

the Howard League for Penal Reform

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ECAN Facebook Group



The Howard League for Penal Reform is active on [Facebook](#) and [Twitter](#). There is a special page dedicated to the Early Careers Academic Network that you can reach either by searching for us on Facebook or by clicking on the button above. We hope to use the Facebook site to generate discussions about current issues in the criminal justice system. If there are any topics that you would like to discuss, please start a discussion.

Introduction

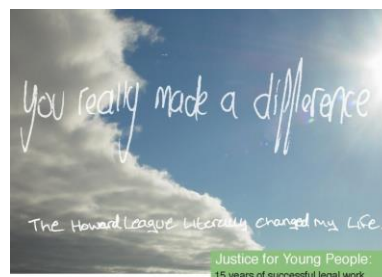
November is Howard League Membership Month – a chance to celebrate our achievements and thank our supporters, as well as reaching out to others who will add their voice to our growing movement. If you are not a member, please support our work by [joining today](#).

The deadline (4 December) for submitting papers to the Howard League's bi-annual international conference, [Redesigning Justice: Promoting civil rights, trust and fairness](#) is drawing close. Please don't miss out as we have a secured more great speakers including Profs Tracey Meares from Yale and a member of President Obama's Taskforce for 21st century policing and Sophie Body-Gendrot from the Sorbonne and a specialist on global urban violence and unrest, as well as writer and broadcaster Gary Younge and Mauro Palma, the former President of the Council of Europe's Committee on the Prevention of Torture. The conference will be held on 21 and 22 March 2018 at Keble College, Oxford. Early bird booking ends in January.



Professor Tracey Meares

This year we are [celebrating 15 years of our legal service](#) for children and young people in custody. Since 2002 our legal work has transformed law, policy and practice and enhanced fairness for young people in prison and the community.



Howard League for Penal Reform

Key points

- Fifteen years ago the Howard League introduced legal work to its approach to achieving less crime, safer communities and fewer people in prison
- The Howard League has transformed law, policy and practice for children and young adults in the criminal justice system. Our legal team has helped to achieve this through legal cases, tailored advice and participation work with hundreds of young people each year
- Our legal education work empowers young people and professionals to understand and use the law to improve outcomes
- The legal work began with a landmark case in 2002, which changed the law to ensure that the protections of the Children Act 1989 apply to children in custody
- We represent young people to establish and enforce local authorities' duties to support children, care leavers and vulnerable adults in and at risk of custody
- Our legal work reduces the intensity and duration of criminal justice system contact with young people. We have achieved this through legal challenges and participation work at all stages of the criminal justice journey, from sentencing to suspension on release
- We have enhanced fairness for young people in prison and the community by successfully challenging policy and practice, from solitary confinement and prison discipline to helping secure the right to an appropriate adult for 17-year-olds at the police station
- We have increased access to justice through our own work and our successful legal challenge to government legal aid cuts to prison law for children and adults

Our recent successful challenge to the government on legal aid cuts to prison law is just one example of the impact of our work. This ruling has increased access to justice on a national level and will benefit thousands of children and young people.

At the heart of our legal service is our free and confidential advice line that is available to young people in prison, we receive more than 1000 calls each year. For many, our free and confidential legal advice line has become a lifeline.

Please [watch our video](#) to learn more about our legal service and how it benefits thousands of children. Our work makes a real difference, but it could not carry on without the generous support of our members.

Anita Dockley, Research Director

Features

Do youth justice responses to young people's poorly equipped passage through complex local spaces contravene Article 37 of the UNCRC?

Sarah Brooks-Wilson,

Youth justice research, policy and practice focuses on very particular places. Within different institutional walls, a myriad of policies and practices meet needs, reinforce acceptable behavioural conduct, restore community relations, address risks and administer young people's youth justice engagement. Broad youth justice objectives make the connections between youth offending team hubs and key institutional partners crucial, resulting in a national collection of locally dispersed and interconnected sites. For young people, predictable and timely arrival at these locations is crucial (and even compulsory) for the completion of youth justice orders. Crossing into the realm of young people's private lives, a variety of non-institutional places also closely connect. The home, neighbourhood and even socialising spaces have become woven into young people's youth justice orders, with the current preoccupation of behavioural prediction marking these sites out for assessment and interpretation. Youth justice practice delivery also depends on sites associated with young people's private lives, with home appointments and community litter picking transforming locations of wrongdoing into the places where problems are resolved.



Sitting between youth offending teams, partner organisations and the sites of young people's private lives are important places where community sentence completion becomes promoted or inhibited. Despite young people's passage through these areas being an absolute requirement, youth justice policy guidance almost entirely overlooks the complicated happenings within - instead turning to the very final outcome of timekeeping and attendance. Such indicators can represent a useful shorthand measure for complex passage to practice. However, a contemporary policy emphasis on the 'non-compliance' counting of 'responsible' young people can be suggested as resulting in the

contravention of universal rights afforded to those under the age of 18.

The UK commitment to Article 37 of the United Nations Convention on the Rights of a Child describes how: 'the arrest, detention or imprisonment of a child [...] shall be used only as a measure of last resort and for the shortest appropriate time' (UN 1989: 10). When young people in England and Wales repeatedly refuse to engage with community sentences, a contingency plan makes sense. But when establishing a measure of last resort, there must be adequate exploration of a problem and sufficient attempts to resolve it. My research suggests that the identification of engagement refusal or incapability is inherently complicated in the context of timekeeping and absence, with intergenerational service access problems found to be beyond young people's control. For example, one youth justice practitioner explained how:

[a young person had] been invited for a police interview in [village] but he lives out in the [village 6 miles away]. So for mum who's, bless her, she doesn't have basic literacy so it needs for her then to get herself on the bus into town and find herself a bus from town out to [village], then deal with the interview and what's going to come from that and then go the same journey back [...] I've offered to take them. But I'm not sure about them getting back, so that's partly on my mind a little bit



Young person's photograph of their bus stop

In my research, a variety of factors that represent taken-for-granted aspects of a journey were found to be especially problematic. One practitioner described how being without a family car and bus fare presented significant service access problems: 'Ninety five per cent of parents don't drive [...] Lots of people struggle with unpaid work cos they've got to be there for quarter to nine [...] They get free bus fares but they can only use it after nine o'clock, so they've got to pay to get to unpaid work - we'll refund the tickets but someone's got to give them the money to start with'. Other factors that impeded attendance and timekeeping included having to travel a long way, being grounded in rural villages, having limited literacy, adverse travel experiences or limited confidence with strangers. Yet despite such complexities, young people did not identify their journeys as problematic.

Within youth justice policy, one isolated sentence asks young people: 'did you find it easy to go to your appointments' (YJB 2014a: 6). This question appears at the start

of young people's youth justice orders and results in a formal commitment to be present and punctual. But the commitment is secured on a wide raft of unknown journey circumstances to new destinations using unfamiliar modes of travel, with further evidence suggesting how: 'the young person can say they understand when they haven't got a clue... they are frightened and not listening' (Hart 2010: 26). Although a young person's community sentence progress is reviewed more broadly when deciding whether to enact formal breach proceedings, a comparison of responses to compliance and non-compliance reveals a deficit-focused approach to attendance as:

a high risk child might attend more than 90 per cent of his or her compulsory contacts [in the first three months of their order] but still trigger breach under national standards. Inevitably children who generate higher Asset scores tend to be those whose circumstances are such that they will find compliance more challenging and are at particular risk of being returned to court in any event (Bateman 2011: 122-3).

With respect to absence, Case Management Guidance (YJB 2014b) makes two main points. The first is in Section 2.23 when suggesting the promotion of attendance (as well as participation and compliance) through positive, clear encouragement, making the implicit suggestion of absence as a choice (rather than a capability issue). The second is in Section 2.25 of the Guidance where

absence is used as a main example when discussing order conditions not being met, making further implicit connections with the prevalence and impact of absence. Guidance describes how when: 'two formal warnings are given within a twelve month period and a further unacceptable failure to attend takes place, breach action must be initiated within five working days' (YJB 2014b). Importantly, Case Management Guidance (YJB 2014b) does not acknowledge young people's varied attendance capabilities. This means that despite specialist practice knowledge facilitating a nuanced and discretionary response, absence and journey support become subject to broader factors such as practice resourcing (including time), practitioner skills (such as driving capabilities), and distance.

Article 37 of the Convention describes how those under the age of 18 should have: 'the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent' (UN 1989: 11). When asked about youth justice absence outcomes, one practitioner in my research described how: 'there'll be a final warning and the third missed appointment and they'll be getting set to breach them'. In recent years, the rise of review panels has placed additional checks before a return to court. Yet negligible evidence explores the reasons for young people's youth justice absence, or extent of absence-based breach. If the eventual outcome is a return to court, young people are not entitled to legal



Young person's photograph of the road walked to access youth justice services

representation, providing limited opportunity for these processes or outcomes to be contested. In my research, one practitioner described the ways young people's views are included within breach processes: 'if they've got any input into the breach report that we prepare for court, you know, if they've anything to say, we'll put that into the report'. Although persistent absence can result in no additional sanctions, those on the most serious community sentences can face the prospect of custody, as described by a 17 year old young person who had chosen not to travel to an appointment due to personal safety fears:

I turned up and I were on probation. And when I went there were just drug addicts on the floor, gouched out, so I says: 'I'm not going back there - this is no place for me', you know what I mean. I said 'I'm not coming and operating with him' so they sent me back inside... I weren't expecting to go [to custody]. I went to court [by] myself, and as soon as he just said, [you're] going, I just dropped to my knees - I couldn't believe it.

The potential that young people are entering custody without legal representation for appointment absence raises crucial questions about whether the Youth Justice System of England and Wales is contravening Article 37 of the Convention, in terms of its 'last resort' custodial intentions.

Appropriate responses to youth justice absence and lateness can impact many young people as: 'children and young people are obliged to attend all appointments which you define as 'statutory'' (YJB 2014b). Despite as few as three 'unacceptable' absences can result in a return to court, absence rates can be as high as fifty per cent for some types of appointments. Yet questions can be raised about the difficulties that can be associated with the identification of wilful and unavoidable absence, and whether youth justice policies adequately consider young people's journey problems, and the legitimacy of custody as a 'last resort'. Youth justice policy guidance must start to provide more detail on the connection between youth poverty and service access problems in order to better distinguish appointment incapability from appointment refusal. A greater focus also needs to be directed towards the contexts within which the multitude of local practice sites are accessed. Although order review panels and the recent acknowledgment of young people as experts in their own lives (YJB 2016) represent important steps forward, a review of contingency procedures for persistent absence and lateness is also urgently required, in order to ensure children's universal rights remain observed.

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About the author

Sarah Brooks-Wilson is a Lecturer in the Department of Social Policy, Sociology and Criminology at the University of Birmingham. Key research interests include young people's journey making and accessing of essential local services, including youth justice institutions. Of particular interest are the varied journey making capabilities of the youth justice population, and the ways that poverty can impede access. Sarah is a keen advocate of research methods that support the strategic inclusion of hard to reach voices in research, policy and practice, with a particular focus on visual methods.

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‘Doing’ Time – Young people’s experiences of the imprisonment of a family member

Kirsty Deacon

There are no official figures for how many children experience the imprisonment of a parent each year but estimates put the number at around 27,000 for Scotland (Scottish Government, 2012) and 200,000 for England and Wales (Williams et al, 2012). This number only includes children affected by parental imprisonment and not those with siblings or other relatives in prison, some of whom may have played an equally large role in a child’s life and whose loss may be felt just as keenly.

Research background

The research on which this article is based was carried out as part of my PhD (which I am currently still conducting). The data comes from a 22 month period spent as part of an arts collective known as KIN, a project facilitated by Vox Liminis in partnership with Families Outside. During this time KIN was made up of eight young people aged 16-25 who have, or have had, a parent or sibling in prison, two members of staff from Vox Liminis, one from Families Outside, a range of freelance artists and me. The group met approximately once a month for a day or weekend residential session. It produced a film, ‘First Words’, a set of immersive audio experiences, ‘The Golden Thread’, and a print copy magazine of texts and images, ‘The Thing’. Each of these artforms has been used to explore their collective experiences



and to share them with others (<http://www.voxliminis.co.uk/kin/>). I carried out participant observation at these sessions, had a literature themed discussion with the group (which forms a separate data source) and have carried out in-depth semi-structured interviews with seven of the young people which have yielded rich data due to the relationships formed during the time spent with KIN.

Research with partners of prisoners has shown that they often feel that they are *doing time* or serving the sentence along with their partner in prison (Comfort, 2008; Kotova, 2017). They also talk about the experience of time passing differently, usually more slowly, for those in prison compared to how it

passes on the *outside*. Those who have written about prisoners' experiences of time also speak of it not being a fixed or constant unit of measurement passing in a linear fashion but that there can be a dual sense of it both *passing and standing still* (Wahidin, 2006).

While there is an increasing body of literature on children's experiences of parental imprisonment, it rarely focuses solely on the experiences of teenagers and young adults (exceptions Brown et al, 2001; McCulloch and Morrison, 2002).

This article aims to explore the potential impact of the differing experience of time by a young person and their family member in prison, what this may mean for the young person's experience of their family member's imprisonment and potential impacts on the maintenance of family relationships while a member is in prison. It will also consider this concept of time in the digital world we now live in where everything is instant and fast moving and how might this impact on young people's experiences of their family member's imprisonment.

'Doing' time

One of the young people I spoke to, Kev,¹ spoke a lot about his experiences of time passing during his dad's sentence. He went away when Kev was about 11 or 12 and was released when he was around

15 or 16. When talking about this he said:

...when they are released and they come back it's like, think of, like, two timelines, but all of a sudden, like, his one's been halted, so when he gets released you're kinda further on...



He also expanded on the experience by saying:

...it's like they are, they're frozen in time and then they come out and you're that much older because you've grown up quicker, so, it's like, then he's talking, you know, like, we need to go to the funfair and the cinema. We went to the cinema a couple of times and I'm like, 'Going to the pictures with,' I'm going with my pals, do you know what I mean....

Kev had kept in contact with his dad during his sentence through writing letters, regular phone calls and visits but there were still these difficulties in re-building the relationship on his dad's release. His dad had watched him grow up during visits over this period of time

¹ Kev is a real identity. Kev actively wants and is happy for his identity to be in the public domain because he feels he is taking ownership of the issues and its impact.

yet still he appeared to expect the child he had left behind not the teenager that he had become on his release. This can be difficult for the young person who not only may be older and have changed during the period of imprisonment naturally, but may also have experienced an element of what is termed *parentification* where there is a role reversal in the parent/child relationship (Boszormenyi-Nagy and Spark, 1973) and in some ways has been forced to grow up more quickly while their parent is in prison while then being forced back into the role of a child on their release.

Teenage Experiences

Differences between teenagers and younger children also means that the latter are more likely to be within the family home to receive phone calls and have fewer things impinging on their spare time allowing them to visit more freely while their family member is in prison. Also, on a family member's release, younger children are more likely to be available and have time to spend with their family member rebuilding their relationship.

Teenagers are less likely to be spending all their time within the family home, instead going out with friends, gaining a level of independence and forming their own identity. This can introduce a level of guilt, both during and after the sentence, where they may feel they are not spending enough time with their family member, which is likely to be experienced less by younger children who have less demands on their free time.

Prison can therefore place restrictions on a young person's time and movement while their

family member is serving their sentence as they have to wait in for phone calls or spend a Saturday going in to visit as that's the only time they can go when they're at school. Even when their family member is released, however, there can be restrictions placed on the young person's life as they still put their own life on hold to spend time with their family member or where they find themselves playing the role of the younger child the person left rather than the teenager that they have become.

What is family?

The way some prisons appear to construct family could also have an impact on how parents in prison experience the passing of time in respect of their children growing up. Prison can often be thought of as infantilising prisoners who have a lack of autonomy, lack of opportunity to make decisions for themselves and a lack of control over a lot of their lives. But prison can also be infantilising for the young people with family members in prison, as they may be placed in the role of 'young child' which the prison tends to cater for when considering families. Where visit rooms or visiting centres have 'play' areas they can be focused on young children with little provision for what teenagers would like to spend their waiting time doing. This may particularly affect relationships between siblings where they are both teenagers/young adults yet do not have the opportunity to relate to each other as they typically would, have no opportunity to 'play' together in a way that is natural for older children or teenagers and are often not even considered for 'family' visits. If teenagers are unable to do things they would

normally do at visits, then the prisoner will still see a 'child' during these times and the prison will effectively hold the young person in that position during the time that they are at visiting.

The digital world

The digital world we now live in may also mean that we experience time differently generally today because of the instant way that we tend to live our lives, rarely waiting for anything. We binge watch TV series rather than waiting each week for the next episode. We download or stream music rather than having to wait to go out and buy a single or an album and even books can be downloaded straight to our phone or Kindle and read straight away as soon as we've thought that we want to read them.

Our means of communication today are also much quicker, snappier and instant than before. We send text messages or make calls to mobile phones knowing that people almost always have them with them. We send messages on apps that tell us our message has been delivered, then read and then we wait for the instant response, often getting annoyed if it is not forthcoming. We send pictures on Snapchat that instantly convey how we feel in that exact moment, and then they disappear.

This is in stark contrast to communication with a person in prison where you are required to wait until the time you are allowed to visit, wait for a phone call, (which if you miss it there is no opportunity to just call back or send a text in response), or the wait for letters which have to be written, sent, delivered, read, responded to, sent back and received again.



This is quite apart from the waiting that goes on generally for the sentence to be served and the family member to be released. Again, this additional waiting, for a child or young person, can seem to be a lifetime. As one of the young people commented when looking back the actual calendar time of three months that her brother spent in prison seemed like nothing but, at the time, when she was twelve, it felt like *forever*.

This experience of a family member's imprisonment in the digital age may have the potential to have increased the pains of imprisonment (Sykes, 1958) felt by family members of prisoners in respect of the concept of time and its passing. It may be felt more keenly, particularly by young people, who have spent their whole lives in the digital age.

Conclusion

Exploring the experiences of young people with a family member in prison is timely given the recent release of the Farmer Review (MoJ 2017) in respect of how supporting men in prison to engage with their families can reduce re-offending. The Scottish Prison Service has also recently launched its Family Strategy for 2017-2022.

The role of families, including children and young people, has long been recognised as important in the reduction of re-offending and the process of desistance from crime. It is likely that many families wish to support their family member in this journey but they should not simply be viewed as a resource (Jardine, 2017). They require support in their own right and recognition of the impact of their family member's sentence on their own lives. As SPS note in their Family Strategy that *every family is unique* and Lord Farmer noted that when he speaks of family relationships that it *should be assumed that other significant supportive relationships are inferred*, so there must also be a recognition of family in the wider sense not only in the partner and young child model which can be seen in literature or practice.

Teenagers can have distinct experiences of familial imprisonment, when compared to younger children. This must be borne in mind when considering how to provide opportunities and support for them in relation to maintaining relationships and dealing with their family member's imprisonment. The rise in digital technology and the digital age that we live in may also be compounding the impact of a family member's imprisonment on young people today and how to ameliorate this is something which must also be explored by those working with this group of young people.

Acknowledgements

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About the Author

Kirsty is currently a full-time PhD student at the University of Glasgow, based within the Scottish Centre for Crime and Justice Research and funded by What Works Scotland. Her research is looking at young people’s experiences of having a parent or sibling in prison and is specifically exploring what family means to this group of young people, how they experience family when a member is in prison and how they deal with the imprisonment of a family member.

About Vox Liminis

Vox Liminis (est. 2013) is playing a significant role in the rehabilitation of the criminal justice system in Scotland, by creating spaces where differently situated people communicate and connect in new ways through the arts, and can imagine a more positive and human future together.

About KIN

KIN is an arts collective of young people who have experienced the imprisonment of a close family member. Working as a collective, they create original pieces of art that are rooted in their experiences. This art is then shared to inspire conversation, thought and action about an issue that is all too often hidden away.

Telling stories about HIV and AIDS in Irish prisons in the 1980s

Janet Weston

In January 1986, Irish current affairs programme *Today Tonight* reported on a spate of deaths and attempted suicides in Dublin's Mountjoy prison. These, the reporter intoned, 'reveal something seriously wrong in the Irish prison system. A system long-known to be overstretched, antiquated and inadequate has been pushed into the front line of modern Irish society's confrontation with drugs'. The situation had reached breaking point – and the attention of *Today Tonight* – with the emergence of AIDS amongst drug users in Irish prisons, bringing 'a new dimension of fear'.²

As part of the Wellcome Trust-funded project 'Prisoners, Medical Care and Entitlement to Health in England and Ireland, 1850-2000', I have spent the last eighteen months researching this aspect of Irish penal history. This began with archival research alongside the collection of oral histories from many of those who remembered this moment in Ireland's past, or who had dealings with its penal system in the years that followed.³ Informal conversations with public



health experts, social workers, and specialists in addiction led me to more in-depth interviews with some of those with first-hand knowledge of the impact of HIV and AIDS upon Ireland's prisons – although, sadly, it proved impossible to trace any former prisoners who may have remembered the turbulent in the late 1980s.

What this revealed was, firstly, that HIV and AIDS in Ireland in the 1980s was closely connected with drug use. Some 60% of all diagnoses were attributed to the use of shared needles. Dublin had experienced an 'opiate epidemic' and rising rates of heroin injecting over the early 1980s; early research found that those affected were often teenagers and young adults from the inner city, who had left school at a young age and

² 'Death in Mountjoy', *Today Tonight*, 21 January 1986. Available (in low quality) from: <https://www.youtube.com/watch?v=h3HNAwcHb6I>

³ These interviews and associated archival material are available from the London School of Hygiene and Tropical Medicine's AIDS Archive.

struggled to find employment in a city struck by recession. Bereavement and a family history of alcoholism were not uncommon. Importantly for this story, three quarters had been arrested, and three fifths had served a prison sentence.⁴ In September 1985, 27% of patients at Dublin's drug treatment clinic tested positive for HIV. A matter of weeks later, after requesting a test, the first prisoner in the Republic of Ireland received the same diagnosis.

Interviewed for *Today Tonight*, this prisoner was described as a heroin user from the age of 15, who had spent much of his adult life in the country's largest prison complex, Mountjoy, in Dublin. He gave an emotional account of being told that he had 'AIDS' by the prison doctor, and how quickly word spread around the prison. Within moments of him leaving the doctor's office, it seemed that staff on his landing knew and he was removed to the administration part of the prison, ostensibly for his own safety.



⁴ Geoffrey Dean and others, 'The Opiate Epidemic in Dublin 1979-1983', *Irish Medical Journal*, 78.4 (1985), 107-10.

He was abruptly released from prison that same day on instructions from the Department of Justice. A number of my interviewees remember this day vividly, and particularly the sense of chaos and panic that took over. The Irish prison system was unprepared for inmates with HIV and AIDS. Staff feared for their own health, and feared an outbreak within the close confines of the prison – whether an outbreak of HIV, or perhaps more urgently, an outbreak of violence and disorder if prisoners began to target those they thought might be infected.

We should remember that at this time there was no cure, very little treatment, and a lack of clarity and certainty about how HIV could be transmitted. This was true all around the world in the mid-1980s, but was intensified in the Republic of Ireland, where information was particularly thin on the ground. Here, services for sexually transmitted infections – where information and expertise on AIDS often developed in these early years – were limited, and the criminalisation of homosexuality restricted discussion and action amongst the gay community. A National AIDS Co-ordinator had been appointed earlier that year, but struggled to make headway as civil servants and politicians felt that the Republic would be relatively unaffected, thanks to its adherence to Catholic morals and family values.⁵

⁵ Ann Marie Nolan, 'Marriage Is Not an Anti-Viral Agent': The Transformation of Sexual Health Policy in the Initial Decade of HIV/AIDS in Ireland' (unpublished PhD thesis, Trinity College Dublin, 2014), p. 180.

There were also no doctors or public health experts within the Prison Service or Department of Justice, and widespread anxieties about AIDS were exacerbated by the prison environment. Rumour and suspicion abounded on all sides, and overcrowding and unsanitary conditions intensified fears of violence and infection.

Quickly, more prisoners began requesting tests for HIV. As several interviewees wryly observed, this should have been expected as soon as it seemed that HIV provided a ticket to early release. Within a matter of months, some 20 or 30 positive results had been returned to Mountjoy's residents, and releasing HIV positive prisoners was clearly no long-term solution. At the time of the *Today Tonight* broadcast in early 1986, plans were in hand to transfer prisoners with HIV to a separate wing of Arbour Hill prison, known informally as the 'middle class' prison or the 'sex offenders' prison in recognition of its typical prisoner population. This proved unsuccessful: following extreme disruption and a rooftop riot, the HIV positive prisoners returned to Mountjoy and were placed in segregation there.

The segregation of women with HIV was quickly abandoned, but many men remained in a separate area of the prison for years. The policy of segregation was not formally set aside until 1 January 1995. Segregation was not without advantages, as prisoners had access



to a new doctor with some interest and expertise in HIV and AIDS, better facilities, better terms for release, and could even be 'prescribed' 7Up. But, unsurprisingly, distress and mental illness were prevalent, and drug use continued. Residents fell ill: AIDS-related illnesses took their toll. The separation unit became bleak, and reinforced the impression that people with HIV or AIDS were different, dangerous, and to be avoided.

Long after its closure, the legacy of the separation unit lived on in largely negative terms. Later staff recalled hearing horror stories about how prisoners had been treated in the 1980s, and were pleased to report that segregation had no place in a modern Irish prison. The truth, as those who remembered the 1980s could attest, was more complex than this. My interviewees described the separation unit and some of its residents in colourful terms, remembering individuals and particular events in the life of the unit as well as the wider impact of HIV, AIDS, and addiction upon prisoners' families, fellow staff members, and their professional lives. Many characterised the separation unit as a

grim and depressing place to work, but it was also remembered as somewhere that could be more humane than the rest of the prison estate, with a sense of community. It was also the case that some prisoners did not want to return to the general population, either for fear of how they would be received, or because of the advantages that came with their special status.

The arrival of HIV and AIDS to Irish prisons and the life of the HIV separation unit stood out within my research as a particularly powerful story. It was unsurprising, then, that it rose to the surface when I began discussions with collaborators [Digital Drama](#) about turning some of my oral history interviews into an audio drama. This had been prompted by further funding from the Wellcome Trust under the auspices of public engagement, and our plan was to use oral histories as a vehicle for provoking interest and discussion around the relationship between prisons, health, and HIV. I had researched English prisons too, as well as other aspects of Irish prison life, but no other story presented itself to us quite so readily.

Even with the help of a talented writer, the process of translating academic research into a thirty minute podcast has been a challenge. What has emerged is more factual than originally planned, as both practical and theoretical difficulties around fictionalising this kind of history raised their heads. Nevertheless, it will hopefully still

convey some of the heightened emotions surrounding AIDS and prisons in the 1980s, and the historical context for the Prison Service's reactions. It also makes extensive use of oral histories, using extracts from these to tell the story in the words of those who were there. The question of how to account for the missing voices of prisoners who spent time in the separation unit remains, but their experiences are, at least, acknowledged and remembered in our final script.

Our podcast will be available to download from 1st December 2017, World AIDS Day, from <https://histprisonhealth.com/>. Those in London on 22 November or Dublin on 1 December can also join us for a roundtable discussion and reception to mark its launch, where you can hear extracts and discuss this history, and we would be delighted to see ECAN and Howard League members there. Visit <https://beinghumanfestival.org/event/positive-in-prison-hiv-stories-from-a-dublin-jail/> to register for London, or contact janet.weston@lshtm.ac.uk for more information or a place at the Dublin event.



London: 22 November, LSHTM,
Keppel Street, London WC1E
7HT Part of the Being Human Festival

Free but booking is required via the
following link:

[https://beinghumanfestival.org/event/
positive-in-prison-hiv-stories-from-a-
dublin-jail/](https://beinghumanfestival.org/event/positive-in-prison-hiv-stories-from-a-dublin-jail/)



Dublin: 1 December, Royal College
of Physicians of Ireland, 6 Kildare
Street, Dublin 2

Free but registration is required:
please email

janet.weston@lshtm.ac.uk

With [Digital Drama](#)

About the author

Janet Weston is a Research Fellow at the Centre for History in Public Health at the London School of Hygiene and Tropical Medicine. She is currently part of the team working on 'Prisoners, Medical Care and Entitlement to Health in England and Ireland, 1850-2000', funded by the Wellcome Trust. She is the author of *Medicine, the Penal System and Sexual Crimes in England, 1919-1960s*, out in December 2017 with Bloomsbury Academic.

Still Not Hearing Us: d/Deafness in prison part two

Dr Laura Kelly

The research

In recent years the Howard League for Penal Reform has worked to shed some light on a sub-section of the prison population about which very little is known; d/Deaf prisoners. Such exposure is vital, as these individuals are arguably some of the most vulnerable and deprived in the prison estate. While penal reform is of course needed for many other reasons, I argue that few reasons are more urgent than this. I have come to this conclusion after completing my doctoral research, which acted as a critical exploration into the lived realities of d/Deaf people in prisons in England and Wales, and is the most rigorous and comprehensive study yet to be completed about these individuals. My research was qualitative in nature, with semi-structured interviews being the main form of data collection. Throughout the period of December 2014 to May 2015, I interviewed a total of 27 participants from seven adult male prisons in England. The research sample was made up of hard of hearing/d/Deaf prisoners, and staff members who had worked with them.



My research followed that of Dan McCulloch, who in 2012, published a report for the Howard League for Penal Reform entitled [*Not Hearing Us: An exploration of the experience of deaf prisoners in English and Welsh prisons*](#) in which he looked at the lives of a sample of d/Deaf prisoners, and collected his data by communicating with participants by letter. McCulloch found that those included in his study were suffering disproportionately in prison, and argued that their treatment equated to a violation of the Equality Act 2010, which stipulates that reasonable adjustments must be made to ensure that those with a protected characteristic such as d/Deafness are not discriminated against. His findings were key to my research as they acted as a spring board. In this vein, one of my primary

aims was to further explore his claims of disproportionate suffering and the legal violation on the part of the Prison Service.

My other aim was to look at d/Deafness more comprehensively; both audilogically *and* culturally. Although McCulloch undoubtedly provided an invaluable insight into the lives of d/Deaf prisoners, he did not differentiate between medical deafness and cultural Deafness in any meaningful way. Such differentiation is important, as while many hearing people view those who are d/Deaf as simply having the misfortune to live in a world without sound, d/Deafness is in fact much more complex.

Defining d/Deafness

The extent to which a person is d/Deaf varies significantly from those whose hearing is only slightly impaired, to individuals who are severely deaf, and finally to those who are Deaf. For the purposes of my research, severely deaf referred to those with little or no functional hearing, who usually need to rely on lip reading even with hearing aids, and Deaf to individuals who identify as being culturally and linguistically Deaf, and commonly use British Sign Language (BSL) to communicate. The lives of those who are d/Deaf have been studied at length within the academic discipline of Deaf Studies, where individuals who identify as being deaf (but not Deaf) are commonly shown to view their deafness negatively (Higgins, 2002), and where those who are Deaf they are seen as being part of a distinct group known as the Deaf Community which is made up of people who are happy in their Deafness and share the same language, norms and experiences (Lane et al, 1996).

Exposure to Deaf life has been shown to reveal to individuals that it is possible to live full lives without sound, and to introduce them to visual and tactile ways of behaving, including using touch to express warmth and friendliness, and for getting people's attention. However, although Deaf people view their Deafness positively, the fact that they still exist as part of a wider hearing world, means that on a day-to-day basis, they, like those who are severely deaf, usually require access to specialised equipment that makes sound accessible to them. Such equipment includes vibrating alarm clocks, flashing fire alarms, minicomms, hearing aids and hearing loop systems. Deaf individuals usually require access to BSL interpreters for everyday interactions with hearing people as well.

the Howard League for Penal Reform



Not hearing us

An exploration of the experience of deaf prisoners in English and Welsh prisons

The distinction between deafness and Deafness was vital to my research, where it was shown that the way an individual identifies with their d/Deafness has a significant impact on their experience of prison. Although all of the prisoners interviewed were experiencing significant issues in prison due to their lack of access to sound, the fact that the Deaf participants (of which there were seven) were also culturally and linguistically different meant that they experienced more complex issues, and consequently, were being subjected to greater levels of deprivation and pain. With this in mind, I will focus on the experiences of these prisoners throughout the remainder of this article.

Prison versus Deafness: The consequences of culture clashes

Of the seven Deaf prisoners included in the research sample, five were situated in one prison, and the remaining two were each at separate establishments and were the only Deaf people there. All of these individuals communicated using BSL, were happy to be Deaf and used common Deaf behaviours such as touching and prolonged eye contact. They saw themselves as being intrinsically different to hearing people, preferring to be with other Deaf people, and viewing the hearing world with hostility and resentment as a consequence of their experiences in wider society. These perceptions and behaviours had an enormous impact on the way these people experienced prison, where, as would be expected, they tried to maintain their cultural and linguistic Deaf identities.

Despite this, it soon became clear that that there was little room for such

profound difference in prison. There are a number of reasons for this, the first relating to the role played by sound. Throughout my fieldwork it became clear that prison as an institution is reliant on sound in order to operate, with voices, tannoy, bells and alarms all being fundamental to the prison regime. While sound is of course key in wider society as well, my data suggested that it is even more important in prison where it is used to regulate prisoners and to guide them through their daily rituals. Consequently, without sound, prison life automatically became harder for the Deaf (and indeed deaf) participants, who often became largely isolated from the daily regime. While the provision of specialist equipment could have alleviated some of the issues that a lack of access to sound created, none of the Deaf (or deaf) participants were given consistent access to the majority of the equipment that they would need.

Another reason that it was so difficult for the participants to behave as Deaf in prison related to their preference for a visual language. In addition to sound, verbal communication also plays a key part in most parts of prison life. This means therefore that Deaf prisoners need regular access to qualified BSL interpreters in order to convert this verbal communication in to sign language. However, it became clear that the provision of interpreters was rare, indeed so rare for one of the participants that he had not had access to one in over three months, despite the fact that no staff members/surrounding peers could communicate in BSL. While this lack of provision was slightly less isolating for the five prisoners who were at the same establishment, for the remaining two participants, this lack of provision led to almost total

communication isolation. The consequences of this are highlighted in the below interview extract:

Participant: It's a real problem for me inside. I keep it in. We are communicating now at this appointment, and I was EXCITED to come here. I was excited to see you because I knew I would be communicating with people. But out there I have to hold it all in, and I really do struggle.

Interviewer: So is it nice to have somebody that you can sign with then?

Participant: Yeah. It is.

Interviewer: Okay. Just a couple of questions, I know I've kept you for ages so thank you.

Participant: *Starts crying*

Staff: I'll go and get a tissue.

Interviewer: Oh no, are you okay? Are you alright?

Participant: Yeah, I just get upset because I need to communicate. If I was in a Deaf prison, I would be able to communicate so it is really emotional for me.

Although there were a number of reasons for this insufficient provision, issues relating to a lack of Deaf awareness were perhaps the most prominent. Without a certain level of understanding about the needs of Deaf people, prison officials did not know how to appropriately respond to them. In consequence, interviewees reported that staff members often left Deaf prisoners to their own devices, deeming them 'too different' to manage, or alternatively, attempted



to communicate with them in a variety of largely ineffective (and often extremely inappropriate) ways. Strategies for communication ranged from speaking louder and writing information down even though many Deaf people cannot read, to attempting to use staff members with low levels of BSL comprehension as interpreters, to finally using a Deaf prisoner who could sign and speak a bit as an interpreter. I found the last strategy to be the most concerning, given that it gave the prisoner a huge amount of power, without a way to clarify whether he was in fact interpreting the information accurately.

The fact that a number of the Deaf participants were imprisoned at the same place was of particular interest

to me, and I hypothesised (albeit somewhat naively) that this may have made it easier for them to behave as culturally and linguistically Deaf, or even given them the opportunity to create a 'mini' Deaf Community. However, in reality, a lack of Deaf awareness on the part of many of the staff there meant that in day to day life they were just as isolated as the Deaf prisoners who were the only Deaf person at an establishment. Central to this was the fact that staff commonly did not understand why it may be beneficial to keep them on the same wing, and in contrast many often viewed Deaf behaviour such as signing and touching as being suspicious or inappropriate, as shown here by one staff member:

But then there are negative attitudes about how the Deaf prisoners interact with each other, which I don't necessarily think it is about rules, but rather staff not being aware of Deaf culture... They fear that they don't know what's going on because they can't understand what they are saying [when the Deaf prisoners are communicating in BSL], or what's happening, [and they worry] that they might be able to group together and make plans and plot.

My research showed that without appropriate resource allocation or Deaf awareness, Deaf prisoners often become almost completely isolated from prison life. Just like McCulloch (2012), I found that the Deaf (and indeed, deaf) interviewees were experiencing disproportionate levels of punishment in prison. They were largely unable to take part in education, vocational or rehabilitation programmes, which made it difficult to fulfil the conditions of their sentence plans. They were also

commonly unable to access legal aid or medical assistance with an interpreter, which, in one instance led to an individual not receiving important medical treatment when needed. Finally, they all appeared to be confused about the nature of the prison regime, and the prison rules and procedures. Not only this, but the lack of access to others who could communicate with them was creating a situation where they were being forced to 'live in their minds', creating a toxic mix of frustration, anger, stress, loneliness and anxiety.

Me as the researcher

On a personal level I found this research very unsettling, and at times could not quite believe the things that I was hearing, not only from the prisoners themselves, but also the staff members too. The staff members who had agreed to be part of the research were the ones that were concerned about what was happening, that knew something was wrong, and knew that something desperately needed to be done. I am very grateful for their involvement, as in many instances what they said backed up the data collected from the prisoners, and heightened the validity of my findings.

Where do we go from here?

When McCulloch's report was published in 2012, he put forward a number of recommendations for the Prison Service to implement in order to be acting within the legal boundaries of the Equality Act 2010. However, it is strikingly clear that these recommendations have not been executed, and that changes still desperately need to be made. While this article only had scope to give a very brief insight into this important topic, I urge you to read the below forthcoming publications which detail

in a lot more depth the findings from my research, and outline comprehensively a set of recommendations for the Prison Service. If made, these recommendations will enable the Prison Service to be compliant with the stipulations of the Equality Act, and to begin meeting the needs of this vulnerable, isolated group.

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- McCulloch, D. (2012) *Not Hearing Us: An exploration of the experience of deaf prisoners in English and Welsh prisons. A Report for the Howard League for Penal Reform*, London: The Howard League for Penal Reform

Recommended further reading

- Kelly, L. (forthcoming) 'Suffering in Silence: The unmet needs of d/Deaf prisoners', *Prison Service Journal*, November 2017, No 234
- Kelly, L. (forthcoming) 'Sounding out d/Deafness: The experiences of d/Deaf prisoners', *The Journal of Criminal Psychology*

About the Author

Laura Kelly is a Lecturer in Criminology at the University of Central Lancashire, who specialises in prison studies. She works on modules across the undergraduate Criminology courses offered at UCLan, and is module leader for both of the prison modules delivered there. She has recently been awarded her doctorate for the thesis entitled 'Silent Punishment: The experiences of d/Deaf prisoners', from which she is currently publishing findings. In addition to this, she is working as part of a team of researchers on a funded project, looking at the value of a drama based initiative in environments such as prisons and care facilities. She also runs a student/prisoner debating programme on an annual basis, the next of which will be taking place from January 2018.

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Opinion

Wealth, culpability and justice

Meron Wondemaghen

US Attorney General Jeff Sessions has recently called for mandatory minimum laws to be reinstated, ending Obama-era sentencing reform for non-violent drug offenders designed to reduce the prison population. These, like 'three-strikes' laws, often affect the poor and disadvantaged, and people of colour. Sessions justifies the move as follows: "It is a core principle that prosecutors should charge and pursue the most serious, readily provable offense".

Given the current political climate in the US with a president under investigation by a special prosecutor pertaining to obstruction of justice and members of his administration for collusion with a foreign power; the multiple allegations of sexual assault against him during his campaign; and the recent allegations of sexual harassment against Bill O'Reilly and Harvey Weinstein, it raises questions about what Sessions means by 'the most serious' offenses. Presumably the seriousness of the offense is measured by the harm it carries. Are nonviolent drug 'mules' posing the most serious risk such that archaic tougher and longer penalties must be reinstated?



The legacy of tougher penalties for minor offenders

Law and order politics - tougher penalties, longer sentences, less judicial discretion - is a characteristic populist move during politically sensitive times. In the 1980-90s, racially coded rhetoric calling for mandatory minimums for non-violent drug offenders led to the mass incarceration of predominantly young and black men. Without judicial discretion, distinctions could not be made between drug-lords or couriers for proportional and individualised justice based on the seriousness of the offense. Racial disparities in sentencing, coupled

with the over-policing of this population group, have led to the overrepresentation of Black and poor people in prisons. Latinos are the second most overrepresented people in US prisons because they too are sentenced more severely for the same offences committed by their White counterparts.

Similarly, nine hours after the 'three strikes' Bill of 1994, Lester Wallace, a homeless black man suffering from schizophrenia was arrested. The Bill was passed in response to a child murder by a convicted felon released on parole, Richard Allen Davis, and was designed to severely punish those convicted of more than two violent offenses with a mandatory life sentence. But Wallace had two non-violent burglaries on his record when he was caught attempting to steal a car radio. That was the third strike. He was sentenced to life. Similarly in 1995, Curtis Wilkerson, another black man with two convictions for aiding as a lookout in a series of robberies, took white socks worth \$2.50 from a shopping centre making it his third strike. He too was sentenced to life in prison in addition to the \$2,500 restitution fine he received.

So Sessions's concerns for 'the most serious' offenses is confusing when these laws have only targeted poor and disadvantaged people of colour. Wallace and Curtis are but two of many such examples of disproportional punishment and gross injustice. Particularly concerning in this continuous 'war on drugs' is when a powerful arm of the justice system – the police – are, allegedly, engaged in planting evidence as was recently reported in Baltimore



(<http://www.independent.co.uk/news/world/americas/baltimore-police-plant-drugs-evidence-claims-video-body-camera-footage-a7849411.html>). The most serious offences, as Mr Sessions might already know, are often perpetrated by the wealthy and powerful and to whom the 'core principles' of prosecutorial charge and pursuit should be directed.

But as Bryan Stevenson puts it, it is 'wealth not culpability' that shapes outcomes in the American justice system.

The rich get richer and the poor get prison

Authors Jeffrey Reiman and Paul Leighton, in their book *The rich get richer and the poor get prison*, argue that the justice system is designed to aim 'its weapons against the poor, while ignoring or treating gently the rich who prey upon their fellows'. In doing so, it serves the interests of

the rich and powerful by broadcasting the message that the real danger to most Americans comes from people below them on the economic ladder rather than from above.

Consider the case of Charles Kushner, president advisor Jarred Kushner's father. He has previously plead to 18 felony counts which included illegal campaign contributions, tax evasion and witness intimidation. Kushner was sentenced to two years in prison only to be released after one year. He has since continued to run his multimillion real estate empire. Money does indeed exculpate from culpability or diminish the punishment it ought to carry.

The bias against the poor begins earlier in the process of law and justice. As Reiman and Leighton explain, it starts when legislators decide which activities will be criminalised and penalised with long term prison sentences. Interestingly, activities with far reaching and broad negative consequences, such as unsafe working environments as in the cases of O'Reilly and Weinstein, are not even considered harmful enough to be criminal. Nor does witness intimidation receive the same attention as non-violent drug offences if the perpetrator has wealth and power.

The current move raises interesting questions about which is harmful and 'most serious' warranting tougher and longer penalties: unsafe working environments, misuse of corporate power, witness intimidation and tax evasion, or the theft of a car radio by a homeless man with mental illness and nonviolent drug offenders –

populations against whom the most punitive sanctions are directed. The concern here does not appear to be 'most serious, readily provable' offenses but on keeping certain populations in check and governing through crime (Simon, 2007) by exploiting the fears and concerns of the American citizenry and 'mystifying' the crimes of the poor which serves to disguise the harms of the powerful whilst orienting us towards the powerless (Box, 1983).

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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 (eg 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.

Please note

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