

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

When the Howard League formed in the nineteenth century, capital punishment was a central concern. Sadly, we have been forced to engage on the issue again when it emerged in July that Home Secretary, Sajid Javid, failed to seek assurances that two men will not face the death penalty in the US. We explored the issue further in this year's Parmoor Lecture when Ben Emmerson QC examined the British Government's recent record in death penalty cases and asked whether they have fatally compromised the UK's international reputation for promoting the progressive abolition of the death penalty around the world. You can listen to the lecture [here](#).

In the last couple of months the Howard League has continued to highlight conditions across the prison estate including: responding to a series of damning Chief Inspector of Prison's reports: providing evidence to Parliament's Health and Social Care Committee on the need to take public health issues seriously and ensure that prisoners can access a healthy lifestyle; and, most recently revealing that many prisoners in England and Wales say they are unable to shower every day, with some children in custody getting only two showers a week.

Our [survey](#) of the most recent HMCIP prison reports showed that in Belmarsh prison, south-east London, only one in six men (17 per cent) who responded to the inspectorate's survey said that they were able to have a shower every day. Other prisons with alarming survey results include Isis (24 per cent), Aylesbury



Ben Emmerson delivering the Parmoor Lecture

(25 per cent), Swinfen Hall (27 per cent), Dartmoor (31 per cent) and Pentonville (36 per cent). Speaking about the findings Frances Crook said "The government has said that it wants prisons to be clean and decent, but is ignoring the fact that thousands of children and adult men are smelly and dirty because they cannot get a shower. It's no good cleaning up prisons if prisoners are not able to keep clean."

The Howard Journal continues to showcase its articles using video abstracts including one which considers the articles in our special issue on Interpreting Penal Policy, there are also videos about procedural justice and prison officers and work at Kirkham prison to develop the role of families in supporting prisoners' resettlement. All of the video abstracts can be found [here](#).



Finally I would like to welcome Professor Neil Chakraborti as the new Chair of the Howard League's Research Advisory Group. We are looking to further advance the research capacity at the Howard League and in particular we are thinking in terms of developing activism and active support from the academic community on Howard League issues and seeking active research partnerships. Look out for new initiatives or opportunities, but probably the best way to keep up to date with all our work and please [join](#) the Howard League. We can only continue to undertake all these things with your help.

Anita Dockley, Research Director

Features

Normalisation, wellbeing and the prison environment

Dominique Moran

“Normalisation” has become something of a buzzword in prison reform, and like many buzzwords, it probably merits a little reflection. The dictionary definition of “normalisation” is *“the process of bringing or returning something to a normal condition”*. For prisons, this cuts both ways. It could mean that prison becomes “normal” for those experiencing it, which is arguably the outcome that we already have, but don’t want, where prisoners become ‘institutionalised’, and lose the skills needed for independent life post-custody. Or, more positively, it could mean that prison starts to resemble “normal” life outside.

With its roots in the International Covenant on Civil and Political Rights, and the Nelson Mandela Rules, this latter version of normalisation infers that *“the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate... suffering”* (Rule 3). Since it is the deprivation of liberty that is the intended ‘punishment’, there should be no need to punish *further* through housing incarcerated people in poor conditions. This approach rejects the idea that the very best conditions inside prisons *should still be worse* than the very poorest conditions outside - the basis for the flawed assumption that harsh



prison conditions ‘work’ as a deterrent to offending. So “normalisation” is intended as a positive driver for change towards better and more respectful prison conditions, and its deployment in reform circles has supported such advances across the policy spectrum.

Over the past few years we have seen a commitment from the UK government to build new prisons whose construction is intended to address a steady deterioration in the fabric of the prison estate. Recent high profile inspection reports have identified serious deficiencies in the conditions in which large numbers of prisoners are accommodated. Normalisation

has been advanced as a key consideration to inform the design of new prisons and improve the quality of conditions in the existing estate. But what actually *is* “normal”? Who decides on a definition, and towards which (or whose) version of “normal” are prisons supposed to move? The problem is that there are almost as many versions of “normal” as there are people defining it, and those definitions vary from place to place and change over time.

Time is a critical factor. Like any architecture, prison design is always a product of its era. If we consider HMP Liverpool; the 2017 HMIP report found ‘squalid’ living conditions, poor sanitation, rubbish, rats and cockroaches. In the 1850s, when this Victorian-era prison was built, such living conditions were all too common throughout Liverpool and all other UK towns and cities. So in terms of conditions inside resembling conditions outside, this prison was “normal” for its day. The problem is that like in other Victorian (and indeed newer) prisons, for various reasons, living conditions inside have not kept pace with improvements outside. HMP Liverpool is working extremely hard to improve conditions - to narrow the gap between inside and outside - but if ‘normalised’ conditions are the objective, then to what ideals should prisons aspire?

One problem with defining what is ‘normal’ (and what is not), is that even within the UK, conditions on the outside vary widely. We may each have a ‘common-sense’ idea of what is normal for us, and what might also be considered normal by other people, but this idea is



Image from HM Chief Inspector of Prisons report Liverpool 2017

unavoidably a product both of our own circumstances and the types of places we have experienced – in other words it is highly subjective, and context-dependent. Sadly, very poor living conditions did not end with the Victorians. We know that many UK prisoners have a history of social exclusion, and are more likely than the general population to have grown up in care, and in poverty. In the United States, a disproportionate number of prisoners come from a few, highly marginalised neighbourhoods in the country’s biggest cities. In both jurisdictions, many are homeless when they come into custody.

Whatever our own ‘normal’ and our associated ideas about ‘normality’ may be, it is very difficult indeed to translate those ideas into specific guidelines for prisons about what elements of ‘normal’ life they should be trying to incorporate.

Sometimes it's easier to identify what prison should *not* be like. A recent consultancy report Gleeds 2016: 12-13) suggested that common prison characteristics such as *'high internal walls, thick mesh fences, numerous gates, cage-like interiors and heavy, vandal-resistant furnishings'* hinder normalisation, and may reinforce criminal identities by communicating negative messages (*'e.g. 'you are animals'; 'you are potential vandals'*).

These undesirable characteristics may seem to many people to be unmistakably prison-like. But in many impoverished urban communities (in the UK context the so-called 'sink estates'), in which many prisoners have previously lived, high walls, mesh fences, CCTV cameras, steel gates and barred windows - characteristics shared with prisons – are commonplace (Fig 1). They are *normal*. American researcher Rashad Shabazz, who himself grew up in such a housing project in Chicago, argues that *because* these places resemble prisons, people who live there are, in a way, "prepared for prison" in that they develop a familiarity with these prison-like features in their everyday lives (Shabazz 2009). So for many people who go to prison, even for the first time, the visual register of the prison may already be familiar, in that it resembles conditions in which they may have lived *outside* – and which were 'normal' for them.



Figure. Steel security window grilles; CCTV camera. Birmingham, UK (photo: Phil Jones)

What does this mean? Is it OK to accommodate prisoners in poor conditions because these may have become 'normal' to them through prior poverty and disadvantage? In a society of extreme and increasing social inequality, with associated divergence in living standards, the range of different versions of 'normal' to which the prison could be compared is wider than ever, and there is a risk that unpicking the 'normal' in normalisation opens a space for unhelpful statements about what prisoners 'deserve' and can 'appreciate', based on their prior experiences. The normalisation drive implicitly suggests that that the 'normal' to which prisons should aspire is *not* the normal of the 'sink estate' or housing project, but something else. The question is - *what* else?

The same consultancy report advocates the deployment of 'normalised' prison housing units based on a model used in the Nordic countries, where *'prisoners mostly live in units of up to 12 individuals who share a kitchen/communal area (much like University halls)'*. Communities like

this are thought to be successful in part because they resemble in size the extended-family groupings in which it is thought human society first developed; but in the UK, communal living of this kind (i.e. in units larger than nuclear families but smaller than military barracks) is indeed now largely limited to experiences of University halls. But for whom is experience of University halls 'normal'? Although more young people in the UK now enter higher education than ever before, they are still in the minority, and students who received free school meals – an indicator of poverty – are less than half as likely to enter higher education than their more affluent peers. Such prison living units may indeed be optimal, but in making the case for what is or what should be 'normal', we must take care to reflect on the origins of our own preconceptions.

So where does this leave us? We do not want prison to institutionalise and infantilise by becoming 'normal' to incarcerated persons. We recognise that the 'normalisation' agenda is a positive move towards humane and respectful prison conditions in that the 'normal' to which it aspires is something better than the worst, most 'prison-like' conditions of some of our most marginalised urban communities. But determining which or whose normal is *normative*, (in that it establishes what *is* 'normal') is much more difficult, especially when the 'normal' of those shaping this agenda is likely to differ significantly from that of the people whose lives it will ultimately affect.

'Normalisation' is a compelling and persuasive term that has already

facilitated reconsideration of what prisons should be like, and it has resonance far beyond the consideration of the built environment, which has been the focus of this piece. But in terms of that environment, where even minor changes can be expensive and require a particular type of planning and consideration of operational concerns, it can be very difficult to know what decisions to make to move towards 'normality'.

One way forward is perhaps to think about what normalisation is intended to *achieve*, and to focus on its envisioned *outcomes* in terms of wellbeing. Recent years have seen an explosion of built environment research, with studies demonstrating the effects of a variety of features such as acoustics, ventilation, layout and lighting, on health and wellbeing. Nature contact, for example, is often identified as a health-enabling feature found to produce calming effects, to reduce levels of stress and tension, and to improve health outcomes, and recent studies in prisons have supported these findings (Moran and Turner 2018). Focusing on these outcomes means that whether or not it is 'normal' to have a tree outside your window, or to be able to smell and touch grass, doesn't really matter – what matters is that nature contact reduces stress and improves wellbeing. Although prior experiences will always shape and influence current and future lives, the focus in these studies is on identifying therapeutic or restorative environments that support human wellbeing *in general*, rather than that resemble any particular version of 'normality'.

References

- Gleeds (2016) *Rehabilitation by Design: Influencing Change in Prisoner Behaviour*, Gleeds, October 2016
- Moran, D. and Turner, J. (2018) "Turning over a new leaf: The health-enabling capacities of nature contact in prison." *Social Science & Medicine*
<https://www.sciencedirect.com/science/article/pii/S0277953618302752>
- Shabazz, R (2009) "So high you can't get over it, so low you can't get under it": Carceral spatiality and black masculinities in the United States and South Africa. *Souls*, 11(3), 276-294.

About the author

Dominique Moran's research and teaching is in the sub-discipline of carceral geography, a geographical perspective on incarceration. Her research in the UK, Russia and Scandinavia, supported by the ESRC, has contributed to her transdisciplinary work, informed by and extending theoretical developments in geography, criminology and prison sociology, but also interfacing with contemporary debates over hyper incarceration, recidivism and the advance of the punitive state.

Dominique is Chair of the [Carceral Geography Working Group](#) of the Royal Geographical Society with the Institute of British Geographers. Her publications include: ['Carceral Geography: Spaces and Practices of Incarceration'](#) (2015) and ['Carceral Spatiality: Dialogues between Geography and Criminology'](#) (2017).

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What is the experience of being pregnant in prison?

Laura Abbott

Introduction

This article gives an overview of my qualitative ethnographic doctoral research into women's experiences of pregnancy in English prisons. Pseudonyms are used to give examples of women's experiences.

Background

A significant percentage of imprisoned women have complex backgrounds including history of sexual and physical abuse, domestic violence, substance abuse and mental illness (North, 2006, Corston, 2007, O'Malley and Baldwin, 2015, Baldwin and Epstein, 2017). Most women are imprisoned for non-violent crimes and usually serve short sentences (Baldwin and Epstein, 2017). It is understood that pregnant women represent approximately 6% of the female prison population although exact numbers are not collected (Abbott, 2015). To date, our understanding of pregnant prisoners' experiences has mainly relied upon second order interpretation of the women's experience through interviews with prison and health staff (Albertson et al, 2012; Edge, 2006; Price, 2005; O'Keefe and Dixon, 2015). Qualitative studies are limited, and methods have relied solely on semi structured interviews (Wismont, 2000; Chambers, 2009). My background as a midwife and the



gap in the current evidence led to my curiosity in researching the experience of pregnant women in prison.

Researching the experience of pregnant women in prison

My professional background is in midwifery, nursing and teaching. Prior to undertaking a doctorate, I had never been inside a prison. Access was therefore a complicated process; however, I was granted favourable ethical approval in 2015 and was given permission to undertake my research in three English prisons. The research necessitated a qualitative, rather than quantitative

approach to understand the sociological perspective of the lives of the women and unravel their experiences (Hammersley, 2013). My total inexperience of the criminal justice system meant that my approach to observation was with completely fresh eyes having never worked in this area.

Capturing the atmosphere through description and reflection gave context to the women's experiences as well as depicting the prison routine. Careful consideration was given to ensuring the emotional safety of women, especially as fieldwork ended (Abbott and Scott, 2018). In total 28 women consented to audio-recorded interviews and five of the women who were incarcerated agreed to follow up interviews. Ten staff members consented to audio-recorded interviews including six prison service staff and four health care personnel.

Main findings

The main frustration that was articulated by all women was not receiving basic rights and entitlements: from provision of nutrition and equivalence of healthcare, basic comfort needs, choice of birth support to access to 24-hour midwifery guidance and being able to take maternity leave.

Inconsistency

Interviews with women and staff revealed that there was inconsistency amongst prisons. An example of this was in the provision of a 'pregnancy mattress'. Some women were issued with two mattresses (one of top of the other). Ellie outlines this confusion:

Apparently, you can put in for a proper mattress when you're pregnant, and I didn't know that until right at the back end, because I didn't get told (Ellie).

Eventually Ellie gave up asking the staff and was given a pillow by her cell mate: *my pad mate, she's given me her pillow.*

Lack of necessities

The unavailability of necessities such as breast pads, a necessity for women who may be lactating or leaking breast milk, meant that often women were inappropriately advised to use other supplies, such as a sanitary towel or toilet tissue, to soak up their milk.

I was leaking for a while but after that it kind of just dried up. I had to put tissue in my bra because I didn't have any breast pads. It made me feel upset (Tammie).

Shame

Women often described their embarrassment and humiliation of being seen in public as a pregnant prisoner. With pregnancy becoming increasingly visible, women transferred to hospital for routine appointments more regularly. This brought feelings of shame for women especially when handcuffed.

I was handcuffed to the man officer and he had to be asked every time they wanted to examine me to go out...But he stayed in the room the whole time (Caroline).

Births in cells

One woman in my study described her experience of giving birth in her prison cell. Layla was distressed during the interview as she relayed her experience and she told me that she felt disempowered because: *'Nobody was listening'*, and she expressed her concern that there were no appropriately trained personnel:

They were not even trained in that field whatsoever...telling me that I wasn't in labour, so I ended up having (baby) in my cell (Layla).

Layla's labour was assessed, and wrongly dismissed, by a member of the nursing staff unqualified to make such assessments – a breach of the Nursing and Midwifery Code (2001) statutory order. As a result, she experienced an emergency birth in her prison cell with no qualified support and no provisions for her newborn baby.

Although Layla was the only woman interviewed for this study who gave birth inside of prison, several members of staff had some experience of women labouring quickly and giving birth in prison:

We were like, 'We've got a baby in prison,' and we didn't know what to do (Prison Officer).

Such testimonies suggest these occurrences are not as rare as they should be, despite the significant risks they pose to the safety of women and their babies. As Naomi Delap, Director of Birth Companions, has said,

Any pregnancy and birth carries risks, and complications can happen for many reasons. We don't want to blame prisons for incidents beyond their control, but there seems to be a good deal of evidence suggesting that prisons are failing to minimise and manage these risks, not only in terms of physical safety, but mental health too.

Anticipating separation

The experience of parting from babies mirrors previous research findings from Wismont (2000) and Chambers (2009). The reality of separating from the baby for five women was discussed at interviews. Emotions were diverse and individual to each woman. Two women talked about being *'strong'*, whereas one expressed her grief and despair: *'I just want him back'*. Another's response was more physical: *'I didn't eat, I didn't sleep'*, whereas one woman was said she was *'heart-broken'*: *'It was devastating leaving him, it broke my heart'*. Evidence suggests that women separating from babies are extremely emotionally vulnerable and their needs require careful planning and sensitive care (North, 2006; O'Keefe & Dixon, 2015; Powell et al., 2016). In 2016, the suicide of Michelle Barnes, a woman forcibly separated from her newborn baby and returned to prison, highlights the potential harm and need for further research and strengthening of support (Newcomen, 2016). There was an expectation from women that separation would *'send me off the rails'*

Survival and resilience

Throughout my whole life I've had struggles, and I've had to survive... so this is just another thing that I've had to go through.

'Finding inner strength and resilience' were common expressions from women interviewed about their ways of coping with being pregnant in prison. The extraordinary experience of being pregnant or becoming a new mother brought about unique coping skills, different from any other human prison experience.

Recommendations

Clear guidance is a necessity so that rights such as provision of maternity leave is properly and meaningfully planned, not provided on an ad hoc basis, dependent on the coherency of the prisoner and how well she can articulate her needs. Being invisible to society and unable to voice concerns should not be an excuse to breach her rights.

Campaigns calling for recommendations by the Corston report to be actioned have been driven by charities and pressure groups such as: The Howard League for Penal Reform, The Prison Reform Trust (PRT), Women in Prison (WIP) and the Baldwin and Epstein (2017) report. The RCM (2016) advocate that the UK develops a Prison Service Instruction (PSI) specific to childbearing women, encompassing a minimal standard of care for pregnancy, labour and post-natal care (Royal College of Midwives, 2016). Birth Companions' 'Birth Charter', which provides evidence-based guidance

for the perinatal care for women in prison, including the call for a specific PSI, was launched in May 2016 (Kennedy et al, 2016). Provision of antenatal classes, one-to-one support and advocacy is often reliant on voluntary charitable organisations such as Birth Companions or the [Born Inside Project](#) who currently support women in two prisons, facilitating antenatal education and early parenting groups.

References

- Abbott, L. (2015). *A Pregnant Pause: Expecting in the Prison Estate*. In L. Baldwin (Ed.), *Mothering Justice: Working with Mothers in Criminal and Social Justice Settings* (1st ed.). England: Waterside Press.
- Abbott, L. and Scott, T. (2017). Women's Experiences of Breastfeeding in Prison. *MIDIRS Midwifery Digest*, 27(2).
- Abbott, L. and Scott, T. (2018). Reflections on Researcher Departure: Closure of Prison Relationships in Ethnographic Research. *Nursing Ethics*. February 2018. Sage.
- Abbott, L.J (2018) The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons. University of Hertfordshire.
- Albertson, K., O'Keefe, C., Lessing-Turner, G., Burke, C., and Renfrew, M. J. (2012). *Tackling Health Inequalities Through Developing Evidence-Based Policy and Practice with Childbearing Women in Prison: A Consultation*. The Hallam Centre for Community Justice, Sheffield Hallam University and The Mother and Infant Research Unit, University of York.
- Baldwin, L., O'Malley, S. and Galway, K. (2015). Mothers Addicted: Working with Complexity. Chapter 10: 239-262 in Baldwin, L. (2015). *Mothering Justice: Working with Mothers in Social and Criminal Justice Settings*.

- Baldwin, L. and Epstein, R. (2017). *Short but not Sweet: A Study of the Imposition of Short Custodial Sentences on Women, and in Particular, on Mothers*. De Montfort University.
- Chambers, A. N. (2009). Impact of Forced Separation Policy on Incarcerated Postpartum Mothers. *Policy, Politics, & Nursing Practice*, 10(3), 204-211.
- Corston, J. (2007). *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System: The Need for a Distinct, Radically Different, Visibly-led, Strategic, Proportionate, Holistic, Woman-centred, Integrated approach*. Home Office.
- Council of Europe. Committee of Ministers. (2006). *European Prison Rules*. Council of Europe. Recommendation Rec. 2 of the Committee of Ministers to member states on the European Prison Rules.
- Edge, D. (2006). Perinatal Health care in Prison: A Scoping Review of Policy and Provision. The Prison Health Research Network, Manchester.
- Hammersley, M. (2013). *What's Wrong with Ethnography?* Routledge.
- Kennedy, A., Marshall, D., Parkinson, D., Delap, N., and Abbott, L. (2016). *Birth Charter for Women in Prison in England and Wales*. London. Birth Companions.
- Newcomen, N. (2016). *Independent Investigation into the Death of Ms M B a Prisoner at HMP L on 16 December 2015*. Probation Ombudsman Independent Investigations: A Report by the Prisons and Probation Ombudsman.
- North, J., Chase, L., and Alliance, M. (2006). *Getting it Right: Services for Pregnant Women, New Mothers, and Babies in Prison*. Lankelly Chase.
- Nursing and Midwifery Council (2015). *The Code: Standards of Conduct, Performance and Ethics for Nurses and Midwives*. London: NMC. Nursing and Midwifery Order, 45 Statutory. (2001). Department of Health. http://www.legislation.gov.uk/ukxi/2002/253/pdfs/ukxi_20020253_en.pdf
- O'Keefe, C., and Dixon, L. (2015). *Enhancing Care for Childbearing Women and their Babies in Prison*, http://www.birthcompanions.org.uk/media/Public/Resources/Extensions/publications/FINAL_MBU_report_8th_December_2016.pdf
- Powell, C., Marzano, L., and Ciclitira, K. (2016). 'Mother–Infant Separations in Prison. A Systematic Attachment-Focused Policy Review', *The Journal of Forensic Psychiatry & Psychology*, Taylor and Francis. pp.1-16.
- Price, S. (2005). Maternity Services for Women in Prison: A Descriptive Study. *British Journal of Midwifery*, 13(6), 362-368.
- Prison Reform Trust, (2017). *Bromley Briefings, Prison: The Facts*. Summer 2017. Prison Reform Trust, London. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Summer%202017%20factfile.pdf>
- Sikand, M. (2017). *Lost Spaces: Is the Current Provision for Women Prisoners to Gain a Place in a Prison Mother and Baby Unit Fair and Accessible?* The Griffins Society University of Cambridge Institute of Criminology.
- Van Gundy, A., and Baumann-Grau, A. (2016). *Women, Incarceration, and Human Rights Violations: Feminist Criminology and Corrections*. Routledge.
- Walklate, S. (2004). *Gender, Crime and Criminal Justice*. 2nd edn. London: Willan Publishing.
- Wismont, J. M. (2000). The Lived Pregnancy Experience of Women in Prison. *Journal of Midwifery and Women's Health*, 45(4), 292-300.

About the author

Dr Laura Abbott is a Senior Lecturer in Midwifery at The University of Hertfordshire and a Fellow of the Royal College of Midwives. Laura's doctorate examined the experiences of pregnant women in prison: *The Incarcerated Pregnancy: An Ethnographic Study of Perinatal Women in English Prisons*. She was awarded the Jean Davies award in 2014 for her work in reducing inequalities and the Midwives award in 2017 from The Iolanthe Midwifery Trust. Laura volunteers with the charity Birth Companions supporting perinatal women in prison and co-authored The Birth Charter for pregnant women in England and Wales published by Birth Companions in May 2016. Laura hopes to continue to highlight the issues facing women, campaigning for the recommendations arising from her research to be actioned, with tangible change on the ground for pregnant women and new mothers in prison.

Examining prisoners' families: definitions, developments and difficulties

Isla Masson and Natalie Booth

"Ohana means family – no one gets left behind, and no one is ever forgotten"

(Lilo and Stitch)

The special attention currently being paid to prisoners' family relationships in recent penal and policy discourse has focussed on the importance of maintaining and developing family relationships for the purpose of reducing re-offending (for example the Female Offender Strategy, 2018 and Farmer Review, 2017; HM Inspectorate of Prisons, HM Inspectorate of Probation and Ofsted, 2014; HMI Prisons, 2016). In a recent paper published in the Probation Journal we explored whether the Ministry of Justice's long awaited and much needed female offender strategy can deliver any of its promises. Within the paper we urged a 'consideration of the diverse forms of 'family' alongside women's lived experience and their histories that may feature abuse and dysfunctional relationships' (Booth, Masson and Baldwin, 2018: 6). We suggest that in conjunction with the greater pressure applied to prisoners' sustaining relationships with family members, it is vital to unpick exactly what is meant by 'family' and how this might incorporate diverse forms of close, personal and intimate relationships for people in prison. Without a critical and reflective consideration of these



relationships, there are possible barriers to understanding what support is needed by some of our most vulnerable citizens resulting in additional pains of imprisonment.

Family: the concept and context

In the more traditional sense, family is defined as 'a group consisting of two parents and their children living together as a unit' (Oxford Dictionary, 2018) or 'a group of people who are related to each other, especially parents and their children' (Collins Dictionary, 2018). Previously the word 'family' may have conjured up images of a married couple living in their own house with 2.4 children in a 'nuclear' family (Giddens, 1993). However it is suggested that for many this no longer represents the ways in which people might relate to one another; with families being characterised in more fluid and diverse ways (Morgan, 1999). These familial changes are reflective of

wider social changes, such as women's increasing participation in the labour market since 1950s; a reduced uptake of marriage alongside rising divorce rates; the alternative living arrangements of adults through a greater social acceptance of same-sex relationships, cohabitation, and solo living (Williams, 2004). Further, family is no longer just comprised of blood and legal relatives; there are many more iterations of what constitutes a person's family network. For many, family is not about being related to, or married to someone, but are being constructed as 'families of choice' (Week, Heaphy and Donovan, 2011) whereby a person is choosing their significant other(s). Initially applied to non-heterosexual relationships, the concept of 'choice' in forming family relationships is closely linked to wider changes in the meaning and practices of families in society, for instance through the increasingly prominent role of friendships to replace or supplement 'family' ties (Allan, 2008 and Wrzus, Wagner and Neyer, 2012). Wider social changes, such as globalisation might also explain why these developments may have occurred; as family members do not necessarily reside in the same physical or geographical space. As such, we suggest that policies, based on a narrow definition of the 'nuclear' family structure, might not reflect the lived experiences of contemporary family life in England and Wales. For reasons that will be explored below this is likely to particularly affect the formation and diversity of families of prisoners.

Exploring the meaning of prisoners' families

There has been increasing interest in the role of prisoner's families, especially in reference to how they can play a role in preventing re-offending (Farmer Review, 2017). Not only does this offloading of responsibility have significant financial benefits for the Ministry of Justice and apply significant pressure to these 'families', but it is particularly concerning given that little effort is made to identify 'who' is a family member of a prisoner (Booth, 2017). There is no systematic collection of data about this particular population (Williams, Papadopoulou and Booth, 2012) and so much research and policy focus on prisoners' families has tended to assume its construction as a heterosexual family unit; with the father in prison, and the mother and children outside (Codd, 2007, 2008; Farmer Review, 2017). It is argued that given their diverse and complex life experiences, those caught up in our prison system might not recognise or represent the previous typical 'nuclear' family structure.

The existing literature demonstrates time and time again how prisoners have often experienced many hardships throughout their lives. This may affect whether they are able to maintain contact with significant others, or in fact whether they have anyone at all to call 'family'. For instance, the prison population has a large proportion of care leavers (Lamming Review, 2016 and Taylor, 2006) and number of people who have experienced abusive relationships (for example Corston, 2007; Williams et al, 2012). Moreover, when considering women in prison, it is really important to consider whether those who the

prison would define as a person's family member are actually harmful relationships, compared with those who the prisoner considers to be their family may provide more appropriate and/or meaningful support.

Therefore, it is vital for us to take a step back and reflect upon the 'family' from a wider perspective and include definitions that are more fluid and subjectively interpreted by prisoners themselves. This paper will now examine a few examples of tangible implications to those incarcerated when a difference in understanding of family is held by them and the prison authorities.

Implications of difference in understanding in policy

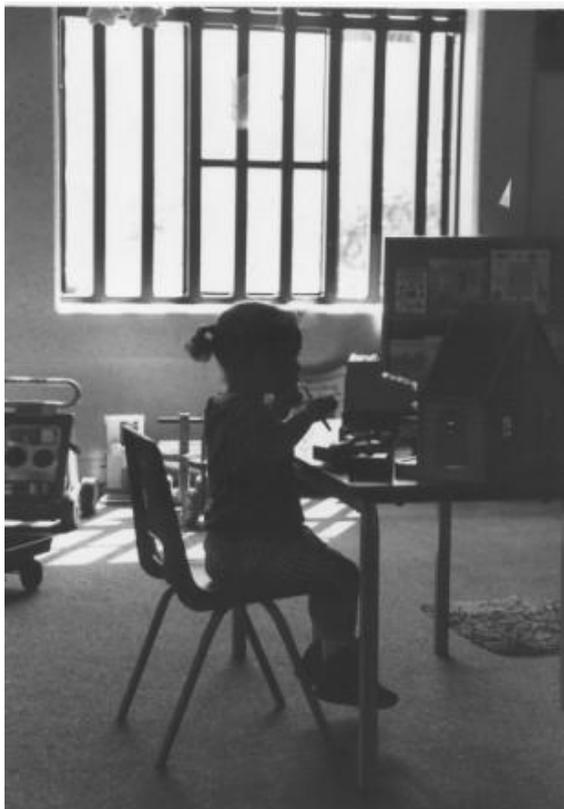
The first to be explored is the ambiguous language surrounding the number of children permitted to visit a 'parent' in prison. PSI 16/2011(p.6) states that: 'social visits are limited to three adults per prisoner. No such limitation applies to children who are visiting a parent in custody, so every effort should be made to book visits for large families'. This appears to provide flexibility to prisoners with children (under 18 years old).

However, it is unclear whether relationships resembling, and being subjectively defined, as a parent-child relationships are also included by this definition, or whether this only refers to biological children. If the latter, opportunities to sustain relationships with step-children, nieces and nephews, or god-children may be hampered. Ambiguous language in this PSI may lead to inconsistent or unnecessarily restrictive decisions about the definition of 'parent', and have significant repercussions on relationships between extended family members, or families of choice during a loved ones' prison sentence. Similarly, on account of our ageing

prison population (Public Health England, 2017), this policy also fails to recognise that a larger number of prisoners may be visited by adult children, who may also want to visit with their own children (the prisoner's grandchildren).

The second implication of a difference in understanding of family is when a prisoners' loved one is terminally ill or has died. Pains of incarceration are often acutely felt it times of stress, no more so when being in prison means that you cannot physically be there with those that you love. PSI 13/2015 allows a person to apply for temporary release if this has happened to a 'close relative' (a spouse/life partner¹, a fiancé/fiancée, siblings (including half or step siblings), a child, parent, someone who has been 'in loco parentis' or someone the prisoners has been 'in loco parentis' for). Although this covers a wider range of people than some of the above definitions of the 'nuclear' family, the definition of close relative is problematic for those not ascribing to these definitions of family. It is argued that extended families cover so many more 'family' members than this, and the requirement for prisoners to prove the closeness of the relationship in a time of such stress seems particularly punitive. It is also argued that delays in being able to prove this relationship in a short-time period may further hinder those during a period of grief. As such, many in prison may not be granted temporary release to attend such meaningful family moments. It is suggested being prevented from doing this may have significant repercussions to the prisoner's

¹ The inclusion of same sex partnership is definitely a step in the right direction.



mental health and ability to meaningfully engage with the prison system as a whole. It is suggested that allowing prisoners to determine who their 'family' is may help to reduce such obstacles.

However, there is evidence that positive change is coming in policy documents published more recently. For instance, we welcome the inclusion of 'significant others' in the title of 'families and significant others' strategy documents that prisons are obliged to publish on the National Information Centre on Children of Offenders (NICCO) website. In particular there is recognition in many of these strategies, including that published by HMP Leicester (2018), that 'family' includes blood, legal or 'significant persons that a prisoner identifies' as a next of kin. This might better enable meaningful contact with individuals that the prisoner considers their family as opposed to

prescriptive definitions based on blood or legal ties. Similarly, there appears to be more flexibility with financially supporting wider family with visits. We know from the existing literature that many prisoners do not receive regular or any visits whilst they are incarcerated because of the distance and/or cost associated with visitation, which may be compounded by families already experiencing financial difficulties as a result of a loss of earnings (Hairston, 2009). However, given the previously discussed belief in the importance of the maintenance of relationships, there is financial support for visitors on low income to overcome these barriers as a result of Assisted Prison Visits Scheme (APVS). Importantly though, guidelines for APVS have a broader definition of which visitors might be able to receive financial assistance for visiting a loved one in prison. As well as expected relatives, such as "Husband, Wife, Parent" it also includes "next of kin (as noted by the prisoner in prison records)". This flexibility in who constitutes family is crucial for supporting those most in need.

We acknowledge, however, that this language needs to be reflected across all policies as currently those in prison controlled by out-dated penal policies are often still prevented from meaningful contact with those they consider their family. Indeed, the true scope to which an expanded definition of family is adopted and could be influential is yet unclear. Greater understanding of the nuances in prisoner's conceptualisation of family will be fundamental in driving future policy changes.

Concluding thoughts

Support for maintaining and developing prisoners' family ties is at the crux of Ministry of Justice rhetoric regarding reducing re-offending. Yet, the evidence critically examined in this paper show inconsistencies and ambiguities around the definition and application of the term 'family' in policy documents that instruct prisons how to operate. The changing and diverse nature of 'family' relationships in contemporary Britain is widely acknowledged as characteristic of wider social changes. Although some positive steps have been made to include 'significant others' in localised 'family' strategic prison plans (e.g. NICCO website) as well as the APVS, which supports visitation, these more dynamic conceptualisations are not supported in other, out-dated policy documents. Thus, instead of policies relying upon archaic concepts of family, they should all be changed so that prisoners should be able to identify their biological, legal or social family members, and take ownership of who constitutes their family. Failure to recognise the myriad of personal and social relationships that people in contact with the criminal justice system may have through their disadvantaged backgrounds, will impact how prison is experienced by prisoners and their loved ones. It may also hinder opportunities for crucial support to be provided by significant others.

Considering the possibility of further pain and familial dislocation that might occur through a continued use of a narrow definition of 'family', further research that explores the different ways in which people might understand and interpret their relationships in and around the prison setting is

required. To begin to bridge this gap, the authors are particularly interested in how prisoners and their 'families' view who is part of their family, and would be interested in hearing from anyone who has experienced a family member on remand.

References

- Allan, G. (2008) Flexibility, friendship, and family. *Personal Relationships* 15: 1-16. doi:10.1111/j.1475-6811.2007.00181.x.
- Booth, N. (2017) Prisoners' Children and Families. *Criminal Law and Justice Weekly*. 181(15): 246-248.
- Booth, N, Masson, I and Baldwin, L. (2018) Promises, promises: Can the female offender strategy deliver? *Probation Journal*. <https://doi.org/10.1177/0264550518808363>.
- Codd, H. (2007) Prisoners' Families and Resettlement: A Critical Analysis. *The Howard Journal of Criminal Justice*. 46: 255-263. doi:10.1111/j.1468-2311.2007.00472.x.
- Codd, H. (2008) *In the Shadow of Prison: Families, Imprisonment and Criminal Justice*, Devon: Willan.
- Collins Dictionary. (2018) *Family*. Available at: <https://www.collinsdictionary.com/dictionary/english/family>.
- Corston, J. (2007) *The Corston Report: A Review of Women with Particular Vulnerabilities in the Criminal Justice System*. London. Home Office.
- Giddens, A., (1993). *Sociology* (2nd ed.) Oxford: Polity Press.
- Hairston, CF. (2009) *Kinship care when parents are incarcerated: What we know, what we can do*. Baltimore: Annie E. Casey Foundation.
- HMP Leicester (2018) *Delivering Effective Practice for Families & Significant Others*. Available from: <https://www.nicco.org.uk/directory-of-services/hmp-leicester-families-and-significant-others-strategy-document-2018>.

- HM Inspectorate of Prisons, HM Inspectorate of Probation and Ofsted. (2014) *Resettlement provision for adult offenders: Accommodation and education, training and employment*. London: Criminal Justice Joint Inspection.
- HM Inspectorate of Prisons. (2016) *Life in prison: Contact with families and friends*. London: HMIP.
- HM Prison Service and Scottish Prison Service. (2017). *Assisted Prison Visits Scheme. Visitor Guide. Help with the cost of prison visits if you are on a low income*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627024/APVU-guidance-for-visitors-GOVUK.pdf.
- Public Health England. (2017) Health and social care needs assessments of the older prison population. A guidance document. London: PHE.
- Lord Lamming. (2016) *Keeping Children in Care out of Trouble: An Independent Review*. London: PRT.
- Lord Farmer. (2017) *The importance of strengthening prisoners' family ties to prevent reoffending and reduce intergenerational*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642244/farmer-review-report.pdf.
- Ministry of Justice. (2018) *Female Offender Strategy*. London: MoJ.
- Morgan, D. (1999) 'Risk and family practices: accounting for change and fluidity in family life', in E. Silva and C. Smart (eds) *The New Family?* London: Sage. Pgs: 13-30.
- National Information Centre on Children of Offenders (NICCO). <https://www.nicco.org.uk/directory-of-resources/hmpps-conference-developing-effective-practice-for-families-and-significant-others>.
- Oxford Dictionary. (2018) *Family*. Available at: <https://en.oxforddictionaries.com/definition/family>.
- PSI 13/2015. *Release on Temporary Licence*.
- PSI 16/2011. *Providing Visits and Services to Visitors*.
- Taylor, C. (2006) *Young People in Care and Criminal Behaviour*. London: Jessica Kingsley.
- Weeks, J., Heaphy, B., & Donovan, C. (2001). *Same sex intimacies: Families of Choice and Other Life Experiments*. London: Psychology Press.
- Williams, F., (2004) *Rethinking families*. London: Calouste Gulbenkian Foundation.
- Williams, K, Papadopoulou, V and Booth, N. (2012) *Prisoners' childhood and family backgrounds Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*. London: Ministry of Justice.
- Wrzus C, Wagner J, Neyer FJ. (2012) The interdependence of horizontal family relationships and friendships relates to higher well-being. *Personal Relationships*. 19(3): 465–482.

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Exploring the impact of Council of Europe institutions through a cross-jurisdictional collaboration

Elizabeth Abati, Ellie Brown, Elizabeth Campion, Sheriar Khan, Charles McCombe, Juliana da Cunha Mota and Nicola Padfield

Introduction

This article reports on an innovative research project that was carried out by postgraduate students in two countries: the UK and France. Whilst this collaboration did not develop as was initially hoped, the research undertaken by the Cambridge students did provoke much discussion and a lively debate with prisoner students in HMP Warren Hill.

In 2017, Professor Martine Evans at the University of Reims, proposed a collaborative study involving students from the Universities of Cambridge, Reims and Strasbourg that was inspired by Professor Tom Daems' article 'Slaves and Statues: Torture Prevention in Contemporary Europe' (2017). The aim was to evaluate the extent to which different member states comply with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reports and the European Court of Human Rights (ECtHR) judgments. As this was an original project, there were few precedents or similar studies which led to methodological challenges. This article explores some of these challenges and reveals certain preliminary findings.



Nicola Padfield

The European Court of Human Rights, which frequently cites CPT reports in its judgments, acts as a court of final appeal in relation to the European Convention of Human Rights. Countries are legally obliged to implement the ECtHR's judgments, but it has no sanctioning powers to compel them to do so. The CPT is a monitoring body established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Convention), which was adopted by the member states

of the Council of Europe in 1988. Small delegations visit places of detention, both periodically and occasionally on an ad hoc basis, producing reports which are available online. Since the ratification of the Convention, the CPT has visited the UK 20 times (8 periodic and 12 ad hoc visits) and France 12 times (6 periodic and 6 ad hoc visits). The CPT clearly has a value for academics and others in that its reports are a detailed source of information, and they also provide a benchmark against which to measure Europe-wide policy. However, the CPT does not seem to be widely known in the UK, and its impact seems correspondingly limited. It was this impact that the project sought to examine.

Research questions and aims

The aim of the project was to explore how we might evaluate the impact of the CPT and the ECtHR on prison conditions. A team of French masters students (on a two year course) started to work with Professor Evans and five one year masters students volunteered to work with Nicky Padfield in Cambridge. Later the UK group was joined by a first year PhD student.² Each member of the Cambridge team chose a separate topic to reflect their individual interests: strip searches; segregation; overcrowding; suicide; and, Northern Ireland. The CPT reports were analysed along with

² As it turned out, the Strasbourg students did not join the project and there was not as much cross-fertilisation with the French students as we had hoped. This was partly because the two groups were working to different timescales, but also perhaps because of different expectations. The French students were working towards formal coursework, whereas for the Cambridge students this was 'extra-curricular' activity with a less pressing deadline.

ECtHR judgments and the official responses by the UK Government to determine whether the reports and/or judgments had had any obvious impact. The official responses by the UK Government were categorised using the Daems' framework³, which identified a number of possible Government responses:

- (1) We fully agree and follow up,
- (2) You're wrong,
- (3) Its not our fault,
- (4) In reality everything works perfectly,
- (5) We don't contest your findings, but we won't change anything,
- (6) We don't contest your findings, but we cannot change anything,
- (7) We need to investigate this,
- (8) Answers that raise new questions,
- (9) Partial answer and
- (10) No answer.

The research group also sought to explore where there was overlap between the CPT reports and ECtHR jurisprudence. Domestic reports from the Independent Monitoring Board (IMB) and domestic court judgments were also evaluated to determine whether the CPT reports were given any consideration by those bodies. Searches on the Council of Europe case law database (HUDOC) for

³ We also considered Koskeniemi and Lappi-Seppala (2017) suggested categorisation, which was very similar to Daems, but continued with the French colleagues to focus solely on Daems:

- (I) Acceptance (alternatives 1 and 1B (We are trying),
- (II) Denial/disagreement (2, 3 and 4),
- (III) Non-compliance (5 and 6),
- (IV) Evasion (7, 8, 9 and 10),
- (V) (Only Information provided).

cases taken against the UK allowed us to estimate the frequency with which cases had been brought in our chosen areas and study the results of these cases. We analysed the CPT reports, tabulating information (using the same process as our French colleagues), placing the CPT's recommendations alongside the relevant Government response and categorised according to Daems' scale. Interestingly, the French team found their enormous detailed results helpful and reached preliminary conclusions that CPT recommendations had a substantial impact on prison policy. For example, they identified a positive correlation between a CPT recommendation concerning overcrowding and the building of additional French prisons. By contrast, for our team, the conclusion that the building of a new prison was directly attributable to a CPT report was tenuous. Any number of socio-political factors could have contributed to the opening of a new prison and, for us, it seemed impossible to identify the causal relationship between CPT recommendations and the construction of a new prison. Further analysis left us in a scenario of uncertainty: apparently, the CPT had no or little impact on the UK prisons. The most used answer of the Government was "in reality, everything works perfectly".

So we decided that, in order to assess the practical impact of the CPT's reports, it was necessary to go beyond this, carrying out web based searches to inform ourselves of new developments in the areas we were covering, analysis of IMB reports (particularly those relating to the prisons the CPT visited) and HM Inspectorate of Prisons reports.

Speeches, White Papers and other government materials on prison reform were also evaluated to find any mention of the CPT. There was also analysis of materials produced by the Howard League and the Prison Reform Trust.

In terms of outcomes, there were real difficulties around measuring and quantifying impact. For the French students, producing a detailed and complete table covering the CPT reports produced for France was an end in itself whereas the Cambridge students were frustrated by their findings. The impact of the CPT is difficult to quantify because it is seldom referred to in domestic legal and political materials and also because, when an issue is highlighted by the CPT, other organisations and persons often also draw attention to the same problem. For example questions of overcrowding, suicide and strip searches have been raised by many organisations (such as the Howard League for Penal Reform, the Prison Reform Trust and the Prisons and Probation Ombudsman). It was impossible to identify the causal impact of the CPT.

The Daems typology was useful in helping us with an initial analysis of the Government's formal written response, but this does not necessarily bear any relation to its practical actions or necessitate follow-up action. For us, the typology was less helpful in assessing the practical impact and utility of the CPT's work, especially as the typical response of "everything works perfectly" was not always borne out in reality. For example, in February 2017 the opening of HMP Berwyn in North Wales created an additional 2,106 prison places, to meet capacity demands of the national prison system. Shortly afterwards, in March 2017, Justice Secretary Liz Truss revealed plans to build four new prisons in England and Wales, to create 5,000

new prison places. The plans are part of a £1.3 billion investment into the prison system to address the current challenges of overcrowding in prisons.

Moreover, the practice of segregation has received substantial levels of legal challenge, with varying degrees of success. Successful legal challenges to segregation have been accompanied by amendments to the overarching legal framework (the Prison Rules 1999)⁴ and planned updates to prison service guidance (such as PS0 1700 on segregation and special accommodation which is currently being reviewed and updated by the Ministry of Justice). Consequently, we identified substantial changes occurring within the national prison system which were not reflected by the official discourse of “everything works perfectly”. If everything is working perfectly, new prisons would not need to be built and prison policies, like segregation, would not need to be reformed. We found it was difficult to apply a framework, like the Daems typology, which narrowly assigned governmental responses to strict categories and failed to truly capture the realities of prison policy and prison politics.

⁴ The Supreme Court held in *R (on the application of Bourghass) v Secretary of State for Justice* [2015] UKSC 54 that the claimant’s segregation was unlawful, in breach of the Prison Rules 1999 and violated principles of procedural fairness. Shortly after *Bourghass*, the Secretary of State for Justice amended Rule 45 of the Prison Rules 1999 (which concerns removal from association) as a direct response to the Supreme Court’s decision.

Presenting findings at HMP Warren Hill

A unique part of the project was the holding of a student-led conference at HMP Warren Hill in May 2018.⁵ The project team organised a conference which brought together students (prison and Cambridge-based), prison staff and academics, to discuss the influence of the CPT and ECtHR on prison policy and those confined in prisons. Tom Daems was a guest speaker and provided insights into the role of the CPT and its preventative function. The project team each presented the research carried out over the past year. We compiled five separate posters illustrating our findings (see Appendix). Given the novel subject-matter and unusual approach of this project, this was a rare and inspiring opportunity for each student who took part. Participation in the conference gave some of the students their first experience of being in a prison and exposed them to the views of prisoners and prison staff. This was perhaps the greatest benefit of participation for several.

⁵ We are grateful to the governor of HMP Warren Hill for her encouragement and to the organisers of the Butler Law Course, a Learning Together partnership between the University of Cambridge and HMP Warren Hill. We are also grateful for the funding and support of the Cambridge Socio-Legal Group who made the conference possible. We are grateful for all the attendees of the conference, particularly the residents at HMP Warren Hill who contributed enormously to the day.



HMP Warren Hill

Each presentation examined the role of the CPT and ECtHR in the context of the chosen topics: Northern Ireland, suicide, strip searches, overcrowding and segregation. The presentations were followed by lively group discussions that explored a range of themes: from the causes and potential prevention strategies for suicide in prisons to the importance of raising public awareness about the true experience of incarceration. Overall, discussions reflected scepticism towards both the CPT and ECtHR, especially in their ability to hold State's to account and the limited ways in which they can truly impact prison policy and practices.

Key conclusions and areas for future research

Our tentative findings indicate that the CPT has a limited effect on prison practice in the UK. The Government's recurrent response to CPT recommendations appears to be "*in reality, everything works perfectly*", particularly in relation to strip searching and suicide. The fact that visits are rare must also limit its impact. As Daems correctly points out, the Government cannot simply ignore the CPT and its reports, it must respond. In relation to overcrowding, the Government acknowledges the existence of a problem, but also rejects the CPT's proposed solutions. The Government can refrain from making any practical changes to comply with the

recommendations. The prisoners and officers who attended the conference at Warren Hill had not heard of the CPT nor its reports and recommendations; its impact on their daily lives appeared to be non-existent. Daems stresses the importance of the CPT-state dialogue in upholding the aims of the Convention, but the extent to which the UK appears to be participating in this dialogue is invisible. For as long as the Government remains committed to the official response of "everything works perfectly" (which, as demonstrated above, is not necessarily a true account of reality), and the CPT recommendations continue to be ignored, then the impact of the CPT will be minimal. Further, the choice of Northern Ireland as one of our 'topics' revealed the importance of recognising the relationship between the 'problems' in a given prison and the broader socio-political context. We wondered whether CPT members are sufficiently aware of the unique social and political problems faced by prisons in many jurisdictions.

Although we concluded that the CPT has no visible impact on the UK's mechanisms of torture prevention, we would not advocate for its overhaul or abolition. We acknowledge its noble mission of preventing torture and trying to create harmonisation between the national minimum standards for the treatment of incarcerated people. At the same time, we also acknowledge, as Daems does, that further study on the CPT needs to be undertaken in order to assess its real utility and its effectiveness as a preventive mechanism. The project revealed broad questions about the operational mechanics of the CPT, for example, how does the CPT select prison sites for visit? why those sites? how does it select participants? Valuable insights could be gained from further exploring the main functions of the CPT, for example, does the CPT act largely as a

fact collector for the ECtHR? Is it possible to develop mechanisms of compliance with its recommendations beyond the Government's formal responses? How does the CPT engage in dialogue not only with the Government but also with other bodies (e.g. the HM Inspectorate of Prisons)? Our project also raised questions about the utility of the sanctions available to the CPT, such as its ability to make a public statement about the failed implementation of its recommendations, which has never been deployed against the UK and, in fact, at the time of Daems' article the CPT had issued only seven public statements. It raises broader questions about the UK Government's response and whether its approach is seen in other Member States. Is the UK, for example, an outlier or can similar reactions and responses be seen in other Member States.

Although our conclusions refer to the CPT, we reached similar conclusions in relation to the ECtHR. Although much better known, it is difficult to identify clear causal connections between judgements and changes in practice. Although our project reached no clear conclusions, we felt that it was worth bringing it to wider attention. The masters students involved all found the project exceptionally stimulating and would urge others to try and develop collaborative projects with students in other jurisdictions. We hope that our small project may provoke future work in this area.

References

- Daems, T. (2017) 'Slaves and Statues: Torture Prevention in Contemporary Europe', *British Journal of Criminology* <https://doi.org/10.1093/bjc/azv133>
- Koskenniemi, L and Lappi-Seppala, T (2017) 'Assessing the role of European monitoring Instruments and their impact on prison conditions in the Nordic countries', in Cliquennois, G. and de Suremain, H. (eds.) *Monitoring Penal Policy in Europe* (Routledge)

About the authors

All of the students were enrolled in post-graduate courses at the University of Cambridge for the academic year 2017-2018. Four of the students (Elizabeth Abati, Elizabeth Campion, Sheriar Khan and Juliana da Cunha Mota) were enrolled in the Cambridge Master of Law (LLM) programme. Charles McCombe was enrolled in the MPhil in Criminology. Ellie Brown was a first year PhD student in the Institute of Criminology. The project was supervised by Professor Nicola Padfield who is a professor in Criminal and Penal Justice, as well as being the director of the Cambridge Centre for Criminal Justice and the Master of Fitzwilliam College.

Appendix: A selection of posters illustrating the project findings

CPT, ECtHR and Prisoners' Rights Project

Segregation/Solitary Confinement/Disciplinary Cells

Elizabeth Abati
University of Cambridge

<div style="background-color: #4a7ebb; color: white; padding: 2px; text-align: center; font-weight: bold;">2016 CPT Report</div> <p>Visits – HMP Pentonville, HMP Doncaster, HM Cookham Wood YO1 CPT – concerned about the impact of segregation on prisoners with mental health issues and on juveniles "Prisoners with severe mental-health conditions should not be placed in segregation units as an alternative to normal accommodation ..." – Pentonville and Doncaster "Every effort should be made to avoid placing juveniles into conditions of de facto solitary confinement ..." – Cookham Wood UK's response Generally that "in reality everything is working perfectly" its response is to explain its rules and how they work in practice</p>	<div style="background-color: #4a7ebb; color: white; padding: 2px; text-align: center; font-weight: bold;">2008 CPT Report</div> <p>Visits – HMP Manchester, HMP Wandsworth, HMP Woodhill, HM Huntercombe YO1 CPT Segregation units needed to be upgraded and a more purposeful regime offered There should be no systematic accommodation in the segregation block Juveniles' Intensive Support Unit should be improved and a better regime should be provided to reintegrate juveniles rapidly into mainstream accommodation units UK's response Explains its rules and procedures and how they work in practice The issue has been rectified – "we fully agree and have followed up" Part "in reality everything works perfectly well"; part "we fully agree and will follow up" No information is given on the steps that will taken</p>	<div style="background-color: #4a7ebb; color: white; padding: 2px; text-align: center; font-weight: bold;">European Court of Human Rights</div> <p><i>Keenan v UK</i> (2001) Mr Keenan had committed suicide while serving a prison sentence. After assaulting two hospital officers he was placed in a segregation unit of the prison punishment block. His body was later discovered by two prison officers in his cell. The material fact in question was that during this time he was an identifiable suicide risk and Mr Keenan had not been referred to a psychiatrist. The application was filed by the deceased's mother who claimed that there had been a violation of Article 3 of the Convention. The Court found that there had been a breach of Article 3 of the ECHR. It held that the seven days' segregation of the applicant's son in the punishment block, <i>inter alia</i>, must be regarded as constituting inhuman and degrading treatment and punishment. There is no information available on the UK's response. The CPT was not mentioned.</p>
<div style="background-color: #4a7ebb; color: white; padding: 2px; text-align: center; font-weight: bold;">UK Domestic Case Law</div> <p><i>R (on the application of B) v Secretary of State for Justice</i> The claimant prisoner applied for judicial review of the defendant Secretary of State's decision to authorise his removal from other inmates. While assessing whether the removal amounted to a breach of Article 3 of the ECHR, the court referred to the CPT. It referred to the CPT's visit in 2016 to Cookham Wood YO1, the CPT's observation of segregation through the "separation list" and the CPT's recommendation that the YO1 rules be amended. It noted that the CPT pointed out that two of the juveniles on the separation list were being held in conditions of solitary confinement that amounted to inhuman and degrading treatment. The court relied on this, <i>inter alia</i>, to hold that this showed that being put on the separation list did not de facto amount to inhuman and degrading treatment. The court consequently found that there was no breach of Article 3.</p>	<div style="background-color: #4a7ebb; color: white; padding: 2px; text-align: center; font-weight: bold;">IMB Reports</div> <p>CPT Report 2016 HMP Pentonville – no mention of the CPT HMP Doncaster – referred to the CPT's report but "due to being a new board, [it was] unable to comment on its own experiences" HM Cookham Wood YO1 – no mention CPT Report 2008 HMP Manchester – no mention HMP Wandsworth – no mention HMP Woodhill – no mention HMYOI Huntercombe – no mention</p>	<div style="background-color: #4a7ebb; color: white; padding: 2px; text-align: center; font-weight: bold;">HM Chief Inspector Annual Reports</div> <p>2009 – 2017 Reports The reports expressed concerns in relation to segregation like in the CPT reports but the CPT itself was not referenced. The 2014 Report mentioned the CPT and explained its mandate but did not mention or engage with any of its findings and/or recommendations</p>

Committee on the Prevention of Torture (CPT)/ ECHR study on Strip-Search

Juliana da Cunha Mota

Strip searches and Human Rights framework.

Strip-searches are not, per se, a violation of rights; however, they should be undertaken only when absolutely necessary.

- **United Nations Standards for Minimum Rules for the Treatment of Prisoners** rule 52

-

Strip Searches in the UK: Case law

There is just one case against the UK on the ECtHR relating to strip search.

- **Wainwright v UK**- The applicants were visiting a relative in a prison, and were subjected to strip-search. They were not asked to sign consent forms until after the searches were complete. Various breaches of procedure took place, including the touching of one applicant's genitals.
- Did not find a violation of art. 03
- Found a violation of article 08 ECHR, that is, violation of the right to respect for private and family life. Reasons: : (i) although it accepts the government's opinion that there was an endemic problem with drug smuggling in the facilities, there was no direct evidence to connect them with any smuggling of drugs, particularly because that was the first time they were visiting the prison; (ii) officers did not provide the applicants with a copy of the form which set out the applicable procedure; (iii) there was a violation of the rule that the person to be searched should be no more than half-naked at any time;

Strip Searches in the UK: CPT reports

There is just one CPT report (2008) that mentions strip search problems within the UK, specifically in relation to a juvenile facility

- In the report, the CPT mentioned that strip searches were conducted, in theory, after a risk assessment approach; However, in practice, strip searches were the routine, rather than exceptions in that facility;
- Government response: does not consider the routine practice of strip-searches as disproportionate. Alleges that there are safeguards to conduct it, such as: (i) searches are conducted by staff members of the same sex; (ii) other people -staff and other juvenile- are not present; (iii) the searches are carried out after an assessment of identified risks, as after visits, following room search, following release on temporary licence, and on discharge. There are no current plans to revise Prison Search regulations on strip-searching of minors.

Strip Searches in the UK: HM Inspectorate of Prisons



Cambridge CPT Review Project

NORTHERN IRISH PRISONS AND THE CPT



Why Northern Ireland?

- To contextualise criminal justice in the UK.
- To emphasise the localised nature of the implementation of human rights.

Northern Irish Prisons

- HMP ~~Maghaberry~~ → male, high-security, long-term sentences and remand.
- HMP ~~Magilligan~~ → male, medium-to-low security, shorter sentences.
- HMP ~~Hydebank~~ Wood → female, sentence and remand, plus YOC on same site.

Key Dates

- 1998 → Good Friday Agreement.
- 1999 → CPT visit 1.
- 2000 → Criminal Justice Review Group Report mandated by the GFA 1998.
- 2008 → CPT visit 2.
- 2010 → Devolution of policing and justice.
- 2011 → Prison Review Team Report.
- 2017 → Stormont collapses.
- 2017 → CPT visit 3 (report yet to be published).

Charles McCombe

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

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