

# 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

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 third and final in a series of conference special ECAN bulletins. You can read the first and second heret and

you can 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

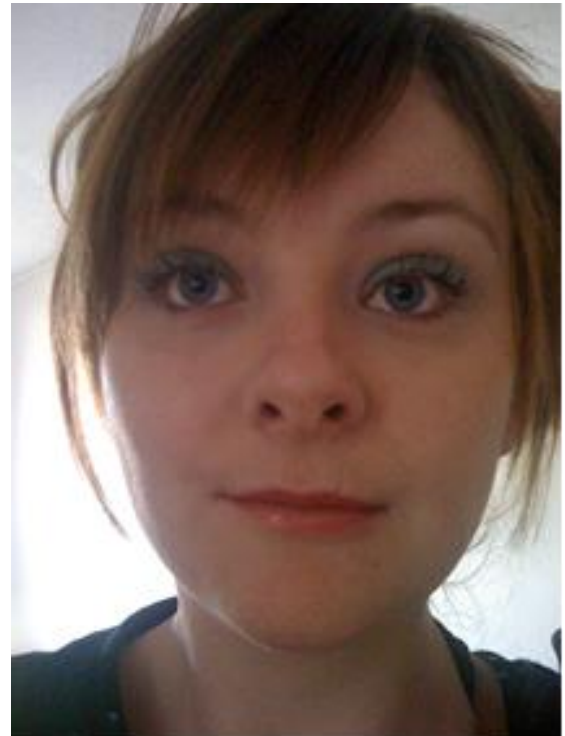
### Boredom and the Buzz: 'It's all about killing time'

Johanne Miller

This article shares findings from a five year constructivist grounded theory (CGT) of gangs in Glasgow, a city situated in the west of Scotland which is historically notorious for gang culture and violence (Davies 2007; Bartie 2010). A key element of this research was the creation of a definition of a Glasgow gang. Although this is not the focus of this paper the gangs being discussed were defined as:

*A regenerating, self-aware group of young people (majority male) aged 10-30 that emerge from play groups, are socialised via the streets and engage in territorial violence. The groups originate in low income, urbanised areas. They have attachment to territory; the area will historically be involved in territorial violence and have a name and area associated with it. (Miller 2016)*

The CGT that was developed concentrates on a very small aspect of the theory generated in this research, concepts known as boredom and the Buzz. These two concepts are presented as being symbiotic of one another as young people discussed boredom and the Buzz alongside each other. This paper explores these concepts and their relationship with one another. I draw upon the experiences of young



men and women in gangs within Glasgow and explore how they navigated, what might be described as, *the mundane ever oppressive cage of boredom* through the use of excitement seeking behaviours they termed the Buzz.

Before being able to contextualise the problem and discuss the findings, the methodology of Charmaz (2006) CGT must be discussed. As the rigorous data collection and subsequent analysis associated with CGT allowed the concepts of the Buzz and Boredom to be theorised. This methodological approach also slightly changes the presentation of this paper, so we will begin with the methodology and then go on to

discuss the findings which emerged from the study followed by a discussion in which relevant literature is elucidated.

### CGT methodology

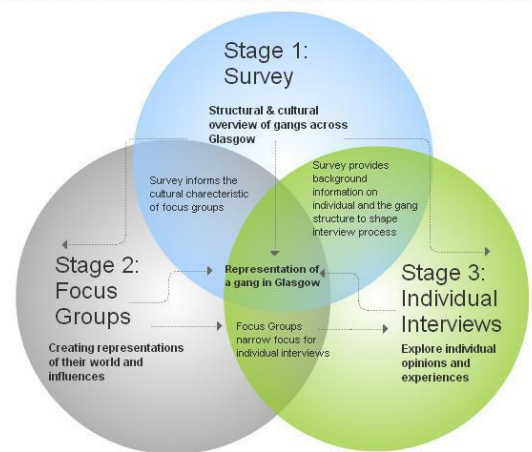
Within CGT methodology there is a rigorous method of collecting and concurrently analysing the data to allow the concerns of the participants to emerge allowing the focus of the study to narrow, beginning with a broad landscape and like a camera lens bringing the picture into a narrower focus (Charmaz 2006). Concurrent data collection and analysis follows a systematic process of line by line coding creating gerunds as codes. Gerunds are doing words which indicate action or meaning to help unearth hidden processes or meaning.

*Gerunds build action right into the codes. Hence, coding in gerunds allows us to see processes that otherwise might remain invisible (Charmaz, 2012:5).*

The coding process is intense and creates short labels which begin to abstract the data. The second stage is focused coding which narrows the focus in the field and allows categories to emerge from the codes. This process created hundreds of codes which were then collapsed into relevant categories. To give an idea of the scale and size of this undertaking, there were 153 emergent codes in this study which were then subsumed into 23 categories, from the 23 categories initial memos were created and through the writing process and abstraction of the data these became 18 memos. Two of which were entitled 'nothing to do' and 'the Buzz' and these two concepts are the ones I will to share with you in this paper.

I used a triangulation of methods to achieve this process which was designed for me to enter and re-enter the field at various stages. This design allowed me to work with the same participants numerous times and repeat the process with new participants to gain saturation in the field (Charmaz 2012).

Triangulation of Approaches



I spent six weeks with each of my participants, sometimes working with one whole gang for the six weeks and sometimes just one or two individuals. I spent two weeks observing and interacting with the participants to build trust and respect. Week three resulted in a survey which gathered structural and cultural data on the individual and the gang they represented. This data was analysed and used to inform two arts based focus groups, one a collage in which they created representations of their worlds and one a circle of influences in which they discussed the main influences within their lives. The last stage was an in-depth individual interview. This was a funnel like process with 60 participants taking part in the survey, 40 of those taking part in the focus groups and twenty of those taking part in the individual interviews. Of the sixty participants, they ranged in age between 12-25, the majority



were between the ages of sixteen to nineteen. Seven were white Scottish females, and three were Eastern European males, the rest were Scottish white males. Any names for the following participants are pseudonyms. Of the memos created from this process two emerged which the coding process in Nvivo highlighted as symbiotic: Nothing to do and the Buzz – to which we will now turn our attention.

### **The Buzz**

*A ya wee excitable creature, having Glasgae lads chasing tae feed ye!*

The Buzz was a gerund that the participants used to explain a certain feeling, sensation or event which they viewed as being grounded in a euphoric emotion. It was a freeing, exciting or fun event in their lives which was always linked with other young people. The term was employed by all of the participants regardless of gender, ethnicity, age and area of origin. Through discussions and focused enquiry a definition which highlighted the properties and characteristics of the Buzz emerged. It was defined as:

A fleeting moment of euphoria where all thoughts, consequences or worries are left behind and the moment is enjoyed with all senses, in this heightened state adrenaline is flowing and you are numbed to feeling pain. It is typically experienced in a group or a crowd of people. (Miller 2016)

The Buzz was different for each of the participants and could be experienced through a range of different events but it was always discussed in three contexts:

1. The Buzz was achieved through physical sensation seeking typically through fighting, breaking the law and dares; although fighting was the most common way.
2. The Buzz was brought on artificially through the use of chemicals into the body with alcohol or drugs.
3. The Buzz was experienced in group situations.

### ***What is, “Getting a buzz,” to you?***

Getting stoned, probably. ***Getting stoned?*** Aye, no no getting mad with it (drinking), I'd say, probably. Getting stoned doesn't really get me a buzz. Getting mad with it, more or less, unless it's heavy good green (grass) aye then I would get a buzz off of it. (Kieran)

The Buzz was used as a means of transcending the normal, banal or often hard lives that they experienced. It allowed them to transgress the present or the past and live fleetingly in a perfect moment. This emotion was, as Lyng (2004), states 'a controlled loss of control' and understanding the emotional context and the transgression of the moment allows those looking in on an alien situation understanding into why fighting was viewed as a freeing, enjoyable moment. It was a means of enacting agency upon the world. Because, in that one freeing moment all the participants had was their own wiles and physicality - they could enact agency upon the world.

See when you run into each other and that, its, brilliant, it's just brilliant, see when you just crack cunts and the adrenaline rush, aaaw its quality so it is. (Jamie)<sup>1</sup>

The Buzz for participants was a way of transgressing the banality of their world, of enacting agency and a tool, not just to transgress the moment but to kill time. Telling stories about how they achieved the Buzz or reminiscing it was a means of creating shared histories, of passing on cultural values and creating loyalties within the group.

We used to play bottle fights and everything with glass bottles. That was something that [laughter]. Aye that's all it was about killing time, as we had nothing to do. (Alex)

The Buzz did not just live in the moment but it also nourished them through the boring moments of their lives. Reminiscing a buzz was also a main activity used to alienate the boredom of their lives.

### **Boredom**

*Nothing to do? Lose it!, kill it!, squash it!. But its blue, gloomy and comin fer you*

Having nothing to do was a gerund used consistently by participants that discussed the depth to which they viewed their lives as holding little meaning at a structural and cultural level and the strategies used to negate it. Boredom did not just refer to their lack of leisure pursuits but reflected their marginalised status within society. Participants discussed how having nothing to do was related to their inability to enact agency upon the world, it reflected how they felt about their positioning in life and how

it was difficult to fill their lives with meaningful activities.

*See sometimes when I am sitting in the house, in my bed, "what do I actually do today?" You know what I mean? Do nothing but sit about man. I used to, a few years back when I was young, a had to be out the house. I had to be out with ma pals. I just got up man, a wanted to be... (Liam)*

Participants described lives filled with emptiness both structurally via inability to consume, lack of available jobs, lack of legitimate leisure activities but also culturally with participants struggling to ascribe meaning to their existences once they left school and the lure of the gang began to diminish. The majority of participants in this study were 16-19 years old, spending 4-6 hours a day on the streets and discussed having had a similar routine for the last 3-4 years of their lives. They have no job, no money to do legitimate activities and felt actively rejected by society.

The majority of their time was spent killing time, smoking hash or grass, creating risk seeking activities, engaging in banter (witty but often sarcastic conversation), storytelling and fighting to kill boredom. Their lives were structured to avoid the temporal pressure of filling time, actively avoiding the markers in time which denoted purposeful activity. Markers of time which highlight when people should be engaged in working or meaningful activities such as the working week, weekdays, nine to five pm, morning, lunch time etc. Instead they were sleeping or smoking through these markers of time, seeking out non-structured time frames such as the night time or the weekend. Without explicitly asking, eleven of the twenty participants who

<sup>1</sup> Many of the quotes have been taken out of dialect in order to ease understanding.

engaged in the individual interviews, discussed how they would rely on weed as a coping mechanism to avoid boredom. There was a constant search for something to do, something to fill the time, fill the void, consider Mic trying to convey the searching for meaningful activity.

*Aye like when I was fighting I was aye like hitting cunts with apples or something or eggs or something, just something to do I don't know. **Is it so you get a chase or?** I don't know it's something to do, there's nothing else to do, it's just for fucking ... so we don't get bored (Mic)*

Boredom was both a structural and cultural force in these young people's lives and it had a symbiotic relationship with the Buzz. Both concepts despite their pervasiveness are largely ignored within our understandings of crime and the criminal justice system.

### Discussion

Within gang studies it is recognised that 90% of gang members time is spent with nothing to do (Bloch and Niederhoffer 1958; Patrick 1973; Willis 1977). Yet the majority of academic research is focused on the spectacular elements of the gang - the violence, the deprivation and the poverty in which they are situated. Boredom as a concept is cited as one of the main reasons for crime by those who commit it and yet within criminology and criminal justice system there is a dearth of research into this area. The majority of research is situated within philosophical (Svensden 2005; Klapp 1986), and anthropological areas (Jervis et al. 2003 ; Musharbash 2007) but not within criminology, with the exception of (Bengtsson 2012; Steinmetz, Schaefer, and Green 2017; Ferrell 2004).

Svensberg (2005) highlights that there are two kinds of boredom: situative boredom and existential boredom. Situative boredom is ennui which contains a longing for something that is desired and the main boredom that most experience fleetingly. Whereas existential boredom, which I argue is the type the participants in this study experience, refers to a deeper crisis of meaning. Klapp (1986) argues that for young people growing up in a neoliberal, technologically advanced world meaning is bled out of existence through an oversaturation of meaningless activities. This was portrayed within this research. The symbiotic nature of boredom and excitement seeking is an area we need to further explore (Ferrell 2004). Had this been a traditional area of study the importance and the symbiotic nature of these two concepts would not have emerged. They would have been submerged into Lyng (2004) theory of edgework which explains sensation seeking behaviour of extreme sports. But, due to CGT (Charmaz 2006) approach of not taking part in a detailed literature review I was unaware this theory existed until I had theorised these concepts on my own. I found significant differences between edgework and the Buzz. Namely, the social element of the Buzz with young people.

Although my participants were gang members, the phenomenon of excitement seeking behaviours and ennui emerges in other contexts and other countries highlighting that this lived experience is vast and wide reaching and is an area worthy of our attention. Recent research in a Belgian young offenders' institution also explored the relationship between boredom and excitement seeking behaviours. In her opening statement Bengtsson (2012)

describes a young man hitting his head off the wall in response to the ennui of institutions. It can be argued prisons and institutions systematically forces boredom onto those who live and work within its confines. Bengtsson (2012) then goes on to describe the sensation seeking that is carried out to alleviate these feelings. Bengtsson (2012) findings and my own indicate that the lived experience of boredom has a massive detrimental effect on people's lives which acts as a conduit for allowing crime to happen.

Therefore, I am suggesting that we begin to explore these concepts in greater detail not just with those who are within the criminal justice system but also those who operate it. So I send a call out to those who have read this article and have seen representations of it within their own research or practice. Come join me and let's do some boring research. Let's systematically explore and theorise both Boredom and the Buzz to see what impact they have within our criminal justice systems.



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**About the author**

My research is predominantly with young people who are in gangs or have experience of the criminal justice system. My current research is about youth justice interventions and the use of creative methodologies. I worked as a youth worker for ten years and as a mentor for people with convictions within Glasgow prior to taking on a full time post as a criminal justice lecturer in University of the West of Scotland two years ago. If you would like to contact me about carrying out boring research my contact details are: [johanne.miller@uws.ac.uk](mailto:johanne.miller@uws.ac.uk) I would love to hear from you.

## **The Disenfranchisement of Ex-Felons in Florida: A Brief History**

**Sarah A. Lewis**

*No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.*  
*Wesberry v. Sanders, 376 U.S. 1 (1964)*

In the United States, felony disenfranchisement affects more than 6 million people (Florida's 1.5 Million, 2018). Disenfranchisement laws differ from state to state, with the State of Florida having one of the harshest disenfranchisement schemes in the country (Sweeney et al., 2015). In Florida, felons are permanently disenfranchised regardless of the type of felony committed. Felons have the opportunity to regain their voting rights. However, the process is onerous and few regain their voting rights (ibid). The result is that almost 1.7 million people are disenfranchised in Florida (Order on Cross-Motion, 2018). This equates to 10% of Florida's voting population and 27% of the national disenfranchised population (ibid; The Sentencing Project, 2016). African-Americans are particularly hard hit with more than 20% of Florida's African-American voting age population disenfranchised (Order on Cross-Motion, 2018).



This paper will explore the origins of Florida's felony disenfranchisement laws in the period from 1865 to 1968. The first part of this paper will review the Thirteenth Amendment to the U.S. Constitution, which ended slavery, and the Florida Black Code, which sought to return freedmen to a slavery-like status. The second part of the paper will explore Florida's reaction to the passage of the Reconstruction Act of 1867, which conditioned reentrance into the Union on the writing of new state constitutions by former Confederate

states extending the right to vote to all males regardless of race, and ratification of the Fourteenth Amendment to the U.S. Constitution. The third part will explore the felony disenfranchisement provisions of the 1868 Florida Constitution and the persistence and effect of those provisions in the 1968 Florida Constitution.

### **1865 to 1866**

In 1865, the Thirteenth Amendment to the U.S. Constitution, the first of the so-called “Reconstruction Amendments,” was passed by Congress and ratified by the requisite number of states. The Thirteenth Amendment abolished slavery and involuntary servitude except as punishment for a crime.

In 1866, the Florida legislature passed a series of laws collectively referred to as “the Black Code.” Passage of the Black Code was a reaction to the Thirteen Amendment and the end of slavery (Richardson, 1969). The Black Code sought to put freedmen back into a slavery-like status for crimes committed (ibid). For example, if a former slave could not prove he was gainfully employed, he could be arrested for the crime of vagrancy (Shofner, 1977). In such circumstances, they could post bond as a guarantee of good behavior (ibid). However, if they could not post bond, their punishment could include pillory, whipping, prison, or being sold to the highest bidder for up to 12 months’ labor (ibid). Vagrancy laws also could be used if a former slave violated a contract (ibid). The former slave could be found in violation of a contract for willful disobedience, wanton impudence, disrespect to his employer, failure to perform assigned work, or abandonment of the premises (ibid). For those found violating a contract, the punishment could include whipping, pillory, imprisonment, or being sold for up to

12 months’ labor (Richardson, 1969). In addition, former slaves unable to pay fines or court costs associated with various crimes under the Black Code could be punished by being sold to the highest bidder for labor for a period of time (Shofner, 1977). On June 13, 1866, Congress passed the Fourteenth Amendment to the U.S. Constitution, the second Reconstruction Amendment. The Fourteenth Amendment extended the right of citizenship to former slaves. On December 6, 1866, Florida rejected the Fourteenth Amendment as did nine other former Confederate states (Wood, 2016).

### **1867 to 1868**

On March 2, 1867, Congress passed the First Reconstruction Act, which conditioned reentrance to the Union by former Confederate states on two things (Reconstruction Act, 1867). First, former Confederate states had to approve new constitutions granting the right to vote to all adult males, including African-Americans (ibid). Second, such states had to ratify the Fourteenth Amendment (ibid). Florida reacted to the First Reconstruction Act by ratifying the Fourteenth Amendment and adopting its 1868 Constitution (Wood, 2016). Although the 1868 Constitution extended the right to vote to all males regardless of race, the 1868 Constitution also provided for the automatic disenfranchisement of felons. Echoing the sentiments of the Black Code, the disenfranchisement provisions contained in the 1868 Florida Constitution sought to reduce the number of African-American voters (ibid). Anyone who was convicted of bribery, perjury, larceny, or an infamous crime could be disenfranchised (Holloway, 2014). These are the same crimes recognized and expanded by Florida through the Black Code (Wood, 2016). Petty larceny crimes such as

stealing a gold button, a case of oranges, hogs, oats, six fish worth 12 cents, or a cow hide could result in the denial of the right to vote (Holloway, 2014). Not surprisingly, larceny charges increased prior to elections (ibid).

### **1968 to Present**

On November 5, 1968, Florida ratified its 1968 Constitution, which is still in effect today. Mirroring the 1868 Constitution, the 1968 Constitution provides for the automatic disenfranchisement of felons. Drafters of the 1968 Florida Constitution articulated no independent, nondiscriminatory reason for maintaining the felony disenfranchisement provisions of the 1868 Florida Constitution (Brennan Center for Justice, 2006). Regardless, the U.S. Court of Appeals for the Eleventh Circuit held in *Johnson v. Bush* that reenactment in the 1968 Florida Constitution of the felony disenfranchisement provisions cleansed the discriminatory intent of the disenfranchisement scheme of the 1868 Florida Constitution (353 F.3d 1287, 1339 (11th Cir. 2003)). However, when observing the data, the disparate impact of felony disenfranchisement on African-Americans in Florida is clear. Although African-Americans make up 16% of Florida's voting population, over 20% of those who have lost the right to vote through felony disenfranchisement in Florida are African-American (Wood, 2016). In the State of Florida, each gubernatorial administration<sup>2</sup> has the



power to craft its own clemency rules whereby ex-felons may regain their voting rights. This has real impact on the ease or difficulty by which ex-felons in Florida may regain their voting rights. For example, from 2007 to 2010, Governor Charlie Crist restored the voting rights of 155,315 ex-felons; whereas, since 2011, Governor Rick Scott has restored the voting rights of only 2,488 ex-felons (Order on Cross-Motion, 2018). This is because the restoration process under Governor Scott is much more onerous than the restoration process under Governor Crist. Under Governor Crist, the voting rights of people convicted of committing certain felonies were automatically restored upon completion of their sentences. Under Governor Scott, ex-felons must wait five or seven years after completion of their sentences, satisfaction of any conditions of supervision or probation, and payment of any restitution prior to application for the restoration of their voting rights. The waiting period depends on the offence committed with the clock resetting if the individual is even arrested for any further offence, even

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<sup>2</sup> In the United States, there are three branches of government on the federal level: the executive (the President), the legislature (the U.S. Congress), and the judiciary (federal courts). Each of the 50 states that comprise the United States also has three branches of government: the executive (the Governor), the legislature (the Statehouse), and the judiciary (state courts). In Florida,

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the Governor serves a four year term. At the end of the term, Florida voters vote on candidates for Governor. A "gubernatorial administration" means the elected Governor's administration for the four year term for which he or she was elected.



a misdemeanor and even if charges are never filed. Those required to wait seven years must also go through a hearing process. The current wait time for such a hearing is 9.2 years (Mitchell, 2017).

The constitutionality of Governor Scott's voting restoration process is currently being litigated. A federal judge in the Northern District of Florida found that Governor Scott's restoration process violates the First and Fourteenth Amendments to the U.S. Constitution (Order on Cross-Motion, 2018). The Scott administration has appealed to the Eleventh Circuit, arguing that the clemency board, comprised of the Governor and three cabinet members, has unfettered discretion in making clemency decisions, including whether to restore voting rights (Defendant-Appellants' Motion, 2018). The Eleventh Circuit heard oral arguments on July 25, 2018. However, a decision from the Court will likely not be issued until after the midterm elections to be held in the United States on November 6, 2018 (Kirkland, 2018).

On the ballot in Florida is Amendment 4 to the Florida Constitution. Amendment 4 would automatically restore voting rights to felons who have completed their sentences (Bazelon, 2018). However, those convicted of murder or sex crimes would have to apply for restoration of voting rights (ibid). Floridians will vote on Amendment 4 on November 6, 2018. For the Amendment to pass and become part of the Florida Constitution, 60% of voters must vote yes (ibid).

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## **Mere Anarchy? or, what Yeats might have told us about colonialism, storytelling and the narrative arc of the British Justice system**

**Victoria Anderson**

It has been said that the arc of history is long, but it bends towards justice. It was Barack Obama who said it, to an audience of steelworkers; and he was paraphrasing Martin Luther King, who was paraphrasing Rabbi Jacob Kohn, who was paraphrasing American abolitionist Theodore Parker. Parker had condemned the ongoing institution of slavery, saying that the arc of the moral universe (not history) is long and bends towards justice. (Parker, 1853)

Sadly for us, the terms 'history' and 'moral universe' are not synonymous.

The writer and filmmaker Trin Minh Ha wrote in 1989: "When history separated itself from story, it started indulging in accumulation and facts." (Minh-ha, 1989) The story of the colonised and dispossessed is either erased, or relegated to the category of folk art (or even high art). The story of the coloniser, meanwhile, becomes history spoken in the language of law. And these systems of power, scaffolded on the illusory opposition between truth and fiction, are deeply embedded within our justice system; a system which both mirrors and presupposes the dynamics of colonialism. It is not by accident that I begin this paper by alluding to civil rights and the abolition of slavery when thinking about prison reform in the UK. We—



know - or at least, the media tells us - we are in the midst of a 'prison crisis'. Perhaps it is as much a case of being a 'justice crisis', but for now at least the focus of this paper is a collection of preliminary thoughts on whether or not the prison crisis in Britain today can be compared to a process of colonial dissolution.

During the past year I've been able to spend time in some of our venerable penal institutions working directly with prisoners as part of storytelling projects, and seeing for myself what happens behind the scenes within these, as Foucault terms them, 'theatres of punishment' (Foucault, 1991). My role with the charity Stretch has provided me the opportunity to spend substantial periods of time talking to men in prisons, hearing their stories, listening to their lives, their hopes, their dreams (sometimes literally), and coming to see how

things actually are 'behind bars'. But it was only on reading Chinua Achebe's novel *Things Fall Apart* a few months ago that the threads started – perhaps counterintuitively, given the title - to come together. The novel was one that had been lying unread on my bookcase for at least a decade. I don't always get around to reading books immediately; I'd bought *To Kill A Mockingbird* when I was 14 and finally got around to reading it when I was 25. But somewhat in the spirit of Ecclesiastes I firmly believe there is a time to read, and a time to shelve.

Achebe's novel, set in 19th century West Africa sees a warrior culture that begins to come apart at the seams as the well-intentioned English missionaries arrive on the scene. And behind the missionaries comes the law, and with the law the penal system, the soldiers, the governance, the judges, the prisons, and let us not forget the schools... All designed to keep order and which inflict an endless process of order and reordering until, by the end of the book, nothing remains but the pallid indifference of an English brigadier; a brigadier who permits himself, once everything is broken, to contemplate the book he will start writing – *his story* which will, we understand, become our *history* - on the 'primitives' of West Africa. The title of the novel is of course borrowed from WB Yeats' poem 'The Second Coming', from which I've also extracted the title of this paper, 'Mere Anarchy':

*Turning and turning in the widening gyre  
The falcon cannot hear the falconer.  
Things fall apart; the centre cannot hold  
Mere anarchy is loosed upon the world.*

The poem was written in 1919. It was a response to the beginning of the Irish war of independence which

marked, not the beginning of the colonial process in Ireland, but one of many flash points in a long process of resistance to violent subjugation by the British. And as a set of metaphors it describes the breaking down of structures that once held firm, as the whole situation becomes increasingly untenable; drifting irretrievably towards disintegration, violence and entropy. By using the line from Yeats' poem to frame his novel, Achebe anchors both Ireland and West Africa within the same colonial discourse of not just social, but also historical, dissolution. This assumed particular resonance for me since, during my own visits into the prison hinterland, I'd been particularly struck by the parallels between the one Northern Irish man I'd met inside, and the numerous men of both direct and diasporic West African descent; all of whose direct and inherited histories of colonialism seemed to have served as blueprint for their experiences of incarceration, and which merit further exploration.

But prisons here on the British mainland are not colonies. A colony by definition is the extension of one territory into another, the process by which a group settles and takes over a geographical space and, depending on circumstances, displaces or assimilates its pre-existing inhabitants. This is not the primary function of prisons as penal instruments; although penal discipline has formed an integral, even defining component, of Britain's colonial apparatus. Historically there has been a well-defined tradition of penal colonies in Britain's global outposts; through transportation, the nation's undesirables - the rogues, vagabonds and bread-stealers - were altogether removed from the country, ostensibly to provide labour and ultimately to participate in the settlement of new territories. At the

same time, penal apparatus figured prominently in the strategies of colonialism across Africa, the Americas, Australasia and the Indian subcontinent - and Ireland, lest we forget - where the incontrovertible facts of British justice were forced upon unwilling colonial subjects in order to ensure complete submission to the crown and, by extension, to colonisation itself.

Colonial penalty then had two principal target groups: first, the indigenous British miscreants - the poor, in short - who were exported out of the country; and secondly the overseas colonial subjects who were controlled and assimilated *by*, and as, the British empire through a more-or-less brutal process of penalty. It comes as no surprise that these same two groups - the indigenous poor and colonially (or post-colonially) assimilated - are those vastly over-represented in our existing prison system. In fact, between them they have the immense privilege to occupy it almost exclusively.

Slavery is imprisonment by any other name, and refusal to submit to the conditions of enslavement would face the relevant penal consequences, most often spectacular torture and death. The institution of slavery as it existed across the European and post-European colonies during the modern pre-industrial era is perhaps one of the more extreme examples of absolute penalty. In post-bellum America, penalty and slavery were so thoroughly intertwined that systematised penal slavery extended beyond the end of the civil war and into the 20th century via organised, rentable convict labour, penal farms, mines and a complete absence of legal redress or even legal recognition for those caught up in that system (Blackmon, 2009). Many

would argue that industrial-scale US prisons even now are engaged in a form of neo-slavery (Alexander, 2012). But it remains a fact that throughout the entire colonial period elaborate systems of penalty were used to restrict, regulate and exploit the bodies of the colonised, and indeed, were the principal means by which the sun did not set on the British Empire.

Now as we look to the ever-present quest for prison reform, the key issue is perhaps not about reducing crime and increasing the efficacy of punishment, nor how we manage prison populations or dole out an 'extra portion of sweetcorn' at mealtimes (a comment made to me by one of the cynical prisoners while I was at Wandsworth prison). The question, for me, is about *whose* truth, *whose* justice, *whose* version of history is being served by the penal apparatus as it currently stands.

The world inside our prisons is a world within *our* world and yet, at the same time, absolutely outside of it. Officers representing Queen and Country – and it would be easy to forget, if we weren't continually reminded, that these are Her Majesty's Prisons - visually represent, by virtue of their black-and-white uniforms and crown-embossed lapels, the law and customs of the land. And yet, things are not so black and white as the uniforms would have us believe. Because, once we are inside the prison, we do not feel we are part of that same land. Despite the best efforts of many of the staff, we are now in a land that is subject to its own customs, bizarre systems of currency, catastrophic inflation, voter disenfranchisement and, unhappily, the potential for unchecked corruption. It is what the novelist Joseph Conrad described as a 'Heart

of Darkness' - only he was writing about the depredations of colonialism and colonialists in Africa.

I have also seen the kindly Missionaries – the people who, like me, with varying degrees of benevolent concern and condescension, fly into the prison wings on angel-wings of faith, hope and charity - breathing messages of peace and introducing new and ever more ingenious ways of civilising these poor unfortunates who, if only presented with the correct form of edification, and relevant woodworking skills, could emerge from the darkness and into the light with the rest of us 'civilised' people. And while the situation may not always be quite as dramatic as that presented by the media, it is at other times infinitely worse; I have seen conditions that, I would absolutely describe as bordering on 'mere anarchy': a sort of flaccid, dissolute almost outlawry born of confusion, misdirection and entropy; a malaise, a sickness, a rot.

We know that the prison population disproportionately reflects our collective colonial inheritance in terms of the demographics of those contained by the state; if we were in any doubt about that, the Lammy Review has put the inequities of the system into clear and immediate focus (Lammy, 2017). But there inevitably comes a phase in the history of colonies where, as Yeats puts it, the falcon cannot hear the falconer. Which does not suggest that until such a point the colony has been run in a state of organised perfection; as Foucault again reminds us, 'the prison institution has always been a focus of concern and debate' (Foucault, 1991). But what the history of colonialism shows us is that inevitably there is a point at which the colony begins to break

down, to break away, and can no longer be contained; and as often as not this process is not peaceful.

The process of decolonisation occurred in a domino effect around the world as European nations gradually relinquished their grip on hard-won overseas territories, and with varying degrees of bloodshed. Britain was comparatively quick to relinquish slavery (the trade in 1807, the ongoing practice phased out during the 1830s), but not before it had established itself at the forefront of the industrial revolution and global imperialism. As far as slavery was concerned, once formerly profitable sugar islands became - by the end of the 18th century - increasingly dissolute and anarchic, it was a relief to give them up in favour of a new capitalist (rather than mercantile) form of industry ushered in with the industrial revolution (Williams, 1966). Britain was then free to trumpet the enlightened success of the abolitionist movement, while concentrating renewed efforts on the subjugation and exploitation of India and Ireland instead, alongside a domestic and imperial agenda of social reform.

We are at a stage now where some of our neighbours in Europe are, to some degree, rejecting imprisonment and its associated modalities of codification, classification and control as the default penal mechanism. At the same time, other countries like Britain (and America) double down on inflicting unfreedom on its citizens and subjects as a matter of course, despite there being no evidence of crime reduction – being the stated aim – through such methods (Allen, 2012).

So, the question that remains is, perhaps: can the centre hold? At what point upon history's arc, and on



which side of the moral universe, will this story end? Prisons are not colonies; and yet, they are strangely like colonies. What, then, is the appropriate response to this falling apart of things, this merest of anarchy? Could we imagine looking back, at some future stage, from wherever we might temporarily come to rest on our moral curve, to the period not of decolonisation but of depenalisation? Or, is the answer to build more prisons, better prisons, bigger prisons, send in more missionaries, more basketweaving, extra sweetcorn?

Or do we simply wait until – to borrow once more from Yeats - a blood-dimmed tide is loosed?

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## Non-statutory experiences of gender-specific services in a post-Corston (2007) Women's Centre

**Kirsty Greenwood**

### Introduction

This article explores the knowledge and experiences of non-statutory women accessing the gender-specific services of one Women's Centre in the North of England which was opened in response to the Corston Report (2007). This article draws from ongoing doctoral research at the case study women's centre; referred to as TWC. The research process has involved 24 semi-structured interviews with non-statutory service-users, 7 semi-structured interviews with service-providers, 4 semi-structured interviews with statutory-service users and two focus groups with 12 statutory-service users undertaking unpaid work orders at the time of participation in the research project. Drawing upon the ideas of gender-specificity framed within the context of neoliberalism (Barton and Cooper, 2013; Carlton and Segrave, 2013; McNaul, 2018) and engaging with theoretical notions of social control and the State by utilising Stanley Cohen as a key point of reference, this article examines how the rhetoric of gendered penal reform and gendered penal policy in terms of the relationship between neoliberalism, the State and



gendered justice translates into effectiveness, legitimacy, and impact for non-statutory women in addressing their gender-specific needs within TWC. For the purpose of this research study, non-statutory service-users comprise women who have no legal recourse for continued attendance at TWC.

### The concept of gender-specificity

Gender-specificity refers to a complex and multi-faceted principle central to the establishment of non-custodial penal sanctions for women in an attempt to: reduce the female prison population; meet the multiple and often complex needs of women in the community; reduce the intergenerational effects of crime; and, empower women to lead law-abiding lives (Corston, 2007). Whilst the Corston Report 'marked a bold endorsement of a gender-responsive approach to female prisoners', it was preceded by feminist and penal reformers' campaigns as well as various policy developments across the globe (Carlton and Segrave, 2013: 36).

Gender-specificity was initially developed in the USA in the early 1990s as 'gender-responsivity' to address the 'realities of women's lives' via a social justice framework (Bloom, 1999: 22). One of the very first proponents of a gender-responsive strategy claimed that women often struggled to survive 'outside legitimate enterprises' resulting in them being drawn into the criminal justice system (ibid.:22-3). It was claimed that women offenders' complex *needs* were not being acknowledged by gender-neutral assessment in traditional 'risk, need, responsivity' (RNR) models of offending behaviour programmes (Radcliffe and Hunter, 2016: 977; original emphasis). This RNR model or 'what works', previously adopted by the Probation Service in England and Wales, failed to account for the differences in the characteristics of women who offend and was not responsive to their gender-specific needs as women (ibid). Gender-responsive services in the USA were thus initially designed as

preventative and early intervention techniques to reduce the unnecessary criminalisation of women (Bloom, 1999).

In England and Wales, the New Labour government implemented the accredited cognitive behavioural programmes as a key feature of Probation Service practice which characterised offending as a result of faulty thinking (Kemshall, 2002). New Labour 'rejected the social causes of crime' and instead attributed poverty, inequality, social exclusion and marginalisation to individual personal failings and exclusion from paid work (Kemshall, 2002: 41). Whilst a key manifesto aim at the start of their term in government was claiming to acknowledge and address wider social factors in determining criminal behaviour, attention remained focused upon individual factors associated with some forms of behaviour and increased emphasis was placed on risk and public protection (ibid).

The Wedderburn Report, *Justice for Women: The Need for Reform* (2000) published by the Prison Reform Trust following a two-year independent study, recommended that 'a network of women's supervision, rehabilitation and support centres' should be set up in recognition of a cross government approach to rehabilitating women who offend, in the community (Carlen and Worrall, 2004: 150). These recommendations were designed to give women better access to a range of community agencies under one roof via multi-agency working (ibid). Gelsthorpe and Morris (2008: 141) suggested that the Wedderburn Report both echoed numerous points outlined by Carlen and Tchaikovsky (1996) and Carlen (1998), but also further

recognised the importance of the socio-economic backgrounds of women in prison and the wider consequences of imprisonment for them in terms of family life. Further advancing conclusions drawn in the Wedderburn Report ; the *Social Exclusion Unit Report* (2002) was the first official policy document to recognise that women subject to prison sentences are among the most socially deprived, disadvantaged and marginalised in society (Hedderman, 2010). It was acknowledged that female offenders' needs were frequently greater than men's, women's rates of imprisonment were increasing more rapidly than men's and that women's needs were being persistently overlooked in a criminal justice system designed primarily for men (Social Exclusion Unit, 2002). The Report identified nine key factors specific to reducing women's re-offending which are central to gender-specific service delivery in Women's Centres in England and Wales:

1. Education and training
2. Employment
3. Drugs and alcohol
4. Mental and physical health
5. Attitudes and self-control
6. Institutionalisation and life skills
7. Housing
8. Benefits and debt
9. Families

The Women's Offending Reduction Programme (WORP); a progressive response to the SEU Report (2002) specifically for women who offend stressed that the intention was 'not to give women offenders' preferential treatment but to achieve equality of treatment and access to provision' within existing systems and approaches (Home Office, 2004: 5 cited in Hedderman,

2010). To be effective in reducing re-offending, gender-specific practice aimed to consider the 'distinctive features of women's lives and needs' as being interrelated, multiple and complex (Gelsthorpe *et al*, 2007 cited in O'Neill, 2011: 94).

### **Emergence of women's centres in England and Wales and Corston (2007)**

Following the SEU Report (2002) a number of practice-based initiatives began to emerge in England and Wales. Years of promotion work from charities and campaigning organisations (Carlton and Segrave, 2013), and academic research which 'consistently underlined the inadequacies or inappropriateness for women of most conventional criminal justice interventions' (Radcliffe and Hunter, 2016: 976-7) including the 'revolving door of prison' (PRT, 2016: 7) paved the way for new gender-specific non-custodial arenas . They fuelled the development of gender-specific justice in the form of the women-centred Asha Centre<sup>3</sup> in Worcester, Calderdale Women's Centre in Halifax and the 218 Centre in Glasgow (Loucks et al, 2006). The 218 Service was established in 2003 due to a series of suicides in Scotland's only women's prison, Cornton Vale and increased concerns from policy makers, academics and practitioners at the lack of female-centred provision in a system designed and focussed on men who offend aged 18-24 (Beglan, 2013). All three Centres operated via a gender-specific lens and were 'pioneers of a woman-centred approach', being a 'real alternative

<sup>3</sup> The Asha Centre closed in 2017 due to a lack of funding.





to prison' (Corston, 2007: 10). They recognised the significantly different pathways into and out of crime for women in comparison to men and were appreciative of the non-homogeneity of women (O'Neill, 2011).

Women's centres as pioneers of gender-specific practice however, were not officially recognised as alternatives to prison until the Corston Report (2007) was commissioned. The official prompt to recognise the distinctive needs of women who offend in policy and practice in England and Wales came from the self-inflicted deaths of 6 women between August 2002 and August 2003 at HMP Styal and the consequential report produced by the Cheshire Coroner and the Prisons and Probation Ombudsman (New Economic Foundation, 2008: 11). Corston (2007: i) emphasised the inappropriate and disproportionate use of prison for women who are non-violent and/or minor offenders; placing the burden of responsibility on society to 'support and help establish themselves in the community'.

Corston (2007) recognised three categories of vulnerability in criminalised women; domestic

circumstances including childcare and domestic violence; personal circumstances regarding mental health, low self-esteem and substance misuse; and, socio-economic factors such as poverty, unemployment, and isolation. Paradoxically, whilst it was identified that a combination of these three types of vulnerabilities would lead to a 'crisis point that ultimately results in prison', Corston (2007: 1) stated that these vulnerabilities must be addressed in each individual case to help women 'develop resilience, life skills and emotional literacy'. Corston (2007) highlighted the ineffectiveness of short prison sentences in comparison to community sentences in reducing offending and stated that enabling women to access gender-specific support for their multiple needs within a woman-only environment would signal a turning point in breaking their cycle of offending.

Corston called for the countrywide establishment of women's centres alongside educating sentencers' and other criminal justice professionals of the provision of gender-specific community sentences. This was intended to be achieved via a Commissioner for women (a recommendation that did not come to fruition) who would lobby for the current gaps in provision, services and knowledge to be addressed as a matter of urgency. Corston (2007) foresaw that women's centres should be utilised as referral centres; as a means of diverting women from court and police stations and providing a credible alternative to prison.



### Non-statutory women's experiences of the women's centre

Whilst there is an emerging body of literature and critical research concerning the operation and impact of women's centres for women who have been subject to custodial sentences (see Elfleet, 2017; 2018), very little is currently known about the experiences of women who attend women's centres voluntarily and not due to a criminal or civil order. Based upon 24 semi-structured interviews with non-statutory women at TWC, this article briefly explores how the precarious funding arrangements of TWC alongside gender-specific penal reforms emerging 'in parallel with the dismantling of the welfare state' (Prugl, 2015: 616) and a subsequent rise in inequality (Arestis and Sawyer, 2005: 199) may be contributing to non-statutory women's dependence on TWC.

Four non-statutory women; Poppy, Emma, Evelyn and Layla<sup>4</sup> expressed how they were attending TWC on a regular basis and had been so for a prolonged period of time. They had never committed a criminal offence and were attending TWC voluntarily. Poppy was referred to TWC by her Doctor due to depression and arthritis and stated:

*You know what; I'm going on to my fourth year now. So I've kept it up. I do courses all the time.*  
(Poppy)

Emma discussed chronic mental ill health and the closure of a community advocacy service as her reason for continued attendance at TWC in the following interview extract:

*KG: What is your current situation with respect to employment, training or education?*

*Emma: Erm... I've been on the sick for thirty years... mental health issues.*

*KG: Ok, and how did you first hear about the Centre?*

*Emma: Erm... Izzy, she's a lady who used to do, erm... what was it called now. At Lidgate. It used to be by Lidgate Dean.<sup>5</sup>*

*KG: Was it like a support group?*

*Emma: Erm... I'm trying to think. Advocacy... they had like erm... a place there where we used to go. We used to meet there and have coffee and...*

*KG: And is that still there now?*

*Emma: No it's closed down. I came here just before it closed down.*

*KG: So how long would you say you've been coming here for now?*

*Emma: About three or four years.*

Both Poppy and Emma had therefore been engaging with TWC for several years with little indication of moving on. Additionally, Evelyn had been attending TWC regularly for 9 months, stating that "well I only used to come, say, twice a week but now I come four days a week". She claimed that she participated in a group every Tuesday to help with her alcoholism and that it was due to her alcohol issues that she was referred to TWC:

<sup>4</sup> All participant names are pseudonyms individually chosen by the participants.

<sup>5</sup> A pseudonym

*I got referred. I went to the Lidgate Support when I was ... I spoke to Katie a few times and she does acupuncture in the YMCA. And I used to go there on a Monday night to do that and relaxation. And then she told me about here so I came here.*

Layla had been attending TWC “about three times a week” for “about three years now”. She stated that she often attended more frequently depending on “If I’m doing courses” in which case she attended “sometimes nearly every day”. Poppy, Emma and Layla were 55-64 years of age and Evelyn was over 65; all discussed extended periods of engagement with TWC.

The significance of the personal characteristics of these four non-statutory women is that they had never committed a criminal offence but were accessing gender-specific services on a prolonged basis within a criminal justice system aimed primarily at ‘punishment and social control’ (Malloch and McIvor, 2013: 206). The original aims of women’s centres, as outlined by Corston (2007) were to target both women who had offended and women considered at risk of offending due to both groups possessing similar needs. The four women included in this study presented physical and mental health needs, and drug and alcohol needs. They had presenting needs relating to two of the nine gender-specific factors recognised within the nine factors explicit to gender-specific service delivery (Social Exclusion Report, 2002). The aim of gender-specific practice was to consider the multiple and interrelated factors that put women at risk of offending (O’Neill, 2011) however, all four women were over 55, had never committed a criminal

offence and presented issues relating to poor physical and mental health, and addiction. Questions therefore concerning the suitability of a criminal justice women’s centre in meeting their needs were raised in the four accounts of these women.

Giving credence to Cohen’s (1985: 50) framework that non-custodial alternatives often result in an expansion of the criminal justice system because ‘the “wrong” populations are being swept into the new parts of the net’; ‘wrong’ populations in this study are potentially wrong in the sense of being inappropriate because they are not for whom the original reforms were designed. Poppy, Evelyn, Emma and Layla present little risk of offending and thus TWC, operating as a carceral institution, is arguably unsuitable for them. Whilst women’s centres always intended to work with non-statutory women, the prolonged duration of engagement at TWC, no indication of future disengagement with the service, the older age group and the mental and physical health needs presented by the women suggest that ‘need’ and ‘risk’ are potentially being conflated within TWC (McNaull, 2018: 93).

The aim of TWC in serving non-statutory women was highlighted by the Operations Manager of TWC:

*I’d say the main aim of the Centre is to empower women. So it is, er...it is just making women aware of their potential. And sort of enabling them to achieve things that they wanna achieve but have maybe been told they can’t or you know, feel they can’t. So I think predominantly, we’re just, I’d say*

*we're just a Women's Centre for anyone over the age of 18 who wanna make positive lifestyle changes and wanna be empowered to move forward.* (Original emphasis)

By claiming that women who lack confidence and/or possess low self-esteem are suitable for criminal justice intervention suggests an 'institutionalised response to vulnerable women whose social issues are redefined as risks to be managed' (McNaull, 2018: 93). Much like Poppy, Evelyn, Emma and Layla the 'conceptual boundaries' between 'criminality' and 'vulnerability' appear very indistinct (Ibid: 93). Additionally, the criminal justice co-ordinator's use of statistics to demonstrate the small number of statutory women who engage with TWC and by deduction, the high number of non-statutory service-users that utilise TWC further supports McNaull's (2018) argument of the conflation of need and risk and also gives credence to Cohen's (1985: 51) theory of individuals being diverted 'into' the system, due to the largest clientele being non-statutory service-users:

*The percentage of women that are accessing the services through Probation is down now; I think it's 5% now. We have over 50 odd women attend this Centre on a daily basis and that is basically, over the week, 5% of them women are probation women.* (Criminal Justice Co-ordinator)

This highlights the potential unnecessary criminalisation of non-statutory women due to what the Howard League (2015) warned to be premature or unwarranted contact with the criminal justice

system. Criminal justice penetration into the lives of non-statutory women appears to produce a discourse of dependency with non-statutory service-users heavily relying upon TWC in order to function in their day-to-day lives. Non-statutory service-user Becky, who was the longest serving service-user at TWC stated that *"Oh, I love it here. This is home. I just go to where I live to sleep"*. Similarly, Lexie commented that *"It's like this is my job... I come here... I love it"*.

Given the concerns raised in this project relating to the potential dependence of non-statutory service-users on TWC, it also appears that TWC itself possesses a dependence upon non-statutory service-users in a mutually reinforcing, but potentially problematic relationship. As highlighted by the Criminal Justice Co-ordinator earlier, TWC consider non-statutory service-users to be steady clientele comprising approximately 95% of TWC population. Continuous and relatively stable *"footfall"* according to the Operations Manager guarantees *"bums on seats"* and by extension helps to guarantee a steady stream of funding.

An overarching issue in this study is that the 24 non-statutory women largely presented needs relating to social isolation and poor mental health, with many attending TWC due to both the closure and subsequent dearth of social and welfare services in the community that operate outside of the criminal justice system. However, operating within a neoliberal culture, TWC appears to be unintentionally capitalising on the socio-economic and political landscape by increasingly relying upon non-statutory women as steady clientele. Whilst not minimising the

positive impact that TWC has on many non-statutory women, as highlighted by Becky and Lexie, the institution may be operating as an expansion of the criminal justice system, not as an alternative, with women's social needs being translated into risk, hence rendering them suitable for criminal justice intervention. TWC thus appears unintentionally to be co-opting with neoliberal techniques of marketisation to maintain a steady client group. By adopting a gendered neoliberal strategy of promoting a gender-specific, safe and welcoming environment, TWC is potentially able to target women's vulnerabilities, predominantly that of social isolation, to promote a dependency on the institution as a neoliberal enterprise.

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Kirsty Greenwood is a PhD student and GTA at Liverpool John Moores University. Her doctoral research explores statutory and non-statutory service-users' experiences of gender-specific services in one Women's Centre in the North of England. Her wider research interests include the historical and contemporary punishment of women and gendered penal regimes. She published the main findings from her Masters thesis in a book chapter entitled "The Mobilisation of "deviant" female bodies: Carceral regimes of discipline in Liverpool Female Penitentiary, 1809-1921" in Peters, K., and Turner, J. (Eds.) (2017) *Carceral Mobilities*, Oxford: Routledge and has early doctoral findings in "Social Justice" in Women's Centres? Experiences and Impact of Gender-specific service provision' in White, H., and Fletcher, S. (Eds.) (2017) *New Voices/Emerging Thinkers*, Bristol: European Group for the Study of Deviance and Social Control.

## Social Justice in civil courts for whom? Women, domestic abuse and agency

**Kirstin Anderson**

Gender disparity still thrives in Scotland and is a root cause of violence against women and girls. The Scottish Government (2016) reported that out of 59,882 domestic abuse incidents recorded by Scottish Police in 2014/15, 79% involved a female victim and a male perpetrator. In the same report, where gender was known, 1,901 recorded rapes or attempted rapes showed 95% of the victims were female. Females who experience abuse, if reported, can come into contact with the justice system at various levels, the police and court systems being most prevalent. Research demonstrates that women as victims are often neglected in research about legal intervention (Lewis, 2004) and, when examined, their experiences in civil courts can cause 'considerable distress' (Roberts et al., 2015: 599).

This short article discusses an element of a small internal scoping project undertaken for the Scottish Human Rights Commission (SHRC)<sup>6</sup> in 2017 that examined the human rights impact of the Scottish justice system. Despite being a



small research project, the aim of the work was large; to explore the key human rights impacts of the Scottish justice system through the lens of lived experiences in order to inform the Commission's strategic direction of work in the area. The scoping paper, in its entirety, highlights the lived experience of men, women and young people, which was gathered through three small focus groups. The experience of the Scottish justice system varied across the three focus groups and included individuals with experiences of court, civil and criminal, custody and secure care. This short article focuses on the lived experiences of the women who contributed to the project and, in particular, their experiences in the civil courts as female survivors<sup>7</sup> of domestic abuse.

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<sup>6</sup> The Scottish Human Rights Commission (SHRC) was established by The Scottish Commission for Human Rights Act 2006, and formed in 2008. The SHRC is the only Scottish organisation that can make direct contributions to the UN Human Rights Council on devolved issues affecting the people of Scotland.

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<sup>7</sup> There is contention about how to identify women who experience domestic abuse that recognises the harm done to them but

### Methodology

The Scottish Women's Aid (SWA) assisted the project in putting together a small focus group, made up of three women. There were a number of considerations made when putting together the group; we wanted to ensure the women participating were at a place where they felt comfortable talking about their experiences, and felt comfortable talking about their experiences with each other. The focus group took place at a SWA office, which enabled the women to speak about their experiences in a safe place and ensured SWA staff could support the women after the focus group if needed.

All of the women (n=3) had experienced some form of domestic abuse (physical, mental or verbal) and in two cases they had experienced multiple forms. The women shared their experiences of fleeing from abusers, their attempts to safeguard their children while complying with legal requirements for their ex-husbands to see their children and challenges in rebuilding their lives after losing established support systems in their communities. The women discussed their experiences of navigating legal aid services and court environments, both which appear, for some, to negate women's experiences of being a victim of domestic abuse (e.g. removing their words from official documentation, not acknowledging women's fears of their abuser). They expressed concern also for their safety, and their child's safety, when facilitating child contact

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also allows those women who survive to reclaim their agency. Of course, not all women do survive domestic abuse, which needs to be acknowledged as well, as their experiences are left out of research and court proceedings.

meetings with former abusive partners and, when asked, replied that there had been no discussion of their rights when they first engaged with the police and legal services.

### The women's lived experiences

#### *Experiences in civil court proceedings*

All the women in the focus group agreed that their experiences of civil courts<sup>8</sup> included environments and processes that can cause distress to female victims/survivors of domestic abuse ranging from the architecture of courtrooms to the proximity of their abuser. Participants in the focus group spoke at length particularly about their experiences in civil court proceedings in relation to how they were treated and spoken to. They did not think it was appropriate that their abusers' solicitors should "belittle things [they have] reported". They also found that the "intonation of [the solicitor's] voice, the style with which they communicate...is hostile for a victim of domestic abuse and traumatic." They also discussed their experiences of fear when being released from the court as their abuser would be released five minutes later. One participant described the experience, "This person had threatened to kill me and my child...just being in the same room, the same building, when you're released from the building, you know, they're close by."

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<sup>8</sup> Unlike in England and Wales, there is not a separate family court system in Scotland; cases concerned with family law take place in civil court.

Another concern was the lack of consistency in the solicitors and sheriffs<sup>9</sup> that they saw throughout their case. This brought up a discussion of the stress of continuously repeating your story of abuse to legal representatives and the pressure each of the women carried with them.

*It is colossal. The pressure. It's enormous. You're only having occasional court appearances but you have to be always thinking about it. Always gathering evidence. Always conscious. Always, always conscious. There's a huge mental and emotional cost. Massive.*

The experience of constantly engaging with the civil court system as a victim of domestic abuse can be "traumatic" and depending on the level of media attention can follow women with every Google search. This had very real consequences on the participant's ability to "secure jobs", "resettle in another community" and "support their children".

#### *Legal aid*

Access to legal aid was another topic discussed at length and the participants' experiences of working with the legal aid system and solicitors came up many times during the discussion. Practical concerns of accessing the system included having to wait to access legal aid until the women were receiving benefits (which could be a minimum of six weeks), the substantial cost of an interdict to protect them and their children

<sup>9</sup> Sheriffs sit as a trial judge in civil and criminal court cases, from minor to moderately serious, in the court which deals with the largest volume of cases by number in Scotland.



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when they have just fled their abuser and experiences with legal aid solicitors who refused to take on work until funding was secured to pay them.

*I needed an interdict to protect my child so he couldn't just find us, turn up and legally take the child away from me, which he could have done up to that point and to get an interdict, I had to pay. I had to pay £500, which my family paid. Now, I had nothing. He had control of everything.*

One individual expressed her concern over the continuing payments she has to make to legal aid; despite the court saying her ex-husband is legally liable for all expenses because legal aid is not considered an expense. The group was most vocal about the lack of choice of solicitors who work on legal aid cases. This was particularly concerning for a participant who knew that one of the solicitors that represented her abuser had been accused of domestic abuse himself. She found this to be another example of the insensitivity towards victims of domestic abuse when engaging with the civil court system.



*Child contact centres*

One particular concern for two of the participants was the lack of safe spaces for facilitating meetings for their children and the child's father, mostly in child contact centres. These centres are run by independent organisations and they provide spaces for family visits, relationship counselling and family mediation. What was clear in the discussion was the feeling from participants that these centres are often not appropriate for women who experienced domestic abuse. One participant expressed how the centres can be set up to be very welcoming with a "scones and tea" approach but lacking security and CCTV.

One woman spoke in detail about the experience of her son, who "was sick going [to the child contact centre]" had to go even if he did not want to because of a court order. The participants spoke of how their challenging these visits on the grounds of their children's emotional and physical health was perceived as "emotional and a bit crazy." Another concern expressed by the group was people in the child contact centres "had very little training writing documents for court"; documents that can heavily influence a civil case.

*Human rights*

None of the women reported being informed of their rights, or their children's rights, when first engaging with the police or legal aid services. The women reported that "[rights] were never mentioned." Participants voiced how these particular agencies focused on processes of the services and the emphasis was not on the individual and their personal experience. There were positive personal experiences of interacting

with agencies, like the Women's Aid, and with particular individuals in social services. One participant discussed how they had a "really good social worker" that was "very supportive and well trained and knowledgeable about domestic abuse."

When asked if the women had made complaints in relation to their negative experiences in the civil justice system, or felt they were able to make complaints, participants agreed that they had to "weigh up the consequences of how it's going to be judged" in court and sometimes they were specifically told they could make a complaint but "it would be a waste of [their] time."

One of the most striking topics to come out of the discussion was the unanimous feeling by the participants that the abuser is still in control of their lives, especially when the accused was not convicted, was released back into the family home and can continue to request parental rights to visitation. Moreover, the women discussed the frustration and disappointment that their eventual divorces from their abusers were not on the grounds of domestic abuse, rather unreasonable behaviour.

*[The divorce] was [on the grounds of] unreasonable behaviour but there was nothing criminal at the time because it was all coercive control. He never hit me. There was nothing I could go to the police with at all. I could get divorced and I did. When it came to the divorce, I was very lucky with the solicitor I had, she was great and she knew it was domestic abuse, I think we probably used those*

*words between us, but I don't think it got written anywhere.*

One participant felt very strongly that this choice of language ignored the severity of the experience for her and her children and that it also perpetuated the misunderstanding of domestic violence in Scottish culture.

### Discussion

Lewis (2004) suggests that women who use the law, and the courts, to challenge and resist abuse should be seen as actively negotiating and resisting violence against themselves and their children. This shift in perspective, she suggests can enable women who actively engage with the law to contribute to their overall sense of safety.

However, based on the responses from women in the focus group for this research, they did not feel safe when 'actively engaging' with civil court proceedings and when leaving court buildings with their abuser in close proximity. They did not feel safe taking their children to child contact centres and they feared for their children's safety. Roberts et al. (2015: 603) describe similar responses in their study where women reported that they felt that legal representatives had a lack of empathy and understanding as to the fear women felt in proximity of their abuser.

A sense of control over legal processes is valuable. Fleury (2002: 184) found that 'survivors who perceive they have control may be more satisfied with the criminal legal system, regardless of the level of actual control'. However, I would argue that societies should do more to support women with experience of domestic abuse to just 'perceive they have

control'. The danger with the current civil court system in facilitating the perception of control is that the system itself can replicate a controlling relationship a woman is resisting against; one that is subversive, controlling and instills fear.

I recognise that it is easy for me to type the words, to write that the women were afraid (both in their relationships and in their experiences of civil court), but my words leave out the actual feeling of the women, the actual fear of being in the same room with an individual that abused them for many years. This feeling of fear is conveyed easily in their discussion (it was palpable) but somehow does not transcribe with the same intensity on paper. Perhaps part of the problem for women who are victims/survivors of domestic abuse when attending civil court proceedings is the processes are not designed to recognise the human emotions in response to violence against women. The processes are designed to be clean, to present the facts, to attend to the complaint; but women's experiences of domestic abuse and domestic abuse relationships are hardly that sterile.

In summary, domestic abuse is not a behaviour that lies solely within the criminal justice area; it is a gendered crime that is a result of the rooted social inequality between men and women. Focus group participants reported experiences of being in the civil courts to be traumatic as they felt the system is designed to ignore what brought them there in the first place as a victim of domestic abuse. Women who participated in the focus group had strong concerns about the lack of safe



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spaces for facilitating meetings for their children with their former partners. Legal professionals need a better understanding about the dynamics of abusive relationships and the impacts domestic abuse has on women and children to run better services. They also need adequate funding and support to do this.

Further work is needed to build on this piece of a small internal scoping project. Consideration of best methods is needed. One idea is to conduct a series of focus groups on civil court processes with women from both rural and urban communities who have experience of domestic abuse, and to use an interpretative phenomenological approach (IPA), which would enable a better understanding of how women make sense of their experiences in civil court proceedings. As discussed in this paper, the voice of women's experiences of domestic abuse (in *their* words) is often stripped out of civil court proceedings. It is possible that research using an IPA methodology could begin to highlight how women articulate

their experiences, both in abusive relationships and in civil court proceedings to break free from those relationships.

To conclude, there is potential in this work to focus on the areas of gender and agency, how women can be their own spokesperson who resist violence and navigate their process in civil court, and how a focus on these concepts, along with the development of the Domestic Abuse (Scotland) Act 2018, can aid the Scottish Government in drawing out implications for policy and practice that better support victim's experiences of the civil court system. To do this, however, more work is needed to consider how civil court processes and engagement with Legal Aid solicitors can truly engage women who are victims/survivors of domestic abuse and include their voice in the proceedings.

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## The efficacy of punishment: How the doctrine of Hell has helped shaped our penal system and how that can be undone

**Christabel McCooey**

*This too I know – and wise it were,  
If each could know the same –  
That every prison that men build,  
Is built with bricks of shame,  
And bound with bars lest Christ should see,  
How men their brothers maim.*

**Oscar Wilde, *The Ballad of Reading Gaol***

I have chosen to reflect on a rather controversial topic: Hell and its connection with crime and punishment. My interest derives from my role as both a criminal barrister and what could be considered a 'heretical' Christian.

### **Courtroom experiences**

As a barrister, I meet people from every walk of life, in the throes of every type of crisis, both practical and existential. One of my first trials involved an 18-year-old who was thrown, hog-tied and spit-hooded, into the back of a police van, the corner of which split open his chest, leaving a permanent scar, which he showed me on the day of trial. He was charged with assaulting those six police officers, as he lashed out indiscriminately whilst being pinned down and spit-hooded. The only injury suffered by the officers; one small cut to the thumb.

I've represented a Grandma of ten, a dinner lady, who stabbed her ex-partner in the arm; he was a kickboxing champion who had



beaten her to within an inch of her life three years earlier and ransacked her home. It complicated matters when, after being granted bail pending trial, she was then found on her doorstep wielding a meat-cleaver and screaming at that same partner: "I'm going to chop your fucking head off," at that same partner. They had been cheerfully sharing a bottle of vodka moments earlier. I have seen fights in court, docks kicked in, one client get on his knees and howl at his mother-in-law, believing she may persuade his wife to let him see their children.

This is despite having beaten them all vigorously and being subject to a restraining order.

I have had to cross-examine someone at length about their access to, and use of, toilet roll as we explored whether smearing faeces on your cell wall was a legitimate form of protest. I have seen the bitterness of family breakdown in divorce courts, and felt the despair and disdain lingering about youth justice courts, where the young are often criminalised 'for their own good' instead of being offered the support they have so far lacked. The list is not exhaustive, though is at times exhausting.

In all my work I hold the question: 'Is anyone beyond repair?' 'Is anyone truly evil?'

### **Faith**

The second thread that underpins my interest in this theme, and my work overall, is my Christian faith. I came at it through the back alley, with the intention of disproving it, or the character of Jesus, at least. What I found is that if there is a God - or a power articulated as such- He is one of utter, self-sacrificial love, out of which flows all life, beauty and progressive energy, in whatever context it is expressed. I realised after about nine months of grappling with God that the doctrine of Hell is abhorrent and quite simply irreconcilable with a God of love, particularly one who claims each human as His child, and affirms the entire natural world as good.

By Hell, I mean the theological doctrine that some people go to a blissful afterlife with God, whilst others go to eternal torment at worst, or are annihilated at best, at

the end of their lives, depending on their religious beliefs or lack thereof. Without attempting a theological overview of this topic, which can be found elsewhere (see for example Harper 2012), the roots of Hell have been historically distorted and co-opted. The message of Jesus, as an engineer of restoration and forgiveness, albeit highly disruptive at times, has been displaced by a message of the Saved versus the Damned, the Us and Them, the Good Guys against the Bad Guys. This binary mental attitude that flavours so much of our political and social discourse derives its legitimacy to a high, albeit implicit degree, from the notion of Hell. It is this notion that reaffirms distinction, separation and provides a moral mask for what would otherwise be barbaric behaviour and beliefs.

It is here that I turn my attention to prisons and the administration and justification of punishment.

### **Underpinnings of the criminal justice system**

There is a well-known adage found in 12 step recovery groups: "There, but for the grace of God, go I". The premise being that there are untold starting points at which we all journey through life, whether biological, genetic, personality-based, economic or social. All of these starting points have been attributed to us through no personal merit or fault of our own. Consider John Rawls' (1971) recognition of this concept through his, Veil of Ignorance, and his subsequent analysis of how society and justice should be organised to protect the interests of the least desirable.

With this in mind, there is something highly distasteful about a penal system that holds

punishment as its modus operandi (see Criminal Justice Act 2003, s142) without a corresponding, and superseding, inquiry into how far someone has been driven to the dock by trauma of various kinds in earlier years. I do not mean that greater weight ought to be placed on mitigating circumstances, which might justify a non-custodial sentence, or otherwise lesser sentence. I mean that on a macro-structural level, we do not inquire, with sufficient depth or sincerity, how far 'we' as a society are collectively responsible for those who commit offences, rather than their being individually culpable. This inquiry is relevant to achieving one of five statutorily stated goals of sentencing and the penal system: reducing crime and preventing recidivism (see Criminal Justice Act 2003, s142 (1)(b)). If we do not understand, or desire to understand with sufficient clarity, why someone is offending, how will we create adequate incentives and mechanisms to address individual behaviour and motivation?

The second issue, which is relevant to both theology and penal reform, relates to the motivation and efficacy of punishment itself, expressed most potently in our country through prison, and the social isolation and restriction of civil liberties that necessarily entails. There has been research and academic literature exploring whether punishment works. Dr James Gilligan (1997) considers shame to be a key driving force, at least in its early genesis, of many cases of extreme violence and pathology; he concludes that a lack of love, from others and for oneself, is at the root of much criminality, and therefore love is its cure; he states (in extract form):

A humane environment is an absolute prerequisite for the healing of violent men; punitive environments only perpetuate the violence of criminals in them... The soul needs love as vitally and urgently as the lungs need oxygen without it the soul dies as the body does; it may not be self-evident to healthy people just how true this is for they have resources of love sufficient to tide them over periods of severe and painful rejection or loss. ... When one has worked with deeply and seriously ill human beings the evidence of the need of love is overwhelming. (1997)

Intriguingly, a study of pre-schoolers by Harvard University (2016) also suggested that the harsher the punishment and shaming of a pre-schooler, the more likely the pre-schooler was to rebel and play with a once forbidden toy.

Assuming for a moment that it is true, on balance, that prisons do not adequately address or resolve criminal behaviour, and the despair or wounds surrounding it, why do prisons continue to exist? To protect society from dangerous individuals, you might say. Absolutely. But these particularly dangerous groups of people form the minority, not majority, of people who are imprisoned.

### **Human responses**

The desire for punishment is one of the most natural, and predictable, human emotions. If someone does something bad to us, or to someone we care about, we want to see a tangible consequence for that person: it would seem the closer to the event the more grizzly the preference. If you doubt this, consider the nature of the wave of

emotion that hits you following an encounter on the Central Line Underground station at 8.05am, Monday Morning; a lady in heels crunches painfully on your toe, bats a derisive and unapologetic glance at you, then climbs into the last available spot on the already crammed carriage. What would you say about that wave of emotion?

Or consider a person who jumps out of a bush and wordlessly slaps you hard on the head; your almost irrepressible first internal reaction (it's arguably a matter of personality/socialisation as to whether you'd actually do it) would be to slap them back, or to shove them. I would suggest, not purely in self-defence either; you want them to see how it feels, to show them exactly the level of pain they have inflicted on you, to an equal or even greater degree.

A brief scan of human history, with its Gladiator rings, public executions, rubber-necking, creative torture devices, Guantanamo Bays, and battles, suggests that we relish inflicting punishment on others at an important level. This premise is seemingly recognised and articulated in early form in the Old Testament: *"But if a serious injury results, then you must require a life for a life—eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, and stripe for stripe..."*<sup>10</sup> from which we derive the associated maxim, "an eye for an eye".

<sup>10</sup> Exodus 21:24; Albeit interestingly, it is argued that that Biblical directive was intended to limit the escalation of retaliatory violence following clan clashes to that which was inflicted, and not to that of a greater degree.

I am not saying that people are wrong to feel a desire to punish. Consider the hardest cases: victims of murder, acid attacks, victims of torture. Think of the families of loved ones massacred before each other's eyes in genocides; victims of sexual abuse; the parents of children killed by 'the other' in conflict or war zones; perhaps also, those wrongfully incarcerated for 30 years until DNA proves their innocence. I have had the opportunity to speak first-hand with people in the latter three examples.<sup>11</sup> They have described in vivid terms the almost subhuman power it takes to eventually overcome the injustice done to them. They cite forgiveness, self-acceptance, and ultimately, love, as the vehicle for doing so (see for example, Tutu 2014). The question then, moving forward is: does punishment contribute effectively to the resolution of violence and oppression in society?

Jesus Himself, albeit cryptic as ever, is attributed as speaking on this theme in his Sermon on the Mount: *"You have heard that it was said, 'Love your neighbour and hate your enemy.' But I tell you, love your enemies and pray for those who persecute you, that you may be children of your Father in heaven (Matthew 5:38-42, NIV). Similarly, "You have heard that it was said, 'Eye for eye, and tooth for tooth.' But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also (Matthew 5:43-44, NIV). There are many analyses which explain that*

<sup>11</sup> See the Bereaved Families Forum, Capital Appeals Project, Louisiana Coalition for Alternatives to the Death Penalty, The Promise of Justice Initiative





Jesus is not saying, 'be a pushover', and do nothing when confronted with evil. Rather he is saying that responding to violence or oppression on its own terms, namely with corresponding violence or a reaction that legitimises it, simply does not work. It does not end its repetitive cycle (see Doubleday 1998, Wink 1998)

To that end, it has been further argued that Jesus' public execution at the hands of both the State, and the religious leaders of his own faith tradition, symbolically and metaphysically embodies this principle: that only love is capable of truly overcoming evil and unconditionally transforming its perpetrators. Jesus absorbs the evil inflicted on him to death, not responding to his State interrogation with an answer, nor to his torturers (Romans were notoriously good at this) with condemnation; rather he says at the climax, 'Father, [God], forgive them for they know not what they are doing'.

Surely this is said of all of humankind, in all its weakness and corruption? Should we perhaps say the same of each other?

### **Time for thinking afresh?**

Where does this leave the academic, policy-making and legal world in terms of penal and criminal justice reform? My purpose in broaching this nebulous subject is simply to put it into the academic and policy-making arena for reflection; to add perhaps alternative fuel to the growing discussion about the efficacy of prison, punishment and the direction that ongoing reform efforts may take. This article is not intended to be a fully articulated academic or theological piece, and I am conscious of its deficiencies; however, I hope it adds a fresh perspective to what is perhaps one of the most important ethical issues of the century: how we treat, and justify our treatment, of prisoners.

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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.

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