

# **Howard League** for Penal Reform

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## Contents

### Introduction

Anita Dockley and Helen Churcher, the Howard League for Penal Reform

Page

2

## Features

### Empathy - What's the Story?

Eleanor Horwood, Edinburgh College of Art

4

### Race and Sentencing: A systematic review and exploration of discrimination in the courts

Ana Veiga, University of Leeds

14

### Releasing babies from prison: the case for change

Helen Crewe, independent researcher

23

### The experience and treatment of women in prison as victims of violence

Rezia Begum, independent researcher

29

### Women, poverty, violence and justice: the need for a new research agenda

Jo Phoenix, Open University

34

## Announcements

### Become a Howard League Fellow

38

### Guidelines for submission

39

### 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

### Anita Dockley and Helen Churcher

This issue explores the intersections between personhood, identity and the criminal justice system. The articles inspire us to think about the human stories behind the policy.

Eleanor Horwood (Edinburgh College of Art) begins with an overview of the key findings from her design for change project *Empathy- What's the Story?* In this article, Eleanor explores how the complex process of empathy can be challenging to operationalise and practice within a prison context. The research, culminating in the production of a prototype card game exercise, illustrates the need for enhanced consideration and training about empathy amongst the myriad different actors who work and live in prison.

This broader focus on experience, stories, and identity sets the scene for further exploration at a micro level. The articles that follow explore these ideas in specific contexts, at different stages of the criminal justice system.

Ana Veiga (University of Leeds) explores the impact of race and ethnicity on sentencing. Whilst decades of research into racial and ethnic disparities in sentencing have shown that, generally, Black and minority ethnic defendants are sentenced more harshly than white defendants, there is little consensus as to the shape and magnitude of these disparities and whether they constitute discrimination. Combining a systematic review with in-depth qualitative research conducted with barristers, Ana Veiga finds evidence



for and concern about racial and ethnic disparities in sentencing. Key findings include evidence of institutional racism and discrimination; covert and discrete discrimination from the judiciary; and a need for greater training and diversity among the judiciary. Veiga explains how the gap in experience and context between defendant and judge results in a lack of comprehension or empathy toward a defendant's circumstances.

Helen Crewe (independent researcher) explores the discourse around, and responses to the issue of babies in prison from a range of stakeholders in 2020. Despite being an area in which the many and varied stakeholders can potentially clash, this article argues for a collaborative approach. Crewe calls for a renewed focus into the issues, and for a more co-ordinated approach that utilizes the efforts of activists, practitioners, and other stakeholders.

Rezia Begum (independent researcher) provides an overview of qualitative research focusing on the experience of women prisoners as victims of violence. The study focusses specifically on domestic abuse victims and the support programmes offered in prison and after release. Begum provides a snapshot of women's experiences and prompts us to think more deeply about them. In listening to women's stories, Begum illustrates how we can better understand the ways in which further research can develop institutional and national policies and improve women's lives.

Jo Phoenix (Open University) argues that women's access to justice is poor and likely to get worse. Her article considers what criminal *justice* means for women whose lives have been impacted by poverty, marginalisation and abuse. Through her work with *The Stage Project* (an organisation working with sexually exploited adult women), Phoenix learned that there remains a group of women whose lives are shaped by the fact that they are both over-policed (for their law-breaking) and under-protected (for the crimes committed against them) and that there is little or no equal access to justice for them.

***Please note***

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

## Features

### Empathy - What's the Story?

Eleanor Horwood

#### Introduction

Empathy can serve to humanise us and our relationships. And yet, in prison, where the very principles on which human life and liberty depend are tested to their limits (Liebling, 2011), one might be inclined to ask where empathy exists?

In this article I present key findings from an independently led master's dissertation, which delved into the topic of empathy within the UK prison system. The project - *Empathy - What's the Story?* - took place throughout the summer of 2020, as the final part of my Design for Change MA at Edinburgh College of Art. I adopted a mixed method approach to research, weaving secondary research with primary findings from qualitative semi-structured interviews and engaged with creative methodologies and product design. It was a journey of exploration and learning, through which I sought to be guided by the plural perspectives of individuals with first-hand experience of working, volunteering, and researching within prison, as well as by those who campaign for, and communicate on, penal reform more widely. I was curious to explore empathy's positioning within



human-centred design and how, within the unique context of prison, empathy might be better conceptualised and hence better supported.

Through primary research conversations I engaged with three prison officers and three prison volunteers who worked in establishments in England and Wales. Additionally, I spoke with a director from The Howard League of Penal Reform; a University Professor and researcher; an independent expert who has formerly worked as a prison officer; a deputy governor and who has volunteered for the Independent Monitoring Board (IMB); and to the co-founders of prison podcast Bird<sup>1</sup>. A Scottish perspective was gained through conversations with a Fellow of Law who worked on secondment with the Scottish Prison Service (SPS) and an artist and educator who has taught in both male and female establishments in Scotland. For reasons of ethics and anonymity the names of all individuals quoted in this article are pseudonyms.<sup>2</sup>

<sup>1</sup> Bird Podcast was founded in 2018 by Kate and Nina. Kate is a social worker with previous experience working in prisons. Nina is a service designer and user experience researcher.

<sup>2</sup> All the names of the research participants quoted in this article are fictitious:

**Amanda** has a professional background in Education. She is now an Honorary Fellow of Law and is currently working on secondment with the Scottish Prison Service.

**Claire** formerly worked for two years at a women's prison establishment in England.

**Emma** currently works as a prison officer at a women's prison establishment in England.

**Helen** is the Branch Prison Support Officer in charge of running the Samaritan Listening Scheme in two men's prison establishments in the northeast of England. She has volunteered as a Listener Trainer in prisons for over 10 years.

**Josh** currently works as a prison officer at a men's prison establishment in England.

**Lisa** is the Director of a Samaritans Branch in the north of England. She has previously volunteered as a Listener Trainer and has been the Branch Prison Support Officer heading up the Listening Scheme in two men's prisons establishments in the northeast of England.

In what follows, I dive straight into empathy and the core question which prompted this research. Next, I outline the positioning of empathy as a buzzword within the design discipline and introduce four emerging critiques around the limits of empathy. These limits were identified during conversations with actors within the prison system and warrant greater understanding and engagement.

Lastly, I present *Empathy - What's the Story?*, an iteratively developed and designed card activity which emerged from my research. This card exercise draws directly on stories and insights generously shared by research participants. The prototype activity, intended for use in a training context in prison seeks to engage, inform and deepen understanding around the subjective and multifactorial process of empathy. This is a process which is very far from clear-cut, as highlighted by this project.



### Why empathy?

As a Design for Change student, I was interested in better understanding the role that social design approaches might

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**Lucy** is an independent expert who has previously volunteered for the Independent Monitoring Board and worked as both a prison officer and a deputy governor for HMPPS. She currently works for a criminal justice organisation.

play in working toward a fairer, more humane and more rehabilitative penal system. Broadly speaking, social design encompasses design practices aimed toward collective and social ends rather than predominantly commercial or consumer-oriented ones (Armstrong et al., 2014). The project was sparked by a series of questions: As outsiders, and without first-hand experience, how can we begin to understand, empathise and contribute to dialogue on change within the space of the prison system? Exploring this question allowed for an examination of how designers work to gain a deeper understanding and knowledge when designing for unfamiliar contexts and user groups. The answer was empathy.

### Empathy within the design discipline

Empathy can be defined as 'the ability to share someone else's feelings or experiences by imagining what it would be like to be in that person's situation' (Cambridge Dictionary, 2020). From a design perspective, empathy is understood to be both an emotional and cognitive process which develops over time through. This occurs when we are able to 'step in' and immerse ourselves in someone else's world and then 'step out' again to reflect on insight from a professional distance (Kouprie and Visser, 2009).

Empathy has become a buzzword in many industries but particularly within design, where it has become entangled with a concept of 'good design'. It entered into design vocabulary, in the 1990's when designers argued that the success of future products hinged upon designers' ability to empathise with their user group from the start of product

**Sarah** is an academic Professor who has conducted and supervised several prison research projects in the UK and abroad.



development (Dandavate et al, 1996). Today, empathy is regarded as central to social design and design thinking (Battarbee et al, 2014).

As explained in IDEO's Field Guide to Human-Centered Design:

*'Design is premised on empathy, on the idea that the people you're designing for are your roadmap to innovative solutions. All you have to do is empathise, understand them, and bring them along with you in the design process.'* (2015: 22)

As a student of design, I found myself puzzled by this positioning of empathy as a concrete means to an end. It sat at odds with my own understanding of the process of empathy as being non-linear and multidimensional (Gibbons, 2011; Leyva, 2013). The idea of 'bringing your users along with you in the design process' is complicated when working with prisons.

### **So, is empathising really that straightforward?**

The last two decades have seen growing critical engagement with the concept of empathy (and indeed its limitations). The positive and simplistic portrayal of empathy within the design discipline has begun to be questioned (see Heylighen and Dong, 2019; Bennet and Rosner, 2019). Whilst acknowledging its power, the concept of empathy has been problematised, particularly in feminist theory and disability studies. A review of design literature highlighted four key areas in the limits of empathy. I was curious to understand, beyond a theoretical design lens, what empathy really looked like and how it was understood through the eyes of actors working within the penal system. It was interesting to note that when discussing

empathy with research participants, tensions were observed.

### **The limits of empathy**

#### *1. Empathy can fail to capture the complexities of lived experience*

Empathy maps are used by designers and provide insight into four areas: 'think', 'say', 'feel', and 'do' (Birch, 2020). Designers have criticised the oversimplification of individual experience when using this popular design tool because it can foster dangerous illusions of understanding (Siegel and Dray, 2019). Critics argue that this type of simplified research risks losing important dynamic narratives, such as the recognition of both how experience changes over time and the complexity of impacting factors which make up our day-to-day experience (Siegel and Dray, 2019).

Kate, a former prison social worker, explained to me how dynamic narratives of individual experience can be similarly lost within the penal system. Pre-sentence reports, for presentation to a judge or magistrate bench, provide accounts of the defendant's context, experience and circumstances. This same level of information does not extend to prison and is not received by prison officers Kate explained 'When large bits of someone's journey are missed, I guess it makes it easier to see people through just one lens.' Lisa, a prison volunteer, concurred that this single lens focus also prevailed within the public sphere. She explained, 'General acknowledgement about what might have led an individual to commit an offence is rarely portrayed, it becomes part of the missing story.'

The challenges of capturing the lived experience of prison are particularly pertinent when we consider that concrete

evidence bases are paramount in influencing penal policy (Wyld et al., 2019). Research aimed at understanding individual needs and differences within a heterogeneous prison population is vulnerable to derailment by political anxiety and media scrutiny as well as funding and policy pressures (James, 2013; Liebling, 2015). A persistent challenge is that statistical figures "... get us only so far in understanding the prisoner experience, which is far more nuanced than most metrics can convey" (Crewe, 2015: 52). Amanda, from the Scottish Prison service, echoed these concerns surrounding the priority given to quantitative performance measurements. She explained '... it's easy to tick box, but profound changes that have to come through relationships, you can't put that in a box - it's so difficult to pin down in a simple form.'

## *2. Empathy involves the body and embodied experience*

Bodies matter in empathy; we seek to understand the experience of another body from the position of our own (see Finlay, 2005; Goldinger et al, 2016). Indeed, it is precisely the fact that our own bodies perceive those of others that enables the very possibility of empathy at all (Merleau-Ponty, 1962). Within design, there is criticism that studies too often fail to sufficiently consider the differences between stakeholders' bodies (e.g., the designers, the end-users, or both) (Heylighen and Dong, 2019). Black, Asian and minority ethnic communities are overrepresented in the prison system, and so when considering the role of design in fostering positive change, these issues must be considered. Numerous factors influence people's experience of prison, including sentence stage, age, ethnicity, race and sex. In light of this, designers have sought to reframe empathy as the act of 'being with' someone, rather than trying

to 'be like' them (Bennett and Rosner, 2019).

Gender differences also affect empathy. Helen, a prison volunteer, recalled her experiences in a male prison '...the men don't want to let anyone see how they really are, that's how they survive, you simply can't survive by being empathetic all the time.'

Interestingly, prison officer training is standardised and there is no differentiation between training for male and female establishments. As Claire explained:

'Men and women are polar opposite people to deal with in situations so it was quite a challenging environment to be in, in the sense that, we had to keep asking 'okay, so how does apply to a woman'. Nine times out of ten the trainers didn't know because none of them had worked in a female environment.'

Designers often use roleplay scenarios in an attempt to cultivate empathy. Prison officer Emma reflected on the roleplay scenarios she participated in as part of her officer training:

'I was incredibly impressed with the acting and stuff but the things I've dealt with on the job you just can't compare. You can't put pure emotion into a book, you can't experience through acting how you might feel in a very stressful and hard situation.'

In working to develop empathy we should always seek to be aware of the inevitable barriers to gaining a full understanding of someone else's experience (Kullman, 2016). In a prison context, these barriers are particularly resonant when we consider the physical barrier of the prison. The physical restriction of movement is itself a prime



example of ‘non-knowledge’ for those who have not experienced it.

### *3. There’s a risk that through empathy we can actually fail to be inclusive*

Pursuing empathy might also inadvertently work to single out or ‘other’ the person or group empathised with (see Ahmed, 2015; Wendt, 2017; Friedman, 2002; Buber 1958). As Carolyn Pedwell (2014) outlines, ‘co-feeling’ can occur when we mistakenly end up assimilating the emotions of the person we are empathising with as our own. Some recent notable examples of ‘co-feeling’ include narratives of the lockdown as being ‘like prison’, including a Guardian article entitled ‘Coronavirus has robbed us of life’s markers and left us like prisoners crossing off the days until we can live freely again’ (Freedland, 2020).

Debbie is a volunteer for the Samaritan Listening Scheme.<sup>3</sup> Samaritan volunteers go to prisons to train peer-support volunteers known as ‘listeners’ who provide ongoing support to other fellow prisoners within their establishment. Debbie expressed her thoughts on the trap of co-feeling:

*‘On a personal level, I don’t think I can ever truly have empathy for someone unless I’ve been in that position myself, unless their situation has happened to me and even then you might say it’s not true empathy because I’m not them. I can’t feel what they feel.’*

Feminist and postcolonial scholars in particular have highlighted a need to acknowledge the power relations at play within empathy. They stress that the political and ethical issues involved in seeking to come to know the private

world of someone else should not go unquestioned (Pedwell, 2014). This acknowledgment of power relations takes on an added pertinence in a prison context and has long been recognised by prison ethnographers (Liebling et al, 1999).

### *4. The short-sighted nature of empathy*

The process of developing empathy in design typically encompass a narrow focus on the needs and circumstances of a select user group at a given time (Heylighen and Dong, 2019). However, the reality is that designed outputs are rarely delivered in the ‘here and now’; their effects are commonly delayed and dispersed. Paul Bloom (2016) critiqued what he termed the short-sighted nature of empathy, comparing it to a spotlight directing attention and aid to where it is needed. Bloom argued that this spotlight creates bias toward what is illuminated, resulting in a disregard for the bigger picture and for others actors (ibid).

Research participant Sarah, an academic and prisons researcher, noted how this spotlight focus of empathy is apparent in the prison system. Sarah explained that when new prison projects are costed, the capital expenditure for the build and (sometimes) the first facilities management contract are included. Yet these figures do not take into account the wider societal costs of incarceration which are arguably harder to calculate. Compensation following assaults, transport costs of hospital visits, and the cost of reoffending are a few examples of issues left out of the ‘bigger picture’ equation. Research participant Josh, a prison officer, described prison as being ‘Like a huge network, like a big beehive with its own structures and hierarchies.’ His words

<sup>3</sup> The Listener Scheme is a peer support service, established in 1991, which now operates in over 100 prisons across the UK. The aim of the

Scheme is to reduce suicidal thoughts and suicide within prisons (Samaritans, 2019).

are a crucial reminder that we do not develop empathy within a vacuum, but whilst experiencing life in pre-existing systems. Within prison, these systems and structures take on a heightened intensity.

Even within the relatively long history of prison research, Liebling notes that 'work is rarely exclusively "prisoner-focused" but tries to understand the prison experience in the light of what others in the environment (particularly staff and senior managers) are doing, saying and thinking' (2015: 22).

### **Key findings**

How do those working and volunteering within the prison system regard empathy and the factors that affect it?

Conversations with research participants illustrated how empathy cannot be viewed in isolation from the differing roles, responsibilities and experiences of professional training. Furthermore, in a prison context distrust, security concerns and minimal opportunities for the development of relationships between uniformed staff, civilian staff and volunteers mean that empathy is often a fine balance.

Training, roles and responsibilities  
Prison officers who took part in the research noted that empathy had not been sufficiently covered or was positioned within training at 'an assumed prior knowledge level'. Claire reflected on the role of empathy in her training:

'It was a "learn this list of skills" thing, so when it came to the exam, it was just a memory exercise. You do a few practical role-plays with peers, but no-one is really assessing so it's very easy for the skill to not develop and then you're straight into the job and there's complete disparity between those who possess the skills and those who don't.'

For volunteers, the training provided by establishments largely revolved around the notion that too much empathy could result in security risks. Safeguards against this included not giving personal details to prisoners, discussing crimes, or becoming involved with personal or institutional problems for fear of grooming. None of the volunteers who participated in the research received any information about the responsibilities of prison officers and the role's challenges. Participants noted that this would have been very valuable.

Samaritan Listener trainer Helen was invited by HMPPS to attend a staff workshop on suicide and self-harm, the content of which was aligned to Samaritan principles of active listening, non-judgment, and supporting people to find their own solutions (Samaritans, N.D.). Helen reflected on the role plays used inuring the workshop:

'It was clear to see a difference in approach to empathy based on training. The officers had all been trained in the 5-minute intervention concept so they were going straight in and would be done in five minutes flat! Us Samaritans and Listeners we were still just gently probing.'

Lucy volunteered in prison prior to joining HMPPS. She explained that, as a volunteer, it was natural to operate from a position of positivity. Later, when working as a Deputy Governor, Lucy found she had to teach herself to keep her own empathy in check:

'It's quite a lesson to have to undo your natural empathy, and look at things on paper for risk assessment, you don't want to become too cynical and risk averse, it's a really fine balance.'

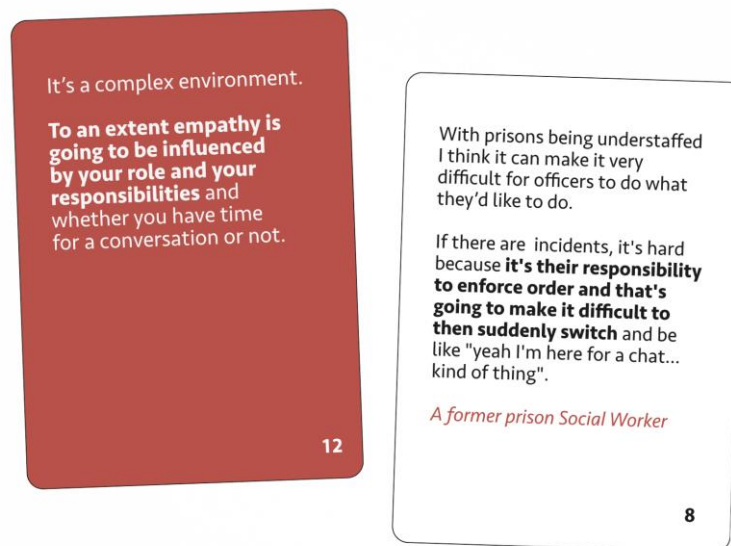
It was evident that, within the unique context of prison, the extent to which individuals could allow themselves to

empathise was framed by varying roles. When responsibilities include decision making with security consequences, empathy was often trumped by other factors. Furthermore, understaffing, inadequate support and an absence of time could derail the very possibilities of empathy. Prison officer Emma was often left to run a wing alone and explained the challenges of responding to the needs and requests of forty different women:

'Sometimes you forget or you just don't have the time and that's when relationships really start to break down. There comes a point where you just have to distance yourself emotionally.'

research participants explained how little empathy is involved or fostered in the system, and that the two can be at odds. Some conversations highlighted examples where the system actively quashed possibilities for empathy to develop. Josh, a prison officer, explained that empathy was a key aspect of his day-to-day experiences. He shared an incident which vividly captured the contrast between unforgiving systems and the empathetic power of people:

'I sat with a chap recently that had been in my opinion ignored. He'd self-harmed. I sat with him and just listened. The guy was ex-army and it was clear he had PTSD. He'd been in prison over 30 times. Prison was his rehab. Clearly no-one had presented any form of empathy or understanding.'



### A design output - *Empathy - What's the Story?*

*Empathy – What's the Story?* is a matching pairs card exercise designed for use in prison, by prison officers, Samaritan volunteers, Listeners (prisoners), senior

Increased staffing would have a positive impact in building relationships and fostering empathy. Emma expressed that she felt, in the eyes of the prison governor at her establishment, just 'a number'.

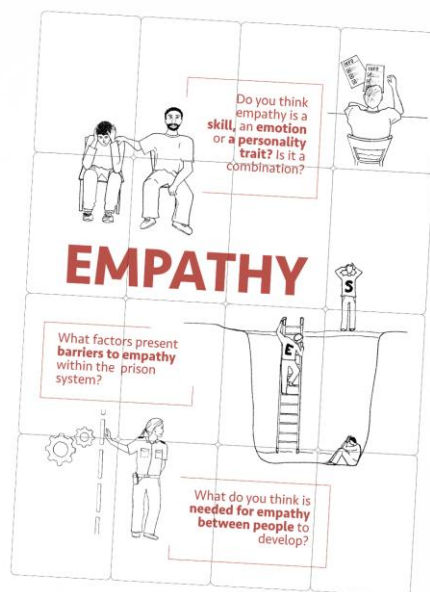
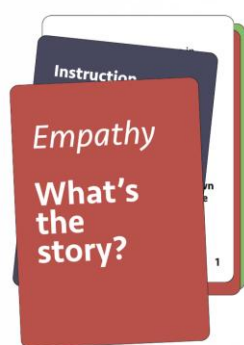
Research participants spoke to the idea that it is people rather than systems that create empathy. Efforts to 'change the system' are often removed from the people living, working and volunteering within them (Wyld et al, 2019). Yet

management and civilian staff. The cards capture the voices of eight men and women within the prison system talking about empathy. The content on the cards reflects their stories and insights shared during data collection. The aim of the game is that small groups work collaboratively to match eight statements, expressing a perspective on empathy, with a corresponding story told by the same person.

Once the statements have been matched to their corresponding story card, the

Stories can act powerfully in three ways: as mirrors, to see our own experiences

reflected; as windows, to look and see the perspectives of others; and as sliding doors, allowing entry into another's perspective (Sims Bishop, 1990). The statements in *Empathy - What's the Story?* are ones which participants may, or may not, identify or agree with. A statement might be a mirror for someone and a sliding door for someone else.



cards can then be turned over to reveal graphics on the reverse and pieced together to construct a puzzle. The completed image reveals three open-ended discussion questions to prompt group conversation around empathy. Participants are prompted to reflect on their own stance on what empathy is, the factors in prison that can present barriers to empathy, and the conditions that might help to support its development.

### Mirrors, windows and sliding doors

The goal of *Empathy - What's The Story?* is to provide a non-challenging way to expose players to plural standpoints around empathy. The hope was that it might help to render a subjective concept such as empathy more tangible. The story and statement concept aimed to convey a simple truth, evidenced throughout the research process: that behind every understanding there lies a story, a reasoning, influenced by our own lived experience.

Agreement aside, using designed activity as a catalyst, the intention is to showcase, different perspectives from different actors and to highlight the subjective and personal nature of empathy.

### Conclusion

'Within prison concepts like "dignity" and "humanity" are difficult to operationalise and practice' (Liebling, 2011: 530). This research project highlighted that the complex process of empathy can be challenging to operationalise and practice within a prison context. The findings highlighted the entangled nature of empathy within the differing roles and responsibilities of varying actors within the prison system. This context therefore warrants enhanced training about these roles and responsibilities, and a stronger, shared understanding of the complexities of empathy. From a policy standpoint the Ministry of Justice seek robust statistical, often cost-driven, figures. Breaking through the treadmill of reactive, stop-start policy is undoubtedly an immense task.



Designer Thomas Markussen argued that social design rarely facilitates social change at a macro scale; however, this does not take away its value. Crucially, it is often engagement at the micro level that can drive ‘the fostering of small, but decisive qualitative changes in the form of re-distributing identities and interpersonal relationships.’ (Markussen, 2017: 172). Through the design of *Empathy - What’s the Story?*, my engagement with the concept has convinced me that social design does have a role to play in facilitating small but important qualitative shifts in interpersonal relationships within prison gates, and indeed changing perspectives beyond them. Exploring creative avenues to facilitate ‘windows’ and ‘sliding doors’ onto systems and actors has merit and potential. Socially engaged designers can support this in using and promoting new methods and tactics.

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## Race and Sentencing: A systematic review and exploration of discrimination in the courts

Ana Veiga

This article stems from my MPhil dissertation in Criminological Research at Cambridge University, for which I conducted a systematic review on race and sentencing studies in England and Wales and the United States. This was supplemented with qualitative data collected during interviews with ten barristers. The systematic review was conducted to ascertain whether there is an identifiable impact of race and ethnicity on sentencing, and to explore the different contexts and settings of such effect. Decades of research into racial and ethnic disparities in sentencing have shown that, generally, Black and ethnic minority defendants are sentenced more harshly than white defendants. There is little consensus as to the shape and magnitude of these disparities and whether they constitute discrimination. Whilst the majority of studies find that minority defendants are punished more harshly in comparison to white defendants (Steffensmeier and Demuth 2001; Kutateladze et al. 2013), a considerable amount of research finds no racial or ethnic differences in sentencing outcomes (Franklin 2013; Tartaro and Sedelmaier 2009). Indeed, a small number of studies have found that white people are sentenced more severely than minority defendants (Walsh 1991; Brewster 2002). Interviews with barristers allowed me to explore this difference in greater depth and assess whether disparities in sentencing could be explained by discrimination. The interviews allowed for an exploration of the nature and role indirect and covert forms of discrimination and examined



what could be done to combat discrimination in the courts.

### Systematic review

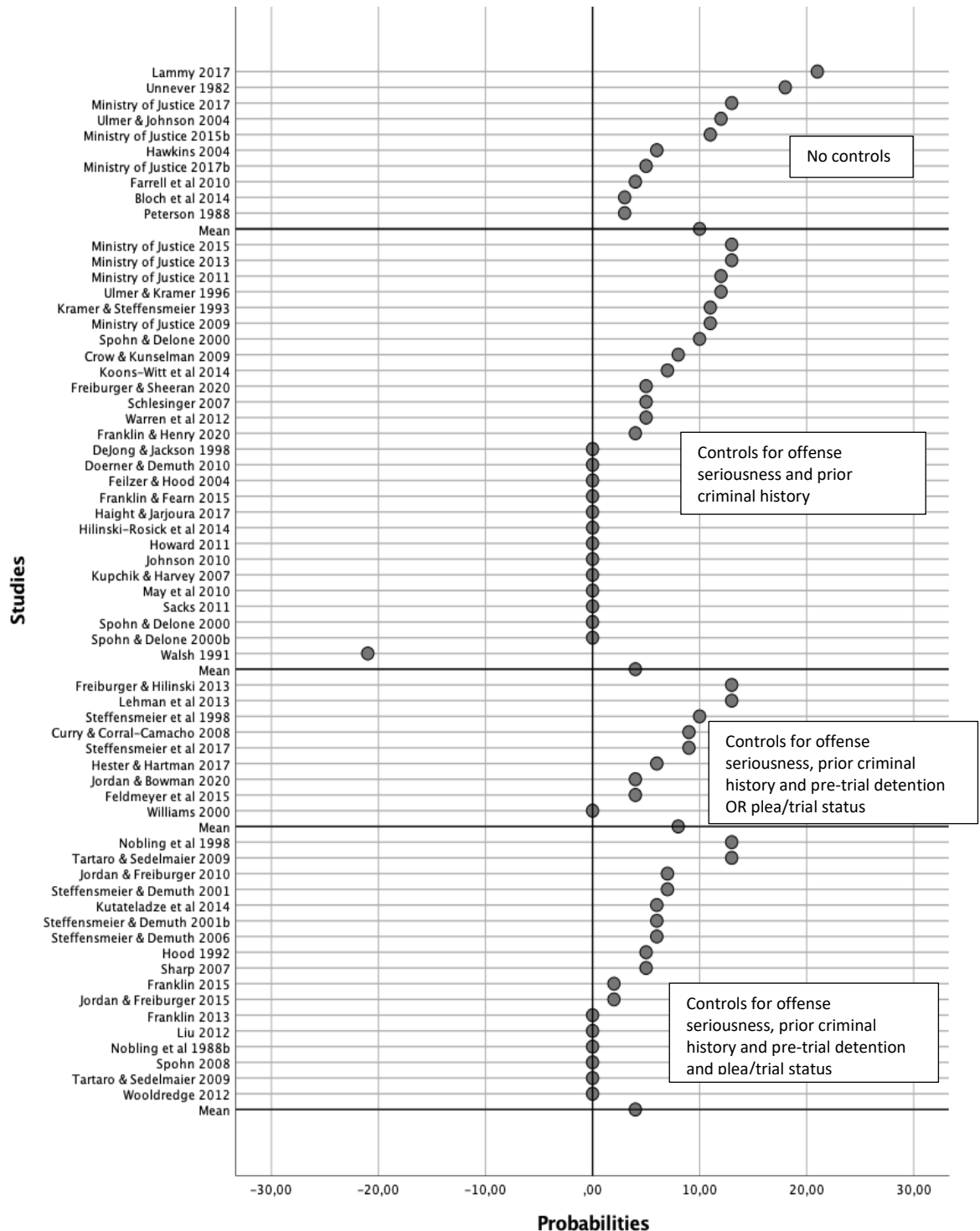
The systematic search yielded a total of 1,092 records, which after removing duplicates, screening and assessing the articles for eligibility, resulted in a total of 91 studies being eligible for analysis. The majority of the studies were based on sentencing decisions in the United States, with only 14% of studies based on sentencing decisions in England and Wales. This was due to the small number of studies that examine disparities and discrimination in sentencing in England and Wales. The majority of English and Welsh studies present bivariate and descriptive statistics; they simply describe the data without providing analysis, therefore not meeting the eligibility criteria. This highlights the urgent need for studies that adequately examine sentencing disparities in England and Wales.

On review, 78% of studies found that minorities were treated more harshly than their white counterparts, 16% of studies found no difference in treatment and only five studies found an inverse result. This confirmed the impact of race and ethnicity on the sentencing of minority defendants. The systematic review also compared the findings of studies in the United States with those in England and Wales. It found that in

England and Wales, Black defendants were treated more harshly than their white counterparts, being 9.5% more likely to receive a custodial sentence. Black defendants in the United States were 4.5% more likely to receive a custodial sentence. Even when taking into account the seriousness of the

offence and the individual's criminal record, sentencing disparities appear to be greater in England and Wales than in the United States.

**Figure One, Black/White contrast imprisonment decisions- legal controls**



The no-discrimination thesis argues that racial and ethnic disparities exist in sentencing due to the failure to control for legally relevant variables; once controls for legal variables are exercised, apparent disparities disappear (Wilbanks, 1987). The systematic review contested the no-discrimination thesis and showed that as legal controls increase, the impact of race and ethnicity decreases but is still present. A total of 17 studies controlled for offense seriousness, prior criminal history, pre-trial detention and plea/trial status and found that on average, Black defendants were still 4% more likely to receive a custodial sentence than white defendants.

Figure One represents studies from the systematic review that examined imprisonment decisions for Black and White defendants, aggregated per the number of controls. Each circle denotes the greater probabilities a Black defendant has of being imprisoned compared to a white defendant.

Hood (1992) was the only study which included controls for all four variables in England and Wales. Hood's study found that even after controlling for legal variables, Black defendants still had a five per-cent greater probability of being sentenced to prison than white defendants. This shows the need for more recent sentencing studies that control for legal variables to be carried out in England and Wales. At present, most studies are conducted internally by the Ministry of Justice. The problem here is that 'official sentencing data has traditionally been presented in an aggregated format, precluding the use of regression modelling techniques' (Pina-Sánchez et al, 2019: 3). The use of regression modelling techniques would allow researchers to test for and properly examine racial and ethnic disparities and

whether they could be indicative of discrimination.

### **Barrister interviews**

Interviews with barristers were conducted to further determine whether there was discrimination in the sentencing of minority defendants and to explore the different forms and contexts it took place in. The interviews also sought to examine the issue of indirect discrimination that is harder to detect in quantitative studies as well as explore what needs to be done to combat discrimination in the courts. A total of 10 interviews were conducted with barristers from three different chambers; Bedford Row Chambers; Fenners Chambers; and King's Bench Walk Chambers. Three of the interviewees were contacted at a networking event. These barristers then shared details of the research with their colleagues. This 'snowballing' sampling technique resulted in an additional seven barristers being recruited. The interviews took place remotely due to the Covid-19 pandemic. Throughout this article, pseudonyms are used to protect participants' anonymity.

Nine out of the ten barristers interviewed confirmed that they had witnessed racial and ethnic discrimination from judges towards defendants. One barrister who said they had not witnessed any discriminatory behaviour, however, did say that they felt that a defendant had been treated differently due to their ethnicity or race.

Michael, a barrister, explained that he had seen judges 'acting in ways towards defendants who are of Afro-Caribbean origin in a way that I do not personally believe they would act if they were white British peers of the same age'. He also noted that 'I've seen the same judge behave more sympathetically towards people of white ethnicity'. Claire similarly remarked that 'there are certain judges

that are renowned' for racist behaviour. Claire explained how some judges would behave when there was a Black defendant in the dock:

'[They] would immediately ask what their immigration status was and ask whether an IM3 had been served, which is a notice of deportation before even finding out whether or not they were second generation, or had UK citizenship. Just the automatic assumption was see a Black or minority defendant, immediately ask about their immigration status but obviously they wouldn't do that if it was a white person in the docks.'

These accounts of more blatant and direct discrimination from senior barristers contrasted with the experiences of some junior barristers. Rachel explained 'it's not an overt discrimination by judges' and Emily similarly remarks 'I don't think it's blatant and direct'. Another barrister, Hannah, explained that discrimination 'is really hard to pinpoint ... very few people in the legal profession would be stupid enough to make it clear that the reason they're discriminating against someone is because of their race.'

Discrimination has changed its form to become more covert and discrete. One barrister suggested that discrimination can occur when 'you want to achieve something unusual, if you're asking for someone not to go to prison where normally you would expect them to. You seem to have more of a chance if they're well educated, if they're a bit more like the judge, they've got a really good job.' Tom also agreed that discrimination occurs in situations 'where a judge has given a white defendant a chance' and compared this to the Oxford student case where the judge decided not to imprison the student because of her intelligence and the perceived impact on her life chances. Tom remarked how 'there

seems to be an idea that if you're a young Black boy or man from south east London it kind of doesn't make much difference if you go to prison since you're not doing much anyway'.

Discrimination was particularly salient in drug offences in spite of the existence of sentencing guidelines. One barrister remarked 'very often young Black men are more likely to receive custodial sentences than their white counterparts, and this is because of the judge's approach to the sentencing guidelines'. Particularly alarming were cases involving county lines; Emily affirmed that she had 'never seen a white man sentenced for county lines'. John recalled how a judge once told a Black defendant that 'we're sick and tired of having people like you coming to places like these'. As Claire explained, there was also 'real significant reluctance on the part of the judiciary out of London to employ the Modern Slavery Act regarding the protection of vulnerable children through county lines once they see they're Black.'

All barristers who were interviewed felt that indirect discrimination was an ongoing issue. It commonly occurred due to the 'crossover between the social class or social status or position of a person and race as well' and was predominant in bail decisions. Anne explained that:

'... lots of young Black men are not in a position to have anyone in their family to offer surety to enable them to get bail and I think there's an expectation almost on the part of some judges "oh well this person is not going to get bail and I'm not going to give him any consideration towards that"'.

John explained how judges, as in society more broadly, could be prejudiced; for judges, '... it just means they have



preconceived notions based on their experiences'. This makes it harder for them to comprehend or sympathise with the defendants' wider circumstances and could lead to a denial of bail or consideration of mitigating factors. Similarly, Emily remarked that 'if you don't have an address it can sometimes be very, very difficult to obtain bail'. Emily further explained 'you're more likely to not have a fixed address if you're from an ethnic background'.

In order to combat discrimination in sentencing, on barrister noted that 'judicial diversity is a really big thing because ultimately it's up to the judge on an individual basis how to sentence someone'. Some minority ethnic defendants get harsher sentences because judges are unable to sympathise with them and understand where they are coming from. As Tom explained, 'some judges, they can identify more with defendants that look like them and made mistakes, so I think judges sometimes treat more favourably defendants with whom they feel they can identify more'. John similarly pointed out how mitigation is about 'how much the judge identifies with the defendant'. Hannah explained:

'Judges are making decisions about whether or not someone's personal mitigation qualifies as, is meant to be used to reduce somebody's sentence but they're looking at people who have grown up in environments that they've never been to and in. They don't have people in their friendship circles who are Black and working-class. How are they going to know whether or not growing up with a single mother in an estate in Brixton road is sufficiently met with a three-month reduction in a sentence. They haven't lived that experience.'

Moreover, as Tom remarked, 'training is really, really important'. Hannah summarised:

'We treat the learning around being anti-racist and the learning around being anti-discriminatory as being something which isn't actual to the role. There needs to be more diversity because nothing beats having first hands experience of different things that happen but the fact is what are you going to do, you're not going to get rid of all of the white-middle class, middle-aged men who are already sitting on the bench. So you also need to introduce things in the system that make them think about their prejudice. And I think there needs to be a lot more done in terms of very challenging anti-racism training for judges'.

The systematic review showed that people from Black and minority ethnic backgrounds were more likely to be imprisoned than white defendants. The interviews with barristers suggested that this could be due to minority defendants not being as likely to receive suspended sentences. As Emily explained:

'Getting a suspended sentence is really difficult for young Black men because to get a suspended sentence you need to have relative prospects of rehabilitation. But if you don't have a job and you don't have a house and you don't have the support, then you don't have the things that you need to be rehabilitated'.

When speaking about her experiences, Emily remarked that 'because of their race and the factors in their life, the social factors that work against them, they are more likely to get a higher sentence than a white person'. Rose explained:

'...there'll be considerations in their lives that might mean they have non-standard backgrounds. So, they may have come

from poorer communities or they may move addresses more or they may have temporary housing. What can be perfectly innocent like moving address or no longer living somewhere can be something that makes them look less reliable or like a flight risk or something that might worry a judge and so because of that they're treated differently'.

Institutionalised racism and discrimination was present in the criminal justice system, identified by several of the barristers interviewed. One remarked that 'I just think it's more the system is set up to probably discriminate against people but it's not an overt discrimination by judges'. Another explained 'I think it's definitely the system, the sentencing guidelines and things like that, disproportionately affecting certain defendants'.

The Macpherson Inquiry (1999) into the murder of Stephen Lawrence established that institutionalised racism 'can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people'. With stop-and-search disproportionately applied against minority ethnic communities (now more than ever), examples of institutionalised racism and discrimination are ever present. People from Black and minority ethnic backgrounds are 9.6 times more likely to experience stop-and-search than their white counterparts. This disparity increases 40 times, with Black and minority ethnic people being more likely to experience stop-and-search under s.60 of the Criminal Justice and Public Order Act 1994, which no longer requires reasonable suspicion to search someone (Home Office, 2019; The Guardian, 2019). This impacts the number of ethnic minority defendants that are

apprehended. Barrister Hannah explained that 'the areas that have the highest BAME populations are over-policed compared to areas that are more suburban, so you're more likely to be arrested for something than if you were a white person doing the same thing'.

Not only is stop-and-search disproportionately and discriminatorily applied against minority communities, it further influences sentencing decisions. Claire explained:

'Because stop and search is very disproportionately applied to the Black community the number of times where the element of a case has been the extent to which a client has been repeatedly stopped and searched, the judge seems to take the view that that's because they're up to something. Not because on ten times they weren't up to something and the one time that they were up to something doesn't mean that they were disproportionately affected by the previous ten times'.

Claire continued:

'There's a real reluctance for the judiciary to accept that policing is implemented in a racist way, so that affects where if they haven't followed the codes of practice for the police whether they're less likely to exclude evidence as a result of those breaches. So if they think well the police are only doing that because they must've been at it then if they've breached that, then they won't exclude the evidence. So it has an effect on the granting of bail, admissibility in trials, summing-up and sentencing in particular'.

Particularly alarming is the situation with drug offenses and the sentencing guidelines. Emily explained that 'I have a bit of a bugbear when it comes to sentencing for drugs matters and unfortunately a lot of people that get



sentenced for drug matters, particularly a certain type, are young Black men and I feel that they end up with a disproportionately higher sentence than other people'. Rachel similarly explained that 'Black defendants are disproportionately sentenced in relation to drug offences and drug offences have much higher sentencing guidelines.' Rachel questioned whether '[this] should be taken into consideration and there should be shorter sentencing guidelines for drug offences or better rehabilitation, specifically targeted as you know they disproportionately affect minority communities.' Anne recalled how the opposite occurs in courts:

'... most judges find reasons to put defendants, particularly young Black men, into a significant role category where for women or white or other ethnic backgrounds individuals, they would be more open to arguments that that individual is in a lesser role. And that results in more custodial sentences and longer custodial sentences and I'm convinced that that is a thing'.

### Conclusion

This study that there is both evidence for and concern about racial and ethnic disparities in sentencing. The interviews with barristers evidenced that discrimination exists in the sentencing of minority defendants in England and Wales, confirming how the unwarranted disparities found in the systematic review could be the result of discrimination. This highlights the urgent need for quantitative research that adequately controls for legal variables and for further qualitative research that is able to explore the underlying mechanisms that result in sentencing disparities.

Mitigating factors enable a judge to reduce and even suspend sentences, and so lack of judicial diversity (and by extension, understanding of contextual

factors) could be one of the reasons why minority defendants are more likely to be imprisoned and receive longer sentences than their white counterparts. Currently 93% of the judiciary are white (Ministry of Justice, 2020). Increasing judicial diversity, however, is not a simple solution; even if achieved via positive discrimination, it will take some years until the judiciary is diversified. Self-reflection, education, training and commitment are vital.

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## Releasing babies from prison: the case for change

Helen Crewe, independent researcher

### Introduction

Babies in prison represent a small and invisible population. This population has to a minimal extent been acknowledged in criminal justice policy, such as the early prison release scheme in England and Wales in response to COVID-19 (Ministry of Justice, 2020). Whilst this article contributes to an emerging debate relating to the continuation of sentencing pregnant women and women with babies to prison, it also highlights renewed calls to uphold the rights of vulnerable populations such as babies in prison, sparked by the COVID-19 pandemic. This article explores the discourse around, and responses to the issue of babies in prison from a range of stakeholders in 2020. Despite being an area in which the many and varied stakeholders can potentially clash, this article argues for a collaborative approach.

In the summer of 2020, the UK government produced a policy review document that recommended changes for mother and baby units (MBUs), including extending the age of separation between babies and mothers from 18 months to two years (Ministry of Justice, 2020 (b)). A notable exclusion from this review was the work of the Howard League, an organisation that provides support in many forms, including legal representation for mothers. In April 2020, the Howard League for Penal Reform (2020) had been successful in releasing a young mother and her baby after taking this case to the court of appeal.



### International context

A challenge in the field is that there is no international agreement on an age limit for children in prison. The treatment of babies in prison is inconsistent across countries. In many nation-states across the world, babies can be accommodated by prisons to live with their mothers from birth. In fact, Norway is the only nation that does not allow new-borns, babies or children in prison (Crewe, 2020). In Germany, young children can live with their mother in prison until the age of six (Bauer, 2019), and in India children up to this age are imprisoned with their mothers without any pre-school education (Fair, 2009). While the practice of keeping mothers and infants together is common throughout the world, in the United States this has changed and there is now less cohabitation for babies in prison (Covington, 2017). MBUs are presented as a solution in the majority of countries, however many studies highlight that these living arrangements are not always in the best interests of children (Herzog-Evans, 2013; Scotti, 2020; Warner, 2015).

Babies are subject to a life in prison when their mother is given a custodial sentence. Studies show that the first two years of a baby's life are crucial for development; exposure to stress or adversity during this period can affect the rest of their lives (House of Commons Health and Social Care Committee, 2019). Academic research with women,

through interviews, also illustrate the detrimental effects of the separation mothers and babies and suggests that prison policy makers should take this into account (Abbot, Scott, Thomas and Weston, 2020). MBUs pose a unique problem, as illustrated by Galloway et al (2014) who state that they “may reduce the trauma of separation of children, but it might also mean living in an environment that is detrimental to child development”. This dilemma has also been expressed by a former baby in prison; when reflecting on her own experience, Deborah Jiang-Stein (2013) asked, ‘Should [I] have been allowed to form a bond with her prison mother? Was it correct that [I] was separated?’

### **Theoretical landscape**

There is an urgent need to understand how to support babies in prison, who are at risk from suffering the consequences of living in an institution, not least in light of the COVID-19 pandemic. To understand the rationale behind imprisoning a vulnerable and voiceless population during a pandemic, we could learn from Angela Davis’s (2016) theory that imprisonment is not only a material and objective problem but is internalised as ideological and in society’s psyche. Rebecca Covington (2017) argues that if a prison is not a suitable place for a child, then it is not suitable for their mother. With a focus on reform this study asks, ‘Do we want a criminal justice system that is generally more lenient? Is it fair to introduce a system that may have more variation in sentencing or treats parents more leniently than non-parents?’ Covington’s (2017) article has provided a theoretical discussion which has explained that re-thinking babies in prison needs to look beyond a narrow focus on sentencing issues, or living conditions, and child development.

### **Policy landscape**

A Ministry of Justice policy review document (covering England and Wales) announced that 17 babies were resettled with their mothers during the COVID-19 crisis (Ministry of Justice, 2020). This review referenced voluntary sector organisations that are working within MBUs in England and Wales. In omitting the work of the Howard League for Penal Reform (following the successful release of a young mother, and their ongoing work with the APPG on women in prison), the government appear to be using the COVID-19 crisis to elide important details and are failing to support sentencing changes that would be necessary to prevent pregnant women and babies living in prison.

To compound the problem of parenting at a governor’s discretion, the cost of supporting growing babies has to be met within prison budgets. For example, the Ministry of Justice (2011) released details of expenditure for MBUs. This service specification estimated that baby food and clothing for 12 children would cost approximately £8,000 per year. In a recent policy document, it is stated that children can be provided for through the prison budgets on a case-by-case basis (Ministry of Justice, 2020b). For babies and pregnant mothers there are issues not just with receiving appropriate support but also issues relating to visits from families or agencies. Prison officers are required to escort pregnant women to medical appointments (both within the prison, and at external hospitals).

Despite campaigns by activists, the government in England and Wales have recently announced a plan to increase the female prison estate. This policy document explains that whilst ‘custody should always be a last resort’, up to 500 new places will be built in existing prisons (Ministry of Justice, 2021). This plan has been condemned by many,



including the charity Birth Companions who state that there will be an increase in the number of pregnant women and mothers of infants sentenced to custody (Birth Companions, 2021).

#### Articulating the case for change

A stakeholder can be defined as an individual, group or network of people involved with, having interests in, or affected by a particular activity (Duke and Thom, 2014). Stakeholders such as policymakers, non-governmental organisations and researchers have an important role to play in monitoring and challenging the implementation of government policy.

#### The role of activists and charities

Activists are helpful in exploring local interpretations, implementation issues and areas for developing future-orientated solutions. Activists have the ability to highlight the consequences for criminalised women and their babies as well as raising awareness about current localised problems.

In March 2021 and in recognition of International Women's Day and Mother's Day, two organisations (Clean Break and Birth Companions) collaborated to organise an event called 'Disrupted Lives'. Using social media, the #ChooseToChallenge Maternal Imprisonment Campaign, challenged the sentencing of pregnant women and mothers of young children. These campaigning efforts are important but not always co-ordinated to involve all stakeholders. For example, an important lobbying organisation called Women in Prison was not present despite highlighting the need to agree a plan for the early release of pregnant, or women and children living in MBUs. In campaigning organisations, there are often disagreements regarding the focus of campaigns.

Recent years have resulted a challenging landscape for NGOs and some smaller independent organisations supporting women and babies in prison have not survived. For example, Babies in Prison (registered in 1992) ceased to exist in February 2019. This charity provided relief for babies who are 'in conditions of need, or hardship, or distress' (Charity Commission, 2021). Larger NGOs, such as Birth Companions, have survived by working with governmental departments and have informed the recent Ministry of Justice (2020) review for England and Wales.

#### The role of practitioners

Governance and its strategic dimensions play an important role in understanding the range of practitioners. Currently implementing and complying with local, regional and international rules and regulations involve complex bureaucratic systems of monitoring. In many jurisdictions around the world there is evidence that for the human rights of female prisoners have been violated. For example, legal cases have been documented in which women in prison have been fed rotten food or had no assistance when giving birth in their cell (Van-Gundy and Bauman-Grau, 2013). Conditions for women in prison can result from the implementation of programmes which fail to challenge the underlying health, social or welfare issues for women (Carlen and Tombs, 2006; Carlton and Baldry, 2013). Female prisoners are widely acknowledged as representing a population who have experienced a lifetime of discrimination. Women in prison have disproportionately been victims of abuse, poverty, substance misuse or have mental health problems (Corston, 2007; Knight and Plugge, 2005).



### The role of academic research

Academics play an important role through researching and exploring the efficacy of policy and practice, and indeed alternatives. For example, Shona Minson (2021) highlighted the Human Rights Committee recommendations following their inquiry babies during imprisonment. The government have not yet acted on these recommendations.

### Conclusion

COVID-19 has provided stimulus for governments to release pregnant women and babies from prison. Despite this health crisis and the obvious risks to vulnerable populations that are often 'voiceless', pregnant women and mothers continue to receive custodial sentences. Organisations and individuals have campaigned through legal action, policy reform and other publicity. These struggles have not yet had a sufficient impact and there is evidence that the government in England and Wales not only intend to extend the length of time that babies can live in prison, but also are planning to increase the female prison estate.

A more co-ordinated approach is needed that utilizes the efforts of activists, practitioners, and other stakeholders. There is a need to spark a new conversation about babies in prison. This population is voiceless and by keeping silent nothing will be done to change their plight.

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### About the author

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## The experience and treatment of women in prison as victims of violence

Rezia Begum

### Introduction

The aim of this research project, part of my doctoral research, was to explore the experience of women prisoners as victims of violence. A qualitative study was undertaken, focusing specifically on domestic abuse victims and the support programmes available to them during and after release. The research seeks to ascertain what treatment or programmes available to women on admission to and release from prison which speak to their needs as regards being the victims of violence. As a small-scale study, it provides a snapshot of women's experiences and prompts us to think more deeply about the experience and treatment of women in prison who have experienced domestic abuse and violence.

### Methodology

Semi-structured interviews were conducted with 22 women at two UK prisons (termed Prison One and Prison Two). Their participation in this study was voluntary. All of the women were aged between 20 and 48, and had a history of domestic, sexual, emotional and/or physical abuse. Most of the women had been abused by a close relative or somebody that they knew well (e.g., partner, husband, close relative, other). It was of paramount importance to treat the interviews with sensitivity, given the nature of the subjects to be discussed; I responded to emotional cues, ensured that support was available and did not continue with distressing question topics. It was essential to observe and listen to women's stories. Findings were analysed using thematic analysis (Braun and Clarke, 2006).



### Current understandings

The Prison Reform Trust (2017) found that 57% of women in prison were victims of domestic violence. Moreover, 53% women prisoners reported that they have experienced emotional, physical or sexual abuse as a child. Academic research has also illustrated the links between offending and domestic violence. Carlen (1987) and Borrill et al (2003) found that women who commit crimes were often at risk from the people they lived with. Liebling (1992) found that women in prison who attempted suicide reported being abused or having experienced domestic violence. In 1997, HM Chief Inspector of Prisons published a thematic review of women in prison. The aim of this review was to 'discover how effectively the security, through care, training and resettlement needs of women prisoners [were] being addressed, to assess the effectiveness of the organisation and management of female estate and to make recommendations for improvement' (1997: 10). The report found that many staff were unaware that women had a history of abuse and that 'very few staff...had any training in working with abused women' (1997:132).

The Howard League for Penal Reform report that two thirds of women in the criminal justice system have experienced

domestic abuse (The Howard League for Penal Reform, N.D.). Despite these stark figures, research specifically on the experience and treatment of female prisoners who have suffered violence is limited.

### **Findings**

The findings emerged along five themes: experience of abuse, reactions to abuse; timing of abuse; support and treatment in prison; and support following release.

#### ***Experience of abuse***

Across both prisons, all the women who were interviewed explained that they had experienced domestic violence by their partners, husbands or biological fathers.

‘My ex-partner was hitting and abusing me...’

‘...in an abusive relationship with my husband...’

‘My dad abused me and my mum. While I was growing up I met my boyfriend. He was nice at first then he started bullying me.’

#### ***Reactions to abuse***

Some of the women interviewed suggested that they had tried to leave their abusers. These women also noted that several people around them – including family and friends – were aware of the violence. They explained that whilst some of these people offered support, others were unhelpful. For example, one interviewee explained:

‘I tried to get away from it all but it was difficult. They can be nice, but they really don’t mean it. My friend was aware what was going on. She was helpful, but I loved him. The police got involved but they were not helpful they did nothing - only give advice like go to Women’s Aid.’

Another of the interviewees expressed:

‘He always followed me wherever I went. My family knew about my experience. They wanted me to leave him, but I was scared that he might kill them if I left him. He did not like me going to see my parents. My parents left town because of him and his violence. The police were involved but they did not do much because I didn’t react strongly.’

The women who participated talked about the barriers to accessing support and leaving their abusers. One woman explained:

‘My problem was that I always dropped the charges - it’s hard to explain when you are married...My family have helped me by supporting me, but it’s always on your mind, it’s hard to forget violence. I will fight myself to forget the abuse by talking and being open about my abuse.’

One woman described the cyclical nature of abuse and the challenges in accessing support:

‘I tried to stop the violence by leaving him, but I went back to him. I had to think about my children and their happiness. I wanted them to have a good upbringing, but he never let this happen. My children were scared because of the violence. I tried to protect them, but it was so hard. I tried to ease my own mind by clinging onto this creature, but it did not work – he’s not the kind type...My sister knew of my problems - she got involved in helping me, but it never worked.’

In addition to these experiences, several women echoed fears of violence towards their children or families, and therefore chose to remain in their relationships. For example, one of the women explained:



'I did not get the police involved because he would kill me and my parents and my child.'

***Timing of abuse***

Some of the women interviewed had suffered abuse directly prior to committing the offence that led to their current custodial sentence. These women expressed they had committed the crime as a direct result of domestic violence and abuse.

'I experienced horrifying violence before my offence. I was so down...so down. I just lashed out. I was so hurt, so hurt. I was punched in the face by my boyfriend and kicked around before my offence. The ten years of domestic violence really got to me and I just shot like a gun. The abuse really got to me. During that time, I felt bad for what I did. I was not thinking.'

'Because of violence I always felt low, worthless, ashamed of myself and weak.'  
'I was so badly abused by him that I just wanted to forget it. I turned to drugs before I committed the offence. I burgled for money so I could get drugs. I needed drugs to forget my pain and to stop crying and just forget everything.'

Support and treatment in prison  
The women from Prison One who took part in the interviews all attended the Freedom Programme, a course available to female victims of violence. Interviewees noted that this course was helpful and enabled them to feel stronger and see their experiences from different perspectives. The course also helped the women to make important realisations.

'...I have done a course here in Prison. I completed a relationship course and a freedom programme, which was excellent. It helped me to see things differently. I will never be a victim of violence again, that's for sure. During the Freedom programme women have

opportunities to talk about their experiences and there is wide discussion about the dominator and the types of men. The freedom programme is a fantastic course, it makes me feel stronger and I see things from a different direction, and I realised then that I was a victim and it was not my fault...'

'The prison service was aware that I experienced violence. I heard about this course and I attended the course which I am pleased about.'

'I am also attending counselling courses which helps me to talk to someone about my experience. I can talk to a counsellor whenever I need to. When I speak to a counsellor I feel I've got something to look forward to in life in a positive way and life is worth living.'

In contrast to women's positive experiences in Prison One, women in Prison Two were not offered the same level of support.

'Unfortunately, there is nothing in this prison. I was here for eleven years; they haven't offered me any courses on domestic violence...I've only done an Anger Management course.'

Women in Prison Two felt that counselling services would be helpful for them to manage and navigate their experiences in the prison environment. One of the women explained that:

'...there is no help in this prison, definitely there should be, women who are in prison have been abused...there's no support in prison. I want to see more counsellors and courses in prisons. Prisons are not aware of abuse...I am not on medical treatment.'

Others explained that there were some counselling and medical services available but that they were not sure of

the help that is available to them. One woman explained:

'I think there might be a little counselling, I am not sure of this. I am not really aware of this. Nobody here asked about my experience. I am taking anti-depression medication because of the violence and I am always thinking about my children...'

### **Support following release**

Some of the women interviewed talked about the new life they hoped for following release. The majority of the women reported that they would go back to their families and children. Some reported that they would like to do courses or help other women experiencing domestic violence. Some women were also hopeful of the support they would receive from probation. None of the women said that they would be in danger upon release.

'I will go back to my Mum's in Liverpool; my boy is with my mum. To be honest my son's father was troubling me, he gets drunk, he was troubling my son... Drinking, drinking... He tells my son, your mum's a murderer, my son gets upset with that. I don't intend to have contact with him. I've been thinking about that when I get out – he's wicked... My main thing is to be with my son and go to college and do NVQs. I will try to get funding and do 'A' levels and help women who are abused, do counselling, get things in place, ideal to stay first at my Mum's... Not going back to him. I will live with my family.'

Similarly, another woman stated:

'...I will go back to my children, my home, my new life and forget the past and start a fresh life... I won't be in danger - I killed my partner. He did so much to me I just couldn't take it any longer.'

One woman suggested how probation officers might be able to help her upon release:

'The probation officer will sort this out - they are quite good. I've got lots of confidence. I have done Maths and English. I want to go to College.'

All women interviewed confirmed that they would not be in danger after being released.

'The person who abused me is still out there but far away. I won't be in danger. I have moved on.'

Another woman expressed similar sentiments:

'I will not be in danger when I am released from prison, I will be hassle free.'

### **Conclusions**

The women in prison who took part in this research experienced different forms of abuse, mostly by an individual close to them (e.g., partner, boyfriend, family member). Some women drew links between their experience of abuse and their offending. The women who took part explained how difficult it was to escape abuse because of many different factors including family ties, financial difficulties, or the wellbeing of their children. In spite of the prevalence, findings suggested that there is inadequate support available in the prisons examined. Whilst it appears that the women are offered medical help, the emotional and psychological support desired by women interviewed (therapy and counselling) appears to be extremely limited. Additional help and support at the institutional level is needed to address the emotional and psychological needs of women in prison. Some of the women interviewed were hopeful about returning to their families upon release

and the opportunities that probation and education could bring.

In listening to women's experiences, we can better understand how further research can develop institutional and national policies and improve women's lives. Further large scale and in-depth research is required to understand what interventions would be most beneficial during prison and post release to help abuse victims. Further research is also needed to explore the positive link between courses and desistance. Research exploring women's experiences could also be of use in court policy, whereby sentences could take into account historic and ongoing abuse. Research exploring women's experiences could assist the prison service in meeting its objectives of providing a safe and healthy environment for women: it addresses the challenges faced by many women; it enhances an understanding the impact of abuse on women's sentences and their experiences of prison regimes; and it would assist in the development of better support upon admission, during detention, and upon release.

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Rezia Begum works in a care home as a support worker. She has completed her BA Honours degree at the University of Nottingham. Rezia also has an MSC in Criminology and Criminal Justice from Loughborough University, where she completed a dissertation about domestic violence against women in Leicestershire in 2005. Rezia also completed an advanced Diploma in local history at the University of Cambridge. Rezia Begum's dissertation for her MSc has been published in the *Internet Journal of Criminology* (Begum, 2021). Rezia is a member of the Amnesty International Human Rights Organisation. Ms Begum is passionate about learning more about violence against women.

## Women, poverty, violence and justice: the need for a new research agenda

Jo Phoenix

This article is an appeal for a new research agenda concerning women, poverty, violence and justice. I argue that in the post COVID-19 social and economic world, women's access to justice is poor and likely to get worse. There is an urgent need to consider what criminal *justice* means for women whose lives have been fractured by the shattering effects of poverty and by interlocking systems of marginalisation and histories of abuse in the twenty-first century post-pandemic world.

I base my argument on my involvement in *The Stage Project*. The project can best be described as a practitioner led exploration of common challenges and issues facing six voluntary organisations who all work with sexually exploited adult women across the north-east of England and Yorkshire. The aim of the *Stage* project is to inform the creation of a national strategy and framework for dealing with adult sexual exploitation. My role in that project was as a member of a group of MPs and specialists with an interest or expertise in sexual exploitation who could help to amplify the policy messages arising from the project.

'Sexual exploitation' is a loaded concept. It tends to denote a pre-given theoretical and political framework in which individuals who are involved in the exchange of sex for money are seen as not wholly consenting to what happens to them and as being victimised by criminal gangs or criminally minded men. It is a term that is normally associated with



under 18-year-olds given its role in shifting the locus of intervention away from criminal justice (of arrest and punishment of young girls for soliciting and loitering for the purposes of prostitution) to social work interventions (as victims of a particular type of child sexual abuse) (Phoenix, 2019). Leaving the conceptual and political controversies of the term aside, for the six *Stage* voluntary organisations 'sexual exploitation' became a short-hand way of describing the women with which they work. These are women whose involvement in the commercial exchange of sex for money was bound up with their poverty and characterised by highly exploitative relationships with violent and abusive men, who themselves often worked together in small affiliations of similarly acting men.

What did I learn from being part of the *Stage* influencers' group? I learned that there remains a group of women whose lives are shaped by the fact that they are over-policed (for their law-breaking) and under-protected (for the crimes committed against them) and that there is little or no equal access to justice for them. This is a problem within a modern democracy committed to the rule of law; the central principle of criminal justice in such a society is that everyone has equal access to the law and equal protection by the law. This simple observation came as no surprise to me. One of my



theoretical domain assumptions is that 'justice' is incapable of being realised in societies marked by profound class, sex-based, gendered and cultural inequalities (to mention only a few of the stratifying dynamics within contemporary social existence). It is a second domain assumption that 'injustice' arises not as the result of individual criminal justice professionals 'poor thinking' or 'bad stereotypes'. It arises from the routine administration of criminal justice and the everyday application of law to complex social situations. Hence, and to borrow from Angela Y. Davis, justice is a constant struggle (Davis, 2016).

Let me explain: the women who accessed the six voluntary organisations had remarkably similar stories to those of the women in prostitution that I interviewed nearly 25 years ago for my PhD. They were in highly exploitative and violent relationships and these relationships shaped their experiences of the commercial exchange of sex for money. They are often raped, beaten and forced to sell their bodies and the money they earn is often taken from them through force of violence or within the context of a so-called loving relationship. They are both sex workers and prostituted women (Phoenix, 2001).

They experience multiple and interlocking disadvantages that accumulate through the shattering effects of economic deprivation, homelessness, child abuse, sexual violation, alcohol and drug dependencies and so on. They are often 'difficult' women whose emotional distress is psychiatrised and labelled as 'personality disorders'. They fall through the cracks of current statutory services, partly because no one agency can deal with their multiple issues and partly because statutory services little understands them. The forces of necessity that shapes these women's lives are often

reinterpreted as 'risky lives' or 'lifestyle choices'. The women these organisations are working with are the women who populate our criminal justice system as *criminalised women*. The conditions of their criminalisation are now well understood and known (see Richie, 1996 and Carlen, 1988). Yet, as sexually exploited women they are also *victims* of sex-based disadvantage and sexual violence. Those interested in reforming criminal justice responses to women highlight the links between victimisation and offending, noting that high levels of prior victimisation distinguish female from male offenders. Indeed, it was this recognition that underpinned the Corston Report and the creation of women's centres. It continues to justify single sex prison placement policies and the very different penal regime of women's prisons (Corston, 2007).

Why do I suggest that we need a new research agenda focused specifically on women, poverty, violence and justice? The six organisations that were part of the *Stage* project recounted the challenges faced by the women they worked with when going to the police to report what was happening to them. They also recounted the experiences that they as professionals had. Some of the dynamics recounted are very similar to the processes and problems of providing justice for rape victims (see: Gregory and Lees, 1996; McGlynn, 2017 and Carline and Gunby, 2019). They begin with individual women's struggle to recognise that their experiences are crimes and that they have been victimised. For sexually exploited women however, there is a criminal justice failure to fit what happened to them into neatly containable 'cases' that are readily prosecutable. As with all cases of sexual violence, the police are instructed by the CPS to collect undermining evidence. However, unlike the less 'complex cases'



for sexually exploited women and the organisations working with this, this often means police requesting everything that is known about the women from the support services and all statutory agencies. As noted earlier, these are women whose lives have already been shattered by interlocking disadvantages and histories of abuse, alcohol and drug problems, complex welfare and psychological issues are not uncommon. Histories of prior convictions for prostitution related offences are also not uncommon as are previous allegations of rape or sexual violence that do not succeed in conviction. These histories then become the undermining evidence that results in the CPS dropping the prosecution.

If prosecutions do go forward, instead of prosecuting rape, these women (and the voluntary organisation professionals working with them) find themselves in a process whereby their stories are repackaged as 'complex cases' with multiple suspects which take substantially longer to prosecute – delays of up to 4 years are not unfamiliar. During this time period, criminal justice services cannot easily protect the victims, their families and the professionals working with them from intimidation and harassment by suspects and known associates. Finally, in an ironic twist, the individual case worker supporting the woman to go to the police and report the crimes committed against her finds that they cannot continue to provide support as it jeopardises the credibility of the evidence they can give.

At the beginning of the article I stated that ground had been lost and that women's access to justice is likely to become more and more unequal in post-pandemic Britain. The signs are already here. Prosecutions for rape are at an all-time low (Barr and Topping, 2021). The economic effects of COVID-19

(combined with the necessity to social distance) have meant that statutory services and voluntary organisations are no longer able to offer the type of face to face case work that is required to support victims of domestic and sexual violence (Social Care Institute for Excellence, 2021). Social distancing and lockdowns have trapped families into poor and inadequate housing and placed extra pressure on women regarding childcare. Rates of violence against women and children have skyrocketed (V/formerly Eve Ensler, 2021). With the end of the lockdown and economic support provided by the government in response to the pandemic, the extra allowances provided to income support will go down. In relation to criminal justice, COVID-19 has pushed the court systems to the breaking point with lengthy delays for relative simple cases (Criminal Justice Joint Inspection 2021).

What this means is simple: times are getting hard and the hardest hit will be the girls and young women who are at the centre of these interlocking systems of disadvantage and exclusion. It is entirely feasible that the next decade will see women's poverty increasing exponentially and with that there will be a number of women for whom the force of necessity drives them into prostitution or sex work. The difference between the twenty-first century and the late twentieth century, however, is that internet technologies have also made it much more possible for sex work to become 'invisible'. Street based sex work has all but dried up and with that, outreach and policing of highly exploitable and violent forms of exchanging sex for money relies more and more on individual women coming forward.

Hence, this article is a plea for a new criminological research agenda examining women, poverty, violence and justice. COVID-19 has restructured the

economic, social, political and ideological conditions that shape women's lives. As a community of critical researchers, it is our responsibility to think again about what justice means for women in this new world.

To find out more about *The Stage Project* and its findings, as well as its events and webinars please see <https://www.changing-lives.org.uk/expertise/position-statements/>

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Professor Jo Phoenix is a Chair in criminology at The Open University. She is interested in a wide range of substantive topics: youth justice, prostitution and prostitution policy reform, child sexual exploitation, gender, sex and sexualities, research ethics. She is a member of the Howard League's Research Advisory Group as well as a Trustee for the Centre for Crime and Justice Studies.

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#### **A fellowship for academics and magistrates**

Throughout the Howard League's 150-year history we have been committed to informed debate and have been highly successful in achieving real and lasting change in the penal system. A guiding principle of our work has been to develop new ideas and to understand the consequences of changes and innovations. In this time of flux and uncertainty both in communities and the penal system, it has never been more important to generate discussion, ideas and commitment to a humane and effective penal system.

Howard League fellows will be invited to attend special events that will offer opportunities to meet informally with senior politicians and academics as well as attend seminars and events to contribute to current research streams and emerging, innovative ideas.

One of our inaugural fellows is Barry Godfrey who is both Professor of Social Justice at the University of Liverpool and a magistrate. He became a fellow 'in the hope that my research can contribute to the work of the Howard League, and do something useful. My aim is to analyse historical data and longitudinal research to show policymakers that incarceration has long been socially and financially unaffordable; inefficient as a system; and incapable of bringing about reform and rehabilitation.'

#### **How to become a fellow**

Academics and magistrates may apply themselves or be nominated to become a fellow. There is no fixed cost but a minimum donation of £10 a month is suggested. The expectation is that fellows will have supported penal reform and social justice. The criteria for elevation to a Howard League fellow are deliberately broad in order to promote individual initiatives and creative work that embeds justice in the community.

Nominations should be no more than 200 words long and emailed to Anita Dockley, the Howard League's research director at [anita.dockley@howardleague.org](mailto:anita.dockley@howardleague.org). The nomination should also include the name, contact details (address and email) and the nominee's institution/bench. A selection panel will assess all nominations.

Nominations are assessed on a quarterly basis.

## **Guidelines for submissions**

### **Style**

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

### **Illustrations**

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

### **Authorship**

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

### **Publication**

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

### **Format**

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

### **Please note**

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