolf report — incremental progress, changing over time, things improving step by step — the last thing you want to see is that set back. Of course prisoners have to be safe and have to be secure, and even that in so many senses is in jeopardy. If you look at the rising levels of serious incidents and violence in adult male establishments, if you look at the increase in suicide rates, you cannot help but be bitterly disappointed. We have certainly seen the effort that governors and staff have made to improve standards of treatment and conditions, noted by successive Chief Inspectors. So, the last thing you want to see is a series of setbacks where people are having to ‘sand bag’, having to try and preserve or hold on to improvements and not allow them to be eroded. In this context, the idea of having to innovate and change is really challenging.

One of the important aspects of PRT is to act as a critical friend to the Prison Service, looking for solutions and sharing examples of best practice where things do work. It might be good practice in individual prisons; it might be bringing examples of practice from abroad. The Perrie Lectures focused on life sentences and lifers. These are the very people that do need to be in custody, and the challenge is how you make that period, that very long period, constructive whilst they are there and not just a very long holding operation. And I do worry that there has been a large emphasis in political terms on toughness that equates a length of sentence with a tough, more punitive, approach, whereas sentences should be focussed on effectiveness, what works to reduce a person’s risk or to increase personal responsibility. And I think holding people in a container is unlikely to be it.

PA: We have been talking about lifers and the life sentence. I am aware of the work PRT did with prisoners given indeterminate sentences for public protection (IPP), you can see the elimination of this sentence as a success, but what are your thoughts, and what more can be done for those currently serving an IPP sentence?

JL: It felt a huge stain on the justice system had been removed when the IPP sentence was abolished. We were pleased that PRT could publish solid evidence

from Professor Mike Hough and colleagues to inform that decision. Our report ‘Just Deserts’, looked at the opinions of Judges, what families were saying, what prisoners were saying, what staff were saying about this sentence. Their testimony made clear that it was a bad example of a declamatory sentence, which had been so poorly drafted that far too many people were caught in its net. When the IPP sentence was passed it was thought that it could capture up to 900 people. In the end, as you know, over 6000 people were subject to this Kafkaesque sentence.

As well as providing evidence that would underpin the reform and abolition of the sentence, PRT acted as an advocate for change, working with families and ensuring there were articles in the press, and working closely with the then Justice Secretary Ken Clarke, and Prisons Minister Crispin Blunt, who were both committed to righting a wrong. All of that felt positive, but you are right that there are now a residual number of people who are going absolutely nowhere. We were heartened by the change in the Prison Service Order, but it does not appear to have had as much effect as we hoped in terms of enabling people to show not only that they have attended courses but also that they have a plan and can make progress.

My colleague, Jenny Talbot, submitted evidence to the Joint Committee on Human Rights about the situation for people who had mental health needs or a learning disability who were serving an IPP sentence and unable to access courses. The Committee concluded that banning vulnerable people from their one legitimate means of exit from this maze was a breach of the Human Rights Act and required the Ministry of Justice to recalibrate the offending behaviour programme. We are not convinced that the courses have been adapted sufficiently. There are still a lot of hurdles. One thing PRT is known for is sticking with something until it is sorted out. We are meeting the central team regularly at NOMS to look at what is happening and see how they are working to help progress people though this sentence and what more can be done.

PA: Do you think the changes we are currently facing within the Prison Service will impact on IPP prisoners and their release?

JL: I think it’s a bit too easy to accept that this will take absolutely years to work through. There are already 3,575 people beyond their tariff and the rest of

If you look at the rising levels of serious incidents and violence in adult male establishments, if you look at the increase in suicide rates, you cannot help but be bitterly disappointed.

those still serving an IPP will reach a tariff date at some stage. I think the acceptance that they will automatically go well beyond that tariff date needs challenging regularly, and there is a very strong argument for case by case reviews of individuals, but resources are tight and these people have become seen as a group rather than as individuals. You only have to look at foreign national prisoners to see how that happens and the harm it does. Yes it is resource intensive to do independent case by case reviews, but in terms of enabling people to make progress then I can't see how else you could do it really.

When I worked in hospitals if you had someone who was held under the Mental Health Act, trying to show people that they were now well, doing this from the confines of a locked hospital ward is near impossible. Whatever you do to try and show the changes in yourself can be misrepresented in a whole variety of ways — you could be seen as being manipulative, everything you do could be misconstrued. So I do think it's one of the biggest problems within the Prison Service, being faced with this very large number of people with disproportionately high levels of mental health need or learning disabilities being held in this uncertainty. In an unjust situation they have reasonable cause to feel angry and distressed. How do you work with these people to ensure they are kept safely and helped to prepare for release? The abolition of the sentence does not deal with that and is really just the start of trying to put things right.

PA: This leads me on to ask about some of the other current challenges facing the Prison Service, such as release on temporary licence (ROTL). What are your thoughts for the reasons for this change, and impact?

JL: This is a stark example of the toxic mix between politics and the press. It shows how the media can damage something really positive that the service has developed. One of the things we did when stories of absconds started appearing in the press was to check with NOMS to get the actual facts, because the facts and figures matter so much more than opinion. The information is pretty clear. The verified figures for 2012 for example show there were 485,000 instances of ROTL, with 428 cases of failure, late returns etc and, of those, just 26 prisoners were arrested on suspicion of committing a further offence. That's a remarkably high degree of success and a testament to the risk

assessment made to ensure that people are ready for the responsibility that needs to be taken for ROTL.

So the combination of getting the facts and figures from NOMS, and the fact that we have men working at PRT every day on ROTL from HMP Brixton, and before that a woman prisoner from Send, all of whom have been punctual, worked diligently and been good colleagues, has made us pretty determined to stand up for a scheme that has been under fire in a really unhelpful way. We are preparing a briefing on ROTL: the reasons for a scheme such as this and the facts and figures on outcomes. If you don't allow a testing time for someone the options are just to open a door from a closed prison, and that does not appear as good an option. And actually when you do a broadcast interview, people understand that it is better to have a graduated approach than just to open the door of a prison at the end of a long sentence.

I hate the fact that it's been the 'dangerous dog story' for the media this summer. What you don't want is for the press to be running it week in and week out, as they are now, finding stories, as it just fans fear and creates a lot of distrust in an important scheme. And it goads politicians to make decisions about ROTL which really need to be more thought through.

PA: You have stats for 2012, is there any evidence that failures have increased

since 2012?

JL: The trend is very similar. There has no significant increase in failures though of course lessons can be learned from any breakdown of the scheme. Once highlighted, absconds have become a preoccupation for the press. Which puts undue pressure on staff who are trying to do a professional job. If you have that glare of the media, even with the best testing in the world there will be times when things go wrong. I used to respect the way that Ken Clarke when he was Justice Secretary would talk about risk and acknowledge that there was no such thing as a risk-free environment. At a Prison Governors' Association conference he said 'Governors are doing a fine and difficult job and as Secretary of State I support you. I accept that you will do your absolute best to assess risk, but there will be times when things will go wrong', and that acknowledgement that there will be times when things will go wrong is important. It's an authoritative approach to take.

PA: We have spoken about a couple of the challenges, what do you think are the other key challenges NOMS are facing at the moment?

JL: I think there are three key things that are really difficult, and probably many more, but one is: to keep things as steady as possible as we move towards a general election when there is always a temptation from politicians from all parties to start talking 'tough on crime' which inevitably means more pressure on prison places and on the Prison Service. There is already a tendency to attract headlines, so keeping it steady is very hard. The second thing is: budget cuts, they are just immense, and the risk is eroding some of the reforms that are already in place, leading to a setback in progress made, and people feeling set back, that will affect morale. I think the third challenge is the emphasis on the private sector which is massive.

We hold more people in private hands than any other prison service in the world except for Australia. People are always surprised to know that proportionately we hold more people in private establishments than they do in the States. It would be disingenuous and naïve to say there were not good private prisons and bad private prisons, just as there are good and bad public prisons. I think what is more important is the level of vested interest, so you start getting private concerns influencing policy. I can remember when private companies were opposed to the Corporate Manslaughter Act applying to prisons, basically as it was going to prove very expensive, and underhand means were used, thankfully unsuccessfully, to avoid being included in its ambit.

Independent organisations are going to have to watch the impact that privatisation is having on the system. From prisons to Probation Services, it's a massive change. And because there is nowhere to look to see an international model that works particularly well, policy-makers and commissioners are having to kind of make it up as they go along. So short term savings may have an enduring longer term impact, it's inevitable I guess. Our chair is Lord Woolf, and a lot of what he said in the report on Strangeways still applies. Take small community prisons for example and the importance of closeness to home and establishments that work closely with local services, now if you go for economy of scale you lose the smaller prisons and you have larger prisons where it's much harder to know your prisoners. I am not sure this is any line of advance

and the fact is we will not know that for a long time yet.

PA: What made you move into the world of penal reform, with a mental health and education background?

JL: It's not a very big step from working in mental health or working in education to working with prisons and learning how they operate. I remember the first Young Offender Institution (YOI) I went to with a young patient who was due to become a young prisoner. I remember going there expecting a completely different population, and was surprised by what I saw. I had worked in hospitals where the emphasis was on treatment, the biggest shock for me was not in finding that a very similar population of vulnerable and volatile

young people were held in this YOI, but it was the scarcity of staff. I could not believe the difference in staffing levels from our adolescent unit with its multi-disciplinary team, and this establishment, trying to run a wing of over 70 young men with a handful of largely untrained staff. That visit made me think and was instrumental in my becoming more and more interested in helping to reform the system.

PA: What would you consider to be your most memorable contribution during your time at PRT?

JL: At PRT we spend a lot of time informing and supporting those in a position to change policy and practice. There is a whole range of things I feel we have helped to change in different ways. In 2010 with the Consumer Council, we submitted a successful Super-complaint to the Complaints Commission, about the cost of making phone calls from prison. We were able to help right a wrong, as at that time it was at least six times more expensive to call a mobile from custody than it would normally be outside and, considering poor pay in prison, this had a damaging impact on family contact. So this is just a small example of a change which had a big practical gain.

On a different scale the thing I feel most proud that PRT has been able to contribute to is more than halving the number of under 18 year olds in custody. Supported by the Diana, Princess of Wales Memorial Fund, our team worked for over five years to reduce child imprisonment. Independent evaluators showed the impact of our work with high custody local authorities, the Home Office, the Youth Justice Board and allied organisations. The surest way to build the

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adult prison population of tomorrow is to lock up children and young people. This shift to earlier intervention will have a big long term impact.

PA: As you have mentioned, you are currently the brand of PRT, you have received a CBE, and the Perrie award, how does it feel?

JL: It's helpful for our charity. It's a recognition of what PRT does and what an experienced team with good partnerships, a longstanding director and a wise Board of Trustees can achieve. I love leading a small charity with worthwhile aims, some gains and the capacity to effect social change. We are set to reduce

women's imprisonment, secure full roll-out of diversion and liaison services and improve resettlement. That is one thing — when I was told I was to receive the Perrie Award I thought 'that's tremendous but I'm not about to step down just yet'. It is nice to get recognition for what PRT does and for the work I enjoy. I would still like to be the person to know when it is time to say enough is enough and hand over in due course to someone who will really relish the next set of challenges. I hope the Perrie award can be for staying to see some things through first.



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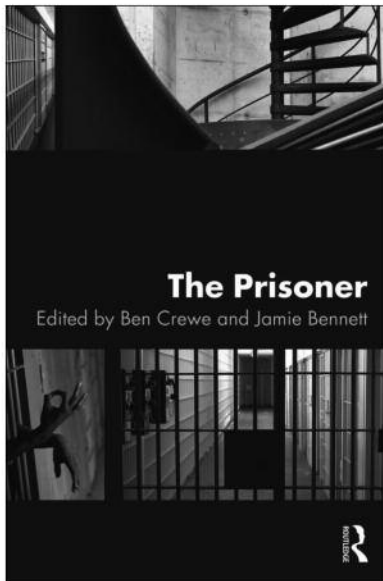
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The *Prison Service Journal* is a peer reviewed journal published by HM Prison Service of England and Wales. Its purpose is to promote discussion on issues related to the work of the Prison Service, the wider criminal justice system and associated fields. It aims to present reliable information and a range of views about these issues.

The editor is responsible for the style and content of each edition, and for managing production and the Journal's budget. The editor is supported by an editorial board — a body of volunteers all of whom have worked for the Prison Service in various capacities. The editorial board considers all articles submitted and decides the outline and composition of each edition, although the editor retains an over-riding discretion in deciding which articles are published and their precise length and language.

From May 2011 each edition is available electronically from the website of the Centre for Crime and Justice Studies. This is available at <http://www.crimeandjustice.org.uk/psj.html>

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Six editions of the Journal, printed at HMP Leyhill, are published each year with a circulation of approximately 6,500 per edition. The editor welcomes articles which should be up to c.4,000 words and submitted by email to jamie.bennett@hmps.gsi.gov.uk or as hard copy and on disk to *Prison Service Journal*, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge, Gloucestershire, GL12 8HL. All other correspondence may also be sent to the Editor at this address or to jamie.bennett@hmps.gsi.gov.uk.

Footnotes are preferred to endnotes, which must be kept to a minimum. All articles are subject to peer review and may be altered in accordance with house style. No payments are made for articles.

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