

PRISON SERVICE JOURNAL

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Special Edition:
The prison crisis

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Editorial Comment

Is there a Prison Crisis? Thinking creatively and dialogically about prison's old and new problems

Co-editors: **Dr Anastasia Chamberlen** is Assistant Professor at the Department of Sociology, University of Warwick, **Charlotte Weinberg** is Director of Safe Ground, and **Anita Dockley** is Research Director at the Howard League for Penal Reform¹

Following a multi-expert workshop that took place at the University of Warwick in January 2018, this special issue brings together a collection of papers that reflect on contemporary problems in English prisons.

It offers one of the first comprehensive collections that look at the notion of a 'prison crisis' critically, and from a range of perspectives. Its ultimate aims are: first, to discuss whether there is such a thing as a 'prison crisis' in the first place. Second, to unpack key factors behind what the media has called the 'prison crisis'; to do so, we include here the perspectives of both those observing prison from a top-down perspective, including the independent inspectorate and researchers, as well as those who work, or live in prisons, thus offering a bottom-up account of prison's daily emotional fibre, highlighting the impact of this crisis on a personal and systemic level. Finally, this special edition aims to conceive of creative means to make an intervention on how we think of, frame and discuss so-called solutions, or responses to the current problems posed by prisons and punitiveness.

Media, politicians and members of the public have talked more than usual about prisons in recent times. Reports and scandals around the deterioration in living conditions, safety and purposeful activity in several English prisons are now numerous and have put prisons under renewed scrutiny, even by its defenders. In particular, the Chief Inspectorate of Prisons' reports and

its adoption of the Urgent Notification process have, since 2017, placed a new kind of urgency around exacerbating issues of violence, disorder and harm. The Prisons Inspectorate has led the chorus of concern, but it is joined by Independent Monitoring Boards, charities, campaigners and academics, all of whom have warned against some of the policy decisions that appear to have escalated these issues, including staffing cuts, overcrowding, and the prioritization of security over rehabilitation and care.

This special issue thus follows a diverse range of concerns about the state, social function, and future of our prisons.

Though the label of a 'crisis' may suggest that what is happening today in our prisons reflects a new and unprecedented series of problems, it is also a term that captures a general sense of decay and anxiety about prisons' fundamental function and operation. This so-called crisis, for us, can be observed in terms of poor desistance rates post-release and thus in prison's poor record in fulfilling its own objectives of protecting the public and addressing crime.² It can also be seen in the personal tragedies experienced in terms of significant rises in violence, self-harm, suicides, family breakdown, and addiction, and in the deterioration of workable relationships between prisoners and staff, all of which are issues arguably exacerbated by a growing and often overcrowded custodial estate.³

The narrative of crisis we consider in this special edition is not only a crisis of numbers, but also of those people incarcerated. Prisons hold many young men,

1. This special edition is dedicated to Winston 'Gus' Augustine, a Safe Ground peer who was recently found dead in his prison cell.
2. 48 per cent of adults are reconvicted within one year of release, and for those serving sentences of less than 12 months this increases to 64 per cent (see Tables C1a and C2a, Ministry of Justice (2018) Proven Reoffending Statistics: April 2016 to June 2016, London: Ministry of Justice).
3. The latest figures from the Ministry of Justice show that many prisons are severely overcrowded: local prisons Leeds, Wandsworth, and Exeter each hold around 50 per cent more prisoners than they should safely hold, while Wandsworth and Durham are 60 per cent over capacity (Ministry of Justice (2019) Prison Population Figures: 2019, Available Online [Accessed February 2019]: <https://www.gov.uk/government/statistics/prison-population-figures-2019>)

and there is an over-representation of people from BAME backgrounds. Yet there is also an increasing number of older people in prison, for whom, as both the current Chief Inspector of Prisons, Peter Clarke, and the former Inspector of Prisons, Nick Hardwick note in their interviews in this special issue, the system in place is not suitable.

And while there are fewer women among the prison population,⁴ their distinct needs should not be forgotten, particularly in the context of rising harm and vulnerability inside prisons. There is also a preponderance of poor health in both men and women's prisons, including high levels of mental health needs and addiction. As the Chief Inspector of Prisons explains in his interview, the problem of mental health in prisons is a long-standing one, driving several other follow-up problems and raising serious concerns about the efficacy and suitability of prisons with regards to a substantial proportion of prisoners. As Mr. Clarke notes, the issues of an ageing population and of the high numbers of prisoners experiencing ill mental health call for a more comprehensive, overall strategy, which is currently lacking.

More generally, research has shown the prison population includes many people that have been abandoned and abused by social structures and institutions, blamed for their experiences of extreme poverty and exclusion and who, by the time they reach prison, often have a range of needs and deficits in terms of education, employment and housing.⁵

Large proportions of people in prison are people with multiple and complex needs, created, sustained and fed over many years, often with state involvement and without social support. This heady mix of individual and collective impact cannot arguably be addressed under punitive conditions with limited staff availability and compromised use of 'purposeful' and rehabilitative activities in prison. From this perspective, the challenges facing prisons today are both more longstanding and complex than the idea of a crisis might superficially suggest.

Drawing from the fruitful and ongoing dialogue developed at the 'Chaos and Crisis: Can prison be better than this?' event at the University of Warwick in 2018, we argue, throughout the special issue, for a more open and committed dialogue between charities, campaigners, researchers, activists, journalists, those who work in prisons across management levels, and prisoners and their families. Talking across all of these actors and strata is not an easy task; and for this reason, we think that promoting creative means of expressing and sharing discussion and experiences,

along with creative and inclusive methodologies, are essential approaches. We hope that with this special issue we can take a first step towards offering a dialogic avenue through which to problematize, better understand, and potentially address punishment's old and newer problems.

This collection starts with artistic pieces by former and serving prisoners which seek to express conditions of personal and prison-led crises from an affective stance often overlooked when talking about prison's systemic or operational problems. The systemic, dynamic relationships between prisons, people who live and work in prisons, and the wider population are intrinsic to our understanding of the function prisons serve. Such relationships raise important questions about the wider context in which prisons operate, including: how does the structure, management and staffing of a prison relate to its local community? How do people in prison relate to staff and to one another?

Artistic practice and relationship-focused work is part of what Safe Ground does as a small, arts and education-based organization, and in many ways, it is this kind of work that has shaped our collaboration as editors on various events and initiatives over the past three years. It is these artistically driven, emotionally complex expressions that have in many ways guided our collective discussion on the crisis of harm we find today inside prisons.

Alumnus of Safe Ground, spoken word artist, and former prisoner, Jason N. Smith articulates through his poetry how there is much we can learn about the crisis of harm currently found inside many prisons. We can learn about the driving features of self-harm and suicide in prison, reflect on the fears and anxieties that prisoners bring into prison and try to cope with, and importantly, through such learning we ought to empathise with the complex emotional narratives that make up not only prison life, but also the individual inner worlds of thousands of people in prison and of those who support them outside. Similarly, the piece of art and accompanying text by 'Fred', who was at the end of a long sentence in HMP Ranby when he made this contribution, points to a sense of unarticulated pain that in many ways shapes a significant portion of the prison population's life narratives. 'I don't know what it signified', he says of the hot oil that hit him when his stepfather threw the frying pan against the wall. Such trauma brought into prison inevitably conditions how prison is experienced.

'Scatter When they Come' is a piece by Kelly Roberts. Kelly performed this piece at Safe Ground's symposium, 'A Matter of Life and Death' in September

4. There were 3,820 women in prison in February 2019.

5. See Cooper, V. (2013) *No Fixed Abode: The implications for homeless people in the criminal justice system*. London: The Howard League for Penal Reform. Available online: <https://howardleague.org/wp-content/uploads/2016/04/No-fixed-abode-report.pdf> (Accessed: 3rd March 2019); House of Commons (2017) *Housing Support for Ex-offenders*. London: House of Commons. Available online: <http://researchbriefings.files.parliament.uk/documents/SN02989/SN02989.pdf> (Accessed: 3rd March 2019).

2018. It was a contribution to the idea that for many young people, especially black young people, the notion of a police force that keeps them safe from harm is far from a reality. For many, before involvement with the criminal justice system comes a sense of suspicion, fear and concern for the ways in which such state institutions can directly or indirectly cause harm. Within such emotional narratives, understanding the impact of a so-called prison crisis and disorder becomes ever more complicated and significant.

The piece by Will Styles, governor at HMP Whitemoor, which reflects on his research on the notion of hope in custody, calls for a deeper appreciation of the role of not only emotional wellbeing in custody, but also of the significance of meaningful activities and relationships in making prison 'survivable'. Styles also points out the importance of the consistent, responsible institution and thus alludes to the impact breakdowns in bureaucracy can have on men's ability to cope with their sentences.

Drawing on qualitative research findings from interviews with Category A prisoners serving long sentences, he outlines the conditions that can threaten and compromise a sense of hope in prison and argues that without a sustained investment in promoting hope, trust and meaningful relationships and activities inside, prisons and prisoners can lose a sense of purpose and enter states of existential crises.

Linked to this is also Victoria Lavis' article on 'Intersectionality and the prison crisis'. Using an appreciative inquiry methodology that is reflective of the role of prisoners and prison staff in the co-production of research, she shows findings from her study that suggest an important relationship between 'the singularising way diversity, personhood and identity are currently conceptualized and responded to and prisoners' experience and perception of humanity in custody'. She explores the implications of this singular approach to diversity for rehabilitation and desistance and argues that intersectionality can offer a way forward. Intersectionality can address a range of issues of diversity and difference in custody at once and 'could inform practices which can respond to the whole person and thereby mitigate against a crisis of personhood and identity in prisons.'

Overall, with the contributions in this special edition we wish to illustrate that engaging with such creative, intersectional and intersectoral approaches can not only enable better interactions among stakeholders in prisons, but can also offer the potential for more creative means to address the current problems faced in English prisons and seek solutions that may exist outside prison and go beyond our current, arguably limited, imagination of social justice.

Such dialogue is essential for understanding issues of social harm in general, including those societal 'crises' of punitiveness and hostility which, for

decades now, have driven much of our legal and criminal justice practice and increasingly are also cloned into other areas, including immigration detention and deportation policies.

As the interview with psychotherapist Susie Orbach aptly highlights, problems within institutions like prisons can often offer an opportunity to re-examine, question and understand the broader function prisons might serve in society.

The interview with Orbach discusses how the chaos and crisis so often manifested in the system, is also internally created and experienced by many of us. Orbach outlines the indescribable pains of what people are capable of doing to each other and to themselves as 'indigestible' and suggests that perhaps we use the structures and edifice of prison and punishment as ways of justifying, perpetuating and 'containing' truths about ourselves which we cannot handle.

She invites us to consider how the functioning of the prison may relate to our own anxieties, by shielding us against the unbearable, indigestible truths of the harms we cause each other and the challenges of healing together. Finally, Orbach warns against the circular logic of punitivity and hostility that has become widely popular today and urges us to consider more therapeutic approaches to dealing with our hurt, rage and sense of injustice, collectively.

In a similar vein but from a socio-legal rather than psychotherapeutic perspective, Henrique Carvalho's article, titled 'Feeding the prison crisis through hostile criminalisation: The case of joint enterprise', broadens the question of who we punish and how we relate to them. He opens up the notion of the prison crisis 'by critically examining its context from the perspective of criminalisation — of who is criminalised, how and why.'

In agreement with Orbach, Carvalho sees the prison crisis as being primarily a 'crisis of hostility', and as the result of an ongoing urge in recent decades to punish more, longer and harsher. As he explains, the hostility of punishment performs an exclusionary function, hence why prisoner populations are made up of those most socially marginalized.

He notes that broader processes of criminalization work to ensure that those deemed punishable and most dangerous are always those populations that 'expose certain characteristics of 'undesirability' in our contemporary context'. He exemplifies this exclusionary interplay between criminalization processes and punitive institutions through the case of joint enterprise, 'the legal rules that allow multiple individuals to be prosecuted and punished for a crime substantially committed by another person, on the basis that they were associated with or participating in a previous joint criminal activity with that person'. As Carvalho concludes, joint enterprise showcases the breadth of

both the criminal law and of punishment today, putting both at risk of self-destructing cycles of crisis.

The notion of crisis and what it implies in the context of prisons is the subject of Richard Garside's article, 'Getting out of the crisis'. Garside observes that we might see prisons at the moment as being in crisis, reflecting the particular circumstances of custodial establishments which may be compromising their effective functioning in terms of harm, violence levels, and disorder. Although this understanding suggests that some prisons are more crisis-prone than others (a point also made by the Chief Inspector of Prisons, Peter Clarke in his interview), Garside also notes that today we may need to concede that we are facing an additional crisis of imprisonment. This second, broader crisis relates to our 'enduring attachment to prison and imprisonment as a social institution' and thus to 'our apparent inability to consider other options, different possibilities, in place of the monotonous making and remaking of the prison institution.'

While in the twentieth century the crisis of prisons and the crisis of imprisonment expanded and occurred hand in hand, deepening one another, Garside argues that solutions to each of these require distinct approaches and are driven by different ideologies. As he explains, while the crisis identified in some prisons can be remedied through reformist efforts around the improvement of conditions, the underlying, deeper, crisis of imprisonment is one we ought to consider through a more committed and perhaps less cynical appreciation of the notion of abolition. Doing so would offer opportunities to see the future of punishment and criminal justice as 'open, rather than already determined', enabling us to consider fresh solutions as not only imaginable but also possible, meaning that new solutions to the problems of harm and crime do not necessarily have to be conditioned by a prison-centric approach.

Last, but not least, we would like to dedicate this special edition of the Journal to the memory of a Safe Ground colleague who was recently found dead in his prison cell. Winston, 'Gus' Augustine, who drew the pen illustration on the cover of this edition, worked with Safe Ground on a variety of programmes and organisational developments over many years.

Winston first came into contact with the organisation when he took part in the Family Man programme in HMP Wandsworth in 2004. From 2012 until his tragic and premature death in 2018, Winston worked with Safe Ground to design and develop new work, recruit staff, support their strategic thinking and deliver a range of presentations to public, academic and artistic audiences nationally.

Whilst it is true Winston may have been involved in some very violent and disturbing crimes (he was on remand for such charges when he died), it is also true he was known to many over a very long period of time as a creative, responsible, committed, engaged, caring and thoughtful family member, friend, partner, uncle and colleague. Winston did volunteer work, participated in organisational events and activities and always prepared with diligence for public presentations.

Within the current complex climate of punishment and prisons, it is important to consider this contradictory reality: we are all capable of being more than one thing at a time, and that poses both complexities as well as avenues for hope and change.

We are committed to keeping Winston's memory alive, to using it to raise the potential for how awareness of the impacts and outputs of trauma, violence, abandonment, punishment and emotional pain can drive us to create a wider social system that considers care, compassion and concern for each other, to be its priorities.

By way of conclusion then, we hope that this special edition will invite a more sensitive and empathetic approach to prisons and imprisonment. Those of us who research, work or experience prison know that it is an institution that cannot be understood without a fair amount of emotional intelligence and attention to the complex stories that make up the human fibre of the system. This fibre includes all who live, work, research in prison, visit, volunteer and invest; but also, those who walk past the walls, read the books, watch the documentaries and enjoy the crime dramas.

We propose that the 'causes' and the 'solutions' to current problems in prison can both be traced to the lessons we can derive from taking more seriously the importance of meaningful and open relationships and compassion in custodial settings. We also wish to show that while still pertinent, there is more to this so-called crisis than the reform of specific conditions in some of our institutions. Perhaps this is an opportunity for us to reflect deeply and collectively on the system as a whole and to reconsider the purpose and function of punishment, its consequences for all of us under our current context, and to rethink what we are aiming to achieve through it. Considering the numerous committed, passionate, and thoughtful people involved in prisons and the justice system we remain confident that more socially just solutions can be drawn to the many and recurring crises of prisons and punishment.

The Chief Inspector of Prisons, Peter Clarke reflects on recent problems in prisons

Peter Clarke is HM Chief Inspector of Prisons. He is interviewed by Dr Anastasia Chamberlen, Assistant Professor at the Department of Sociology, University of Warwick

This interview showcases how Peter Clarke outlines the Inspectorate's priorities and considers what he sees as some of the persistent problems in the prison system, three years since his appointment as Chief Inspector of Prisons. Conducted in May 2018, this interview followed the Inspector's first of report of HMP Liverpool in January 2018 and an Urgent Notification to the Secretary of State, regarding deteriorating conditions at HMP Nottingham in the same month. Since then, the Inspectorate has issued a number of further Urgent Notifications, including one for HMP Exeter in May 2018, another for HMP Birmingham—which in August 2018 was taken under the control of the State from the private contractor G4S — and an additional Urgent Notification concerning appalling conditions at HMP Bedford, issued in September 2018.

The Urgent Notification Protocol has given the Inspectorate important opportunities to highlight the urgency and seriousness of problems in some of our prisons, requiring the Secretary of State to act on the concerns raised and to give wider public attention to these issues. These problems are complex, but predominantly include deteriorating living and safety conditions, rising levels of violence and harm, drug misuse, and missed resettlement opportunities for prisoners. These notifications not only place the capacity of some of these establishments to fulfil their objectives with regards to rehabilitation and public protection under scrutiny, but taken together, they also suggest and highlight broader systemic challenges.

This interview revisits some of the most significant of these challenges in the past five to six years and considers ways forward. Whilst raising concerns about some establishments, especially local and training prisons, Mr. Clarke remains optimistic that with good leadership, commitment and coordinated strategy, hope and decency can be reinstated in some of the poorly performing prisons he and his team inspected. He also remains confident that with increases in staff

numbers, some of the 'crisis' points identified in some prisons in recent years can be remedied.

Since the time of this interview, the Inspectorate has remained committed to addressing several of these problems, particularly by urging both prison leadership and the Government to seriously consider viable solutions that will help improve prisons' day-to-day work and overall function. The Inspectorate's recommendations are framed under international human rights standards and include their four part Healthy Prisons Test, incorporating evaluations around safety, respect, purposeful activity, and rehabilitation and release planning. But since some of the Inspectorate's reports have not always been appropriately responded to, in recent months Mr. Clarke and his team have taken a further step in developing a new type of review which will assess whether previously inspected prisons which were found to be failing are making progress towards improving standards. From 2019, the Inspectorate will publish Independent Reviews of Progress (IPR) for prisons (it is envisaged that there will be 15-20 reports per year) which were previously found to fail on one or more of its Healthy Prisons Tests, hoping to incentivise a more committed approach towards its recommendations.

In the interview, Mr. Clarke explained current problems in prisons in a measured manner. It was clear throughout our conversation that his primary intention was to help effect improvements in a number of areas in which he and the Inspectorate feel prisons have recently deteriorated. In so doing, he expressed serious concerns and criticisms, but also recognised the efforts of a number of actors and acknowledged areas where progress has been made.

Our discussion started by going back to 2016, when he took up the role of Chief Inspector of Prisons, having previously worked for several decades for the police, retiring in 2008 as Assistant Commissioner of Specialist Operations. Until 2015 Mr. Clarke worked in public, private and academic roles. The year 2016 was also a year which marked some undeniable increases in

This interview was conducted in May 2018 and updated in March 2019; nonetheless, it may not fully reflect latest developments. The abbreviations AC and PC refer to Anastasia Chamberlen and Peter Clarke. The editors of this special issue would like to thank Mr. Clarke and the Inspectorate's Chief Communications Officer, Mr. John Steele for their time and assistance with this interview.

harm and violence in many custodial institutions. It was a time when a range of prison disturbances took place and political attention on prisons brought a rare kind of public consideration of the custodial estate.

The context of prisons today: Opportunities, ambitions, challenges and obstacles

Mr Clarke explained: 'It was well known when I took over this role from Nick Hardwick in 2016 that we were facing some very serious challenges. All the indicators were going in the wrong direction in terms of violence, the ready availability of drugs, etc. It was obvious that prisons were under pressure in terms of staffing levels and this impacted their ability to deliver meaningful and positive regimes of activity for prisoners. So, I knew this was a very challenging period and, of course, it coincided with when I came in this role, in the end of January 2016, with the Government announcing its prison reform programme. David Cameron, then prime minister, made a speech at the Policy Exchange setting out the framework for the Government's proposed reforms and along with Michael Gove they were putting their combined political weight behind a programme for prison reform.

Of course, things have changed since then and I'm now working with my fourth Justice Secretary and the political landscape is now dominated by Brexit. Prison reform has to an extent suffered because of that, because the Prisons and Courts Bill which was making its way through the last parliament and enjoyed pretty broad cross-party support lost its prisons element after the last election.

Thus, much of what I had hoped would be achieved, in terms of putting, for instance, this Inspectorate onto a statutory footing for the first time, didn't happen. After the election, David Liddington who was then the Justice Secretary said that he wanted to achieve some of the objectives of the Prisons and Courts Bill that were administrative rather than of legislative means. From that conversation came the Urgent Notification Protocol. We worked for many months with the Ministry of Justice to figure out how this would work and it was eventually signed off in the end of November 2017 and the first time we used it was January 2018 at

It was obvious that prisons were under pressure in terms of staffing levels and this impacted their ability to deliver meaningful and positive regimes of activity for prisoners.

HMP Nottingham. Given this context, the Urgent Notification Protocol is real progress.'

AC: *Would you say the Urgent Notification process has been the main bit of progress you've seen in this area in the past couple of years?*

PC: 'I would say that's the main piece of progress. When I came to this job I set out as my ambition to increase the impact of inspection as there's no point in inspectors of any kind or type, independent or otherwise, if their findings and recommendations are not taken notice of. I have been very concerned, and still I am at the way in which far too many of our recommendations are not achieved and in my mind are not taken seriously.

This is happening due to a combination of factors.

I don't think it's an act of political ill will or obstruction. I think that prisons have been under immense pressure over the past few years and there's an extent, in some prisons, to which just keeping the places safe, keeping the staff safe, keeping the prisoners safe on a day-to-day basis absorbs all of their energy. And achieving Inspectorate recommendations has perhaps not been at the top of their priorities list.'

Arguably, this is something that the recent decision of the Inspectorate to follow up inspections with the Independent Reviews of Progress (IPR) evaluation will help address. IPRs

are due to be published in 2019, enabling more accountability for those prisons rated as poorly performing and providing ministers with an independent review, separate from HMPPS. Mr. Clarke went on to explain that performance levels are linked to the willingness of different prisons to take seriously the Inspectorate's recommendations: 'some prisons do manage to respond very well and others don't. You can actually draw correlations between achievement rates of recommendations and performance. It's quite clear that those prisons which do respond positively to our recommendations either maintain or improve their grading in subsequent inspections.'

The role of leadership: Enabling and disabling positive performance in prisons

AC: *What differentiates performance outcomes between prisons, is it a matter of different management?*

PC: 'I think if you look at all the variables that there are in prisons, and prisons are very complex organisations, the one key variable which stands out for me above all others is leadership. That is, quality of leadership. Where you have good leadership, prisons tend to perform better. Many prisons at the moment, particularly the local prisons, and let us get one thing right: it's not right to say there's a crisis in every prison in the country, because there's not. Many prisons are actually doing a really good job, and there are a lot of very good, dedicated staff that are working in them. For instance, open prisons are performing well, women's prisons are performing quite well, and the high security prisons are pretty good. The problem is in all the local prisons and the training prisons. In those prisons what would make for better performance are four or five things which are getting in the way of improving the performance.'

We as an Inspectorate measure the performance against objective standards which are underpinned by international human rights standards, we're not a regulator, and we're not looking for compliance with policy. It's all about outcomes for prisoners. The things that are getting in the way of prisons achieving what we're looking for are to be found in our so-called Four Healthy Prisons Tests. These concern issues of safety, respect, purposeful activity and rehabilitation: First of all, safety. Prisons are simply at the moment not safe enough, far too many of them are violent. There's far too much violence of all kinds and all the indicators have been going in the wrong direction for some years now. With prisoner on prisoner assault, prisoner on staff, self-inflicted harm, self-inflicted deaths.'

Unpacking the crisis of safety: The role of drugs, staff numbers, and boredom in custody

AC: *This crisis of safety then; is it a relatively recent trend?*

PC: 'It has been building up for a number of years. In recent years it has escalated. The increase is year on year and levels of violence have been appalling. Double digit increases. What sits behind that is clearly the impact of drugs and in particular new psycho-active substances. My personal view is that there hasn't been enough done to have a coherent strategy to reduce the

supply of such drugs. I know as an Inspectorate we often say, there should be a whole prison approach where we should look to reduce demand as well as supply. That is, of course, true, but the fact is that the drugs are getting in there and are causing problems, and they're causing debt, and violence, and bullying and, in some cases, a lot of injury and illness; they're destabilising prisons. I think there's a very clear need to sharpen up the strategy in keeping drugs out.'

AC: *Is part of the problem lower staff numbers?*

PC: It is part of it, but those staff that are available also have to be properly led.

AC: *I saw in Nottingham prison that it wasn't that there weren't enough staff; but some were seen as 'inexperienced'.*

PC: 'That's an interesting observation. That's what they said at Nottingham. But what I see is that newer staff coming in can also be seen as an opportunity to change the culture. So, at some places they might say 'we're really worried because these new staff lack confidence, etc'. Whereas in another prison and another governor, can take a more positive approach and say 'with these new staff here's a new opportunity to change'. After all, it's clear that there are long-standing cultural issues in some jails.'

If you're going to have role models and mentors within the staff you've got to have positive ones, and not the cynical or careworn or exhausted ones. Being a prison officer is not an easy job, I don't blame anyone for being utterly exhausted by it. But particularly, some of the places we've inspected in the past few years, the staffing levels were far too low. They've been reduced by the benchmarking exercise to a level which was simply not sustainable and they did not allow sufficient staff to be present to do anything, other than the bare minimum. Thus, while I appreciate there will be some challenges with having new staff, having them is better than no staff.'

Our discussion on prison staff and their role in enabling a balanced environment in prisons took us back to the theme of safety. Staff cuts have clearly impacted the way in which some prisons are managed from a security perspective, but arguably also impacted the rise in the use of new psycho-active substances.

Mr Clarke remarked: 'I still find it quite strange that prisons are extremely good at keeping people in, but

Our discussion on prison staff and their role in enabling a balanced environment in prisons took us back to the theme of safety. Staff cuts have clearly impacted the way in which some prisons are managed from a security perspective.

they're far less good at keeping stuff out, and I don't see why that should be the case, it needn't be this way. They could do a lot more with technology and just by adjusting their mindset under security measures.' He listed a range of factors affecting the supply of drugs, including the possibility of staff corruption, drones, drugs smuggled through visits, prisoners deliberately getting recalled to bring drugs inside, or even the involvement of organised crime groups. He explained, 'all of these things come together', but what enables such issues to persist is 'when you haven't got sufficient staff in some of these places to have a really effective security regime. The drugs issues are compounded by the lack of staff, meaning that prisoners are not getting enough time out of their cell and so boredom is driving them to drugs when they're locked up for such a long time. There're so many jails where people can't get out of their cells to get to the various courses available and the amount of waste is enormous. When we inspected Feltham in 2017, a YOI, I think we had found that 19,000 days of teaching time had been lost, because people were just locked up unable to get to the courses. Prisoners need to be able to get out of their cells to get to these activities, it's not good having a wonderful set of programmes if only 40 per cent of the education places are filled. Having said this, safety, drugs, living conditions all come together. Living conditions are really deteriorating, far too many of our jails are simply shameful really.'

The crisis of indecent conditions

Mr. Clarke explained that living conditions deteriorated 'because of lack of investment.' In a 2017 report of the Inspectorate, they found that a key feature associated with poor living conditions was the 'doubling up of prisoners in cells designed for one person.' Staff shortages have meant, that in some establishments, prisoners are locked up together, some for up to 23 hours a day. As Mr. Clarke notes, in these overcrowded cells, prisoners 'have the one screen lavatory in the cell and they very often have to take all their meals in that cell as well. There is no way that that

is decent, it's just simply not. And it's hardly surprising that the lack of rehabilitative activity is so low in such circumstances. I don't think the Government's ambition around reform and a 'rehabilitation revolution' led by education and training is going to happen until they can get these basics of decent living dealt with, get the places safe, get people out of their cells, and get them into work and education.'

The mental health and ageing population crises

...beyond the clear evidence of problems with regards to safety, drugs and living conditions, prisons today are facing two additional 'crises'...the excessively high number of prisoners experiencing ill mental health...and the increase in the ageing prisoner population.

The Inspector of Prisons went on to clarify that beyond the clear evidence of problems with regards to safety, drugs and living conditions, prisons today are facing two additional 'crises' which he feels need more urgent, strategic consideration. The first concerned the excessively high number of prisoners experiencing ill mental health. As he explained: 'far too many people in jail shouldn't be there, they need to be in a much more therapeutic environment.' Addressing the mental health crisis in prisons may be about considering different pathways in terms of diversion, but, as Mr. Clarke said, this may also need 'a different pathway when those needs are identified in prison about making sure that the prisoners are able to get the right sort of environment to improve. At the moment, if you have a mental health issue, it's not going to be improved in the conditions where far too many prisoners are being held.'

The second strategic issue he identified concerns the increase in the ageing prisoner population. 'Due to the changing sentencing patterns of the types of offence of which people are being convicted, sex offences for example, the prison population is going to continue for many many years to get older. Prisons are not configured as residential care homes for elderly people. There is much good work being done around the country with regards to this issue; there are some good initiatives. For instance, in one jail there was a wing that was specifically set aside for older prisoners. And there's a waiting list to get to it. I saw for myself that some of the older men there were actually looking after each other and they were pleased to be off the main wings, full of drugs, violence, and noise.' However, such good initiatives he explained are often

not followed by an overarching strategy, thus lacking coordination across the sector. 'I don't see this sort of approach being coordinated and I don't see an overall strategy yet for dealing with this older prisoner population. We need to ask difficult questions in regards to this: do older prisoners need to be held in traditional prisons? When one is aged 70 or beyond, do they need the security measures that are in place in a category B or category C prison, or should we be thinking about a different type of custody? At the moment the only thinking I've seen is about tinkering around the edges with what's available. It hasn't been strategic in terms of picking up good practice and propagating it and thinking more broadly about a different structure for older prisoners.'

Is this a crisis or a series of long-term, inherent problems?

AC: *Which of these problems that you've listed in prisons, around safety, drugs, conditions, mental health and ageing populations, would you say have been long-term problems? Some of these don't sound so new.*

PC: 'Overcrowding which plays straight into the living conditions is a long-term issue and that has been with us for many many years. Drugs have been with us for years, but not these new psycho-active substances that have been so damaging. I think there's an extent to which the Prison Service was slow to respond to this new form of the drugs problem. Even when I came into this role some people in the Prison Service would say to me, 'look we've had drugs in jails for a long time it's just another iteration', I don't think that's the case. The impact of these substances was so unpredictable, so strong, causing immense harm; some of the self-harm we have seen, it is quite grotesque, it really has changed the situation in prison, at a time when staff were simply not there to deal with it.

So, some of these are longer term problems that have now changed in nature. Now, too, we've got the ageing population that is going to be with us for a

long time and the mental health issues. I know that there's much concern about mental health in the community; prisons are just a very focused microcosm of that reality. Many of those people find themselves falling foul of the criminal justice system and end up in jail when actually, potentially some other type of intervention earlier might have avoided that.'

But, Mr. Clarke was careful not to overstate the notion of a 'crisis' in prisons. Over the past five or six years, and certainly since problems inside prisons received considerable media attention, we have heard the phrase 'prison crisis' indicating the unprecedented deterioration of some establishments and significant increases in harm. However, Mr. Clarke wanted to clarify that not all prisons have been subject to such crisis. I then asked him what might constitute a way of understanding the notion of crisis in the prison context. As he said, 'in terms of prisons the term crisis should be used perhaps a little more sparingly than it is. But in recent years it is, I think, an accurate description of the situation where prisons find themselves in. Some of them at least are unable to fulfil their core function. Their core function obviously is to fulfil the sentence of the court. But the next bit of that is when you start seeing such function being to hold people in such a way so that they are likely to be able to reform and less likely to reoffend. If they are fundamentally failing in that resettlement function, and too many prisons are failing when you look at reoffending rates,

then you can say there's something there that is in crisis. I would rather call it a very serious problem than a crisis; it sounds a little bit journalistic talking about a crisis. I don't mean to trivialise it, but I think it's an overused expression. But there are, of course, really serious problems and as an Inspectorate I think it's our job to expose those problems and shine the light, because inevitably those who run prisons and those who administer them would not be volunteering the information that there are some serious problems unless there was a degree of independence and transparency.'

We need two things: one is the finance... Clearly resources are an issue. But there has to be investment in the fabric of prisons as well, anyone who goes into a prison like some of the ones for which we issued Urgent Notifications can see the appalling conditions and knows that it just can't go on like that

Considering solutions: The role of finances, cultural shifts and public attitudes

AC: *Both of the issues you've raised alongside safety and conditions, those of mental health and of an ageing prisoner population, suggest that if we are to take a different approach, then we need a much more concentrated social and financial rethinking around the purpose of prisons.*

PC: 'Yes we do, we need two things: one is the finance. There isn't any money at the moment. The Ministry of Justice has got a huge hole in its budget and I can't see any prospect in the next few years of there being a lot more money being put there. Clearly resources are an issue, there's got to be more staff, more staff of the right quality are needed.'

But there has to be an investment in the fabric of prisons as well, anyone who goes into a prison like some of the ones for which we issued Urgent Notifications, can see the appalling conditions and knows that it just can't go on like that, it's not sustainable.

It's not only just about money being invested; as we saw with the collapse of Carilion, it is important that contracts have got to be drawn up properly to get value for money. Doing so will get the best effect and flexibility in delivering what's actually needed in terms of improving conditions. In many prisons I visit, I get complaints about the

essentially mismanaged contracts which are not delivering better value for money and are not delivering better physical environments, so that needs to change too.'

In similar vein, and following the events at HMP Birmingham, Mr. Clarke has also called for an honest and impartial appraisal of what went wrong with the contract at Birmingham. Mr. Clarke went on to add that it is also important to work on the representation of prisons in the public domain:

'We also need to work on some of the public commentary in order to enable a different attitude to prison. All too often you see in papers banner headlines about 'lags in luxury', etc., which doesn't actually help in having a sensible, public debate about where the public interest sits. In my mind, it is quite clear that there is a very significant public interest in having people held in conditions which are likely to make it less likely that they will reoffend. That's not about

mollycoddling or spoiling prisoners. It's just about saying if you treat people decently and give them the opportunity to learn new skills or turn their lives around, that has to be better than holding them in conditions which will almost inevitably lead to them emerging more embittered, more alienated and more likely to reoffend.'

Can solutions be drawn from positive examples?

PC: 'Within this period of turmoil and crisis, there have also been encouraging, positive shifts that are worth noting. For example, in the children and young people's estate since 2017, the inspections we have carried out in young offenders' institutions have shown some positive improvements which I hope are not built on fragile foundations.'

Admittedly, since the time of this interview, the picture in the young people's estate is now a bit more opaque and may perhaps look less optimistic. Mr. Clarke went on to say that positive examples can also be found in the women's custodial estate:

'We have also seen some positive steps in the women's custodial estate. I think more of what is already being done needs to continue. For example, there's some very good work being done around trauma informed practices; that's terrific work that

should be applauded.

I would like to think that since 2017, there has perhaps been something of a turning point in the way in which the Inspectorate is regarded and taken seriously. Too many recommendations are still not being implemented, but I'd like to think perhaps Liverpool and the Urgent Notifications marked a turning point. Unfortunately, some of the things we've had to report on have been such that it's not hard to gain public attention.

With a place like Liverpool where all the windows were broken and I came across people in cells that were just in disgusting conditions, and the vermin and the rats and the rubbish and whatever else was going on. In the middle of a major city, in the middle of Liverpool, there was this hell hole. There's no need to be like that. The new governor has got a grip now, but there's no excuse for the dirt we saw.'

...I get complaints about the essentially mismanaged contracts which are not delivering better value for money and are not delivering better physical environments, so that needs to change too.

The role of the third sector and a last message to those who work in prisons

Before finishing off our conversation, I asked Mr. Clarke for his views on how a sense of hope and progress may be reinstated in prisons. More specifically, we talked about the role of the various third sector organisations working inside prisons. Some of these organisations provide all sorts of support to prisoners, including therapeutic, educational or arts-based programmes, that often enhance and reinforce the work of prison staff. Thus, in light of the current problems we identified around missed opportunities with regards to rehabilitation and resettlement, I asked Mr. Clarke what he thought the role of such charities and organisations may be in paving the way beyond and away from the current 'crisis' points we identified with regards to safety, violence, conditions and purposeful activity.

As he explained, 'the role of charities and the third sector is absolutely crucial; they make a huge contribution in prisons. The worry I have is that not enough use is actually made of them, because it's not well coordinated. When we published our revised expectations we put in a new expectation about wanting to see a senior named member of staff with

specific responsibility for coordinating third sector activity within jails. We don't see that happening often enough. I think that is something that more could be done about. I know from my time at the Charity Commission, that the charitable instinct of the nation is vast, but as is often the nature with charities and the third sector, it all needs coordinating so that efforts are not wasted, the resources are put in the best place, and work is done constructively and collaboratively together with everybody else in the prison. We have to make sure the coordination is right and is properly directed. But, nonetheless, the third sector's involvement is invaluable and the prisoners just couldn't function without their support.'

Finally, as a way of concluding, I asked Mr. Clarke for a message he would like to send to those who work in prisons. He recognised the efforts of prison staff under the current, challenging climate and said, 'prison staff are doing a great job, they are doing a really difficult job too. The public generally just don't understand how difficult such job this is.' He also added that he hopes 'in the coming months and years whilst the jobs of prison personnel will never be made easy, because by definition, these are not easy jobs, that they will be made easier than they currently are.'

Building up to today's prison crisis:

An Interview with the former Chief Inspector of Prisons, Nick Hardwick

Professor Nick Hardwick was formerly HM Chief Inspector of Prisons and Chair of the Parole Board. He is interviewed by Dr Anastasia Chamberlen, Assistant Professor at the Department of Sociology, University of Warwick

Looking back: Long-term changes in the sector

AC: *In 2010 you became the Chief Inspector of Prisons and stayed in this role until 2016. Has a lot changed in the past decade?*

NH: 'In some ways it would be a mixed picture. Generally speaking, things have improved. If you look at the position of young people for instance, when I started as HMCIP there were about a third more young people in custody. The number of young people in custody has dropped two thirds over the last decade. So that's a positive change.'

Look at policing and police custody. Back in the 1980s when I ran Centrepoint we saw young people who had been abused. But we didn't think we could go to the police with that problem and it didn't mean there wasn't a problem, it was that we didn't think the police could solve it. Our options and approach on this today would probably be different, but would not be completely better.

Similarly, if you look at prisons: there are obviously problems in prisons, but, if you take a longer-term view, overall conditions have improved. The health service in prisons is now managed by the NHS, that's better than it used to be decades ago. But on the other side of that, I certainly think that prisons in the last 5 or 6 years have indisputably deteriorated very sharply and today there are new issues. The proportion of people in prison who are there for violence or sexual offences has grown so you could argue that today we have a more challenging population.

When I worked at Nacro in the early 1990s I remember very distinctly how we were having a big staff meeting and it was announced the prison population had reached 40,000; we all gasped in horror at how high it was — and now that number has more than doubled. Related to the issue of numbers, there are many older people in prison who the prison system isn't catering for.

So overall, if you took a much longer-term view, I think things have improved. But if you took a shorter-term view, over the past decade or so there has been a variation in the kinds of challenges facing prisons.'

AC: *When you took up the role in 2010 what were your main objectives? What did you hope to achieve?*

NH: 'If you look at the Inspectorate's findings over a decade that we published in my last Annual Report for 2015/16, what basically happened was that from about 2006 to 2010, there had been a consistent but slow improvement. The Inspectorate's findings were that things were getting better. So, when I took up the role my aim was to continue to do that. There were possibilities at the time with talk about rehabilitation, reducing the prison population, normalising conditions, getting the numbers of women in custody down: all these seemed realistic prospects then.'

But from 2012 onwards things deteriorated and there were very sharp deteriorations in a series of issues which came together. This includes major reductions in staffing. This affected especially the most experienced staff, which is the most damaging bit of it. We then had a series of quite destabilising policy initiatives, and on top of that we had the sudden surge of drugs and all those things that came together and had a pretty disastrous impact on the prison system.

The role of staff in giving prisoners a sense of hope and the impact of shortages in staff

NH: 'If you look at the published staffing statistics, operational staff were cut by about 25 per cent between 2011-2013. It wasn't just the numbers, there was a particular reduction in the numbers of experienced staff; they got rid of the most experienced people as they were the ones that cost most. That's why it's now so difficult to reverse what happened. This is because even though now they are recruiting

This interview was conducted in May 2018 and thus may not reflect some of the latest developments. The AC abbreviation refers to Anastasia Chamberlen and NH refers to Nick Hardwick. The editors of this special issue would like to thank Professor Nick Hardwick for taking part in this interview.

more staff, it takes time for those staff to gain the necessary experience.

Meanwhile, under Grayling there was a policy of toughening prisons up and reduced access to rehabilitation and other opportunities. But, prisons and prisoners need to get their sense of hope from somewhere. The prisoner must be able to generally say 'I can get through my sentence, I can get out, I can make this bearable, I can get through it.' But if people think that whatever they do the system is unfair towards them, they lose hope. Then coupled with this mentality, if staffing isn't consistent and there is a big turnover in staff, then all those things come together and damage the relationship between staff and prisoners. These are relationships upon which prisoners depend and putting them under threat creates a general sense of instability.'

Disorder in prisons today

AC: *Recently we saw increases in incidents of disorder. Are these expressions of disorder simply linked to the rise in the use of new psycho-actives substances?*

NH: 'In general terms it seems to be that the factors that contribute to riots in some instances include legitimate grievances that are widespread and combined with poor relationships between staff and inmates. Then, if you have the ready availability of either alcohol or drugs which reduce inhibitions and you have a ring leader and then also have a spark that sets things off, then all of those things together can create disorder. But they don't usually boil over; on the whole the system is good at putting a lid on these things when they happen.

However, it is misleading to talk about the 'prison crisis' in the sense that it represents some great combination of events across the system like there was back in the early '80s. I think what has happened up to now has a less dramatic look. There have been many unnecessary deaths, each of those were a crisis for the individual concerned and their family and the staff who had to deal with it, but the system as a whole was able to contain many such situations. At the same time however, the fact that the death rate can be and has been lower shows that what happened was not inevitable.'

AC: *Let us unpack the notion of 'prison crisis' a little more then. Do you think this is a unique moment for prisons in which they are in a deeper, worse state than before or is this a picture that corresponds to its past or its nature as a system?*

NH: 'I think it depends on how you measure a crisis. To some extent the system in terms of what you can measure has slid back to how it was 10 years ago, so the progress that was made is now undone. If you look at the suicide rate in 2016-17 it got to a point when it was higher than it had ever been before. But looking at the data you can also see that we had been in this position before; what's new about this is some of the relationship issues are now different because of the staff losses, and the consequent loss of experience.

I think that because the malaise is more widespread it's more difficult now for individual prisons to avoid the downward trend because prison governors have less control over what is happening in their prison. Also, there are certainly new issues in terms of the number of elderly prisoners that the system has to cope with. I'm not completely convinced that the drugs issue is that new. There have always been issues with drugs in prison and if it's not one thing it would be another. I think that such issues aren't greater than they'd been before; the difference now is that the handling of such issues shows that the prison hasn't got the capacity to manage these problems.

Suicide and violence are not just serious issues in themselves, but they're a symptom of a loss of control generally. So, I think

there's a loss of control in the system which means the other things you might want to do can't happen because the system is too unstable for them.

The current Chief Inspector has made it more difficult for those issues to be ignored. I think the Inspectorate was powerful in describing what was happening inside prison in these past few years. We have tried to make the reports accessible in a way that people could understand and doing so gave these issues greater media coverage.'

AC: *It sounds like, for you this is not necessarily a new crisis but it has a few new features.*

NH: 'I think that the situation has elements of what had happened before and some new elements too. But the progress and advances that had been made before were recently destroyed due to poor decisions, and it will take time to get back to where we started.'

What caused the prison crisis?

Staffing issues and a crisis of relationships

NH: 'In my view the deterioration of prisons was a result of political and policy decisions. I don't think you

Suicide and violence are not just serious issues in themselves, but they're a symptom of a loss of control generally.

can construct a logical scenario when suddenly prison governors and prison staff all decide to do their job less well. Not across the system. You can't explain what happened as a result of individual failures. Having said this, there were some prisons that were worse than others, so I'm not saying that there were not individual features to this crisis too. But if you look at the pattern overall, I don't think an explanation of it being down to individual prisons and staff is tenable and I think if you look at the coincidence of the rise of deaths with the declines in staff and the decrease in deaths when new staff start, that says a lot. It was a political and policy failure. Politicians and policy makers at the time were warned about deteriorating conditions, but they didn't respond to those warnings.

What prisons rely on is the relationships between staff and prisoners. You need to have staff on the ground in a consistent enough way to do that work. If you simply rely on procedural security, locks and bars and CCTV, as some systems do, you can probably on that level clamp down on the violence, but you can't do the rehabilitative activity you also need to do. So, if you're preparing someone to leave prison, they need to make their own way to work in the morning, they need to show some initiative and autonomy. And if you don't have the staffing numbers for such relationships that's where things can go wrong. You can keep prisons safe by locking people in their cells all day, but that doesn't do anything for when those prisoners eventually get out. It's about staffing numbers but it's also about making sure that the systems in place are fair and aren't arbitrary, so that prisons have some sense of hope. No one is talking about luxury here, what we are talking about is the basics and the incentives for people to behave well.'

Overcrowding and capacity

NH: 'If you analyse prison population figures against prison capacity every so often there will be a real pinch point. At those pinch points there seems to be a spike in deaths, and when you have a wider gap, more capacity, death rates seem to decline. The issue is not population per se, the issue is capacity and when the system gets to about 99 per cent of its capacity, at that point you have to start putting prisoners where there is space rather than where they need to be. If you look at the series of riots that we had in winter of 2016/2017, part of that was caused because wings

were lost, maybe only a fairly small number of people were actually involved; but, then once this happens, those prisoners have to be moved somewhere else. That then disrupts the prison that they're being moved into, and you get that kind of knock on effect. So, I think you need some headroom in the system. It appears to me there's a link between when that headroom gets pinched and when you get more trouble.

The other point to note about overcrowding is that it is not simply a question of physical overcrowding in that cells are doubled up. It also means you don't have the capacity of prison staff to deal with the size of the population growth. In practice this means, prisoners can not get to visits or it's too big of a queue for the phones, etc.'

It's about staffing numbers but it's also about making sure that the systems in place are fair and aren't arbitrary, so that prisons have some sense of hope.

Looking back and looking forward: Prison reformers should not neglect the harm of crime

AC: *You've had at least a decade's worth of experience in this area, in the criminal justice system in general, what areas do you think are important areas to focus on from now on?*

NH: 'I believe in prison reform. However, what drives the increase in prison population has been people doing longer sentences for serious offences and those on the prison reform front, often avoid acknowledging that issue. Those offences are serious, they have hurt people, a high proportion of them would be around violence against women, for example. Thus, if you are going to have an argument for decreasing the prison population, you need an argument across the board. It needs to be an argument that properly reflects and understands the harm that people cause, an approach that recognises such harm impact's but nevertheless still allows treating people decently.

Similarly, if you produce a narrative that is entirely prisoner-focused you focus on some characteristics and not others. We know that prisoners are overrepresented in terms of mental health problems, or having been in care, but still a large portion of prisoners don't have those characteristics. It is important not to imply prisoners are simply a victim of circumstance. If you remove the agency from the prisoner you are effectively saying 'well, prisoners don't have choices about what they did and they don't have a choice about what they will do in the future'. Whereas on the whole I think most of them have made bad choices and

could have made other choices; they have agency. Because of this agency, I always believe in the future they could make better choices. But, if you say, 'he's a victim of circumstances' then I think that you dehumanise people. Of course, I'm not denying that many people will be badly affected by trauma.

So, if we think the prison population should be lower, we need to be consistent about that in terms of campaigns and need to be able to describe that in a way that doesn't downplay the harm people have done. I think it's ethical that people who have crossed the boundaries of what society says is acceptable to be punished. But I don't think the only punishment we should have on our sleeve is prison. I think we should look into other solutions too.

The prison reform movement, academics, etc. have nothing really to say about what we should do with people like Worboys other than lock them up for longer, even doing that, can such people be reformed? Or can we see them as reformed?

I remember when I was at the IPCC there was a case concerning a woman with a daughter with Down's Syndrome; they were being tormented, bullied, by kids on the local estate where they lived. Although the behaviour of the youths who were tormenting them was relatively minor it had made their lives a misery. And they shouldn't have put up with it. What are those who believe in reform, who don't think long sentences are the answer to everything, what have they got to say about all of that? And how do we have a credible narrative on that? I think that's a big gap in both research and policy.

And that has consequences for the work we all do. Looking at serious offence rates post release, they are less than 1 per cent which at first sight looks pretty good. That probably means about every year between 12-20 people released from prisons commit a violent offence and quite often it's a violent offence against women. This means a woman gets smashed up or beaten or assaulted. If you put it like that, it sounds very different from the less than 1 per cent statistic.

There's also another issue regarding prison staff. We confuse people doing very difficult things and getting it wrong sometimes and people deliberately abusing their powers. You get out of bed in the morning wanting to do the right thing, wanting to help and then mess up or something you hadn't expected happens. There are, of course, people who are doing something deliberately negligent too. I think if you don't make that distinction it can have wider consequences.

If you look at instances where people have died in prisons, you can probably find things that staff on the ground could have done better and could have saved lives. But you need to be clear that the overall picture is such because of policies and political decisions.

Dumping it on the people who are doing the job on the ground and criticising them is a mistake. People who are progressive, interested in reform sometimes seem to be as prone to do that as people from other perspectives. I think that is a mistake.'

Addressing the crisis of community services

AC: *Institutions like prison and parole, where do you predict they'll be in a few years from now. Do you think there is room for them to improve?*

NH: 'On the whole I'm reasonably more optimistic about prisons because within prisons there are still the governors and staff who know what to do; who want to do the right thing. There are staff who will get more experience, you can see how that would improve.

I think the biggest problem in the system is actually in probation and community services which have been entirely wrecked. I'm not sure that now there's anything to build up from. Community services almost need to be reinvented; that's where we have the most serious issues.

I remember hearing someone say 'the Metropolitan police is recruiting 300 extra staff to deal with gang crime in London'. My view would be we may need to do that, but we also need to recruit community workers to address such an issue. It's the destruction of those community services more broadly that will impact on the criminal justice system in the end. It is not about sticking plasters. Solutions are about the range of services in the community. If you take parole, quite often the biggest problem now with IPPs is for people who have got very chaotic behaviour, there aren't facilities in the community to manage or supervise them. Thus, the issues aren't really in the prison or parole system, they're out in the community or rather, they are in the lack of facilities in the community.'

AC: *It sounds like prison to some extent came to replace the lack of services in the community*

NH: 'Exactly. You can see this clearly with regards to people with mental health issues: why are people with mental health issues in prison? But, what is the alternative? That's not to say there couldn't be alternatives, there should be alternatives, but they don't exist at the moment.

So all in all, solutions to all these problems mean community investment. I'm not an abolitionist, I think we need prisons and I think the prison estate should be modernised. But in the end I would put most of my investment into community resources rather than into the prison. That's where we need it most and that's where we would get most impact from generally. Community investment also means, inevitably, the most positive impact on prisons.'

From poem into spoken word

Jason N. Smith is a Safe Ground alumnus, spoken word artist and former prisoner

Everything inside is slow again today,
and we have got through April to May,
but unlocked for showers one by one
and faces reveal that something's wrong.

A prisoner is hanged and presumed dead
Now although CPR there's no pulse read.
While in my dreams and in bed I snuggled
my mate fought for breath and struggled.

Once orderly and cleaner on the servery
now there's crime scene tape barring entry.
I can still see his smiling young face,
and fortitude to get through this place.

We chatted yesterday, he seemed OK,
even touched fist throughout the day.
Happy go lucky when he walked landings,
but going like that defies understanding.

Why man? Why? I just cannot get it.
I always thought you were mentally fit,
What took off the hope from your face,
and your presence within this place?

You didn't have to suffer in silent pain,
With lines of mates to listen, explain.
Whatever it was we could have shared.
Maybe you did not know that I cared.

It goes without saying you'll be missed
the brews we shared, us getting pissed.
I'll always look for your bouncing walk,
but I pray you are beyond these walls.

He was born into the world with so much to offer,
but within a capitalising mass production of assets off-
setting taxes, he become just a number, in a place
where men walk shell-shocked and numb, but mentally
they are cocked guns expecting hammers to drop. Yet
another loss within a prison system afflicted victims,
until lying there limp.

But let us go back a bit to him sitting in a cell alone
amid his hell trying to atone for or flee from inner
demons, while unknowingly not seeing three mamba
fiends creeping, until he feels that drug-crazed cast
glass shattering his visage into millions of fissures and
sharp homemade shank knives malicious glint reflecting
his tormentors eyes under a harsh prison cell light.

Let's glide on by along his journey down a long
dark corridor, because as you now realise he's been
through horrid wars, but before that, he would dine on
upper crust crumbs descended like dead stars as he
stuffed them into pockets and stood looking through
scarred eye sockets believing that one day, one day life
skies would open wide and he would be allowed to fly
across dividing lines, after dragging himself through grit
believing he can have much more than this life it seems
he's been in since the beginning.

But now he's no longer living as his body lies there
limp, and where it should be his family next to him, he's
on journey after being zipped tight into a black bag and
left on a gurney in an overcrowded corridor before
being pushed into that cold sliding mortuary draw.

But let us pause,

Let's pause and leave that parked there while we
talk about 2062 suicides since 1990, 59 homicides and
1002 awaiting classification.

In this nation in 2016 there were 354 bodies lying
limp, now with a growing number of mind altering
substances, drugs, prison deaths are set to rise higher
than inflation ever could.

Hold up, let's pull up and look back a bit to before
him lying limp on a gurney and let's reverse the
journey back from an overcrowded NHS corridor, to
back before being zipped into that black body bag and
before he desperately...

Wait, let me pause a second and take a deep breath
before reliving an etched picture of a hanging corpse
deeply scored into thoughts and heart shredding sounds
echoing down long linages of unjustly cut short family
trees, with deep grief not understanding the loss of life
after entering a hungry hole and futile struggle to survive.

It is not right the slashing and burning of budgets
and much needed resources for personal causes of
political decisions breaking already broken systems, and
when presented with facts and figures there on a
page they still do not listen. What's with them in this
day and age?

Is it a lack of strong political leadership that can fix
the controversy of prisoners being held in overcrowded
conditions, because rising levels of violence show fear is
a daily reality for people in prisons.

But how many more body temperatures are to
drop morbidly cold into an enfolding embrace and race
prematurely away until erased. How much more DNA

spread under harsh lights from sharp knives let slip from slick grips to clatter within impressionable minds and reflect a perpetrator's eyes. How many more mother's hands striving to dam leaking out heart shredding sounds echoing down long lineages of unjustly cut short family trees, How many more on fatherless journeys blown here and there like a directionless breeze, and how much more denying the un-hiding of prisons hidden divisions that when revealed can widen realisations, so that the village decides to raise a fatherless child that expects to be accepted, but is institutionally rejected.

Or will more politicking politicians continue picking from a mixed bag of politrix and try to 'tridently' strive out of situations with misfired stereotypes percolating wildly inside and regurgitating behaviours?

Institutionalisation

In monolithic states relationships dictate, so without healthy communication weighty matters become lost in red tape or hidden away under carpets for another day that may never come.

But gaps cannot be bridged, chasms filled and relationships healed without a two way receptive conversation.

Communication break barriers, dictates progression, acceptance, inclusion, support, stability and simple gift of 'being' settled, but there is a term titled resettlement entailing giving advice, guidance and training to help humans re-settle into normal life. However, for those from broken homes and walking around in states of hyper vigilance instigated by abuse, past trauma, trauma of prison environments, mental illness and never even lived a life of simply being, the term re-settle falls short and another term needs to be coined. Settlement.

Prison should be ascribed a parent role in the context of a parent child connection and then examined to see how does applies for those within the system.

If an institution can be ascribed to a parent child relationship, how do we describe effects of actions or inactions to address underlying issues of children in their care who have previously spoken through negative behaviours, and just what are the responsibilities of a parent to both the child and society?

If it takes a village to raise a child then by extension in the topology of a world community what are the responsibilities of all other parents/institutions to

underprivileged, traumatised and disadvantaged parts of its body?

In a society of community, relationships are paramount in success or failure. How we relate to others can determine acceptance or rejection and unhealthy perceptions stemming from under developed relationship growth is born out broadly both inside and outside the justice system. Healthy relationship growth promotes trust and a sense of safety which helps to walk confidently, how is it for those traumatised and living in an environment that is not safe and trust is rewarded with negative consequences.

One consequence is released prisoners do not make long term plans because of unpredictability and fear instilled within hostile environments. Another consequence is lack of relationship ties causing an 'every man for himself mentality,' which works contrary to a community society.

In prison institutions prisoners do not have access to internet, have to pay above three times the rate for telephone calls and are unprepared for society in its current state; there is a social divide with demarcation lines between those linked into community via ability and experience and those who do not.

People living before internet or mobile phone technology communicated and established face to face relationships.

However, in this millennia isolation and depression is increasing and attention spans are decreasing in a click get linked quick mind-set mentality.

Societal progression is now a networked relationship and without necessary education, skills and experience the unprepared do not progress and are cut short like Wi-Fi signals turned off.

The prison system is currently reacting to matters trying to contain while working with budgets in deficit rather than proactively equipping necessary skills, education and experience to bridge divides, despite the good will of many working within the system.

With austerity, inflation and the nation struggling to maintain a grip on world economical markets, societies eyes and resources will continue to have a blind spot for those beyond the margin.

Comment

Congesting negatives into one place breeds and condenses even more negativity. A prison environment

One consequence
of imprisonment is
that released
prisoners do not
make long term
plans because of
the unpredictability
and fear instilled
within hostile
environments.

conditions behaviours and people establish ties that re-establish outside prison; whether individuals are aware or not, environments influence. Too much prisoner stimuli are a promotion of crime, drugs, money, hostility and mistrust. Inevitably prisoners are conditioned with only a minority truly able to break free.

Some offenders enter prisons never having used harmful substances, but leave in cycles of addiction. The drugs problem further aggravates the problems of prisoners addressing offending. The onus is on individuals to stop offending behaviour and re-enter society successfully however, when the self is buried under substances, getting lost in both uniform and wild environments, self-identity becomes lost. Many 'bury heads' under prescription medication to deal with ups and downs, this stands in the way of 'self' improvement. It takes great strength to focus on self-identity, self-control and self-progression amid atmospheres of so many negatives.

Eliminating factors precipitating offending needs addressing before 'offenders' are imprisoned. Instilling moral values cannot be programmed with positive and negative reinforcements, this only ensures compliance. Good moral values come from the heart however, prisoners have difficulty with open hearts in prison; this takes a strength and understanding many do not realise amongst influences of environment. Prison dehumanizes, strips self-respect, buries identity and disengages people from responsibility; deprivation of interaction with communities only reinforces this.

There are many in prison coming from dysfunctional families and/or have learning difficulties, It is beyond probation's scope to reach a people who have buried themselves, prison is far from a place conducive to restoring trust; therefore prisoners and ex-prisoners live isolated (even around close ones) and continue similar patterns.

Rehabilitation revolutions cannot work without polices beyond the prison gate. Fear, cynicism from prisoners, government and society, will keep offending

rates static or in escalation. There cannot be uniform formulas for human needs.

Prison tries to prepare people for release and there are increasing numbers of positive initiatives striving for inroads however, this is curtailed by lack of funding, budget cuts, punitive philosophies and prevalent concerns of security. Programmes promoting true self-reflection and creative expression needs to be driven.

Society living evolves while people are inside prisons. For those warehoused, bereft of homes, jobs, relationships, social structures and routines, the challenge of stability amidst pressures of society living becomes harder; even those with jobs struggle, so it is that much harder for those facing the stigma of 'ex-prisoner.' Too many are being released unprepared and fall back into negative conditionings.

Without fundamental changes allowing precedence of positivity and a cohesion of both society and prison, prisons will continue to fail offenders and society.

The system is on the 'back foot' and reacting to pressures rather than being proactive with unified agenda for change. Hard to reach offenders need to be guided to see the need for change and desistance from action or behaviour can only lastingly be done by showing another way through opportunities. Opportunity changes futures.

Released prisoners should have PTS counselling like returning soldiers from active service, but this. When sentencing mothers judges need to be more considerate because they not only sentence a mother, but their children too.

The incarcerated should be trained from day one of imprisonment in preparation for tackling universal credit, housing and how to stop re-entering this revolving door.

There are many more strands synapsing along neural paths and exploding within grey matter. After the shock wave has finished rippling within my subconscious I will revisit ground zero and present salvaged gems.

Chaos and Conflict: The dog and the frying pan

Fred is a student at Milton Keynes College, HMP Ranby

I am 5 years old.

I am in the kitchen, looking at the family dog, her name is Jenny, and she is a Jack Russell.

She has had pups and they are still born.

She is a dog but a mother too; I can feel her anguish and her pain and suffering. Instructed by my mother and handed the black plastic refuse sack, I am to put the still born into the bag.

This is my first exposure to death; I fight the tears we share.

It seems so unceremonious, a great gulf opening before her beautiful eyes. Enter my stepfather, something is wrong and he is angry, he is shouting at my mother. Jenny cowers in the corner.

In a split second he has reached for the hot frying pan sits on the stove. It is in his hand, he launches it at the wall above me and my mother.

Hot oil and food debris scattered across the air pelting myself and my mother; the pan falls to the floor with a loud crash.

(Note on death)

I have only ever had to deal with death on one other occasion in my life, that was the death of my grandmother on my mother's side. This was a few years later. At the funeral I didn't cry, I couldn't understand

why people around me were crying, I didn't know what it signified.

I am 41 now.

I am not sure what will happen when I am exposed again.

In my bed my mother brings the homemade crisps and shortbread penguins cast from ice lolly moulds.



Scatter when they come

Kelly Roberts is an artist and guest performer at Safe Ground's A Matter of Life and Death event, September 2018

Stop! Don't Run
Succumb to the power
Of state
Patrolling the slum walls
Seeking out those
Destined for a slippery slope
Mischievous trip fall
Into the tight grip
Of incarceration.
Dragged along bars to harden
Then Infected with the incriminating poison.

Decaying bouquets and candle wax cease into
Kingsland concrete.
Chocolate loiterers congregate outside corner
shops like vultures
Finding refuge on the sides of pavements
Intimidating pedestrians with words unspoken.

I used to know a girl
Displaced in the tower block maze
Brown with curls
She wore gold in her teeth
Skin thick and seasoned like meat
Smoking cigarettes in stairs wells
Littering the estate with the butts
Of her broken dreams

In the hood she would chill
With the mandem posted up on the block
In the manor
The Siren would sound
A Warning shot!
Blues lights flicker in sight
Scatter when they come
Run, Fled!
I C fed!

I see 1 male
Taken to reprimand a brother
Then another, then another
I see them ambush

A father, a son, a human being
But he was vex and must of resisted arrest
Slammed into the floor
Face plastered to the ground
His teeth crushed against tiles dirt cold
Don't move or make a sound
He wouldn't want to be
Sent down town in a body bag
Don't breathe, it might be his last breath
Respect the authority
Or he could be tackled with brunt violence
Finding a knee press up against his chest

Pressure tugging tight at the neck
It's porta —call
This is how they serve to protect
And keep us in check
With no accountability

Mothers of the minority
Bleed tsunami tears
From the bearing of their womb
Lying lifeless above scarlet pools
Washing away the trauma
From a world desensitised
To sight of Black Death

The Brown girl's eyes raged red
She cried!
Another black body dead
He died after
Being racially profiled
And Justice was never London met
Death his penalty
Another black body
Made victim of police brutality
Excessive and unnecessary
Force is used 139 times a day in London
Stopped and search 4 times more
Likely to be a suspect
Of carrying a sharp object
Genetics target capsized by life
Then locked up in the pen
Because society never accounted for them.

The brown girl would never committed a crime
But still feared doing the time
As stigma lives on the surface her skin
Even when innocent she could be taken in
Sat at the back of a cop car
Coz nothing aint changed star!
The prejudice is still alive
And it thrives in the prison system
Penalising a generating
Suffocating at the wrists by
Silver bracelets that only shine
Behind their backs.
The brown girl is left with silent screams
Spending the day with her 5 year old niece
Siren sounds
It's the police
Her niece sinks into her arms
And repeats 'I'm scared of the police'
She then knew the fear ran deep.

Does a 5 year old white child have the same fear of
the police growing up on London streets?

A crisis of hope? Long term prisoners' experiences in Category A environments

Will Styles is Governor of HMP Whitemoor

Introduction

In England and Wales, there are over 900 Category A male prisoners. These men can expect to spend decades in maximum security conditions, often not knowing when, or even if, they will be released. Arguably, these men may be living hopeless and miserable lives. Yet those visiting a high security prison are likely to find a busy and often apparently cheerful daily routine of work, education, gymnasium and social activities; where men choose their meals and think about what canteen goods they will buy each week. Many of them will talk positively about their lives, families and hopes for the future. That is what I found when I took up post as Governor at HMP Whitemoor in 2016. It surprised me and struck me as an important first impression. At the time I was also studying for a Criminology Masters at Cambridge and focussed my dissertation on what 'hope' means to, and for, Category A prisoners in dispersal prisons. The key aims of this study were to identify:

- ❑ *How Category A prisoners define hope, and what impact they believe it has for them and for dispersal prisons;*
- ❑ *If hope exists for Category A prisoners, how it is generated; and;*
- ❑ *Factors, circumstances, experiences and conditions that extinguish hope.*

In 2017 I conducted one to one and groups interviews with twenty five Category A prisoners at HMP Whitemoor, HMP Full Sutton and HMP Long Lartin. In this paper I offer an overview of my findings.

In England and Wales, the number of prisoners serving long sentences is increasing. As Crewe, Hulley and Wright suggest,

changes in legislation have increased the 'starting points' for consideration of the minimum period of custody for a range of homicide offences. As a result, the average tariff imposed upon people sentenced to life (excluding whole life sentences) increased from 12.5 to 21.1 years between 2003 and 2013. In sum, an increasing number of men and women are serving sentences which, until fairly recently, were not only extremely uncommon, but were also considered more or less unsurvivable.¹

Moreover, Category A prisoners are a unique group, likely to be imprisoned significant distances from home and family, subject to extreme security and supervision, serving very long sentences, experience a high degree of uncertainty regarding their futures and a very low level of control over their prison life. They are perhaps the prisoner group that experience the greatest and most enduring difficulties associated with imprisonment. How then in such circumstances could these men have and hold on to hope?

Hope

Dufrane and Leclair suggest, 'hope can be defined as an inner confidence that an expected and desired outcome will occur'.² But for Adam, serving a 30-year sentence at HMP Whitemoor, the highly emotional experience of hope can also be described in much more vivid terms. For Adam, hope is:

the day after the night...it's the dawn, it's not seeing a wall in front of you, it is seeing a road that you can walk down and having a target and reaching the end. I don't know how to explain, it's just that glimmer of light, that beacon.

Asking men who are serving very long prison sentences to talk about hope presented them with a

1. Crewe, B, Hulley, S & Wright, S. (2017). Swimming with the Tide: Adapting to Long-Term Imprisonment. *Justice Quarterly*, 34:3, 517-541, 518.
2. Dufrane, K. & Leclair, S. (1984). Using Hope in the Counselling Process. *Counselling and Values*. October 1984. Volume 29 (1), 32-41, 33.

significant and at times painful challenge. David was given a 28-year tariff and said:

I don't really believe in hope. I have got 28 years. My tariff will expire when I am 46 so there is no hope, no matter how you look at it. Everyone has washed their hands of you and you're in this environment, compressed and concentrated with the most dangerous criminals in the UK for the next forever years.

Thus, faith and dedication to feelings of hope are usually conditional on one's circumstances and special and temporal environment. This is corroborated by Corrigan who raises an important question:

At times, hope seems to have limitless potential for promoting well-being and quality of life, which begs the question, might there be limits to the phenomenon of hope?³

A small number of the participants talked about their view that hope has very clear limitations in their case. They suggested that time was easier to serve when they felt they had no hope and nothing to lose. Abdi, for example, is 12 years into a 35-year tariff, and has clearly struggled with making progress:

I think having hope is the whole problem in prison. I was sold a dream, that I will be downgraded, progressed, go to a therapeutic community, sort out my problems or whatever I needed towards finishing off my sentence. I never felt bad like this until I started to behave myself and engage in courses and look to a future that really, is impossible for me to get. Before I started to do all these courses I felt happy because I knew where I stood, I was happy being wherever I was, I knew I wasn't going nowhere. And then I thought, let me try something new, be good, do these courses and I saw one or two people progress and that could be me — it gave me false hope. Yes, I bought the dream, that I still can't get... and now I give up on it. When I didn't care about what was happening, that was the best

time, I was getting in trouble because I didn't care, I was in prison, I was going to die in prison, I had nothing to lose. Now, I've got things to lose, I've got things to worry about. I have got a responsibility to my family. I feel worse now than I did when I first started this sentence... Yes, it's a hundred times worse now for sure.

Many of the participants were able to feel and express personal hope, but a minority claimed to be able to do neither. This then raises an interesting question; why are levels of hope so variable and where does hope come from? The participants suggested hope was generated not as a result of help from others for example prison staff or other prisoners, but from inside themselves. Kevin commented:

it's good when you see staff helping someone, that boosts it up a bit more but as for where does hope come from, that would be me, that is the type of person I am. If it's going to happen it's going to happen inside. Yes, self-determination.

Many of the participants were able to feel and express personal hope, but a minority claimed to be able to do neither.

The experience of a long prison sentence

Generally speaking, participants that had served longer appeared more settled and accepting of their sentence. They appeared better able to recognise hope in their life. All those interviewed described difficulties in the early stages of their sentence and a challenging period of adjustment spanning years. For example, Arthur said:

when I first got that 36 years, I was absolutely numb. I was here 3 weeks after being sentenced and a switch went, I'm never going home, that is it, you are dying in prison. I switched off and I wanted to die. I had no hope whatsoever, and at that point I would rather they had given me the death penalty.

Ben described fighting against the system for four or five years before he could stop blaming others, accept responsibility for his actions and come to terms with his sentence. Other men

3. Corrigan, P. (2014). Can there be false hope in recovery? *The British Journal of Psychiatry*. 205, 423–424, 423.

described a painful monotony and pointlessness in their life. Josh explained:

I'm in prison, I know I'm going to die in prison, so I just go through the motions, eat food, go to work, come back, call my family. Existing just existing. We are like zombies in reality.

The experience of being Category A

Almost all those interviewed shared a story of frustration and distress regarding various issues, including the visitor checking process. Leroy explained:

It has been years and years since I seen my mum. As a Cat A if someone from Jamaica comes over they can't get to see me. That is part of our Cat A depression, that is very harsh, no-one can come and see you. If you don't hope, you don't care, simple.

A strong sense of hope was attached to having a belief in making progress through the prison system. In those participants for whom that belief was weak, there appeared to be a corresponding weak sense of hope. Crewe asserts that progression through the system is a vital part of the experience for prisoners serving long sentences.⁴ There was a clear feeling that the Category A system is unfair, secretive and irrational. Thus, John linked hope and legitimacy:

you asked us if we feel the system is legitimate, well there isn't any legitimacy. Right now, the whole length of sentence that people are being given is not legitimate and being on A Cat for 15 or 20 years is not legitimate. No legitimacy equals no hope to me.

Part of the lack of legitimacy talked about frequently by the men related to a belief that any mistake they made was blown out of proportion and held against them forever. Abdi talked about the

potential for one mistake in a year to negate anything good he had done and remove any chance of being downgraded that he might have had:

you can have one bad day and as a result of that it affects your whole year, no matter how much work you have done.

Family

Hairston's work on family ties during imprisonment suggests that external ties are important at all stages, even for those serving long prison sentences.⁵ Indeed, Gibbs's work on the disruption and distress of going from the street to jail, suggests a heightening of the importance of family during imprisonment: *'the importance of family can reach metaphysical proportions in the eyes of the confined.'*⁶ This is supported by the fact that the most consistent theme in my interviews was the importance of family. For instance, Kevin, who has served 12 years and has a 28-year tariff, linked his sense of hope with being a parent:

having someone that you see grow and someone who is the most important person in my life, that is my daughter. That definitely gives me a sense of hope and some sort of purpose.

For many of the men, the connection to family was clearly the most significant factor in developing and maintaining hope and coping with very long sentences. Dav, a foreign national prisoner is 2 years into a 25-year tariff and similarly to Kevin, said:

You have to find something to survive. This is my young son, my wife and my daughter. I have somebody waiting for me. Maybe I am not a good father, and now I will never get the chance to be one. But I have hope to be a good grandfather one day, and this gives me power to survive and to think about the future.

A strong sense of hope was attached to having a belief in making progress through the prison system.

4. Crewe, B. (2011). Soft Power in Prison: Implications for staff-prisoner relationships, liberty and legitimacy. *European Journal of Criminology*, 8(6), 455-468, 459.
5. Hairston, C. (1991). Family Ties During Imprisonment: Important to Whom and For What? *Journal of Sociology & Social Welfare*, Vol 18. 87-103, 94.
6. Gibbs, J. (1982). Disruption and Distress: Going from the Street to Jail. In Parisi, N. (ed), *Coping with Imprisonment*. (pp. 29-44). USA: Sage Publications, 37.

But for many of the participants there was also a clear association between hope and pain when discussing their families. Being apart from them, and knowing that situation would probably have to be endured for decades was clearly painful. There was a clear sense of loss amongst men, when describing time, people and an outside world that continues without them: Leroy said with clear sadness:

oh man, my oldest kid is 18, I came to prison when he was 3, I don't even know my kids, I came to prison when the second child was in the belly, so I don't even know my kids. I really wish I did though.

For some men the upset and anxiety they felt leading up to, during and following a visit was such that it deterred them from receiving future visits. For Simon, the emotions attached to visits were hard to cope with:

to be truthful I don't even want visits right now. Seeing them when they come and leave, it brings up a whole heap of emotions. If I hear my family are doing alright, then I am alright. They are my hope, and that is what matters to me. But visits right now, no, it's just too much.

Authority, bureaucracy, frustration and legitimacy

Zelditch argues, 'something is legitimate if it is in accord with the norms, values, beliefs, practices and procedures of a group.'⁷ Jack commented on an issue raised by several participants; that of staff not having answers, or there being no consistency in the answers that were provided:

one thing that is very annoying is that you can go to three different officers and ask the same question and you will get three different answers. You can never have confidence in what staff tell you, you have to ask a lot of them and go with the average answer.

Honestly it makes you angry and tired at the same time.

The men understood the need for rules and their enforcement, but expressed frustration about rules that didn't seem legitimate, that even staff could not explain. These relatively minor issues were small pains, that endured day after day could become hugely corrosive and draining. Danny summarised it:

it's not the major things, because we understand the need for them, it's the petty minor things; that is what destroys your soul and eventually kills your hope in here.

Prisoners are of course not alone in their prison community; their lives and living environment are shared by the staff working with them. Observations regarding staff were generally neutral, though most participants acknowledged that many staff do a difficult job. Few of those interviewed were able to talk about experiences where staff members have had a notably positive influence in their life. Jake suggested with a note of sarcasm:

well I haven't really met a member of staff that's changed my life in a massive way yet, but I've only been in three years so its early days yet.

Pete however was able to recall a recent incident where members of staff showed him care and kindness in his break up with his wife after seven years in prison:

I had some good help, when I was on the phone one day when I split up with the Mrs and I got off and I was sobbing, I didn't show it, I walked back to my cell and there was a female officer, Rachel. She knew, and she came in there and sat on the bed with me, and was talking to me. Yes, staff were helpful, there were quite a lot of them, they used to chat with me. I live here now, I suppose, it's my extended family.

Observations regarding staff were generally neutral, though most participants acknowledged that many staff do a difficult job.

7. Zelditch, M. (2001). Theories of Legitimacy. In J. T. Jost & B. Major (Eds.), The social psychology of legitimacy: Emerging perspectives on ideology, justice, and intergroup relations. New York, NY: Cambridge University Press, 33.

Interestingly in almost every example offered of a member of staff being helpful, kind or generous, they were female.

The power of trust

Trust was presented as a powerful element in maintaining hope and resilience and in this regard, workshop and education staff were seen in a positive light, particularly those that had managed to build a culture of trust and respect in their classes. Being treated as an equal and someone that could be trusted seemed to have a profound impact on participants. Arthur's 36-year tariff has left him resigned to dying in prison, but he has found a role that gives him a sense of purpose:

I will be honest with you, most days it's a struggle to even get up, let alone have hope. The good thing is the jobs that I have here mean people depend on me. Linda in the cookery class depends on me to help her. So, I suppose it's being needed, trusted and relied on that gets me up every day.

For some, faith and communal worship activities were only relevant when times were particularly difficult.

Having a sense of control and faith

Many participants were clear that they could make limited choices in prison, but there was very little meaningful control over their daily life. Those areas where they could exert some control therefore became extremely important to them. One area that was mentioned positively by many of the men was the gymnasium. It meant much more to them than just exercise, fitness and building muscle mass. Many of the men talked about the gymnasium as a place of mental escape, personal control and a temporary sense of freedom. David described the gym as a way of managing his emotions and energy:

It's a place of hope for me, its independence, and a good stress reliever. It is better than any drug. I can go down the gym, I can set my own targets and achieve them without some psychologist who I haven't even met, approving it.

Marranci suggests that the acceptance of their imprisonment as God's will and the transferral of

control over their lives from the prison system to an abstract idea, such as God, can help prisoners to accept their existential realities and provide hope for future change or a promise of change.⁸ In all three prisons studied, religion was a very significant element in the culture of the establishment. For a small minority of the men, their faith was a strong part of who they are and how they spend their time in custody. For James, his faith and religious observance were central to his life:

what keeps me going now then, the source of my hope? Faith, my religion that is exactly it.

However, those expressing strong religious views were a small minority. Most participants had little interest in faith. For some, faith and communal worship activities were only relevant when times were particularly difficult. Many of the participants saw religious activity and corporate worship as 'safe space', somewhere to mix with friends and feel safe: *'for some of the blokes, the true believers, they get hope from going to services. But mostly it is about safety and something to do for most of them'* (Ken).

The impact of the environment

Generally, little was said by participants about their environment, facilities and services. But where basic needs weren't being met, there was a clear sense of frustration that this wasn't taken seriously by the prison authorities:

you see sometimes people from the establishment look and think it's only a washing machine, or a cooker, but these things are very serious here. As I was walking here someone said to me, don't forget to speak to the Governor about the washing machines (Adam).

And while paint schemes and décor were infrequently mentioned, it was an issue to some participants:

I'm doing 22 years, so I can tell you, I've seen a lot of magnolia. It's depressing after a while you know (Ben).

8 Marranci, G. (2009). Faith Ideology and Fear: Muslim Identities Within and Beyond Prisons. Continuum International Publishing Group, 69.

Unsurprisingly, prisoner movement from one part of a high security prison to another, generally involves moving through secure corridors. Most of the men felt there were very few opportunities for them to have quality time in the fresh air. Many of the participants suggested this was an important issue for them and the corridors of the prisons were criticised vehemently.

Safety and friendship

A view shared by many of those interviewed was that, as an individual they had limited control over their safety. The general feeling was that one could partially mitigate the risks, but that other prisoners could be unpredictable. Perhaps unsurprisingly, the longer they had served in prison, and at their current prison, the less negative were their perceptions about their personal safety. This appeared to be a benefit of simply knowing people and having the time to manage relationships. Mike, who has served 12 years of a 27-year tariff and has lived on his current wing for a number of years, explained:

I've probably made it safe for myself now. I just adapted and made things better for myself. I know who's who now, but it takes time. When you move jails, it can be like starting again.

During group interviews, discussion regarding friendships was warm, with descriptions of 'mates', 'homies' and 'brothers'. In one to one interviews however, views were much less charitable. Participants were generally 'lukewarm' at the mention of friendship in prison. Friendships, where they existed, consisted of a very small group of individuals and were limited in their nature. Friends were not described as a source of hope and more often were something to be wary of. In many cases what participants described were friendships of convenience, established strategically to mitigate threats and risks from others, or just for companionship. Jake, is 3 years into a 31-year tariff, and explained that he is still 'learning the ropes' about life on the wings:

if you get close to people and they get into stuff, you are going to have to take their side..., that always ends badly. It's no good having hopes if you get close to people and

they take you down and all your hopes along with you.

Keeping busy

Having a routine and keeping busy was frequently highlighted as an effective means of making time pass quickly and reducing the risk of being drawn into activities that might be detrimental to self-progression. Arthur's perception is that his sentence is so long that he will die before he has any prospect of release. Security for him centred on predictability and not having to worry that he will be moved, or his routine interfered with:

hope for me is because I've got my little routine here to have the peace of mind that I can wake up tomorrow knowing I'm still going to be doing that.

The men who had been able to carve out a sense of routine and keep themselves busy seemed to have an ability to partially 'switch off' to the difficulties of imprisonment, by operating in what might be described as 'auto-pilot'. But for some participants the daily routine, and prospect of living that regime for the next 10 or 20 years was seemingly unbearable:

when I wake up in the morning, I'll tell you what is going through my head. Another boring day. Another day of exactly the same as what you have just gone through yesterday and the day before that and the day before that. Fuck, sometimes hope for me is just to do something different. It is mind numbing. Boredom is a massive fear, a really big thing. That is where depression starts I think. (Martin).

Education was a popular activity, being described as something interesting to do but also a route to bettering oneself. Adam had been enthused by participation in a 'Learning Together' activity with a local university, which involved studying together with students from the community:

well I personally love education. When I did Learning Together, I loved that, I think this is

great for prisoners. When I feel hope in my life in here, it really makes me want to get involved in that sort of stuff much more.

Ben however explained how funding issues prevented him from realising his academic potential:

listen, I wanted to do a sports science degree. You have got to have 7 years or less left before you can do an OU, otherwise you can't get the funding. So instead of doing an OU degree I am a wing cleaner. You tell me, where is the hope in that?

Conclusions

The importance of family to Category A prisoners cannot be overstated. It was repeatedly offered as the greatest source and focus of hope, and the factor that made the biggest difference for men in managing to cope with prison sentences of a duration which have been described as almost unsurvivable. It is interesting that when the men talked of what they hope for, in most cases they first talked about being reunited with their families, rather than being free. But family relationships can also be a source of loss, pain, guilt and anguish. Separation from family was without doubt, for most of the men interviewed the greatest difficulty of their imprisonment. Those difficulties were often increased by a requirement for security checks to be carried out on visitors; a process which they had little control over and could be protracted.

Being a Category A prisoner brings additional difficulties and frustrations. There was a clear perception that the Category A process is an unfair, inconsistent, secretive and unjust system and that once a prisoner became Category A they were likely to remain so for many years. In fact these perceptions were not without merit. The Category A Team at HMPPS Headquarters report that in 2016, the status of 805 Category A prisoners was reviewed and only 58 were downgraded to Category B. From January to September 2017, just 38 men were downgraded from 573 reviews.

Irrespective of the merits and necessity of the Category A system, it is not perceived as legitimate, fair, consistent or transparent, by Category A prisoners. Inevitably then, such perceptions create anxiety and diminish hope.

Concerns regarding feelings of safety were raised, but few of the participants talked of fear as a predominant feature of their experience. Perhaps this reflects the apparent skill the men have developed in managing their routines and associations strategically, to

mitigate personal risk and maximise their sense of security and safety.

To this end, routines and activity matter. Staying busy provided a means for men to partially tune out their unpleasant predicament. The gymnasium and education centres in particular provided meaningful opportunities for a temporary form of mental escape. Engaging in physical activity gave the men a sense of control in their life and the ability to independently set and achieve personal targets. It also provided hope that they could maintain their health and survive their long terms of imprisonment. And academic education was a revelation for many of the men, who had found confidence, hope and self-esteem in their achievements, which in some cases extended to degree level qualifications. It was disappointing that in many cases, their further learning ambitions were stifled by funding hurdles.

The significant efforts made by prison staff should also be acknowledged. It is unfortunate though that however good the intentions of staff, they were not apparently resulting in a commensurate positive impact on the lives of prisoners. The workings of the prison system was a factor that in most cases served to erode hope. As such, participants expressed low levels of perceived legitimacy in the rules of the institutions. Perceived indifference, inconsistency, pettiness, lack of knowledge, unreasonable expectations and a lack of 'common sense' from staff, created anxiety, uncertainty and a loss of hope.

In summary

Notwithstanding several frustrations, hope does exist in dispersal prisons. Those that expressed feelings of hope suggested that it helped them maintain resilience and be motivated to engage in the regime and progress through the system. A significant range of factors exist that can clearly influence levels of hope amongst Category A prisoners and can, at least partially, be enabled and changed, (such as access to family and education). But whilst it has been established that hope can help motivate men to try and progress, this needs to be supported by a personal belief that progress and change can be made, and that they will be recognised respected and rewarded by those in authority. To conclude then, particularly as our prisons are currently experiencing significant challenges, it is important to remember that:

'Devoid of hope, imprisonment is a pointless pain'⁹ and thus, perhaps one of the most crucial crises prisons ought to avoid at all costs is a crisis of hope.

9. O'Donnell, I. (2016). The aims of imprisonment. In: Jewkes, Y. Bennett, J. & Crewe, B. eds. (2016). Handbook on Prisons (2nd ed). Routledge, 46.

Intersectionality and the prison crisis:

What is it as a concept and why does it matter today in understanding current problems in prison?

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Introduction

This paper addresses the fundamental questions of the special issue through the lens of prisoner diversity, personhood and identity: ‘What does the current response to diversity, personhood and identity reveal about whether prisons are in crisis?’; ‘What insights can be gained by positioning prisoners, prison and partnership agency staff as experts — people whose lived experience of the response to diversity, personhood and identity can inform creative interventions and improvements?’; ‘How can inclusive, generative and solution focussed approaches to knowledge creation, change and development help us gain a deeper insight into prison life and create the ideas, appetite and energy to address the crisis?’

The observations offered in relation to these questions are informed by a research project whereby Appreciative Inquiry (AI) methodology creatively disrupted the conventional expectations of prisoners, prison staff and researchers.^{1,2} Consistent with the underlying principles of AI, prisoners, researchers and prison and partnership agency staff drew on their experience to co-create the research methodology and co-design some methods of data collection. This inclusive approach promoted a deeper engagement with and insight into the challenges and possibilities for managing and responding to difference, promoting equality and the implications of diversity, personhood and identity for creating cohesive penal communities.

The research findings revealed an important relationship between the singularising way diversity, personhood and identity are currently conceptualised and responded to and prisoners experience of the humanity of custody and its implications for rehabilitation and desistance. This paper offers the concept of Intersectionality as an alternative to the singularising view. It considers how the development of an intersectional approach could inform practices which can respond to the whole person and thereby mitigate against a crisis of personhood and identity in prisons³

The effect of prison on personhood and identity in prisons.

Ethnographic studies have characterised the prison as a micro society—reflecting many of the social structures of wider society and constituted by an increasingly diverse prisoner population.⁴ They are however, very different from free society in terms of the social roles, power structures, freedom and agency they offer for maintaining personhood and fully expressing identity.⁵ Personhood is concerned with the fundamental position of being a human being with value, intelligence, a past, present and a future⁶ and is closely associated with concepts like self⁷ and identity.⁸ A wide field of research studies have explored inherent and interpersonal personhood, the implications of incapacity and embodiment for personhood and the impact of definitions and practices of exclusion which render someone a ‘non-person’.⁹ Consideration of

1. Lavis, V.J., Cowburn, M. and Elliott, C. (2017) ‘Appreciative Inquiry for Research: Exploring the response to diversity and equality in English prisons’, in J. Brooks and N. King (eds), *Applied Qualitative Research in Psychology*, London: Palgrave.
2. Funded through the Economic and Social Research Council with acknowledgements to Dr Emily Turner, Rebecca Baylis, Dr Matt Merefield and Prof. Charles Elliott.
3. Walby, S. (2007), ‘Complexity Theory, Systems Theory and Multiple Intersecting Social Inequalities’. *Philosophy of the Social Science*, 37/4: 449-470.
4. Phillips, C. (2012) ‘The Multicultural Prison: Ethnicity, Masculinity and Social Relations among Prisoners’. Oxford, Oxford University Press
5. Crewe, B. (2009), *The Prisoner Society: Power, Adaption, and Social Life in an English Prison*. Oxford University Press: Oxford.
6. Lawrence, RM (2007), ‘Dementia. A personal legacy beyond words’, *Mental Health, Religion & Culture*, 19/6: 553-562.
7. Sabat, S. R. (2001) *The Experience of Alzheimer's Disease: Life Through a Tangled Veil*. Oxford and Malden, MA: Blackwell
8. Kitwood, T. (1997) *Dementia reconsidered: the person comes first*. Buckingham: Open University Press.
9. Baldwin, C., & Capstick, A. (2007) *Tom Kitwood on dementia: a reader and critical commentary*. Buckingham. Open University Press.

personhood in prisons is important because on entry to prison many of the characteristics of personhood; sex, race, ethnicity, class, age, gender, sexual orientation, disability, relationship status and faith, are reformulated as predominantly singular functional categories through which the person is classified and recorded. The social roles and understandings formulated and maintained in the external social world become secondary to the role and behaviours expected of a prisoner and the opportunities to be one's self in the way possible in the free world is curtailed and constrained.¹⁰ Moreover, the social world of the prison re-shapes imported identities¹¹ and infuses them with alternate shared social meanings.¹² This dilution of personhood, self and identity is in tension with research which is simultaneously demonstrating the importance of maintaining and enacting identity in prison. For example, in negotiating and surviving prison,¹³ enabling and supporting rehabilitation¹⁴ and for desistance during custody and on release.¹⁵ The tension is reflected in the consistency of requests to be treated like a human being found in HMIP and MQPL reports. It is also evident in findings that the enactment of identity in prison life is dynamic, involving compromise, conflict and negotiation.¹⁶

Consideration of personhood in prisons is important because on entry to prison many of the characteristics of personhood, sex, race, ethnicity, class, age, gender, sexual orientation, disability, relationship status and faith, are reformulated as...singular...categories through which a person is classified or recorded.

has augmented the challenge for prisons and their staff to understand and respond respectfully and decently to the diversity of personhood and identity imported into prisons. The challenge has been amplified by the wider legal requirement imposed by the Equality Act¹⁸ which identified and prioritised nine characteristics of personhood and imposed a Public Sector Equality Duty.

This duty mandates organisations to manage and respond to difference, encourage good relations between different people, eliminate discrimination and ensure equality of opportunity. The National Offender Management Service (NOMS) response to the Act combined the previously separate prison service orders and instructions for protected characteristics like race, disability and faith to create a Single Equalities Policy (PSO32/2011). The recording of all protected characteristics at reception/induction aimed to ensure protected characteristics were identified on entry. The reporting and investigation mechanisms for racial discrimination (RIRF) were widened to cover all protected characteristics (DIRF) and the establishment of prisoner diversity representatives to raise prisoner awareness of and access to support became widespread.

Increasing prisoner diversity and the framework for response

The last decade has seen a trend towards increasing diversity within the prison population.¹⁷ This

progress in recognising the importance of responding to personhood. Prison and partnership agency staff became more sensitised to characteristics of personhood that were protected in policy and in law;

10. Phillips, C. (2012) *The Multicultural Prison: Ethnicity, Masculinity and Social Relations among Prisoners*. Oxford, Oxford University Press
11. Gergen, K. (2010) *The Self as Social Construction*. *Psychological Studies*, 56/1:108–116.
- Giddens, A. (1991), *Modernity and self-identity: Self and Society in the late modern age*. Stanford, CA: Stanford University Press
12. Stets, J.E. and Burke, P.J. (2000), 'Identity Theory and Social Identity Theory'. *Social Psychology Quarterly*, 63/3: 224-237.
13. Ross, J.I. and Richards, S.C. (2002) *Behind Bars: Surviving Prison*. Indianapolis, USA: Alpha Books.
- Crawley, E. and Sparks, R. (2005) 'Older Men in Prison: Surviving, Coping and Identity', in A. Liebling, and S. Maruna (eds.) *The Effects of Imprisonment*, Abingdon: Willan Publishing, pp. 343 – 365.
14. Ward, T. and Brown, M. (2004), 'The Good Lives Model and Conceptual Issues in Offender Rehabilitation'. *Psychology, Crime and Law*, 10/3: 243-257. Ward, T. and Marshall, B. (2007), 'Narrative Identity and Offender Rehabilitation'. *International Journal of Offender Therapy and Comparative Criminology*, 51/3: 279-297.
15. Paternoster, R. and Bushway, S. (2009), 'Desistance and the "feared self": Toward an Identity Theory of Criminal Desistance'. *The Journal of Criminal Law and Criminology*, 99/4: 1103- 1156. King, S. (2012) 'Transformative agency and desistance from crime'. *Criminology and Criminal Justice*, 13/3: 317-335.
16. Bosworth, M. and Carrabine, E. (2001), 'Reassessing Resistance: Race, Gender and Sexuality in Prison'. *Punishment and Society*, 3/4: 501-515.
17. Ministry of Justice (2018) *Offender management statistics*. London: Ministry of Justice.
18. Equality Act 2010 (Specific Duties) Regulations 2011. Available at: <https://www.gov.uk/guidance/equality-act-2010-guidance#public-sector-equality-duty>. Accessed: 19.11.2018.

adjustments to the prison regime and rules to respond to needs of prisoners with protected characteristics became normalised; and prisoners perceiving unfair treatment arising from a protected characteristic were able to request a detailed investigation.

The singularising approach and the creation of a hierarchy of protected characteristics

These developments, whilst a step forward, had the unintended consequences of creating a singularising approach to diversity and identity in prison policy and practice. A singularising approach isolates a single characteristic of personhood enabling it to become a focal point for intervention or adjustment without considering the impact on the wider identity. For example, focussing on faith without considering the relationship between culture and faith. An unfortunate outcome of responses that singularise is that people can experience being forced to choose between or prioritise one aspect of their personhood in order to resist oppression or discrimination or to gain access to fair treatment. This is partly because prisons, like many organisations are set up to address mainstream needs. Their regimes and responses work to accommodate the status quo. Thus, non-mainstream needs which might lead to disadvantage are met primarily through adjustments to the norm. A good example is the provision for Islamic prisoners to take time out of participation in the daily regime to pray.

The research revealed that diversity related adjustments disrupt the equilibrium of prisoner relationships and power dynamics because the norm is delivered to all prisoners, whilst the adjustments are delivered only to those whose need is known and accepted as valid. This distinction creates tensions and perceptions of unfairness which are typified by the often-expressed view that non-mainstream prisoners ‘...get what we get and then more’. Prisoners who are looking to gain an advantage in an environment of scarce resources begin to look for ways to align themselves with groups perceived as getting more or able to get more. The resulting shift in power dynamics generates a perceived hierarchy between protected characteristic groups. Prison and partnership agency staff, acknowledging their often-limited cultural awareness, experience and competence, report confusion about what adjustments are fair and

reasonable to make which can lead to a reticence to acknowledge and respond to diversity. Staff anxiety about the consequences of getting the response to influential protected characteristics wrong, unwittingly reinforces the power dynamic.

These changes in how diversity and protected characteristics of personhood play out in daily practice are exacerbated and amplified by the restructuring of the wider prison landscape in the last six years. Now well documented these include: changes to the terms and conditions of work for operational staff, attrition of experienced operational staff, the application of the benchmark and associated reductions in funding and staffing, high staff sickness and attrition and reduction in the breadth and depth of entry level training for prison officers. Together with the rise in the availability and use of novel psychoactive substances these conditions are creating an unprecedented challenge to the delivery of core custodial services. Add to this context the re-designation of equalities work as ‘flexible’ (able to be dropped in response to operational pressures) and being able to respond effectively to prisoner diversity, personhood and identity seems ephemeral.

The prisons participating in the research have made strides towards developing mechanisms to enable recognition of and provide support for delivery.

How does this contribute to the characterisation of prisons in crisis?

The impact of the singularising approach to personhood and its consequences for feeling treated like a person and fully expressing identity are certainly a tension bubbling under the surface of the current context. In a world of stretched resources, it is perhaps not surprising to find the focus of staff in prisons under pressure has gravitated towards what they can deliver in terms of core custodial services. Staff report that there is little time or energy to consider how that gets delivered or what that means in terms of prisoner personhood and identity expression. The prisons participating in the research have made strides towards developing mechanisms to enable recognition of and provide support for diversity. However, many of these support mechanisms still focus resource and attention on single aspects of personhood. The characterisation of crisis arises from the effects of this longstanding singularising response to personhood and identity at this very particular point in time when prisons are experiencing a wide variety of financial, political and staffing pressures. The singularising approach appears to be undermining good relationships between diverse prisoner groups

and impairing relationships between staff and prisoners both of which are important for maintaining safety and good order. Ultimately, it continues to inhibit achievement of rehabilitative goals which rely on personhood and identity as a resource. Taking an intersectional approach may be one route to off-setting the tensions and potential crisis of personhood and identity.

Intersectionality: — recognising and responding to the whole person

The AI research methodology generated rich stories reflecting the experience of diverse minority prisoners and prison and partnership agency staff. These stories reveal a shared desire for a response that recognises and responds to the ‘whole person’ rather than single characteristics of personhood. Theories of intersectionality offer insight into why a whole person response is needed and how an intersectional approach in prisons can support the development of policy and practices that are more reflective of the whole person, affirm rather than constrain identity and agency and thereby assist the prison in its wider remit to support offenders to lead non-offending lives during custody and release. In short, offering the potential to mitigate the personhood/identity crisis.

Intersectionality is a theory explaining how the socially constructed categories of personhood (race, ethnicity, gender, faith etc.) overlap and intersect within each individual creating their personhood and the implications this has for their experience of oppression, discrimination and disadvantage. Intersectionality can also be used as an analytic framework for uncovering, critiquing and challenging oppression and discrimination.¹⁹ The term was coined by Crenshaw²⁰ (1991) to illustrate how discrimination can arise from the intersection of two socially constructed characteristics of personhood;

Intersectionality
can also be used as
an analytic
framework for
uncovering,
critiquing and
challenging
oppression and
discrimination.

being black and being female. Crenshaw illustrated the impact of intersectionality through the legal case of a black woman claiming discrimination after being denied employment. The company denying her employment argued they were not discriminatory because they employed both black people and women. However, the black people they employed worked in the factory and were all male and the white people were all women working in administration. The site of the discrimination lay in the intersection between being black and being a woman, which disqualified her from both roles. Despite this, the court dismissed the claim for discrimination on the grounds that only one personal characteristic could be cited as grounds for the discrimination — either being black or being a woman. There were no grounds to claim discrimination arising

from the intersection between two personal characteristics. The singularising approach to personhood in English prisons means that prisoners seeking an investigation of perceived discrimination through the use of the DIRF are placed in the same situation — they must specify one singular protected characteristic that is the root or site of the discrimination.

Since Crenshaw’s early conceptualisation of intersectionality the theory has been extended and developed to consider the implications of multiple intersecting personal characteristics, the implications of social structures, ways of talking and associated practices that position and oppress people. It has also been applied to identifying the ways in which these are negotiated and resisted in fields as diverse as politics, education and healthcare. Whilst there has been some application of intersectionality as a way of understanding how people experience prison life this work has been in countries outside the UK²¹ and only with female prisoner populations.²² Henne and Troshynski²³ and Potter²⁴ have both called for criminologists to take an intersectional approach to

19. Walby, S., Armstrong, J. and Strid, S. (2012), ‘Intersectionality: Multiple Inequalities in Social Theory’. *Sociology*, 46: 1-17.

20. Crenshaw, K. (1991), ‘Mapping the Margins: Intersectionality, Identity, Politics, and Violence Against Women of Color’. *Stanford Law Review*, 43/6: 1241-1299.

21. Gray, P. (2006) ‘Women’s experiences of Incarceration in Hong Kong: Doing time, Doing choice, Doing class-gender-culture’. *International Journal of the Sociology of Law*. 34: 89-104.

22. Cherukuri, S., Britton, D.M. and Subramaniam, M. (2009) ‘Between Life and Death: Women in an Indian State Prison’. *Feminist Criminology*. 4/3: 252-274.

23. Henne, K. and Troshynski, E. (2013), ‘Mapping the Margins of Intersectionality: Criminological Possibilities in a Transnational World’. *Theoretical Criminology*, 0/0: 1-19.

24. Potter, H. (2013), ‘Intersectional Criminology: Interrogating Identity and Power in Criminological Research and Theory’. *Critical Criminology*, 21: 305-318.

exploring the identity of offenders, prisoners and victims to take into account the impact of power dynamics within the criminal justice system and the social construction of identity.

Relevant to the present discussions about the relationship between diversity, personhood and prisons in crisis, theories of intersectionality also offer insight into identity. An intersectional reading of personhood sees identity as multiplicative²⁵ — that is — constituted by many intersecting and interwoven aspects of personhood; for example, race, ethnicity, sexuality, gender and class.²⁶ In simple terms, who we are, our ways of being and behaving in the world derive from interwoven and indivisible aspects of personhood and it does not make sense to respond to them singularly. This marks an important departure from the singularising approach currently informing the response to diversity and personhood in prisons.

Research led insight

The research suggests that an intersectional reading of identity could have far reaching value for prisons assisting them with; maintaining good order and discipline, fostering good relations between different people, promoting prisoners resilience to survive prison, developing effective staff and prisoner relationship through respectful basic daily interactions and through the keyworker system promoting the maintenance of aspects of personhood which can form the basis for developing a non-offending identity. The key component of these outcomes lies in being seen as a *whole person* as opposed to a collection of characteristics some of which are more valued in law and prison policy than others.

The appreciative inquiry approach developed for the research marked a departure from more traditional problem-based methodologies. Using questions which prompted prisoners and staff to reflect on past successes in responding to diversity of personhood and identity the approach revealed not only challenges but opportunities, resources and possibilities for improvement. The approach enabled staff to explore what underlies the difficulties they face and explore the

The appreciative inquiry approach developed for the research marked a departure from more traditional problem-based methodologies.

possibilities for responding differently. This approach takes the focus away from judging and blaming staff and situates it on exploring how the desired outcomes can be achieved. In this way the research process creates both an appetite for and an energy to generate change in sites of combined challenge/opportunity.²⁷

Two sites of challenge/opportunity have relevance for mitigating the crisis of personhood and identity under discussion. Firstly, the challenge/opportunity of recording, analysing and reporting the intersectionality of the national and individual prisoner populations and thereby promoting awareness and engagement with the intersectionality of personhood and identity. Secondly, the challenge/opportunity of increasing the confidence and competence of prison and partnership agency staff to recognise and respond effectively to the whole person. Achieving this outcome will involve overcoming anxieties about accusations of bias and inequality which impair responsiveness and increased clarity about what constitutes an effective and appropriate adjustment to support characteristics of personhood which are protected in law and policy.

Challenge/Opportunity: establishing and utilising data about the prevalence of intersectionality in prison populations

Consistent with the singularising conceptualisation of diversity and personhood already discussed, prison population figures are produced for only four of the nine protected characteristics of personhood; sex, age, ethnicity and religion.²⁸ Whilst quarterly statistics are produced to show the make-up of the national population in terms of gender, offence and sentence type, ethnicity and faith, statistics which reveal protected characteristic groups are only produced annually in arrears. This presents several challenges; i) it makes the monitoring of protected characteristics and the localised needs they create difficult for the service as a whole and for individual prisons and ii) the way the data is presented makes it difficult to establish the extent of intersectionality and more importantly which

25. Chigwada-Bailey, R. (2003) *Black Women's Experience of Criminal Justice: Race, Gender and Class, a Discourse on Disadvantage*. Waterside: Winchester, England.

26. Staunæs, D. (2003): Where have all the subjects gone? Bringing together the concepts of intersectionality and subjectification. *NORA—Nordic Journal of Feminist and Gender Research*, 11/2: 101-110.

27. Elliott, C. (1999), *Locating the Energy for Change: An Introduction to Appreciative Inquiry*. Winnipeg, Manitoba: International Institute for Sustainable Development.

28. Other protected characteristics like sexuality and disability are not reported because this information is difficult for prisons to access unless disclosed voluntarily.

characteristics of personhood are intersecting in any given population. Table 1 shows the prisoner population in June 2018²⁹ and the figures published for the four protected characteristics in the male estate.³⁰

Prison Population	82,773	
Gender (Male)	78,790	95 per cent
Protected groups		
Age (Under 25 or 50+)	33,137	40 per cent
Ethnicity (excl. White)*	22,001	27 per cent
Religion**	57,369	69 per cent
In any of the four Protected Groups *		136 per cent

* White ethnicity is not a protected characteristic

** of which 48 per cent are Christian.

Table 1. Protected Characteristics in the national prisoner population

Despite only being able to consider the impact of four protected characteristics a rough appreciation of the extent of intersectionality in the population can be seen. The figures indicate a 36 per cent overlap in protected characteristics, even without considering the impact of the other five unrecorded protected characteristics. Gaining a more sophisticated view of the extent of intersectionality in the national prisoner population would greatly assist prison governors to exercise the local autonomy envisaged in PSI32/2011 to respond to the needs of their localised populations. However, achieving this would require the collection, analysis and reporting of data on a single case by case basis.

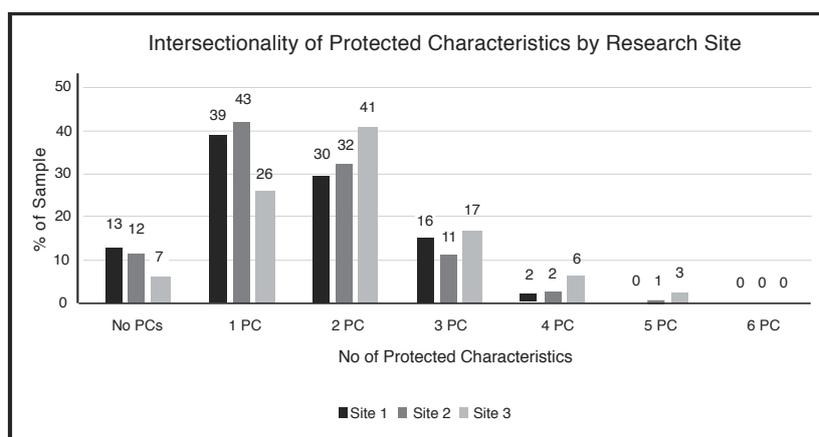
A more detailed assessment of intersectionality can be achieved by using the data from the research study. Whilst not a census, prisoners self-selecting to participate in the survey component of the research

provided information about 7 of the 9 protected characteristics.³¹ Analysis of the overlap between protected characteristics, shown in figure 1, shows the extent of intersectionality between 6 of the 7 protected characteristics recorded in each research site.

Figure 1. Intersectionality of protected characteristics across the three research sites

Even a cursory examination of intersectionality like this one provokes interesting questions and new ways of thinking. For example, it provokes questions about which are the most common or frequently occurring intersections of protected characteristics and how these relate to the informal awareness of staff about their population. When asked informally which intersections they thought would occur most commonly, the tendency in responses from prison and partnership agency staff was to highlight faith and ethnicity. However, the most commonly occurring combination of protected characteristics across all three sites were age and disability (although this varied across the individual prison sites).

An intersectional analysis brings other interesting questions into view, for example-what does an intersectional analysis reveal about the norm and about who the statistical minority and majority groups are? The basic analysis here indicates that there is likely to be a very small population (a statistical minority in every prison) of white, middle aged, heterosexual, non-religious, able bodied prisoners who do not identify with any protected characteristic and who do not receive any adjustment to the prison regime or practices. This small minority are an important feature in considering the experience of staff when responding to diversity and how this relates to the anxieties they report about accusations of bias and inequality.



*based on 682 surveys from a population of 2,867 (23.8 per cent return rate)

The challenge/opportunity of establishing intersectional practices of responding to the whole person.

The focus of AI on asking questions which provoke a reflection on past successes as a means of uncovering improvements and solutions enabled staff to appreciatively share their knowledge and experiences of responding to diversity of personhood and identity. The approach uncovered commonly

29. Ministry of Justice (2018) Annual Prison Population Statistics June.

30. The male estate is used as an example because the national figures are compared with the research figures and the research was only conducted in the male estate.

31. Biological sex and Pregnancy and maternity were not included as the research took place only in the male estate.

held vulnerabilities and anxieties, practical challenges and ideas and opportunities for improvement.

The stories of staff revealed widely shared concerns about the extent of their cultural awareness and its impact on their cultural competence which contributed to anxieties about accusations of positive bias (the appearance of favouritism through adjustments for diversity) as well as fears about accusations of discrimination (failure to provide adjustments for diversity). Stories also illustrated how discrimination, poor responsiveness and neglectfulness can arise from kind of diversity blindness contributing to misattribution and misrecognition. For example, it was not uncommon to hear stories about Hindu or Sikh prisoners being unlocked on Friday lunchtimes to attend Jumma prayers because staff had conflated being of Asian ethnicity with being of Muslim faith. Neither was it unusual to encounter stories which illustrated that difference was overlooked because staff misunderstood equality as the need to treat everyone the same, as this quote from a prison officer illustrates:—'I try not to see that he is Black or Asian, it shouldn't make a difference, I should treat them all the same.' Such understandings often co-existed with a strong desire to be fair to all prisoners and reflected the tension created by the singularising approach to diversity of personhood. Less commonly, stories revealed a more intersectional approach that attempts to see and respond to the whole person, as this quote also from a prison officer demonstrates:—'You can't treat them all the same—they are different—you have to look at what each person needs'.

The perception that treating everyone the same would promote fairness also underlay confusion and concern amongst staff about what adjustments were fair to make and how the effectiveness of adjustments should be defined and measured. The singularising approach was again dominant here. For example, when diversity and personhood are looked at through a singular lens it is not surprising to find that prisoners attending chapel are all unlocked at the same time — giving prisoners whose mobility is affected by an impairment or by age the same amount of time to get off the wing and across the yard to chapel as those who are fit and able bodied. In contrast, when looked at through an intersectional lens, unlock for chapel might be staggered, enabling less mobile prisoners to have a more equitable chance of getting to chapel on time. The difference here is that the singular approach focuses attention on adjustment in terms of the input of the prison. In contrast, the intersectional approach focuses attention on the outcome of the adjustment for the whole person taking account of the intersection of mobility, age and faith needs. In summary, the

experiences of prison staff reveal a strong desire to adopt an intersectional approach—to respond to the needs of the person standing in front of them, rather than a singularising approach—attempting to identify whether the person's needs arise from a characteristic that warrants protection in policy and law. Assisting them to achieve this will require further consideration of how staff and managers can overcome fears about accusations of bias in equity enabling them to focus on equality of outcome, rather than measurement of input.

Concluding thoughts

The article has explored and critiqued the notion of a crisis of personhood and identity in prisons, exploring the implications for prisoners, prison and partnership agency staff and the wider aims and purposes of prison to rehabilitate. Critiquing the longstanding singularising approach to conceptualising and responding to personhood, it has offered intersectionality as one possible means of generating an approach to custody and rehabilitation which responds to the whole person. The insights offered have been drawn from a uniquely inclusive research project which re-envisioned the roles prisoners and prison staff usually play in research. Inspired by and adopting the principles of appreciative inquiry the research methodology repositioned these stakeholders' experience as expert insight. Adopting the AI principles of drawing forward past strengths to generate future solutions, the research has enabled staff to move beyond participation in research which subsequently points the finger and finds them lacking. Rather they are invited into a dialogue where solutions and suggestions arising from their experience have immediate day to day value.

Moving forwards, the AI methodology has wider applicability to generate alternate perspectives, insights and engagement with other issues impacting prisons in this uniquely challenging time. As for intersectionality, whilst not a panacea or a magic wand, a concerted exploration of the benefits of adopting an intersectional approach is recommended on the grounds that it offers the potential to develop policies and practices which are more reflective of the person and which affirm rather than constrain identity and agency. This whole person approach would enable prisoners to maintain and express more fully aspects of their personhood which can form the building blocks of a non-offending self. Thus, recognising and valuing the intersectional nature of personhood would appear to be a vital component of the creation of a healthy, humane, safe and decent prison.

Crises of selfhood and expressions of punishment

A conversation with psychotherapist Susie Orbach

*Susie Orbach is a distinguished psychotherapist who has published widely. She is interviewed by **Dr Anastasia Chamberlen**, Assistant Professor at the Department of Sociology, University of Warwick and **Charlotte Weinberg**, Director of Safe Ground*

As part of this special issue on the prison's various and often re-emerging crises, we sought to incorporate the perspective of an outside observer; someone who can speak about the role of punishment beyond prison walls and who has thought about punishment rather differently to how practitioners, researchers and campaigners approach it in their day-to-day work in the prison context.

More specifically, as part of our conversations on punitivity and public attitudes to punishment we thought it was important to unpack current problems and so called 'crises' in prisons through individual, psychic experiences that drive punitivity today. To do so, we approached one of the UK's leading psychotherapists, Susie Orbach. Though not usually a commentator on punishment, Orbach is a prolific psychoanalyst, writer and social critic who has written on women's experiences and the politics of eating and the body, the dynamics of relationships and dependency in intimate relations, including those of mother and child, and more recently has written on the experiences and challenges of being a therapist. She has also commented on various social and political issues and has not shied away from making often controversial but thought-provoking interventions on various contemporary debates. Susie Orbach kindly accepted our interview invitation and, on a May afternoon, hosted us at her house in London.

A psychotherapeutic perspective on punishment can arguably tell us about punishment not only as institutional practice, but also as something experienced and expressed (and often repressed) within all of us. After all, as sociologist Emile Durkheim established long ago, it might be that the primary subjects of punishment aren't offenders (alone), but rather the rest of the 'law-abiding' community. In this interview, we wanted to unpack why punishment keeps finding itself within different crises, why despite these

crises we keep relying on it, and what our attitudes towards punishment might be able to say about us as a society and individuals.

In prisons research and in the sociology of punishment we often speak about the 'emotions' of punishment and prison's symbolic role in society. We do so to explain punishment as a social phenomenon linked to our values, insecurities and broader relations with one another. In the following extracts, we consider the psychic dimension of such emotions and drives in order to understand what it is that makes punishment not only so popular, but also desirable even when found within conditions of crisis. Together with Orbach, we think about the origins and causes of our reliance on punishment, discuss long-standing problems inside our justice process—including its targeting of the most disadvantaged, and consider ways around and beyond our punitive attitudes. We have summarised our discussion within the following themes: punishment's expression of racism, class divides and authoritarian practices; punishment's expression of contemporary fragility and vulnerability; the fantasy and anxiety driving punishment and the satisfaction of sadism; and its expression of an emotional illiteracy when it comes to establishing social and personal boundaries. We also consider punishment's position within the psychic structure and the transformative role of conversation and dialogue in contemporary life.

On the functions of punishment: Racism, class divides, and expressions of authority

We started our conversation with Susie Orbach by discussing punishment and prisons' role in society. Orbach explained that for her the motivation for rises in mass incarceration in the Anglo-American world was evidently greater than simply the pragmatic need to respond to crime. Similarly, she clarified this wasn't simply an instrumental pursuit in search for economic

This interview was conducted in May 2018. The editors of this special issue would like to thank Susie Orbach for agreeing to take part in this conversation.

profit. As she explained, 'I don't think the motive is money; I think the motive is racism. But I think money is a nice by-product.' She referred to Michelle Alexander's *The New Jim Crow* and that of Kathy Boudin's work which looks at how prisons create employment and profit. Orbach raised the issue of racism and structural inequality as a fundamental component of punishment's application—not only with regards to offenders, but also with regards to penal institutions and logics often targeting people seeking asylum or refuge from conflict and political violence. Orbach's perspective on the role of punishment in society also included the idea of nationalism and the notion of 'our country' as being a place and an idea in need of protection, an entity to defend and keep safe from so called 'others' from whom we may perceive to be under threat.

This thinking is useful as a critique of current perspectives on prison and penal reform as it perhaps reminds us that we ought to study prisons within a wider and broader network of socio-political processes. Indeed, when discussing whether punishment today is expanding and widening as a practice, Orbach directed us to the work of Anthony Loewenstein on *Disaster Capitalism*. In this work, she explained that 'Loewenstein describes how the UK participates in the promulgation of outsourcing as a key element of economic growth through 'disasters' such as homelessness (particularly for refugee and asylum-seeking people), criminal justice and 'defence' needs. Loewenstein points out the emergence of profit from migration, climate and environmental disasters (like hurricanes, volcanoes and wars) whilst promoting a simultaneous expansion of militarisation.'

The reference to a clear 'we' from the start of this conversation was telling. Orbach suggested that today we invest in creating a range of punishing environments (e.g. through war and military interventions) and then generate profits (often for large corporations) derived from so-called 'clean ups', or punitive and security-based responses that we offer as responses to the various 'disasters' we encounter and produce. She argued that engaging in such processes maintains a vicious circle in which punitive and captive institutions like the prison or detention centres appear always necessary and unavoidable and are rarely questioned. Her sociological reflections on punishment extended also onto the role of class and gender. Orbach

recalled the work of Beatrix Campbell in *Goliath* and the importance of gender and class in considering how authority and status are ascribed in our contemporary contexts, highlighting how all of these intersect in driving punitivity and mass incarceration.

**The psychic structure of our vulnerable selves:
The basis of our reliance on punishment?**

As we wished to unpack further the drivers motivating our specific reliance on punishment as a technology and practice, we asked Orbach to give us a technical explanation of how the urge to punish might emerge. She explained it as an act of expulsion and distancing from individually experienced pain, performed primarily through the infliction of pain on others:

SO: *You're trying to expel what's been done to you, and as you're doing so, you are living through it, at a distance, so you're enacting something similar onto someone else. You're trying to get on top of the hurt that you experienced; that would be a psycho-analytic understanding of punishment.*

The analytic approach then, she went on to explain, enables us to see the use of punishment and, to some extent, authority, as a way of 'distancing oneself from one's own punishment' by enacting it and seeing it instead on someone else. But, as Orbach

...the exercise of punishment is often not an act of superiority by a confident authority, but in psycho-analytic terms at least, it is often an act of fragility or vulnerability.

clarified, this is not just a process of mere distancing; it is also a mechanism for 'surviving' and coping with the exercise of punishment. In the simplest terms, she explained, 'one's use of punishment is a defence against their own hurt, hence the adage about violence, 'hurt people, hurt people'.' This suggested that the exercise of punishment is often not an act of superiority by a confident authority, but in psycho-analytic terms at least, it is often an act of fragility or vulnerability. It also clarified a basic but often overlooked feature of punishment: that somewhat inevitably punishment is an act of pain infliction and thus of violence too.

CW: *So is the notion of punishment an inherent, innate human need? Why do you think politically, analytically, personally, we punish ourselves and each other so much?*

SO: *Because we find things really difficult. Here's how I understand it psychologically: something happens to you that's incomprehensible, you are dependent on whoever, whatever the environment is.*

Let's call it your Mum, for the sake of argument, since that's still what most people are first exposed to. You're continually exposed to incomprehensible behaviours but you cannot afford to hate that person because you need them so desperately, you can't cross the street, you can't feed yourself, you can't do anything. You are utterly dependent emotionally and physically. That inability to countenance rejection of the person on whom you're so dependent can lead you to make yourself the author of your misfortune. In this way, you become an agent of your own distress. Eventually and normally you learn how to split yourself and how to be self-critical and simultaneously how to give powers to others, and so you've developed a mechanism inside of you for distilling that distress.

CW: *If we're split between love and hate, why is the punitive split bit of me (and therefore of us) so much stronger and more pervasive?*

SO: *Because it's indigestible. I think hurt, pain and confusion are indigestible, unless you have a mechanism for understanding it. Which could be a collective response. For instance, you could say, fascism, could give someone an answer to such turmoil, or so could communism. Or, proper conversations could also give you an answer. I think it must be the indigestibility of pain that sticks around and turns into punishment. And that's why I think therapy is very powerful. Because if somebody gets that their anger is a displacement from vulnerability, they don't have to be angry all the time, they can risk feeling vulnerable. It might take them a long time to get there, but they can risk that feeling and therefore the feeling is metabolised and goes through them. They don't need to seek to enact it, or export it on to everybody else.*

The link between violence and punishment appeared to be about shared experiences of 'unmetabolised' vulnerability and pain. At this point, the conversation took us to HMP Grendon and the fact that it is one of few therapeutic prisons in the UK. Orbach recalled recently watching the documentary film 'The Work' based at Folsom state prison in California where members of the public and prisoners engaged in a difficult but cathartic process of group therapy. She was hugely moved and impressed by the prisoners' ability to care for each other and the public who come in the draconian and hostile environment of the prison; she admitted 'It's a shame we can't put that film in this Journal'.

But we probed Orbach a bit more about the links between self-vulnerability and the enactment of punishment upon others. Using the narratives of prisoners such as those in 'The Work', we wanted to better understand why our vulnerability, expressed through punishment, tends to target those most marginalised and vulnerable in society.

CW: *We brutalise people and then we punish them for having been brutalised. We're being brutal in response to a brutal situation.*

SO: *I think that's true.*

CW: *It sounds very simplistic.*

SO: *Yes but it isn't simplistic, it's really complex.*

CW: *And that is endemic throughout our institutions. Because it's in our organisms.*

SO: *Unfortunately. But, it's not the only thing in our organisms.*

AC: *But then we know some people are less punitive than others.*

SO: *Of course, but we're currently in a culture in which brutality, or punitiveness, sits alongside being lovely and empathic. We've got two dominant narratives if you like.*

The satisfaction of sadism in punishment

Our discussion on the links between brutality and punishment took us onto a conversation around punishment's alleged purposes. We also reflected on what the emotions on which punishment relied were, and questioned whether punitivity itself might be an emotional practice.

AC: *So is there something satisfying about punishing then?*

SO: *I think so, I mean sadism can be satisfying. It's also inside of you, so you can tell, you can catch yourself doing it. I think we're more insecure, we're more fearful today so punishment can be a kind of a solution. We're a very angry society now, because the whole social structure has changed so rapidly from the post war settlement, which was a progressive settlement. I mean it wasn't that progressive because that's why it needed to be revised in the 60s and cast off to be re-thought again. But it was the beginning of a mentality of 'no you don't just get to rule', 'we fought the war, we rule now.' And it's just heart-breaking, because now we don't have a notion of society anymore, or, we don't have a notion of affiliation.*

The link between violence and punishment appeared to be about shared experiences of 'unmetabolised' vulnerability and pain.

CW: *Is this anger linked to the idea that 'nobody's looking after me, I'm looking after myself', and the level of resentment that this brings?*

SO: *Yes. It incentivises the notion of 'I'm going to toughen up now. And I'm going to have my own little rules. This is the sheet it'll all go on. I'll tick anything on it, and don't you dare come anywhere near me and my plan'.*

AC: *So, is punitiveness then an emotion, an expression?*

SO: *It serves an emotional role, it's driven by emotion. But, no, it's a behaviour.*

AC: *The rise or return to this right-wing authoritarian kind of politics that we see around us today, in migration and education, for instance, happening here, the US, across Europe. Do you think there're links between that phenomenon and this turn to punitive measures: punishing more people, for longer, letting punishment spill out in our schools, hospitals, immigration policies, into our language or logics.*

SO: *Of course. If recognition is not what you get when you're in a family, in the school, if you don't have a society that recognises you just for you being human, then what options have you got? There're very few people getting sufficient recognition today, so then you've got to react. I think punishment is a consequence of the lack of recognition we experience in contemporary society. I know it's a bit of a funny leap to make, but I do think it's all linked. Though punitiveness is not a feeling in itself, in the absence of recognition you feel like 'I'm not having this', your authority is being threatened, you feel there're no boundaries, you think I need to get back control, something like 'get this room cleaned up now, or I'm out of control', or whatever it is that's triggering you. But when doing so, you don't think of what you're doing as being punitive, you think of it as 'this is what I need to do for me now'.*

Gendered fragility in punishment

CW: *We see different people as worthy of punishment in different degrees. For instance, we've seen support for the gendered idea that, a bad girl is worse than a bad boy. Is there a gendered element to punishment?*

SO: *Of course there's a gendered element, we can conceive of behaviours that are appropriate for each gender to be entirely different. We expect boys to race cars and fight, we don't expect girls to go and beat up granny, or each other. In this context, aggression has to be somehow channelled if you're a girl.*

AC: *In a similar vein then, is punishment and the promise of authority attached to it about expressing some forms of 'toxic masculinity'?*

SO: *I think a better way to think about it, but that's just because I've been thinking about this and I moved from toxic masculinity about 15 years ago, I think it's best described as the result of a fragile masculinity.*

The discussion on fragility was helpful on multiple levels. It helped us see the 'urge' to punish as psychosocially wider and driven by our sense of self; as fulfilling a set of unsatisfied fears and vulnerabilities in a world that is often unforgiving to signs of weakness and does not often open up safe spaces for dialogue, contact and self-expression. It also helped us make sense of the current state of crisis in prisons. We discussed how we have prisons largely built upon and representing a range of traditionally masculinist-ascribed ideas like order, authority and control. Our capacity for care and conversation in such contexts is

often hindered by various practical and structural constraints but also by the need to perform certain representations of 'toughness' in the context of criminal justice. After all, why is it that only a few of our prisons are founded upon therapeutic principles? Similarly, what are currently prevailing logics inside prisons? See, for instance, the focus in prison staff training, where clearly there is an overemphasis on control and restraint.

However, this 'masculinist' focus has its limitations; such structures are increasingly challenged and resisted by prisoners (often using similarly masculinist tactics), and this raises questions about the very purpose of such damaging spaces, both for officers and prisoners. This discussion also took us to the issue of boundaries, a big theme in psychotherapeutic contexts. Orbach clarified that punishment is all about the lack of appropriate and helpful boundaries; hence why, according to her, today punishment is deemed more and more necessary:

SO: *It could be said that we've got a misunderstanding of what constitutes a boundary.*

We see different people as worthy of punishment in different degrees. For instance, we've seen support for the gendered idea that a 'bad' girl is worse than a 'bad' boy.

Because we all need boundaries, you can't think or relate without a boundary. So the question is: shouldn't we have a discussion about what a boundary might look like within a frame that goes beyond punishment or cruelty.

In other words, as boundaries are increasingly blurred and fluid, we are more insecure and uncertain within our relationships and interactions. Such lack of clarity can make one feel at once both vulnerable and unnecessarily hostile. Lack of boundaries, then, can take us back to a primitive reliance on violent forms of protection. It is worth noting, however, that the notion of having boundaries in psychoanalytic terms is rather different to that of isolationism, borders and walls.

Addressing punitivity

AC: *If we were going to try and resolve all of this hostility, is there an answer? Is there a therapeutic approach to all this?*

SO: *I suppose it would be parenting in a broader, social sense of the term, in terms of state or civic care. We used to give kids orange juice and milk, and that was part of what you got, and you'd have the health visitor coming around every day when you had a baby, because you had problems that would be ordinary, every woman would have them. They'd be there to listen to them and then calm you down. It was just sort of part of what you had. And, yes, there was some looking after. So you'd have the experience of existing outside yourself, being within a collective. We don't have any of that now and I'm not saying that's all we need, but there's no undergirding, no early intervention. And, also, it's about what you teach children and adults. For instance, what are we teaching*

children about vulnerability? We don't have proper emotional education and we're so divided as a society. I mean we're in silos politically, we're in silos age-wise, etc. I think it's quite possible not to relate outside your own group these days.

AC: *Is punitiveness then driven by us not being emotionally educated or emotionally intelligent?*

SO: *Yeah, I think there is no emotional literacy around, we don't teach it. We do not teach about feelings, and we don't tolerate them. Normally families have a couple of feelings that are tropes for that family, right? You might be the angry family, or you might be the smiley family, or you might be the funny family, but that's not it. Famously my son, when he was about 5/6, once said to me 'why do we have to be a feeling family?'*

It seems then that therapeutically speaking, there is a way around punitiveness and punishment. For us, that was an optimistic and hopeful way to end this conversation. After all, a therapeutic approach can help teach and develop a healthier exposure to emotional literacy and honesty. This, in turn, can help channel our vulnerabilities and fragility within safer, more accepting spaces that don't rely on the quickly satisfying but not sustainable solutions afforded by institutional and personal relations reliant on punishment, control and distrust. Of course, for such approach to emerge, we need a collective will to move away and beyond our reliance on punishment; we need to see it as not always necessary and certainly not always helpful, neither for offenders nor for us, as communities and individuals. We also need to feel less pain and isolation. Socially, then, the antidote to punishment may be to work towards a more genuine, collective sense of solidarity.

Feeding the prison crisis through hostile criminalisation

The case of joint enterprise

Dr Henrique Carvalho is Associate Professor at the School of Law, University of Warwick

The past few years have seen prisons in England and Wales consistently put under the spotlight by the media, politicians, independent campaigners and by the wider public. The image that comes out of this scrutiny is that of a system undergoing a serious and persistent crisis. Since 2015, various news and reports ‘unveiled disturbing conditions of violence, harm, corruption and disorder, besides unprecedentedly high numbers of deaths in custody, increases in self-injury, high rates of drug misuse and, in some cases, large-scale riots’ occurring in English prisons.¹ In the last year alone, the Chief Inspector of Prisons issued two urgent notifications concerning significant and systematic failures at HMP Nottingham² and HMP Birmingham,³ the latter a privately-run prison under the management of G4S, which was then taken under emergency control of the Ministry of Justice (MoJ). In addition, the number of assaults, including serious assaults, on both prisoners and staff, as well as the number of self-harming individuals in prison reached record high levels in the year ending in March 2018, and the number of deaths in custody in the year ending in June 2018 remained high, falling 2 per cent in relation to the previous year, which was the highest number recorded to date.⁴ The significant increase in prisoner violence led the Prison

Officers’ Association to organise a mass walkout in September 2018, which was then called off on the same day after concessions from the prisons minister.⁵

In many ways, this crisis is one of numbers. It is inherently linked to a process of mass incarceration: overcrowding in estates that are not fit for purpose, a situation that has been exacerbated by decreases in staff numbers, which is only one of the significant consequences of austerity cuts and measures which have been imposed since the economic crisis. Considering that prisons in England and Wales have been, now for a decade, experiencing conditions of overcrowding, understaffing and underfunding, it should not be surprising that such institutions would be rife with problems. That being said, this paper aims to broaden the debate around the so-called prison crisis, by critically examining its context from the perspective of criminalisation—of who is criminalised, how and why.

The first section of the article starts by characterising the prison crisis primarily as a crisis of hostility, as the reflection and one of the main manifestations of a problematic urge to punish in contemporary society. The hostility inherent in punishment drives its violent and exclusionary aspect, which is reflected in the character of the prison population, in which several markers of marginalisation, deprivation and social exclusion are over-represented. After discussing the links between

1. Chamberlen, A. and Carvalho, H. (2019) ‘The Thrill of the Chase: Punishment, Hostility and the Prison Crisis’. *Social and Legal Studies* 28(1), 100-117, 101.
2. HM Inspector of Prisons (2018), Urgent Notification: HM Prison Nottingham. London: Ministry of Justice. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/01/17jan-sofs-nottingham-letter-and-debrief-pack-for-publication-1.pdf> (Accessed: 9 January 2019).
3. HM Inspector of Prisons (2018) Urgent Notification: HM Prison Birmingham. London: Ministry of Justice. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/08/16-Aug-UN-letter-HMP-Birmingham-Final.pdf> (Accessed: 9 January 2019).
4. Ministry of Justice (2018) Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to June 2018 Assaults and Self-harm to March 2018. London: Prime Minister’s Office. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729496/safety-in-custody-bulletin-2018-Q1.pdf (Accessed: 9 January 2019).
5. The Guardian (2018) Prison officers end mass walkout over inmate violence. Available at: <https://www.theguardian.com/society/2018/sep/14/thousands-of-prison-officers-to-protest-over-unprecedented-violence> (Accessed: 9 January 2019).

the prison crisis and the hostility in punishment, the paper turns to an analysis of processes of criminalisation, that is, of the role of criminal justice in enabling the hostility which fuels the prison crisis. By drawing parallels between criminalisation and punishment, the paper explores how the current challenges experienced by prisons in England and Wales are one part of a broader framework, in which specific populations which espouse certain characteristics of 'undesirability' and exclusion are consistently marked as dangerous in order to be criminalised and punished.

The second section of the article then analyses this process of hostile criminalisation through the specific case study of joint enterprise (JE). Itself a controversial and contentious subject, which has received considerable attention by the media, politicians, courts and scholarship in the past few years, JE broadly refers to legal rules that allow multiple individuals to be prosecuted and punished for a crime substantially committed by another person, on the basis that they were associated with or participating in a previous joint criminal activity with that person. JE's broad application, its ostensive character and its persistence in lieu of significant criticism arguably make it a prime example of the hostile dimension of both criminalisation and punishment.

Dangerousness and hostility: The links between criminalisation and punishment

Although it is undeniable that the penal system in England and Wales is currently undergoing a particularly challenging period, it is also important to avoid falling into the trap of thinking that this crisis represents an exceptional situation that contrasts with the 'normal' functioning of the prison, and that such normality can be rescued through targeted

interventions, or even through more broad-ranging reforms. Rather, what is being referred to as the prison crisis is only the most recent manifestation of persistent issues, that have characterised the English and Welsh prison estates for decades.⁶ Indeed, perhaps the best way to understand the prison crisis is to see it not as a deviation from the normal running of the prison, but rather as the manifestation of some of the most fundamental aspects of punishment as a social phenomenon. From this perspective, the prison crisis is intrinsically linked to the problematic socio-political function of punishment.⁷

In a collaborative project, Anastasia Chamberlen and I have examined how the idea and feeling that punishment is useful to society, and necessary from a normative standpoint, largely derive from the fact that punishment produces a sense of social solidarity through hostility.⁸ In a nutshell, 'punishment promotes the image of an ordered society bound together by moral values and legal rules and protected by a strong and legitimate coercive apparatus'.⁹ This image is very emotionally appealing, especially in moments and situations of social

fragmentation and conflict, and to those people who long for strong bonds of solidarity but feel alienated or neglected by the social order. Consequently, the image of civil order¹⁰ promoted by punishment is more appealing the less it is concretely experienced by those who aspire to it. The most concerning aspect of this symbolic function of punishment, however, is that the sense of solidarity it fosters is achieved through hostility; that is, punishment brings people together only insofar as they are pitted against others, against whom they must unite.¹¹

Punishment thus feeds on hostility. Its symbolic role relies on the existence of dangerous others towards whom feelings of insecurity, anxiety and aggression arising from the lack of concrete

...the paper explores how the current challenges experienced by prisons in England and Wales are one part of a broader framework ...[of over-criminalisation].

6. See Hart, E. L.; Schlembach, R. (2015) 'The Wrexham Titan prison and the case against prison expansion'. *Critical and Radical Social Work* 3(2), 289-294.
7. See Chamberlen and Carvalho, 'The Thrill of the Chase' above.
8. See Carvalho, H. and Chamberlen, A. (2016) 'Punishment, justice and emotions'. In: Tony M (ed.) *Oxford Handbooks Online in Criminology*. Oxford: Oxford University Press, 1-31; Carvalho, H. and Chamberlen, A. (2018) 'Why Punishment Pleases: Punitive Feelings in a World of Hostile Solidarity'. *Punishment and Society* 20(2), 217-234; Chamberlen, A. and Carvalho, H. (forthcoming) 'Punitiveness and the Emotions of Punishment: Between Solidarity and Hostility'. In M. H. Jacobsen and S. Walklate (eds.) *Towards a Criminology of Emotions* (London: Routledge).
9. Chamberlen and Carvalho, 'The Thrill of the Chase' above, 7.
10. Farmer, L. (2016) *Making the Modern Criminal Law: Criminalization and Civil Order*. Oxford: Oxford University Press; Carvalho, H. (2017) *The Preventive Turn in Criminal Law*. Oxford: Oxford University Press.
11. See Carvalho and Chamberlen, 'Why Punishment Pleases' above.

social solidarity can be channelled. This relationship explains the fundamental link between punishment and political exclusion: the civil order sustained by punishment requires groups and individuals who fall outside of it. Within any specific social setting, the most likely candidates to be made targets of such hostility are those groups and individuals who are already marginalised by socio-political conditions, something which is highlighted by the long-established notion that punishment, and especially incarceration, 'represents a means to manage aggregate 'undesirable' groups'.¹² This is clearly illustrated by the constitution of the prison population in England and Wales, where essentially all factors representing some form of social marginalisation and deprivation—such as homelessness, poverty, drug and alcohol dependency, persistent mental health issues, learning disabilities, and belonging to a largely marginalised ethnic minority—are over-represented in relation to the general population.¹³

For punishment to be able to effectively channel hostility towards these marginalised populations, it relies on the many rituals of criminalisation¹⁴ performed by the law and in the many stages of the criminal justice system. Essentially, criminal laws and criminal justice agents and institutions define and reproduce images that symbolically tie factors and characteristics of deprivation together with notions of violence and criminality, effectively turning what might otherwise be considered aspects of vulnerability into markers of dangerousness. Through this process of 'dangerization'¹⁵ of undesirable groups and individuals, criminalisation enacts one of its primary functions: that of reassuring law-abiding citizens (i.e. those who are not criminalised) of the security and

legitimacy of society's civil order, by channelling its insecurity towards the perceived threat of those identified as dangerous others.

The violent and exclusionary aspect of punishment thus begins with, and largely depends on, broader and earlier processes of criminalisation occurring in society. This relation is particularly acute in some areas of criminalisation, which can be seen to be directly geared towards the identification and construction of dangerous identities; such instances of criminalisation can be specifically conceptualised as hostile. The rest of this article focuses on examining one such example of hostile criminalisation, that of joint enterprise. Through this analysis, I aim to illustrate how the shape and effects of the law and policy around JE not only express the hostility of punishment discussed above, but also how this hostility directly relates to and feeds the most prominent and problematic aspects of the prison crisis.

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The hostile criminalisation of joint enterprise

As mentioned above, JE is one of the most widely criticised areas of criminal justice in England and Wales. Seen as a product of judicial policy, it is a broad and imprecise term, and can have different possible meanings. More generally, it

refers to different rules and strategies aimed at 'holding co-defendants equally responsible for offences which appeared to evince a common purpose';¹⁶ this can cover a diversity of situations. For instance, two or more individuals may be committing the same crime together, as joint principals; alternatively, someone can be acting as an accessory, assisting or encouraging another person(s) to commit the principal, substantive offence. But the most controversial situation covered by joint enterprise is what has been known as the doctrine of JE 'proper',

12. Davis, A. P. and Gibson-Light, M. (2018) 'Difference and Punishment: Ethno-political Exclusion, Colonial Institutional Legacies, and Incarceration'. *Punishment and Society* (Online First), 1-22, 17; see also Fassin, D. (2018) *The Will to Punish*. New York: Oxford University Press; Wacquant, L. (2009) *Punishing the Poor*. Durham, NC: Duke University Press; Feeley, M. and Simon, J. (1992) 'The new penology: Notes on the emerging strategy of corrections and its implications'. *Criminology* 30(4), 449-474.
13. Prison Reform Trust (2018) Bromley Briefings Prison Factfile: Autumn 2018. Available at: [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley per cent20Briefings/Autumn per cent202018 per cent20Factfile.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20per%20Briefings/Autumn%20per%20Factfile.pdf) (Accessed: 9 January 2019).
14. See Carvalho and Chamberlen, 'Why Punishment Pleases' above.
15. Lianos, M. and Douglas, M. (2000) 'Dangerization and the End of Deviance: The Institutional Environment'. *British Journal of Criminology* 40, 261-278.
16. Squires, P. (2016a) 'Voodoo Liability: Joint Enterprise Prosecution as an Aspect of Intensified Criminalisation'. *Oñati Socio-Legal Series* 6(4), 937-956, 937.
17. For a comprehensive discussion of the legal aspects and the case history surrounding PAL, see the case of *R v Jogee* [2016] UKSC 8.

also termed parasitic accessorial liability, or PAL;¹⁷ this involves a situation when, during the course of a joint criminal activity, one of the participants commits a further crime that departs from the common purpose of said criminal activity. In such cases, PAL stipulated that the other participants in the joint enterprise could be held liable and convicted of the further crime, so long as they had foreseen or realised that this further crime might happen.

Most importantly, the doctrine of JE has been widely (and quite effectively) used in recent decades to deal with cases involving homicide, especially murder. A 2014 report by the Bureau of Investigative Journalism¹⁸ found that, between 2005 and 2013, 4,590 prosecutions for homicide involved two or more defendants (44 per cent of all homicide prosecutions in that period), while 1,853 people have been prosecuted for homicide in a charge that involved four or more people, which amounted to 17.7 per cent of all homicide prosecutions in that period. This is particularly significant since a conviction for murder carries a mandatory life sentence, meaning that individuals were sent to prison for long periods of time, potentially their whole lives, based on loose notions such as foresight of possible violence for which they were not directly responsible. The 2014 report estimated that around 500 people were serving life sentences for convictions based on JE at that time. More recently, JE was the focus of a debate in the House of Commons, where it was estimated that at least 4,500 people, including children, were incarcerated on the basis of the problematic doctrine, 'serving long sentences for crimes that they did not commit'.¹⁹

Identifying the threat

Besides being a prime example of 'overcriminalization',²⁰ since it stretches beyond what

Joint Enterprise has also been decried as unfair and imbalanced, as it overwhelmingly targets young Black, Asian and minority ethnic (BAME) males from impoverished urban communities.

could be considered the appropriate limits of criminal liability, JE has also been decried as unfair and imbalanced, as it overwhelmingly targets young Black, Asian and minority ethnic (BAME) males from impoverished urban communities.²¹ The 2016 report *Dangerous Associations: Joint enterprise, gangs and racism*, by Patrick Williams and Becky Clarke,²² evidenced how criminalisation through JE predominantly relies on the racialised construction of the idea of 'gang related' violence. The symbolism of the gang as a paradigmatic 'folk devil'²³ has proven to be a powerful tool through which marginalised groups of young BAME individuals can be effectively essentialised into the figure of dangerous others. This

way, traits that could otherwise highlight a condition of vulnerability—a socially deprived background, lack of opportunities, experiences of discrimination and alienation—are reinterpreted as markers of dangerousness, which conditions a specific kind of response—individualistic criminal justice instead of a broader social justice, for instance.

This construction of a dangerous identity thus symbolically conjoins two different kinds of anxiety: a specific fear of crime, and a more general anxiety about socio-political fragmentation and uncertainty linked to conditions of structural violence. In so doing, it produces a conception of 'group threat'²⁴ which concentrates feelings of hostility upon it, generating a skewed picture of the problem which downplays its complexity. The result is that the specific group that is identified as dangerous is disproportionately criminalised. For instance, Williams and Clarke's study has shown that the 'gang' label is overwhelmingly attributed to Black men, even though a much lower proportion of Black men is involved in violence: 81 per cent of individuals identified by the police as gang members in

18. McClenaghan, M., McFadyean, M. and Stevenson, R. (2014) *Joint Enterprise: An investigation into the legal doctrine of joint enterprise in criminal convictions*. London: The Bureau of Investigative Journalism.
19. HC Deb (25 January 2018) vol. 635, col. 445. Available at: <https://hansard.parliament.uk/commons/2018-01-25/debates/00389B37-64AA-4AC8-BBBB-BE6B98F9C5C1/JointEnterprise> (Accessed: 9 January 2019).
20. Husak, D. (2007) *Overcriminalization: The Limits of the Criminal Law*. Oxford: Oxford University Press.
21. See Bridges, L. (2013) 'The case against joint enterprise'. *Race & Class* 54(4), 33-42.
22. Williams, P. and Clarke, B. (2016) *Dangerous associations: Joint enterprise, gangs and racism*. London: Centre for Crime and Justice Studies.
23. Cohen, S. (1972) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*. London: MacGibbon and Kee.
24. See Davis and Gibson-Light, 'Difference and Punishment' above.

Manchester, and 72 per cent in London, were Black, while Black individuals only constituted 6 per cent of those individuals involved in serious youth violence in Manchester, and 27 per cent in London.²⁵

So, even though such forms of criminalisation may sometimes be related to legitimate concerns, such as the serious social problem around knife crime and youth violence in socially deprived urban environments in England, the ostensible focus of criminalisation on specific populations that can more easily be constructed as dangerous others is not only unfair and discriminatory, but also fails to adequately identify and address the concrete origins of the harm in question. Instead, it seems that the main purpose of such criminalisation is precisely to provide a suitable target for hostility.

Shaping and enabling the response

This racialised and exclusionary definition of gang violence as the primary threat in this area of criminalisation not only shapes the deployment of JE, by making it disproportionately affect specific marginalised populations, but also enables such deployment, first by facilitating the prosecution and conviction of defendants, and second by giving them an appearance of social utility. The law around JE has been criticised to be unclear, and juries often find it confusing to apply.²⁶ The idea that individuals can be liable for having foreseen that a murder, for instance, might happen as a possible departure from another form of criminal activity (which can be broadly defined, and often involves occasions of spontaneous, not necessarily serious, violence) can be rather nebulous, and difficult to establish. But when defendants are characterised as members of a gang, or (which seems to be the rule in many cases) more loosely affiliated with notions of ‘gang culture’, this generates a presumption of dangerousness from which it is easier

to infer that these individuals would be likely to foresee violence arising from their actions.²⁷ There is therefore a significant forensic usefulness in this characterisation, as it assigns a form of character responsibility²⁸ to defendants that sets them apart, thus making it easier to charge and prosecute them, and for juries to convict them.

What this also shows is that, in such prosecutions, the symbolism attached to the image of the dangerous other takes precedence over material circumstances, since it conditions the assessment of the blameworthiness of the defendants. This means, for instance, that the police can use a range of mainly circumstantial evidence, such as phone, text and social media records and Rap and Drill videos, to produce the

image that the defendants have some connection and affiliation to something that can be identified as a gang.²⁹ JE enables criminalisation based on foresight and association, and the construction of dangerous belonging³⁰ enacted around gang violence enables such criminal responsibility to be mainly ‘presumed, legally inferred or juridically established by proximity, appearance, and implied normative association. When it looks like a gang — and especially when the police call it a gang — it must be a gang’.³¹

Possibly one of the main factors that underpin these strategies and processes lies in the allure of the hostility engendered by them. To see defendants in these cases not as complex, socially deprived, and often vulnerable individuals, but as potentially violent gang members makes their criminalisation seem useful, even necessary. Under this prism, cases of JE become manifestations of a broader conflict between an ordered, peaceful, legitimate society, and those who pose a threat to it. This allows a process of estrangement from those who are dehumanised and essentialised as dangerous others—often characterised as ‘wolf packs’,³² or ‘packs of hyenas’³³—by their criminalisation, which in

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25. Williams and Clarke, *Dangerous Associations* above, charts 4 and 5).
26. Crewe, B., Liebling, A., Padfield, N. and Virgo, G. (2015) ‘Joint enterprise: The implications of an unfair and unclear law’. *Criminal Law Review*, 252-269.
27. See Krebs, B. (2015) ‘Mens Rea in Joint Enterprise: A Role for Endorsement?’ *Cambridge Law Journal* 74(3), 480-504.
28. Lacey, N. (2016) *In Search of Criminal Responsibility: Ideas, Interests, and Institutions*. Oxford: Oxford University Press.
29. Pitts, J. (2014) ‘Who Dunnit? Gangs, Joint Enterprise, Bad Character and Duress’. *Youth and Policy* 113, 48-59.
30. See Carvalho, H. (forthcoming) ‘Joint Enterprise, Hostility, and the Construction of Dangerous Belonging’. In J. Pratt (ed.), *Criminal Justice, Risk and the Revolt against Uncertainty*. Basingstoke: Palgrave-Macmillan.
31. Squires, P. (2016b) ‘Constructing the Dangerous, Black, Criminal ‘Other’’. *British Society of Criminology Newsletter* 79, 1-4.
32. Green, A. and McGourlay, C. (2015) ‘The Wolf Packs in Our Midst and Other Products of Criminal Joint Enterprise Prosecutions’. *The Journal of Criminal Law* 79(4), 280-297.
33. See Crewe et al, ‘Joint enterprise: The implications of an unfair and unclear law’ above.

turn makes it acceptable for them to be treated with violence and aggression, thus channelling such negative feelings and attitudes towards them.

Deepening and obscuring the prison crisis

Forms of hostile criminalisation such as that engendered by JE feed directly into the chaotic state in which prisons in England and Wales currently find themselves. They contribute to prison overcrowding, by enabling instances of 'wholesale' criminalisation grounded on a low threshold of criminal liability; and they provide the means through which marginalised groups are disproportionately targeted, thus contributing to their over-representation in the prison population. More specifically, JE not only feeds into the prison crisis but effectively deepens it. Its targeted and ostensible criminalisation of young Black urban men for serious crimes, often murder, on the basis of a low threshold of liability and often circumstantial evidence, exacerbates some of the worst aspects of mass incarceration. It sends a large number of marginalised individuals to prison for long sentences, often for crimes which they did not commit.

A series of studies by members of the Institute of Criminology at the University of Cambridge found that those convicted under JE were generally serving longer sentences than other individuals convicted of similar crimes, and that there was an even higher over-representation of BAME individuals in JE convictions than in the general prison population.³⁴ BAME individuals convicted under JE were also usually younger, were serving longer sentences, and usually had more co-defendants during trial.³⁵ In addition, a significant number of those convicted under JE do not feel they were justly treated by the criminal justice system; for this reason, they fail to understand or accept their

conviction, and often appeal against them.³⁶ This tends to undermine these individuals' capacity to adapt to the prison environment and makes them more likely to rebel against it, thus worsening the already painful and detrimental effects of the experience of incarceration.³⁷

At the same time, these processes of hostile criminalisation simultaneously obscure the causes and scope of the prison crisis, by reinforcing the idea of the prison as a legitimate institution, which is necessary to contain the threat of dangerous criminals. This logic leads to efforts to try and 'fix' the prison without concretely addressing its problems, since these problems are related to the main function that is given to the prison in the first place: the engendering of hostility.³⁸

The same vicious cycle can be seen in recent developments in JE. After several attempts to engage with the issues around this area of the law, the Supreme Court (SC) finally addressed it in its decision in *R v Jogee*,³⁹ stating categorically that the doctrine of JE 'was based on an incomplete, and in some respects erroneous, reading of the previous case law, coupled with generalised and questionable policy arguments',⁴⁰ and it should therefore be abolished.

However, what appeared at first to be a watershed in this area of the law was soon revealed to have changed very little. First, while the SC essentially declared that the law of JE was defective, it also paradoxically maintained that previous JE convictions should not be overturned unless 'substantial injustice' could be demonstrated. So far, nearly all appeals post-Jogee have been dismissed. And second, as the SC itself conceded in its decision in *Jogee*, while the error identified with the doctrine of JE was 'important as a matter of legal principle ... it does not follow that it will have been important on the facts to the outcome of the trial or to the safety of the

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34. See *ibid.*

35. See Williams and Clarke, *Dangerous Associations* above.

36. See Crewe et al, 'Joint enterprise: The implications of an unfair and unclear law' above.

37. See Liebling, A. and Maruna, S. (2005) *The Effects of Imprisonment*. Willan Publishing: London.

38. See Chamberlen and Carvalho, 'The Thrill of the Chase' above.

39. [2016] UKSC 8.

40. *Ibid* at para 79.

conviction'.⁴¹ In other words, while the law seems to have changed in form, in substance it has remained essentially the same. Indeed, individuals continue to be convicted in JE cases,⁴² and the Crown Prosecution Service (CPS) continues to rely on the same prosecutorial strategies.⁴³ As long as we continue to use criminalisation both as a means of engendering a specific, hostile, form of solidarity, and as a scapegoat for broader social problems, it will continue to be violent, discriminatory and exclusionary; the same can be said of punishment.

Conclusion

This paper has discussed how the challenges underpinning the current prison crisis are inherently linked to processes of producing hostile solidarity through the criminalisation of marginalised populations, which are themselves linked to broader

social problems. Hostile criminalisation ostensibly identifies who should be punished by constructing specific, often vulnerable groups and individuals as dangerous others, and enables their punishment. In so doing, these processes not only feed but actively exacerbate the factors of the prison crisis: overcrowding, discrimination, exclusion and prison harm. At the same time, the symbolic allure of hostility also obscures the causes and scope of the crisis, by shifting the focus from the problems of punishment to the threat posed by dangerous others, thus making criminalisation and punishment seem necessary. To resist this logic, the paper has suggested that the prison crisis is primarily a manifestation of the pursuit of hostile solidarity in a fragmented and structurally violent society, which must be tackled before any significant change to the criminal justice system can be achieved.

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41. Ibid at para 100.

42. Croydon Advertiser (2018) Jermaine Goupall killer has to be held back in the dock as he lashes out after being found guilty. Available at: <https://www.croydonadvertiser.co.uk/news/croydon-news/jermaine-goupall-killer-held-back-1215673> (Accessed: 9 January 2019).

43. Although the CPS has now, after criticism, amended its post-Jogee guidance on accessory liability about being cautious when using the term 'gang' – see Crown Prosecution Service (2018) Secondary Liability: charging decisions on principals and accessories. Available at: <https://www.cps.gov.uk/legal-guidance/secondary-liability-charging-decisions-principals-and-accessories> (Accessed: 9 January 2019).

Getting out of the crisis

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Tate Britain, a short walk from the Centre for Crime and Justice Studies offices, is one of the UK's finest art galleries. In the nineteenth century it was the site of Millbank Prison,¹ built on land purchased for £12,000 from the Marquis of Salisbury by the father of utilitarianism, Jeremy Bentham.² Completed between 1812 and 1822, Millbank was crisis-prone from the start:

[I]n the spring of 1816 cracks appeared in some of the pentagon walls, and putting these right brought the total cost of the jail to a staggering £458,000. Prisoners rioted about their food allowance in 1817, and between 1822 and 1824 30 prisoners died from diarrhoea, which resulted in the whole prison population being evacuated... [T]here were riots in September 1826 and again in March 1827; various warders were assaulted and in one incident the infirmary warder's cat was found hanged.³

Pentonville Prison in North London, completed in the early 1840s, was built as a replacement for Millbank. Today it remains one of London's main prisons. It was conceived following an 1834 government report into the Philadelphian 'separate system'. As Walter Thornbury noted in 1878, citing the man of letters, William Dixon:

Many people,' says Mr. Dixon in his 'London Prisons,' published in 1850, 'were seduced by the report issued in 1834, into a

favourable impression of the Philadelphian system; and, amongst these, Lord John Russell, who, being secretary for the Home Department, got an Act introduced into Parliament in 1839 (2 and 3 Vict. c. 56), containing a clause rendering separate confinement legal in this country. A model prison on this plan was resolved upon. Major Jebb was set to prepare a scheme of details. The first stone was laid on the 10th of April, 1840, and the works were completed in the autumn of 1842, at a cost of more than £90,000.⁴

In the most recent inspection report on Pentonville, the Chief Inspector of Prisons, Peter Clarke, noted that '[g]ang behaviour is pervasive and brings significant challenges for stability and good order' and that 'one in five men was taking anti-psychotic drugs'. Clarke also raised concerns about high levels of violence and suicide, and drew attention to 'frailties in the case management and care for men vulnerable to suicide and self-harm'. The prison was also 'very overcrowded and the building had suffered from years of underinvestment and neglect'.⁵

The UK's largest prison, HMP Berwyn in North Wales, opened in 2017. Built on the site of a former tyre factory at a cost of £250 million, it has capacity for over 2,000 prisoners.⁶ One former tyre builder who worked at the factory told a local history project in 2017 that he was now working for a joinery company involved in the construction of the prison.⁷ In August 2018 the Governor of Berwyn was

1. Kennedy, J. (2013) 'Before Tate Britain, there was the dreaded Millbank prison'. [ONLINE] Available at: <https://www.tate.org.uk/context-comment/blogs/tate-britain-there-was-dreaded-millbank-prison>. [Accessed 6 September 2018].
2. Thornbury, W. (1878) *Old and New London: Volume 4*. [ONLINE] Available at: <https://www.british-history.ac.uk/old-new-london/vol4/pp1-13>. [Accessed 6 September 2018].
3. Wilson, D. (2014) *Pain and Retribution: A Short History of British Prisons, 1066 to the Present*. London: Reaktion Books, 50.
4. Thornbury, W. (1878) *Old and New London: Volume 2*. [ONLINE] Available at: <https://www.british-history.ac.uk/old-new-london/vol2/pp279-289>. [Accessed 6 September 2018].
5. HM Chief Inspector of Prisons (2017) *Report on an announced inspection of HMP Pentonville*. [ONLINE] Available at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/hmp-pentonville-2/>. [Accessed 29 September 2018].
6. BBC News (2013) '£250m super-prison to be built on ex-Firestone factory land'. [ONLINE] Available at: <https://www.bbc.co.uk/news/uk-wales-north-east-wales-23957373>. [Accessed 6 September 2018].
7. Wrexham History (2017) 'Memories of Firestone Wrexham'. Comment by Phil Burden. [ONLINE] Available at: <https://www.wrexham-history.com/memories-firestone-wrexham/#comment-238>. [Accessed 6 September 2018].

suspended, following allegations made against him.⁸ A report from the prison's Independent Monitoring Board, a month earlier, had found that illicit drugs were 'readily available' in the prison. It also reported that one in five of the prisoners said that they felt unsafe.⁹

The largest women's prison in western Europe, Holloway in North London, was closed in 2016. A few years earlier, a study by the Centre for Crime and Justice Studies of housing and resettlement support for black and minority ethnic women leaving Holloway painted a disturbing picture of gaps and holes in provision. One former prisoner told the researchers about how she had survived following her release:

Nowhere to go, nowhere to go, and then like you got, you want somewhere to sleep, you have to go buy someone a smoke and then you can stay at their house for the night and then you just get back into, just get back into the drug side of it... I mean Broadwater Farm is a bad area around here, and I was staying in the crack house on Broadwater Farm, in a cupboard.¹⁰

At the time of writing, a local campaign—Community Plan for Holloway—is mobilising support around a positive vision for the site, such as social housing, community buildings and spaces that foster human flourishing and respond to human needs.¹¹

The British Government had hoped to build a new prison on a patch of land on an industrial estate in Port Talbot, South Wales. The Welsh Government, which originally supported the plans, came out in opposition. It called for dialogue with the British

Government over criminal justice and public services policy, and on strategies to prevent criminalisation, recriminalisation and imprisonment¹². The plans to build the prison have since been shelved. Other prisons are in the pipeline.

These pen portraits of four prisons, and one potential future prison, in the England and Wales criminal justice jurisdiction suggest at least two ways of thinking about the prisons crisis and about what it would mean to get out the crisis.

First, we can think about the prison crisis as a crisis in prisons. Millbank and Pentonville, Berwyn and Holloway have all been crisis-prone institutions in one shape or form. They are not alone. In 2018, the England and Wales prisons inspectorate has issued

four Urgent Notifications following inspections of Bedford, Birmingham, Exeter and Nottingham prisons. Indeed, the inspectorate has 'documented some of the most disturbing prison conditions we have ever seen—conditions which have no place in an advanced nation in the 21st century'.¹³

Within the England and Wales jurisdiction, some prisons are less crisis-prone than other prisons. Across the UK, some jurisdictions appear less crisis-

prone than those in other jurisdictions. The Scottish prisons system, for example, appears to have been less crisis-prone than the England and Wales, and Northern Ireland, prison systems over recent years. But crises do appear to be a regular feature of many or most prisons, both over time and at any given point in time. Crises in prisons appear to be an inherent feature of many prisons, rather than an uncommon aberration.

Second, we can think about the prison crisis as a crisis of imprisonment. This crisis is our enduring

First, we can think about the prison crisis as a crisis of prisons... Second, we can think about the prison crisis as a crisis of imprisonment.

8. BBC News (2018) 'HMP Berwyn governor Russell Trent suspended amid allegations'. [ONLINE] Available at: <https://www.bbc.co.uk/news/uk-wales-45262381>. [Accessed 29 September 2018].

9. Independent Monitoring Boards (2018) Annual Report of the Independent Monitoring Board at HMP Berwyn. [ONLINE] Available at: <https://www.imb.org.uk/independent-monitoring-board-imb-hmp-berwyn-releases-first-annual-report/>. [Accessed 29 September 2018].

10. Grimshaw, R., S. Harding, M Watkins and S Szydlowska (2013) Housing needs of women from minority ethnic groups leaving HMP Holloway. London: Centre for Crime and Justice Studies. [ONLINE] Available at: <https://www.crimeandjustice.org.uk/publications/housing-needs-women-minority-ethnic-groups-leaving-hmp-holloway>. [Accessed 29 September 2018].

11. Community Plan for Holloway (2018) Unlocking Holloway for the Community. [ONLINE] Available at: https://acomunityplanforholloway.files.wordpress.com/2018/04/download_plan4holloway-pdf-for-web.pdf. [Accessed 6 September 2018].

12. Davies, A. (2018) 'Written Statement—Justice Policy in Wales'. [ONLINE] Available at: <https://gov.wales/about/cabinet/cabinetstatements/2018/justicepolicyinwales/?lang=en>. [Accessed 29 September 2018].

13. HM Inspector of Prisons (2018) Annual Report 2017–18. London: HM Stationery Office. [ONLINE] Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/inspections/annual-report-2017-18/>. [Accessed 29 September 2018].

attachment to prison and imprisonment as a social institution. It is about the apparent inevitability of our commitment to making and remaking the same institutions, again and again, some two hundred years after Millbank prison was built. It is about our taking for granted the ongoing existence of prison as a social institution, and our apparent inability to consider other options, different possibilities, in place of the monotonous making and remaking of the prison institution.

These two ways of thinking about the prison crisis are distinct. One is about the crises in individual prisons, the other, about the crisis of our continued remaking of the social institution of imprisonment. The two crises feed off, and sustain, each other. Our commitment to the social institution of imprisonment compels us perennially to build, maintain and rebuild prisons. By building, maintaining and rebuilding individual prisons, we also reaffirm and revalidate the social institution of imprisonment. So it is that the twentieth century, the century of prison reform, was also the century of dramatic prison growth. As policy makers sought to address the crisis of prisons, the crisis of imprisonment deepened.

Attempts to escape these two prison crises—the crisis in prisons and the crisis of imprisonment—prompt different responses. The crisis in prisons calls forth reform attempts: infrastructural investment, staff training, regime improvements, for instance. The crisis of imprisonment, by contrast, calls forth a variety of demands and proposals: from relatively modest ‘reformist’ proposals to more avowedly abolitionist demands. Attempts to address the crisis in prisons tend towards reaffirming the apparent validity of the social institution of imprisonment, so displacing and deferring any serious attempts to address the crisis of imprisonment.

In the rest of this article, I explore these distinct, but related, responses to the two, intertwined prison crises. The perspective is largely informed by the United Kingdom experience, and by the England and

Wales experience in particular. I hope that the conceptual framework might also have relevance for those considering prison crises in other jurisdictions.

Getting out of the crisis in prisons

Addressing the crisis in individual prison institutions makes up the stock in trade of government-led reforms, tweaks and changes. In their classic form, they might be traced back to the 1895 Gladstone Committee report on prisons. As David Faulkner, a former senior civil servant in the Home Office, claimed, the Gladstone Committee report, and the legislation it inspired, ‘laid the foundation for a, broadly speaking, liberal set of criminal justice and penal policies, most of which were not seriously challenged for another 60 years’.¹⁴ This consensus, Faulkner argued, came increasingly under pressure during the 1990s, with the rise of populist and punitive politics that first wrong-footed, then marginalised, liberal penal policies and politics.

Those looking for evidence of this ‘broadly... liberal’ approach might find it expressed in the 1964 Prison Rules for England and Wales, the first rule of which stated

that the ‘purpose of the training and treatment of convicted prisoners shall be to encourage and assist them to lead a good and useful life’.¹⁵ Other rules covered appropriately liberal expectations over matters such as nutrition, accommodation, clothing, visits, medical attention, prison work and prison pay, and so on. Yet as Joe Sim has argued, lofty expressions from above have often sat in tension with the grim realities of prison life and operations on the ground. The supposedly liberal period of penal policies climaxed in the 1990 Strangeways prison riot. As Sim notes, the riot was anything but an aleatory irruption into an otherwise stable order:

The 25-day long occupation of the prison by prisoners, the effective destruction of most of the institution’s infrastructure and the apparent powerlessness, disorganization and conflict within,

These two ways of thinking about the prison crisis are distinct. One is about the crises in individual prisons, the other, about the crisis of our continued remaking of the social institution of imprisonment.

14. Faulkner, D. (2006) *Crime, State and Citizen: A Field Full of Folk*. Winchester: Waterside Press, 93.

15. The Prison Rules 1964, SI 1964/388. [ONLINE] Available at: <https://www.legislation.gov.uk/ukSI/1964/388/made>. [Accessed 1 October 2018].

and between, state servants, provided a salutary reminder to the governing Conservative Party that the tensions, which had been apparent since the 1970s... had not been alleviated.¹⁶

The current Prison Rules, agreed in 1999, contain a similar set of liberal expectations.¹⁷ They include, word-for-word, the rule quoted above. Whatever their merits, the current rules have not acted as an effective protection against the crisis conditions in numerous prisons across England and Wales.

The widely-held view that the austerity-driven squeeze on prison budgets since 2010 has been the main cause of the current crisis in prisons¹⁸ carries some explanatory weight. It is also the case that prison budgets in England and Wales were being squeezed in the decade up to 2010.¹⁹ Yet such explanations tend to assume what needs to be explained: why it was that successive governments have sought to squeeze prison budgets while simultaneously maintaining, or indeed expanding, the already high prison population. It was, at least in principle, possible for governments of recent years to seek to shrink the size of the prison estate in line with shrinking budgets. That they chose not to do so relates to the wider crisis of imprisonment, which is explored in more detail below.

More recently, the UK Government's 2016 White Paper, *Prison Safety and Reform*, made a number of proposals to achieve 'a transformation away from offender warehouses to disciplined and purposeful centres of reform where all prisoners get a second chance at leading a good life'.²⁰ Among its proposals were improving regime standards, recruiting new staff and investing in prison leadership. It also reaffirmed previous commitments 'to build up to 10,000 new adult prison places' at the cost of £1.3 billion, and to close 'prisons that are in poor condition and those that do not have a long-term future in the estate'.²¹

This current commitment to renewing and rebuilding the prison estate, and improving outcomes for staff and prisoners, has several parallels with past policies. Pentonville was conceived as the successor to the crisis-prone Millbank. The reforms that followed the Gladstone Committee report were intended to improve the way prisons operated. It is important to understand these 19th and 20th century innovations in their own context, rather than present them as but so many instances of an ahistoric narrative of circularity and failure. It is also striking that successive governments have, over time, sought to respond to contemporary crises in prisons with historically distinct approaches that, by embedding and entrenching the crisis in prisons, have tended to reinforce the crisis of imprisonment.

In responding to the current crisis in prisons, the UK Government is working in the shadow cast by the decisions of previous generations. In rebuilding and expanding the prison estate, it is repeating the decisions of these past generations. It is also building future crises in prisons, even as it is seeking to address the current crises in prisons. These future crises will be the inheritance of the generations to come, who will make policy on prisons in the shadow cast by

the present one. And so the cycle of prison building, prison maintenance, prison building repeats itself, compelled by a commitment to the social institution of imprisonment as an immutable fixture of this and future societies.

In responding to the current crisis in prisons, the UK Government is working in the shadow cast by the decisions of previous generations.

Getting out of the crisis of imprisonment

Berwyn and Millbank: where now there is a prison, once there was factory; where once there was a prison, now there is an art gallery. Holloway and Pentonville: one closed, one destined for closure at some point. What will replace them? Another prison,

16. Sim, J. (2009) *Punishment and Prisons: Power and the Carceral State*. London: Sage, 56.
17. The Prison Rules 1999, SI 1999/728. [ONLINE] Available at: <http://www.legislation.gov.uk/ukSI/1999/728/contents/made>. [Accessed 1 October 2018].
18. See e.g. The Guardian (2018) 'The Guardian view on Birmingham prison: the root problem is austerity'. The Guardian, 20 August. [ONLINE] Available at: <https://www.theguardian.com/commentisfree/2018/aug/20/the-guardian-view-on-birmingham-prison-the-root-problem-is-austerity>. [Accessed 1 October 2018].
19. See Mills, H., A. Silvestri, R. Grimshaw, F. Silberhorn-Armantrading (2010) *Prison and probation expenditure, 1999—2009*. London: Centre for Crime and Justice Studies. [ONLINE] Available at: <https://www.crimeandjustice.org.uk/publications/prison-and-probation-expenditure-1999-2009>. [Accessed 1 October 2018].
20. Ministry of Justice (2016) *Prison Safety and Reform*. Cm 9350. London: HM Stationery Office. [ONLINE] Available at: <https://www.gov.uk/government/publications/prison-safety-and-reform>. [Accessed 29 September 2018], 3.
21. Ibid, 58.

or other buildings and developments that may better serve the interests of those living in their shadow?

When we think about how to get out of the crisis of imprisonment, it helps to remind ourselves that every prison that has ever existed was built by people, at given points in time, to imprison people, for given periods of time. Some, such as Millbank, were built and demolished by previous generations. Others, such as Holloway, were built by a previous generation and closed by the current generation. Still others, such as Pentonville, were built by a previous generation, were inherited by, and are maintained by the present generation. Others still, like Berwyn, were built by the present generation, on land that a previous generation had used for a very different purpose.

Every prison that has ever existed, or will ever exist, has a beginning and an end. Every prison that exists today will one day not exist. What our and future generations chose to do — to build new prisons, or do something else — is a political and historical question. It is political because the decision to build and maintain prisons, or to do something else, is wrapped up in broader questions about how the collective wealth and resources of a given society might best be deployed for the common good. It is an historical question because it relates to the human capacity to shape human societies, for better or for worse, drawing on the accumulated ideological and material resources handed down by previous generations.

To make more concrete these rather abstract observations we might start by mapping the current boundaries placed around our human capacity to address the crisis of imprisonment. When, in November 2016, the then Justice Secretary, Liz Truss, published the Prison Safety and Reform White Paper, referred to above, one of her predecessors in that role, Ken Clarke, laid down a challenge:

Every prison that has ever existed, or will ever exist, has a beginning and an end...What our and future generations choose to do...is a political and historical question.

‘Does she agree... that her overriding aim of protecting the public by reducing reoffending and preventing prisoners from committing crimes in future is almost impossible to achieve so long as prisons are overcrowded slums? Will she make the courageous decision to start addressing some of the sentencing policies of the 1990s and the 2000s, which accidentally doubled the prison population in those overcrowded slums? Will she ensure that our prisons are reserved for serious criminals who need to be punished, and find better ways of dealing with problems of mental health and drug abuse and with irritating, trivial offenders?’²²

A month later, Clarke was one of three signatories to a letter in *The Times* (the other two being the former Deputy Prime Minister, Nick Clegg, and the former Home Secretary, Jacqui Smith), which called for the prison population in England and Wales to be halved. If this was not done, the authors wrote, ‘the prisons crisis will do untold damage to wider society’.²³ More recently still, the Justice Secretary for England and Wales, David Gauke, remarked to *The Times* that ‘Twenty five years ago the [prison] population was 44,000. Today it’s 84,000. I would like it to fall’.²⁴

Finally, speaking to the House of Commons Justice Committee in June 2018, the prisons minister, Rory Stewart, set out two policy choices:

‘We can do one of two things: we either go for the Ken Clarke model, which is that you... gamble everything on being able to reduce the prison population; or we can... say that... even though ideally the prison population will go down, that... is [not] very likely to happen, because I am not sure that there is the will among the public or Parliament to take... measures to reduce that population’.²⁵

These exchanges illustrate the consensus, but also the inertia, at the heart of current attempts to

22. HC Deb (3 November 2016) vol. 616, col. 1071. [ONLINE] Available at: <https://hansard.parliament.uk/Commons/2016-11-03/debates/DE8B3392-280F-4512-93FF-6F82699383BB/PrisonSafetyAndReform#contribution-CAEB7B11-BDD9-423C-8574-8AAC2EF42DEA>. [Accessed: 1 October 2018].

23. Clegg, N., K Clarke and J. Smith (2016) ‘Call to halve the prison population’. *The Times* 22 December. [ONLINE] Available at: <https://www.thetimes.co.uk/article/turkey-russia-and-a-call-for-action-on-syria-sc95fclfq>. [Accessed 1 October 2018]

24. Sylvester, R. (2018) ‘David Gauke interview: ‘It’s the carrot and stick: prisoners need to have a sense of purpose’’. *The Times*, 25 May. [ONLINE] Available at: <https://www.thetimes.co.uk/article/david-gauke-interview-it-s-the-carrot-and-stick-prisoners-need-to-have-a-sense-of-purpose-2mp5qt0kx>. [Accessed 1 October 2018]

25. Justice Committee (2018) ‘Oral evidence: Prison population 2022: planning for the future’. [ONLINE] Available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/prison-population-2022/oral/86114.html>. [Accessed 1 October 2018], Q56.

address the crisis of imprisonment. Widespread agreement that the prison population should be reduced is matched by a shoulder-shrugging resignation about the possibility of any meaningful action. The crisis of imprisonment, it seems, is an unchanging reality for this generation, and for future ones. The interventions by Clarke and Stewart do, though, hold out the possibility of getting out of the crisis of imprisonment: in Clarke's case, the question tends more towards the technocratic (changes to sentencing policy); in Stewart's case, the question is more of a political one.

These themes—the technocratic and political—are explored in some depth by *A Presumption Against Imprisonment*, published by the British Academy in 2014.²⁶ The authors of this report take for granted that reducing the prison population has an irreducibly political dimension, one characterised by an 'inevitably slow and arduous process of changing public and political thinking about the use of imprisonment'.²⁷ They also offer a number of technocratic proposals. These include changes to sentencing practices, a review of existing sentence lengths, and developing alternative provision for those with mental health problems, learning disabilities, and those with drug and alcohol problems.

The necessary changes, however, are 'unlikely to be brought about solely by changes to the sentencing system'.²⁸ Prisons policy in particular, and criminal justice policy more broadly should be depoliticised, through 'the creation of a Penal Policy Committee... [to] free penal policy from some of the pressures of short-term party politics'.²⁹ This argument sits in some tension with the authors' earlier commitment to a long-term process of engaging with, and changing, public and political opinion. Others would argue that too little democratic engagement, rather than too much, has contributed to the current crisis of imprisonment.³⁰

Widening their gaze from a narrow focus on prison and penalty, the authors also position the question of imprisonment within a wider context. '[T]he criminal justice system', they note, 'is a realm of social policy that is, and should be linked to others, such as health... employment, education and supporting social services'.³¹ While not exploring this wider context in any detail, the authors list crime prevention, education and employment, family policy, diversion from prosecution and restorative justice as examples.

How useful is this for getting out of the crisis of imprisonment? The twentieth century was characterised by a toxic combination of the crisis in prisons and the crisis of imprisonment, resulting in the expansion of the prison estate and a deepening of both crises. Were the perspectives outlined by Clarke and Stewart, and the prescriptions in *A Presumption Against Imprisonment*, to be successfully enacted, they may go some way towards lessening both crises. That said, all the approaches so far considered take as read that imprisonment has an ongoing validity as a social institution.

Those approaching the crisis of imprisonment from an abolitionist standpoint take a different view. For abolitionists, it is precisely the reliance on imprisonment—the assumption that imprisonment is and should be a timeless, fixed presence in any imaginable society—that is the crisis. The harmfulness of such thinking, at a material level, is clear in the suicides, self-harm, broken dreams and wrecked families and communities that form the collateral damage of imprisonment. But imprisonment also performs an ideological role, not least of all in mystifying the social processes that give rise to the problems to which prison is presented as the answer. As Angela Davis puts it:

The prison... functions ideologically as an abstract site into which undesirables are

Widespread agreement that the prison population should be reduced is matched by a shoulder-shrugging resignation about the possibility of any meaningful action.

26. Allen, R., A. Ashworth, R. Cotterrell, A. Coyle, A. Duff, N. Lacey, A. Leibling, R. Morgan (2014) *A Presumption Against Imprisonment: Social Order and Social Values*. London: British Academy. [ONLINE] Available at: <https://www.thebritishacademy.ac.uk/publications/presumption-against-imprisonment-social-order-and-social-values>. [Accessed 1 October 2018].

27. Ibid, 23.

28. Ibid, 87.

29. Ibid, 89.

30. See e.g. Dzur, A., I. Loader and R. Sparks (Eds) (2016) *Democratic Theory and Mass Incarceration*. Oxford: Oxford University Press.

31. Allen et al above, 89.

deposited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers'.³²

Her own prescriptions for how a future without prisons might be achieved are relatively brief, in what is, to be fair, a short book. We should not, she argues, look for 'prison like substitutes for prison', such as house arrest and electronic monitoring. Rather, we should 'envision a continuum of alternatives to imprisonment—demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance'.³³ A not dissimilar set of proposals are made by Joe Sim,³⁴ while David Scott proposes nine 'interlinked strategic objectives', including tackling inequality, fostering democratic engagement and

promoting alternatives that might credibly displace the punishment reflex.³⁵

That said, given the broad focus of the abolitionist stance, consensus among abolitionists has, unsurprisingly, been conspicuous by its absence. As Vincenzo Ruggiero has noted, 'abolitionism does not possess one single theoretical or political source of inspiration, but a composite backdrop from which, wittingly or otherwise, it draws its arguments and proposals for action'.³⁶ This heterogeneous mix of influences and inspirations has inevitably resulted in a wide range of abolitionist perspectives and prescriptions, some more persuasive than others.

This lack of clarity is as much a resource to draw on as a problem to overcome. For if we are to get out of the crisis of imprisonment, and stop reproducing fresh crises in prisons, a recognition that the future is open, rather than already determined, and that new solutions to old problems, while not easy to come by are in principle possible to find, are the essential first steps.



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32. Davis, A. (2003) *Are Prisons Obsolete?*. New York: Seven Stories Press, 16.

33. *Ibid*, 107.

34. See Sim, *Punishment and Prisons above*.

35. Scott, D. (2018) *Against Imprisonment: An Anthology of Abolitionist Essays*. Winchester: Waterside Press, 218ff.

36. Ruggiero, V. (2013) *Penal Abolitionism*. Oxford: Oxford University Press, 9.

Reviews

Book Review

Start Here: A Road Map to Reducing Mass Incarceration

By Greg Berman and Julian Adler,
Publisher: The New Press (2018)
ISBN: 978-1-62097-223-6
(hardback)
Price: £21.99 (hardback)

This book opens with some stark statistics about the American prison system: there are over two million people in US prisons; the system costs \$80bn annually, and; the incarcerated population has increased 500 per cent per cent over the last 40 years. It has, nevertheless, been argued that there is an opportunity for change as recent years have seen a loosening of the grip of popular punitiveness. It has been argued that there are three primary reasons for this.¹ The first is that there is a growing body of evidence that questions the effectiveness of imprisonment and instead suggests that it may be harmful to society as a whole. Second, declining rates of crime, particularly serious violent crime, across developed nations has meant that there is diminishing political capital from tough rhetoric. Third, the financial crisis of 2008 and the subsequent economic crisis have meant that the approaches of the past are no longer affordable. It is in this context that Greg Berman and Julian Adler, leading figures in New York's Centre for Court Innovation, have published a book that offers practical ways in which

sentencing laws and practices can be altered so as to reduce the use of imprisonment.

Berman and Adler describe the development of mass imprisonment in the US as not only creating warehouses, but '*accelerants of human misery*' (p.4) that make existing social problems worse. Their aim through this book and their ongoing work at the Centre for Court Innovation is to promote crime reduction and alternatives to incarceration with the goal of *demonstrating 'that contrary to conventional wisdom, it is possible to reduce both crime and incarceration at the same time'* (p.5).

There are three key elements to the approach that Berman and Adler advocate: engage the public in preventing crime; treat all defendants with dignity and respect, and; link people to effective, community-based interventions rather than jail or prison. They suggest that such reforms do not take place at the federal level or rely upon the actions of the president, but instead are enacted through local courts, judges and officials.

The majority of the book focusses on real initiatives taking place across America that promote a more progressive criminal justice system. Some of this will be familiar, such as the use of crime mapping to identify high crime areas and the development of preventative, grassroots services including those dealing with

mental health, trauma and conflict resolution. In sentencing, the authors draw attention to the importance of procedural justice, a term that is increasingly being used in UK prisons, on the basis that where people consider they have been treated fairly they are more likely to respect the law, whether or not they get a favourable outcome. There are a number of examples of positive sentencing practices that reduce the use of pre-trial detention, and more imaginative community-based sentencing in drug courts. Even within the felon population, the authors argue that effective community interventions can be effective and they argue that: 'We must give these programs the resources they need so that they can create small group settings that allow for intensive work with participants and encourage individual accountability' (p.139).

Introducing a shift in sentencing and penal policy is not straightforward. The authors acknowledge that, '*...it will demand patience and understanding from the media, elected officials, and the general public, who must have realistic expectations about what alternatives to incarceration can deliver in terms of results*' (p.140). While this comes across as an understatement, the Centre for Court Innovation has been engaged in this task over many years and has had some success.

Readers in the UK, might be tempted to speculate whether

1. Cullen, F., Jonson, C., and Stohr, M. (2013) *The American prison: Imagining a different prison* Thousand Oaks, CA: Sage.

such lessons could equally apply in this country. Recent Secretaries of State for Justice, including Michael Gove, David Liddington and Elizabeth Truss all stated that reducing the prison population was desirable, but wanted this to be achieved through incremental and informed practice, including better community interventions, rather than through a dramatic change in sentencing policy. Recent years have seen a decline in the UK prison population from its height of over 88,000 in 2011 to under 85,000. This has at largely been the result of reduced criminal court cases being processed, lower numbers of remand and recalled prisoners, as well as increased use of early release under the home detention curfew scheme. This modest but important change has therefore resulted from changing practice rather than policy.

A more dramatic transformation has taken place in the youth criminal justice system. The number of children entering the criminal justice system for the first time has fallen 85 per cent in the decade to 2016-17, from 110,817 in 2007 to 16,541 in 2017. Similarly, the average youth custody population has declined from almost 2,914 in 2007 to 868 in 2017, a reduction of 70 per cent. This quiet revolution has been supported by successive governments, albeit without significant fanfare, informed by influential inquiries and reports, and driven by practitioners in the streets, police stations, local authorities, youth clubs and schools of local communities.

The argument of Berman and Adler's book is that change is possible, indeed that change is happening in local jurisdictions across America. There are also examples internationally, not least of which is the youth justice

system in England and Wales. These real-life examples illustrate that reducing the use of imprisonment is not only possible, but also that it does not undermine public safety and in fact can ameliorate social harms.

Dr Jamie Bennett, Governor of HMP Long Lartin

Book Review

Unconscious Incarceration: How to break out, be free and unlock your potential

By Gethin Jones

Publisher: Dot Dot Dot Logo

(2018)

ISBN: 978-1-907282-86-7

Price: £10.99

Gethin Jones presents a book that proposes to change lives, support the most vulnerable and 'bring people back from the gates of hell' (p.92), in 93 small pages of clear and concise language. It combines personal drug addiction and professional psychology experience: alongside the extended metaphor of A Christmas Carol by Charles Dickens. The classic is effectively retold in an instructive self-development style to help people overcome addiction and negative thinking patterns.

It starts with the chapter 'The End Begins', which is a vivid account of a drug addict in dire living conditions where 'desperation is the only thing driving your mind' (p. 5). The authenticity of the author's hardship shown on the synopsis, 'a childhood spent in the care-system' and 'years in prison', allows trust to be developed in his programme. He has been 'there' himself. It gives readers a chance

to connect with their own suffering and can spark the thought 'if he can grow out of that ... then maybe I can too'.

Gethin then declares 'I will introduce you to your Scrooge'. We find Scrooge is symbolic of the part of the mind fuelling life-destroying addictions to: drugs, alcohol, gambling, food, sex, etc (p. 1). The Scrooge behaviours 'fear, disconnecting from others, close-mindedness, suppressing trauma, denial, head in the sand' are described as preventing happiness (p. 9-16). The programme on how to change these behaviours is then presented.

The absence of academic jargon and the direct tone allow this journey to feel accessible to many. Complex theories are not to be found as the reader simply describes psychological concepts of reflection. Like Scrooge, we are able to meet Marley: the inner voice saying 'something must change', connecting us to 'harsh truths' and 'love' (p. 18-21). He brings the selflessness you need to undertake this journey.

Gethin's aim is to facilitate readers to improve analytical thinking, rational judgement and emotional management. He asks you to look back at your experience and use this as hindsight. The character that does this is named the 'Cabbie'. He is symbolic of the 'Ghost of Christmas Past' in *A Christmas Tale* (p. 27-36). The imagery of sitting in a chair self-reflecting ignites emotions through the interweaved anecdotes of a fictional 'you' on a rehabilitative journey. After learning from the past, visualisation techniques are used which encourage you to analyse your present realities with the character the 'Tour Guide' (p. 37-46) then your future goes under analysis with the 'Time Traveller'

(p. 47-56): both are easily understandable and relatable concepts.

From holding this mirror up and seeing the ugliness, as well as the good, it is easy to imagine feelings of emptiness and loneliness with the daunting task of change: 'I can't do this on my own... no one cares' *Scrooge thinking*'. However, Gethin seems aware of this and shifts focus from modern mind-set strategies to practical tools. Because the rehabilitative journey may be too difficult to complete alone, readers are introduced to the 'Singing Nightingales': family, friends, support services, people who are there with honesty, compassion and empathy (p. 64). Gethin's plea is for you to accept the support that your Scrooge ignored. The 'magic of the programme' is described as disempowering the values and beliefs that feed Scrooge (p. 91).

The author's hopeful voice asks you (once you have gained and practiced this knowledge) to become a Singing Nightingale and help the vulnerable in society who he refers to as 'the hobblers'. This brings the journey full circle for one to be more forgiving and compassionate: 'life now being a blank canvas' ready to be painted colourfully (p. 84).

To conclude, this book uses modern mind-set techniques with practical advice to help one create a pro-social identity. Gethin could capture readers further by being more explicit of his own experience of overcoming his Scrooge. The thought provoking and memorable stories could have been extended with more descriptions of internal battles which Gethin faced for others to link to on their journey of change.

This book will be valuable to anyone looking for insight into ways to break free from addiction:

especially current or former drug addicts, offenders and professionals who provide services for such individuals. This is an easy read that could also be useful for non-professionals whom are looking for ways to support friends and family.

Muzzaker Mathias, resident at HMP Grendon

Book Review

Deserved Criminal Sentences: An Overview

by Andreas von Hirsch

Publisher: Hart Publishing (2017)

ISBN: 9781509902668 (hardback)

Price: £50.00 (hardback)

In this compact book Professor von Hirsch summarises with great clarity the fruits of a main theme in his research and in his approach to questions of criminal justice. In a long and distinguished career across three continents, since the publication of *Doing Justice* in 1976, he has developed and refined an account of 'desert' as the core principle for deciding what punishment should be given to a particular person for a particular offence.

By 'desert' he means that the severity of the punishment should be proportionate to the seriousness of the offence. He holds that punishment is 'a blaming institution' (p.4), and his theory of proportionality is based on seeing censure as the primary element in punishment. The person committing the offence is seen as a moral agent: 'that is, as a person capable of reflecting upon the appropriateness of [their] action' (p.12). This centrality of censure arose from pre-1976 moral philosophers, notable

H.H.A. Hart and Joel Feinberg. Throughout this book Hirsch contrasts this 'desert' view with various instrumental (or consequentialist) understandings of punishment, such as deterrence, rehabilitation and treatment.

His argument is rooted in the movements of penal thinking in the last 70 years, and benefits from the fact that he has lived through the whole period. Desert thinking emerged in the 1970s as a reaction to the previous strong emphasis on sentencing for rehabilitation or treatment. 'Doing Justice' challenged this primarily on grounds of fairness: that, more or less broadly, similar offences should attract similar punishments, rather than one person being treated more harshly than another because of factors not directly inhering in the offence itself. Rehabilitative approaches to sentencing returned to some extent during the period of high optimism about psychological treatment programmes in the 1990s and beyond; but increasingly, the 'punitive turn', what Hirsch calls 'penal populism' carried the field, so that punishment simply became incrementally harsher, without reference to careful principles of proportionality and the like.

Hirsch emphasises that 'desert' is not the same as retribution, in the sense of pay-back, or making the offender suffer in order to balance up the damage they have caused to the social fabric; nor is it a return to the 'classical' understanding typified by Bentham, which was based in deterrence. Rather, it is all about scales of proportionality. Some scholars have argued that proportionality is a purely negative principle: i.e., that its only application is to limit the severity of leniency of sentences, so that

they are not grossly out of kilter with the seriousness of the offence. Hirsch does not agree: he believes that the seriousness of an offence, and the severity of a punishment, can be measured and compared by means of a calculus in terms of the impact on 'living standard', as that concept was set out by Amartya Sen. The possibility of such ranking is supported by developments in several jurisdictions, not least the evolution of sentencing guidelines in England and Wales, which are based on an explicit concept of seriousness of the offence.

The author does not claim that a comprehensive account of punishment can be given by desert. Firstly, he acknowledges that proportionality between sentences does not yield any clear guidance on what actual punishments are appropriate. He allows that different societies will 'anchor' the range of punishments at different points, some harsher and some less so; but the principle of proportionality will still govern the choice of punishment within the range that is set. Those familiar with adjudication tariffs in prisons will recognise what he is talking about.

Secondly, he allows room for many other factors as long as they are subordinate to the essential principle of desert. So rehabilitation, the personal situation of the offender, deterrence, previous offences (he argues for a systematic mitigation of punishment for first offences, for example), and 'exceptional departures' when a particular crime wave hits a society, all find their place; in this way he is not at all doctrinaire or inflexible. He also has chapters on juvenile justice and on non-custodial sentences, though the latter receive far less attention than incarceration. It is striking also that restorative justice is not mentioned once in the

book; perhaps this does not fit with the centrality of desert, but that in itself may raise questions about the sufficiency of the desert principle.

This is an unapologetically rigorous philosophical statement of Hirsch's argument, proceeding through argument and rebuttal of objections with great clarity and logic, in plain non-technical language, and engaging concisely with a huge range of scholars at the same time as it sets everything in a clearly analysed historical context. It is a major tour de force which will mark an essential starting-point for anyone who wants to take the understanding of punishment forward from here, and who hopes to match both the rigour and the realism of Professor von Hirsch's theory.

Martin Kettle, Associate Inspector with Her Majesty's Inspectorate of Prisons

Book Review

Life Beyond Crime: What do those at risk of offending, prisoners and ex-offenders need to learn?

Edited by Paul Crane

Publisher: Lemos and Crane

ISBN: 978-1-898001-77-5

(paperback)

Price: £15.00 (Paperback)

As I stop to pick up this book, the front cover briefly gives away the style of text: criminological, reflective and experiential of the criminal justice system. A *Life Beyond Crime* as titled in this book refers to a phenomenon that has sparked much debate across the decades; that is whether offenders can be rehabilitated. Remarkably, Paul Crane has created a book

that is compelling and well suited for these developments, looking at what those at risk of offending, prisoners and ex-prisoners can learn before, during and after incarceration. Commentaries of experience contest the view 'a leopard cannot change its spots' with accounts of real prison circumstances and scenarios. This book digs deep into a range of experience but also pushes beyond what is already in scholarship conceptually and qualitatively, through careful selection of special contributors. *Life Beyond Crime* makes an important note for readers of the *Prison Service Journal*:

'Failure is pain but also natural, universal and stimulating.' (p.68)

A niche feature of this book is the emphasis of co-formation. Paul Crane, a practitioner and policy-maker, promotes the collaboration of multi-disciplines and external influences for the ongoing development and achievement of behaviour change within prisons. This specific exploration of co-formation offers an exciting uncapped limit to plasticity of the mind and self, even in adult life. A notable example is Norman Anderson's passage about his personal drug addiction and subsequent 18-year prison sentence aged fifty-four. His life turned around after he received a letter from a loved one that began with, 'we forgive you daddy'. Stressing the importance of support systems, this contributor sought to bring forth one of many reasons why education and self-reflection before going to complete a degree was critical for a transformation. In doing so, this book sets a scene for future extension on case studies.

There are fifty-seven named contributors, each individually tailored to one of three parts that

divide this text: Diversion and Young People, Adults in Prison and Returning to the Community. Whilst part one focuses on failed pre-court disposals, known as the 'first chances' before young people cross the line of desistance, it is beneficial to look at what offenders can learn during incarceration before it is truly too late. This introduces the most ambitious part, Adults in Prison. For a number of years I have contended that criminological research neglects the success of those that have turned their lives around. Nonetheless, this part fills that void. Accounts of hands on experience within prisons have come not just from prisoners, but from staff, who are notably consistent in role and objectives on a national basis. From this sample, the audience are invited to think from a range of perspectives of different identity, context and scale. Stand out chapters amongst all include 'The right to express yourself' by anonymous ex-prisoner, 'Thirty years as a probation officer' by Liz Dixon, 'The things I wanted to say but didn't' from an official prison visitor through to 'What prisoners

really need to learn before returning to the community' by Parole Board member Tom Millest.

It is important to note that without acknowledgement and appreciation for part two of this book on *Adults in Prison*, we marginalize part three, *Returning to the Community*. Rehabilitation and Innovative Solutions Enterprise (RISE) Prison Leader Elaine Knibbs touches on self-harm and suicide rates in custody, 'something clearly wrong within the prison system' (p.361), giving attention to trauma and low resilience faced by prisoners upon release. What is learnt so far is that education is not enough to achieve full rehabilitation. On the one hand, it provides the basics in order to survive in a competitive world, whereas on the other, it provides only an impression of how much less invested and valued you are in society. This is a striking concept to reveal and provokes the question, how can one learn to abide by the law if they do not know why it matters? Or even, why *they matter*?

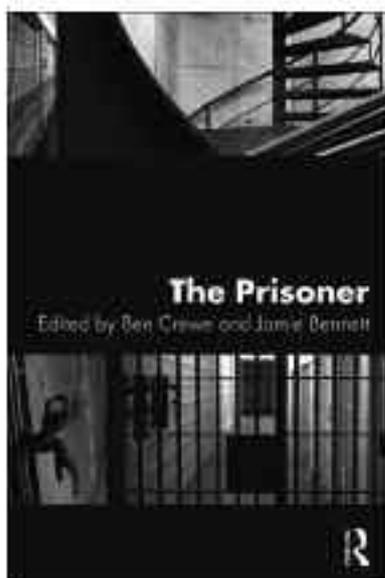
Overall, this book is enlightening, honest and hopeful as it challenges societal

pessimism towards criminal behaviour change. It can be read in any order, yet still help to provide a clear and basic introduction of criminal procedure, life in prison and rehabilitation to all audiences. Moreover, moving between different chapters can also make it easy to build an important bigger picture; that is, moving beyond traditional procedural understanding with critical momentum that directly and honestly underpins individual transformation. This book achieves its aims of providing enriched data evidence within practice and experience whilst we are at a time where scholarship cannot pre-empt empirical testing in such environments due to ethical issues. Certainly, *Life Beyond Crime* maintains usefulness for a range of readers from those with an interest in criminology though to practitioners and prisoners, under all kinds of circumstances.

Olivia Tickle,

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