

British Society of Criminology

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THE POWER OF THE POPULAR

Jill Peay

Philip Rawlings argues in this volume that assumptions concerning 'the relative reliability of academic writing about crime as against popular writing about crime' have led to the 'marginalization of the latter in the former'. He further charges academic criminologists 'with a lofty disdain for the prurience of such work'. This chapter attempts to set his observations into the context of an examination of the power of popular conceptions of crime, criminality and normality to influence the development of law. I have undertaken this task against a backdrop of what I perceive to be a growing impotence of academic criminology and its power to influence.

The shrivelling of academic criminology?

The relative powerlessness of academic criminology may be partly sustained by what David Faulkner has described as 'a serious void at the centre of the criminal justice system'.^[1] His view, moreover, is that the formation of criminal justice policy has changed; a change he dates from late 1992. He argues that until this time policy had evolved gradually through a process which *took account* of public feeling, but which was *driven* largely by consultation with professionals, practitioners, academics and representatives of informed opinion. However, according to Faulkner, policy in this field after 1992 was 'made on the hoof'. In calling for a statement of purposes for the criminal justice system, he argued that there was 'no clearly understood set of purposes which it is meant to achieve or principles which it is meant to observe, and no effective and acceptable system of accountability for its operation.' In addition to this confusion about purpose, there has also been an ironic re-drawing of the structural boundaries of influence and power. For someone (like me) who started in criminological research in 1980, the name of the game used to be about getting the Home Office Research and Planning Unit (RPU)^[2] 'on side'. Yet now, that very body has displayed signs of growing impotence, a view expressed not only by disenchanted academics, but also by the poachers turned gamekeepers, the erstwhile members of the RPU in academic positions who make reference to the difficulties of getting even RPU research taken seriously by those with power to effect change. Indeed, the period between the 1995 British Criminology Conference and the publication of this volume has witnessed the demise of the RPU as a free-standing unit following its merger with the Home Office Statistics Branch. Thus, the goal posts have shifted and the true nature of the pyrrhic victory revealed, for it is now the once ever 'out of reach' ministers who need to be converted to the true path. Or, as Ian Taylor (1995) put it, it is 'political elites making decisions'.^[3] But the impediments to the influence of academic criminology are not merely those of lack of purpose or structure.^[4] I would argue that academic criminology is less influential than it arguably should be partly because we express little objective confidence about our own subject. In the context of Rock and Reiner's conclusion (Rock 1994) that we are fundamentally of one persuasion - right wing criminology having no locus in the UK - it is curious that even with that broad measure of agreement about approach, we nonetheless experience considerable difficulty in agreeing on a common core of basic knowledge. I make this assertion in the light of an exercise I undertook in preparation for this paper's presentation

to the 1995 Conference, an exercise prompted by John Pitts' recent (1995) lament about the lack of influence social scientists have in the UK in comparison with the situation in France. There policy-makers seemingly look for, listen to and learn from social scientists; in the UK we remain in relative isolation. But what, I asked myself and then others, would we say to policy makers if we had the chance?

A sentence to stand by?

I asked a number of criminologists to make one non-attributable statement about criminological knowledge with which they believed most other criminologists would agree. I gave the trite example of 'the official criminal statistics under-represent the true level of crime'. But extracting these one sentence statements proved to be a more difficult exercise than I had anticipated - colleagues became evasive, defensive and some just plain unavailable. It was apparent that there had been sleepless nights, excessive bath-taking and general agonizing over whether most would agree with anything. However, it also finally produced some interesting 'results'. The list included:

'There are no universal truths - other than that no two criminologists will agree with one another, but each will assert that they are right.'

'Criminology is what criminologists do.'

'In the twentieth century more men than women are incarcerated - in prison - in every country of the world.'

'Prison doesn't work.'

'You shouldn't bring babies up in prison.'

'Men, like dogs, are most dangerous (to their families) in their own homes.'

This statement produced a riposte from another source...

'Women, like cats, are most likely to be victimised in their own homes.'

'The nature of crime is based on the nature of man.'

'Nil. Plenty of information but no knowledge.'

'Criminologists don't know very much about crime.'

'British Criminology continues to serve the interests of the state to the detriment of knowledge about crime.'

'Among criminologists, Michael Howard is undoubtedly the most unpopular Home Secretary of recent times, and his package of measures has been the least welcomed.'

'There is an enormous gap between how academic criminologists, policy makers and the public view crime and no-one has found a satisfactory way to narrow that gap.'

'Every society has experienced the dilemma of crime, but no society has solved it.'

'We've not yet found any single theory that explains all forms of crime.'

One criminologist wished to make two statements, one for the right and one for the left of criminology:

Right:

'It is axiomatic that the criminal justice system does not discriminate against minorities - these groups commit more crime and deserve to be the object of social control.'

Left:

'There is always discrimination against certain minority groups - even if this discrimination is hidden by surrogate variables.'

Finally, I've included two statements proffered more widely and without solicitation about London:[\[5\]](#)

'It is a fact that very many of the perpetrators of muggings are very young black people, who have been excluded from school and/or are unemployed.'

And from the same source, one paragraph earlier:

'Most crimes of violence are committed by people who are well known to their victims.'

It is not entirely clear where this exercise took me. The reason may be no more than an appreciation, in the memorable words of Tim Newburn, that 'There are no simple solutions to the complex problems of ...'. Equally, criminologists come from a number of disciplines and a number of perspectives - diversity may be criminology's strength - and our reluctance to be assertive may derive as much from a mature respect and courtesy for the views of our colleagues as from our failure to resolve complexity.

But these statements, together with the programme for the 1995 conference, suggest something more fundamental in the woodshed; namely, that there is plenty of information

about, for example, prisons, policing, masculinity, the media, fear of crime and crime prevention, but little knowledge.

This distinction was notably drawn by one unnamed criminologist above, and is redolent of T.S. Eliot's (1934) *Choruses from 'The Rock' Part 1*:

All our knowledge brings us nearer to our ignorance
Where is the wisdom we have lost in knowledge?
Where is the knowledge we have lost in information?

There were some potential notable exceptions at the 1995 Conference; for example, Philip Stenning's 'Testing Some Theories of Gun Control'; Trevor Bennett's 'Identifying, Explaining and Policing Crime "Hot Spots"'; and Kasic's 'Small Boat Crime; The Whole Story' are all indicative of knowledge.[\[6\]](#)

In essence, my argument is that academic criminology, through the very methodology it chooses to adopt, requires constant qualification. In stark contrast, popular criminology, with its focus on individual cases, enjoys a spurious certainty and confidence. Indeed, it parallels the confidence with which academics will select and cite the single quotation or the single case which best illustrates the general point.[\[7\]](#) The analogy with single issue politics is self-evident; Brent Spar, veal exports and ancient woodlands have all had a motivating force seemingly lost to broader political movements.

However, the paradox is that some of the defining features with which criminologists work, namely the boundaries of the criminal law and the regulatory framework within which infringements of it are set, have evolved on the basis of the influence of single cases. Much of the development of the common law and statute has come about because of the differences between individual case circumstances and the magnification of these in the trial process and through review and appeal.

Simplification - to demonise or normalise?

Philip Rawlings has charted admirably the tensions in popular criminology between the tendency to focus on individual cases (making perpetrators appear outwith the boundaries of normality) and compilations of cases, where the numerical impact lessens the otherwise demonic features. This tension has been further complicated by the more recent texts contextualising domestic violence. It is, however, also possible to discern a further element in popular criminology; namely, focusing on the single case normalises its impact - an approach captured by 'there but for the grace of god go I'. Both demonising and normalising are, of course, a form of simplification of issues, designed to promote maximum impact.

Julian Petley's (1995) review of some of the recent incidents of the power of the popular (and broadsheet) press persuasively illustrates this theme.[\[8\]](#) He notes how first Michael Howard and then Virginia Bottomley respectively demonised restricted patients and children with behavioural problems.[\[9\]](#) Yet the impact of such appraisals is not confined to mere short-term publicity - Michael Howard's doubling of the effective sentence for the two boys convicted of the murder of Jamie Bulger is one such hard case.[\[10\]](#) In contrast, PC Guscott, who assaulted a boy causing his nose to bleed when he had been banging on doors and running away, was 'normalized' by the tabloid press. This resulted in 66,000 supportive telephone calls; PC Guscott was reprimanded and not sacked.[\[11\]](#)

Whether these cases demonstrate a pandering to popular sentiment, as in the latter illustration, promulgation of it or merely keeping one step ahead of where politicians think it ought to be going, is another issue. However, the problem the relationship between policy and popular sentiment poses for liberal minded criminologists is not one we can readily ignore. Democracy (rule of and by the people) requires that the issue be addressed and popular sentiment, if necessary, rejected only on reasoned grounds - perhaps where it is ill-informed or mis-informed. Accordingly, the sources and formulation of widely held opinions is critical. The fluidity of law, and in particular of that relating to criminal justice issues, makes the impetus for change and the motivation of individuals and pressure groups a central concern for criminologists. Or, as Katherine Williams (1994: 10) has exhorted us, 'A criminologist should be aware of the factors and policies which mould the criminal law causing the creation and constant reshaping, of criminal offences.'

The remainder of this chapter is devoted to one such potential re-shaping of the law, embodied in 'Cleggism', and supplemented by another further advanced along the route of legislative reform, namely one to which I shall crudely refer as 'Zitoism/Clunism' (since the

role of the victim's wife Jayne Zito has been as influential as the response to the perpetrator - Christopher Clunis).

Clegg and the judges

Private Lee Clegg was released on life licence on 3 July 1995 by Sir Patrick Mayhew (Secretary of State for Northern Ireland) on the recommendation of the Life Sentence Review Board and after consulting the Lord Chief Justice (NI) and the trial judge. His case has most recently been re-referred to the Northern Ireland Court of Appeal by Sir Patrick Mayhew in the light of new forensic evidence, allegedly casting doubt upon the validity of his original conviction.^[12]

Clegg was convicted by a single judge (in a Diplock Court) of the murder on 30 September 1990 of Karen Reilly. Thirty-six shots had been fired by a four-man patrol of which he was a member into a stolen Astra. Clegg received the mandatory life sentence, with a separate four year sentence being imposed in connection with the death of Martin Peake, who died in the same car but for whom no fatal bullet was recovered. It was alleged that Reilly was hit in the back by a bullet from Clegg's rifle, and this was held to be a significant cause of her death. Although Clegg's evidence was that he fired three shots into the windscreen of the approaching vehicle and one shot into the side of the car *as it was passing*, the trial judge had found as a fact that this fourth shot was fired only once the car was 50 feet further down the road, having passed Clegg. It was not possible therefore to sustain Clegg's argument that he fired because he thought the life of his colleague, Private Aindow, was in danger. Indeed, the Court of Appeal held in its original judgement that the firing of the fourth shot which killed Reilly was a 'grossly excessive and disproportionate use of force'.^[13] Clegg's conviction was upheld by the House of Lords on the basis that the use of excessive and unreasonable force in self-defence could not reduce murder to manslaughter.

The House of Lords also dealt with the other issue as to whether a defence under s.3(1) of the Criminal Law Act (Northern Ireland) 1967 arose. Section 3(1) states

'A person may use such force as is reasonable in the circumstances in the prevention of a crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or persons unlawfully at large.'

However, Clegg said that he had applied the safety catch as the car passed him and that he knew of no justification for firing after that. Or, as the Court of Appeal had found,^[14]

'There was no suggestion in Pte Clegg's evidence ... that he thought that the driver was a terrorist, or that if the driver escaped he would carry out terrorist offences in the future.'

Thus, on the facts, his use of force would still have been unreasonable/excessive.

Both the Northern Ireland Court of Appeal and the House of Lords had questioned whether there *should be* a qualified defence for a soldier acting in the course of duty using excessive force in self defence, to prevent crime or to effect or assist a lawful arrest. The Court of Appeal noted that Clegg had no evil motive, but had reacted wrongly to a situation which suddenly confronted him, having been placed in the course of his duties on the Glen Road, armed with a high velocity rifle. The Court of Appeal concluded ^[15]

'we consider that a law which would permit a conviction for manslaughter would reflect more clearly the nature of the offence which he had committed.'

However, the House of Lords held that this was a matter for Parliament and not judicial creativity. Lord Lloyd, giving the leading judgment, considered at length the possibility that they, the Law Lords, might remedy the deficiency in the law by providing for a manslaughter verdict where excessive force was used in a situation where it was reasonable to use some force (e.g. to effect arrest). But he concluded that this would be inappropriate; this was an area subject to specific statutory control (namely s.3 of the Criminal Law Act 1967) so it was for Parliament to amend the law if necessary.^[16] However, had this been an area of common law the temptation to make law might have been overwhelming. As Lord Lloyd observed ^[17]

'I am not averse to judges developing law, or indeed making new law, when they can see their way clearly, even where questions of social policy are involved.'

Moreover, in support of the proposition that a conviction was appropriate for manslaughter and not murder where a defendant uses excessive force in self-defence^[18] or in the prevention of a crime Lord Lloyd cited a series of official reports advocating such reform.^[19] However, the House of Lords was mindful that this was all part of the wider question of

whether the mandatory life sentence for murder should be maintained; they declined to interfere with the Court of Appeal's judgment and Clegg's conviction was upheld.

Clegg and the media

The campaign to free Clegg started with force in the media once the judgment was given by the Law Lords on 19 January 1995. The successful campaign, masterminded by a committee of retired army officers, led to a *Guardian* editorial^[20] which described Clegg as being 'the beneficiary of a shamelessly political campaign to secure his release. The facts of the case have been barely mentioned. The seriousness of what he did has been consistently trivialised; the Clegg supporter Lady Olga Maitland MP calls his conviction 'a quirk of the law'. The campaign has been based almost entirely on the gut feeling that a British soldier on duty is entitled to kill without being answerable to the law.'

As Petley noted^[21] the *Guardian* was one of the few papers not to support the campaign for Clegg's release. This campaign, argued Petley, did not merely fail to mention the facts, but distorted them; for example, the notion of a 'check-point', in reality a rolling vehicle checkpoint - that is, soldiers walking along the side of the road - was converted in the media into a 'road block'.^[22] There was also considerable tabloid criticism of the system of Diplock courts - where trials are held in the absence of a jury. And, crucially, the media consistently failed to mention that Barry Aindow, another paratrooper involved in the incident, whom Clegg claimed he was firing to protect, was himself convicted and sentenced to two years for perverting the course of justice.^[23] Aindow's injuries were found by the court to have been sustained by another soldier stamping on him to make it appear he had been struck by the car.^[24] Even Sir Ivan Lawrence QC, on Clegg's release, talked of Clegg shooting into the back of a car which had tried to run down the soldiers. These observations distort both Clegg's version of events and the facts as determined by the court.^[25] Couching his behaviour as 'two or three seconds of madness' by a 21 year old makes Clegg's downfall something of which we are all seemingly at risk and therefore, should be reluctant too swiftly to condemn. It is the quintessence of normalising as opposed to demonising.

Yet these symptomatic distortions, and the similarly flawed campaign which preceded them, tapped huge public disquiet. Petley noted 247,000 people telephoned the 'Richard and Judy Show' to register their votes in favour of his release.^[26] One million members of the public similarly signed a petition supporting release after the House of Lords' decision. Finally, the Clegg Committee also tried to stop an edition of 'Panorama' reviewing the case in a mock 're-trial' with Michael Mansfield QC putting the case against release.^[27]

Clegg and parole

In the press coverage of Clegg's release on life licence, many views were expressed regretting the timing and manner of his release; for example Cardinal Cahal Daly, leader of Ireland's four million Catholics, talked of 'crass insensitivity ... release grave blunder in substance and a grave blunder in timing'.^[28] Yet very few supporters could be found for sustaining Clegg's imprisonment, seemingly explained on the grounds that his offence constituted a momentary error of judgment by a young soldier placed in a very difficult position where there was no likelihood of repetition. One notable exception was that of Breidge Gadd, a member of the Northern Ireland Life Sentence Review Board, who resigned following Clegg's release citing 'a major deviation from the principles of practice and procedure used previously'.^[29]

The release was certainly not consistent with other on-going developments. For example, Lord Belstead, Chairman of the Parole Board, lamented Michael Howard's decision to reduce home leave and temporary release (after a number of highly publicised cases) for making the work of the Parole Board increasingly difficult.^[30] Without home leave there is little basis for assessing how well a prisoner will behave if released on parole. Equally, the average sentence length for murderers released on licence over the last decade had risen by 50 per cent from 10 years 6 months (55 releases in 1985) to 14 years 7 months in 1993 (64 releases).^[31]

Whilst executive discretion has been so exercised, the judiciary have seemingly been working towards a different agenda - some might cynically argue to permit the judiciary to have

greater control over sentence lengths. In the House of Lords the senior judiciary successfully amended^[32] (even if only temporarily) the Criminal Appeals Bill to give convicted murderers a formal right of appeal against the trial judge's minimum recommended sentence - with Lord Taylor, the then Lord Chief Justice, urging trial judges to announce their recommendations in open court. At the time, the judge's recommendation was confidential to the Home Secretary, with whom lay the final decision on sentence length.

This, albeit minor, amendment was achieved in the context of a long-running divergence of opinion between the senior judiciary and the government about the future of the mandatory life sentence. And it was this dispute which arguably lay at the heart of Clegg's difficulties. The preferred solution of many academics and a view consistently expressed by holders of the office of Lord Chief Justice, is that the mandatory life sentence should be abolished, giving trial judges the ability to fix sentence length in court (with reasons).^[33] The mandatory life sentence persistently causes problems in cases as diverse as domestic violence and 'mercy' killings. But it was an unpopular suggestion with Michael Howard, who was alleged to want nothing which would interfere with politicians' influence over the release of life sentenced prisoners. An alternative broad brush approach (in this case giving greater discretion to the prosecution vis-a-vis the judge) is that preferred, amongst others, by Sir Louis Blom-Cooper QC, namely, to abolish the legal distinctions between murder and manslaughter and have the equivalent of degrees of culpable homicide. Yet another alternative would be to place specific groups of offenders (for example, those acting in the course of duty) in a privileged position so that they are charged with manslaughter rather than murder and thereby avoid the mandatory life sentence. Although this was a route favoured by the Clegg campaign, there is a double irony. First, such a provision might not have saved Clegg on his evidence.^[34] Secondly, it is not a solution favoured by Ministry of Defence as any change enabling manslaughter charges might result in more serving officers finding themselves before the courts.^[35]

A media feeding frenzy: psychiatric patients who kill

If Clegg's case does not lead to a change in the law, Christopher Clunis's killing of Jonathan Zito certainly preceded one notable change.^[36] Although homicide is intrinsically interesting to popular criminology, only a small proportion of those who kill attract significant media attention. Psychiatric patients are in that select category, a tendency to inclusion exacerbated by the Department of Health's requirement that mental health service providers hold independent inquiries following homicides by those who have had contact with the mental health services.^[37] The attendant publicity, and provision of minute detail of the flotsam and jetsam of people's lives, can create the danger of hindsight bias without necessarily fully exploring the phenomenon of the 'false positive'.^[38] Arguably, such inquiries provide the modern 'empirical' parallel of Rawlings' assertion that ^[39]

'much of a biography is really about the hunt, with the victims being bit players and the life of the biographee being reduced to a series of clues which, with hindsight, can now be read.'

After years of indecision amongst professionals, academics and policy-makers about the possible introduction of a community treatment order,^[40] the culmination of these recent inquiries and of media concern generally about the viability of 'care in the community',^[41] has been the Mental Health (Patients in the Community) Act 1995. This Act gives psychiatric nurses a 'power of arrest', under a supervised discharge order, which places an estimated 3,000 people in the community at risk of being taken and conveyed to a hospital or clinic for treatment or to any other place for work, education or training. Moreover, the highly controversial introduction of supervision registers, which have proved deeply unpopular with mental health professionals, is another manifestation of this phenomenon of seeking greater control over patients and former patients in the community.

Conclusions

First, as Simon Lee has noted: ^[42]

'The media are no longer, if they ever were, observers of the scene; they are players in the game. When they single out cases for campaigns, they ought to consider the distress that

causes to the families involved as victims *and to those involved in similar cases which do not receive the same attention*' (emphasis added)

Putting an individual's picture to a story (popular criminology personified) makes the all-powerful impression. Professor Lee also expressed regret that the earlier recommendations of the Standing Advisory Commission on Human Rights, with which he had been involved, and which had examined the structural issues involved in the use of lethal force, had had its recommendation ignored. Thus, asks Lee, 'why cannot the media and the Government address the question properly?'

Secondly, properly addressing such difficult questions might require the kinds of structures and procedures advocated by David Faulkner.^[43] His view, already adverted to, is that 'Present policies give the impression of being hastily conceived and precarious in their application.'

Establishing a sense of purpose, he argued, would require

'a judicial college or 'think tank', based on the existing Judicial Studies Board but able to operate more generally as a deliberate and advisory body for the judiciary as a whole; a criminal justice institute providing a similar function for the criminal justice system as a whole and working more closely with central government; the development of the Criminal Justice Consultative Council and its area committees, on a statutory basis, to provide national and local fora for consultation and planning; and a long term strategic plan, annually updated, which would be open to public criticism.'

I would add, perhaps then we can begin to clarify or argue about the issues about which we might agree. Standing on the side-lines with our 'on the one hand, on the other' is a reputable strategy for those issues about which we are unclear. But is there not sufficient common ground amongst us for us to be sure of our footing on some issues? If so, shouldn't we share this knowledge - actively seek strategies so to do - with those whose ideas have a different genesis?

Thirdly, as Ian Taylor has warned, 'you underestimate at your peril the anxiety of the suburbs'.^[44] To dismiss or be disdainful of popular beliefs is dangerous - they come from somewhere (be it media or Morse) - and they go right through to the mother of all parliaments. As Tony Bottoms (1995) has so well illustrated, 'populist punitiveness' has its roots in a fairly widespread sense of insecurity, an insecurity which can be exploited all too readily by politicians seeking popularity by promising to be tough on crime. However, it is we criminologists who have to work with the products and consequences of this ill-informed populism.

Finally, academic solutions tend to be global in their proposition, for example, abolishing mandatory life sentences in an attempt to maintain fairness between cases; in contrast, media solutions tend to be piecemeal, for example, to release this offender as further detention is manifestly unjust, or to propose a resolution only for cases like the one in contention, for example, manslaughter for excessive force in course of duty. Such solutions are attractive in their simplicity and are seemingly within reach of reform, but ripple effects frequently cause problems elsewhere and may not even solve the particular factual problem posed by the case in question.

Yet the parallels between popular criminology - with its focus on the individual - and law reform are evident. Much common law reform proceeds on the basis of *single* cases raising difficult and novel points. Indeed, the construction and re-construction of events which occurs in court for the consumption of jury or judge and precedes judicial legal creativity, is not so far removed from the 'art' of crime writers set out by Philip Rawlings. Equally, statutory reform is often initiated by a response to single cases - even if the medium of reform is that of the Select Committee, Royal Commission, Judicial Inquiry or Law Commission Report.^[45] Since the legal framework provides one defining feature of criminological study, it is incumbent on academic criminologists to take note.

To conclude, should we be looking for the middle ground? Is it possible that our claims to expertise by drawing on the 'scientific approach' and the overload of information this generates actually contributes to our own lack of confidence about criminology? Meanwhile, our denigration of popular criminology cannot be justified when we work with the consequences of the self-same method vis-a-vis the development of the law. More information does not mean more it is more meaningful, any more than that less information is not necessarily less influential. Is there a residual potential for each methodology to learn from the other?

Notes

1. David Faulkner was Deputy Secretary at the Home Office in charge of criminal justice policy until 1992. In 1995 he was (and remains) a Fellow of St John's College, Oxford, and a Senior Research Associate at the Oxford Centre for Criminological Research. The quotation is taken from 'All Flaws and Disorder', *The Guardian*, 11 November 1993. [\[Back to text\]](#)
2. Now the Home Office Research and Statistics Directorate (HORSRD). [\[Back to text\]](#)
3. The comment was in a paper presented at a conference at Brunel University on 'Democracy and Justice: Reviewing Crime in Theory and Practice', 13-14 June 1995. Taylor made particular reference to Habermas's *The New Conservatism* (1989: 66) citing the work of Claus Offe. A number of papers presented at the Brunel Conference are cited below. [\[Back to text\]](#)
4. The tendency to talk mainly to the converted, namely ourselves, may be another contributory factor. It is one to which many academics are prone. [\[Back to text\]](#)
5. Sir Paul Condon, Metropolitan Police Commissioner, in a letter to community leaders inviting them to a briefing at New Scotland Yard concerning an important police operation to combat street robbery. Reprinted in *The Guardian*, 8 July 1995. [\[Back to text\]](#)
6. Regrettably, I was unable to attend any of these papers so cannot be confident that their content did justice to their titles. [\[Back to text\]](#)
7. It is curious that we are critical of the anecdotal, but applaud the well-chosen colourful example to illustrate the broader picture. Which gets remembered by our audience? [\[Back to text\]](#)
8. See also Barker and Petley (eds) (1997). [\[Back to text\]](#)
9. Michael Howard denied future home leave to restricted patients on the basis of one untoward incident (wholly in keeping with my own favourite tabloid headline from the mid 1980s, 'Mad Axewoman after Di's Doctor') and Virginia Bottomley criticised the sending of young offenders on ski-ing trips as 'absolutely disgraceful - rewarding them for bad behaviour'. It subsequently emerged that many of the children concerned had behavioural and not criminal problems. [\[Back to text\]](#)
10. There was also a general increase in punitiveness, noted by Ashworth and Hough (1996: 776-87 at 782), taking place in early 1993 with a rise in the prison population from 43,153 (March) to 47,153 (by December). The authors point out that 1993 was a year of 'heightened media interest in crime' following the killing of Jamie Bulger. [\[Back to text\]](#)
11. This would not be to minimise the potential seriousness of children's behaviour. The objective threat posed can be significantly enhanced in its subjective impact given particular contexts, for example, that of persistent racial abuse. Indeed, Alice Sampson (1995) documents the removal of a panic button from the home of a repeatedly racially abused woman, when she used it in fear whilst responding to sweet wrappers being pushed through her letter-box. [\[Back to text\]](#)
12. *The Times*, 17 January 1997. [Editors' note: while this section of the paper discusses the original conviction and subsequent appeals, it should be noted that Clegg's conviction for murder was quashed by the Northern Ireland Court of Appeal in February 1998, on the basis that fresh ballistic evidence made the conviction unsafe. However he would have to face a retrial. At this time Clegg was based at Catterick Garrison, North Yorkshire, and the local paper for the area covered the judgement under the headline 'Now I Can Clear My Name, Vows Clegg' (*The Northern Echo*, 28 February 1998).] [\[Back to text\]](#)
13. Lord Lloyd, in the House of Lords at 336J. *R v Clegg* [1995] 1 *All ER* 334. [\[Back to text\]](#)
14. [1995] 1 *All ER* 338 at d. [\[Back to text\]](#)
15. [1995] 1 *All ER* 339 at f. [\[Back to text\]](#)
16. He also noted that Parliament had chosen to enact statutory defences for provocation and diminished responsibility under the Homicide Act 1957 and under the Abortion Act 1967 and the Suicide Act 1961. Accordingly, Parliament should be left so do in this area, if it felt fit. [\[Back to text\]](#)

17. [1995] 1 *All ER* 346 at j. The example cited by Lord Lloyd was that where the House of Lords affirmed that a man can be guilty of raping his wife *R v R - (Rape: marital exemption)* [1991] 4 *All ER* 481, [1992] 1 AC 599. This view obtained legislative endorsement with s.142 of the Criminal Justice and Public Order Act 1994, amending s.1 of the Sexual Offences Act 1956. [\[Back to text\]](#)
18. As the law stands there is no half-way house in self-defence; the defence either succeeds leading to an acquittal or fails, resulting in a conviction. [\[Back to text\]](#)
19. The 1980 CLRC 14th Report para 294.2 (Cmnd 7844); in 1989 the Law Commission's Draft Criminal Code (para. 59) would have made similar provision; in 1988-9 the House of Lords Select Committee Report on Murder and Life Imprisonment found convincing the argument in favour of a qualified defence of using excessive force in self defence. [\[Back to text\]](#)
20. 4 July 1995. [\[Back to text\]](#)
21. See above. [\[Back to text\]](#)
22. The real 'check-point' was at a bridge further down the road. The stolen Astra had been stopped at that point, but then accelerated away towards Clegg and his three colleagues. [\[Back to text\]](#)
23. A Royal Ulster Constabulary constable notably gave evidence of the faking of the injury to Aindow. [\[Back to text\]](#)
24. Barry Aindow was also sentenced for the attempted murder of Peake. He was released before Clegg. [\[Back to text\]](#)
25. Sir Ivan Lawrence QC, in the same post-release interview, also made reference to the defence Clegg had never asserted, namely, that of thinking that the occupants of the car might be terrorists. [\[Back to text\]](#)
26. The absence of an opportunity to vote against - constituting a failure to comply with tv's statutory duty to be impartial - led to a change in producer of this daytime magazine programme. [\[Back to text\]](#)
27. Michael Mansfield QC is, of course, most noted for his work as a defence advocate and staunch supporter of civil liberties. [\[Back to text\]](#)
28. Since Clegg's release occurred both at the start of the school holidays and just before the marching season, it is difficult to know how much to attribute of the current and on-going troubles to the Clegg debacle. However, 'Clegg out, all out' had been a powerful slogan. The IRA ceasefire also came to an end shortly thereafter. [\[Back to text\]](#)
29. *The Guardian*, 4 July 1995. [\[Back to text\]](#)
30. *The Guardian*, 30 June 1995, citing the Parole Board's Annual Report. [\[Back to text\]](#)
31. The only other soldier convicted of murder in Northern Ireland during the 'troubles' was also released after only two years. [\[Back to text\]](#)
32. 26 June 1995. [\[Back to text\]](#)
33. A discretionary life sentence would still be permitted for the most heinous of offences. [\[Back to text\]](#)
34. It is, of course, a moot point whether his evidence might have been different had the law been different; the thrust of the court's finding against him at the original trial and on appeal, given the forensic and witness evidence, was that they did not believe his version of events. [\[Back to text\]](#)
35. Notably, Lady Blatch announced in the last week of June 1995 that the government were considering a new offence of 'using excessive force in the course of duty'. [\[Back to text\]](#)
36. Report of the *Committee of Inquiry into the Care and Treatment of Christopher Clunis*, chaired by Jean Ritchie QC (1994). [\[Back to text\]](#)
37. 'Guidance on the Discharge of Mentally Disordered People and their Continuing Care in the Community' (NHS Executive HSG (94) 27), 'When things go wrong', paras 33-36. See also Peay (1996). [\[Back to text\]](#)
38. The tendency to over-predict dangerousness amongst psychiatric patients, resulting in patients not being released when they might otherwise safely leave hospital. An inquiry following an unsuccessful release, by examining the patient's history in detail, may lead to the false assertion that dangerousness could have been predicted if only staff had been more alive to the predictive 'signs'. This is the bias of hindsight. See also the case of Andrew Robinson (Blom-Cooper, Hally and Murphy 1995) and the Mitchell triple homicide in Ipswich (Blom-Cooper et al. 1996). [\[Back to text\]](#)

39. Rawlings (this volume: appendix). See also Paul Bowden's (1995) damning critique of the dramatisation by the Robinson Inquiry of the circumstances surrounding the death of Georgina Robinson. [\[Back to text\]](#)
40. That is, whether patients suffering from psychiatric illnesses should be eligible for compulsory treatment in the community as opposed to hospital. [\[Back to text\]](#)
41. Documented for the Zito Trust by Sheppard (1996) (copies available from PO Box 265, London WC2H 9JD). [\[Back to text\]](#)
42. Professor of Jurisprudence at Queens University, Belfast writing in *The Guardian*, 4 July 1995. [\[Back to text\]](#)
43. See above. [\[Back to text\]](#)
44. See above. [\[Back to text\]](#)
45. An example from an entirely different arena would be the way in which the law of limitation was redrawn in the Limitation Act 1963 following the *Cartledge* case - even if the medium for the re-structuring was the *Report of the Committee on the Limitation of Actions in Cases of Personal Injury* (1962) under the chairmanship of Edmund Davies J. [\[Back to text\]](#)

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