Howard League for Penal Reform

Early Career Academics Network Bulletin

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Contents

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

In the spring the Howard League conference Redesigning Justice and Penal Reform: Promoting civil rights, trust and fairness welcomed academics both established and early career, practitioners and campaigners to Oxford from both home and abroad. Over the course of the two days so many topics and concerns were addressed providing so much food for thought.

The conference supports the Howard League's thinking, networking and ideas to help shape its future work. This is the first of a series of conference special ECAN bulletins which will appear in the coming months. In the meantime,

why not relive and remember the conference here.

This ECAN special edition also seeks to allow those of you who were unable to attend the conference to join the debate. However, there is no excuse for missing the next Howard League international conference; so save the date 31 March -1 April 2020 at Keble College Oxford. The best way to keep in touch with this and the rest of our work is to join the Howard League. We can only continue to undertake all these things with your help.

Anita Dockley, Research Director

Features

Restorative and retributive justice: Could they be parallel streams?

Stephan Terblanche

It is not possible to cover the whole field of this paper in the time available. Instead, it works from a number of assumptions. The first assumption is that the reader knows the essential elements of restorative justice; the second assumption is that the reader is familiar with current criminal justice systems.

Several attempts have been made to incorporate restorative justice into mainstream criminal justice (see Dignan 2003 and for the counter view Makiwane 2015:79-83). This is another such attempt.

Why is this worth doing? I am a lawyer, who firmly believes in the rule of law – in other words, that our lives should be ruled, as far as possible, by sound legal principles. Thirty years of studying sentencing from this perspective has only served to cement my conviction that sentencing founded in desert and proportionality does not make the world a better place. Crime causes too much harm, especially to relationships between people. The current standard criminal justice system does not address this harm – it does not even attempt to do so. This is why I believe restoration should be given

a chance within the formal justice system. It should not be a side-issue, an add-on that only finds application with a small number of cases on the fringe of the formal justice system (Makiwane 2015:88-90), but an integral part of every decision finalising the criminal case.[1]

The main issue

The main challenge that one encounters in the attempt to incorporate restorative justice into mainstream criminal justice, is that the two are largely incompatible.[2]

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[1] This paper does not address any form of out-of-court settlements or mediation. However, I remain convinced that all forms of informal processes should be employed as part of the state's concern with crime.

[2] Some commentators disagree – cf Antony Duff 'Restoration and Retribution' 43-59 in Andrew von Hirsch et al (ed) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?*

Pure restorative justice is not even really concerned whether a crime has been committed. This means it has a different starting point, compared to retributive justice, and from there it aims into a different direction anyway.[3] The result of attempts to incorporate one into the other typically leaves nobody satisfied – not advocates of restoration, nor advocates of proportionality.[4]

Taking the primary decision
The essence of my proposal is that one of the first decisions a court should take after conviction, is to determine whether the matter might be suitable for a restorative process. If it is, then the possibilities of such a process become the focus of the sentencing process. If it is not, the court simply follows the current sentencing process. One could refer to two streams – a restorative justice stream and a criminal justice stream.

The law needs to set quite strict conditions in guiding this first decision. It should not leave much room for pure discretion at this stage. I think the following should be required for this strict guidance:

1. The crime must have involved harm, to a relationship between people, which has a chance of being restored through restorative justice processes.
2. If the first criterion is met, the next important requirement is that the victim/s must agree to the restorative process. To this end the victim must make an informed decision.

Something more needs to be said about these criteria or requirements.

The biggest difference that restorative justice can make, above the retributive criminal justice system, lies in its ability to restore harm to damaged relationships. It is clear that there is little reason to follow a restorative process if the crime did not cause clear harm to an individual or individuals. Harm can take many forms, and for this initial decision, I would propose that it be limited to harm to a relationship.[5] This is in contrast to harm that is purely proprietary harm. Theft, burglary and such crimes will normally be excluded. Equally, when harm has been caused by strangers, the objective of restorative justice, to heal relationships, cannot be achieved, and that kind of harm should not inform the main question, whether the restorative or criminal justice stream should be followed.

(2003) Hart Publishing, Oxford at 43: 'I will argue that … [restoration] is not only compatible with retribution: it *requires* retribution …'

[3] Statements that the two approaches are not mutually exclusive (cf Makiwane op cit at 83) have to take a diluted form of restorative justice as point of departure.

[4] Cf Carolyn Hoyle and Lucia Zedner 'Victims, victimization and criminal justice' in Mike Maguire et al (eds) *The Oxford Handbook of Criminology* 4ed (2007) 461-495 at 486 (attempts to incorporate restorative justice into 'the existing punitive framework' have been rather awkward).

[5] This would, in other words, include some 'difficult cases', such as domestic and sexual violence (cf Carolyn Hoyle and Lucia Zedner 'Victims, victimization and criminal justice' in Mike Maguire et al (eds) *The Oxford Handbook of Criminology* 4ed (2007) 461-495 at 484).

Regarding the second requirement noted above, agreement by the victim is an absolutely requirement. However, victims might have to be informed about the process and its potential benefits in order to make an informed decision. Therefore, the information provided to the victim might well have to be prescribed in regulations, to ensure it contains a balanced overview of the purposes of restorative processes. If necessary, the victim should be given an opportunity to discuss the matter with friends and families and mentors they feel comfortable with. If the victim, with the necessary information, is not willing to give restoration a chance, this requirement is not met and the matter will revert to the criminal justice stream.

If the above two criteria are met, the court refers the case for formal restorative justice proceedings run by a qualified facilitator. In the majority of cases, this will include a conference, to decide on the content of the programme. Ideally, the content of the restoration programme should be determined from a closed list of elements or conditions, rather than giving the decision makers unlimited powers to select measures, as they deem fit. Obviously, a wide range of suitable conditions should be provided. The matter should then go back to the court to make the agreement a court order. The court will have to be satisfied that these conditions have the potential to achieve restoration. In addition, the court should also ensure that the victim actually agrees with the proposed conditions, and that the agreement is not the result of a too forceful facilitator (see Dignan 1993:139).

An issue that should be made clear is that the seriousness of the crime plays no role at this stage. It should be a pure restorative process. It has been a concern of many that such an approach might disregard the proportionality that is normally required for just and fair sentences. I return to this issue towards the end of this paper.

One aspect that I am unsure about is whether previous convictions should play any role. Arguably, in theory previous convictions should play no role. In other words, if the victim is happy to come to an agreement with a person with previous convictions, this should be good enough. However, since past conduct is the best predictor of future conduct, it makes little sense to allow a restorative process for someone who offended repeatedly in the past. A pragmatic solution should be found. A tentative proposal might be something like the following: someone who harmed the same victim, or similar victims, with the same conduct in the recent past may not be allowed to take the restorative path. The "recent past" might be defined as the past year or two. It should not be too long – the healing of relationships remains the main purpose of my proposals.

Whenever the requirements for following the restorative justice path are not met, then the retributive road should be followed.[6]

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[6] In a subsequent reform move, it might be possible to add restorative elements to sentences in the criminal justice stream as well. Some of the possibilities are restitution of stolen or damaged property, giving victims the chance to explain the consequences of the crime to the offender,

Why would these proposals improve the criminal justice system?

The improvement will come about simply because it gives the victims of personal, physical crime a bigger role in the resolution of crime. Many of the advantages claimed for restorative processes[7] can be accommodated, if the victim is properly informed and amenable to this process.

In South Africa, as in many other jurisdictions, the law provides for sentence (or plea) agreements, permitting a person charge with an offence to offer a plea of guilty in an agreement with the prosecution.[8] It is conceivable that such a person might also be allowed to present a specific *restorative justice plea* when charged with a crime. This would typically require a procedure to determine whether the requirements for a restorative stream are satisfied, even though a court has not yet convicted them. If the relevant role-players return with a restorative agreement, they might then plead guilty, as part of a plea or sentence agreement. Should the court reject the agreement, on the ground that the requirements of a restorative process to being not complied with, the matter starts anew. Such a procedure will have as advantage that it saves court time, as an additional benefit to the justice system. In a jurisdiction like South Africa there is a great need

to speed up justice proceedings, as guilty pleas are given in a small proportion of trials for serious crime, despite having provisions for sentencing agreements between prosecution and the accused.

How does this resolve concerns about human rights of offenders?

The main concerns for the human rights of people convicted of offences relate to two groups of rights. The first is the right not to be subjected to cruel, inhuman or degrading punishment. Obviously, the restoration conference cannot expect of them to agree to conditions that might be cruel, inhuman or degrading. The same applies to the right to dignity. A related issue is the requirement of proportionality between the seriousness of the crime and severity of the penalty. This is often related to fairness of the trial. Proportionality is more likely to be an issue on the side of leniency, but it is debatable whether any rights will be affected when the victim makes an informed decision in favour of restoration of the relationship, and the punitive content of the measures decided upon is below what would be proportionate to the offence.[9] In addition, courts are expected to uphold the Constitution in every decision or order they make. Should the total punishment risk exceeding what is justified by the crime, then the court should not make the agreed programme a court order, whether legislation specifically require this or not.

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giving the offender the opportunity to take responsibility and ask for forgiveness.

[7] Advantages such as to be 'very well-placed for communicating normative standards' (Dignan op cit at 143); offender takes responsibility; victim and offender face to face.

[8] In terms of s 105A of the Criminal Procedure Act 51 of 1977.

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[9] Cf Dignan op cit at 142, noting that proportionality provides an upper limit to the amount of punishment, but only that it 'may also allow for a lower limit.

The second right is the right to equal treatment before the law, or equality. Restorative justice advocates have struggled with this issue in particular. The standard argument is that it is basically unfair that one offender is treated lightly because, thanks to a willing victim they are not sent to prison, while the next is treated much more harshly, being imprisoned since the victim is not amenable to restoration (see von Hirsch 1986:36; Ashworth 2002:588). It is submitted that the current proposal resolves this issue. The right to equal treatment is never absolute, and differences of treatment are permitted for good reason. Typically, such good reason would include what the South African Constitution (s36) permits for limiting rights, namely, when such a limitation is justified in open and democratic societies. Equal treatment does not require everybody to be sentenced in terms of a single system. By analogy, someone suspected of a crime could barely object to being charged, when another suspect is not, because the available evidence is not sufficient to sustain a prosecution. When a criminal case can be finalised by one of only two streams, and deciding on the stream to which a particular defendant will be channelled is governed by clear legal principles, which are rational and not capricious, the right to equal treatment should be satisfied, because all those complying with the requirements will be dealt with in terms of one system, and all who do not, will be treated in terms of another system. However, it is also clear that this issue will be of less concern if quite strict legislative guidelines are provided to govern

the decision about the specific stream in which the offender will be accommodated.

Do these proposals really improve the formal justice system?

It often happens that proposals for criminal justice reform are rejected as soon as it can be shown that they do not produce a flawless system. Perhaps a perfect system can be devised, although I suspect that imperfection is the reality we are stuck with. My objective is to improve the current system, and even a small improvement should be worth exploring. With this proposal the improvement will come about simply because it gives the victims of personal, physical crime a significantly larger role in the resolution of crime. Many of the advantages claimed for restorative processes can be accommodated. The proposals will also affect a very substantial number of victims. In South Africa, where violent crime is a serious problem, the data is clear that the greater majority of such crimes are committed against victims known to the offender.[10] The same situation applies in the

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[10] Cf Annalise Kempen 'Victims of crime survey - Shocking revelations about violent crime' (June 2016) *Servamus* 20-22 (data from the latest crime victim survey in South Africa: assault (44% in domestic situation; 21% by strangers); sexual assault (62,5% of such assaults take place indoors; of these 24% are committed by strangers); murder (43,7% of victims aged 15 to 34 were killed by friends or acquaintances of the victim; only 9% by a stranger). The Statistician General, Pali Lehohla, noted on 4 May 2016 that, 'The majority of crime occurs when people who know one another commit crime due to their jealousy of one another or due to money issues' (Kempen op cit 22).

USA,[11] and I would be surprised if it is very different in many other countries. This is where relationships need to be restored, in the interests of society at large.

Another important consideration, in the South African context, is that restoration is often claimed, with justification, to be the indigenous approach to conflict solving (see Nomoyi 2000). After almost a quarter of a century of increased reliance on imprisonment to solve the crime problem,[12] the introduction of restoration into the formal system is long overdue.

Closing
Based on the above arguments, I believe it is possible to have a formal justice system that answers the human rights concerns of advocates of retributive justice, without losing the core elements of restoration because the punishment needs to be proportionate to the crime**.**

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[11] According to the FBI, 'In 2015, more than 29 percent (29.2) of homicide victims were killed by someone they knew other than family members (acquaintance, neighbour, friend, boyfriend, etc.), 12.8 percent were slain by family members, and 10.2 percent were killed by strangers – see *Expanded Homicide Data Table 10* at https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/offenses-known-to-law-enforcement/expanded-homicide, accessed on 13 March 2018.
[12] Cf PN Makiwane 'Restorative justice: bringing justice for crime victims?' (2015) Obiter 79: ' The South African criminal justice system … is under pressure. Prison overcrowding, rising caseloads, recidivism and crowded court dockets are some of the problems that contribute to the strain'.

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Professor Stephan Terblanche is a professor in the Department of Criminal and Procedural Law at the University of South Africa. His research and teaching experience centres on sentencing. He is the author of the current standard book on sentencing in South Africa: *A guide to sentencing in South Africa* 3rd ed (2016) LexisNexis; more than 60 contributions to law journals and other books; and have spoken at nearly 40 conferences. He is co-editor of the *South African Journal of Criminal Justice*.

Effective prisoner engagement through the promotion of sport motivation: Implications for policy and practice

Hannah Baumer

Prisoners' health is a public health matter of increasing prevalence, with the prison population experiencing an extensive range of health and social problems (Stewart, 2008) to a far greater extent than the general population (Lester et al., 2003; Senior and Shaw, 2007). Arguably, any period of incarceration is the ideal time for an individual to receive treatment for their physical and psychological needs, but instead of facilitating health rehabilitation, prison settings fail to adopt a proactive approach to improving health (Gatherer et al., 2014; Jakab, 2014; Woodall, 2016). As a result, prisoners are frequently returning to the community without engaging in any form of health rehabilitation, causing their physical and mental well-being to deteriorate further (De Viggiani, 2007; Fazel and Danesh, 2002; Gatherer et al., 2005).

This failure to diagnose and support so many of the social and psychological needs in the prison population is of importance in the context of sport[13]; an intervention which can reach individuals who perhaps would not otherwise receive any support for their needs.

High attrition rates in psychological and related therapies can cause major difficulties when working with people who have offended and

strategies are needed to reduce this (McGuire, 2003). Participation in sport and/or exercise is not dependent on a prisoners' existing mental wellbeing, and therefore has the potential to address unmet needs as well as supporting existing health care pathways in prisons. Despite claims to the contrary, so-called 'hard to reach' socially and economically deprived communities which are reflective of the backgrounds of many prisoners, respond very well to physical activity participation, showing long-term adherence amongst sedentary individuals from such communities (Lowther et al., 2002), and interest in participating in sport with prisons specifically is often high (Buckaloo et al., 2009; Meek and Lewis, 2012). Furthermore, the psychological, social and physical benefits of regular engagement in sport in prisons has been highlighted by a growing body of research (Cashin et al., 2008; Meek, 2014; Parker et al., 2014; Woods et al., 2017a).

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[13] Sport is defined as per the European Sports Charter as any form of physical activity, whether casual, organised, competitive or non-competitive (Council of Europe, 2001).

The Cell Workout Workshops

Woods, Hassan and Breslin (2017b) describe a typical sports-based intervention (SBI) in prison as a "sporting academy" using sport as the focus, with additional aims related to personal development or employability. The Cell Workout (CW) Workshops are an example of a SBI in prison, although shorter than the typical 8-12 week duration at just a fortnight in length, they aimed to promote prisoners' motivation to engage in further healthy behaviours. The workshops pilot was delivered by ex-prisoner, L. J. Flanders across a six month period, and included body-weight workouts in the morning, based on the principles outlined in Flanders' book, Cell Workout (Flanders, 2016). This was followed by group discussions in the afternoon which explored topics including behavioural change, nutrition, and education, with presentations from organisations that operate in the prison such as the Prisoners' Education Trust.

Defining engagement

The understanding of prisoners' motivation and readiness to engage in behavioural change is often applied in the context of formal psychological interventions aimed at promoting desistance from crime (Maruna, 2001). However, research on prisoner motivation to engage in behaviours purely for the enhancement of physical and mental health is limited.

The theoretical basis for understanding the extent of prisoners' engagement with the CW Workshops is Deci and Ryan's theory of human motivation; self-determination theory (SDT; Deci and Ryan, 1985). The central tenant of SDT is that behavioural self-regulation, which is associated with increased resilience to barriers and long-term behavioural change, requires the satisfaction of three basic psychological needs; competence, relatedness, and autonomy. SDT would also posit that successful engagement in a behaviour will increase self-efficacy and in turn promote self-regulation of motivation to engage in further related behaviours. Thus, in the context of SDT, it can be argued that prisoners' physical and mental health outcomes from sport underpin the process of engaging in further so-called "healthy behaviours", such as engagement with sentence planning, formal psychological interventions aimed at reducing risk and, in turn, desistance from crime.
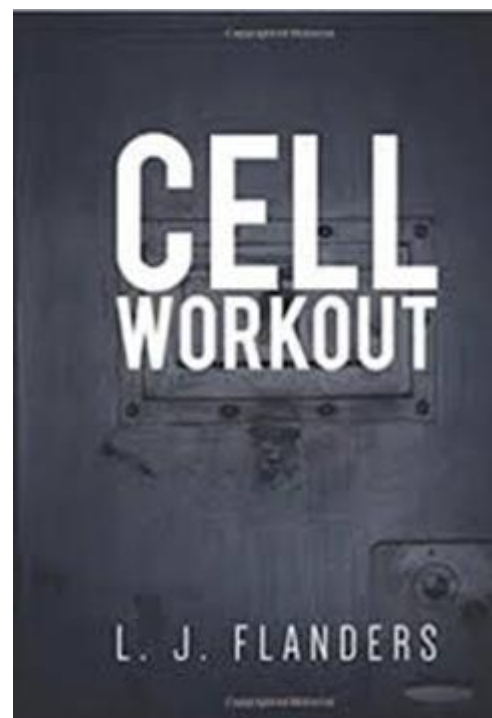
In this article, SDT is applied to understand the impact of the CW Workshops on long-term behavioural change by measuring the extent to which participants of the CW Workshops experienced satisfaction of the three basic psychological needs in relation to sport.

Methodology
Participants
The workshops pilot was delivered in an adult male category B prison in the south of England, with participants across five wings applying to participate in the workshops on a voluntary basis. It included remand, sentenced and "detoxing" prisoners. A total of 105 prisoners aged between 18 – 62 years old (M = 34.86) were accepted onto ten consecutive workshops, 74 of these completed the full two weeks.

Measures
The impact of the CW Workshops on participants' motivation to engage in sport was measured using a scale of basic psychological needs adapted for use in relation to exercise (Basic Psychological Needs in Exercise Scale; BPNES; Vlachopoulos and Michailidou, 2006). Qualitative data was also gathered to identify the scope of any behavioural change, this included open questions regarding participants' behaviours following completion of the workshops which were included as part of a wider survey, and face to face interviews with twenty participants across nine of the cohorts.
Procedure
Data was collected immediately before the start of the workshop (Time 1; N = 105), immediately

after the two-week workshop (Time 2; N = 74) and between 2-6 months following completion of the workshop (Time 3; N = 36).

Findings
The three basic psychological needs as measured by the BPNES had all increased significantly from Time 1 to Time 2, and this impact remained true for relatedness and competence at Time 3, although autonomy had begun to decrease.

Qualitative analysis highlighted changes in exercise behaviours from solitary, weights-based exercise to a preference for more group-based cardiovascular exercise, with participants highlighting the positive impact this form of exercise had on their ability to focus, energy levels throughout the day and motivation for further exercise. The workshops also prompted behaviour change outside of exercise, and more than forty participants expressed an interest in signing up to educational courses within the prison at the end of the workshop, with eighteen participants successfully obtaining funding for long distance learning courses through the Prisoners' Education Trust.

Factors that mediated prisoners' positive outcomes were reflective of relatedness, competence and autonomy. Participants enjoyed a strong sense of camaraderie within the group, led by a sense of connectedness with the trainer and a common goal that was positive and achievable. Participants' competence was supported through the presentation of content that was both challenging and personal to them as prisoners, whilst opportunities for autonomy

were provided by allowing participants to identify why making healthy choices is important to them personally, before introducing ways to take control of their health whilst in prison. These elements created a supportive learning environment in which prisoners felt capable and driven to engage with content that could be applied to the management of daily life in the prison. Promoting prisoners' psychological and physical well-being through sport was the key objective of the workshops, however, as hypothesised, the outcomes suggest that participants' engagement with healthy behaviours in prison were conducive to engagement in further healthy behaviours following release. The workshops gave participants the agency to use their time in prison more positively and begin looking ahead to engage in behaviours which support desistance from crime such as education, employment and relationship building.

These findings exhibit the potential for SBIs in prison like the CW Workshops to effectively promote prisoners' engagement in sport, as well as further healthy behaviours.

Implications for policy and practice – Easy, attractive, social and timely (EAST)

The Behavioural Insights Team (BIT) is a government institution dedicated to the application of behavioural sciences across the policy community. BIT outline four simple ways to encourage a behaviour, namely, make it Easy, Attractive, Timely and Social (EAST; Service et al., 2014). The CW Workshops reflect these four means of applying behavioural insights in several ways, outlined below, to provide tangible examples that policy makers and practitioners can refer to, along with recommendations for amendments to future SBIs in prison based on suggestions from BIT.

Easy

i) Reduce the 'hassle factor'

The application process for the CW Workshops was very straight forward for those who wished to apply, the form only required a name, prison number, cell number and a reason for applying. However, for prisoners with very low motivation levels this may have been enough to put them off applying altogether. Future SBIs that wish to reach prisoners who may benefit most from engaging should 'harness the power of defaults' (Service et al., 2014:9) by automatically signing prisoners up to the intervention when a trigger is reached i.e. young prisoners referred to the violence reduction team.

ii) Simplify messages

Desistance from crime is a complex goal which for many prisoners requires change across multiple behaviours. The workshops broke this goal down into small sessions which focused on individual behaviours, starting with the change in mind-set that is needed to engage with healthy behaviours and working towards the presentation of education and career opportunities at the end of the fortnight. The messages presented to participants throughout the workshops were simplified, from the approach used to explain exercises in the book through to the topics covered in the afternoon motivational sessions, with simple, concise explanations in

language that participants are familiar with, and without any unnecessary information. Furthermore, participants did not have to complete anything or answer any tough questions to receive the information, it was presented to everyone in a straight forward manner using relatable concepts. For example, suggestions for healthy eating were presented in terms of the food options on the prison canteen sheet, and case studies included stories from ex-prisoners who had gone on to achieve their goals on release.

Attractive
i) Attract attention
The Cell Workout book was very popular within prisons before the workshops, and L. J. Flanders' story had caught the attention of many prisoners. This "buzz" around the CW brand meant that posters promoting the workshops around the prison were eye catching, as they maintained the CW logo which the book had made so familiar. The BIT highlight the effectiveness of personalisation to attract attention, and this was incorporated in the workshops in a number of ways. Firstly, Cell Workout as a brand is directly targeting prisoners and the workshops have been developed specifically for prisoners, making them very personal. And secondly, from the outset of the workshop each participant completed a physiological "health MOT" which provided them with

personal information about their health which they could use to track their progress. Future SBIs should look to expand on this by providing as much personal information as possible, an example might be to measure participants' motivation type for them to track their own behavioural regulation style, identifying what motivates them to engage in sport and how they might use this to increase or maintain motivation.

ii) Design rewards for maximum effort
Those who completed the CW Workshops were given their own copy of the CW book and a CW t-shirt. The attractiveness of the t-shirt is greatly improved by its scarcity as prisoners are already limited in terms of the clothes they own inside prison, and the CW t-shirts are limited to prisoners who have complete the workshop only. A supporters' day where friends and family of the participants came into the prison for a workout and graduation ceremony also provided a fantastic reward for those who displayed maximum effort, giving them a unique opportunity to engage with friends and family in an informal and positive way that is not possible elsewhere in the

prison, in particular, giving prisoners photographs with their supporters was seen as a considerable reward.

The workshops also drew attention to self-image through the demonstration of L. J. Flanders as a figure who looks good through exercise and feels good through the positive mental well-being that this brings, offering prisoners a reward in the form of positive self-image by engaging with the workshop and the healthy behaviours that it presents.

Social
i) Use the power of networks
The workshops brought together a group of prisoners who may not otherwise engage with one another, creating a social network with a readiness to engage in healthy behaviours as common ground. Networks allow behaviours to be spread, therefore, as participants begin to engage in other healthy behaviours in addition to exercise, the likelihood that other participants will do the same increases. However, these groups are not formed organically so in order to be maintained they are likely to require greater support. Furthermore, as the CW Workshops were a pilot with limited resource, there was no support provided to prisoners following completion of the workshop, which had a somewhat negative impact on participants' well-being and autonomy at follow-up. This is an important finding and highlights the importance of ongoing support following an intervention such as this in prison. Ongoing support following SBIs could promote the social network of prisoners who have engaged with the intervention,

perhaps providing ad-hoc workouts and opportunities for sharing advice and encouragement.

ii) Encourage people to make a commitment to others
Participants were encouraged to set goals at the start of the CW Workshop which they worked towards throughout the fortnight. These ranged from specified weight loss to cutting out biscuits from their diet or signing up to an educational course. The goals were well-defined, simple, and declared in front of the group to be written up on a flip chart and revisited at the end of the fortnight. Participants were also encouraged to share these goals with others, either inside or outside of the prison, strengthening their commitment by making it public. Future SBIs could expand on this method of social commitment by encouraging participants to make commitments at the end of the intervention, such as continuing to exercise three times a week, and sharing these with the group and significant others.

Timely
i) Prompt people when they are most likely to be receptive
The information in the CW workshops was all presented following the morning workout, either immediately afterwards or after lunch. Feedback from the participants has shown that they were much more receptive to the information given to them at this time, compared with other times when similar information had been presented in prison. For example, many said they had heard of distance learning but never given it much thought until it was presented to them at a time that they felt alert

and energised, and saw the personal benefit of engaging in positive activity.

Feedback from the end of the workshops demonstrated that smokers were significantly readier to use physical activity to support smoking cessation, and interviews revealed that smokers would have been willing to engage in the cessation support provided by the prison healthcare team at the end of the workshop. Unfortunately, at Time 3, smoking behaviours had reverted back to the levels seen before the workshop. This indicates that the end of the workshop may be the ideal time to encourage smokers to engage with formal cessation support, or to present ways in which physical activity can be used to manage cravings. Similarly, there was a wealth of interest in educational courses shown by participants at the end of the workshops, but this did not translate into the number of courses signed up to at Time 3. Education providers could capitalise on this interest by engaging with participants at the end of SBIs and "reducing the hassle" in applying for relevant courses.

ii) Consider the immediate costs and benefits

Engaging in healthy behaviours is tremendously beneficial in the long-term, but it can often be hard to identify short-term benefits. The workshops provided all participants with their "health MOT" results at the start and end of the fortnight to provide a means of highlighting the benefits as early as possible, this may be particularly important in the context of prison where it would not otherwise be possible to measure some of these physiological changes. Some participants also felt more immediate benefits of exercise through an increase in concentration during the afternoon sessions and a greater capacity to cope with daily life in prison through improvements in mental well-being. Future SBIs could look to highlight the benefits that others have experienced as a means of promoting engagement for those who are yet to complete the intervention, which would also strengthen the social network of participants.

iii) Help people plan their response to events

The first afternoon session of the workshops included a presentation of L. J.'s story, from being in prison to publishing his book. This story included recognition of the barriers that L. J. Flanders encountered at each stage of his journey and how he overcame these, highlighting that each time he found a solution he became more resilient and got closer to his goal. When participants were encouraged to set goals they are Specific, Measureable, Achievable, Realistic and Timely (SMART), which prompts each goal to be well-planned and increases the chance of success. As part of a group discussion participants were also encouraged to identify possible barriers to achieving their goal and means for overcoming these, for example, if a participant wants to eat healthier they need to plan ahead and make healthy choices from the canteen sheet, such as tuna and vegetables, so that on days when there are no appropriate meal choices they can choose to make a meal from the food they have in their cell.

Conclusion

Through the creation of a supportive environment which endorses choice and control, allows for skill development and provides a sense of affinity, the CW Workshops promoted prisoners' engagement with healthy behaviours in a way that is rarely encountered in prison. Practitioners would do well to apply the BIT's EAST framework in the development of future SBIs, focusing on long-term support and harnessing the power of networks.

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The Failure of Custody Visiting

John Kendall

When the police in England and Wales make an arrest, the suspect is usually taken to a police custody block. Here, the suspect is likely to be searched, DNA swabbed, finger-printed, photographed, and interviewed, and will be detained for up to 96 hours before being cautioned, charged or released without further action. Most of the time in police custody is spent in isolation and out of public view. In this sense, police custody blocks are some of the state's secret places: they are the police's territory and are not subject to effective scrutiny or independent regulation. Public controversies about what happens in these secret places arise only when there is a death in custody. Into this setting, under a statutory scheme, come some 1,900 volunteers acting as custody visitors. Collectively they make what are supposed to be random and unannounced visits to the custody blocks, every week, in all parts of England and Wales, where they check on the welfare of the detainees. Custody visiting is an important component of the criminal justice system, but it has been almost completely ignored by police scholars and is largely unknown among the general public.

The power of the police
The visiting scheme is profoundly affected by the power of the police. Research by Skinns (2011: 189) has shown that doctors, lawyers and drug workers working in custody blocks are subject to police dominance of the custody blocks as police territory. The concept of power deployed in the research is derived from the work of Steven Lukes (2005), whose theory is a useful device for drawing attention to the way in which the police have shaped understandings of what custody visiting is and should be. The police have achieved this without any action or conflict, and exercise their power over visitors by influencing, shaping or determining their attitudes, particularly by the process of socialisation. This leads the researcher to look for explanations not only of what happens but also of what does *not* happen. Lukes argues that unconscious inaction is

a decision, and that a decision to do nothing may be taken because of the power of an institution. The visitors rarely stray outside the invisible boundaries established by the police through their dominance of custody blocks. This is why the observation technique of looking out for what does *not* happen as well as for what does happen is so important in this inquiry. What did *not* happen, on almost every occasion I observed, was any challenge by the visitors to the police.

Ideology
The other main factor making a profound effect on custody visiting is the ideological stance of the visiting scheme. This can be understood by reference to the crime control and due process models of criminal justice evolved by Herbert Packer (1968). Packer's 'crime control' model majors on the importance of the unobstructed efficiency of the police operation, and on the factual presumption of guilt, while his 'due process' model majors on the primacy of the individual, the normative presumption of innocence, and the need for limitations on official power. The crime control view is that it is best for society to allow the police to obtain confessions without hindrance. In marked contrast, the due process view insists on safeguards for suspect detainees, partly out of belief in the importance of treating individuals with respect, partly because of the concern that confessions are unreliable if induced by physical or psychological coercion. Packer's models are applied throughout the research to obtain answers to the fundamental questions of who, and what, custody visiting is for: is it to

safeguard detainees, or is it to promote confidence in the police so that they can pursue their goals unhindered? As with Lukes' theory of power Packer's models are a useful device; in this case, for understanding the effect on custody visiting of these strongly contrasting ideological attitudes to criminal justice.

The research
With an interest in finding out about custody, but without any intention of writing about custody visiting, I worked as a custody visitor for three years. I found very few discussions of custody visiting other than the official literature. This prompted the research as a self-funded PhD thesis at the University of Birmingham Law School.

Custody visiting operates nationally, with work being carried out in each local scheme by volunteer visitors managed by the Police and Crime Commissioner (PCC). The ideal method of studying the subject would include examinations of custody visiting in several or maybe all parts of the country, but the resources were not available. A case study approach in which the focus was on one major urban police force was accordingly the most realistic way to make a study of this national phenomenon. Seventy-six in-depth interviews were conducted with visitors, police, civilian custody staff, lawyers and, crucially, detainees. A survey would not have provided any of the valuable insights which were obtained from these interviews and from the 123 hours of observation of the orientation and training sessions, the visitors on their visits to the custody block

and their meetings with the police, and the work of the custody blocks during the day and the night.

All the visiting schemes in England and Wales are contained within the same statutory provisions and the same codes of practice. And behind that common formal structure lies the fundamental power imbalance between the police and the visitors; all custody blocks remain firmly within police control, which makes a decisive impact on the way all visitors work. This imbalance is the crucial unchanging factor which explains both the lack of independence and the ineffectiveness of custody visiting, and it is a characteristic shared by all schemes across the country. No other research of this type has been published. The conclusions of this research can therefore be applied generally, unless and until other research disproves that contention.

The nature of custody
Police work in custody blocks is, arguably, the most important component of the criminal justice system. For most people, the expression 'criminal justice system' conjures up dramatic images of courtroom trials. However, defendants plead guilty in most cases and there is no forensic contest. It has become the usual practice of the police to interrogate suspects only when they are being detained in custody (Sanders et al, 2010: 188, 217). The reason for this practice is that suspects are more likely to confess while in detention at the custody block than

Photo credit: Greater Manchester Combined Authority

they are at home. In the words of the National Police Chiefs Council (2017): 'The primary purpose of taking an individual into police custody is to make them *amenable* (emphasis added) to the investigation of a criminal offence of which they are suspected'. The experience of detention is a context conducive to breaking the will of the suspect and persuading the suspect to cooperate, make a confession and, ultimately, plead guilty.

Custody blocks are the places where the hundreds of thousands of people who have been arrested each year are processed. The police have wide discretion in how they operate in custody blocks (Sanders et al, 2010: 197, 253), and what they do there is largely invisible to the outside world. Custody blocks are 'places hidden from public view, where people are held against their will by representatives of the State who possess potentially far-reaching powers over their physical welfare' (Maguire, 2002: 75). A police officer who had formerly worked as a custody sergeant and was interviewed for this research characterised custody blocks as "a

very locked-down environment, the police's world, which nobody else except custody visitors really gets a view into". The officer's characterisation holds true, because professionals who work from time to time in the custody block such as lawyers, nurses and social workers do not see the detainees in the cells. Generally, custody visitors are the only outsiders who see detainees in their cells on a regular basis.

Those who are detained in these hidden places, this very locked-down environment, run the risk of being abused by the police, whatever the extent of any actual abuse. It is true that, generally, in recent years are thought to have seen considerable improvements. However, serious concern is justified, for two reasons. First, deaths in custody are still occurring at the rate of about 20 a year, with a disproportionately high number of BAME detainees. The other factor justifying serious concern about custody is that there is no significant external regulation of police behaviour in custody blocks.

The power imbalance within police custody is exacerbated by the vulnerability of many, if not all, detainees. Some detainees, adults who are mentally disordered or otherwise mentally vulnerable, together with all juveniles, are classed as vulnerable in custody, and an appropriate adult is supposed to be called to accompany them during police interviews. And, in the view of an experienced defence practitioner, 'all detainees in the atmosphere of a police station, are vulnerable, and many are frightened and unsure' (Edwards, 2008: 243).

Custody visiting as a regulator of police conduct

While custody visiting does not appear to be seen by the authorities as a regulator, it is best understood as a form of regulation, and a regulator is what it actually is. Custody visiting is established as a regulator as part of the UK's National Preventive Mechanism (NPM) under an international treaty, the United Nations instrument known as OPCAT, the Optional Protocol to the Convention against Torture and other cruel inhuman or degrading Treatment or Punishment. Custody visiting purports to fulfil those parts of the responsibilities of the UK's NPM which relate to the regulatory function of monitoring the treatment of detainees (Ministry of Justice, 2016). The conditions of detention in the police station are regulated by PACE codes which in practice also leave the police wide discretion. The system relies on self-regulation, provided by CCTV recording, computerised custody records, daily visits by the PACE inspector, and inspections once every six years by the Joint Inspection Team. The police are in control of the system for recording what happens in custody blocks, so they are not likely to record abuse.

Policy

The story begins in 1980 with the House of Commons Home Affairs Committee Inquiry into Deaths in Custody. It was in this context that Michael Meacher MP made the first proposals for custody visiting, as a deterrent to police assaults on detainees. In 1981 the Scarman Report on the Brixton riots adopted this idea and included a recommendation for a statutory scheme of custody visiting. The

Government declined to implement the recommendation. However, responding to pressure, particularly in Lambeth, the London Borough which included Brixton, the Government encouraged the growth of custody visiting from 1984 on the rather haphazard and unofficial basis known as 'lay visiting'. Police authorities were to run these groups of visitors. As can be seen from an analysis of a series of Home Office circulars, the attitude of both the police and of the Home Office was to seek to contain this development and to restrict its effectiveness. However, some successes were achieved by the Lambeth group, which had a degree of independence. On the central issue of deaths in custody, official policy was not to allow the visitors any role but simply to use them to build up the public's confidence in the police after one of these deaths.
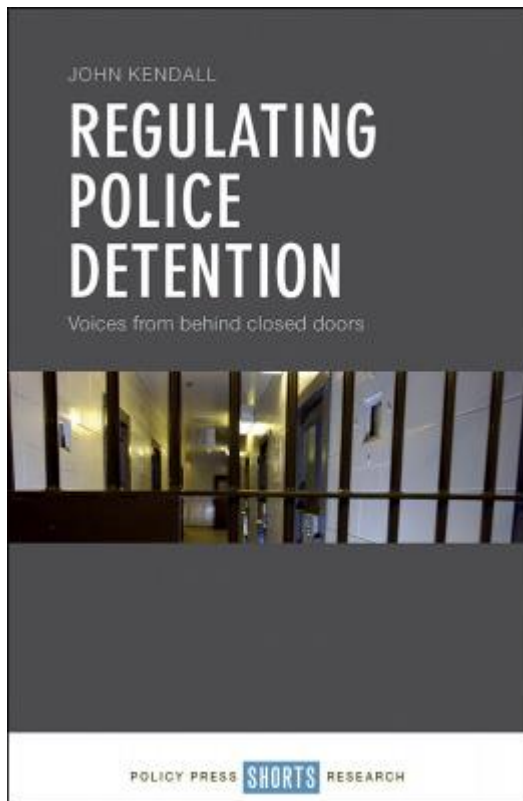
Moves towards a statutory scheme were initiated in 2000. A working party, dominated by the Home Office and the police, with no representation from detainees, defence lawyers or probation officers, drafted the current statutory scheme which was enacted as section 51 of the Police Reform Act 2002, and brought into force in 2003. The statutory provisions, paradoxically branding the system as the Independent Custody Visiting Scheme, actually took away from the visitors any independence they once had, despite reassurances given by a minister to Parliament. And, as with lay visitors, visitors under the statutory scheme are volunteers. Contrary to the prevailing orthodoxy that volunteers play a valuable role in the criminal justice

system, this research is sceptical about custody visitors being unqualified volunteers.

Independence
To do their job properly, custody visitors need to be independent, but the structure of the scheme makes that impossible. The visitors are recruited and managed by the local PCC, who is also required by statute to perform the impossible conjuring trick of ensuring that they are independent both of the police and the Commissioner. The types of people who joined the scheme were found to come from a fairly narrow spectrum: generally middle class, and over 50. A small minority of the visitors arrived with negative experiences of the criminal justice system, while a larger number had close connections with the police. The visitors received orientation training and mentoring from the scheme administrator and from the police and other visitors, and they received no training from former detainees or defence lawyers or probation officers. The new recruits then went on visits with more experienced visitors which confirmed these attitudes.

The case study continues with a detailed examination of the visitors' attitudes shown by their behaviour on visits and opinions expressed in interview, and by comparing them with those of the PCC and the police. Whatever the differences in the attitudes the visitors started with, those differences had been flattened out, and the attitudes of a substantial majority of them were closely aligned with those of the Commissioner and the police. There is a particular focus on the attitudes of the visitors to deaths in custody and their role in relation to

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REGULATING POLICE DETENTION

Voices from behind closed doors

POLICY PRESS **SHORTS** RESEARCH

them. Visitors accepted the police version of events and did not see they had a role in reducing the number of deaths. In this and every other aspect of the work of custody visiting, the case study found that the visitors were socialised by the power of the police.

Effectiveness

The case study assesses the effectiveness of the work of custody visiting, starting with the visits being too infrequent and taking place at predictable times, delays in being admitted to the custody block, and failure to gain access to all the detainees. The visitors did not make sufficient checks of the type they are allowed to make, and they were handicapped by not being able to make some of the checks that they ought to be allowed to make. The police were found not to respect custody visiting.

A central feature of custody visiting is meeting the detainees. I heard directly from the detainees that they thought the meetings were useless. The meetings were very brief, confusing for the detainees, and were often supervised by the custody staff. The detainees did not understand what the visitors were there for: they were suspicious of the visitors and did not trust them. The detainees were therefore unable to confide in them with any significant information. The reporting system was opaque, and the public received very little information about the local scheme.

Custody visiting therefore was found to make no impact on police behaviour. The system was also measured against the United Nations standards for monitoring detainees (United Nations), which include the requirement that the monitors have expertise, and the United Kingdom was found to be in breach of these international obligations. Custody visiting is actually counter-productive, in that it masks the true position, which is that the visiting is ineffective and makes no impact on police behaviour.

The official deletion of reducing deaths in custody as a purpose of custody visiting

The principal purpose of custody visiting, the safeguarding of detainees from mistreatment by the police, has been downgraded, and the issue of police mistreatment that can culminate in the death of detainees has been almost completely obliterated, both in the official literature and in the minds of the visitors. This arises because the scheme is dominated by the police who side-line the issue as

much as they can. The police say as little as possible about the subject: they claim that deaths are not their fault, and they ask visitors to help them by putting over the police case.

What can be done?

The current system could be rebuilt to provide effective regulation, but radical changes would be necessary. The success of reform would depend on a fundamental reconsideration of policy issues: how to deal with the power of the police; making the purpose of the scheme be safeguarding detainees rather than promoting confidence in the police; the independence of the scheme from the state; recruitment and training of visitors; access to the custody blocks and detainees; clear channels for reporting and publicity; and effectiveness as a regulator. This research needs to be widely publicised and taken to the House of Commons Home Affairs Committee. The revelation to Parliament and the public that custody visiting has no legitimacy could lead to a real chance of reform.

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Customary law – A challenge to justice in Indian legal framework: A case study of Meghalaya, a state in northeast India

Sanghamitra Sarker

Customary law exists in the Indian legal framework as a part of legal pluralism. The Indian courts have recognised custom as law only if the custom is *ancient or immemorial* in origin; *reasonable in nature and continuous in use*; and, *certain*. The Courts have interpreted ancient or immemorial to mean that for a custom to be binding it *must derive its force from the fact that by long usage, it has obtained the force of law.* A custom also *derives its validity from being reasonable at inception and present exercise*. Lastly, a *certain* custom is one that is *certain in its extent and mode of operation* and invariable'.[14]

The Indian legal framework is based on the spirit of the rule of law with the accommodation of citizens' civil law based on religious and community identity. The civil laws which deal with marriage, divorce, adoption, inheritance property rights and succession came under personal law. In short, Indian legal framework is a combination of inherited colonial laws, constitutional laws, common laws, customary laws, uniform civil codes of state of Goa[15] and various legislation of Indian Parliament.

Matrilineal societies do exist in small pockets within India. These are societies in which the laws of inheritance are based in favour of women rather than men. The woman of the house becomes the decision maker on a lot of matters, although matrilineal systems do not ensure fair representation of women in the public domains. Despite this short-coming, however, it is an enormous matter in itself for women to gain some power, as opposed to the strictly patrilineal system as practiced in

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[14] Natural resources conservation law, Sairam Bhat, Sage Publication India, ISBN 978-81-321-05-08 (HB),PP

[15] Civil code of Goa, popularly referred as unified civil code of Goa or family law, is the adoption of Portuguese civil code under former Portuguese colonial rule .It was continued in the state of Goa after merger to India in the year 1961and in the year 1966, it was amended. But it is largely different from the civil code of rest of India.

the majority of the societies in India. Only some of societies in Meghalaya and Kerala are matrilineal by nature.

The Sixth Schedule in the Indian constitution contains provisions for the administration of tribal areas in northeastern states of India and grants considerable administrative autonomy to tribal population as a community, granting each regional administrative unit with its own regional council and each district with local district councils. Autonomous councils are invested with both executive and legislative powers, subject to the approval of the provincial governor, to "make laws with respect to a variety of subjects" and even exercise "judicial authority through traditional legal systems embedded with certain features of federal law" (Constitution of India 1950 schedule VI 1-1).

The Sixth Schedule has its roots in the autonomy provided by the colonial British government to the tribes of the northeast where the colonial government chose to exercise its rule indirectly. At the time of independence, the members of the Constituent Assembly delineated these powers in the form of the Sixth Schedule thereby providing continuation of the autonomy given to the hill tribes.

The Panchayati Raj, the Indian brand of local self-government is recognised in the Indian constitution and has enjoyed special status in tribal dominated areas under Sixth Schedule areas in northeast India based on customary law and special areas like Jammu and Kashmir. In 1978,

for the first time in India, local self-government was effectively implemented as grass root democratic institution in West Bengal but was not implemented across India until the 1990s.

The Meghalaya, is a unique state in northeastern India with a matrilineal social structure. It is under Sixth Schedule and has adopted an autonomous district council model with traditional local self-government at grassroots level (e.g. Dorbar Shnong, Dorbar Chnong or Nokma Council). Meghalaya State has three autonomous district councils namely Khasia, Garo Hills and Jaintia Hills district councils. The traditional social status of women in Meghalaya both in rural and urban area is much ahead of most of India.

Contradictory position of women in traditional social system
Before the existence of Meghalaya as a State, tribal women especially Khasi and Garo enjoyed inheritance property rights. They did not have to wait until 1956 (Hindu succession Act, 1956). On the other hand, the current grassroots level institutions of local self-government in Meghalaya like Dorbar Shnong Council and other related traditional institutions (Dorbar Shnong (KHADC), Dorbar Chnong(JHADC) and Nokma Council (GHADC)) bar women's participation in the name of traditional practices: *institutions are managed according to democratic traditions of Khasi, Jaintia, Garo society which have been handed down through generations and are being followed even today* (Memorandum of the Grand Council Of Chief of Meghalaya ref.

GCCM/CM/FKS/2015/005 Jan 6th 2015). In fact, it was pertinent in the age old customs, that traditional practice was based on idea of separation of rights between property rights (for women) and political rights (for men).

This paper seeks to understand the role of customary law based on matrilineal society in traditional local self-governments as practiced in Meghalaya towards women's empowerment, in terms, of participation in decision making and benefit sharing in a humanitarian developmental model of 21st century based on Amartya Sen 's work on *Development As Freedom* (1999).

Methodology
This research project applied both qualitative and quantitative methods. Sampling was both random and purposive: he first phase of selection was based on purposive sampling and the second was random. It needs to be acknowledged that there is a hidden population in the Meghalaya who are not traceable due to their social identity or political preferences. For this section, the researcher applied ascending and descending methodologies for sampling. The snow ball was also included in the questionnaire. The sample tools were executed in the areas covered were KHADC, GHADC and JHADC. The total number of respondents was 731, 199 and 544 respectively.

Findings
Women aged >50years (n=339):

- Literate – 105 (30.97%);
- Bank account holders – 61(18%);
- Receiving of government grant 0;
- Number aware of government grants and schemes – 91 (26.84%). They were mostly aware of MGREGA[16] and free studentship at higher education;
- Number with exposure to media – 41 (12.09%) of whom 37 had access to newspapers to follow tenders;
- Number with 5 children – 215 (63.5%); 3-5 children – 122 (36%); 2 children – 2 (0.5%); and no women were childless.

Women aged 30-50 years (n= 531):

- Literate – 218 (41%);
- Bank account holders – 181(34%);
- Receiving of government grant 199 (37.5%). The grants were mostly in the form of MGNREGA and free studentship at higher education;
- Number aware of government grants and schemes – 153 (28.82%);
- Number with exposure to media – 81 (15%) of whom 59 had access to newspapers;
- Number with 5 children – 315 (59.3%); 3-5 children – 208 (38.9%); 2 children – 8 (1.5%); and no women were childless.

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[16] Mahatma Gandhi National Rural Employment Guarantee Act 2005 is a labour act and social justice initiative to ensure the 'right to act' to Indian citizens. A minimum of 100 days work is guaranteed under this scheme.

Women aged 20-30 years (n= 604):

- Literate – 538 (89%) of whom: 312 (58%) had studied to class V ;91(17%) had studied until class IX/X; 86 (16%) had passed class X in State/Indian Board examinations; 84 (15.61%) had passed class XII in State/Indian Board examinations; and 81 (15%) had graduated or had a diploma from Indian Central University;
- Bank account holders –
- Receiving of government grant;
- Number aware of government grants and schemes –
- Number with exposure to media –of whom had to newspapers;
- Number with 5 children –; 3-5 children –; 2 children –; and no women were childless.

Role of women participants in decision making in local self-government

There is no room for women to play a direct role in the traditional model of local self- government system (Dorbar Shnong (KHADC), Dorbar Chnong (JHADC), Nokma Council (GHADC)). However, as the owner of land and property there is scope for a very few women to play an indirect role to influence the system. But at KHADC there are three women council members including the chairperson and there is one woman member at JHADC. Currently the GHADC is not functioning.

Women's share in the benefits of policies at local level

In the traditional system of Dorbar Shnong (KHADC), Dorbar Chnong (JHADC) and Nokma Council (GHADC) only male residents can participate in their functioning. Most members of these organisations have too few qualifications to be a member of a grass root level decision-making body in the developmental paradigm. In order to offer any significant contribution in local self-government at a grassroots level, the minimum requirement is social awareness among good its members. The research found that this was not the case in 75 villages in KHADC, GHADC and JHADC. Several kings[17] of different Dorbar told the research team that they felt that, Dorbar, did not enjoy the financial status to perform their responsibility in terms of local self-government. They were asked about the Dorbar's role in ensuring the benefits to women as guaranteed under different Indian governmental schemes and grants like Janani Suraksha Yojana (a safe motherhood under Government of India's scheme with the objective of reducing maternal and neo-natal mortality by promoting institutional delivery among the poor pregnant women), different schemes under the National Food Security Act of India (two types of card under Indian Public Distribution system which ensures under privileged citizens can purchase food at a subsidised rate – priority ration card for under privileged and an 'Antyodyan' card for poorest of the poor citizens); unmarried women's pension scheme for those aged >45 years, construction of individual household toilet under rural development schemes and women empowerment schemes (15 different government schemes providing financial assistance) .

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[17] Traditional Head of local self-government in North East India like Dorbar.

They expressed their complete ignorance of such schemes for women. However, a majority of them were aware of only MGNREGA, but they were not aware that wages under this scheme are same for men and women. Thus, the traditional institutions failed to ensure benefit sharing for women at grass root level in customary Indian local self-government. In spite of all odds, it is noteworthy that progress is taking place in India especially in terms of the education of rural and underprivileged populations in India even if the pace of development may not be as desired but there is evidence of steady improvement.

Women's empowerment in Meghalaya.
It is notable that in terms of gender role and attitudes, about 53% of respondents believed that in certain circumstances a husband beating his wife is justified. Women believed that wife beating was justified if the woman neglected her children or house, disrespected her in-laws or if the husband suspected that she were unfaithful (Sarker 2015). Official statistics on domestic violence show that Meghalaya has one of the lowest rates of spousal violence in India NSSO (The Ministry of Statistics and Programme Implementation, Government of India). In

Meghalaya, about 16% of women aged 15-49 claimed to have experienced physical violence and 1 % have ever experienced sexual violence. Overall, 16 % of women claimed to have experienced physical or sexual violence, including 18% of married women. Of the women who experienced violence, only 14% sought assistance to help end the violence and 59% sought neither help nor told anyone about the violence. The women who were abused were most likely to have sought help from within their families. It should be noted that none of the abused women in Meghalaya sought assistance from an institutional source such as the police or social service organisation (International Institute for Population Studies 2009).

In the research findings a comparison of women's empowerment was sought between the matrilineal Meghalaya with the Nair community of Kerala, TTAADC of Tripura (grass root local self-government of tribal people of Tripura under sixth schedule of the Constitution of India since 1985, it is a non-traditional constitutional body) and Halqa Panchayt (a traditional model of grass root local self-government which enjoys special status under Art 370 of the Constitution of India) of Jammu and Kashmir. The Nair community in Kerala has matrilineal social practices where the customary law prevailed until 1970s. Now constitutional practices have been adopted like the rest of India. The Nair women are one of the most advanced women's populations in India .The TTAADC of Tripura is tribal area like Meghalaya and placed under sixth scheduled areas

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in the Indian constitution. This research showed that women in TTAADC areas scored the highest in terms of benefit sharing in Government aids and grants in India. Women's share in policy making and decision making in TTAADC is much higher than national average. In Meghalaya, women, using many indicators, benefit from fewer government sponsored schemes compared to another customary law based grass root self-government institution i.e. Halqa Panchayat of Jammu and Kashmir. Though the level of women's empowerment under Halqa Panchayat is also quite depressing.

Concluding thoughts
Indian civil law mainly deals with issues related to birth and death, marriage and divorce, maintenance and adoption, and, inheritance property rights. They are within the remit of personal law and customary law. Moreover, the jurisdiction of customary law is much bigger than personal law though personal law draws greater public attention than customary law. The Indian constitution mentions that local self-government, the most vital instrument for a grass roots democratic model in tribal dominated areas like Meghalaya, can be regulated by customary law if it will be in accordance with the spirit of the constitution.

In Meghalaya family lineage is matrilineal contrary to the norm worldwide. With regard to inheritance of property rights, land ownership goes to the family's youngest daughter. In the case of selling property, the right goes to male guardians and member of the

society. In general, a maternal uncle plays significant role in cash transactions related to family property. In short, the family purse lies with a male member of the family. In the case of participation and decision making in Meghalayan local self-government, as permissible under sixth schedule of Indian constitution, there are restrictions on women participating in any capacity in the functioning of traditional unit

In Meghalaya the traditional local self-government is not based on universal adult franchise, it is not enjoying its financial rights and control like other local self-government. It contradicts the basic value and principle of democracy and violates fundamental rights within the Indian constitution. More than 90% of population does not have land property, so the inheritance of land ownership does not carry any functional meaning for this group. In contrast, due to land ownership of less than 10% of women population, virtually all women have lost their political rights at grassroots political unit. Without financial power this unit becomes an ornamental institution. Government sponsored all developmental grants for women and other weaker sections are facing challenges at implementation level which leads denial of benefits to women. In due course, customary law leads to refutation of women empowerment in development oriented democratic model of 21st century. India needs urgently to redesign this customary law to accommodate the basic spirit of legal equality for women if political leadership really cares for women empowerment in genuine sense.

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Learning from history by seeing it differently: frameworks for understanding the socio-historical development of youth justice

Justin Brett

This paper suggests that modern approaches to youth justice are limited because they lack wider context. While a historical approach might aim to provide that context, historical approaches can also be limiting and there is a disconnection between criminology and criminal justice history. It goes on to propose that an Eliasian process approach might help make this connection and provide context, and suggests some ways in which this might be of value to the study of youth justice.

It is not difficult to find support for the idea that youth justice needs re-imagination. Indeed, it is almost impossible to find anything outside a government policy document that suggests anything else. However, what I want to suggest is the seemingly paradoxical idea that the very ways in which we analyse youth justice, the methods by which we understand the situation we are in, might themselves be part of the problem.

A theoretical basis for understanding youth justice

This is very much the course that Jo Phoenix has taken in a recent article in the *British Journal of Criminology* (Phoenix 2016), and I hope I can be forgiven for making use of her analysis here as an illustration. She identifies two dominant approaches in youth justice studies, which she calls *youth crime governance* and *youth justice studies*.
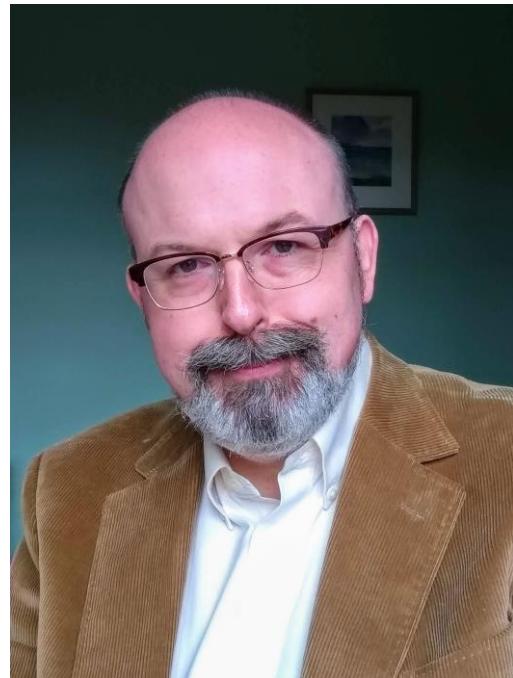
Youth crime governance is Phoenix' way of describing the theoretical response to a wide consensus of criticism that sees youth justice over the last fifteen years or so as confused, unprincipled, excessively politicised and therefore vulnerable to the whims of politicians and popularism. One way to account for the hybridity, contradictions, abandonment of welfare principle, punitiveness and so on is to draw on *a range of Foucauldian-inspired governmentality conceptual tools* (Phoenix 2016:126) and create a governmentality or youth government approach. Her second formulation, 'youth justice studies' is an approach defined by the underlying conceptual assumption that what the government *says*

about youth justice is what actually *shapes* the business of youth justice. In other words, performance targets and political rhetoric are what determine both the nature of the organisations and the actions of practitioners within the system.

Phoenix's view is that both of these approaches, while entirely valid, are in different ways limiting. *Youth justice studies* views youth justice as a coherent system that can be studied in its own right – as she puts it that there is 'something "out there" called a youth justice system' (ibid: 131) and that it can be studied. The reality, of course, is far messier, consider the stakeholders in a youth offending team, for example, and the full remit of each of the services that they represent. Youth justice operates within a much more complex system of interdependent, and sometimes conflicting, agencies, interest groups and their associated pressures and priorities. Viewing it as a closed system carries the risk that, first, these other influences will be ignored, and, secondly, the focus will always be on the state of the system now, and how it can be changed within the perceived parameters as they are now. *Youth crime governance*, according to Phoenix, is limiting in a different way. With its emphasis on governmentality, it leads to a closing off of the theoretical space within which to look at youth justice. The risk is that if you use governmentality as part of your analytical toolkit, then everything becomes about governmentality.

Phoenix's analysis has attracted some criticism, particularly because her identified approaches have been seen by some as caricatures. My point here, however, is not a claim

that all youth justice research falls into these groups, nor that all the research that does will show all the features identified. Instead, it is a suggestion that if such an analysis is possible, even if the specifics of it might be contentious, then we have to take seriously the conclusions drawn about the limits of the approaches identified.

The role of historical approaches
One possible way of overcoming these limits would be to attempt to take more of a historical approach in looking at youth justice. From a historical perspective it is impossible to understand what is going on in the present, or indeed at any point of time in the past, unless you understand the contemporary context. By context in this sense I mean not only the immediate surrounding events, but also the way in which whatever you are looking at fits in to a broader narrative, a broader process.

However, historical approaches have their own tendencies to limit the view. Writing just after the turn of the millennium, Jane Abbott remarked in her unpublished doctoral thesis that *"previous studies in nineteenth century juvenile crime are surprisingly sparse"* and goes on to suggest, while singling out Heather Shore and Peter King as exceptions, that those accounts which do exist are essentially Marxist in approach (Abbott 2004). There is no doubt that such accounts, for example E.P. Thompson's work on the history of crime or Margaret May and Susan Magarey on juvenile delinquency more specifically, opened up the field. However, the approach is not without its drawbacks. Its fundamental thesis is

that conflict arising from power differentials between strata in society lies at the heart of social interaction, and it therefore tends to see all interaction in terms of this conflict. While there is no doubt that the question of power, and its unequal distribution and inconsistent exercise, is important in youth justice, to see it simply through this lens is to narrow the view. For example, although one completely valid understanding of the increasing amount of youth justice legislation through the nineteenth century would be that it shows an increasing exercise of control on the part of the State, and therefore is illustrative of the State's increasing power over the individual, that is not the only way it can be understood. For a start, this view could be seen to imply a modern state apparatus, while ignoring the fact that much of the initial legislation was passed on the initiative of individuals or groups rather than the initiative of the government. Furthermore it fails to ask important questions about the motives of individuals or groups involved; again because of the assumption that their actions are explained by their membership of a particular class.

For a historian, things don't happen in isolation. It has therefore seemed curious, as a relative outsider with some knowledge of both fields, that criminology and criminal justice history appear to have so little interaction. In a recent article in *Theoretical Criminology* (Lawrence 2012) Paul Lawrence suggests that the answer is to be found in the different 'purposes' that the two see for their work, and the resulting *"differing disciplinary perceptions of the relationship between past, present and future".* From the

perspective of the historian, Lawrence argues, sociology is "*overly given over to sweeping theoretical claims"* and the establishment of such theoretical claims as agreed orthodoxies leads social scientists to become so caught up in those orthodoxies that they can seem unaware of other equally valid forms of knowledge that reach their conclusions by other methods. Furthermore, contemporary historians have become less obviously engaged with the present: they tend to concentrate on specific developments in the past and not explicitly seek to connect with the present or future. On the other hand, criminologists have, he suggests, become less interested in the past, and even those who are interested have tended *"to use historical data to problematize criminological assumptions about the present rather than actually to explain the genesis of contemporary behaviours, policies and institutions"*. In his view, *"sociological criminology has a strong sense of contemporary purpose, and a shallow time/depth perception"* whereas *"criminal justice historians tend to have a weak, or at least diffuse, sense of contemporary purpose, and a strong sense of time perception"*.

The Eliasian approach
I would further argue that both, in their own way, display signs of what Norbert Elias called 'process reduction'; the pervasive tendency to reduce processes conceptually to states, or to regard developments in particular times and places as expressions of more general laws.

For example, in his book *What is Historical Sociology* Richard

Lachmann (2013) makes the initial point that although sociology was created to explain historical change it has become increasingly focused on the present day. Norbert Elias made the same point in a 1987 article when he talked about "the retreat of sociologists into the present". However, the point at which the two differ is interesting. Lachmann advocates a historical sociology that distinguishes *"inconsequential everyday human actions from the rare moments when people transformed social structure";* that attempts *"to explain why transformative events occur at particular times and places and not elsewhere"* and *"to show how events make possible later events".* Elias, by contrast, is much more interested in process rather than cause. He discusses (1987) the establishment of the earliest identifiable city states in Sumeria in the fourth millennium B.C. which were made possible by the agricultural developments that, in turn, led to the possibility of a food surplus (obviously a city contains many who do not grow their own food). A historical sociologist following Lachmann's model would perhaps identify the agricultural advance and consequent production of a surplus as the 'transformative event' that makes urbanisation possible. However, Elias points out that the technology, logistics and motive for producing an agricultural surplus are provided by the urban centres dependent on that surplus, which suggests that the two developed side by side. In other words they are both part of a larger process, not one development leading on from another. Furthermore that process - which could as easily be the process by which young people become a

matter of special interest to the system of justice - needs to be seen from a detached perspective. Not only does it take place over time, but it extends from the past and into the present.

Although Elias's process approach is popular in various branches of sociology, it has been little used in criminology. There are some exceptions: John Pratt's (2011) work on penology, and John Flint and Ryan Powell (2012) article in which they use a process approach to produce a sociological analysis of the 2011 riots and their aftermath in which they recommend a "*long-term, detached perspective in discerning historical precedents and their direct linkages to the present"* as a way of understanding what is and is not unique about contemporary responses to urban disorder.

An Eliasian approach to youth justice?
It is my tentative hope that using a process approach in looking at Youth Justice might deal with some of the limitations of the current approaches described earlier in this piece. Indeed, I would suggest that a process approach towards a study of youth justice over time would have a number of advantages. First, we would be freed from the constant need to show causation. While it might indeed be the case that particular legislation is triggered by particular events, this does not mean that everything proceeds through causal links. A process approach proposes that change is a normal part of society rather than suggesting that society is in equilibrium until something happens to disturb it, and that it then returns to equilibrium once more. In other

words, it is no longer necessary to form a definitive judgment, for example, on whether the increase of juvenile delinquency prompted legislative change or whether legislative change served to classify more existing behaviour as delinquent. We would instead be able to see both as strands of the same process. In a similar way it might provide a different view of the conflict between approaches that we find in much of the contemporary work on the subject. As Muncie and Hughes (2002) put it, *"discourses of neglect, immaturity and poor parenting have always sat uneasily against those of incorrigibility, persistent offending and dangerousness"*. Because these ideas can be seen as dichotomous - deprived or depraved; deserving or undeserving - particularly in the less sophisticated branches of the broadcast media and the red-top press, it is all too easy to put them in opposition to each other, to see youth justice over time as a battlefield upon which the struggle of conflicting ideologies and constructions of young people in trouble takes place. By looking instead at the process rather than the struggle, it might be possible to achieve a greater understanding of how the arguments feed off and influence each other over time. Flint and Powell (2012) make the point that by looking at the recurrence of conflicts over time as part of a process (their example is to do with moral panic and public reaction) we can look at the ways in which they are both similar and different, and draw new conclusions from the result.

Secondly, and linked to the fact that this approach looks specifically at process over time, it may well be

possible to use it to inform the current debate on youth justice. The field is as contested as ever, and the future is uncertain. Muncie and Hughes (2002) suggested over a decade ago that that the future would be managerialist in outlook, for only managerialism *"because it has no higher purpose"* would be able to make sense of the contradictions that they saw. This is a depressing prospect. Not only does managerialism have no higher purpose, it is also firmly rooted in the present, and utterly ignorant of past or future except in reference to its own goals.

A process analysis which looks back in order to look forwards would go some way to countering this. If we are to embark on a process of re-imagination then it seems obvious that we need to have a firm understanding of where we are, how we got there and where we want to go next – or, to put it another way, in order to know where you are going you have to know your forward direction of travel, and that can only be established by looking back into the past to see where you have come from. I believe that a process approach to the study of youth justice would be one way to enable the re-imagination that it needs.

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