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## Introduction



Welcome to the new look ECAN bulletin which will now be published once a term. The aim is to include more features, from both established academics and new thinkers, and to look for more contributions from overseas academics. I am keen for more of you to get involved with

ECAN so in November a survey will be landing in your inboxes so that we can find out what you would like our Early Career Academic Network to do – more events? Webchats with experts? More involvement in campaigning? I am genuinely interested to hear your ideas so that we can ensure ECAN works for you.

As well as targeting our work toward you, we would like you to get involved in other Howard League activities and events. On 20 November Alex Marshall, the first Chief Executive Officer of the College of Policing, is speaking at a [public event](#) in London. The lecture is a free event.

We are also holding our next [What if...? seminar](#) on the theme of policing on 4 December. Peter Neyroud will be asking what would happen if evidence was used to redesign the gateway to criminal justice and we moved to offender desistance policing. This event is at the London School of Economics as part of our partnership with the Mannheim Centre.

Finally a little reminder, do you know anyone who has just completed a Masters degree and achieved a distinction for their dissertation? If so, please encourage them to enter our [Sunley Prize](#). The three winners each receive £1,000 and a version of their dissertation will be published. The first of last year's winners will be published soon and will look at the concept of *mate crime*.

*Anita Dockley, Research Director*

## News

### Sex in prison: Jails struggle to strike consistent approach to public health challenge



The Commission on Sex in Prison has produced its first briefing paper, [Consensual sex among men in prison](#). Established by the Howard League, the commission is comprised of eminent academics, former prison governors and health experts, and is the first-ever review of sex in prison in England and Wales. In evidence supplied to the Commission, the National Aids Trust said that attempts to control consensual sexual activity between prisoners risked undermining efforts to promote safe sex and prevent the spread of infections including HIV.

### Prison Service Order requiring prisoners to pay costs of damaging cells

Justice Secretary Chris Grayling recently announced that prisoners who damage cells during custodial sentences will have to pay for any repairs required. Howard League Chief Executive Frances Crook expressed serious concerns about this new measure, stating that as there is 'no discretion or flexibility' and the 'rules include a requirement that the adjudicator must impose a financial penalty' it is 'a charter for bullies and abuse by staff.' Following an investigation into the deaths of three children during custody, it was found that incidents of damage to their cells were

treated as disciplinary offences, and prison staff had failed to identify the cause of this behaviour.

### Training during custodial sentences

A report by the RAND Corporation in the US has found that prisoners who receive general education and vocational training are significantly less likely to return to prison after release and are more likely to find employment than peers who do not receive such opportunities. The findings, from the largest ever meta-analysis of correctional educational studies, suggest that prison education programmes are cost effective, with a \$1 investment in prison education reducing imprisonment costs by \$4 to \$5 during the first three years post release.

### Fourth post-doctoral fellow: Michelle Miao



Michelle Miao is the fourth Howard League post-doctoral fellow at Oxford University's Centre for Criminology. The thesis for her recently completed DPhil in Law at the University of Oxford, *The Politics of Change:*

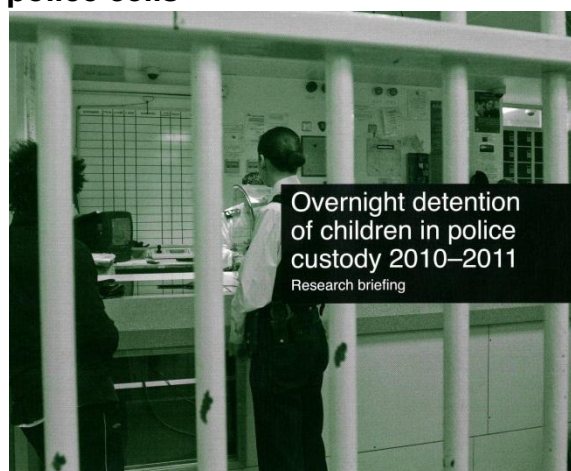
*Explaining Capital Punishment Reform in China*, is the first work to examine the impact of international and domestic forces on China's penal development in the field of capital punishment.

### Howard League victory in legal challenge to complaints system for children in secure training centres

The Ministry of Justice (MoJ) has conceded children held in secure training centres (STCs) should have a right to an independent review of their complaints in response to a Howard League legal challenge. However, the MoJ also

announced its intention to remove legal aid for children in detention except for representation before the parole board. Frances Crook stated that this ‘will have perverse consequences [...] children will not get the courses they need to address their offending or the local authority support to reintegrate safely into the community, while also making it difficult to uncover any serious abuse going on behind bars.’

### Overnight detention of children in police cells



The Howard League has urged police to refrain from detaining children overnight. A [briefing paper](#) published by the charity shows that there were more than 40,000 overnight detentions of children aged 17 and under in police stations across England and Wales during 2011. The data shows that the number of overnight detentions is falling – a success for the Howard League’s campaign to reduce the number of children getting caught up in the criminal justice system. The paper also calls for the presumption of bail to be strictly applied to children, and pushes for all police to be trained in safeguarding and child protection.

### Oakwood inspection report

A recent inspection of G4S Oakwood has criticised the prison for serious shortcomings. Frances Crook stated that ‘this is the jail that the Justice Secretary held up as the model for the whole prison system

to follow. Today’s report shows that he is completely out of touch with reality and is putting the public in danger. It also casts yet more doubt on the government’s plans to hand over probation to G4S and other private providers.’ Inspectors found that provisions for basic needs were poorly managed, and serious concerns for prisoners’ health and well-being were raised.

### Prison overcrowding

Research from The Howard League shows that almost 20,000 prisoners were kept in overcrowded cells last year. The figures show that, during the financial year 2012-13, about 19,140 prisoners on average were forced to share a cell designed for one person. Overcrowding can have a profound effect on prisoners’ mental health and well-being. As Frances Crook states, fewer staff result in limitations ‘opportunities for prisoners to work, learn or take courses to turn them away from crime’ adding that ‘(i)f the Ministry of Justice is serious about reducing reoffending it must tackle overcrowding now.’

### Submission to the Joint Committee on Human Rights on legal aid

The Howard League has made a number of recommendations regarding changes to legal aid. The submission argues that if implemented, these changes would prove disastrous for children and young people in the criminal justice system. As a result of cuts to legal aid, prisoners will stay longer in closed conditions, both to their personal detriment, and at great expense. The submission stated that ‘(i)f, as a result of the lack of legal aid and challenge the 12,000 on life sentences and IPP spend an extra year in jail [...] this will cost £480 million. This sum dwarfs the £4 million the Ministry of Justice hopes to save by the ending of legal aid to prisoners.’ View the submission in full on our [website](#).

## Democratising criminal justice?

Christopher Bennett, Senior Lecturer in Philosophy, University of Sheffield

### Introduction: glimpses of democracy?

In February 2012 George Zimmerman was patrolling his gated community as part of a neighbourhood watch scheme. A young black man came into view, whom Zimmerman said in a phone call to the emergency services was acting suspiciously. Zimmerman left his car and started following the perceived intruder. Shortly afterwards, the young man, Trayvon Martin, lay dead. Ostensibly due to Florida's 'stand your ground' self-defence laws – passed into law in 2005 by then Republican Governor Jeb Bush – which allow apparent homicides to certify that they were acting in self-defence and thus evade investigation as long as there is no evidence to the contrary, Zimmerman was not charged by Florida state prosecutors in the weeks following the killing. However, a wave of protests at this inaction mobilised across the US, and an investigation was eventually launched by the US Justice Department and the FBI. Zimmerman was brought to trial, charged with murder. At the end of the trial, though, a jury acquitted him. The result was widely condemned as unjust. Some diagnoses of the jury's decision pointed to prejudice; others to the jury's being constrained to act within the precise terms of Florida law. Accompanying a report on the protests across the US that the not-guilty verdict sparked, the Guardian published a photograph of a young black man at a rally holding up a placard with the words, ['Zimmerman: the People Say Guilty'](#)

I have started with this story because it raises a number of questions about the way in which democracy might be conducive or inimical to criminal justice; it also raises the question of what we mean by democracy. First of all, George Zimmerman was part of a neighbourhood watch group – the kind of initiative that might (perhaps



controversially) be seen as citizens mobilising themselves and taking responsibility for crime prevention and the maintenance of security in their local area. Secondly, when Zimmerman was initially not investigated and charged, the decision presumably lay with public prosecutors and police chiefs who, in the US system, are elected officials. Thirdly, it was public protest,

seemingly spontaneously motivated and genuine, that ensured that Zimmerman would face a trial. Fourthly, the trial result was determined by a jury, which many regard as a key point of public participation in the criminal justice system. Fifthly, the laws that allowed Zimmerman to walk free from the trial were passed by democratically-elected politicians in the Florida legislature (in a federal system that ensures significant legislative power rests with states). Sixthly, according to the placard in the Guardian photo, and widespread public opinion, the jury's decision contradicted the public decision about how the trial should have been decided.

Do these aspects of the Trayvon Martin case mean that this is indeed democracy in action? Clearly there is public input of a sort at various stages of the story. But at the same time, many will think that the public input in these cases was not always what we would call genuine democracy. So what is genuine democracy, and what role might it have in criminal justice?

### Why is democracy important for criminal justice?

We can distinguish two different motivations in recent criminological scholarship for

discussing public input and democracy. One is a descriptive claim that, as a matter of fact, there is a growing influence of public opinion in criminal justice, especially in Anglo-American systems. For instance, theorists of 'penal populism' have argued that there has been a shift in the past thirty or forty years from a situation (say, in the post-war period) where criminal justice policy was largely regarded as a matter of social control best left to public officials, to a situation where the public and its retributive passions are increasingly demanding to be represented in criminal justice decisions (Bottoms 1995; Pratt 2006; Loader 2006; Lacey 2008). If this descriptive claim is correct, there is room for theorists to take a view about whether this is a positive or a negative development. Typically, however, in view of the disastrous consequences these developments have had for imprisonment rates, sentence lengths and the associated human damage caused, this shift has not been welcomed, and the burden of the theorists' recommendations has been concerned with how we can insulate sentencing policy from public opinion. As Nicola Lacey puts it:

*While accountability and responsiveness are, in different guises, constants in democratic theory, they are in potential conflict with other values such as the aspiration to foster an inclusionary criminal justice policy. And this conflict may be accentuated by the particular institutional constraints under which different sorts of democratic governments operate. (Lacey, 2008: 19)*

Secondly, and contrary to this first trend, some theorists advance a claim that *greater* democracy is what is needed in order to cure the criminal justice system of (at least some of) its ills. For instance, Albert Dzur has argued that the apparent influence of public opinion on public policy does not represent democracy at all; on his view, democracy means participatory democracy – citizens taking 'load-bearing responsibility' for key criminal justice decisions within the

life of criminal justice institutions, in a way exemplified by the jury in a criminal trial (Dzur, 2012). Dzur's view is that there are structural features of the jury system – notably deliberation about the details of an individual case by a group of lay people – that militate in favour of more humane sentencing decisions.

Dzur's view is suggestive, but there are two importantly different ways of understanding it – as brought out by Lacey's distinction between 'accountability and responsiveness' on the one hand and 'inclusion' on the other. First of all, there is the claim that the *right* sort of public input into criminal justice decisions can improve their quality, making them more sensitive to the details and the context of individual human situations. In other words, we might claim that greater public accountability and participation will make institutions like criminal justice more inclusive. Or secondly, we might claim that a criminal justice system, however impartial, efficient and accurate in its decisions, would be problematic if it was entirely insulated from public input of some sort, and hence that there is some *independent* value in public input in key decision-making. In other words, we might construe Dzur as arguing that there is a value in democratic control even if it means that there is sometimes a loss in the accuracy or inclusiveness of the decisions.

What we have said so far raises a series of questions. What does (genuine) democracy amount to? What is the value of democracy? What aspects of criminal justice should the public be allowed to have a say in, how should they be allowed to have a say – and what elements should they be excluded from? And how feasible is it to think that the public will want to get involved in the appropriate ways?

One central criticism of democracy – echoed in Lacey's criticism of allowing public opinion to affect decision-making – has always been that one would never ask

lay people to make important decisions in any other area of expertise, e.g. medical decisions – so why give the untutored the power to make important political decisions? Proponents of democracy have to find some way of arguing that politics is different from medicine (or car mechanics, or navigating a ship, or any other domain of expertise). Looking at that criticism is a good way to focus any investigation of the importance of democracy.

### What is democracy and why is it of value?

First of all, there is a range of views about what constitutes democracy. One view is that democracy is little more than an extension of consumerism: it is simply a question of public preferences being represented and satisfied in public policy; one determines what public opinion is on some question by survey, and then implements a policy designed to maximise the satisfaction of those preferences. That's democracy. However, that view can be criticised as a caricature: to begin with, it treats citizens' preferences in too simplistic and static a manner. Better would be to insist that democracy must involve an element of *deliberation* in which citizens' initial opinions are refined by the presentation of evidence and interaction with the views of others. It is citizen opinion post- rather than pre-deliberation that, on this latter view, should count.

There is also an important split between those who think that democracy is compatible with the delegation of key decision-making to representatives, and those who think that democracy must be at least to some extent direct and participatory. The ideal of 'self-government' might be construed quite broadly to mean a society in which people run things themselves rather than a governing class doing it for them. But even if representatives are involved, democracy might be said to involve public control over the representatives in three ways: through public *choice* of those

representatives; through their *authorisation* by the public (receiving a democratic mandate); and through their being *accountable* to the public. If we take, for instance, the judges or magistrates who adjudicate on criminal cases, who are not chosen or elected by the public, we might ask whether they are nevertheless in some sense authorised by the public – after all, there is some sense in which they make these decisions on the public's behalf, or 'in our name.' Even if the answers to these questions are positive, we might ask whether that is democracy enough.

What is democracy enough in turn depends on what the value of democracy is, and hence whether something important is lost when public officials make these decisions free from public control. A number of types of view have been put forward about the value democracy brings.

a) Education of the public about the issues being dealt with in their name, by giving the public some responsibility for making not unimportant decisions. This might lead to less public disillusion with official decision-making, a greater appreciation of the complexities of the issues, and less public demand for knee-jerk reactions (in the criminal justice context, see Johnstone, 2000).

b) Correction of the decisions of 'specialists' by lay decision-makers operating with 'common sense.' The idea here would be that, as well as providing specialised knowledge, professionalisation can also distort a decision-maker's perspective, encouraging him or her to concentrate only on certain aspects of a situation. The input of lay people is a necessary balance to professional knowledge. This would involve not simply making decisions more in line with citizens' preferences, but making them more accurate. (Though there might also be the consumer-type view on which democracy is valuable because or insofar as it increases preference-satisfaction by making outcomes

maximally sensitive to citizens' preferences.) On one version of this type of view, the reason public input is necessary is that basic policy questions are not merely technical but fundamental moral matters: although experts may be able to provide relevant evidence, there is no reason to think that there is a better way of making decisions involving balancing and weighing different values than by allowing a group of lay citizens to do it (Anderson, 2006; Estlund, 2008; Farrell, 2012).

c) Fairness and equality – where key decisions that affect the collective have to be made, the argument here is, not necessarily that the decisions will be more *accurate* when they are made by all, but that they will be *fairer* and – in at least once sense – more *egalitarian*, because they treat citizens as having an equal say over the outcomes (Waldron, 2006; Christiano, 2004). An argument going back to Rousseau claims that democracy provides a way in which basic rules and policies can be determined in such a way that all citizens are treated as having an equal status: where everyone has an equal say in what the basic rules should be, no one has rules simply foisted upon them. That is to say, each view is given equal weight. While they may continue to disagree with the outcome of the decision, each citizen can recognise at the same time that the decision was made in the most procedurally fair manner available (Wollheim, 1962).

These arguments do not necessarily suggest that we need greater public participation in criminal justice institutions – it might be compatible with these arguments that lay people simply develop a more active role in holding their representatives to account for their exercise of the powers delegated to them. Dzur, however, canvasses an interesting further moralistic argument for participation: that it is an abdication of our responsibility as citizens – particularly in relation to momentous decisions such as those involved in criminal

justice – if we fail to involve ourselves in decision-making. For Dzur, this is a reason for thinking that citizens should participate in jury-like bodies, cooperating with public officials but also remaining independent from them, at all stages of the criminal justice process.

### **What could be democratised in criminal justice?**

When we talk about the criminal justice system, there are a number of different decision-making stages we might have in mind.

Firstly, there are efforts towards crime prevention and the maintenance of order or security. Within this category there may be the task of formulating policies for crime prevention, whether by local or national politicians, Chief Constables, Police and Crime Commissioners, local forums, or by ground-level actors themselves; and there is the task of executing crime prevention – whether by police, private security firm, or neighbourhood watch.

Crime prevention is concerned with pre-emption; but of course a great deal of what we mean by criminal justice is retrospective – having to do with responses to agents who violate the behavioural standards set by the criminal law. So secondly, one central aspect of the criminal justice system is the formulation of criminal law – the passing of legislation; and then the review, adjustment and maintenance of that legislation. Clearly this is the role of the legislature – a democratically elected body. Once a criminal law is in place there have to be mechanisms to deal with those who violate it. So a third aspect concerns investigation of crimes as construed by the criminal law. A fourth concerns decisions to prosecute – decisions made at present by the CPS. A fifth concerns the judicial role – the making of decisions as to whether a particular instance of conduct is or is not compatible with the standards set by the criminal law.

Finally there are aspects of the criminal justice system that have to do with sanctioning those convicted of violations. In our list this would be number six – the task of determining a sentence (where again, this might be divided up into the formulation of general sentencing policies or guidelines, if appropriate; and the execution of sentencing decisions in particular cases). Seventhly, there would be the task of executing the sentence. Eighthly, there may be the task of probation and re-settlement of those who have served a sentence.

I have listed these various aspects of the criminal justice system in order to raise the question of what democracy would amount to with respect to each of them – is democracy relevant or important for each aspect; would the same model of democracy be relevant to each? Could we imagine citizens' panels (randomly selected like juries) helping to make decisions about probation, or about whether to prosecute, or about policing priorities? Should elected officials make these decisions? Or are there some decisions that do not need to be made democratically, and where it is perfectly legitimate to leave them to specialised officials? If public input was increased, could it ever really be more than tokenistic?

### **The feasibility of democracy**

On top of these issues, there are also questions about the public appetite for democracy and/or institutional willingness to allow democracy. After all, it is sometimes said that our democracy is in crisis. One ground for such claims is that ordinary people feel increasingly distant from the decision-makers who implement policy in their name. There are signs of disillusionment with electoral democracy and the UK's two- or three-party system. Although that might suggest we need a democratic renewal, another, more insidious concern, has to do with the way, in a globalised world, that the scope for individuals or even states to exert control over their lives is limited by socio-economic

forces and conditions that seem to have their own momentum. This might make us wonder whether democracy is a forlorn hope.

There is also a concern about the increasing polarisation or atomisation of society – that modern social conditions increasingly turn us into individuals who have little to do with one another – or who increasingly only mix with people like us – and that this makes the consensus-building and grassroots activism of democratic movements increasingly difficult; and that our lives are increasingly marked by a turn inward, to a narrow circle of like-minded associates, and a corresponding decline in concern for the public sphere, public space, public institutions and public goods that we have in common.

At the same time, however, the rise of the internet, bringing with it the free flow of information and new ways of what we might call 'public opinion formation' means that our society is increasingly marked by 'people power' in a certain sense. Furthermore, there are numerous examples of people organising for a particular, broadly political, end – whether this involves the failure of Amazon or Starbucks to pay tax, to the closure of local hospitals, etc. An optimist about democracy might also point to a certain assertiveness, lack of deference and egalitarianism within our social and political culture. People are increasingly unwilling to allow a semi-aristocratic 'educated' mandarin elite to make decisions about how to run the country in their best interests.

### **Conclusion**

In conclusion, what I have tried to do here is to point to the range of issues and questions that are raised when we start to think about democratising criminal justice. Democracy is not the only thing that is important in criminal justice. Justice, security, welfare of victims, those who offend and their families, the rule of law, inclusiveness: these are also dimensions of the complex array of



important criminal justice concerns. But when decisions are made democratically, many would agree they have a legitimacy that is otherwise lacking. That gives us reason to investigate what democracy in criminal justice would involve and how it could be implemented.

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## On going too far: Safe-keeping, public space and the discursive limits of being a slut

Alexandra Fanghanel, Lecturer in Criminology, University of Bedfordshire

*If we're talking about girls who go out and just have a good time, then they are to blame. If we talk about people who happen to be out and actually get 'raped' raped, then I feel no [they are not to blame] - and everything should be done against that.*

*Eddy Shah, in interview on BBC Radio 5 Live, 12 August 2013*



attitudes to making safer spaces might invite us to ask; what is safety? How might safe-keeping work? What might safe-keeping advice look like?

When, in a health and safety class, a policeman suggests that: 'women should avoid dressing like

Do we think too much about sex? Do we think too much about safety when it comes to sex? What about safety when it comes to being sexy? In an era of heightened anxiety about security and public safety (Beck, 1986, Ó Tuathail, 2003) what do we even mean when we talk about safety? Or sexiness? Comments about rape, for instance, such as those above spoken by newspaper magnate Eddy Shah, appear so frequently in popular discourse that they have become almost banal (Shah's comment has only been picked because it is one of the most recent examples of rape-myth-conjuring to appear in the media; it is not the most interesting nor even the most controversial), and yet the consistency with which similar claims that women and girls are complicit in their own experiences of rape and sexual assault by not caring enough for their safety (by 'go[ing] out and just hav[ing] a good time'), suggests to me that rather than thinking too much about sex and safety, we think too little, or rather we think about sexual safety in the wrong ways.

I am interested in how concern about safety, particularly with respect to sexuality, is reflected in the advice given to women about their actions in public spaces. I am also interested in the social cost of promoting such safety – for women who are fearful and for the men whom they fear. Women's safety and efforts to promote safe-keeping are pressing social policy concerns (Farrall and Lee, 2008). Contemporary

sluts in order not to be victimized" (BBC, 2011), he is offering safe-keeping advice. When, in an interview for an online magazine, an author famous for her feminist books makes the following comments, she is offering safe-keeping advice:

*MF: 'And of course it should never be about victim blaming but I worry about the idea of saying to women "don't change your behaviour, this is not your problem!". I feel like that's saying, "You should be able to leave your car unlocked with the keys in the ignition, or leave your front door unlocked, and expect nobody to burgle you".'*

*CM: 'It's on that basis that I don't wear high heels – other than I can't walk in them – because when I'm lying in bed at night with my husband, I know there's a woman coming who I could rape and murder, because I can hear her coming up the street in high heels, clack-clack-clack. And I can hear she's on her own, I can hear what speed she's coming at, I could plan where to stand to grab her or an ambush. And every time I hear her I think, "Fuck, you're just alerting every fucking nutter to where you are now". And [that it's a concern] that's not right'. (Caitlin Moran in interview with Mia Freedman, 2012)*

When Transport for London in the UK run minicab campaigns like [image 1](#), they are offering safe-keeping advice. Yet, what they could also be said to be doing is victim-blaming and perpetuating rape myths which are as harmful and sexist for the women

whom they target and the men whom they warn against as those espoused by Shah, above. By attempting to reduce crime and fear of crime, by promoting specific forms of safe-keeping, I suggest that these fragments of advice compose a specific form of subjectivity: one which idealises a type of victim, which fetishes a particular construction of the person offending, and which is based on racist, classist and sexist constructions of (im)propriety.

### On sluttiness

As many people will know, Michael Sanguinetti's comment above instigated the global SlutWalk movement in 2011. One of the main political aims of the SlutWalk movement was to challenge the culture of victim blaming embedded in the assumptions which underpin Sanguinetti's advice; namely that in order to avoid victimisation in public space, women can take certain precautions, including not 'dressing like sluts', that is to say, not sexually, provocatively, or in a manner that suggests their promiscuity. This imperative suggests that there is something moralistic and importantly *properly feminine* about the way in which women should be acting in public space (for more on this see Lim and Fanghanel, 2013).

The notion that women might be victimised because they dress 'like sluts' has been widely critiqued in the media, and though Sanguinetti himself apologized for his comments, the SlutWalk movement has continued to evolve. The issues of sexual safety, rape myths and propriety remain at the forefront of this protest. However, what of this imperative to avoid your own victimisation? How does the importance of safety actually feature within the discourses of the SlutWalk? Is there a limit to how far (and how slutty) you can go? I interviewed some women with Dr Jason Lim of the University of Brighton at a SlutWalk protest in London 2011 about these questions of safe-keeping.



Image 1: CabWise campaign poster

To walk through a SlutWalk protest is to be confronted by styles of dress and slogans about dress ('My dress is not a yes!'; 'My clothes are not my consent!') from all directions. The question of dressing alongside the question of sexual practice appears to be fundamental to the anti-rape message of SlutWalk. Yet, when reflecting on what it would mean to actually dress like a slut in public space, some of the participants that I spoke to constructed a discursive and ethical limit to the notion that clothes have nothing to do with increasing the risk of getting raped. All names have been changed.

*I think women should obviously be allowed to wear what they want, when they want to wear it. But I also think you have a personal responsibility to protect yourself. And not putting yourself into a situation that could be considered dangerous' (Lynne, London Slutwalk, 2011)*

Elsewhere, another group of young women made the following comments:

*R: I think as long as you are sensible about your behaviour, you know that, you don't drink too much and put yourself in a dangerous situation, it shouldn't matter about the clothes that you wear.*

*E: But the, even drinking too much and putting yourself...drinking too much shouldn't be putting yourself in a dangerous situation. Because...*

*Because...*

*R: Well no, but I am just saying that...*

*E: Yeah its, back to, when you are not in control of your...of yourself. Then...you just need to...*

*R: It does make you vulnerable.*

*E: Yeah it shouldn't...*

*R:...it shouldn't but...*

*E:...people are arseholes [laughs]. (Ruth and Emily, London SlutWalk, 2011)*

Consider these comments in line with those made by Freedman and Moran above: 'I worry about the idea of saying to women "don't change your behaviour, this is not your problem!"', 'as long as *you* are sensible about your behaviour', '*you* have a personal responsibility to protect yourself' (emphasis mine, where 'you' stands in for 'me', or for any of these women, but not men). The imperative to stay safe, to not, for instance, 'wear high heels' lest anyone 'could plan where to stand to grab [you]', to refrain from making a 'clack, clack, clack' noise with your heels in case this alerts potential rapists to your location, all present a certain way of being and behaving in public space which is predicated on social anxiety about producing safety by behaving 'sensibly'; safety which is, crucially, an individual imperative – an incitement to control the self (see Foucault, 1975; 1978).

The individualisation of risk is, according to Ulrich Beck (1986), a consequence of living in an era of reflexive modernity, where the cultivation of a globalised, fractured, digitalised, molecular social life and mode of organising public space becomes an individual responsibility. In the context of health, economics, education and, of course, crime prevention, the neoliberal emphasis on the 'project of the self' – that the self (meaning experience of subjectivity, or being) might be constructed, altered, improved, or enhanced – saturates public and political discourses. It is this that is evidenced within the safety

imperatives that Freedman and Moran, as well as the women I spoke to, espouse. Emphasising what women should and should not wear, how they should and should not behave, where they should and should not go constructs an idealised notion proper and improper femininity (Koskela, 1997; Pain, 2000, Hollander, 2001).

My research posits that this focus on the individual (in this case the woman) as the gatekeeper to her own security is a problematic one which reinforces sexist attitudes to how public spaces might be occupied and by whom, with considerable implications for social and spatial exclusions of both men and women who become socially marginal (see also Stanko, 1995; Beckett and Herbert, 2008).

In order to more fully understand this marginalisation we must interrogate how the person who offends as well as the victim is figured in debates of safe-keeping and combating the fear of crime. If we consider that the SlutWalk, the Transport for London campaign and comments like those made by Shah above focus explicitly on crimes of rape and sexual assault, the sort of offender who is conjured is a sex offender. But what sort of sex offender? The nameless, faceless 'somebody dangerous'? An 'arsehole' as Emily suggests above? A 'fucking nutter' according to Moran? The discourses of safety that are reflected in contemporary social life cultivate an imaginary profile of the persistent, latent threat of the predatory male stranger rapist. We all know that so-called 'stranger rapes' account for a very small percentage of the rapes that occur, wherever they occur. Women and men are more often raped or sexually assaulted by their partners, their exes, their spouses, their friends, their colleagues, or their acquaintances than they are by strangers, and yet it is the fear of this crime, by this stranger-offender, that these safe-keeping discourses perpetuate. By talking about possible rapists as 'fucking nutters' (and so on), a caricature of an

offender is created; the rapist who is abnormal, insane, inhuman, resolutely beyond the pale. Such constructions of those who offend are complicit in upholding rape myths (that real 'rape' rapes are only committed by 'arseholes', not by our brothers, our friends, our husbands), thus making these more commonplace assaults more difficult to recognise and react against.

These stereotypes about those who offend are, as I have suggested, also predicated upon racist and classist imaginaries of the sexual deviant. Take, for instance, [image 1](#). This CabWise campaign is one example of how this emblematic offender and victim become enshrined within contemporary discourses about safe-keeping. This poster is one of several that Transport for London released in the UK to alert people to the dangers of going home after a night out in an unlicensed minicab. While the campaign might ostensibly be aimed at both men and women, this campaign predominantly preys on women's fear of rape and sexual assault, as is demonstrated in the longer advert shown in cinemas in the UK and [online](#) which accompanies this poster campaign.

The poster, which does not appear in the film, shows a racially ambiguous man looking into the rear view mirror of his unlicensed minicab. We – the viewers of this poster – are invited to interpret the gaze as menacing, or at least purposeful and intense. We are also invited to make the link between the man's stare, the fact that he is a 'stranger', and the threat of rape. It is significant that here, and in the film, that this man's 'race' can be called into question; that he is not unambiguously black or white, but that he might be, and that he might be dangerous (see Hyams, 2000). The association between 'blackness', ambiguity and signifiers of fear of crime is a common one (Staples, 1986; Pain, 2000). Of the four minicab drivers who appear in the 40 second advert, only one could be described as appearing to be white, of the three

female passengers who appear in the film, two of the three (the only two 'victims', incidentally) appear as white women about to be attacked by two different black men. When safe-keeping advice and campaigns like this use racist stereotypes of who a person who offends (and who a victim) might be, the beginnings of the problems associated with safe-keeping imperatives and the implications of their interventions for the socially marginalised can be seen (for more on this see Fanghanel, 2013).

### How far would you go?

Whether outside of social norms because he is a 'nutter', or outside of the grace of social privilege because of his class and race, the stereotypical masculine rapist is positioned in safe-keeping discourses alongside the stereotypical feminine victim. Importantly, both the rapist and the victim are spatially-situated discursive figures; 'if you are living with a man, what are you doing, running around on the streets getting raped?' (Butler, 1992:18). This is partially because of the ways in which these rape myths rely on the supposed importance of (not) being in the (im)proper place, of being properly masculine (real men don't rape!) or feminine (Can't touch this! Unless I want you to!), of being properly victim or offender, and of being 'proper', of not going too far:

*And you shouldn't be judged on what you wear, which is what the policeman [Sanguinetti] was doing. Whereas for me I always believe in a little bit of discretion and a little bit of dignity. And...I don't see a lot of dignity in a lot of what these people are wearing today. And to be quite honest, that is probably all that policeman in Canada was trying to say' (Linda, SlutWalk, 2011)*

Dignity and discretion are 'proper' feminine attributes; to be undignified and indiscreet is to be badly feminine (see Bartky, 1990). The properly feminine woman is in the home, is bound to the private sphere, does not binge drink, does not walk home alone late at night, does not flirt with men when she has

no intention to have sex with them, does not sleep around, does not dress or behave like a 'slut'. This properly feminine female is in the proper place; she has not gone too far with (or without) anyone (Wilson, 1991).

Stereotypes of 'properness' such as these which saturate safe-keeping advice can thus be understood as subjugating. Indeed, Moran's comment does precisely this work of subjugation in the service of promoting safe-keeping. Her comments articulate the discursive limit of the ways that men and women belong to, construct, or might be excluded or alienated from, public spaces. Casting herself both as the spectre of a potential rapist; 'I know there's a woman coming who I could rape and murder', and as the 'proper' woman in the 'proper' place; in bed with her husband (unlike this clack, clack, clacking woman who is not in bed with her own husband), she also paints a pastiche of rape victims as voiceless stereotypes of femininity who wander the streets clacking indignantly in high heels. Being improperly feminine (maybe being hyperfeminine) the woman becomes prey; 'alerting' potential rapists to where she can be captured, her high heels suggesting how 'far' she might go with them.

Placing so much importance on staying safe by behaving like the right sort of woman in the right sort of place, and avoiding the wrong sort of man reveals, the insidiousness of the limits to what is accepted and what is not in public spaces when safe-keeping is at stake, limits which are (at least) sexist, racist, classist and which are complicit in the perpetuation of rape myths. My work interrogates some of the ways in which these dominant attitudes to safety as a solution to the social problem of fear of crime work. By thinking critically about sex and safety, by unpicking the assumptions that underpin normative ways of thinking about sex and safety, and by considering questions of spatial 'justice', criminalisation and social exclusions and how they are perpetuated by dominant

safety and fear of crime discourses, the trouble with safety can be examined and the social cost of living in risk averse and anxiously individualised societies can be meaningfully called into question.

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## Restorative justice in prison. An ethnographic study in a Belgian 'restorative' maximum-security prison

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### Introduction

I recently completed my PhD thesis, *Restorative Justice and Imprisonment. An ethnographic study in the Belgian prison Leuven Centraal* at the Free University of Brussels (Belgium), where my supervisors were Professor Sonja Snacken and Professor Serge Gutwirth. The doctoral dissertation focused on the ongoing process of rethinking the custodial sanction in Belgium. Placed within broader societal developments in our post-modern society and reflecting the decline of the rehabilitative ideal, more punitive sanctions and a focus on crime and security, the (symbolic) figure of the victim has taken a more central place in criminal justice policy than ever before. The increasing focus on the rights and needs of victims has been accompanied by the rise of a broad national and international movement in and around the criminal justice system known as 'Restorative Justice' (RJ).

From the 1970s onwards, RJ principles and practices have increasingly attracted interest as a framework for dealing with crime. The emergence of these ideas and practices in western countries has grown from a focus on the victim. While RJ is predominantly focused on victim rights, needs and entitlements and is not generally considered to be an offender-centred approach, over the last few years a growing number of empirical studies designed to test the effects of its practices on future offending behaviour have been undertaken. This more recent approach to RJ is not limited to an evaluation of its ability to reduce crime, but is seen in the connection between reparation, rehabilitation and desistance. The recent boost in research on the criminal careers of those who offend has drawn attention, especially in Anglo-Saxon countries, to the gradual process of



desisting from crime. While the implementation of RJ practices in prisons in Europe, the UK, Canada and the United States has originally been victim-oriented, it is now increasingly undertaken with reference to the moral and social rehabilitation of the prisoner.

Policy makers too have shown a growing

interest in the capacity of RJ interventions to impact positively on recidivism rates, as shown for example by recent legislative initiatives in England and Wales. Ministry of Justice policy documents and initiatives announced in March, October and November 2012 suggest a growth in new initiatives to reform the criminal justice system and its institutions in a more 'restorative' way. 'We need to ensure that prison sentences are reformatory (...) we are proposing to expand the use of restorative justice practices', declared the then Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, in March 2012 (Ministry of Justice 2012: 2).

### The Belgian 'Utopian' restorative prisons

Renowned penologists like Dhami et al. (2009) and Pollock et al. (2012) now advocate the further development of RJ practices in prison, and see reparation as a new objective of the implementation of a custodial sentence, referring to the Belgian evolutions. From the mid-1990s on increased attention on the rights and needs of victims and RJ principles and practices transcended the Belgian prison walls. Following research in six Belgian prisons between 1998 and 2000, the federal government decided in 2000 that all prisons





should evolve towards a RJ-oriented detention system. One RJ adviser was appointed at the management level in each prison in order to make the structure and culture within the prison more RJ-oriented. In each prison, a range of new activities and RJ practices were set up such as victim offender mediation, victim awareness programmes, and information sessions for prisoners on the consequences of crimes for victims. Since mid-2008, the RJ adviser positions no longer exist and each prison governor is now responsible for implementing RJ within the prison. Also, since 2005, restoration towards the victim has become one of the legal objectives of the custodial sentence, and further, the attitude of the prisoner towards their victim is one of the four contra-indications for granting conditional release.

However, the link between RJ and the prison is not as evident as seems to be assumed. Prisons differ significantly from other social institutions. As a 'total institution' their primary aim is not to guarantee the well-being of their inhabitants but to protect society. Security requirements, architecturally and symbolically, shape daily prison life. With the imbalance of power between staff, prisoners and the institution, ambitions and techniques are deployed, experienced and reconstituted. Some attitudes, behaviours and relationships are promoted and others inhibited, some rewarded and others punished. A 'dialectic of control' between the prison and its inhabitants forms part of the

daily social life, the culture and structure of the institute.

Prison environments induce deprivations or 'pains' and negative psychological effects that influence their culture, structure and the behaviour of prisoners. This architectural space is far from being a neutral, value-free context, but can encourage a collection of shared norms, values and practices between prisoners – the so-called 'inmate code'. This 'set of unwritten rules' is seen as an enabling and protective framework for their interactions and relationships, interwoven with elements of high masculinity. If RJ practices are introduced and fostered in prison, they must be understood in relation to the institution's structural and cultural elements. These practices have a place in the prison's essential dynamic between the institution and its inhabitants.

Although there is increasing advocacy for RJ practices in Belgian prisons and abroad, there is little sociological understanding of the effects of the practices on prisoners. Sociological studies of prison focus on describing the prison's culture and social organisation, the prisoner's adaptation to it, new and old pain and frustrations and deprivations in prison – but never in relation to the victim-orientated and offender-centred approach fostered by RJ principles and practices. The way prisoners have to relate themselves to their victim forms part of the new social world in a modern western prison. In my doctoral dissertation, RJ practices were examined in relation to the prison's culture, structure and social organisation, and I described RJ's relationship to new and old pains, deprivations of imprisonment and techniques of psychological survival. The thesis locates RJ practices alongside the 'set of unwritten rules', the set of shared norms, values and practices of prisoners in the social world of the modern Belgian 'restorative' prison, as referred to by RJ advocates.



### Ethnographic research approach

Rather than approaching the victim-oriented developments as if the current situation is more positive or more progressive than in the past, I derived from Michel Foucault his methodological precautions and employed his positive, not aggressive, scepticism to approach these developments. One element of my research has been a focus on examining the ontological, epistemological and methodological issues of doing research within the criminal justice system, and especially within a prison setting. From a set of ideas on how social reality is constructed and the resulting ontological and epistemological questions and stands, I have shaped an ethnographic, reflexive approach to conducting research in a prison setting.

I spent 18 months in the maximum-security prison Leuven Central, which has a population of 350 prisoners, the majority of whom are serving a sentence of more than ten years. I particularly focused on how the cultural and structural characteristics of the prison have influenced ethnographic research and the strategies of the researcher; for example how social relations with prisoners, uniformed staff and governors have been established. Because of this reflexive, ethnographic approach, the thesis resulted in an extensive elaboration on how daily life and work in prison is related, constructed and reconstructed by the present RJ principles, practices and present advocates. This sociological case study of a Belgian prison provided an

account of neglected dimensions and themes of western imprisonment, exposing the prison's social components and examining its constituent parts in relation to RJ principles and practices.

### Prison talk, the internal dynamics of the institute and restorative justice

In my thesis, the meaning of RJ has been related to the 'inmate code'. Committed crime, victims, reparation, regret and remorse are not part of this set of unwritten rules and are therefore seen as 'threatening' themes in this constructed social world where losing positions and roles in the prison's hierarchy, social relationships, and everyday social life can have negative effects on the daily life of the prisoner. As a prisoner sentenced for life in prison after a murder stated:

*'What do you want me to say, Bart, life behind this door does not allow you to show those feelings of remorse. I need to be strong outside, to avoid that others could see right thru me. Of course, I am ashamed of my crime, and I would do everything to turn back time. But it is the same as coping with life in prison, crying is for inside, not outside'.*

Despite this set of unwritten rules, elements of trust can unlock new possibilities for prisoners to engage in social relations. Trust is a necessary condition for prisoners to be able to interact about certain feelings and emotions related to RJ practices.

Restorative justice principles and practices also relate to the social relations between prisoners and prison staff, and particularly the psychological staff because of their role in evaluating the contra-indications for granting conditional release – such as the prisoner's attitude towards their victim.

Restorative justice practices have a place in the growing prominence of psychological staff and expertise within western prisons, and the increased emphasis on motivation, self-change and empowerment, as well as empathy, regret

and remorse in the set of written submissions, psychological judgements and reports that, for all prisoners, structure and influence their path towards freedom. The new knowledge produced through RJ practices is not excluded from the exercise of psychological power, and the way prisoners try to maximize their chances for freedom.

Restorative justice practices have been institutionalised in Belgian prisons for more than a decade, a development often perceived as 'utopian' in other western countries. Over the last five years, RJ practices have been articulated as having promising implications for interventions in prison and sentencing practices that can foster desistance from crime. These practices can for example avoid the destructive, disintegrating effects of the emotions of guilt, shame and remorse on prisoners, which can lead to self-destructive stigmas and identities as well as to feelings of depression and powerlessness. In Belgium, the awareness of these negative, destructive and disintegrating elements had a significant influence on the development of RJ practices in the prison system.

As part of the desisting process, these practices also have the potential to foster social and human capital. Through these mediations or conferences, new connections can be created that build human capital in the (ex-) prisoner and social capital in the communities where they will be reintegrated. The current renewed attention on RJ practices is essentially about accelerating the natural processes of desistance, and by doing this, addressing the changing, rehabilitating or reforming potential of the individual prisoner.

However, as this sociological analysis shows these practices are taking place in a context and institution that is affected by these practices, and affects the practice itself. The external dynamics of the prison's political logic, changes in the criminal justice landscape and societal transformations are related to the internal dynamics of the prison institution. As a result of current penal developments and the punitive turn, characteristics of the politics of incarceration like evidence-based practice, late-modern rehabilitation, risk-needs discourses and assessments place prisoners' psychological needs in relation, in a narrow sense, to public security.

Within these developments and because of the emphasis on restoration of the prisoner and their attitude towards the victim in Belgium, RJ practices and the knowledge such practices create now form part of all internal dynamics within the prison institute, with only some in favour of the desisting path of the prisoner.

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## Drug use inside: exploring the impact of imprisonment on injecting drug use

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### Introducing the research

Two years ago I completed my PhD thesis, *Male injecting drug users and the impact of imprisonment*. The thesis used Grounded Theory to explore what happened to illicit drug use when community drug injectors were sent to prison and the impact on them. Below I briefly outline the research and also provide some of the key findings.



of the prison population. At the time this research was started it was estimated that 40,000 drug users were in English and Welsh prisons at any one time (Lee and George, 2005), roughly half of serving prisoners. Surveys have

### Background: about me and how the study was chosen

I had been working as a Research Fellow for Leeds Primary Care Trust for four years when I started my PhD. While in this role I noticed that injecting drug users often spoke about prison and expressed differing and interesting views about their time in prison and how it had affected them. For example, a study into hepatitis C among homeless drug users discussed excessive needle sharpening and reuse in prisons due to needle scarcity, needle smuggling on prison visits, and also looked at the use of needles as a currency in prison, often traded for tobacco (Wright, Tompkins and Jones, 2005). In a later study, injecting drug using women often expressed a desire to be sent to prison on purpose in order to receive immediate medical assistance for drug dependence (Neale, Tompkins and Sheard, 2007; Tompkins et al., 2007).

These studies encouraged me to think broadly about what imprisonment meant for injecting drug users, particularly in relation to their drug using practices. I found it intriguing that people reported having intentionally committed crime in order to receive a custodial sentence in the hope or expectation that medical assistance for drug dependence would be more easily obtained in prison than in the community.

### Research background

It is well known that people with problematic drug use make up a substantial proportion

identified the widespread use of drug use prior to custody (Stewart, 2008) and over a third of people received into British prisons each year are treated for opiate dependence, 40 per cent of whom report injecting drug use during the month preceding imprisonment (Department of Health (England) and the devolved administrations, 2007).

Due to the volume of drug users in prison and international advancements in the legal and human rights of prisoners, there have been developments in the health care and treatment of drug using prisoners over the years. Responses and policies regarding the treatment of drug users in prison in England and Wales traditionally focused on disrupting the supply of illicit drugs in prison and reducing prison drug use, particularly after reports highlighted high levels of high risk drug injecting practices in prison (Turnbull, Power and Stimson, 1996; Strang et al., 1998). Over more recent years such responses have been superseded by harm reduction orientated policies, which place increased focus on meeting the needs of prisoners with drug problems and improving their health through providing advice, opiate substitute medications and psychosocial support (Department of Health, 2006). The potential benefit of within prison responses to drug users may also extend into other areas, such as reducing the risk

of recidivism and re-offending on prison release.

Such developments prompted this research to explore how imprisonment and the prison environment impacted on injecting drug use behaviour, thus providing an updated perspective within the contemporary policy and practice climate, away from the more punitive and preventative agendas of the 1980s and 1990s.

### Research methods

The research was influenced by a harm reductionist perspective, a pragmatic public health approach which acknowledges that people engage in illegal behaviours such as injecting drug use that carry risks. The approach attempts to reduce the associated potential dangers to those who engage in the behaviour, so that they may do so as safely as possible, with the least possible effect on their health and welfare (Riley et al., 1999; World Health Organization, 2005).

The research focuses on men, mainly due to their over representation as drug users, as users of drug services and within prison. Men were eligible to take part in the research if they had been in prison and if they had been injecting drugs at the time of their last imprisonment. In line with Grounded Theory practice, the study used theoretical sampling to select eligible men from community services whose experiences were considered likely to deepen and test emerging analytical ideas.

Between 2006 and 2008, I conducted in-depth interviews with thirty men after prison release. They were interviewed about what happened to their drug using practices when they were in prison in order to identify what influenced and motivated their drug use, and why. A topic guide was used and all interviews were digitally recorded and transcribed verbatim. The interviews were analysed inductively using Grounded Theory (Glaser and Strauss, 1967), whereby I coded interview transcripts into significant



areas and summarised their accounts and the full range of their experiences.

### Research findings

The research findings highlighted how prison provided the men with an opportunity to consider their drug using practices. Being in prison was a time when participants found relief from hectic drug using lifestyles as they exercised more choice and control over their drug use. While men described how their illicit drug use behaviour in prison had largely continued, there were important changes to the nature of their use, in terms of the types of drugs used, the frequency of drug use and the drug administration routes used.

Depressant drugs such as heroin were more popular in prison than stimulant drugs like crack cocaine and amphetamine. Depressant drugs helped participants to relax and sleep and sentences to pass. This is significant as the desire to feel free from the confines and routine of the prison environment encouraged some men (including some who were prescribed substitute medication by the prison) to keep using depressant drugs when in prison, though at a reduced frequency (Tompkins and Wright, 2012). It also encouraged others to snort illicitly obtained buprenorphine up their noses, rather than take it as prescribed, in order to feel a high from the misused medication. This trend was perceived to be more popular

than the traditional use of heroin (Tompkins et al., 2009).

Not all men used illicit drugs or misused opiate substitute medication when last in prison and the findings regarding participants' views about the prison provision of substitute treatment were largely positive. Participants welcomed the recent provision and expansion of more adequate detoxification and maintenance prescriptions in prison. Knowing that they would be able to access substitute medication when in prison was considered beneficial. In fact, this encouraged some men to deliberately commit crime in order to be imprisoned so that they could readily access prescription medication to assist with their drug use.

From a harm reduction point of view, some encouraging findings included the general reduction in frequency of drug use in prison (particularly stimulant drugs) and the reduction in injecting drug use practice as a method of drug administration (Tompkins, 2013). Reduced drug use when in prison was partly attributable to the prison provision of adequate substitute medication, which included the prescription of methadone and more recently, buprenorphine. These medications were welcomed over ones such as dihydrocodeine which had previously been prescribed by prisons.

Reduced prison drug use was also linked to other factors such as the often sporadic access to illicit drugs in prison, the sometimes financially prohibitive costs of obtaining illicit drugs from other prisoners, the age and stage of life that the men were at, and their reported desires to try to stop using drugs and live a more fulfilling and drug free life.

There was also evidence of harm reduction messages influencing the participants' decisions about whether to inject. Choosing not to inject in prison represented a break from their hectic community injecting practices (Tompkins,

2013). If they continued to use illicit drugs in prison, they chose to use other administration methods, such as smoking or snorting. The main reason for not injecting in prison was the lack of sterile needles (Tompkins, 2013). Participants had concerns about contracting blood-borne viruses such as HIV or hepatitis from unsterile needles that had commonly been used many times before by an unknown number of prisoners. Other dangers, such as violence that could arise if a prisoner borrowed a needle but was then unable to return it also deterred injecting in prison. Finally, using buprenorphine also deterred injecting as it could be snorted up the nose (Tompkins et al., 2009; Tompkins, 2013).

The findings highlight how going to prison in England was often viewed by male injecting drug users as an opportunity to make changes to their drug use, even if the changes were only short-term. It became apparent that through a combination of participants' drug use 'fatigue', their desire to try to change their lives, and prison provision of harm reduction opportunities to manage and address drug use, time in prison could help men reduce their drug use. It is suggested that by learning from these experiences and doing further research into drug users' motivations and drug using practices in prison, the potential benefits – with regard to addressing drug use – of time in prison are maximised for the drug users who are sent there.

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## Research events

### What is Justice? Re-imagining penal policy, 1–2 October Keble College, Oxford

Update by Frith Taylor, Howard League research intern

The ‘What is Justice?’ international conference took place on 1–2 October, and aimed to provoke discussion on different ideas of justice, and how justice can and should be implemented. The conference hoped to facilitate the sharing of new and innovative ideas in order to re-imagine the penal system, and formed part of the What is Justice? symposium. The eventual aim is to create a new, achievable paradigm that will deliver a reduced role for the penal system while maintaining public confidence, fewer victims of crime and safer communities.

While united under the central theme of justice, papers presented over the two-day event varied enormously in subject. The conference featured speakers from institutions around the world as well as those from the UK.

#### Plenary sessions

The first plenary session, *What is Justice?* was chaired by Frances Crook, and featured presentations by Bettany Hughes, Professor Nicola Lacey and Professor Fergus McNeill. The panel moved from Socrates to an appeal for intelligent justice, via a call to recognise the collateral consequences of imprisonment. The afternoon plenary focused on local participation and was chaired by Professor Stephen Farrall. Presentations were given by Professor Albert Dzur, Professor Danny Dorling, and Professor Monika Płatek. The panel broadened conceptions of justice beyond the criminal justice system, with emphasis given to participation, schools, and how location impacts on peoples’ experience of justice.

The morning plenary session on day two, *The role of the state*, was chaired by Professor Barry Goldson. Professor Thomas



Mathiesen delivered his presentation via skype and presentations followed from Professor Vannesa Barker, Professor Steve Tombs, and Professor Sonja Snacken. This panel was wide ranging, covering surveillance, an inversion of the Scandinavian ideal, and examinations of corporate crime and state legitimacy.

The final plenary was chaired by Ian Loader, Professor of Criminology and Fellow of All Souls College at Oxford University. The panel featured presentations from Yasmin Alibhai-Brown, Will Hutton, Professor Matt Matravers and Baroness Helena Kennedy. This dynamic panel presented their thoughts on social justice, ranging from practical solutions to more abstract, philosophical considerations of fairness and equality. The conference concluded with the panel offering their ideals of justice, Helena Kennedy stating that as law does not exist within a social vacuum, ‘the opposite of poverty is justice.’

#### Panel sessions

In the panel sessions, some speakers explored philosophical conceptions of justice, as with Professor Jonathan Jacobs’ contribution on the ‘Theorising justice’ panel. Others presented more practical papers, such as Professor Kevin Haines and Dr



Stephen Case on the 'Children and justice' panel, who examined the fallout of juvenile crime and the processes surrounding children in the criminal justice system using evaluation of the Swansea Bureau. Papers from both practitioners and academics were presented, with several panels focusing on the treatment of marginalised groups in the criminal justice system.

The Howard League's U R Boss young advisors presented in the 'Participatory youth justice' panel, detailing the work of their advocacy projects and explaining the importance of a participative approach in the criminal justice system which prioritises listening to and understanding individual life stories and experiences. Participation emerged as a key theme throughout the conference.

### New thinkers

The conference also sought to promote the work of early career academics. The Howard League awarded a prize for the best PhD paper, which was won by Anna Glazewski of the Université Paris II Panthéon-Assas for her paper *From restraint to retain: States' power to punish and prison privatisation under the prism of human rights law*. Two runners-up prizes were awarded to Daniel Horn, Bremen International Graduate School of Social Sciences for his paper *A welfare state framework for the inclusion of penal systems* and Bethany Schmidt, University of Cambridge for her contribution *Imprisonment and Civility: The Damaging of*



*Democratic Character*. There was also a prize for the best poster which was awarded to Damon B. Briggs of the University of Liverpool (*A national youth justice service? Penal expansion and reduction in England and Wales*). Paula Pérez Morgado of King's College London was highly commended for her poster (*From rights to penal populism: Analysis of the ideas guiding the Chilean youth justice reform*).

The conference brought a wide range of people together to debate and consider the myriad questions posed by asking 'What is Justice?' Delegates came from all over the world, from different academic disciplines, and also from practice. This led to a dynamic and stimulating environment where discussion took place and ideas were shared. The What is Justice? symposium, of which the conference was a key part, will continue, utilising the ideas coming out of the conference in an attempt to move now from theory to practice.

In the coming weeks, look out for updates on the Howard League website:

- Audio downloads of plenary speeches
- Short films of some of the plenary speaker's ideas
- Pdf versions of the posters displayed at the conference
- Papers delivered in panel sessions
- Conference participants and others' [Ideas for Justice](#).

## Upcoming event: What if...? seminar

### **Offender desistance policing: What if evidence was used to redesign the gateway to criminal justice?**

**Peter Neyroud CBE QPM** proposes triaging those who offend with a low harm profile away from court to structured diversion or deferred prosecution, by providing the gatekeepers to prosecution - the police custody officer - with better tools and a more effective framework of pre-court disposals.

#### **London School of Economics**

**Wednesday 4 December 2013, 6–8pm**

Professor Gloria Laycock and Professor Paul Ekblom have been confirmed as discussants

The seminar will be chaired by Frances Crook



To reserve a place email [Jenny.Marsden@howardleague.org](mailto:Jenny.Marsden@howardleague.org).

## Recent research

### What if imprisonment were abolished for property offences?

Update by Frith Taylor, Howard League research intern

As part of the 'What if ... ?' series of challenging pamphlets, The Howard League published a paper entitled 'What if imprisonment were abolished for property offences?', written by Professor Andrew Ashworth, Vinerian Professor of English Law at Oxford University.

In the paper, Ashworth argues that the use of custodial sentences is a disproportionate response to what may be termed 'pure property offences', and that the deprivation of an individual's liberty should only be imposed in cases involving violent, sexual or threatening charges. Instead, Ashworth proposes the use of fines and community sentences as community responses to crime, arguing that they give greater potential for rehabilitation and compensation than custodial sentences.

In making his argument Ashworth details the psychological impact of custodial sentences, and lists the following effects of custody on prisoners:

- i) *Extreme restrictions of freedom of movement*
- ii) *Low levels of comfort and amenity*
- iii) *Idleness, with few opportunities for paid labour*
- iv) *Relative isolation from family members, friends and the wider community*
- v) *Significant loss of autonomy in everyday life*
- vi) *Substantial loss of privacy*
- vii) *Exposure to risk of personal harm*

Ashworth adds that it is important to distinguish between property-related offences and those that cause serious threat or harm. He excludes cases of burglary, blackmail and robbery, as these crimes involve an element of threat, or an invasion of privacy, and so would need to be treated more seriously.



Ashworth argues that fines and community sentences are doubly effective, as compensation for victims of theft is more likely to be secured from somebody still living in the community, and community sentences are more effective at preventing reoffending.

Were they to be carried out, the proposals would have a dramatic effect on the prison population. Some 20,000 people go to prison for theft each year, more than any other crime. An additional 5,000 serve sentences for fraud, and 1,000 for criminal damage. If implemented, Ashworth's proposals would reduce the sentenced male prison population by 8 per cent (5,000 men) and sentenced female prison population by 21 per cent (700 women). The proposals therefore present a considerable financial incentive, as this would save approximately £230 million each year.

Ashworth considers the possibility that these proposals could lead to 'people resorting to vigilantism and private security', but states that this would depend largely on how the policy was managed, rather than the essence of the proposals themselves, 'not least if newspapers fanned the flames with headlines such as 'a thieves' charter'.' The central message of the paper is that the 'amount of censure should be proportionate to the seriousness of the wrongdoing.'

Ashworth concludes with the question: 'Is it not an abuse of state power to deprive a person of liberty – and thereby to condemn her or him to the conditions of a local prison – for an offence that involved no violence, no threats and no sexual assault?'

The proposals attracted a huge amount of media attention, including coverage on BBC news, ITV news, Channel 5 news and local radio stations; and articles

in the [Financial Times](#), the [Times](#), the [Guardian](#) and the [Independent](#) among others. Professor Ashworth wrote an article about the proposals for the [Sun](#). The Howard League submitted the pamphlet as part of our evidence to the Sentencing Council consultation on benefit fraud.

Visit our [website](#) to download the paper for free.

### Chained to the prison gates: A comparative analysis of two modern penal reform campaigners

This report by Laura Topham, who was a recipient of the Howard League BCU criminology masters bursary, is a comparative analysis of two modern penal reformers, Pauline Campbell and Violet Van der Elst. Topham uses both primary and secondary research to provide better awareness of two of the most dedicated penal reformers of modern times, and to develop an understanding of the impact the campaigners had and the reasons for their effectiveness or failure.

The report addresses four key research questions:

- i) *Why and how did they campaign?*
- ii) *Why did they use direct action?*
- iii) *What were their aims?*
- iv) *How were their campaigns received?*

Addressing these questions enabled a comprehensive and comparative analysis of the two campaigners, and helped develop an appreciation of the limitations and successes of direct action in penal reform campaigning. The research also led to greater understanding of the personal and contextual variables which contributed to both women's campaigns and penal reform more widely.



Pauline Campbell, left, and Violet Van der Elst

Topham interviewed a purposive sample of individuals who held first-hand information, and also undertook archival research. Data from the interviews and the documentary sources was used firstly to build a picture of the two women, and secondly subjected to content analysis in order to better understand both women's work and impact. This deeper analysis used public policy theory in order to assess the campaigners' possible roles in the development of public policy.

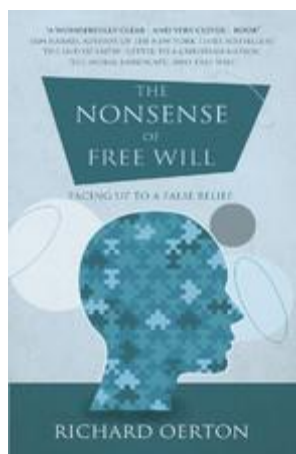
By examining the place of direct action within penal reform, the research responds to public criminology's call for greater engagement with activists and critical voices.

Visit our [website](#) to download the paper for free.

## Book review

### *The Nonsense of Free Will: Facing up to a False Belief* by Richard Oerton (Matador 2012)

reviewed by Carla Teteris



In the preface to his text, Richard Oerton admits that in writing about free will and determinism he adopts an almost anti-philosophical approach. Dealing in reality rather than abstract concepts, and with a lawyer's characteristic tone of common sense and

use of real life examples, Oerton sets out to demonstrate how free will is not only a self-contradictory and incoherent concept, but one which is incapable of existence.

Oerton begins by providing definitions of determinism and free will. His introduction to and explanation of these concepts equip the reader with a sound understanding, so that one feels intellectually equipped to scrutinise the forthcoming arguments. The second section entitled 'Can we rescue free will?' is substantial, and addresses the arguments typically put forward in support of free will. By asking 'what about...?' and considering views in relation to matters of choice, conscience, religion and science, Oerton is able to present a balanced and fair rejection of the standard arguments in support of free will. In parts three and four Oerton addresses some of the concerns of determinism and also discusses the role that emotion, rather than reason, plays in our continued attachment to free will. The relationship between free will and the criminal law becomes Oerton's principal focus in the final two parts of the book.

The idea of free will is central to the criminal law – the notion of choice and one's perceived ability to decide whether or not to

engage in criminal conduct underpin our criminal justice system. Punishment is the consequence of an individual's choice to commit a crime, and Oerton argues that punishment for retributive ends is the only punitive action dependent upon free will for justification. He questions the retributive notion of 'deserved' punishment and proposes that it serves a purely emotional purpose, one which is unjustifiable in the light of determinism.

Some philosophical writings are notoriously impenetrable, but Oerton's work is accessible and accomplishes the near impossible task of making a difficult and complex subject seem straightforward. Oerton's simple and clear logic is convincing, supported by his concise writing style and use of examples. Rather than using countless illustrations throughout the text, he focuses on and continually returns to a few, so that, for example, 'Burglar Bill' becomes a very useful interpretive aid. The author's message is that by accepting the concept of free will the attitude we display towards criminals is that 'if I were you, I should be a better man than you are' (page 34). Oerton asks the reader to reconsider the role of causality in criminal conduct – even when such behaviour seems to be 'inexplicable acts of evil' (page 126).

This book provides a useful gateway into the philosophical realm, and the discussion of criminal law and penology make it a helpful guide to those with an interest in both the philosophical and legal disciplines.

*Carla Teteris is a PhD candidate at Queen Mary, University of London. Her research interests include criminal law and evidence.*

## Member profile

Anna Glazewski, Université Paris II Panthéon-Assas

I studied Law in parallel with Economics and Management at Ecole Normale Supérieure de Cachan, where I passed the competitive exam to teach Economics and Management in secondary schools. I then studied for a year at Université Paris II Panthéon-Assas, specialising in human rights law. I studied various aspects of international human rights law, European human rights law and also domestic issues related to this topic.

I also had the opportunity to represent Université Paris II Panthéon-Assas as a litigant during the 2011 European Court of Human Rights *Moot Court*, in which our team was a finalist. Although enthusiastic about using my human rights knowledge in court, I decided to continue with my academic studies. Indeed, the same year, I became aware that the French government had contracted-out some elements of its prison system to private companies for years. I therefore wrote a masters thesis dedicated to prison privatisation and prisoners' rights. I am now undertaking a PhD on prison privatisation and human rights law.

Studying the development of new forms of managing incarceration under international law has driven me to examine criminal and prison systems in other countries. Investigating different models of prison privatisation, I have been studying the New Zealand prison system and the issue of prison privatisation in California.



I am now focusing on European countries, trying to understand whether there is specificity in both European law (in the broader sense, European Union and Council of Europe) and policies regarding the legal aspects of prison

privatisation in comparison with other models of privatisation. This comparative work should help me to address theoretical questions in the field of human rights law.

My research basically follows two roads. On the one hand, I am trying to determine whether human rights law contains principles and norms that can be used as legal grounds to dismiss prison privatisation. Indeed, human rights are often cited as an obstacle to privatisation without any understanding of the precise legal grounds that could be used efficiently. A more practical side of my research aims to understand, describe and resolve issues related to the violations of prisoners' rights in private prisons.

Being a member of ECAN gives me the opportunity to be in touch with other academics conducting research linked to my PhD. It is a stimulating academic platform, where I can discover new ideas, new issues and different ways of framing and discussing them.

## Guidelines for submissions

### Style

Text should be readable and interesting. It should, as far as possible, be jargon-free, with minimal use of references. Of course, non-racist and non-sexist language is expected. References should be put at the end of the article. We reserve the right to edit where necessary.

### Illustrations

We always welcome photographs, graphic or illustrations to accompany your article.

### Authorship

Please append your name to the end of the article, together with your job description and any other relevant information (e.g. other voluntary roles, or publications etc.).

### Publication

Even where articles have been commissioned by the Howard League for Penal Reform, we cannot guarantee publication. An article may be held over until the next issue.

### Format

Please send your submission by email to [anita.dockley@howardleague.org](mailto:anita.dockley@howardleague.org)

### Please note

Views expressed are those of the author and do not reflect Howard League for Penal Reform policy unless explicitly stated.