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2016 Conference, (6-8 July)
Inequalities in a diverse world
Nottingham Conference Centre

Editor

Lizzie Seal

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Editorial

Lizzie Seal

The British Society of Criminology's 2016 Conference was held from 6-8 July in Nottingham and, for the first time, was organised by the executive committee. The theme was 'Inequalities in a Diverse World', a topic addressed by two plenary speakers: leading criminologist, Kelly Hannah-Moffat and prominent political economist and writer, Will Hutton.

The papers in this volume were submitted to the journal's rigorous peer review process and pleasingly had an unusually high acceptance rate this year of eight out of ten submissions. The window from submission to publication is a relatively small one and the co-operation of authors and peer reviewers in providing quick responses is greatly appreciated. Particular thanks are due to Laura Kelly and Helen Jones for invaluable support in helping to produce the journal, and to Charlotte Harris for providing much needed advice along the way.

The papers in this volume reflect the diversity of criminology as a discipline, both in terms of its theoretical development and wide empirical reach. They also demonstrate how tackling inequality is a key concern of many criminologists. The volume opens with Matthew Ball's paper, which grapples with the relationships between queer criminology and settler colonialism, and addresses how to work on decolonising queer criminology. Jack Lampkin adopts the lenses of green criminology and utilitarianism to explore the harms of fracking. J M Moore draws on the work of Thorsten Sellin to examine how the criminal justice system has grown from deep roots within slavery and consequently maintains and reinforces inequality. Raphael Schlembach turns his attention to the Pitchford Inquiry into undercover policing and argues that the inquiry's shortcomings limit its legitimacy. Mohammed Rahman examines the relationship between organised crime and fatal violence in relation to the 2003 murders of Letisha Shakespeare and Charlene Ellis in Birmingham. Cecep Mustafa presents findings from a qualitative study of Indonesian judges' sentencing decisions in relation to minor drug offenders, finding that rehabilitation is their (often thwarted) preference. The volume closes with two papers on victimisation: Jacki Tapley discusses best practice in relation to victim care and identifies the importance of creating a community of practice to facilitate effective collaborative working, and Kalliopi Sellioti and Sacha Richardson explore the benefits for

children and young people bereaved by murder and manslaughter of participating in residential groups.

In 2017, the British Society of Criminology Conference will take place at Sheffield Hallam University from 4-7 July, with the title 'Forging Social Justice – Local Challenges, Global Complexities'. I wish a restful Christmas break to all.

Lizzie Seal, University of Sussex, December 2016

Towards a Decolonisation of Queer Criminology

Dr Matthew Ball

Abstract:

This paper offers an initial discussion of the extent to which queer criminology is invested in settler colonialism, and a consideration of the prospects for decolonising queer criminology. As the epistemological and political underpinnings of queer activism and scholarship are firmly situated in the Global North, a queer criminology developed in their image may not have resonance for, or be applicable to, those outside of or not fully included in these contexts. In fact, aspects of queer criminology may contribute to the perpetuation and expansion of colonial power generally, and queer settler colonialism in particular (Morgensen 2012). This paper examines three key areas in which queer scholarship and criminology have been critiqued and which suggest that the decolonisation of queer criminology is necessary.

Keywords:

Queer criminology; decolonisation; queer settler colonialism; counter-colonial criminology

Introduction¹

Decolonisation is a well-established goal of critical scholarship and activism in a range of fields (Cunneen and Tauri, 2016; Mignolo, 2011). Thus far, discussions about decolonisation – and particularly the decolonisation of criminology – have not informed

¹ This paper develops arguments initially discussed in Ball (2016).

queer criminology. This paper argues that it is incumbent upon queer criminologists, in developing their field, to confront the question of whether queer criminological work needs to be decolonised, and to explore how this might be possible. Its main purpose is to articulate three key arguments that point to the necessity of this task. Put simply, these arguments are drawn from: the limitations of queer scholarship and activism generally; the counter-colonial critique of criminology broadly; and Indigenous critiques of queer politics, particularly the notion of 'queer settler colonialism'. This paper will discuss these arguments in turn, and suggest that as a critical and politically activist criminology concerned with achieving social justice, it is essential that queer criminology engages further with these issues.

Importantly, this paper can only offer preliminary suggestions in this direction. It is primarily targeted at queer criminologists, some of whom may have only a passing familiarity with work on decolonisation and how it relates to queer and criminological thought. The paper does not offer a comprehensive introduction to these issues, nor does it offer a general discussion of the reasons that decolonisation is an important goal (issues canvassed more broadly elsewhere – see, for example, Mignolo, 2011). Rather, it seeks to provide some tools to demonstrate why pushing beyond what might be considered to be the normative, white, (and often) settler space of queer criminology is important. By focusing specifically on those issues that speak most immediately to the work of queer criminologists, it aims to highlight why they ought to confront these questions.

Conceptual Parameters

In order to contextualise this discussion and to understand the importance of decolonising queer criminology, it is necessary to provide the backdrop against which such arguments are made. These points relate in many respects to the purpose of queer criminology. In previous work I have argued that, following Judith Butler, queer criminology can be understood as an ethical and political task through which to create discursive and political spaces within the fields of criminology and criminal justice in which queer lives can be made 'liveable' and can be taken to 'matter' (Ball, 2014; Ball, 2016; Butler, 2004; Butler, 2009). Butler's work has focused on the ways in which particular lives are constructed as 'liveable', and others as 'unliveable' (Butler, 2004; Butler, 2009). Lives are 'unliveable' if, because of the limits of existing discursive frames,

they are not recognised *as* lives, and are therefore not taken to ‘matter’ (Butler, 2004). The political task then becomes to reshape these discourses and expand what may be considered a ‘liveable life’.

Queer lives have been, at best, overlooked, and at worst, rendered deviant by criminologists for much of the discipline’s history (Woods, 2014). Criminology has also actively contributed to the injurious regulation of queer lives. As such, through their work, queer criminologists have sought to address these oversights and misrepresentations in criminology and criminal justice practices. For example, Jordan Blair Woods has suggested that the task of queer criminology ought to be to ‘consider how sexual orientation and gender identity/expression as non-deviant differences – in combination with other differences, such as race/ethnicity, class, and religion – may influence victimisation, involvement in crime, and experiences in the criminal justice system more broadly’ (Woods, 2014: 18). Similarly, Carrie L. Buist and Emily Lenning have suggested that queer criminology ought to ‘highlight the stigmatisation, the criminalisation, and in many ways the rejection of the Queer community... as both victims and offenders, by academe and the criminal legal system’ (Buist and Lenning, 2016: 1). On this basis, it is possible to conceive of queer criminologists as taking up, in some respects, the ethical task mentioned above.

But conceiving of the task of queer criminology in this way also requires a constant examination of how the discourses of queer criminologists may contain within them, or perpetuate, new definitions of what constitutes ‘liveable’ and ‘unliveable’ lives. In many of the directions proposed for queer criminology so far, the overwhelming focus (understandably) is placed on issues relating to sexuality and gender diversity. While it is not the case that other intersectional dynamics have been ignored (race and class are two key factors that often feature in this work), so far, issues of colonialism and indigeneity and their connections to sexuality and gender diversity have not been articulated in significant depth within queer criminology. It is important for this to be considered in the development of queer criminology if queer Indigenous lives are taken to ‘matter’.

In order to appreciate the importance of decolonising queer criminology, it is also necessary to consider the unique way in which ‘queer’ is understood here. As I have also argued elsewhere (Ball, 2013), there is considerable scope for queer criminology to move

beyond identity-based understandings of 'queer', and to utilise queer thought within criminology in *disruptive* ways (see also Ball, 2016). Doing so would make it possible for queer criminological work to challenge, subvert, and redirect the major tasks and assumptions of criminology. The reason for this is not simply to engage in disruption for disruption's sake – a critique often levelled at deconstructive politics informed by poststructural analyses. Rather, such disruptions are fundamentally informed by a desire to achieve change in the interests of justice for those who might find comfort under the 'queer' umbrella. These purposes mean that queer criminology is not underpinned by a limited conception of LGBTIQ identity politics, from which Indigenous voices are often excluded. In this sense, it can more effectively encompass the politics associated with decolonisation, which incorporates a more disruptive challenge to the status quo and the taken-for-granted. It can also extend the views of which queer lives are taken to 'matter' and how best to ensure this. I turn now to discuss the three key reasons canvassed in this paper that suggest that the decolonisation of queer criminology is necessary.²

The Limits of Queer Scholarship and Activism

One reason that it is necessary to explore how queer criminology might be decolonised relates to the limits of some queer scholarship and activism. Despite being associated, in many respects, with quite radical politics, queer scholarship and activism have not been immune to critiques that they also reinforce other unjust social structures and existing power relations. These structures and power relations include those that disadvantage, disenfranchise, and otherwise dispossess Indigenous people. Such critiques ought to be considered here, as queer criminology may risk perpetuating them.

A central critique levelled at queer scholarship and politics relates to their epistemological, conceptual, and political positioning within the Global North. Queer politics initially developed in response to the limitations and exclusions identified within American and European lesbian and gay rights movements, as well as feminist politics –

² In doing so, it is important to note that while there are alliances between queer and counter-colonial politics, queer criminologists must not misrecognise counter-colonial politics as queer politics and reframe them according to queer concerns or through a queer lens. I suggest that conceiving of the tasks of queer criminology in the way outlined above helps queer criminologists to identify how their politics might be aligned with counter-colonial politics, and recognise their responsibility to respect and contribute to those politics.

particularly the exclusion of transgender people, people of colour, and those who did not align with traditional gay and lesbian liberation politics. While, in some respects, queer activism was intended to offer a more radical political alternative to those who were excluded from, or felt that their interests or political goals were not reflected in, these movements (Sullivan, 2003), it still developed from culturally and politically contingent circumstances in Anglo-European and American contexts. The kinds of politics developed in these circumstances are not necessarily always relevant to those who encounter other social and political conditions, and it is not possible to simply artificially reproduce 'queer' work in other contexts (Bao, 2011).

Partly because of their historical and political context, and partly because of the conceptual and philosophical positions on which they are based, queer scholarship and activism have been criticised for maintaining specific forms of erasure and exclusion. Some early queer work struggled to adequately account for the multiple intersections between forms of social difference (Giffney, 2009: 3), and it often seemed that the radically deconstructive, anti-normative politics of queer work was only available to a 'transparent white subject' who already has racial and cultural privilege (Eng et al., 2005: 12) – prototypically the cisgender man (Jagose, 1996: 116; Sullivan, 2003: 48; Walters, 1996: 11-12). This is a concern for those who do not experience white privilege, because the term 'queer' is not necessarily always empowering for people of colour, given that it is used within racist social structures as a way of reinforcing the supposed sexual deviance of people of colour (La Fountain-Stokes, 2011; Muñoz, 2009; Sullivan, 2003: 48). As Crichlow has argued, 'queer' reinforces 'the white hegemony of lesbian and gay politics' (Crichlow, 2004: 217), erasing culturally specific terms and subjectivities. And even when it does recognise and respect these subjectivities, as I will discuss in a later section, it can do so problematically by reproducing injustice.

There has also been some concern that despite critiquing binaries (primarily in the context of gender and sexuality), queer scholarship and activism reproduces some other problematic binaries, leading to forms of elitism. For example, it is argued that in creating a distinction between the 'normative' and 'conservative' assimilation politics that dominate gay and lesbian movements, and the more 'radical' and 'progressive' queer politics, queer scholars and activists position queer approaches as superior and imply that others are less desirable as a result (Sullivan, 2003: 47). Associated with this, some have felt that there has also been a denigration of more 'normative' identities or

'traditional' relationships, and a celebration of the array of non-normative relationships and subjectivities symbolised by 'queer' (Berlant and Warner, 1995: 346; Halperin, 1995: 65; Sedgwick, 2011: 198-199; Sullivan, 2003: 49). These dynamics, it is argued, potentially exclude those who identify in ways that appear essentialising, or those who may adopt an identity category because of its strategic political value (Butler, 1993) – something that may characterise queer-related politics among significantly disadvantaged groups or in many contexts outside of the Global North.

Finally, one of the most persistent critiques of queer scholarship and activism is that due to its preference for encouraging discursive play and deconstruction, it does not focus enough on achieving material gains in equality and justice in queer lives (Walters, 1996: 12). Additionally, because the writing style of queer scholars has been described as opaque and dense, queer work is thought to be inaccessible to members of the community who experience the worst disadvantage and marginalisation (Giffney, 2009: 3). Queers scholars usually defend their style in this respect by highlighting that these forms of politics are nevertheless directed at very real injustices, and that the apparent complexity of their work is inevitable given that they seek to radically push against existing structures of thought (Lloyd, 2007: 21). However, it remains the case that some feel more could be done in an immediate sense to link queer scholarship and activism to the injustices that they experience, or at least to better articulate these connections and make them apparent to those experiencing marginalisation.

Thus, while queer work has been productive in many respects, it has not been without critique. The productivity and utility of 'queer' for some, particularly those who experience the most significant forms of marginalisation, has been questioned. Because of this, it is important to consider the potential limitations of queer-informed work for those who do not experience particular forms of privilege, including Indigenous people and many of those outside the Global North.

Challenging the Colonial Dynamics of Criminology

Insights from counter-colonial scholars working within criminology might provide further impetus for queer criminologists to explore how queer criminology might be decolonised. Counter-colonial criminologists are generally united in the political project of decolonisation, responding to the injustices that Indigenous peoples continue to

experience in societies with a history of colonisation, and particularly in settler-colonial societies (where the settler population and settler social structures and institutions have sought to replace the Indigenous population and Indigenous social structures). In particular, they work to identify the ways in which criminology as a discipline, and criminal justice practices, operate as part of an ongoing colonial project. On this point, Biko Agozino notes that criminology emerged historically ‘...as a discipline for disciplining and controlling the Other at a time when colonial administrations were imprisoning most regions of the world’ (Agozino, 2003: 6), also pointing out that ‘...criminology is a social science that served colonialism more directly than many other social sciences’ (ibid: 1) because it ‘...was developed primarily as a tool for imperialist domination’ (ibid: 228). Because criminologists have not fully accounted for these historical connections between criminology and colonialism, Agozino suggests that criminology remains connected to ‘imperial reason’ (ibid: 245). The goal of counter-colonial criminologists, then, is to ‘...decolonis[e] theories and methods of the empire of law in criminology’ (Agozino, 2004: 344).

For counter-colonial criminologists, central to decolonising criminology is challenging the epistemological assumptions of criminology, and the relations through which knowledge is produced and circulated within the discipline. This is not just in order to include previously overlooked Indigenous voices, as to do so would only reproduce the structural inequalities perpetuated by the discipline. Rather, it must also provide a space for new ways of knowing, including Indigenous epistemologies and ontologies (Blagg, 2008: 130; Cunneen and Rowe, 2014: 61; Cunneen and Tauri, 2016; Kitossa, 2014: 65; Kitossa, 2012: 217). In this sense, the targets of many counter-colonial criminological critiques are positivism and scientism (defined by Kitossa [2014: 73] as ‘...the socialised deification of an approach to science as though by means of quantification and technical definitions the vast domain of human experience and interaction, like molecules in a test tube, are quanta’) within criminology. These approaches have been described as racially coded and gendered, and as forms of ‘epistemic violence’ that work to dismiss as unscientific or irrational other ways of knowing (Kitossa, 2014: 63, 73). As the dismissal and suppression of Indigenous knowledges and cultures has been a central component of colonial domination, the dominance of scientism and positivism in criminology only reinforces criminology’s role in expanding colonialism and highlights the importance of these as targets of decolonisation (Cunneen and Rowe, 2014: 50, 52; Kitossa, 2014: 67).

These critiques highlight for queer criminologists the importance of considering how queer criminological work itself might perpetuate the dynamics that are challenged here. On the basis of such critiques, it is important to consider the ways in which calls to develop queer criminology, and invest in or expand the production of criminological knowledge, may perpetuate the dynamics of colonial power that counter-colonial criminologists seek to push against. These dynamics differ across societies with a history of colonialism, thereby working against the development of a single kind of approach to 'decolonising' queer criminology. Nevertheless, it is important to examine the multiple ways that the production of queer criminological knowledge, and any associated queer politics, may perpetuate colonial power (such as by serving the interests of the settler colonial state), and to identify ways of subverting this. In fact, it may be instructive that counter-colonial criminologists rarely seem to entertain the possibility of being situated within criminology. In this vein, while suggesting that some sort of critical presence by counter-colonial criminologists within criminology is necessary, it is possible to hear the irony when Agozino asks '[s]hould third world students be encouraged to study the science with which their countries were subjugated for centuries?' (Agozino, 2004: 354). These questions have not yet been explored in any substantial way within queer criminological work and yet remain essential if queer criminology is to be taken seriously as an ethical project as described above.

Queer Settler Colonialism

A third reason that suggests it is necessary to explore how queer criminology can be decolonised is drawn from more specific critiques of queer scholarship and activism raised by Indigenous and counter-colonial scholars, and particularly the notion of 'queer settler colonialism'. This is particularly useful for understanding queer criminological politics in settler colonial societies – that is, where the settler population has sought to replace the Indigenous population, in contrast to other societies that might be described as postcolonial (Veracini, 2010). There are many reasons to argue that queer scholarship and politics have a lot to offer to sexuality- and gender-diverse Indigenous peoples – including as open spaces to recognise, celebrate, and represent diverse sexualities and genders, particularly those that have been regulated through colonial constructs of sexuality and gender (Buist and Lenning, 2016: 26-29; Morgensen, 2012: 170). However,

as we have seen, the utility of 'queer' for addressing the discourses and power relations that produce marginalisation and oppression, including those that feature in Indigenous lives, is contested.

In particular, it is necessary to look at the ways in which queer politics may in fact operate to support settler colonialism – something that Scott Lauria Morgensen terms 'queer settler colonialism' (2012; see also Morgensen, 2011). After all, as Morgensen points out, the primary condition of queer politics in settler states is settler colonialism (Morgensen, 2012: 167). Queer settler colonialism is perpetuated in a number of ways. One key way in which this is achieved is through queer political support for the nation-state and its institutions – institutions and relations that have not yet been decolonised. In recent times, diverse genders and sexualities have been progressively 'included' by nation-states, further securing the rule of those states, and 'domesticating' these communities, though often at the expense of certain 'others' (Haritaworn, 2015). A key example highlighting this is the growing recognition of LGBT rights in the Israeli state, which has occurred at the same time that the basic rights of Palestinians are violated and the dispossession of Palestinian land continues (Morgensen, 2012: 175; Schulman, 2012). These kinds of queer politics, which seek inclusion into, and recognition by, the institutions of the nation-state, simply perpetuate settler colonialism by strengthening these states and institutions. They do not contribute to a decolonisation of these institutions, and do nothing to change the colonial power dynamics that not only make those institutions possible, but enable queer politics on colonised lands. As Morgensen points out, to the extent that queer politics '...ma[kes] the settler state [its] horizon of freedom', the calls of colonised peoples for a decolonisation of settler society will go unheeded (Morgensen, 2012: 170).³

Queer settler colonialism is also perpetuated through queer political claims of respect for, and kinship with, Indigenous gender and sexual diversity (Morgensen, 2012: 172). Within queer politics, it is easy to suggest parallels between the struggles of diverse genders and sexualities present within many Indigenous cultures and queer

³ These critiques reflect a number of arguments about investments in the nation-state that have long been articulated in queer scholarship and critical scholarship more broadly. For example, they extend Wendy Brown's argument that they position the nation-state as a 'neutral [arbiter] of injury', and not as an institution also 'invested with the power to injure' (Brown, 1995: 27). They also align with the critique of homonormativity, developed by Lisa Duggan (2003) and others, which points out that the political wish among mainstream gay and lesbian politics is to be able to conform within the neoliberal state.

subjectivities in settler colonial societies – particularly because of their regulation through the violent colonial impositions of gender binaries, or through laws prohibiting sodomy, for example. It becomes tempting, then, to define these as queer struggles, and to suggest that queer politics has a lot to offer sexuality- and gender-diverse people in Indigenous communities. However, it is here that queer politics potentially colonises Indigenous politics. Thus, while it is possible to suggest that the reassertion by colonised people of diverse genders and sexualities is a form of queer politics, this potentially misrecognises projects of decolonisation for queer politics. It is important that such movements also (and even primarily) be understood as a renewal of ‘...Indigenous traditions of personhood and governance’ connected to a project of decolonisation (Morgensen, 2012: 170).

Thus, as long as queer politics is organised around the interests of settlers, it will fail to contribute to decolonisation. On the basis of these critiques, queer settlers must

...take responsibility for examining how their gendered and sexual existence is conditioned by settler colonialism. Both their marginality and its redress are structured by settler-colonial power, such that every articulation of their existence on stolen land sustains that inherent interrelationship (Morgensen, 2012: 185).

For queer criminologists in settler colonial states such as the US and Australia, this means reflecting on the ways in which the development of queer criminology – and particularly the production of criminological knowledge as part of this – reinforces queer settler colonialism, and exploring whether it is possible to pursue queer politics at the same time as engaging with a decolonising politics.

Conclusion

The reasons, articulated in this paper, that the decolonisation of queer criminology needs to be explored further are not new – they rehearse many arguments already canvassed over the years by scholars and activists pushing against colonialism. My purpose in drawing them together here has been to underscore their importance to the work of queer criminologists. As I have shown, queer criminology lies at the intersection of these critiques of criminology, queer settler colonialism, and queer politics and scholarship

generally (see further Ball, 2016). If queer criminology develops without confronting the issue of decolonisation – and specifically the different kinds of colonial power and colonial histories that exist in different contexts – then it is likely that the problems identified above will only be compounded. Thus, the future of the field depends on engaging with these issues. This is particularly the case if queer criminology is taken to be a disruptive project that seeks to challenge orthodoxies and the taken-for-granted, and an ethical task directed towards expanding which queer lives are considered to be ‘liveable lives’.

This discussion has suggested, only on the basis of the arguments that it canvasses, that it is likely that queer criminology is invested in colonial power in various forms and that it is necessary to explore how it can be decolonised. However, this remains a suggestion, and the detail of how colonial power informs or underpins queer criminology has not been articulated here. While the purpose of this paper has simply been to turn the attention of queer criminologists to these issues, it remains necessary to further engage with the work of scholars (including criminologists) already dealing with these issues. Doing so will help not only to provide a deeper understanding of the ways in which queer criminology can be decolonised, but also to identify the potentially problematic aspects of queer criminological work and bring to light the places at which change is possible.

Agozino, B. (2003) *Counter Colonial Criminology: A Critique of Imperialist Reason* (London: Pluto Press).

Agozino, B. (2004) ‘Imperialism, Crime and Criminology: Towards the Decolonisation of Criminology’, *Crime, Law and Social Change*, 41, 343-358.

Ball, M. (2013) ‘The Use of “Queer” in Criminal Justice Discourses’, in K. Richards and J. Tauri (eds.) *Crime, Justice and Social Democracy: Proceedings of the 2nd International Conference, Volume 1* (Brisbane: Crime and Justice Research Center, QUT), 1-9.

Ball, M. (2014) ‘Queer Criminology, Critique, and the “Art of Not Being Governed”’, *Critical Criminology: An International Journal*, 22 (1), 21-34.

Ball, M. (2016) *Criminology and Queer Theory: Dangerous Bedfellows?* (Basingstoke: Palgrave Macmillan).

- Bao, H. (2011) 'People's Park: The Politics of Naming and the Right to the City', in B. Scherer and M. Ball (eds.) *Queering Paradigms II: Interrogating Agendas* (Bern: Peter Lang), 115-132.
- Berlant, L. and Warner, M. (1995) 'What Does Queer Theory Teach Us About X?', *PMLA*, 110, 343-349.
- Blagg, H. (2008) 'Colonial Critique and Critical Criminology: Issues in Aboriginal Law and Aboriginal Violence', in T. Anthony and C. Cunneen (eds.) *The Critical Criminology Companion* (Leichardt: Hawkins Press), 129-143.
- Brown, W. (1995) *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press).
- Buist, C.L. and Lenning, E. (2016) *Queer Criminology* (Oxon: Routledge).
- Butler, J. (1993) *Bodies That Matter: On the Discursive Limits of 'Sex'* (New York: Routledge).
- Butler, J. (2004) *Precarious Life: The Powers of Mourning and Violence* (London: Verso).
- Butler, J. (2009) *Frames of War: When Is Life Grievable?* (London: Verso).
- Crichlow, W. (2004) 'History, (Re)Memory, Testimony and Biomythography: Charting a Buller Man's Trinidadian Past', in R.E. Reddock (ed.), *Interrogating Caribbean Masculinities: Theoretical and Empirical Analyses* (Jamaica: University of the West Indies Press), 185-222.
- Cunneen, C. and Rowe, S. (2014) 'Changing Narratives: Colonised Peoples, Criminology and Social Work', *International Journal for Crime, Justice and Social Democracy*, 3 (1), 49-67.
- Cunneen, C. and Tauri, J. (2016) *Indigenous Criminology* (Bristol: Policy Press).
- Duggan, L. (2003) *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston: Beacon Press).
- Giffney, N. (2009) 'Introduction: The "Q" Word', in N. Giffney and M. O'Rourke (eds.) *The Ashgate Research Companion to Queer Theory* (Farnham: Ashgate Publishing), 1-13.
- Halperin, D. (1995) *Saint Foucault: Towards a Gay Hagiography* (Oxford: Oxford University Press).

- Haritaworn, J. (2015) *Queer Lovers and Hateful Others: Regenerating Violent Times and Places* (London: Pluto Press).
- Jagose, A. (1996) *Queer Theory* (Melbourne: Melbourne University Press).
- Kitossa, T. (2012) 'Criminology and Colonialism: Counter Colonial Criminology and the Canadian Context', *The Journal of Pan African Studies*, 4 (10), 204–226.
- Kitossa, T. (2014) 'Authoritarian Criminology and the Racial Profiling Debate in Canada: Scientism as Epistemic Violence', *African Journal of Criminology and Justice Studies*, 8 (1), 63-88.
- La Fountain-Stokes, L. (2011) 'Gay Shame, Latina- and Latino-Style: A Critique of White Queer Performativity', in M. Hames-García and E.J. Martínez (eds.) *Gay Latino Studies: A Critical Reader* (Durham: Duke University Press), 55-80.
- Lloyd, M. (2007) *Judith Butler: From Norms to Politics* (Cambridge: Polity Press).
- Mignolo, W.D. (2011) *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (London: Duke University Press).
- Morgensen, S.L. (2011) *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonisation* (Minneapolis: University of Minnesota Press).
- Morgensen, S.L. (2012) 'Queer Settler Colonialism in Canada and Israel: Articulating Two-Spirit and Palestinian Queer Critiques', *Settler Colonial Studies*, 2 (2), 167-190.
- Muñoz, J.E. (2009) *Cruising Utopia: The Then and There of Queer Futurity* (New York: New York University Press).
- Schulman, S. (2012) *Israel/Palestine and the Queer International* (Durham: Duke University Press).
- Sedgwick, E.K. (2011) *The Weather in Proust* (Durham: Duke University Press).
- Sullivan, N. (2003) *A Critical Introduction to Queer Theory* (New York: New York University Press).
- Veracini, L. (2010) *Settler Colonialism: A Theoretical Overview* (Basingstoke: Palgrave Macmillan).

Walters, S.D. (1996) 'From Here to Queer: Radical Feminism, Postmodernism, and the Lesbian Menace', in I. Morland and A. Willox (eds.) *Queer Theory* (Basingstoke: Palgrave Macmillan), 6-21.

Woods, J.B. (2014) "'Queering Criminology": Overview of the State of the Field', in D. Peterson and V. Panfil (eds.) *The Handbook of LGBT Communities, Crime, and Justice* (New York: Springer), 15-41.

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Green Criminology and Fracking in the UK: An Application of Utilitarian Ethics

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Abstract:

Fracking is a controversial hydrocarbon extraction technique with the UK public, but the passing of the Infrastructure Act 2015 has made fracking in the UK imminent. This paper attempts to conduct a cost-benefit analysis of the potential social and environmental risks and benefits of fracking in order to provide a lens through which to guide public policy on the issue. The classic philosophical theory of utilitarianism is outlined and then re-applied to the assessment of the risks and benefits of fracking. This re-application comes to the conclusion that fracking should not be instigated by the UK government under the principle of utility based on the equal consideration of all people's interests. Instead, the paper calls for the increased use of renewable forms of energy as a solution to the utilitarian outlook on the UK's energy policy, in line with the UK public's energy generation preferences.

Keywords:

Fracking; utilitarianism; green criminology; victims

The study of green criminology is complex not least because of the array of far-reaching issues that can be encompassed under the green criminological umbrella. These issues can range from, but are not limited to: access to water resources, the illegal management and distribution of wastes, trades in illegal timber and wildlife, extraction of natural

resources, and animal abuse, to reveal a handful of examples. In fact, green criminology does not just draw the line at attempting to explain green crimes that violate criminal laws. On the contrary, green criminology widens its net by including in its broad scope acts and omissions that cause *harm* which may not necessarily be defined as illegal by criminal justice systems. After all, crime is a social construct that has ‘no ontological reality’ (Hulsman, 1986: 64), and laws are constantly being created, amended and repealed according to the political, economic and cultural attitudes of the times. As a result of this realization, many academics who could be said to be contributing to the concept of green criminology (for it is not a distinct, grounded criminological theory) have noted that the broader notion of ‘harm’ may be a better focus for criminological enquiry (Hillyard and Tombs, 2007; Stretesky et al., 2014) rather than the narrow, orthodox criminological lens that limits itself specifically to tackling actions that violate the law of the day.

Despite such a disjuncture in criminology between crime and (legal) harm, a distinct positive of the subject is the realization that ‘criminology is the application of other disciplines to the study of crime and criminals (and also deviance, harm, incivility, offence and so on’ (Millie, 2016: 7). Therefore, whilst this paper could be seen as interdisciplinary (considering aspects of law, philosophy, victimology, zemiology and social and environmental justice), the overall glue that binds these topics together is criminology itself through the recognition that harm is occurring and that something ought to be done about it.

This paper will focus on the notion of harm, rather than the traditional, man-made notion of crime. The act of unconventional onshore hydraulic fracturing (hereafter “fracking”) in the United Kingdom (UK) will be presented as a legal act that falls within the broad remit of green criminology on the basis that the process creates social and environmental harms and injustices, rather than causing the violation of specific laws. The fact that governments around the world (namely, the United States (US), Australia, South Africa, the UK, and Poland) are currently consenting to the use of unconventional hydraulic fracturing (either at exploratory or production phases), despite the known social and environmental harms the process creates, requires green criminological explanations for such state-corporate interests, and this will be a theme that runs consistently through this paper. The primary aim of the paper however, is to use utilitarianism to show that

fracking does not create the greatest net utility and that, actually, the UK public would rather see the use of less harmful renewable forms of energy creation.

Fracking

Although hydraulic fracturing in a conventional, vertical manner has been undertaken for several decades in both the US and the UK, the unconventional act of hydraulically fracturing a horizontal well is a new technique developed by Mitchell Energy in the US in the 1990s. Mitchell Energy developed 'slick-water fracturing' (Prud'homme, 2014: 29) that could be conducted several times per well and involved the use of water, sand and a small amount of chemicals to fracture rock underground to release the gases trapped inside. This technique is now commonly referred to as *fracking*, to describe the manner in which hydrocarbons are released. It must be noted however, that there is not one definitive way in which to conduct fracking, and the techniques involved vary from company to company and from location to location, respective of the time, resources and funding available to companies and the geological nature of differing underground rock formations of the proposed fracking area.

Fracking is an extremely controversial issue for the British public and there are now hundreds of anti-fracking groups who are organizing to campaign against the expansion of the fracking industry in the UK (Jones et al., 2013). Statistically, a survey from the Department of Energy and Climate Change (DECC, 2016: 9) found that 31% of the public were opposed to fracking with 19% in support of fracking. Conversely, 81% expressed 'support for the use of renewables with 4% opposed to renewables' (DECC, 2016: 7). This clearly indicates that the UK public would prefer renewable forms of energy rather than the use of shale gas, and this is a growing trend over time. There are arguably two main reasons for this state of affairs. Firstly, negative representations of fracking that portray social and environmental harm have caught the attention of the media in the US and the UK leading the public to question the safety and necessity of the industry. Such representations include the documentary film *Gasland* directed by anti-fracking campaigner Josh Fox, and *Promised Land* starring the actor Matt Damon (Jaspal and Nerlich, 2014: 2). Finally, it could be argued that the potential social and environmental costs associated with fracking coupled with the uncertain economic benefits proposed by

the industry could be a factor in the hesitancy of the British public to get behind fracking and to give it their full support.

It is this final point that is extremely important for the UK government in their future decisions with regards to the fracking industry. If the government continues to push the fracking agenda and the public continues to progressively oppose fracking, public resistance to the industry will strengthen and government sovereignty will continue to be questioned. However, it must be noted that *some* of the public, alongside the fracking industry and many MPs are in favour of the expansion of the fracking industry, and these views must be considered equally alongside the views of those who are conversely opposed to the industry. In this respect, it could be argued that a fair solution to the fracking debate (in terms of directing public policy on the issue) would be to conduct a cost-benefit analysis with regards to the potential social and environmental costs that may occur from fracking in comparison with the potential social and environmental benefits that may occur from fracking correspondingly. This fits neatly with the theory of utilitarianism which advocates for the equal consideration of every person's interests. This is shown through the work of J.S. Mill who proposed that 'a society between equals can only exist on the understanding that the interests of all are to be regarded equally' (Mill, 1863: 304).

Table 1 displays a cost-benefit analysis with regards to both the *potential* social and environmental *costs* associated with fracking and the potential social and environmental *benefits* associated with fracking. Table 1 does not aim to identify *all* of the possibilities with regards to these potential costs and benefits, but it *does* intend to bring together the salient issues from both sides of the fracking debate into one particular place. Similarly, Table 1 does not imply that the arguments in each respective column are concrete to that respective column. Arguments overlap between social and environmental issues as well as between benefits and costs. For example, the impact of fracking operations on local air quality could be interpreted as both a social cost and an environmental cost. Similarly, it is unknown to what extent fracking will contribute to an increase in emissions leading to a negative effect on climate change, or whether using gas rather than coal will lead to a positive effect on climate change.

Potential Social Costs	Potential Environmental Costs	Potential Social Benefits	Potential Environmental Benefits
Impact on local air quality from drilling sites (Gear et al., 2014: 7; White et al., 2016: 14).	Surface water and soil contamination from surface spillages (Entekin et al., 2011: 506; Gear et al., 2014: 7).	Creation of approximately 74,000 jobs (Institute of Directors, 2013: 17; White et al., 2016: 9).	Using more gas and less coal could bridge the gap to a low-carbon future (White et al., 2016: 25).
Traffic, noise, light and dust pollution from drilling sites (DECC, 2014: 4; Gear et al., 2014: 7).	Risk of groundwater contamination from leaks at depth (Gear et al., 2014: 7; Throupe et al., 2013: 206).	Investment of £3.7 billion per year (Institute of Directors, 2013: 17; White et al., 2016: 9).	Creating gas in the UK decreases the need to import liquid natural gas from abroad, the transportation of which contributes to emissions (Institute of Directors, 2013: 46; White et al., 2016: 26).
Landscape disruption (Gear et al., 2014: 7) and habitat fragmentation (Jones et al., 2015: 382; Slonecker et al., 2012: 9).	Sustained Casing Pressure (SCP) and well integrity issues during or after fracking leading to leaks (Jackson et al., 2014: 337-339).	Heightened energy security (White et al., 2016: 27).	
Exposure to chemicals through spillages or water contamination. Exposure also to Naturally Occurring Radioactive Materials (NORM's) and Radon gas (DECC, 2014: 4).	Radiation risks to surface and groundwater from radiation in waste fluids and drill cuttings (Gear et al., 2014: 7).	Investment in UK hydrocarbons could contribute to economic growth (Ochieng et al., 2015).	
Risks to the health of fracking workers caused by continued exposure to radioactive chemical compounds (Esswein et al., 2012).	Risks of spills in transporting chemicals and/or wastewater (Gear et al., 2014: 7; Mash et al., 2014: 333).	Creation of jobs in poorer areas of the UK such as Lancashire (Institute of Directors, 2013: 29-33).	
Depreciation in property value of property in close proximity to well sites, particularly where seismicity occurs (Gibbons et al., 2016). People may decide to move away from the area.	Seismic activity or larger earthquakes resulting from waste disposal through re-injection (Royal Academy of Engineering, 2012: 45-46; Zoback, 2012).	The ability to use fossil fuels for energy both for individual, family and commercial purposes for decades to come (Stacey, 2015).	
Property damage resulting from blast vibrations or seismic activity (Jones et al., 2015: 385).	'Impact on climate change caused by fugitive emissions and the subsequent burning of gas' (Gear et al., 2014: 7) through the techniques of flaring and venting (DECC, 2014: 3).	Increase in jobs could mean more people moving to the area, particularly workers and their families meaning the possibility of higher rental income and money spent in local area.	
Energy prices may not reduce even with the energy created by fracking (House of Commons Energy and Climate Change Committee, 2013: 5)	Use of large quantities of water leading to water depletion in water-scarce areas. Each well could require up to 3.8 million gallons of water (Cooley and Donnelly, 2014: 67)	Communities may receive £100,000 per well at exploratory phase and 1% of revenue at production phase (White et al., 2016: 22).	
Difficulty of the government to abide by legally binding emissions legislation (such as the Climate Change Act 2008) and climate agreements (such as COP21).	Cheaper gas could divert investment from cleaner, renewable forms of energy (White et al., 2016: 26) and towards the continued use of fossil fuels.		

Loss of tourism due to tourists avoiding an area undergoing shale gas operations which could result in a loss of jobs (Shropshire Council, 2014: 2).			
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(Table 1: Potential social and environmental costs and benefits).

Table 1 clearly shows the multitude of factors that need to be considered when making decisions on fracking. Whilst communities have the potential to benefit financially from fracking, exactly how communities will use such money, and who the money goes to, is open to interpretation. Most of the social and environmental benefits identified allude to wider benefits to society, largely in economic terms, such as the creation of jobs, creation of fossil fuel energy and heightened energy security. Whilst such arguments often carry political weight, there are alternatives to fracking that also produce similar wider social benefits (jobs, energy security, energy creation) and these are renewable forms of energy. The DECC (2016) public attitudes tracker shows that the public support renewable energy much more favourably than energy created by fracking.

The social and environmental costs of fracking outlined by the cost-benefit analysis (Table 1) cover a range of problems related to human health (from the potential exposure to spilt chemicals), to extremely important climatic considerations (for example, leakages and fugitive emissions from flaring). These costs may be significant for local communities and for the wider global human population and environment. For a fracking industry to develop in the UK, the government is highly dependent on the social benefit arguments of fracking to gain legitimacy for their decisions. However, there is no guarantee that such benefits will materialize. For example, whilst the institute of Directors (2013) report indicated the potential creation of 74,000 jobs for fracking in the UK, Great and Little Barugh Parish Council claimed that the KM8 well at Kirby Misperton in North Yorkshire would ‘not create a single new job for local people’ (North Yorkshire County Council, 2016: 57).

The cost-benefit analysis has shown the complex nature of fracking, making decisions on its usage very difficult. One way to overcome this is to use alternative, renewable technologies that create much less social and environmental cost. An analysis of the classic criminological (and philosophical) theory of utilitarianism helps to explain why fracking does not create the greatest net utility.

Principles of Utilitarianism

Utilitarian ethics are generally attributed to the work of 18th and 19th century scholars and philosophers such as Cesare Beccaria, Jeremy Bentham and John Stuart Mill. Whilst these figures are exceedingly important in the development of a modern utilitarian ethics, a form of utilitarian thought can be detected much earlier in the works of 5th century BC Chinese philosopher Mo Tzū (Scarre, 1996: 23), but also in the teachings of 4th century BC Greek philosopher, Epicurus (Mill, 1863: 278; Scarre, 1996: 39). It was Jeremy Bentham however, who developed the 'Principle of Utility' in his formative work entitled *An Introduction to the Principles of Morals and Legislation* (Bentham, 1781: 65), arguably the most well-established concept attributed to utilitarian thought. The principle of utility is a simple concept devised on the idea that all actions result in either pleasure or pain and, 'it is up to them alone to point out what we ought to do, as well as to determine what we shall do' (Bentham, 1781: 65). Because of pleasure and pain, the principle of utility advises that all actions should intend to promote pleasure and reduce pain resulting in the 'greatest good for the greatest number' (Bentham, 1776, cited in Burns, 2005: 46).

Utilitarianism holds that all decisions (whether they be made by individuals or by governments or by companies) must promote happiness and prevent the reverse of happiness; pain or harm. Therefore, it is the perceived outcome of an action that is the deciding factor as to the 'rightness or wrongness' of an action which makes utilitarianism (like Kant's deontological ethics) consequentialist in nature (Millie, 2016: 36). Actions that create happiness and minimize pain are therefore classed as morally right actions under utilitarian ethics, and acts that prevent happiness or exacerbate pain are consequently considered as morally wrong actions. According to Mill (1963: 273) 'a test of right and wrong must be the means... of ascertaining what is right and wrong, and not a consequence of having already ascertained it.' Therefore, actions should be led by what is right and wrong designed by a code of ethics, here proposed as utilitarian ethics, and should not be ascertained by committing an act regardless of the unknown consequences of that act.

An interpretation of this can be linked to a well-known concept within environmental law known as the *precautionary principle*. According to Wolf and Stanley (2014: 16) 'this principle enables or requires states to take action where a risk to human health or the

environment exists, but there is evidential uncertainty as to the existence or extent... of the risk.' Hydraulic fracturing has already been shown to cause environmental contamination and social victimisation in the US in a multitude of ways (Jackson et al., 2014). This, combined with the fact that hydraulic fracturing has not yet begun on a commercial scale in the UK, means that there is evidential uncertainty as to the scale of the risk of human and environmental victimisation in the UK. Until there is succinct evidence to suggest that hydraulic fracturing will not cause any social or environmental victimisation, both the precautionary principle and the utilitarian way of ascertaining right and wrong would condemn the act from taking place.

A critique of this argument manifests itself in the decisions that are made by governments with regards to legalizing acts that promote ecological destruction or human harm. If a company, for example, is actively releasing pollutants into the environment, but acting within the remit of a particular permit or law, then the current legal system permits this as a morally right action (Wyatt, 2013: 62). This is an idea considered in relation to environmental victimology where Hall (2014: 129, emphasis in original) states that:

... most debate concerning how environmental destruction might fit within the corpus of criminology and victimology is whether those harmed by environmentally destructive activities are truly victims of *crime*, given that many polluting activities are frequently not only state sanctioned, but in fact are actively *promoted* by states.

Therefore, although a particular act that causes pollution may at one time be legal, a realization of harm, or over-pollution, may see the same act criminalised in the future. It is for this reason that laws are not always the best way of deciding what is morally just and what is morally unjust, particularly where environmental laws are concerned.

Although this article began by suggesting that green criminology may be a more appropriate way to analyse environmental destruction than traditional notions of criminology (the focus of green criminology being on harm as well as crime), the reality is that laws produced by governments are the social construct upon which different actions affecting the environment are deemed to be moral or immoral by the rest of society. Green criminologists however, are now starting to focus on the relationships that governments have with corporate actors (Michalowski and Kramer, 2007; Stretesky et al., 2014), both of whom may be considered responsible for environmental harm taking

place. This is known as state-corporate crime where: 'the state tends not to act in ways that reduce the negative ecological impacts of corporations and the production of ecological disorganization. In this sense, the state facilitates green harms caused by corporations' (Stretesky et al., 2014: 76).

Utilitarian thought does not allow for the state-corporate decision-making that comprises social and environmental well-being at the expense of state-corporate economic objectives. According to Stretesky et al. (2014: 72) 'environmental laws make a trade-off between public and environmental health and economic development and expansion.' These trade-offs are the result of both parties seeking to gain an advantage from the other. For example, a government may pass a law that permits a corporation to undertake a certain amount of ecological disorganisation, and in return for the passing of that law, the corporation provides the government with economic benefits that are a result of that transaction, such as the creation of jobs.

In February 2015, the UK government passed the Infrastructure Act 2015, part 6 of which legally permitted the act of onshore hydraulic fracturing under certain conditions. The Infrastructure Act was passed by government despite the fact that unconventional onshore hydraulic fracturing has been found to cause social and environmental victimisation in the US (Howarth et al., 2011; Ingraffea et al., 2014; Jackson et al., 2014) and also caused seismic activity at the Preese Hall-1 wellsite in Lancashire in 2011 (Green et al., 2012: 1). The fact that the Infrastructure Act has been passed can therefore be seen as a state-corporate trade-off that allows a certain amount of social and ecological destruction taking place, for the return of benefits such as a contribution toward economic growth for the UK government.

Although a certain amount of happiness is created through the expansion of the fracking industry in the UK, this happiness is concentrated in the companies that extract the hydrocarbons and the government who increase their chances of successful re-election. Pain is created through the process of releasing hydrocarbons through the creation of various types of victimisation. This victimisation is forced upon a variety of people who involuntarily suffer from the consequences of extraction processes. These pains can be seen in the social and environmental costs associated with fracking identified in Table 1. Utilitarian morality would not condone the concentration of happiness and the exacerbation of pain caused by fracking as this does not equally promote the principle of

utility which is primarily concerned with the greatest amount of happiness for the greatest number of people. Mill (1863: 288) acknowledges that;

... the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator.

Corporations and governments have individual and economic imperatives and motives that influence their actions which does not allow them to make decisions through the eyes of a disinterested and benevolent spectator. On the contrary, state-corporate actions facilitate harms and crimes that contribute to the privation of pleasure and the exacerbation of pain.

It must be noted, however, that fracking has the potential to create a variety of social benefits that are enjoyed by all people which would tend to agree with the utilitarian thought of providing the greatest amount of happiness (or benefits) to the greatest number of people. The development of fracking in the UK, for example, will create jobs (Institute of Directors, 2013: 17), and producing gas in the UK will decrease the need for the importation of gas from abroad (Weijermars and McCredie, 2011: 2). Similarly, investment in fracking is likely to contribute (however minimally or greatly) to economic growth (Ochieng et al., 2015) which, in turn, increases the collective standard of living. However, regardless of this realization, the social and environmental costs of fracking offset the economic potential of the process when the theory of utility is re-applied to fracking. Where there are technologies that create similar social, environmental and economic benefits, technologies that create much less social and environmental risk (compared with fracking), the theory of utility would always choose the technology that creates the largest nett quantity of utility over the technology that creates a lesser quantity of nett utility (utility being pleasure minus pain, or in this case, benefits minus risks). This is recognised in the work of J.S. Mill who denounces that 'a sacrifice which does not increase, or tend to increase, the sum total of happiness, it (that is, utilitarian morality) considers as wasted' (Mill, 1863: 288).

If both the costs and benefits of fracking were concrete and quantifiable, it would be easier to determine what the morally right outcome would be, in line with the principle of utility. However, it is fair to say that the outcomes of the fracking process in the UK are

unknown and any attempts to promote the technology are based on subjective estimates of what might happen, rather than based on concrete evidence which would support the moral legitimacy of any such action. This is because the UK is currently at the exploratory phase of the fracking process, rather than the production phase seen in the US. The theory of utility does not condone acts and decisions that are based on the subjective interpretation of what may or may not happen. To re-quote Mill (1863: 273) 'a test of right and wrong must be the means... of ascertaining what is right and wrong, and not a consequence of having already ascertained it.'

The acknowledgement of this way of thinking is similar to the precautionary principle of environmental law. Similarly, there is another legal justification that follows this same moral reasoning. If the effects of the fracking process on climate change are unknown (see Table 1), then the advancement of the technology by the UK government risks infringing upon both the Climate Change Act 2008, a legally binding climate change commitment target, and the recent United Nations Framework Convention on Climate Change (UNFCCC or COP21) deal. Part One of the Climate Change Act 2008 commits the government of the UK to 'ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline'. If the impact of fracking operations on the UK carbon account is unknown, then the theory of utility would not condone fracking as there is a serious risk that emissions from this activity could hinder, or contribute to the inability, of the UK government to meet this legally binding target. Similarly, the COP21 deal made in Paris in December 2015 reaffirmed 'the goal of limiting global temperature increase well below 2 degrees Celsius, while urging efforts to limit the increase to 1.5 degrees' (Centre for Climate and Energy Solutions, 2015: 1). The fact that the effects of fracking in the UK on climate change are unknown, the theory of utility would argue that fracking should not be supported because the moral justification for utilitarianism is that decisions should be made on ascertaining what is right and wrong, and not a result of already having ascertained it. It is with this judgement that it cannot confidently be declared that fracking will aid or hinder the ability to meet objectives laid out in the Climate Change Act 2008 and by the COP21 deal.

As has been mentioned, the UK public are generally more unsupportive of the advancement of the fracking industry than supportive of it. Despite this state of affairs, the government passed the Infrastructure Act 2015 legalising fracking, whilst at the same time removing incentives for forms of renewable energy (Macalister, 2015). This could

be interpreted as a sign that the government is overriding the clear public wish to use renewable energy over fracking technology. This sort of political decision-making juxtaposes the utilitarian principles of Jeremy Bentham who sought for the decisions of government to be made in accordance with the interests of the community, the community being 'the sum of the interests of the several members who compose it' (Bentham, 1781: 66). Such decision making also undermines the sovereignty of the government and its overall purpose which is to serve the interests of the people over which it legislates. As a result, the government, by promoting the development of fracking in the UK, can be seen as acting in a way that cements state-corporate relationships.

Similarly, choosing to advance non-renewable industries such as fracking, when less harmful alternatives are available goes against a major aspect of utilitarian thought. *Act utilitarianism* 'maintains that an action is right if it can reasonably be expected to result in a state of affairs at least as good as the alternative state of affairs' (Scarre, 1996: 10). In terms of the potential creation of social and environmental injustices from fracking technologies (identified in Table 1), act utilitarianism would undoubtedly choose renewable energy creation as these forms of technology (solar, wind, geothermal, wave, tidal, biomass) create much less social and environmental injustice, particularly in terms of the creation of emissions.

Conclusion

This paper has moved away from traditional studies of criminology that often focus on the violation of criminal laws and instead, has focused on the notion of legal, environmental and social harm. Therefore, this paper is more akin to discussions within emerging *green criminology* debates that recognise that something ought to be done about harmful activities, irrespective of their legality. The new technology of unconventional, onshore fracking has been put forward as a natural resource extraction process that demonstrates this disjuncture between harm and crime. In a world where non-renewable resources are depleting and new, higher risk extraction techniques are being developed, more research needs to be done to identify the state-corporate relationships that enable such development to take place. Green criminology in particular is well suited to engaging in this area, but there is a lack of research particularly in the US where fracking is an established technology.

This paper has also highlighted the clear UK public desire to use renewable forms of energy more readily than fracking technology which was acknowledged by the recent DECC (2016) public attitudes tracker. This makes for a seemingly easy decision with regards to the development of fracking. If the UK government were truly representative of the wants and needs of the population, then renewable energy would be prioritized over fracking technology. Utilitarianism would support this outcome as, in terms of providing energy, the greatest amount of utility is generated for the greatest number of people.

Utilitarianism has been used as a moral perspective from which to analyse state-corporate decision making. Principles of utility (such as producing the greatest amount of good for the greatest number of people) do not condone fracking because of a combination of environmental and social risks, and a lack of knowledge of the environmental, social and economic benefits associated with fracking. This fits with the precautionary principle of environmental law that urges for increased scientific and factual evidence before new technologies are implemented.

Bentham, J. (1776) 'On a Fragment of Government', in Burns, J.H. (2005) 'Happiness and Utility: Jeremy Bentham's Equation', *Utilitas*, 17 (1), 46-61.

Bentham, J. (1781) 'An Introduction to the Principles of Morals and Legislation', in Ryan, A. (ed.) (1987) *John Stuart Mill and Jeremy Bentham: Utilitarianism and Other Essays* (London: Penguin Books).

Centre for Climate and Energy Solutions (2015) *Outcomes of the U.N. Climate Change Conference in Paris*. [Online]. Available at: <http://www.c2es.org/docUploads/cop-21-paris-summary-02-2016-final.pdf> (Accessed: 14th November, 2016).

Cooley, H. and Donnelly, K. (2014) 'Hydraulic Fracturing and Water Resources: What do we Know and Need to Know?' in Gleick, P.H. (ed.) (2014) *The World's Water: The Biennial Report on Freshwater Resources, Volume 8* (Washington: Island Press).

Department of Energy and Climate Change (2016) *DECC Public Attitudes Tracker – Wave 17*. [Online]. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519488/PAT_Wave_17_Summary_of_key_findings.pdf (Accessed: 10th November, 2016).

Department of Energy and Climate Change (2014) *Fracking UK Shale: Local Air Quality*. [Online]. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277219/Air.pdf (Accessed: 12th May, 2016).

Entrekin, S., Evans-White, M., Johnson, B., and Hagenbuch, E. (2011) 'Rapid Expansion of Natural Gas Development Poses a Threat to Surface Waters,' *Frontiers in Ecology and the Environment*, 9 (9), 503-511.

Esswein, E.J., Breitenstein, M., and Snawder, J. (2012) 'NIOSH Field Effort to Assess Chemical Exposures in Oil and Gas Workers: Health Hazards in Hydraulic Fracturing', in Institute of Medicine Workshop on the Health Impact Assessment of New Energy Sources: Shale Gas Extraction. [Online]. Available at:

<http://www.ohioeha.org/media/7254/Health-Impact-Assessment-of-Shale-Gas-Extraction.pdf#page=42> (Accessed: 15th February, 2016).

Gibbons, S., Heblich, S., and Timmins, C. (2016) 'Fear of Fracking: earthquakes linked to shale gas exploration cause house prices to fall', *Policy Bristol: Policy Briefing 22/2016*. [Online]. Available at:

[http://www.bristol.ac.uk/media-library/sites/policybristol/documents/Briefing%2022 Fracking FINAL v2.pdf](http://www.bristol.ac.uk/media-library/sites/policybristol/documents/Briefing%2022%20Fracking%20FINAL%20v2.pdf)

(Accessed: 12th May, 2016).

Grear, A., Grant, E., Kerns, T., Morrow, K., and Short, D. (2014) *A Human Rights Assessment of Hydraulic Fracturing and Other Unconventional Gas Development in the United Kingdom*. [Online]. Available at:

<http://www.sas.ac.uk/sites/default/files/files/UK%20HRIA%20w%20appdx-hi%20res.pdf> (Accessed: 3rd March, 2016).

Great Britain. *Climate Change Act 2008*: Elizabeth II. (2008) London: The Stationery Office. [Online]. Available at: <http://www.legislation.gov.uk/ukpga/2008/27/contents> (Accessed: 16th May, 2016).

Great Britain. *Infrastructure Act 2015*: Elizabeth II. (2015) London: The Stationery Office. [Online]. Available at:

<http://www.legislation.gov.uk/ukpga/2015/7/contents/enacted> (Accessed: 16th May, 2016).

Green, C.A., Styles, P., and Baptie, B. (2012) *Preese Hall Shale Gas Fracturing: Review and Recommendations for Induced Seismic Mitigation*. [Online]. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15745/5075-preese-hall-shale-gas-fracturing-review.pdf (Accessed: 10th February, 2016).

Hall, M. (2014) 'Environmental Harm and Environmental Victims Scoping out a "Green Victimology"', *International Review of Victimology*, 20 (1), 129-143.

Hillyard, P. and Tombs, S. (2007) 'From Crime to Social Harm?', *Crime, Law and Social Change*, 48 (1), 9-25.

House of Commons Energy and Climate Change Committee (2013) *The Impact of Shale Gas on Energy Markets: Seventh Report of Session 2012-13, Volume I*. [Online]. Available at: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenergy/785/785.pdf> (Accessed: 10th February, 2016).

Howarth, R.W., Santoro, R., and Ingraffea, A. (2011) 'Methane and the Greenhouse-Gas Footprint of Natural Gas from Shale Formations', *Climatic Change*, 106 (4), 679-690.

Hulsman, L.H.C. (1986) 'Critical Criminology and the Concept of Crime', *Contemporary Crises*, 10 (1), 63-83.

Ingraffea, A.R., Wells, M.T., Santoro, R.L., and Shonkoff, S.B. (2014) 'Assessment and Risk Analysis of Casing and Cement Impairment in Oil and Gas Wells in Pennsylvania, 2000-2012', *Proceedings of the National Academy of Sciences*, 111 (30), 10955-10960.

Institute of Directors (2013) *Infrastructure for Business: Getting Shale Gas Working*. [Online]. Available at: <http://www.iod.com/influencing/policy-papers/infrastructure/infrastructure-for-business-getting-shale-gas-working> (Accessed: 11th May, 2016).

Jackson, R.B., Vengosh, A., Carey, J.W., Davies, R.J., Darrah, T.H., O'Sullivan, F., and Pétron, G. (2014) 'The Environmental Costs and Benefits of Fracking', *Annual Review of Environment and Resources*, 39, 327-362. [Online]. Available at:

<http://www.annualreviews.org/doi/pdf/10.1146/annurev-environ-031113-144051>

(Accessed: 8th February, 2016).

Jaspal, R. and Nerlich, B. (2014) 'Fracking in the UK Press: Threat Dynamics in an Unfolding Debate', *Public Understanding of Science*, 23 (3), 348-363.

Jones, P., Hillier, D., and Comfort, D. (2015) 'The Contested Future of Fracking for Shale Gas in the UK: Risk, Reputation and Regulation', *World Review of Entrepreneurship, Management and Sustainable Development*, 11 (4), 377-390.

Jones, P., Hillier, D., and Comfort, D. (2013) 'Fracking and Public Relations: Rehearsing the Arguments and Making the Case', *Journal of Public Affairs*, 13 (4), 384-390.

Mash, R., Minnaar, J., and Mash, B. (2014) 'Health and Fracking: Should the Medical Profession be Concerned?' *SAMJ: South African Medical Journal*, 104 (5), 332-335.

Macalister, T. (2015) 'UK Solar Panel Subsidy Cuts Branded Huge and Misguided', *The Guardian*, 17 December [online] Available at:

<https://www.theguardian.com/business/2015/dec/17/uk-solar-panel-subsidies-slashed-paris-climate-change> [Accessed: 12 May 2016].

Michalowski, R.J. and Kramer, R.C. (2007) 'State-Corporate Crime and Criminological Inquiry'. in Pontell, H.N. and Geis, G.L. (eds.) *International Handbook of White-Collar and Corporate Crime* (New York: Springer).

Mill, J.S. (1863) 'Utilitarianism', in Ryan, A. (ed.) (1987) *John Stuart Mill and Jeremy Bentham: Utilitarianism and Other Essays* (London: Penguin Books).

Millie, A. (2016) *Philosophical Criminology* (Bristol: Policy Press).

North Yorkshire County Council (2016) *Planning and Regulatory Functions Committee Report*. [Online]. Available at:

http://democracy.northyorks.gov.uk/committees.aspx?commid=12and_meetid=3449 (Accessed: 10th November, 2016).

Ochieng, E.G., Price, A.D., Egbu, C.O., Ruan, X., and Zuofa, T. (2015) 'Fresh Driver for Economic Growth: Fracking the UK Nation', *International Journal of Energy Sector Management*, 9 (3), 412-431.

Prud'homme, A. (2014) *Hydrofracking: What Everyone Needs to Know* (New York: Oxford University Press).

Royal Academy of Engineering (2012) *Shale Gas Extraction in the UK: A Review of Hydraulic Fracturing*. [Online]. Available at:

<http://www.raeng.org.uk/publications/reports/shale-gas-extraction-in-the-uk>
(Accessed: 28th January, 2016).

Scarre, G. (1996) *Utilitarianism* (London: Routledge).

Shropshire Council North Planning Committee (2014) *Schedule of Additional letters*. [Online]. Available at:

<https://shropshire.gov.uk/committee-services/documents/s4592/Schedule%20of%20Additional%20Letters.pdf> (Accessed: 12th May, 2016).

Slonecker, E.T., Milheim, L.E., Roig-Silva, C.M., Malizia, A.R., Marr, D.A., and Fisher, G.B. (2012) 'Landscape Consequences of Natural Gas Extraction in Bradford and Washington Counties, Pennsylvania, 2004-2010.' *U.S. Geological Survey Open-File Report 2012-1154*, 1-36. [Online]. Available at: <https://pubs.usgs.gov/of/2012/1154/of2012-1154.pdf> (Accessed: 12th May, 2016).

Stacey, K. (2015) 'Dozens of New Fracking Licences Awarded', *Financial Times* [online] Available at:

<http://www.ft.com/cms/s/0/06af0f28-a4be-11e5-97e1-a754d5d9538c.html#axzz48p3NfXqn> (Accessed: 16 May 2016).

Stretesky, P.B., Long, M.A., and Lynch, M.J. (2014) *The Treadmill of Crime: Political Economy and Green Criminology* (Oxon: Routledge).

Throupe, R., Simons, R.A., and Mao, X. (2013) 'A Review of Hydro "fracking" and its Potential Effects on Real Estate', *Journal of Real Estate Literature*, 21 (2), 205-232.

Weijermars, R. and McCredie, C. (2011) 'Assessing Shale Gas Potential,' *Petroleum Review*, 65 (777), 1-3. [Online]. Available at: http://www.shale-gas-information-platform.org/fileadmin/ship/bilder/The_debate/Weijermars.pdf (Accessed: 16th May, 2016).

White, E., Fell, M., and Smith, L. (2016) *Shale Gas and Fracking*. House of Commons Library - Briefing Paper: SN06073. [Online]. Available at:

<http://researchbriefings.files.parliament.uk/documents/SN06073/SN06073.pdf>

(Accessed: 28th January, 2016).

Wolf, S. and Stanley, N. (2014) *Wolf and Stanley on Environmental Law* (Abingdon: Routledge. 6th Ed).

Wyatt, T. (2013) *Wildlife Trafficking: A Deconstruction of the Crime, the Victims and the Offenders* (Basingstoke: Palgrave MacMillan).

Zoback, M.D. (2012) 'Managing the Seismic Risk Posed by Wastewater Disposal', *Earth*, 57 (4), 38-43.

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Panel Paper

Built for inequality in a diverse world: The historic origins of criminal justice

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Abstract:

Forty years ago a number of revisionist histories of the institutions of criminal justice were published. Collectively they located the emergence of the institutions of police and prisons in modernity and the advent of capitalism (see for example Foucault, 1977; Ignatieff, 1978; 1979; and Melossi and Pavarini, 1981). One book, published in 1976, that was largely overlooked by both historians and criminologists was Thorsten Sellin's *Slavery and the Penal System*. Sellin (1976) proposed a radically different history, rather than focus on rupture he emphasised continuity. The contemporary criminal justice system, he argued, had its roots not in modernity but in the slave societies of Antiquity.

This paper draws on both Sellin's *Slavery and the Penal System* and my paper 'Is the Empire coming home? Liberalism, exclusion and the punitiveness of the British State' presented to the 2014 BSC conference (Moore, 2014). This allows me to demonstrate not only criminal justice's origins in Antiquity's slavery but also how these roots equipped criminal justice to play a central role in the colonial project of domination and exploitation.

I argue that by understanding this history we can see that the tendency to reinforce inequality and oppress the 'other' that characterises contemporary criminal justice is not an aberration but a natural consequence of its genealogy. Criminal Justice (and the associated discourse of criminology) was built for maintaining and enforcing inequality

in diverse societies. Creating equality in a diverse world will require a strategy based around abolition, transformative solutions and decolonisation.

Keywords:

Penal history; colonialism; Thorsten Sellin; institutional inequality; justice

‘The enslaved are the fittest to be governed by laws, and free men by custom’

(attributed St John of Antioch, 4th century AD)

Forty years ago, Thorsten Sellin (1976) published *Slavery and the Penal System*, which sought to locate the origins of the contemporary criminal justice system in slave societies. His thesis was radically different from the revisionist penal histories published at around the same time by, among others, Rothman (1971), Foucault (1977), Ignatieff (1978) and Melossi and Pavarini (1981), which collectively sought to explain the emergence of the modern prison through linking it with the enlightenment, modernity and the rise of capitalism. These accounts all highlighted change and rupture. This was most clearly expressed by Foucault’s (1977) comparison of the spectacular execution of the regicide Damiens in 1757 with the order and disciplined routine of the Maison des Jeunes Détenus à Paris in 1838. Although these revisionist accounts, and indeed previous Whig histories, do not agree on the exact date of the emergence of the modern prison, they are united in a belief that its emergence represented a transformation in punishment from the pre-modern, uncivilised, corporal punishments aimed at the body to a new modern, civilised, carceral punishment aimed at the mind. In *Slavery and the Penal System*, Sellin (1976) challenged this genealogy, and offered a radically different account; one that highlights continuities in punishment. The modern prison, he argues, does not have its origins in modernity but can be traced back to the slave societies of Antiquity.

The theme of this year’s British Society of Criminology conference was *Inequality in a Diverse World*, an area where much work is being done in the academy as well as in political and civil society. However, much of this reform work is based on the broad assumptions firstly, that criminal justice is, whatever its immediate failings, potentially ‘just’ and secondly, that achieving this potential justice can be realised through reforms.

Using the insights of Sellin and published research on the deployment of criminal justice by the British state in its Empire, I want to challenge these assumptions and explore the possibility, as suggested by Foucault's (1977) insights into the role of the modern prison, that what we routinely perceive to be criminal justice failure may in fact be success. Through exploring criminal justice's origins, I argue that it was not only designed and built to generate and reinforce inequality but to also utilise human diversity to facilitate social domination by the powerful. The implication of this analysis is that efforts to build a more just and equal society in a diverse world will not be achieved through criminal justice interventions.

This paper starts with an analysis of contemporary criminal justice failure particularly highlighting how it disproportionately targets both minority ethnic communities and the most socially excluded and vulnerable sections of society. It then summarises Sellin's account of the history of penal law, demonstrating how criminal justice was not intended to promote justice for citizens but to enforce an unjust social order. Sellin's history focuses on Euro-America and ignores the history of criminal justice in the European colonies which I introduce to both reinforce Sellin's thesis and to illustrate penal law's capacity to exploit human diversity to facilitate an unjust social order. The paper then returns to the contemporary criminal justice system to argue that by refusing to accept its claimed objectives at face value it becomes possible to understand it as a success in achieving a number of important functions that maintain the existing social order. The final section of this paper argues that if we are to achieve a more just society for all sections of our diverse communities we need to develop non-penal strategies based around abolition, transformative solutions and decolonisation.

Diversity, inequality and criminal justice 'failure'

Contemporary Britain is characterised by a high level of diversity. Migration over recent decades has created a diverse society, particularly in London. In the period directly after the Second World War these migrations were primarily from former British colonies but since the introduction of the free movement of citizens within the European Union migration has been increasingly from Europe. Conflict, often linked to Western military interventions, combined with widespread poverty, often generated by Western economic intervention, have also seen migration from the Global South. At the same time, legislation

has been passed aimed at removing discrimination – for example the opening up of marriage to same sex couples – and responding to individual ‘hate crimes’ against people victimised on the grounds of race, sexuality, religion or disability. Within this diverse society official crime statistics provide some insight into how Black and Minority Ethnic (BME) communities experience the criminal justice system. Despite BME communities only comprising 12.9% of the population they make up 30% of those stopped and searched (MOJ, 2013: 9). The figures for Black people are even more disproportionate with 14.8% of those stopped being Black despite their being only 3.1% on the overall population (ibid: 9). This disproportionality, particularly for Black people, continues through all stages of the criminal justice system with for example Black people making up 10% of those given custodial sentences (ibid: 9). Whilst the average length of sentence for white people sentenced to prison is 15.9 months, for Black people it is 23.4 months and for Asian people 22.4 months (ibid: 60).

There is evidence that such discrepancies are the result of stereotyping and other racist practices within the criminal justice system. For example, research by Patrick Williams and Becky Clarke (2016) has showed how police, prosecutors and courts use the legal concept of joint enterprise to target young Black men. The researchers highlight a serious dissonance between the ethnicity of those responsible for serious youth violence and those classified as gang members. For example, in the Manchester area they identified that white young people perpetrated 77% of serious youth violence but represented only 11% of those identified by the police as associated with gangs (ibid: 11). Joint enterprise, originally introduced to target those who attended duels, allows for criminal liability to be extended, on an equal basis, beyond the principal who carried out the actual offence to all those associated with them. Establishing this association is often achieved through alleged membership of a gang (ibid: 15); inevitably, given the racist way this label is applied by police, this leads to a disproportionate number of Black people being convicted using this prosecution strategy. It is important to also note that not only have BME communities much greater levels of the fear of crime – nearly three times as many BME adults worry or think they are likely to be a victim of violent crime as white adults (MOJ, 2013: 25) – but Black people report the lowest levels of confidence in police (ONS, 2015: 9).

As well as being a diverse society the United Kingdom has increasingly become more unequal (Wilkinson and Pickett, 2009). Although the most comprehensive analysis of the prison population carried out by the Social Exclusion Unit (SEU, 2002) is now over a decade old its findings remain the most detailed analysis of the social profile of whom we imprison. Whereas one in twenty of the general working population is unemployed, of those imprisoned two out of three were unemployed in the four weeks before their incarceration (ibid: 20). This disproportionality of the economically marginalised is also reflected in educational disadvantage with 49% of male and 33% of female prisoners having been excluded from school compared with a 2% rate within the general population (ibid: 19). Indeed 27% of prisoners (compared to 2% of the general population) have been taken into state care during their childhoods (ibid: 18). In terms of mental health, although 5% of men and 2% of women suffer from more than two mental disorders for prisoners this rises to a staggering 72% of men and 70% of women (ibid: 20). Rough sleepers, the most obviously socially excluded of our society are 47 times more likely to be imprisoned than the general population (ibid: 21). Criminal justice is overwhelmingly focused on the most socially excluded as well as disproportionately targeting Black and other minority ethnic communities.

Increasingly these characteristics - criminal justice's institutionalised racism and its focus on the poorest and most marginalised - are being accepted as weaknesses and failings (for example, PM's Office, 2016). This adds to an extensive and persuasive literature identifying the failure of criminal justice to not only prevent crime and but also to respond adequately to the needs of those who have been harmed. In particular, the stated justifications of the penal system – deterrence, rehabilitation, retribution, and incapacitation – have been shown to fail (Mathiesen, 1990). In addition to general critiques of its failure to address the needs of victims (Christie, 1977) it has been particularly criticised for its failures of the victims of domestic violence (Dobash and Dobash, 1992; Hall and Whyte, 2003) and sexual violence against women (Brownmiller, 1975; Bumiller, 2008; Leander, 2013). The immediate response to these critiques has been to perceive the criminal justice system as failing and in need of reforms. Political discourse around crime in recent decades has been increasingly characterised by an acknowledgement of criminal justice failure combined by proposals for reforms that will be 'tough on crime, tough on the causes of crime' (Blair, 1993), turn 'prisons from places of idleness into places of work' (Cameron, 2012) and more recently a promise that

prisons which, '(f)or too long, we have left ... to fester', will '(n)o longer ... be warehouses for criminals' but instead 'now be places where lives are changed' (Cameron, 2016). The, almost immediate, failure of these good intentions needs an explanation and in the next section I use Sellin's (1976) account of the history of western penal systems to offer one.

Sellin and the historic origins of penal law

Whereas most scholars studying historic punishment have focused on state sanctions and ignored household and slave punishments (see for example Mackenzie, 1981), Sellin places them at the centre of his account, highlighting how in Ancient Greece, Rome and the early Middle Ages two parallel systems of justice emerged: a state system whose main focus was on managing disputes between free (male) citizens and a private domestic system through which free citizens maintained discipline within their household and over their slaves, the former through establishing fixed levels of financial penalties and the latter through corporal and carceral means (Sellin, 1976).

Ancient Greece's philosophers' discourses on crime and punishment are remarkably similar to 20th and 21st century criminology. Plato (Mackenzie, 1981) believed communities where wealth and poverty existed side by side engendered crime and Aristotle (Sellin, 1976: 12) speculated on the possibility that some crime was generated by a lack of necessities. They discussed punishment's capacity to reform and deter, debating whether its aim was to provide a response to past offences or to prevent future crime. When Plato conceived that the rule of law required that citizens avoid wrongdoing through the exercise of their rational capacities rather than merely blindly obeying the law in response to threats of punishment, he was anticipating criminological theories developed two and half millennia later (Cohen, 2005: 188-9). However, whilst debates over citizens 'rational capacities' are important it is essential that they do not hide the reality of the social structure of Plato's Athens. It was a slave society in which punishment was directed predominately at slaves who were not considered to have rational capacities. The absence of slaves from ancient Greek discourse on punishment reflects an acceptance of the slave owners' right to inflict routine corporal and capital punishments in the private realm without recourse to philosophical consideration or justification.

In Ancient Rome slave owners also had unfettered powers to punish slaves. This could involve whipping, branding, mutilation, and execution. Confining slaves in a private prison, the *ergastulum*, became common although abuses in these institutions, including the confinement of kidnapped freemen, led to attempts to suppress them (Sellin, 1976: 21-22). The evolution of Roman penalty shows however that over time those punishments originally reserved for slaves were gradually extended to poorer freemen (Bradley, 1994: 170). Enslavement itself became a punishment for lower class freemen whilst 'upper class offenders were spared the brutal capital and corporal punishments which the poor had to suffer' (Sellin, 1976: 29).

Tacitus's (1999) description of the communities of central and northern Europe at the end of the 1st century AD identifies a clear distinction between the disciplinary power of the tribal state and those of the head of the household. The former was restricted to acts that were deemed to offend the gods or threatened the safety of the tribe. Disputes between households were resolved through private vengeance and feuding, although mediated by a socially imposed code designed to ensure the settlement and ending of feuds. Tacitus (1999: 35) observed that 'even murder is atoned for by a specific number of cattle and sheep and the entire family accepts the settlement'. All other matters were the prerogative of the head of the household whose disciplinary powers were unlimited. Slaves could be killed with 'no fear of punishment' and the adulterous wife's 'husband drives her naked from the home, with her hair cut off, and whips her through the whole village' (ibid: 39, 33).

The barbarian penal codes that emerged in the first millennium sought to limit feuds and private retribution by transferring conflict resolution functions to the emerging state. These codes reflected the social economy of power with separate provision being set out for different classes of freemen, the nobles, middle and lower classes, and for those below them in the social structure, the half free freedman, serfs, and at the very bottom slaves (Sellin, 1976: 33). This transition was intended to regulate inter-household disputes facilitating resolution of conflicts between freemen by both imposing indemnities on the offending party or in some cases handing over the offender to the accuser for public execution (Drew, 1967). It left intra-family and slave discipline largely in the hands of the head of the household. Enslavement became the punishment for the widow and children

of executed freemen and for freemen unable to pay imposed indemnities (Sellin, 1976: 34-5).

Building on these origins, Sellin (1976) shows how penal law developed by transferring disciplinary functions to the emerging state. In Europe, by the Middle Ages, penal codes were largely established, with the state beginning to become the dominant disciplinary power despite the Church, local land owners and the head of households retaining significant disciplinary powers. For Sellin (1976) this development of penal law and state sanctions represents not the replacement of domestic slave punishments but their integration into state practices. Concerning the historic origins of criminal justice and penal law Sellin (1976:35) is clear:

The legislator simply made the practices employed by slave-owners within the domestic establishment – flogging, castration, cutting off the hand, blinding, death, and physical force to elicit confessions – into public punishments and judicial procedures.

Empire, Law, Race and Colonial Domination

The first nine chapters of *Slavery and the Penal System* set out a history of penal systems in Europe starting with Ancient Greece and ending in the middle of the 20th century. The final three chapters provide a history of penal law in the United States from its European colonisation until the 1970s. The United States is a classic example of two of the main types of European colonialism, it is both a settler colony and a former slave colony. A substantial and impressive body of work has been published in the 40 years since *Slavery and the Penal System*, detailing the links between contemporary United States criminal justice and its history of slavery (see for example, Davis, 2005; Blackmon, 2009). However, these accounts suggest this link is something peculiarly American without any direct relevance to the development of European penal systems. However certain characteristics of United States criminal justice – its institutionalised racism and targeting of the powerless – are also apparent in European criminal justice systems. This I wish to explain by introducing a parallel history of colonisation, missing from not only Sellin but also from nearly all other histories of western penalty (Moore, 2014), which

shows how criminal justice was used to facilitate imperial domination, cultural destruction and economic exploitation (Brown, 2014).

Empires are creations of conquest. A land is invaded, resistance crushed and a new order, based on the domination of the conquerors, forcefully imposed. The justifications vary from the concept of *terra nullius* – seeing the lands as empty spaces despite being inhabited by a people with their own culture, society and economy – to the concept of a just war (Chatterjee, 2012: 52). My focus is on the modern colonialism that developed alongside capitalism in Western Europe. Modern colonialism did more than extract tribute, goods and wealth from the countries that it conquered – it was more than a parasite – it required a complete restructuring of the lands occupied, sometimes involving depopulation through systematic genocide, sometimes requiring repopulating with enslaved Africans or indentured Indians and Chinese labour, always requiring the decimation of existing social structures, moral economies and social order and their replacement with new arrangements structured to the advantage of the colonising power (Loomba, 2005: 9). This process in the colony was dramatic. To establish the colonial state a pre-existing order needed to be removed. A process described by Aime Césaire (2000/1955: 43):

I am talking about societies drained of their essence, cultures trampled underfoot, institutions undermined, lands confiscated, religions smashed, magnificent artistic creations destroyed, extraordinary possibilities wiped out ... natural economies that have been disrupted ... food crops destroyed, malnutrition permanently introduced, ... the looting of products, the looting of raw materials.

The concept of 'justice' and the 'rule of law' were central to the colonising project. It legitimised the 'swift and bloody' response to a slave rebellion in 1831 in Jamaica after which 312 slaves were hanged, their severed heads displayed on poles for over a year and many more were shot without trial (Paton, 2004: 30, 31). In 19th century British India, courts regularly, following trials conducted scrupulously in line with the standards of British justice, ordered Indians to be 'blown away by canon' (Brown, 2014). This spectacular penalty was not only reserved for extraordinary events such as the 1857 Rebellion but seen as legitimate responses to political threats for decades afterwards (ibid). In colonial Kenya the British state's response to the Mau Mau rebellion, in which 32 white settlers were killed, was both judicial and institutional (Elkins, 2005: xiv).

Courts ordered in excess of 1,000 hangings (Anderson, 2006) including for offences such as 'consorting with terrorists' and 'supplying and aiding terrorists' (Maloba, 1993: 93). This judicial intervention was accompanied by the deportation and forced villagization of over a million people and the detention of tens of thousands in resettlement camps. It was as Caroline Elkins (2005: 190) has described, 'organized terror, violence, and degradation' with, for example, women detained in 'resettlement camps' being routinely 'beaten, whipped, and sexually violated with bottles, hot eggs' (ibid: 220). It was not only the resettlement camps that experienced this violence. As Elkins (2005: 313) has reported: 'A pornography of terror, including public brutality, rape and starvation swept through the villages as well, and thousands died there.' As conditions deteriorated in these villages mass graves were dug in which the dead, including children's corpses 'tied in bundles of six babies', could be buried (ibid: 228).

Focusing on extraordinary events, particularly responses to challenges to the legitimacy of colonial rule, risks overlooking the everyday reality where 'violence was ... endemic rather than ephemeral' (Kolsky, 2010: 2). By focusing on everyday violence two key facilitators become clear, law and 'race'. To justify the imposition of the metropole's law a myth of the lawlessness of indigenous peoples had to be created. As Sir Thomas Stamford Raffles (1835: 98) lamented: 'Nothing has tended more decidedly to the deterioration of the Malay character than the want of a well defined and generally acknowledged system of law.' At an ideological level law legitimized the exercise of colonial power. It was presented in official discourse as the 'guarantor of liberty and (an) agent of civilization' (Kolsky, 2010: 232) whilst simultaneously, in practice facilitating the appropriation of land, the imposition of capitalist employment relations, as well as for providing impunity for everyday white violence. To achieve this, it had to dilute its claims to universality by repeatedly invoking colonial exceptions.

Writing about the tea plantations of British India, Elizabeth Kolsky (2010: 147) has highlighted how legal arrangements 'placed the planter above the law and justice beyond the reach of the laborer's grasp.' The order that colonial rule brought entailed as 'routine elements of everyday life on the plantation ... Public and private floggings, as well as confinement, cuffing, kicking and other forms of physical assault' (ibid: 158). The enforcement of criminal law on plantations, in the West Indies, across Africa and Asia, was routinely delegated to planters who used it to impose labour discipline with a

violence that, despite habitually involving the raping and killing of women, children and men under their jurisdiction, was carried out with an impunity provided by law. In practice this law offered no redress for, as Franz Fanon (1967: 41) observed, 'the native is always presumed guilty'. Race was at the core of the colonial administration of justice. As the radical Indian nationalist Bal Gangadhar Tilak observed in 1907: 'The goddess of British Justice, though blind, is able to distinguish unmistakably black from white' (cited in Kolsky, 2010: 4).

It was not just the law, racism permeated virtually every aspect of Europeans' interaction with indigenous populations. In the British Empire, as Satadru Sen (2012: 300) has pointed out, 'race' was 'the primary grid for the organisation of power, possession and knowledge'. The 'politics of exclusion and subordination' necessary for colonial domination,

... required mechanisms of differentiation to describe and legitimize who the rulers were and who the ruled were. As the empire expanded, race became a primary register of difference that was used to establish and naturalize imperial inequality (Kolsky, 2010: 14).

In a fundamental way Empire was dependent on 'race', it required it to be real, scientific, and natural both in terms of ideological justification and in its day to day administration. Race allowed the colonised to be separated from the coloniser and to justify their different treatment. As Clare Anderson (1997:170) has pointed out it is through 'the "scientific" discourse of "race" ... (that) concepts of the criminal class, the criminal caste and the criminal tribe were developed' in British India. More recently the institutionalised racism of 20th century British South Africa included, as Ivan Evans (2005:191) has described,

Political disenfranchisement, 'job color bars' that legally reserved certain jobs for whites only, residential segregation, a pass system for controlling the mobility and involuntary servitude of blacks, and a bifurcated legal system that subjected blacks to draconian administrative control.

Within the colony domination was legitimised by a process of liberal exceptions, concepts like justice, law and order were filtered through the paradigm of race – the colonial 'other' was both the victim and the excuse – they were not white, and therefore both unworthy

of legal protection and, like the slave in Antiquity, unable to respond to anything less than corporal brutality (Pierce, 2006). Colonial rule required categorisation by race. Diversity provided an opportunity for domination, exploitation and injustice. Empire required racism – everyday racism and institutionalised state racism.

Diversity, inequality and criminal justice ‘success’

This history, both in the metropole and in the colony, suggests that we should not take the criminal justice system’s declaration of its contemporary objectives literally. Debates about its ineffectiveness in terms of controlling crime or responding to the needs of victims are incomplete without a consideration of its historic roots, the functions criminal justice was originally built for. Can the slave origin of criminal justice help explain its disproportionate deployment today against the most excluded? Can the history of penal law’s deployment in Empire explain its tendency to target BME communities? The functioning of criminal justice is a case where we should consider the possibility that the menu is not the meal. Indeed, a number of sociological studies of criminal justice and punishment suggest ways in which it succeeds.

In Antiquity domestic discipline focused on the behaviour of the slave whose minor misdemeanours were often harshly dealt with whilst their owner’s violence had complete impunity. In contemporary society we see this mirrored in a criminal justice system that focuses on the predominately minor and relatively harmless ‘crimes’ of the powerless whilst looking away from the much more serious harms of the powerful (Hillyard and Tombs, 2004). Both Antiquity’s domestic discipline and Empire’s criminal justice were effective mechanisms for maintaining unequal power structures and disciplining the poor, functions Wacquant (2013) has highlighted the penal system replicates today. The centrality of race to the colonial administration of justice (Kolsky, 2010: 10) imbedded racist attitudes into British culture, governance and institutions that makes the disproportionality experienced by BME communities in Britain today a clear legacy of colonial rule (Moore, 2014). This historic focus on exclusion can be seen replicated in the contemporary criminal justice system’s success as a tool for disposing of the homeless, mentally ill and other marginalised sectors of society (Bauman, 2004). A critical analysis of criminal justice policy indicates that it is also successful in creating an appearance of the state’s concern for citizens’ security despite it simultaneously implementing a

programme of austerity that causes real insecurity for the majority of the population (Neocleous and Rigakos, 2011; Reiman, 2007); likewise, as Angela Davis (2016: 6) has highlighted, prisons succeed 'as a strategy of deflection of the underlying social problems – racism, poverty, unemployment, lack of education, and so on'.

In understanding the criminal justice system and the apparent punitive turn in contemporary Euro-America a historic analysis can enable us to see beyond the liberal rhetoric of criminal justice and its advocates. To some extent this has been undertaken in the United States with the impressive body of work identifying the continuities from slavery, through Jim Crow and into the contemporary policies of mass incarceration (Davis, 2005; Blackmon, 2009; Alexander, 2012). However, I would argue this work is incomplete as it suggests a very specific genealogy that does not apply outside the United States. A fuller history – exposing criminal justice's slave roots in the domestic social control mechanisms of Antiquity and its central role in the colonisation of the Global South, where it facilitated and legitimised slavery, genocide, rape and economic exploitation, whilst simultaneously ruthlessly suppressing any resistance from the colonised – shows that the United States experience is not exceptional but can be directly related to criminal justice's historic roots and global deployment.

Abolition, Transformative Solutions and Decolonisation: Towards a diverse, socially just and equal society

The central argument of this paper is that a history of criminal justice shows it was built not as an instrument of social justice but as a mechanism targeting the most powerless with the intention of generating and maintaining an unjust social order. This must lead us to question if it can be utilised as a progressive force, to promote social justice and address inequality? Indeed, to take the example of gendered violence, where feminist critiques have led to radical and extensive reform of both the law and the attitudes and performance of criminal justice practitioners, criminal justice failure continues with, despite these revolutionary reforms, the 'clear-up rate, for women between the ages of 16 and 59, for rape is at best 1 per cent and for other sexual offences under 0.5 per cent' (Moore and Roberts, 2016:127). If, as the title of this paper suggests, criminal justice was 'built for inequality' and is therefore an inappropriate mechanism for promoting a more

just society, what are the alternative approaches? In this final section I want to suggest three.

Firstly, abolition. The consistent failure of criminal justice both in terms of its failure to meet its stated aims and its consistent focus on the BME communities and the most socially excluded provides an almost irresistible temptation to advocate for its reform. However, if criminal justice is inherently unjust, an instrument designed for oppression rather than liberation, such reforms are likely, in the long-term, to prove futile. We need to become conscientious objectors to its deployment pointing out the unsuitability of penal sanctions as tools for generating social justice. We should be arguing for the shrinking and ultimate abolition of the institutions of criminal justice and focusing our efforts on developing new approaches to social harms, conflicts and social problems that are better suited to the task of creating more equal and just societies.

Secondly, developing transformative solutions. Moore and Roberts (2016) have recently argued that to move beyond criminal justice we need to start developing transformative solutions. Citing an initiative of the Centre for Crime and Justice Studies in London, 'Justice Matters', they argue that, rather than focus on alternatives to criminal justice, the starting point should be the underlying primary harm or problem. By focusing on the real problem rather than the current criminal justice response to it, a wider range of expertise and knowledge can be deployed in developing solutions. 'Justice Matters' workshops provide a template whereby participants firstly identify a social harm or social problem, secondly explore the limitations of current criminal justice responses, before thirdly being tasked to explore the development of an alternative social justice response (ibid: 119-122). By seeking to locate the development of transformative solutions democratically within the communities directly affected and firmly locating them within the paradigm of social justice such solutions are not only more appropriate and effective but also avoid incorporation as 'they are ideologically incompatible with criminal justice's function of maintaining an unjust social order' (ibid: 131).

Thirdly, decolonisation. The influence of colonisation on modern societies is increasingly recognised (Chatterjee, 2012) and its impact on criminal justice in England and Wales has begun to be explored (Moore, 2014). This paper has only touched on this briefly but that has been sufficient to identify that penal law and criminal justice were central to the colonial project. In particular, our understandings of 'race' have been shaped by an

ideological project of 'othering' that both legitimised racism in colonial administration and institutionalised it in the metropole. The need for decolonisation operates at many levels and a full agenda is beyond the scope of this paper. However, we need to start thinking and acting in ways that at least begin the process of decolonising society, the academy and our own discipline of criminology.

Agozino (2003) and Brown (2014) have highlighted the intimate links between criminology and colonisation. Bonger (1943: 71) observed that for Lombroso, the generally acknowledged founder of the discipline, 'race, explains everything.' Forty years after Sellin (1976) sought to explore the consequences of the penal system's slave roots it is time to highlight the links between criminology and colonialism. Developing a process of decolonising criminology would involve exploring the history of the discipline, its complicity in colonialism, its adoption and deployment of racism, its fixation on individuals and its failure to address structural harms or the major crimes against humanity perpetrated by Euro-America: colonialism, genocide, and slavery. Such a process would not be risk free and in deconstructing the discipline the danger is that: 'Things fall apart; the centre cannot hold; Mere anarchy is loosed upon the world' (Yeats, 1920). But would that be a bad thing?

Agozino, B. (2003) *Counter-Colonial Criminology: A Critique of Imperialist Reason* (London: Pluto Press).

Alexander, M. (2012) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press).

Anderson, C. (1997) 'The Genealogy of the Modern Subject: Indian Convicts in Mauritius, 1814-1853' in I. Duffield and J. Bradley (eds.) *Representing Convicts: New Perspectives on Convict Forced Labour Migration* (London: Leicester University Press), 164 – 182.

Anderson, D. (2006) *Histories of the Hanged: Britain's Dirty War in Kenya and the End of Empire* (London: Weidenfeld and Nicolson).

Bauman, Z. (2004) *Wasted Lives: Modernity and its Outcasts* (Cambridge: Polity).

Blackmon, D.A. (2009) *Slavery by Another Name: The Re-enslavement of Black Americans from the Civil War to World War II* (New York: Anchor Books).

Blair, T. (1993) 'Tony Blair is tough on crime, tough on the causes of crime', *New Statesman*, 29 January 1993.

Bonger, W.A. (1943) *Race and Crime* (Montclair: Patterson Smith).

Bradley, K. (1994) *Slavery and Society at Rome* (Cambridge: Cambridge University Press).

Brown, M. (2014) *Penal Power and Colonial Rule* (Abingdon: Routledge).

Brownmiller, S. (1975) *Against Our Will: Men, Women and Rape* (New York: Bantam Books).

Bumiller, K. (2008) *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement against Sexual Violence* (Durham: Duke University Press).

Cameron D. (2012) 'Transcript of the Prime Minister's speech to the Centre for Social Justice', Prime Minister's Office [online] Available at:

<https://www.gov.uk/government/speeches/crime-and-justice-speech>

Cameron, D. (2016) cited in 'Biggest shake-up of prison system announced as part of Queen's Speech' Prime Minister's Office [online] Available at: <https://www.gov.uk/government/news/biggest-shake-up-of-prison-system-announced-as-part-of-queens-speech>

Césaire, A. (2000/1955) *Discourse on Colonialism*, (Trans. Joan Pinkham) (New York: Monthly Review Press).

Chatterjee, P. (2012) *The Black Hole of Empire: History of a Global Practice of Power* (Princeton: Princeton University Press).

Christie, N. (1977) 'Conflict as property', *British Journal of Criminology*, 17 (1), 1-15.

Cohen, D. J. (2005) 'Theories of Punishment', in M. Gagarin and D.J. Cohen (eds.), *The Cambridge Companion to Ancient Greek Law* (Cambridge: Cambridge University Press), 170-190.

Davis, A.Y. (2003) *Are Prisons Obsolete?* (New York: Seven Stories Press).

Davis, A.Y. (2005) *Abolition Democracy* (New York: Seven Stories Press).

Davis A. Y. (2016) *Freedom is a Constant Struggle: Ferguson, Palestine, and The Foundation of a Movement* (Chicago: Haymarket Books).

De Ste, Croix, G.E.M. (1981) *The Class Struggle in the Ancient Greek World* (Ithaca: Cornell University Press).

Dobash R.E. and Dobash, R.P. (1992) *Women, Violence and Social Change* (London: Routledge).

Drew, K.F. (1967) 'The Barbarian Kings as Legislators and Judges,' in R.S. Hoyt (ed.) *Life and Thought in the Early Middle Ages* (Minneapolis: University of Minneapolis Press), 7-29.

Elkins, C. (2005) *Imperial Reckoning: The untold story of Britain's Gulag in Kenya* (New York: Henry Holt).

Evans, I. (2005) 'Racial Violence and the Origins of Segregation in South Africa,' in C. Elkins and S. Pedersen (eds.) *Settler Colonialism in the Twentieth Century* (New York: Routledge) 183 – 202.

Fanon, F. (1967/1961) *The Wretched of the Earth* (London: Penguin).

Foucault, M. (1977) *Discipline and Punish: The Birth of the Prison*. (London: Penguin).

Hall, T. and Whyte, D. (2003), 'At the margins of provision: domestic violence, policing and community safety', *Policy and Politics*, 31 (1), 3-18.

Hillyard, P, andand Tombs, S. (2004) 'Beyond Criminology' in P. Hillyard, C. Pantazis, S. Tombs, and D. Gordon (eds.) *Beyond Criminology: taking harm seriously* (London: Pluto).

Ingnatieff, M. (1978) *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850* (New York: Pantheon Books).

Knapp, R. (2013) *Invisible Romans* (London: Profile Books).

Kolsky, E. (2010) *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press).

Leander, K. (2013) 'The Decade of Rape', in J. Gilmore, J.M. Moore, and D. Scott (eds.) *Critique and Dissent* (Ottawa: Red Quill Books).

Loomba, A. (2005) *Colonialism/Postcolonialism* (Abingdon: Routledge).

- Mackenzie, M. (1981) *Plato on Punishment* (Berkeley: University of California Press).
- Maloba, W.O. (1993) *Mau Mau and Kenya: An Analysis of a Peasant Revolt* (Bloomington: Indiana University Press).
- Mathiesen, T. (1990) *Prisons on Trial* (London: Sage).
- May, T. (2014) 'Oral statement to Parliament: Stop and search: Comprehensive package of reform for police stop and search powers' [online] Available at: <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers> [Accessed: 28 July 2016]
- Melossi, D. and Pavarini, M. (1981) *The Prison and the Factory: Origins of the Penitentiary System* (London: MacMillan).
- Moore, J.M. (2014) 'Is the Empire coming home? Liberalism, exclusion and the punitiveness of the British State', *Papers from the British Criminology Conference*, 14, 31-48.
- Moore, J.M. and Roberts, R. (2016) 'What lies beyond criminal justice? Developing transformative solutions', *Justice, Power and Resistance*, Foundation Volume, 115-136.
- MOJ (2013) 'Statistics on Race and the Criminal Justice System 2012' [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269399/Race-and-cjs-2012.pdf [Accessed 28 July 2016]
- Neocleous, M. and Rigakos, G.S. (2011) *Anti-Security* (Ottawa: Red Quill Books).
- ONS (2015) 'Perceptions of the Police' Office of National Statistics' [online] Available at: http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/dcp171776_399828.pdf [Accessed 28 July 2016]
- Paton, D. (2004) *No Bond but the Law: Punishment, Race and gender in Jamaican State Formation, 1780-1870* (Durham: Duke University Press).
- Pierce, S. (2006) 'Punishment and the Political Body: Flogging and Colonialism in Northern Nigeria', in S. Pierce and A. Rao (eds.), *Discipline and the Other Body: Correction, Corporeality, Colonialism* (Durham: Duke University Press), 186-214.

Prime Minister's Office (2016) 'Review of racial bias and BAME representation in criminal justice system announced' [online] Available at:

<https://www.gov.uk/government/news/review-of-racial-bias-and-bame-representation-in-criminal-justice-system-announced> [Accessed 28 July 2016]

Raffles, S. (1835) *Memoir of the Life and Public Services of Sir Thomas Stamford Raffles Vol. 1.* (London: James Duncan).

Reiman, J. (2007) *The Rich Get Richer and the Poor Get Prison: Ideology, Class and Criminal Justice* (New York: Macmillan, 8th edition).

Rothman, D. (1971) *The Birth of the Asylum* (Boston).

Sellin, J.T. (1976) *Slavery and the Penal System* (New York: Elsevier).

Sen, S. (2012) *Disciplined Natives: Race, Freedom and Confinement in Colonial India* (Delhi: Primus Books).

SEU (2002) *Reducing re-offending by ex-prisoners* (London: Social Exclusion Unit).

Tacitus (1999) *Germania* (Warminster: Aris and Phillips).

Wacquant, L. (2013) 'Crafting the neoliberal state: workfare, prisonfare and social insecurity', in D. Scott (ed.) *Why Prison?* (Cambridge: Cambridge University Press), 65-85.

Williams, P. and Clarke, B. (2016) 'Dangerous associations: Joint enterprise, gangs and racism' (London: Centre for Crime and Justice Studies) [online] Available at: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Dangerous%20associations%20Joint%20Enterprise%20gangs%20and%20racism.pdf> [Accessed 28 July 2016]

Wilkinson, R. and Pickett, K. (2009) *The Spirit Level: Why More Equal Societies Almost Always Do Better* (London: Allen Lane).

Yeats, W.B. (1920) 'The Second Coming', in *Michael Robartes and the Dancer* (Churchtown: The Chuala Press).

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The Pitchford inquiry into undercover policing: some lessons from the preliminary hearings

Raphael Schlembach

Abstract:

The public inquiry into undercover policing (“the Pitchford inquiry”) commenced in July 2015 and in its first year has considered a range of preliminary issues, including the awarding of core participant status to interested parties. Although the inquiry is perceived broadly as an inquest into undercover policing, it is highly politically charged due its focus on the infiltration of left-wing protest groups by undercover police units. In this paper I reflect on some of the key issues arising from the preliminary hearings and from the remit set by the Home Secretary. In particular, I query whether the inquiry suffers from a legitimacy deficit, due to a number of shortcomings; for example the restriction of the inquiry’s remit to England and Wales only and the police’s resolve to give some of the evidence in private rather than public. This has implications for how non-police core participants will relate to it and how it will be perceived more widely.

Keywords:

Public inquiry; surveillance; undercover policing; protest, legitimacy

Introduction

The public inquiry into undercover policing commenced in July 2015 with the consideration of a range of preliminary issues. In his report to the Home Office, the inquiry’s Chair Lord Justice Pitchford is tasked with addressing allegations that undercover officers had sexual relationships with targets; that they gathered information on Stephen Lawrence’s family and their campaign for justice; that they used the identity of dead children as cover; that they withheld evidence in court leading to miscarriages of

justice; and that they spied on political groups and elected representatives including Members of Parliament. Although the inquiry is perceived broadly as an inquest into undercover policing, it is highly politically charged due its focus on the infiltration of left-wing social movements by the Special Demonstration Squad and the National Public Order Intelligence Unit.

In Britain, public inquiries are now favoured judicial instruments to respond to crises in government and governance. Their quasi-independent status from both the executive and the legislature grants them a privileged role in establishing the facts of past events and learning the lessons of institutional failures, thereby seeking to restore public confidence and trust. Their seemingly transparent and public character is decisive for one of their central functions: providing a public response to ‘the insistence that “something must be done”’ (Burgess, 2011: 3). Inquiries into major incidents and breakdowns of institutional management, in particular, gain high status within legal and administrative circles. They are typically chaired by senior members of the judiciary and granted a level of autonomy and in some instances statutory powers under the Inquiries Act 2005. Their symbolism is not lost on those observing public inquiries: unlike in the High Court their chairs do not wear wigs, their inquisitorial nature lends itself to a closer and more cosy relationship with the public and their ways of working indicate openness, transparency and truth. It is perhaps ironic, then, that the Pitchford inquiry established by the Home Office as a statutory judge-led inquiry is tasked with breaking open one of the most invisible fields of public management and control – undercover policing.

It is true, of course, that ‘in an apolitical age characterised by public cynicism and mistrust, the relative authority that public inquiries enjoy, compared to fixed institutions, is striking’ (Burgess, 2011: 8). The proliferation of calls for public inquiries and inquests in Britain is perhaps symptomatic of declining reverence by both the public and the elites towards institutions. Despite this there are important criticisms that frequently accompany public inquiries, especially where they regard the investigation of serious institutional failures or wrongdoings. Their justification is, after all, based on ‘a democratic pluralist position not without its critics’ (Scruton, 2013a: 48). Most importantly, inquiry teams are well aware that they will be scrutinised on the basis of identifying not just individual transgressions but on their ability to point to systemic breakdowns. Furthermore, the Inquiries Act 2005 has significantly reduced the independence of public inquiries by establishing a stronger framework for ministerial

influence over the inquisitorial process. Also, members of the public are effectively reduced to being observers rather than participants, unlike in jury trials and inquests. The establishment of such mechanisms of accountability may therefore amount to little more than a ministerial move to increase the government's popularity at the expense of one or several of its public institutions (Sulitzeanu-Kenan, 2010).

In this paper I apply such analyses to the role of public inquiries as a form of governance to the Undercover Policing Inquiry (UCPI). My data draws from the first twelve months of the inquiry beginning in July 2015 and specifically considers the issues arising out of the preliminary hearings held in the Royal Courts of Justice. Two themes are explored in depth: (1) the relative legitimacy of the inquiry in the eyes of those who were the targets of intrusive surveillance by undercover police, and (2) the adversarial nature of the proceedings separating the police and the non-police core participants. It is suggested that a deficit in the former can only be addressed if the public interest in openness and disclosure is given priority over the police's interest in confidentiality and anonymity.

My analysis of the preliminary hearings of the UCPI is based on extensive engagement with campaign materials, observations of court hearings, and an analysis of submissions made to the inquiry over the course of its first year. This forms part of a broader project to scrutinise the legitimacy of the inquiry in the eyes of core participants and the wider public. As Scraton (2013b: 2) notes, the existence of campaigns running alongside inquiries and investigations can be regarded as 'an alternative method for liberating truth, securing acknowledgement and pursuing justice'. This study aims to highlight just that with regards to the Pitchford inquiry.

A legitimacy deficit?

While their independence from direct political intervention is not questioned, inquiries are primarily mechanisms for remedying institutional failures, rather than adversarial instruments for laying blame. Their role is essentially contrived by their set terms of reference related to specific issues and their habitual reliance on the expertise of middle-of-the-road judges and other esteemed professionals, 'achievers within the status quo' (Scraton, 2013a: 48).¹ Similarly, in their now classic work on official discourse, Burton

¹ The controversies that have so far engulfed the Independent Inquiry into Child Sexual Abuse, however, are a reminder of how contested the role of inquiry chairs can be.

and Carlen consider them to be a 'routine political tactic directed towards the legitimacy of institutions' (Burton and Carlen, 1979: 13).

As some authors have noted, public inquiries into state crime, such as the collusion of state actors with non-state political violence in Northern Ireland, were 'essentially mechanisms for re-establishing the legitimacy of the authoritarian state' (McGovern, 2013: 11; also Rolston and Scraton, 2005; White, 2010; Gilligan, 2013). This would certainly be true for those who were subjected to police infiltration by undercover officers. The units in question – the Special Demonstration Squad (SDS) and the National Public Order Intelligence Unit (NPOIU) – focused their work on left-wing, anti-racist and environmental protest groups and individuals, although far right groups were also targeted. All of them are vocal critics of state policy, and in some instances have developed a political outlook that sees state accountability mechanisms as cynical attempts to detract from state crime. Nevertheless, these very same activist groups were at the forefront of the call for a public inquiry into undercover policing. Their relationship to the inquiry remains complex, however. The official investigation is not so much seen as a way of achieving justice, but rather as a part of the strategy for truth recovery – despite the apparent impossibility of its attainment within a totalising system of law (see Carlen, 2013). From a different theoretical perspective but with similar implications, recent analysis of the Leveson Inquiry has shown how public inquiries can bring invisible aspects of police work to the front stage, even though impression management tactics used by the police may be designed to protect the institution's image (Mawby, 2014).

The terms of reference

As a statutory, judge-led inquiry the UCPI was set up by the then Home Secretary Theresa May in accordance with the Inquiries Act 2005. The Terms of Reference she established are rather broad, although there are some notable omissions from its remit. As the Chairman of the inquiry, Lord Justice Pitchford, is keen to stress his priority is the understanding of what happened – the truth. He is tasked to 'inquire into and report on undercover policing operations conducted by English and Welsh police forces in England and Wales since 1968', a period of 48 years. 1968 refers to the establishment of one undercover police unit in Special Branch, the Special Demonstration Squad. Its successor unit, the NPOIU, will also be scrutinised. While the inquiry does not restrict itself to

undercover operations conducted in order to gather intelligence on political campaigns, the nature of these two units already suggests an emphasis on what critics would call 'political policing'. This is interesting in so far as public inquiries into policing matters are frequently restricted by very narrow Terms of Reference that rarely look beyond the improvements that can be made to police management. Pitchford will have to negotiate the broader political perspectives with smaller administrative ones.

The restriction of the inquiry to operations in England and Wales only, however, is a major bone of contention. The NPOIU, for example, was centrally involved in gathering intelligence for the purposes of informing public order policing in Scotland, as well as internationally in countries such as Germany, Iceland, Italy, France and Spain. A number of stakeholders have made repeated calls to the Home Secretary to broaden the remit to include at least Scotland and Northern Ireland. The Scottish government for example has formally requested inclusion in the Terms of Reference. However, in a letter to the Member of the Scottish Parliament Neil Findlay, the newly appointed Home Office minister Brandon Lewis appeared to dismiss this option. The issue has also been raised by senior politicians in Ireland and Germany.

The Terms of Reference ask the inquiry to pay particular attention to six aspects of undercover policing. In brief, these can be summed up as:

- i. the aims and achievements of undercover policing
- ii. its rationale, and its effects on the public
- iii. its justification
- iv. knowledge of undercover policing methods in government
- v. oversight and governance
- vi. selection process, training and management, and support available to undercover officers.

It is worth noting also what the inquiry does not cover:

- i. as mentioned above, undercover police work outside England and Wales
- ii. corporate intelligence gathering on political activism and its relationship to the public police; this includes the blacklisting of workers
- iii. anything that involves the security services, domestic or international.

One of the concerns of the inquiry is the potential of miscarriages of justice, resulting for example from cases where intelligence gathered through undercover operations has not

been made available to the defence in criminal trials. This concern is in part informed by an earlier review into a specific account of miscarriages of justice where the work of one officer – Mark Kennedy – had led to the pre-emptive arrest and eventual prosecution of a group of environmental activists (Rose, 2011). The fact that Kennedy had infiltrated the protest group was not disclosed to the activists’ defence team, although it was known to the prosecution. In the event, the Court of Appeal quashed the sentences of several activists deeming their convictions unsafe. While the inquiry is not itself responsible for investigating miscarriages of justice, in the event of identifying any potential unsafe convictions Pitchford is obliged to report these to a justice panel.

Preliminary rulings

From the establishment of the inquiry team in 2015 up to July 2016, a large part of the work of the inquiry has constituted evaluating submissions from interested parties, determining preliminary legal issues and setting out guidance principles. In cases where submissions to the inquiry needed further exploration, Pitchford has held preliminary oral hearings in the Royal Courts of Justice. There have been a series of these hearings to date, before the formal evidence hearings begin:

- i. a hearing to determine applications for core participant status
- ii. a hearing on legal representation and public funding
- iii. a two-day hearing on the legal approach to be taken in relation to applications for restriction orders
- iv. a hearing on the terms of undertakings the inquiry will make to the Attorney General
- v. a hearing on the state’s duty to disclose to the parents of a deceased child that the child’s identity was used for police purposes.

Following the first two hearings Pitchford has accepted, to date (August 2016), the applications of 200 core participants in the inquiry and ruled that the legal representatives of 178 of them should be in receipt of public funding. He has refused 87 applications. The Chairman has made it clear that he regards the chances of success for the inquiry to be bound up with the participation of those 178 non-state/non-police (NSNP) participants. The status of NSNP participants has been determined on the basis of categories to which they belong:

- [D] Political organisations and politicians
- [E] Trades unions and trades union members
- [F] Relatives of deceased children
- [G] The family of Stephen Lawrence, Duwayne Brooks OBE and Michael Mansfield QC
- [H] Individuals in relationships with undercover officers
- [I] Miscarriage of justice
- [J] Justice campaigns
- [K] Political activists
- [L] Social and environmental activists

Most of the participants are named, although some are known only by a code number or other identifier. Controversially, Pitchford has also rejected several applications for core participant status, some from high profile campaigners including Ricky Tomlinson, Peter Tatchell and Jenny Jones. The rejections have usually been on the grounds that there was no evidence that the police monitoring of the applicant had been made through the manipulation of relationships by authorised Covert Human Intelligence Sources. Yet as the applicants and their supporters have pointed out, to prove beyond doubt that such targeted surveillance occurred would necessitate a prior disclosure of police authorisation documents and therefore the inclusion as interested parties in the inquiry.

The inquiry as an adversarial battle

Even though public inquiries are inquisitorial by nature, the preliminary hearings have been marred by a significant adversarial tone of engagement; principally due to the approach taken by the counsel for the various state institutions – the Metropolitan Police Service, the National Crime Agency and the National Police Chiefs’ Council – and in a similar way to the Hillsborough inquests.² In a number of ways, police and state actors have sought to restrict public access to evidence, citing – without a sense of irony –

² After a twenty-seven year campaign for the truth by the families of the victims, the jury in the inquest into the Hillsborough stadium disaster finally returned an “unlawful killing” verdict. Commenting on the drawn out process – the inquest was the longest running jury inquest in English legal history – the QC for the family campaign accused the police of turning the inquisitorial process into an adversarial battle. Under pressure, the Chief Constable of South Yorkshire police resigned amidst accusations that his force sabotaged the inquest and blocked the process.

concerns over the intrusion into the private lives of serving and former undercover police officers.

Restriction orders

The submissions, hearings and rulings on the legal principles to govern the application for restriction orders have been the most contentious ones so far. They are also able to tell us something about the nature of the inquiry and the relationship between state and non-state participants. In broad terms, the counsel for the non-state participants – and those here included representatives for the media, for elected representatives and for the police whistle-blower Peter Francis – approached the preliminary hearings from what we may call a ‘principle of openness’. Their emphasis was on the maximum disclosure of the kinds of policing operations that have gathered intelligence on political campaigns. By contrast, the police’s submissions rested on a ‘principle of confidentiality’. This was based on the premise that ‘fairness’ to police officers could only be guaranteed if evidence to the inquiry was protected by anonymity of core state participants. The Metropolitan Police Service therefore argued that in most instances facts and details of undercover deployments should not be disclosed in open inquiry sessions.

Non-state core participants submitted written and oral statements opposing such restrictions, particularly attempting to query the logic behind a blanket policy of not confirming cover identities. These submissions seeking public disclosure of documents identifying and proving the identity of further Covert Human Intelligence Sources were submitted by a range of non-police core participants, as well as a group of elected representatives, the former SDS officer Peter Francis, a group of media actors including Guardian News and Media Ltd, Times Newspapers Ltd and the BBC, as well as a personal submission by one of the NSNP core participants, Helen Steel.

Pitchford’s ruling on the matter sets out the legal principles that underlie decisions under section 19 of the Inquiries Act 2005, as to applications for restrictions on the public disclosure of evidence and information. Most importantly this addressed the question of confidentiality for undercover police officers and the implied principle of ‘neither confirm, nor deny’ that the police had relied on in a bid to maintain their anonymity. The ruling notes, on eighty-five pages, the central importance of the legal approach taken and the public interest in disclosure. In summary, Pitchford decided to take an ‘incremental

route' through case-by-case decisions on restriction orders and anonymity, which remains largely non-committal towards public disclosure of evidence.

The ruling notes that the police and the Home Office have offered full access to secret documentation they hold about undercover policing, 'subject to exceptional circumstances'. The inquiry is of course reliant on full compliance by these institutions, but does not see reason to doubt their commitment to transparency.³ The ruling completely subjects itself to meeting the public interest. It recognises that a balance needs to be struck between two competing public interests – the interest for a public inquiry and the interest for protecting secrets and individuals and the public from harm. This second interest is somewhat tautological: according to the ruling there is public interest in secrecy only when secrecy is in the public interest. However, the ruling does give some reassurance to the NSNP core participants in saying that the police's 'neither confirm, nor deny' position cannot amount to a blanket ban on disclosure. In practice, Pitchford has published 'minded-to notes' suggesting he will grant restriction orders that prohibit the naming of core participants both for police officers and for non-police participants, such as the former partners of undercover officers as well as for activists. In one of the first restriction orders, Pitchford granted anonymity to an undercover officer referred to only by the codename 'Cairo' in the inquiry.

Undertakings and the importance of asymmetry

Similar issues arise from the ruling on undertakings. In the ruling the Inquiry Chair indicated that he would seek an undertaking from the Attorney General that self-incriminating evidence given to the inquiry cannot be used against the individual in any criminal proceedings. This would be essential to allow witnesses coming forward to give evidence without fear of being investigated or prosecuted. This was of course a key demand of the NSNP core participants to facilitate their full participation in the inquiry, but they also argued for the importance of asymmetry. Their submissions upheld that in an inquiry about the wrongdoings of police units there is a difference between the status

³ Mark Ellison QC had criticised the Metropolitan Police's records management in the Stephen Lawrence Independent Review, deeming it 'chaotic' (Ellison, 2014: 16). In response, the Met launched Operation FileSafe, which in turn has received criticisms from campaigners as insufficient.

of police witnesses and those witnesses who participate as 'victims' of intrusive surveillance.

Deceased children

A final contentious issue raised in the preliminary hearings regarded the police's practice of appropriating the identity of deceased children to legitimate and protect undercover officers' assumed identities. A Home Affairs Select Committee Report into undercover policing raised this as a serious instance of police failure:

The practice of 'resurrecting' dead children as cover identities for undercover police officers was not only ghoulish and disrespectful, it could potentially have placed bereaved families in real danger of retaliation (Home Affairs Committee, 2013).

Submissions to the inquiry were made by core participants designated as 'Relatives of deceased children', in particular the mother of Rod Richardson. In her submission she cited the positive duty of the state under Article 8 of the European Convention on Human Rights to provide information about the possible infringement of state actors into private lives. The Home Affairs Select Committee was clear that it expected the police to identify instances of the practice, to notify the families concerned and to apologise.

In his preliminary ruling, the Inquiry Chair did not fully endorse this view, but he did decide that he would contact the parents and close relatives of deceased children where he could establish that the child's identity had been used for the purposes of undercover policing. However, once again, a restriction order granting anonymity to the police officer would override this and parents would not be notified in those cases.

Campaigning for a public inquiry

The public inquiry, its Terms of Reference, and the legal principles applied to it following the preliminary rulings are not in any way natural responses by the British state keen to deflect criticism. In fact, all of those, and the concessions granted, rested heavily on groups of campaigners and individuals who have played a pivotal role in making sure that the 'spycops scandal' reached the level of public scrutiny it has.

In their recent work, Greer and McLaughlin (2016) are interested in the notion of institutional scandals in the regulatory state. They note their proliferation engulfing Britain's public institutions – from local authorities to the BBC. Building on symbolic interactionist perspectives, they explain scandal proliferation as a process shaped by the dynamic interactions between a set of state and non-state actors. Here they grant a significant space to the power of the mainstream media to define and amplify public scandals. Greer and McLaughlin assert that transformations in the British media landscape make 'scandal hunting' a lucrative endeavour for the national press and internet news sites alike. Initially, the scandal might be largely concealed from public knowledge but latently present as an open secret within the institution. These open secrets may become activated where rumour or chatter on social media and online forums is picked up and verified by mainstream news agencies (see also Greer and McLaughlin, 2011). Thus validated, scandals provoke reaction, primarily by public institutions seeking to manage their institutional reputation. In cases where the scandal fits with the news agency's business model, a phase of 'trial by media' sets in, whereby individuals are blamed and institutional processes are scrutinised – leading to scandal amplification. The accountability phase of the scandal's lifecycle is characterised by 'the *separation* of the individual and institutional accountability' (Greer and McLaughlin, 2016: 11, emphasis in the original). The authorities will seek to manage the institutional crisis by seeking to establish the 'official truth' and rectify the institutional failures.

Applied to the infiltrations of political targets by the police's undercover units, Greer and McLaughlin's (2016) model can be usefully applied – yet, as we will see, with an important reservation:

1. *Latency*. In this phase social movement activists first suspected and then discovered the identity of undercover officers who had infiltrated environmental campaigns and other protest networks.
2. *Activation*. A post on the activist website Indymedia UK alerted other activists to the police identity of Mark Kennedy. Working with the journalists Paul Lewis and Rob Evans from the *Guardian* newspaper, the scandal was brought to public attention in the national press.
3. *Reaction*. Kennedy and his former police employers reacted in various ways to contain and neutralise the scandal, as well as to shift the blame. Kennedy, for

example, made frequent media appearances whilst the police launched an internal investigation into the allegations.

4. *Amplification.* The uncovering of further police infiltrators served to amplify the scandal. A whistle-blower, Peter Francis, alleged that he had been sent to monitor and smear the justice campaign run by Stephen Lawrence's family and his mother. These revelations and allegations proved toxic for the police.
5. *Accountability.* A number of accountability mechanisms were employed, from official investigations, to the quashing of sentences for falsely convicted activists. Eventually, the Home Secretary recognised that the scandal had warranted enough public concern to establish a statutory inquiry.

While the model works, there is a significant shortcoming in its applications to this case. In its description as a 'scandal machine', Greer and McLaughlin themselves insinuate that there is something mechanical in the workings of their procedural model, although they warn against any sort of determinism. Reading it in this way, it appears as if the establishment of the Pitchford inquiry was a natural and inevitable phase in the 'process' of the scandal proliferation model. In fact, the scandal proliferation that led to the public inquiry was driven *by activists* seeking to establish the truth very much *against* the official accountability processes.

Greer and McLaughlin note the advances of a regulatory state, one which has lost its traditional deference to the sanctity of its own public institutions. Members of the British government and establishment are less adamant to protect public bodies from criticism and instead employ the mechanisms of audit, accountability and performance management to maintain the dynamic yet continuous legitimacy of state institutions. Greer and McLaughlin mean to criticise the work of political scientists, who, in a functionalist manner, assume that state-sanctioned moral outrage about the failings of its own system components is an acceptable mechanism for the correction of individual faults. In the regulatory state on the other hand, the public inquiry brings to the fore systemic and institutional failure.

Clearly, such theorisation on institutional scandals is a noteworthy attempt to regenerate criminological state analysis by infusing it with the conceptual frameworks of media sociology and regulation. Thus it goes beyond an analysis of the abstract role of the state

to create, justify and enforce legal rules designed to maintain economic, racialised and gendered divisions in the accounts of many critical criminologists. It seeks instead to progress a more empirically-grounded and interactionist understanding of the changing character of the state in different regimes of accumulation.

But what does this mean for political strategy and agency? Even though the model advocated by Greer and McLaughlin reintroduces an activation phase in the cycle of moral panic and scandal formation, it foregrounds the state's (and mainstream media's) response and inserts the conflicting interests of state control and its detractors only as an afterthought. The model describes the context of scandals as a business model of the press and a state increasingly prepared to allow the hollowing out of its own institutions. But agency here only serves to activate and accelerate an already existing structural failure. By contrast, in the various stages of the undercover policing scandal, campaigners and activists played a pivotal role.

There is perhaps a more political reading we can suggest here. Commenting on the strategic lessons that the left could draw from the Lord Scarman Report following the 1981 Brixton riot, Stuart Hall (1982) suggested that there is more to official recommendations for police reform than an attempt at foreclosing debate and legitimising existing practice. In fact, he contended, the appearance of cracks and differences within the established positions on law and order signalled a political opening that progressives would do well to engage with and exploit: 'internal contradictions are not random occurrences and we need to understand both why they occur and what they mean' (Hall, 1982: 67). There is no guarantee that the Pitchford inquiry will provide similar openings, and it is certainly too early to say whether 'Pitchford matters'. But, the process of the inquiry is very much driven by those who want to see justice done. Those who are engaging in the process, the non-state/non-police core participants, are a vital public from where the inquiry receives legitimacy and acknowledgement. Without the active and critical participation of those whose lives were infiltrated, the inquiry is dead in the water.

Conclusion

Critical scholarship has repeatedly pointed out that official inquiries in the United Kingdom fulfil a political, or even ideological, function. They serve to manage actual or

perceived crises of legitimacy, restore confidence in public institutions and generate trust of accountability processes. For Burton and Carlen (1979: 48) the official discourse of the state was embedded in its 'legal and administrative rationality', a mode of argumentation that could put to bed the claims of more vernacular knowledge and dispel myths and rumours. One reading of the UCPI, then, is that it is designed to manage the scandal that engulfed undercover policing and to demonstrate to the public the necessity of covert surveillance for the benefit of public safety and national security. As a secondary function, but from a similar perspective, it is seen as having been instigated by the then Home Secretary Theresa May, despite police concerns, keen at overcoming past accusations of police wrongdoing. This would feed into her agenda of streamlining the service and moulding it more in the shape imagined by new public management and drives for efficiency and cost-cutting.

But another reading, for which I have provided some evidence here, would focus on the agency and struggle involved in forcing concessions from state institutions that are eager to maintain reputations and shift blame to other aspects of the institutional construct. Greer and McLaughlin (2016, see also White, 2010) make use of Stan Cohen's work in his book *States of Denial* to analyse how the state's response can shift from outright denial to an acceptance of liability if put under pressure. Cohen (2001) argued that criminologists have helped to normalise state crimes which stand in a disproportional relationship to the vast body of research carried out on relatively minor transgressions. Both criminology and state actors have found ways of denying or justifying atrocities on huge scales. Elsewhere Cohen describes acts of denial as a 'spiral' (Cohen, 1993), where states first deny the existence of atrocities committed, or, upon exposure, engage in forms of partial denial to shift attention or blame. Scraton (1999), similarly, employs the Foucauldian notion of a 'regime of truth' to question the adequacy of police accountability in processes whereby the state seeks to reconstruct and suppress the truth. These are not literal denials. Rather they issue public self-criticism embedded within discourse that 'implicates the rule of law, harnessing its processes and procedures to conduct a sophisticated "legal defense"' (Scraton, 1999: 279; Cohen, 1996). Conceivably, various police actors and their oversight bodies are deeply embedded in a spiral of denial of their own. It is most clearly evident in the Metropolitan Police's policy of 'neither confirm, nor deny'.

The Pitchford inquiry, optimistically due to report its findings to the Home Office in 2018, has embarked on one of the most thorough investigations into the practice of state abuse ever conducted in England and Wales. Despite its reduced independence as set out in the Inquiries Act 2005 Pitchford is armed with statutory powers, an extensive team of counsels, public funding and an extended timeframe of evidence hearings. And despite its complex problems of gaining legitimacy from those who have been victimised by undercover policing, it is a powerful reminder of the vulnerability of those citizens engaged in political activity and their civil liberties to state abuse. The struggle for the public inquiry, and for the legal principles that will guide it, has played an important role in galvanising a civil liberties and anti-state crime movement in Britain.⁴ The exposure of infiltrators in political, environmental and justice campaigns has already brought about the establishment of new civil liberties organisations – including the *Campaign against Police Surveillance* and the group *Spies Out of Our Lives*. Some of their activities have been a remarkable coming together of individuals and groups who have all had the experience of police infiltration. Few of them so far have received apologies, or compensation payments for some of the worst invasions of their private and political lives. However, I have highlighted how those who have become non-police core participants in the inquiry are at the forefront of making the inquiry public and accountable. The legitimacy of the Undercover Policing Inquiry is clearly bound up with their full co-operation.

Burgess, A. (2011) 'The changing character of public inquiries in the (risk) regulatory state', *British Politics*, 6 (1), 3–29.

Burton, F. and P. Carlen (1979) *Official discourse: on discourse analysis, government publications, ideology and the state* (London: Routledge and Kegan Paul).

Carlen, P. (2013) 'Official discourse, comic relief and the play of governance', in G. Gilligan and J. Pratt (eds.) *Crime, truth and justice: official inquiry, discourse, knowledge* (Abingdon: Routledge), 259–276.

Cohen, S. (1993) 'Human rights and crimes of the state: the culture of denial', *Australian and New Zealand Journal of Criminology*, 26 (2), 97–115.

⁴ The demand for a public inquiry into the events at Orgreave in June 1984 has had similar effects, with the formation of the Orgreave Truth and Justice Campaign in 2012.

Cohen, S. (1996) 'Government responses to human rights reports: claims, denials, and counterclaims', *Human Rights Quarterly*, 18 (3), 517–543.

Cohen, S. (2001) *States of denial: knowing about atrocities and suffering* (Cambridge: Polity).

Ellison, M. (2014) *Stephen Lawrence Independent Review: Summary of Findings* (London: Home Office).

Gilligan, G. (2013) 'Official inquiry, truth and criminal justice', in G. Gilligan and J. Pratt (eds.) *Crime, truth and justice: official inquiry, discourse, knowledge*. (Abingdon: Routledge), 11-25.

Greer, C. and McLaughlin, E. (2016) 'Theorizing institutional scandal and the regulatory state', *Theoretical Criminology*, DOI: 10.1177/1362480616645648, 1–21.

Greer, C. and McLaughlin, E. (2011) 'This is not justice': Ian Tomlinson, institutional failure and the press politics of outrage', *British Journal of Criminology*, 52 (2), 272–93.

Hall, S. (1982) 'The lessons of Lord Scarman', *Critical Social Policy*, 2 (2), 66–72.

Home Affairs Committee (2013) 'Undercover policing: interim report', Thirteenth Report of Session 2012-2013 (London: House of Commons).

Mawby, R. (2014) 'The presentation of police in everyday life: police–press relations, impression management and the Leveson Inquiry', *Crime, Media, Culture*, 10 (3), 239–57.

McGovern, M. (2013) 'Inquiring into collusion? Collusion, the state and the management of truth recovery in Northern Ireland', *State Crime Journal*, 2 (2), 4–29.

Rolston, B. and Scraton, P. (2005) 'In the full glare of English politics: Ireland, inquiries and the British state', *British Journal of Criminology*, 45 (4), 547–64.

Rose, N. (2011) *Ratcliffe-on-Soar power station protest: inquiry into disclosure* (London: Office of Surveillance Commissioners).

Scraton, P. (1999) 'Policing with contempt: the degrading of truth and denial of justice in the aftermath of the Hillsborough disaster', *Journal of Law and Society*, 26 (3), 273–97.

Scraton, P. (2013a) 'From deceit to disclosure: the politics of official inquiries in the United Kingdom', in G. Gilligan and J. Pratt (eds.) *Crime, truth and justice: official inquiry, discourse, knowledge* (Abingdon: Routledge), 46-68.

Scruton, P. (2013b) 'The legacy of Hillsborough: liberating truth, challenging power', *Race and Class*, 55 (2), 1–27.

Sulitzeanu-Kenan, R. (2010) 'Reflection in the shadow of blame: when do politicians appoint commissions of inquiry?' *British Journal of Political Science*, 40 (3), 613–34.

White, L. (2010) 'Discourse, denial and dehumanisation: former detainees' experiences of narrating state violence in Northern Ireland', *Papers from the British Criminology Conference*, 10, 3–18.

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Understanding Organised Crime and Fatal Violence in Birmingham: A Case Study of the 2003 New Year Shootings

Mohammed Rahman

“...we didn’t play, and real gang members are straight up ballers and killers” (Ali – ex-gang enforcer)

Abstract:

This paper discusses the relationship between fatal violence and organised crime. It does this by first providing a brief overview of two Birmingham street based organised crime groups, and then considers the 2003 fatal shootings of Letisha Shakespeare and Charlene Ellis. Methodologically this research is qualitative, and the ethnographic strand of the research offers a “criminological autopsy” of the case. By triangulating primary data, secondary sources and criminological theory, it is hoped that this paper will provide an exploratory understanding of the overlooked and under researched correlation between organised crime and fatal violence.

Keywords:

Organised crime; gangs; violent masculinity; murder; Birmingham

Introduction

Inner-city Birmingham during the 1980s was an extremely difficult place for young black men to grow up in. It was during this time that chaotic economic change and neo-conservative administrations in the US and UK ended traditional forms of working-class

employment (Ellis, 2014). Conventional forms of working-class employment swiftly disappeared due to de-industrialisation, when much of the manufacturing sector relocated to the 'developing world' (see, for example, Lash and Urry, 1987; Lea, 2002; Harvey, 2005). It was during this turbulent time in British history that crime rates started to rise at unprecedented levels (Reiner, 2012). This also affected Birmingham, and the combination of socioeconomic deprivation and high unemployment rates there fostered racial tension. All of the above, contributed to brutal race riots in 1981 and 1985.

During the 1980s, the West Midlands Police were habitually accused of over-zealous and repressive behaviour, especially when it came to the 'random' stop-and-search of black youngsters (Hall et al., 1978). One can say that things have not changed in that sense, as figures show that black youths are six times more likely than their white counterparts to be stopped and searched by the police, under section one of the Police and Criminal Evidence Act 1984 (House of Commons Home Affairs Committee, 2007). This figure then rises to black youths being stopped and searched 30 times more than their white counterparts when police exercise the powers of section 60, of the 1984 Public Order Act, which allows people to be stopped and searched 'without' reasonable suspicion (EHRC, 2012).

The aforementioned conditions of inner-city Birmingham in the 1980s resulted in young black men working together for self-protection. This resulted in groups of men meeting up in a fast-food joint in Lozells, Birmingham. They often took turns to plan and conduct vigilant patrols to protect their communities. For some of these young men, this reactionary behaviour was necessary in order to fight on the front line against racism and police brutality (Bassey, 2005; Evans, 2010). According to Thompson (2005), even though the threat from the far right began to recede, unemployment in inner-city Birmingham was as much as 20% during the late 1980s, and crime became an alternative and lucrative option to make fast money and acquire notoriety and respect for some black youths (Bassey, 2005). As Glynn (2014: 113) rightfully observes:

When those same subordinated masculine identities connect to the streets, some black men use the structured action of criminality to challenge the existing social structures that excludes them. In doing so, some black men join forces and create an alternative form of 'social structure', namely, 'street gangs'.

Methodological Note

Before investigating the 2003 New Year shootings, there are some methodological points to consider. The Ethics Committee at Birmingham City University approved this study as PhD level research in September 2015. Access to members of Birmingham's criminal underworld was achieved through 'gatekeepers' working in academia and in the criminal justice system. Some were befriended by chance and others by design. Indeed, interviewing these intermediaries was critical for the research, as it allowed them to measure my creditworthiness and legitimacy as a researcher, before being referred to members of organised crime groups. Accounts from these individuals were a combination of semi-structured and unstructured interviews, which were then corroborated with police data, legal papers and newspaper articles. Pseudonyms have been given to maintain participant anonymity and confidentiality.

The ethnographic strand of the research encompassed spending a substantial amount of time with people immersed in the criminal underworld (Atkinson, 2014). The result of this allowed the successful completion of a 'criminological autopsy' (see, Brewer, 2000, for a general introduction) of the crime scene. Of note, this concept should not be confused with 'psychological autopsy', which Beskow et al (1990: 307) define as 'a procedure for the reconstruction of suicidal death through interviews with survivors'. Wilson et al (2016) consider criminological autopsy as a pragmatic approach to explain murders that are committed. The reason to conduct a criminological autopsy is twofold. First, it was important to make sense of places and spaces of organised criminality in Birmingham. Second, it allowed the understanding and appreciation of two tragic murders and the complexities and controversies surrounding the case. While it is accepted that qualitative methods often provide a snapshot of people and their cultures, as oppose to a full portrait, it can be argued that this is appropriate in this case, given the sensitive nature of the subject matter and the challenges inherent in high-risk research. After all, gaining access to individuals in the criminal underworld is a primary obstacle and as Blaxter et al (1996: 145) note, research is 'the art of the feasible'.

Of note, there is a methodological limitation to consider. Some of the primary data were retrospective accounts. As Sudman and Bradburn (1973) observe, the problem with such accounts is that they are contingent upon memory, which is selective and fades with time.

Having said that, prominent events are recalled more easily than events that are frequent or mundane (Densely, 2013).

Introducing the Johnson Crew and the Burger Bar Boys

Between the late 1980s and early 2000s, the criminal enterprises of the Johnson Crew and the Burger Bar Boys was notoriously active, lucrative, expansive and increasingly violent. While this may be the case, there are no scholarly sources that have investigated the criminal fraternities. That literature which exists is in the form of 'true crime' books that provide descriptive accounts of both of these illicit organisations (see for example, Bassey, 2005; Cawthorne, 2010; McLagan, 2013). The Johnsons started supplying drugs from the early nineties, and soon controlled the drugs market and nightclub security across a huge swathe of the city. The syndicate lacked hierarchal structure, and fall-outs between members over botched drug deals resulted in some of the members leaving the organisation. Those that left started up a rival firm called the Burger Bar Boys. The firm took its name from a fast-food bar near to the Johnson's café hang-out.

Ex-gang member Ahmed, who wished not to disclose which of the two gangs he was affiliated with, recalls his early days in the criminal underworld:

By 15 I was completely immersed into the gangster world, and school was non-existent. Basically within a space of 12 months, I went from school to the music scene, and all the way to the gang life. From the age of 16 I started selling bud [marijuana], and then moved onto crack and heroin. Because of this I was committing further offences, like carrying a knife for protection [from rival gangs], which eventually became a gun. With all this came mad respect on the streets. You'd go out at night to these nightclubs and the MC's would give you a shout out and big you up. At that moment you'd feel like you were made. It was all about making money through drugs and protecting yourself at all times, and you'd repeat that day in, day out.

While the criminal underworld may simply be considered a subculture of a particular legitimate community (Hobbs, 2013), their influence within that community is far from simple. What Ahmed describes, resonates with the understanding that street gangs can

eventually evolve into organised crime groups (Spergel, 1995; Densley, 2013). For instance, Densley (2014) has suggested that street gangs are defined by their engagement in sporadic offending. They can, however, evolve into more entrepreneurial crime, and finally become organised crime groups if they begin governing territories or markets (Varese, 2010). This became the case for both the Johnsons and the Burger Bar Boys. However, with criminal entrepreneurship came conflict and this invariably led to frequent murderous feuds in Birmingham. Ali discusses how criminal entrepreneurship was his primary motivation during his time as an 'enforcer' in Birmingham's underworld during the 1990s. He reveals that if this was ever challenged, violence was the natural response for settling disputes:

On road, we'd make moves, until we were balling. We controlled the ends and all the streets in it, and anyone in our way would get taken out. This was serious man, we didn't play, and real gang members are straight up ballers and killers.

The term 'baller' derives from the US, to describe talented basketball players. However, within the context of hip-hop music and urban gangs, it alludes to making monetary gain through illicit activities. Of note, various scholarly sources have argued for rap music's impact on violent practice (see, for example, Hagedorn, 2005; Hallsworth and Silverstone, 2009; Weitzer and Kubrin, 2009; Ilan, 2012; Lozon and Bensimon, 2015). Ali indicates that the path towards becoming a 'baller' can be impeded by rivals, who would simply be 'taken out'. As Densley (2013: 50) argues, gang membership is about 'taking no shit from nobody'. With the above in mind, it is worth considering the pioneering work of Anderson (1999), which considers behavioural codes that generated and regulated violence in the inner-city suburbs of Philadelphia. Anderson (1999: 33) describes the code of the street as:

... a set of informal rules governing interpersonal public behaviour, particularly violence. The rules prescribe both proper comportment and the proper way to respond if challenged. They regulate the use of violence and so supply a rationale allowing those inclined to aggression to precipitate violent encounters in an approved way.

At the core of Anderson's notion is 'respect' and this form of 'symbolic capital' (Bourdieu, 1986) is often achieved through the admiration of fear, which habitually is attained

through the execution of violence. It can be contested that Ali's use of violence during his time as an enforcer was twofold. First, in order to uphold criminal entrepreneurship on a street level, a fearful reputation would have been continuously maintained. Brookman et al (2011: 26) note how the maintenance of reputation 'requires the occasional notable acts of violence', and invariably this enables the regulation of 'governance' of a particular illicit market (von Lampe, 2016). Second, punishing 'disrespect' is paramount, and violence in this particular case for Ali would be seen as 'street justice', which would be applied to those who interfered with his criminal endeavors (Brookman et al., 2011).

Interestingly, the 'code of the street' and the 'code of silence' intersect. A retired police officer, who served the majority of his 30 years in the West Midlands Police as a Detective Inspector, admits that the police were always 'one step behind' during the 1990s, when it came to shutting down the criminal operations of the Johnsons and the Burger Bar Boys. He recalls:

In the early days we didn't take these boys seriously. Back in the 1990s when it came to violent street crimes – armed robbery was still a big thing for the police, and there wasn't much focus on street gangs and organised crime groups. However, once we noticed the increase of illegal drugs in the streets of Birmingham, the agenda began to change, because stabbings and shootings also spiked. Both drugs and violent attacks worked hand in hand. There were probably more front line officers on the streets of Birmingham back then as oppose to now. But the problem we faced was that no one was willing to speak to us. We were dealing with very close-knit communities, and the other issue was, these weren't your average criminals. They were pretty smart at covering certain things up, so we were always one step behind.

Indeed, there were a number of high profile organised crime related murders leading up to the 2003 New Year's shootings. The majority of these have not been prosecuted, due to a lack of witness testimonies. Witnesses for 'confrontational' and 'revenge' based homicides (see, for example, Brookman, 2005) encompassed members of organised crime groups, as well as innocent bystanders. However, Regan (2010: 93) draws attention to how both entities often conform to the inner-city 'code of silence', and states how the

failure to offer information to the police ‘revolves around the fear of reprisal – the fear of what will happen to them if they do speak’.

The 2003 Murder of Letisha Shakespeare and Charlene Ellis

Letisha Shakespeare and Charlene Ellis were celebrating New Years on 2nd January 2003 and at an after party event held at the Uniseven Studio hairdressers. Uniseven Studios was based in Aston, Birmingham, which territorially back then was renowned as a Johnson Crew stronghold. The girls were chatting outside the venue before they were shot multiple times in what has been described as a drive-by shooting (Cawthorne, 2010; McLagan, 2013).

The shootings happened shortly after 0400 hours, and Charlene’s twin Sophie Ellis and their cousin Cheryl Shaw were injured in the gunfire. Leon Harris, a reveler, was also injured. The weapon used was a MAC-10 machine pistol. Capable of firing 1,200 rounds per minute, this blowback-operated weapon is extremely difficult to control, even for trained marksmen. In the criminal underworld it is often referred as the ‘spray and pray’ weapon (Cawthorne, 2010). In total, 37 cartridge cases were found at the crime scene. Out of the two deceased, Charlene was the first to die. The first bullet hit her left arm and the second hit her shoulder. The fatal shot hit her face, fracturing her skull, which caused a massive brain hemorrhage. In total, Letisha was shot four times. All the bullets travelled through her body. The fatal bullet pierced her heart and lungs, and came out of her back (Busari, 2004). Four men: Nathan Martin; Michael Gregory; Marcus Ellis and Rodrigo Simms were found guilty of the murders and the attempted murders, and received a total of 132 years in prison (Morris, 2005).

While it can be said that drive-by shootings during that period were prevalent (Wilson, 2013), this particular incident was by no means an ordinary case. The nature of the tragedy, including its rationale, complexities, and controversies, galvanized inner-city Birmingham. As a result, the case became a watershed moment for the British criminal justice system for many reasons. However, before discussing the complexities and controversies, it is worth considering the motivation behind the murders.

Motivation for the Shooting and Case Complexities

It has widely been accepted that the murders of Miss Shakespeare and Miss Ellis was a retaliation attack for the earlier murder of Yohanne Martin. One of the 'facts' of the case was:

There was no dispute that the killings of the young women were gang-related. It was the prosecution case that the shootings were perpetrated by members of the Burger Bar gang and were intended to target members of the Johnson Crew, in revenge for the shooting of Yohanne Martin. The victims were not members of either gang and had been in the cross-fire. (ECHR 184, 2012)

The trial for the murders began in November 2004, and immediately it was considered by the prosecution that Nathan Martin sought revenge for the murder of his brother, Yohanne Martin. Mr. Martin was also killed in a drive-by shooting in December 2002 by members of the Johnson Crew (Revill, 2003). During the trial it was also revealed that Nathan Martin was frustrated with the police during questioning and stated:

It pisses me off because the shooting (of the girls) was in the headlines for weeks and weeks but my brother's death had been in the headlines for a day. (Summers, 2005)

The work of Katz (1988) parallels Anderson's (1999) notion of respect and considers the transition from 'humiliation' to 'rage', which for some offenders warrants 'righteous slaughter'. In other words, the impassioned killer is an individual who justifies and makes sense of their actions by resurrecting the 'Good'. For this incident, a revenge based motivation would assume that the impassioned killers sought to escape a situation that came to seem disrespectful and inescapably humiliating. As Katz (1988: 12) states:

When people kill in a moralistic rage, their perspective often seems foolish or incomprehensible to us, and, indeed, it often seems that way to them soon after the killing. But if we stick to the details of the event, we can see offenders defending the Good, even in what initially appear to be crazy circumstances.

All of the above coincides within the context of needing to understand violent masculinity and urban street level violence. Ellis (2014: 23) explains that 'the need for men to achieve, and appear to be in possession of, a particular masculinity has relevance for

understanding violent criminality, which can represent a means to exert dominance and power over others'. This is no different in relation to understanding violent masculinity in gangland Birmingham. Irrespective of criminal motivation, the perpetrators of the 2003 shootings collectively agreed on one behaviour that would allow them to enforce supremacy and exert masculinity within their sub-division, this was 'righteous slaughter' (Katz, 1988).

Ali provides a critical insight of his standpoint on righteous slaughter and states:

You know the saying, an eye for an eye, makes two blind. Well some people don't see it like that. I'm just saying, if my brother got killed, I wouldn't be waiting on no police to find his killer. I'd take things into my own hands. It's just how it is.

Brookman (2005: 48) reminds us that gangland related 'hits' are often considered as a form of 'revenge killing', whereby a murder is 'generally planned and purposeful'. Her understanding of revenge killing mirrors Katz's (1988) notion of righteous slaughter, in the sense that individuals like Ali are not interested in conventional justice; rather they are willing to 'take things into their own hands'. Simply put, this implies underworld justice. Ali's comment on 'it's just how it is' denotes the normalization of revenge based deaths in the criminal underworld, and reminds us that upholding a violent masculine image is also critical for prolonging street reputation and a 'badass' persona (Katz, 1988).

In regards to the 2003 shootings, there are some complexities and controversies that are worth mentioning. In the case of one of the defendants, Marcus Ellis, the prosecution heavily relied upon the anonymous witness statements of a man referred to in court as 'Mark Brown'. Brown testified in court that he saw Ellis in the getaway car at the crime scene. However, the creditworthiness of his testimonies is of doubt, as during the trial several disclosures were made about Brown. Brown himself was a habitual offender who served several custodial sentences, which included robbery and police assault. He refused to identify Ellis via ID parade on numerous occasions and in court he stated that he had a personal 'vendetta' against Ellis. Before deliberation, in his summary, the trial judge stated that Brown was a liar on numerous occasions and that his 'credibility was severely dented'.

Case Reflexivity

Pink (2013) discusses the importance of ethnography as reflexive practice. Since the 1980s, scholars of traditional research methods emphasize the constructedness of ethnographic knowledge (Burgess, 1984; Ellen, 1984), coupled with the stresses on the central importance of reflexivity (Fortier, 1998; Walsh, 1998). A central criticism of this research method is that ethnographic knowledge can only be a subjective construction – i.e. ‘fiction’ (Clifford, 1986), which means that it represents the ethnographer’s version of reality, as opposed to empirical truth. Cohen and Rapport (1995) allude to the fact that what informants do or say is solely an expression of the researcher’s consciousness. However, Walsh (1998: 220) insists that the ‘social and cultural world must be the ground and reference for ethnographic writing’ and that ‘reflexive ethnography should involve a keen awareness of the interpenetration of reality and representation’, and scholars should not ‘abandon all forms of realism as the basis of doing ethnography’. Pink (2013: 36) states that ‘a reflexive approach recognizes the centrality of the subjectivity of the researcher to the production and representation of ethnographic knowledge’. Below is an extract of reflexive observation taken from my field notes after visiting the crime scene:

The shootings occurred at the back of Uniseven, on a service road, called Church Hill Parade. The service road is wide enough for cars to drive past one another, however, when cars are parked, the two-way maneuverability of motor vehicles can become difficult. I decided visit the service road twice in order to undertake a criminological autopsy. Both visits were conducted with an ex-gang member. The reason for this was to verify where the party exactly took place, and also what way the getaway vehicle entered and exited on the night of the shooting (entered via Arden Road, exited via Trinity Road). The first visit was carried out at midday, and the second was conducted with the same individual on the following day at 0400. This was around the time of the shooting.

I decided to conduct the second visit at that particular time as I wanted to somewhat acquire a visual representation of the events that unfolded in the getaway car on 2nd January 2003. To do this fully would be impossible,

however I decided to position myself as the vehicle driver of the getaway car and set-up my dash-cam in order to attain a visual recording of the journey to the murder site and the getaway itself. Driving to the murder site meant that I saw in front of me the A34, an arterial route that territorially separates the Burger Bar Boys and the Johnsons crew. When I entered the service road via Arden Road, the strip of terrain was pitch black. My headlights were on, and I found it difficult to see, as well as through my dash-cam, what was ahead of me or beside me. Each commercial property is equipped with one external floodlight. Only two flickered, which meant that they lacked effectiveness. In order to measure the visibility that Mark Brown had on the night of the shootings, I decided to station my car outside exit of the Uniseven, and got out of my vehicle and positioned myself where Mark Brown stated he was. According to a forensic investigation report, the getaway vehicle had tinted windows, whereas my car has no window tints or any other window modifications. Even then I could not see the ex-gang member who was sitting in the passenger side of my car. I asked him to sit in various positions in the back seats of my car, and I still was unable to see him. (Reflexive Extract: January 2016)

Discussion

The work of Densley (2013) provides a holistic insight into the progression of inner-city gangs from recreational neighbourhood groups; to delinquent collectives; to full-scale criminal enterprises; and finally, to providers of extra-legal governance. In this case, the advent of the Johnson Crew and the Burger Bar Boys was a result of fighting socio-political injustice. Although the movement was not recreational, it still formed an identity with shared interest, which Thrasher (1927) calls 'ganging'. Those that were ganging were black young males, suffering from socioeconomic deprivation and racial oppression. Naturally this warranted a collective unit of 'structural violence', namely rioting (Galtung, 1969). As Ray (2011: 23) makes clear, 'humans have a history of violence and violence has a history'. Rioting too, has its place in the British history of violence, and while pioneering research considers the shift of rioting from a clear response to manifest social

injustice to a more diffuse expression of generalised rage (see, Hall, 2012; Hall and Winlow, 2012; Winlow et al., 2015), the upshot of Birmingham's civil unrest in 1985 merely contributed towards an increase of urban interpersonal violence.

Interpersonal violence in the night-time economy has risen exponentially since the 1980s (Winlow and Hall, 2006), and during this period criminologists have rightly pointed out the rise in drug smuggling and firearms deals. Such markets have allowed illegal and legal sectors to merge (Ayres and Treadwell, 2012; Hall, 2012; Hobbs, 2013) and, as Ray (2011: 3) observes, violence in these realms is a 'slippery concept that permeates the unstable divisions between public and private, legitimate and illegitimate, individual and collective'.

Of all the volume crimes, drug distribution remains the most lucrative and ubiquitous (Ghodse, 2009). Not only has this illicit marketplace 'eroded the links between traditional criminal territories and the cultures they spawned' (Hobbs 2013: 153), it has also broken traditional methods of 'doing the business' (Hobbs, 1988). As a result, Hobbs (2013: 153) considers organised crime to be a 'glocal' crime, and observes how the phenomenon is no longer 'in fixed terrain, but is manifested as both local and global networks of opportunity'.

By controlling the nightclub security across a huge swathe of the city, members of the Johnsons would have been publicly challenged to violent confrontations, which necessitated retaliation (Hobbs et al., 2005). Controlling, regulating and policing the night-time economy not only elevated an individual's masculinity amongst his peers and rivals, but also presented the opportunity to govern and profit from money making schemes, which included illegal drugs. As Winlow (2001) observes, whatever commodity was on offer, bouncers were the ideal conduits. As Ray (2011: 63) indicates, 'the risk of violence is distributed through geographical space'. This is evident in organised criminality in inner-city Birmingham, as violent practice often navigates from the streets into the nighttime economy, and vice versa.

This paper reveals how choices are stark 'on road'. The context is simple: survive or become a victim (Hallsworth and Silverstone, 2009). Hobbs (2013) considers the engagement in violent practice by professional criminals as pragmatic, while Hallsworth (2013) in his study of violent street gangs considers violent practice to be sporadic, as young people 'drift' into crime and violence (Matza, 1990). If the orientation of violence

amongst professional criminals is typified as instrumentalism, violence and weaponisation by streets gangs is visceral and emotive, and extends beyond business imperatives. However, we must remind ourselves; for both criminal identities, upholding an image of violent masculinity and engaging in violent practice is a commodity, which is often used to advance criminal endeavours. This alone helps us to understand as to why both entities should not be considered separate and unrelated (Densley, 2013). Additionally, violence can emerge over disrespect, honour slights, territorial disputes between gangs, and 'is endemic within the retail sector of the illegal drugs market which is where many young men "on road" sought a living' (Hallsworth and Silverstone, 2009: 366), for profit and reputation. While this would indicate that masculine reputational violence may be most common with men from working-class societies, we must remind ourselves that the relationship between masculinity and violence is complex and influenced by a range of factors.

Criminological scholars remind us of the need to consider the role of emotion when thinking about violence (see, for example, Katz, 1988; Presdee, 2000). As discussed, the murders of Letisha and Charlene were heavily laden with emotions. In relation to the New Year shooting, Nathan Martin was enraged that the murders of Letisha and Charlene received an extensive amount of publicity in comparison to his brother, Yohanne's. One can consider Nathan's emotions leading up to the shooting transitioning from 'humiliation' to 'rage'. As Katz (1988: 141) observes, once an attack by another group becomes public knowledge, 'a failure to respond threatens to make retrospectively ridiculous the pretensions of all in the attacked group'. In the criminal underworld, this alone prompts the execution of righteously enraged slaughter, even though this may be inconceivable to the ordinary person.

An intricate and pivotal aspect of investigating this case was the ethnographic element of the research. Spending time with those connected to the case enabled the understanding of violence within social space. The visit to the crime scene was crucial for helping to understand the complexities and controversies surrounding the case. The journey to the crime scene, and the methodology utilised, allowed the appreciation of how violence is embedded within a multifaceted sociality, in which local, global and generational processes interconnect.

Concluding Thoughts

Similarly, to this research, Pitts (2008) argues that 'supergangs' in certain London boroughs are violent and heavily immersed in the criminal underworld, which start off as territorial and then move onto the higher echelons of organised crime. Likewise, Densley (2014) highlights that urban street gangs are often used by organised crime groups as 'drug runners', but some are then given the opportunity to evolve into criminal entrepreneurs. They both support the argument that the advent of globalisation has changed the business models of traditional organised crime in order to accommodate youth gangs.

This paper has considered how some of the members start in youth gangs and then make the successful leap into criminal enterprise and governance. With this leap comes the unavoidable world of violence, including fatal violence. This paper shows that murder in street level organised criminality in Birmingham is a masculine affair. For these offenders, when their masculinity, collective identity and legitimacy is challenged, the need for revenge-based murder is obligatory. Simply put, there is no room for compromise or negotiation. As Wilson and Rahman (2015: 263) observe, it's 'shoot to kill', or be 'killed'.

Anderson, E. (1999) *Code of the Street: Race and Class in an Urban Community* (Chicago: University of Chicago Press).

Atkinson, P. (2014) *For Ethnography* (London: Sage).

Ayres, T. and Treadwell, J. (2012) 'Bars, Drugs and Football Thugs: Alcohol, Cocaine Use and Violence in the Night Time Economy among English Football Firms', *Criminology and Criminal Justice: An International Journal*, 12 (1), 83-100.

Bassey, A. (2005) *Homeboys: The Bloody Story of the Birmingham Gang War* (London: Milo Books).

Beskow J., Runeson, B., and Asgard, U. (1990) Psychological autopsies: Methods and ethics', *Suicide Life Threat Behaviour*, 20 (4), 307-323.

- Blaxter, L., Hughes, C., and Tight, M. (1996) *How to Research* (Buckingham: Open University Press).
- Bourdieu, P. (1986) 'The forms of capital', in J. Richardson (ed.) *Handbook of Theory and Research for the Sociology of Education* (New York: Greenwood), 241-258.
- Brewer, J. (2000) *Ethnography* (Buckingham: Open University Press).
- Brookman, F. (2005) *Understanding Homicide* (London: Sage).
- Brookman, F., Bennett, T., Hochstetler, A., and Copes, H. (2011) 'The "code of the street" and the generation of street violence in the UK', *European Journal of Criminology*, 8 (1), 17-31.
- Busari, S. (2004) 'Reprisal rivalry revenge: Gangster killed half-sister in bungled attack on enemy', *The Mirror* [online] Available at: <https://www.thefreelibrary.com/REPRISAL+RIVALRY+REVENGE%3B+'Gangster+kill+ed+half-sister+in+bungled...-a0124469961> [Accessed: 1 December 2016]
- Cawthorne, N. (2010) *The World's Most Evil Gangsters* (London: John Blake).
- Connell, R. W. (1987) *Gender and Power: Society, the Person and Sexual Politics* (Stanford: Stanford University Press).
- Connell, R. W. (1995) *Masculinities* (Berkeley: University of California Press).
- Densley, J. (2013) *How Gangs Work: An Ethnography of Youth Violence* (Oxford: Palgrave Macmillan).
- Densley, J. (2014) 'It's gang life, but not as we know it: The evolution of gang business', *Crime and Delinquency*, 60 (4), 517-546.
- EHRC (2012) *Race Disproportionality in Stops and Searches under Section 60 of the Criminal Justice and Public Order Act 1994* (Manchester: Equality and Human Rights Commission).
- Ellis, A. (2016) *Men, Masculinities and Violence: An Ethnographic Study* (London: Routledge).
- Evans, K. (2010) *Crime Prevention: A Critical Introduction* (London: Sage).
- Ferrell, J., Hayward, K., and Young, J. (2008) *Cultural Criminology: An Invitation* (London: Sage).

Galtung, J. (1969) 'Violence, Peace and Peace Research', *Journal of Peace Research*, 6 (3), 167-191.

Ghodse, H. (2009) *International Drug Control into the 21st Century* (Aldershot: Ashgate).

Glynn, M. (2014) *Black Men, Invisibility and Crime: Towards a critical race theory of desistance* (Abingdon: Routledge).

Hagedorn, J. (2005) 'The Global Impact of Gangs', *Journal of Contemporary Criminal Justice*, 21 (2), 153-169.

Hall, S. (2012) *Theorizing Crime and Deviance: A New Perspective* (London: Sage).

Hall, S. and Winlow, S. (2012) (eds.) *New Directions in Criminological Theory* (Abingdon: Routledge).

Hall, S., Critcher, C., Jefferson, T., Clarke, J., and Robert, B. (1978) *Policing the Crisis: Mugging, the State, and Law and Order* (London: Macmillan).

Hallsworth, S. and Silverstone, D. (2009) "'That's life innit': A British Perspective on Guns, Crime and Social Order", *Criminology and Criminal Justice*, 9 (3), 359-377.

Hallsworth, S. (2013) *The Gang and Beyond: Interpreting Violent Street Worlds* (Hampshire: Palgrave).

Harvey, D. (2005) *A Brief History of Neo-Liberalism* (Oxford: Oxford University Press).

Hobbs, D. (1988) *Doing the Business: Entrepreneurship, Detectives and the Working Class in the East End of London* (Oxford: Clarendon Press).

Hobbs, D. (2013) *Lush Life: Constructing Organized Crime in the UK* (Oxford: Oxford University Press).

Hobbs, D., Hadfield, P., Lister, S., and Winlow, S. (2005) *Bouncers: Violence and Governance in the Night-Time Economy* (Oxford: Clarendon).

House of Commons Homes Affairs Committee (2007) *Young Black People and the Criminal Justice System: Second Report of Session 2006-2007* (London: Stationery Office).

Ilan, J. (2012) "'The industry's the new road': Crime, commodification and street cultural tropes in UK urban music", *Crime Media Culture*, 8 (1), 39-55.

Katz, J. (1988) *Seductions of Crime: Moral and Sensual Attractions of Doing Evil* (New York: Basic Books).

- Lash, S. and Urry, J. (1987) *The End of Organised Capitalism* (Cambridge: Polity Press).
- Lea, J. (2002) *Crime and Modernity* (London: Sage).
- Lozon, J. and Bensimon, M. (2015) 'A Systematic Review on the Functions of Rap Among Gangs', *International Journal of Offender Therapy and Comparative Criminology* (online first 27 November 2015)
- Matza, D. (1990) *Delinquency and Drift* (New York: Transaction Publishers).
- McLagan, G. (2013) *Guns and Gangs: The Inside Story of the War on our Streets* (London: Alison and Busby).
- Morris, C. (2005) 'Inside gangland Brum: The evil executioners', *Sunday Mercury* [online] Available at: <<https://www.thefreelibrary.com/INSIDE+GANGLAND+BRUM+%3A+THE+EVIL+EXECUTIONERS%3B+%60THE+GUNMAN+FIRED+TWO...-a0130628154> [Last accessed: 1 December 2016].
- Pink, S. (2014) *Doing Visual Ethnography* (London: Sage).
- Pitts, J. (2008) *Reluctant Gangsters: The Changing Face of Youth Crime* (Devon: Willan).
- Presdee, M. (2000) *Cultural Criminology and the Carnival of Crime* (London: Routledge).
- Ray, L. (2011) *Violence and Society* (London: Sage).
- Regan, P. (2010) *Fighting Chance: Tackling Britain's Gang Culture* (London: Hodder and Stoughton).
- Reiner, R. (2012) 'Political Economy and Criminology: The Return of the Repressed', in S. Hall and S. Winlow (eds.) *New Directions in Criminological Theory* (London: Routledge), 30-51.
- Revill, J. (2003) 'Gangster 'executed by rivals'', *Birmingham Post* [online] Available at: <<https://www.thefreelibrary.com/Gangster+'executed+by+rivals'-.a0110839981> [Accessed: 1 December 2016].
- Spergel, I.A. (1995) *The Youth Gang Problem: A community Approach* (Oxford: Oxford University Press).
- Sudman, S. and Bradburn, N. (1973) 'Effects of Time and Memory Factors on Response in Surveys', *Journal of the American Statistical Association*, 68, 805-815.

Summers, C. (2005) 'Victims of transferred malice', *BBC News* [online] Available at: <http://news.bbc.co.uk/1/hi/england/west_midlands/4010485.stm [Accessed: 1 December 2016].

Thompson, T. (2005) 'Bloodlines', *The Guardian* [online] Available at: <<https://www.theguardian.com/theobserver/2005/apr/17/features.magazine2>>. [Accessed: 16 August 2016].

Thrasher, F. (1927) *The gang: a study of 1313 in Chicago* (Chicago: University of Chicago Press).

Varese, F. (2010) 'What is organized crime?' in Varese, F. (ed.) *Organized Crime* (Abingdon: Routledge).

von Lampe, K. (2016) *Organized Crime: Analyzing Illegal Activities, Criminal Structures, and Extra-legal Governance* (Thousand Oaks: Sage).

Weitzer, R. and Kubrin, C. (2009) 'Misogyny in Rap Music: A Content Analysis of Prevalence and Meanings', *Men and Masculinities*, 12 (3), 3-29.

Wilson, D. and Rahman, M. (2015) 'Becoming a Hitman', *The Howard Journal of Criminal Justice*, DOI:10.1111/hojo.12126.

Wilson, D., Yardley, E., and Pemberton, S. (2016) 'The Dunblane massacre' as a 'photosensitive plate', *Crime Media Culture*, (online first 22 June 2016).

Wilson, P. (2013) "'Urban terrorism" of gangs', *BBC News* [online] Available at: <http://news.bbc.co.uk/1/hi/england/west_midlands/4293995.stm [Accessed 19 August 2016].

Winlow, S. (2001) *Badfellas: Crime, Tradition and New Masculinities* (Oxford: Berg).

Winlow, S. and Hall, S. (2006) *Violent Night: Urban Leisure and Contemporary Culture* (Oxford: Berg).

Winlow, S., Hall, S., Treadwell, J., and Briggs, D. (2015) *Riots and Political Protest: Notes from the Post-Political Present* (Abingdon: Routledge).

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“Punishment, in fact, did not resolve the problem”: Judicial perspectives on the sentencing of minor drug offenders in Indonesia

Cecep Mustafa

Abstract:

The purpose of this study is to explore judicial perspectives on the sentencing of minor drug offenders. In order to understand the perspectives of the judiciary, it is important, as the focus of this study is Indonesia, to explore these perspectives against the social conditions in which they are located (Hutton, 2006). The methodological design draws upon qualitative methods in order to undertake micro and meso levels of analysis. Judges perceive drug offences as a global concern and as serious. Judges feel constrained in their sentencing by prosecutors' indictments, appellate procedure, medical assessments, and the availability of treatment facilities. Rehabilitation for minor drug offenders was seen as being in the interest of judges and of society.

Keywords:

Inequality; sentencing; judges; perspectives; minor drug offenders

Introduction

There is growing evidence concerning judicial perspectives in relation to sentencing. Understanding the perspectives of the judiciary is important for theoretical reasons. Central theoretical questions are whether or not sentencing is a social practice that is rooted in the context of punishment and society and whether or not judicial perspectives interact with sentencing (Gibson, 1983; Holmes, 2009; Hutton, 2006; Myers and Talarico,

1987). Understanding these social practices of sentencing is crucial, also, in filling the gap in the literature on sentencing minor drug offenders (Ward, 2013).

The research which forms the basis for this paper offers an insight into contemporary courts and sentencing practices in Indonesia (Vanhamme and Beyens, 2007), which can shed light on both the challenges and opportunities to reform these practices (Ashworth, 2010). In order to understand sentencing practices, it is important, as the focus of this study is on the case of Indonesia, to explore judicial perspectives under the social conditions where they operate (Hutton, 2006). Research into judicial attitudes and perceptions of sentencing is rare, and there are difficulties with permission and access which discourage potential investigators. Because of this, there are virtually no precedents for this type of research. A similar study of sentencing in the Crown Court in the UK was attempted in the early 1980s, but permission was refused to continue beyond the pilot study (Ashworth et al., 1984).

What judges think about sentencing, and how they approach the task, can be described as a gap in sentencing research. The judge holds a central role in the sentencing process because of the international system of judicial discretion, and it is because of this limited discretion that it is important to know how judges come to their decisions. This paper focuses on Indonesian judges' perceptions on sentencing minor drug offenders. In order to understand the issues surrounding this process, it is necessary to review the context which has led to the provision of drug sentencing in the first place.

Indonesian prisons have long struggled with problems associated with drug use. The prison population grew 85% between 2011 and 2013 (The Indonesian Prison Service (IPS), 2013). The growth of the prison population was largely related to the prosecution of drug offenders. According to the 2013 IPS report, approximately 93% of prisoners across the country have a history of drug involvement, including 45% for drug use, and 48% for selling drugs (IPS, 2013). The large proportion of drug users in prison reflects the practices of targeting and lengthy imprisoning of drug users which has had an impact on the increasingly crowded prison occupancy rate (Mulyadi, 2012: 216; Anang, 2014).

Recent changes in legislation have meant that the legal sanction, imposed for serious drug offences including drug trafficking, will be longer terms (the period of imprisonment under Narcotic Law 35/2009 is one third longer than under Narcotic Law 22/1997) of imprisonment up to the death penalty. With regard to minor drug offences including drug

possession and drug use, the Narcotics Law (Law 35/2009, Rule 127) enables a choice to be made between less serious drug offenders being either punished by imprisonment or sent for treatment.

In 2014, there was an increased recognition of how the drug war had led to the imprisonment of too many convicted drug offenders. It was in this particular context that Regulation number 01/2014 was made to allow more judicial discretion. At the same time, the regulation offers more discretion for Indonesian judges to develop alternative sanctions through which offenders, who are found guilty and convicted of drug possession, control, and use of drugs for personal supply, are not given custodial sentences, but are instead sentenced to treatment (Anang, 2014). In short, changes in the penal field and particularly the increasing number of drug users in the penal system shaped suitable conditions for the use of sentencing for rehabilitation.

This study presents findings based on primary research on the perceptions of Indonesian judges in relation to sentencing minor drug offenders, and investigated the following research questions:

- a. What are the judicial perspectives on sentencing of minor drug offenders in Indonesia?
- b. What factors, according to judges, influence them when sentencing minor drug offenders in Indonesian courts?
- c. What are the Indonesian court judges' stated aims when sentencing minor drug offenders?

My interview-based research involved Indonesian judges as participants. This was because I had practiced and worked not only in that jurisdiction since early 2004 but also because Indonesia's adopted model of bifurcated approaches to drug offences had not been studied previously. I was fortunate in having personal contact with some of the judges and this facilitated access to them. This paper provides some thoughts, largely in their own words, on the issues judges face in their interaction with the sentencing process. In this paper, I discuss the rehabilitation of drug users since this is the matter on which the judges had the strongest views. I will argue that Indonesian sentencing of minor drug offenders reflects structural inequality. Therefore, addressing structural

inequalities could be a fairer response and, ultimately, would contribute to the very meaning of justice.

Inequality and sentencing for drug offences

History repeats itself as those from lower classes were sentenced severely, while those from higher/ruling classes often went unsanctioned in relation to minor drug offences (Chambliss, 1975; Melossi, 2008; Quinney, 1974; Rusche and Kirchheimer, 2003). Critical research has examined class and racial prejudices in the criminalisation of black and lower class drug offenders (Buchanan, 2015; Lassiter, 2015; Nadelmann, 2004; Provine, 2011), mass imprisonment of minor drug offences (Pettit and Western, 2004; Shiner, 2015) and disparities in drug sentencing (Chen and Nomura, 2015; Nunn, 2002; Spohn, 2015). Offenders who could not afford to pay for voluntary drug treatment programmes were more likely to be perceived by judges as being less suitable for rehabilitation (Ulmer, 1997). A recent study of the judiciary in Slovenia indicated the sentencing law is set up to disproportionately punish drug consumers (Kopenic, 2015).

Moral panic about drug use and the demonisation of drug use among minorities in English-speaking countries is associated often with poorer classes and racial minorities. Garland (2001) notes that in the United States (US), the mass imprisonment of people of colour and immigrants for drug offences can be interpreted as an attempt to segregate members of the lower class population from members of the middle class population. Lower class citizens were imprisoned punitively for longer periods while middle class citizens remained hidden from the criminal justice system. In the US, sentencing guidelines about drug offences appear to be attributable to class discrimination and the punishment tends to be disproportional in the case of lower class citizens.

The challenges to providing drug treatment

Buchanan (2006) discusses the challenges facing the provision of drug treatment. One major challenge is the difficulty in addressing social inequalities, such as discrimination, inequality and childhood trauma, which often became risk factors for drug dependency. He argues that a combination of drug treatment programmes and sanctions might affect drug-dependent behaviour. According to Stevens (2008), drug treatment services should

include a range of people, such as young people, parents of users, and sex workers who use drugs and suffer serious consequences for themselves, their children and their families. There are some challenges in providing drug treatment implementation: the difficulties for women seeking locally-based community treatment; the gaps in service delivery capability; lack of communication between providers; lack of providers' philosophy causing community confusion; and lack of coordination between providers would appear to be obstacles (Sacks et al., 1999)

Stevens (2008) defines successful treatment as being where participants report a positive experience of treatment, where staff are available when needed and motivate clients/service users to change, and where service providers understand the various obstacles that hinder the daily participation in treatment, including: malnourishment due to lack of income, illness due to being medically untreated, and homelessness. Thus, problematic drug users need someone who really helps them through their difficulties and removes obstacles to participation.

Methodology

A total of 31 participants were interviewed. Out of these 31, 27 participants came from the district court in Urban and Rural jurisdiction (17 in Urban Court and 11 in Rural Court) and three were Supreme Court Judges (I am using these names to protect the identity of the actual courts in my study). This includes judges relocated to another jurisdiction but still willing to participate. Of the 31 participants, 9 were female and 22 were male. I interviewed each participant individually. The interviews were arranged in advance and each lasted between 27 and 97 minutes. In exploring Indonesian judicial perceptions about influences on their sentencing practice, this study provides original data about the ways in which issues such as societal pressure, time constraints, lack of resources for treatment, and persistent offending enter the judges' deliberations. In order to minimise bias, I inserted a statement at the beginning of the interview schedules asking judges who had had contact with me previously to avoid assuming that I knew certain things about issues or aspects. They were asked to approach my questions as though I knew nothing at all. I piloted the interview topic guide with one judge to ensure clarity and understanding of the language and concepts. Then, I used the feedback from the pilot study to make some adjustments.

For this study, court hearings were observed every two weeks per court (n=8), including observation of sentencing for drug offences. A basic observation checklist was used to note judges' interactions with offenders during the sentencing hearing. This included observable interactions such as:

- Direct dialogue between judges and offenders being sentenced
- Judges' attention to speeches in mitigation and how judges appeared to respond to the offender

The study was approved by the University of Stirling Ethics Committee and was funded by the Indonesian Endowment Fund for Education (LPDP).

Each of the interviews was recorded and subsequently carefully transcribed in full. The transcripts were then thematically coded and translated into English. Efforts to protect confidentiality of the information included the secure storage of original audio file and paperwork, and the protection of electronically stored transcripts with passwords. An anonymous version of each transcript was prepared, with all identifying information removed. Careful data management procedures are central to ensuring reliability in qualitative studies. I linked the results of the field observations to the results of the interviews and gathered them together. My notes from the initial observations were written in a notebook and the notes of my observations included in-depth description of the judges' approach to sentencing (Ashworth et al., 1984; Tait, 2002).

Recent perspectives on sentencing for drug offences in Indonesia

Inequality

Inequality in sentencing is part of a wider historical discussion about law as a means of controlling the lower classes. Interviews with judges in this study found that the post-2009 Indonesian drugs law can be interpreted as targeting people who are of lower social class. Most of the people charged with breaking this drugs law are from underprivileged/poorer backgrounds and it seems that the criminal justice system targets people who are more likely to experience poverty. During the pre-reformation era, drug use was considered to be a 'trend'. By contrast, during the reformation era, drug consumption was seen as a crime. (The term 'reformation' refers to the end of New Order Era during Suharto's regime. Drug Law 39/1997 was born after the reformation era. After

the reformation era, the provisions of drug sentencing were set under minimum sentencing.)

In 2008 when the former drug law was in use, [there were larger numbers of drug use however there was a lower number of people sentenced] [...]. At that time narcotics was considered a 'trend'. For example, the elite classes who hang out through the street at the uphill would often take ecstasy on a Sunday evening. The people who resided downside deemed this the lifestyle and drug consumption of choice of the elite classes. Nowadays, drug consumption is seen as a crime, and the average person accused/charged with drug consumption is from an underprivileged/poorer background. (Judge 5)

Judges 5's concerns related to the discriminatory effects that the war on drugs had on lower class citizens. The participating judges frequently explained that the majority of the people being charged with breaking new drugs law were from lower social backgrounds. It seems that the current criminal justice system is targeting lower class people. The following extract indicates this point: 'So far, as I observed during the court, the offender I sentenced is not a middle-class person, therefore, actually, are rarely from the middle class' (Judge 8). The interviews with the participating judges indicated that drug taking was connected with the impact of poverty. Judge 8's assertion drew attention to the fact that poverty influenced a person's choice to sell drugs and gave him/her free drugs to use. In understanding the causal relationship between poverty and drug taking, Judge 14 suggested the following connections:

In Urban, unemployment becomes an issue; this is the reason why people want to sell drugs because they receive commission not only for selling drugs but, also, receive free drugs to use.

The context of the urban jurisdiction as a place of tourism was considered by the participating Urban Judges to contribute to drug related offences.

Concerning the connection between drug taking and the lower class, the participants noted three different explanations for why lower class citizens had the potential to engage in minor drug offences. Firstly, lower class citizens were inclined to be involved in the drug culture. This is reflected in the following statement from a participating Rural Judge.

There is person B who was persuaded initially to use drugs and, then, was forced to distribute them. When he had no capital to buy drugs, and was living in a drugs culture and needing money for survival, then, he might do dual activities of both selling as well as using drugs for commission. (Judge 19)

The participating Rural Judges considered the offender's social circumstances to be a factor influencing minor drug offences. In a similar vein, the participating Urban Judges considered that unemployment influenced minor drug offences. Both sets of judges described how unemployment led to minor drug offences. For Urban Court Judges, unemployment in the Rural jurisdiction led to minor drug offences. For Rural Court Judges, lower class workers had the dual activities of both selling as well as using drugs for survival. Other participants claimed that the link between lower class citizens and minor drug offences was because lower class citizens used drugs to enable them to keep working hard.

I ask the offenders: 'why do you use *Shabu* [methamphetamine]?' 90% of them, who come from the lower class replied: "the first is to make body stronger", this is the dominant perception among drug offenders. 10% of them, who come from the middle class, replied that 'drugs are perceived as a way of life'. (Judge 28)

This significant proportion of lower class citizens indicated discrimination. Moreover, the interviews with the participating judges across the two jurisdictions showed that the class structure contributed to drug related offences:

... drugs seem to have become the disease, sometimes, they were not aware of the effects and they continue to use them. These circumstances make me sympathetic, due to their doing everything to get drugs. They will sell everything available including stealing. (Judge 27)

... once the person is addicted to drugs, he/she could do collective purchasing or other ways such as stealing. This is the reason why, despite his job being only a driver, he/she can do *Shabu*. (Judge 8)

The causal relationship between being poor and drug offences echoed other recent studies. These studies suggested that lower class citizens were at risk of being arrested

because they tended to be involved in other offences in order to feed their need for drugs; this led them to become a target of criminal justice. During the researcher's observations, the participating Urban Judges showed that they challenged the offender's choice of spending money.

Judge panel: ...It would have been the same value of money to buy fish but too much fish makes you sleepy, and I heard that using Shabu makes you awake all day, right?

Offender: Right;

Judge panel: What is your job?

Offender: I sell groceries;

Judge panel: So Shabu makes you stronger for lifting groceries?

Offender: Yes.

The majority of the people being charged with breaking this new drugs law are from lower social backgrounds and it seems that the current Indonesian criminal justice system is targeting lower class citizens. The following extract indicates this point:

... at the moment, those who are being arrested are mostly '*tanggung*' (low level offence), while the drug dealers remain hidden, and their cases will finish with the police. By contrast, those, who use '*selinting*' one smoke, or those who are found using drugs, although the quantity of drugs is only zero point zero, their cases will be brought to the court. (Judge 12)

While the participating district judges mentioned how 'class' often decided whether minor drug offenders ought to be punished or treated, the participating lower court judges noted that the class structure directly influenced judges' sentencing experiences in two different ways. Firstly, the majority of participants suggested that most lower-class citizens failed to receive treatment. The following statement from an Urban Court Judge indicates this point:

They [drugs] have a dual role, for example, the price of drugs is *Rp50,000.00* (around £2.00), the person will receive commission both from the seller and from the buyer and will be allowed to have the sample of drugs for his own use. (Judge 14)

Here, the Urban Court Judge asserted that drug users were characterised as lacking stable employment, leading them to use drugs. It seemed, also, that the judge recognised clearly that these drug users were lower class citizens. This suggested that being poor was behind the failure to escape from the drug culture.

The second impact of class structure on sentencing was seen by three participants as a relational process which affected sentencing. More specifically, it was apparent that the Supreme Court's response to this topic echoed the judicial concern about lower class citizens experiencing suffering from imprisonment.

It was agreed that the assessment is required for rehabilitation. So we rely on the medical assessment about the level of addiction to drugs. If the requirement of assessment is not met, even though the offender is a drug user, they will not receive rehabilitation. This raises concerns about those offenders who are unable to receive rehabilitation and will end up in prison. (Judge 30)

These comments indicate explicitly that offenders who are unable to meet the requirements of rehabilitation end up in prison. In contrast, middle class drug users were hidden from the criminal justice system.

The challenges to providing drug treatment

The issue of resources

Part of the difficulty of sentencing seemed to stem from the fact that the court had not met the majority of drug users' need for support. In explaining why this was the case, all of the participating judges referred to the lack of funding to pay for transport and treatment; this made it difficult for drug users to receive treatment.

Part of the constraints on sentencing minor drug offenders seemed to be attributable to the lack of treatment facilities. The interviews with the participating Rural Court Judges indicated their concerns that treatment facilities were available only in the capital city and not in all districts. The following extract illustrates this point: 'due to treatment facilities being available only in the capital city and not in all districts, this has caused the prisons to be overcrowded' (Judge 25). The participating Rural Court Judges frequently stated their concerns about the lack of support available for drug users. The following

extract illustrates this point:

Sometimes we face a dilemma in sentencing those drug users.... Each time we ordered the prosecutor to help to facilitate a medical assessment. Due to having no funds, the prosecutor found it difficult to do an assessment and, then, it becomes a barrier. This has resulted in the offenders being charged differently than they should be. This has put the offender in a disadvantageous situation. (Judge 27)

The prosecutor not doing an assessment of the offender often resulted in offenders being charged differently than ought to have been the case and led the judges not to sentence offenders into rehabilitation. Consequently, the Rural Court Judges considered that the lack of assessment of the offenders led to a negative effect on sentencing.

This understanding was reflected, also, in the participating Urban Court Judges' response to this topic. The participating Urban Court Judges were aware that such lower courts had no facilities for rehabilitation and that this hindered the judges in sentencing offenders to rehabilitation. The following extract illustrates this point:

We remind the Supreme Court judges that 'at such lower court, there are no facilities for rehabilitation', the Supreme Court judges then did not sentence offenders into rehabilitation. (Judge 2)

Judge 2 was aware that the lack of treatment facilities was part of the difficulty in sentencing offenders to rehabilitation.

The impact of law enforcement

Another part of the difficulty in sentencing seemed to stem from the extent of the prosecutor's influence on the case. Judges felt constrained by prosecutors' indictments: 'Our sentences depend greatly on the initial indictment' (Judge 7). Others were concerned that sentencing below the minimum often resulted in an appeal by the prosecutor.

I am so upset when there is such a case where the offender could be charged under rule 127 due to the smaller quantity of drugs but the offender is not charged under rule 127. By contrast, when the quantity of evidence is larger, the offender is charged under rule 127... (Judge 23)

The researcher's Rural Court observations revealed that the prosecutor consulted with the panel of judges. This indicated the prosecutor's influence on the final decisions in such matter.

Judge Panel: ...We take a break now! ...

Judge Panel: Okay, the session continues [front stage sentencing], we decide to discount the sentencing from 5 to 4 years that is the minimum.

How do you feel?

Offender: [Cried].

The above quote highlights Judge 23's concern that, for smaller quantities of drugs, the prosecutor often prosecuted severely while, for larger quantities of drugs, the prosecutor often prosecuted leniently. It is apparent that the Supreme Court's response to this topic echoed the given explanation about the initial indictment being a constraint to sentencing.

We hardly understand what has happened behind the prosecutorial indictment... it was found after the court hearing that the offender was convicted as a drug user; however, rule 127 on drug users was not part of the indictment. Therefore, this was a problem if we applied the law strictly and the evidence showed that the offender was a drug user, while the rule on using drugs was not indicted. (Judge 30)

This finding suggests that the contradictions between the filed indictments and the factual evidence revealed in court had a negative impact on sentencing. The following extract shows that judges often felt constrained by appellate procedure when they sentenced below the minimum term:

I am aware that, if the offender is sentenced below minimum, it will certainly be appealed. Also, it will cause unexpected consequences which would make matters more difficult for the offender. These practices have become a habit, it happened often. (Judge 5)

Judge 5 explained that the prosecutorial appeal often caused unintended consequences which would make matters more difficult for the offender. In doing so, the appellate procedure was seen as having a negative impact on the offender.

Rehabilitation

There was wide acceptance of rehabilitation as a sentencing purpose amongst the judges, particularly for young drug users and first offenders. See for example these two comments:

This [rehabilitation] aim would be better than imprisoning them because, once they are involved with other drug dealers and drug users inside the prison, this will have a negative impact on their mental health. (Judge 17)

The fact is that we must be honest, in Rural, also generally in other places. Punishment, in fact, did not resolve the problem. We see, after the drug user enters prison, they will then be more acute. (Judge 26)

Not unreasonably, rehabilitation was seen as suitable rather than imprisonment. But rehabilitation was also seen as being in the interest of society as a whole:

Those offenders, whose families become victims of drug taking, expect rehab.... This is perhaps in line with the society's expectation that the treatment facilities need to be adequate. (Judge 27)

Several other judges (including one who said that prison doesn't rehabilitate) also said that it could, in certain circumstances, have a rehabilitative effect. What they are probably referring to here however is individual deterrence.

I think the function of prison is basically as a correction institution, this applies to all cases. So actually, so long as the offender in the detention centre can be healed, then no need to put them into prison. (Judge 19)

I heard from the offender's sister-in-law, who worked in my house and I saw myself that the offender had changed after his sentence. Previously, the offender sold and used drugs; now, after release from prison, he no longer does drugs. (Judge 22)

The participating Supreme Court Judges emphasised that the policy to stop punishment would require police and the National Narcotics Agency (BNN) practices on the ground to change. This is because, at the investigation phase, the decision to divert drug users is in the hands of the police and the BNN.

It seems possible, if the drug user is diverted at the beginning... the drug user then will no longer enter the court if already diverted at the beginning.... From our point of view, it would be good if the drug user could be rehabilitated and not punished... because inevitably, it helps us as well.

(Judge 30)

The above excerpt highlights the Supreme Court Judge's expectation that the initiative for diversion would start from the bottom at the investigation phase. In doing so, the police's willingness to change their practice at the beginning would have an impact on the rehabilitation of minor drug offenders.

Discussion

The findings resonate with the notion that the impact of class poverty on drug taking can be measured and understood as a relational process that determines minor drug offences. Therefore, it can be argued that drug taking in Indonesia reflects the economic inequality in wider social structures, as suggested by Carlen (1994) in relation to the reality of the society which itself is unjust. Overall, the structural issues attached to drug use would appear to represent a departure from contemporary drug treatment research, which has advocated the need for drug users' access to stable employment (Buchanan, 2006).

Moreover, bearing in mind that most people brought into the court were low class citizens, the participants asserted that the link between lower class citizens and targeting drugs concurred with the notion of the war on drugs and that the criminal justice system tended to target drug users who were lower class citizens (Nadelman, 2004).

This suggests that 'class' often decided whether minor drug offenders ought to be punished or treated. The participating lower court judges noted that the class structure had a direct influence on the sentencing in two different ways. Firstly, most lower-class drug users failed to receive treatment. Secondly, the war on drugs had been targeting lower class citizens and was discriminatory. This is due to the fact that the majority of the people being charged with the breaking of the post-2009 drugs law were from lower social backgrounds. In contrast, middle class drug users escaped the criminal justice system and were not the target of its sanctions.

This qualitative study suggests, also, that part of the difficulty in making use of treatment

provisions stems from the fact that judges feel constrained by prosecutors' indictments, appellate procedure, medical assessments, and the availability of treatment facilities. Nevertheless, rehabilitation for minor drug offenders was seen by judges as having both the potential to facilitate offender recovery and to reduce the courts' caseload.

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Iskander, I. (2014) 'Decriminalisation to Drug User are not similar with Legalisation' [online] Available at: <http://anangiskandar.wordpress.com/> [Accessed: 6 October 2014].

Ashworth, A., Genders, E., Mansfield, G., Peay, J., and Player, E. (1984) *Sentencing in the Crown Court* (Centre for Criminological Research University of Oxford).

Ashworth, A. (2010) *Sentencing and Criminal Justice* (Cambridge: Cambridge University Press).

BNN (2013) *Data Analysis of Drug Prevention and Enforcement 2013* (Indonesian Narcotics Board) [online] Available at: http://103.3.70.3/portal/_uploads/post/2014/09/02/Analisa_Data_P4GN_Tahun_2013.pdf [Accessed: 23 November 2014].

Buchanan, J. (2015) 'Ending Drug Prohibition with a Hangover?' *British Journal of Community Justice*, 13 (1), 55-74.

Buchanan, J. (2006) 'Understanding Problematic Drug Use: A Medical Matter or a Social Issue', *British Journal of Community Justice*, 4 (2), 387-397.

Buchanan, J. (2004) 'Tackling Problem Drug Use: A New Conceptual Framework', *Social Work in Mental Health*, 2 (2-3), 117-138.

Carlen, P. (1994) 'Crime, Inequality, and Sentencing', in D. Garland and R. Duff (eds.) *A Reader on Punishment* (Oxford: Oxford University Press), 306-332.

Chambliss, W.J. (1975) 'Toward a Political Economy of Crime', *Theory and Society*, 2 (1), 149-170.

Chen, E. and Nomura, K. (2015) 'And Justice for All? Racial and Ethnic Disparities in Federal Drug Courts in California and the US', *California Journal of Politics and Policy*, 7 (2).

Duff, R.A. and Garland, D. (1994) *A Reader on Punishment* (Oxford: Oxford University Press).

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society* (University of Chicago Press).

Gibson, J.L. (1983) 'From simplicity to complexity: The development of theory in the study of judicial behaviour', *Political Behaviour*, 5 (1), 7-49.

Holmes, O.W. (2009) *The Common Law* (Harvard University Press).

Hutton, N. (2006) 'Sentencing as a Social Practice', in S. Armstrong and L. McAra (eds.) *Perspectives on Punishment: the Contours of Control* (Oxford: Oxford University Press), 155-174.

Kopenic, P. (2015) 'Interview of Kamil Ivanek, Slovakia, Regional Court of Bratislava', in D. Das and R. Lowe (eds.) *Trends in the Judiciary: Interviews with Judges Across the Globe*, Volume Two (CRC Press), 129-150.

Lassiter, M.D. (2015) 'Impossible Criminals: The Suburban Imperatives of America's War on Drugs', *Journal of American History*, 102 (1), 126-140.

Law 35/(2009) (Narcotics Law of Indonesia)

McSweeney, T., Turnbull, P.J., and Hough, M. (2008) *The Treatment and Supervision of Drug-Dependent Offenders: A Review of the Literature Prepared for the UK Drug Policy Commission* (London: Institute for Criminal Policy Research, King's College London).

Melossi, D. (2008) *Controlling Crime, Controlling Society: Thinking about Crime in Europe and America* (Polity).

Mulyadi (2012) *Punishment against Traffickers and Drug Users: Research on Principles, Theory, and Practice Norms Application in Court* (Research Centre for the Indonesian Supreme Court), 147.

Myers, M.A. and Talarico, S.M. (1987) *The Social Contexts of Criminal Sentencing* (Springer Science and Business Media).

Nadelmann, E.A. (2004) 'Criminologist and Punitive Drug Prohibition: to serve or to challenge?' *Criminology and Public Policy*, 3 (3), 441-450.

Nunn, K.B. (2002) 'Race, crime and the pool of surplus criminality: or why the war on drugs was a war on blacks', *Gender Race and Justice*, 6, 381.

Pettit, B. and Western, B. (2004) 'Mass imprisonment and the life course: Race and class inequality in US incarceration', *American Sociological Review*, 69 (2), 151-169.

Provine, D.M. (2011) 'Race and inequality in the war on drugs', *Annual Review of Law and Social Science*, 7, 41-60.

Quinney, R. (1974) *Critique of the Legal Order: Crime Control in Capitalist Society* (Transaction Publishers).

Rusche, G. and Kirchheimer, O. (2003) *Punishment and Social Structure* (Transaction Publishers).

Sacks, J.Y., Sacks, S., Harle, M. and Leon, G.D. (1999) 'Homelessness prevention therapeutic community (TC) for addicted mothers', *Alcoholism Treatment Quarterly*, 17(1-2), 33-51.

Shiner, M. (2015) 'Drug policy reform and the reclassification of cannabis in England and Wales: A cautionary tale', *International Journal of Drug Policy*, 26 (7), 696-704.

Spohn, C. (2015) 'Evolution of Sentencing Research'. *Criminology and Public Policy*, 14 (2), 225-232.

Stevens, A. (2008) 'Quasi-compulsory treatment in Europe: an evidence-based response to drug related crime?' in A. Stevens (ed.) *Crossing Frontiers: International Developments in the Treatment of Drug Dependence* (Pavilion).

Stevens, A., Berto, D., Frick, U., Hunt, N., Kersch, V., McSweeney, T., Oeuvray, K., Puppo, I., Santa Maria, A., Schaaf, S., Trinkl, B., Uchtenhagen, A., and Werdenich, W. (2006) 'The relationship between legal status, perceived pressure and motivation in treatment for drug dependence: results from a European study of Quasi-Compulsory Treatment', *European Addiction Research*, 12 (4), 197-209.

Indonesian Prison Service (2013) *Annual Report* (Jakarta: Ministry of Justice and Human

Rights) [online] Available at:

<http://www.ditjenpas.go.id/sites/default/files/ANUAL%20REPORT%20REVISI%20TERAKHIR%20hq%20print.pdf> [Accessed: 8 February 2015].

Ulmer, J.T. (1997) *Social Worlds of Sentencing: Court Communities under Sentencing Guidelines* (SUNY Press).

Vanhamme, F. and Beyens, K. (2007) 'La recherche en sentencing: un survol contextualisé', *Déviance et Société*, 31 (2), DOI: 10.3917/ds.312.0199.

Ward, J. (2013) 'Punishing Drug Possession in the Magistrates' Courts: Time for a Rethink', *European Journal on Criminal Policy and Research*, 19 (4), 289-307.

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Sharing and Collaborating – Improving outcomes for victims of crime

Dr Jacki Tapley

Abstract:

Significant progress has been made to improve victims' experiences of the criminal justice system and more recent attempts have been made to improve victim access to appropriate support services. Collaborative partnerships between statutory and non-statutory agencies are essential in order to ensure that victims of crime can access their entitlements to information and support. However, a consequence of the increasing competitiveness for limited funding has resulted in support services having to adopt protectionist strategies in order to survive, resulting in a reluctance to share good practices and develop collaborative partnerships. This paper draws together the findings of a rapid evidence assessment on what works in supporting victims of crime and the preliminary findings of an evaluation study of a model of victim care which promotes the sharing of best practice, and further explores the benefits of developing communities of practice.

Keywords:

Best practice; community of practice; funding; multi-agency working; Victims' Commissioner; victims of crime; victim support services

Background Context

In 2012, the Ministry of Justice (2012) published a consultation document '*Getting it Right for Victims and Witnesses*' as part of its wider plan to improve the delivery of services to victims of crime and to comply with the European Union Directive (2012/29/EU). The

Directive established minimum standards on the rights, support and protection of crime victims in all Member States (however it is not yet clear what the impact of Brexit in 2016 will be). Following the consultation in 2012, the Ministry of Justice announced that from 2013 the majority of support services for victims of crime would be commissioned at a local level by Police and Crime Commissioners (PCCs). This signalled a significant departure from the previous centralised model of funding and has introduced a new mixed-model of commissioning, with PCCs taking responsibility for the commissioning of local support services.

Whilst 20% of national services remain funded by central government, the shift towards a mixed-model has challenged the dominance of Victim Support as the main provider of support services for crime victims in the UK. For the year ending March 2013, Victim Support had an income of £48m and £39m of that had come from the Ministry of Justice (Civil Society, 2014). The decline in dominance was evidenced by the Ministry of Justice's decision in April 2015 to competitively commission the national Witness Service and to award it to Citizen's Advice, thereby replacing Victim Support, who had originally established the first Crown Court Witness Service in 1990. In 1991, Victim Support had been awarded Home Office funding and subsequently expanded the Witness Service to all Crown Courts by 1996, and with additional Home Office funding extended the service to all Magistrates Courts, by 1999. Given the significance of this decision, it was surprising that it received so little media attention and the response of Victim Support was quite stoic.

The Politicisation of Crime Victims from 1990

Victim Support was founded in 1974 and since 1979 has benefited from Home Office funding, initially from the Voluntary Services Unit and then as core funding from 1987. The increase in funding for victims of crime reflected the wider political context and shift in the criminal justice agenda introduced by a Conservative government in 1979. The demise of the rehabilitative ideal towards a more neo-classical, punitive response created an environment more sympathetic towards victims (Rock, 1990). This assisted in the gradual politicisation of crime victims, starting with the publication of the first Victim's Charter (Home Office, 1990). Williams (1999) argued that the politically neutral position adopted by Victim Support in its early years played a key contributory factor to its success

in attracting government funding, but its expansion was at the expense of other support services. Williams (1999) described these other services as the 'hidden wing' of the victim's movement, namely the more political activist groups led by the campaigns of second wave feminist organisations from the 1970s, such as Rape Crisis, Refuge and Women's Aid.

In 2009, the government launched a consultation aimed at tackling violence against women and girls. In the Foreword to *Together We Can End Violence Against Women and Girls: A Strategy*,⁹ (Home Office, 2009: 3), the 'invaluable and pioneering role played in developing support services by specialists in the voluntary sector' was recognized, acknowledging how the dedication of the women's voluntary sector had helped to place the issue of violence against women firmly on the public policy agenda. However, this failed to explain why it had taken successive governments over fifty years to tackle a culture that condoned and tolerated violence against women. It was Jack Straw, as Home Secretary, who provided the catalyst by pledging to put 'Victims at the heart of the criminal justice system' (Straw, 2001). Essentially, the shift towards a victim-centred criminal justice system had made it increasingly untenable for governments to continue to ignore the extent of violence against women, resulting in domestic abuse and sexual violence achieving unprecedented prominence on the political agenda (Tapley, 2010: 141).

From National to Local Funding – a Shift in Power and Influence

This new approach to commissioning from 2012 has marked a significant change in the commissioning of support services for victims and, to assist with this transition, a number of PCCs commissioned research to map existing services, in order to identify what support services already existed and to highlight any gaps in provision (Avon and Somerset PCC, 2014; Sarkis, 2013; Tapley et al., 2014). These audits of support services revealed a landscape consisting of a complex network of statutory and non-statutory agencies, all competing for funding with other providers in order to sustain and develop the services they provide. This reflects the essentially organic way in which support services have evolved in England and Wales since the late 1960s, historically consisting of a range of voluntary and third sector agencies, responding to specific needs and providing services where none previously existed. As detailed above, whilst some

voluntary services have benefited from government funding, the more politically driven agencies, campaigning for changes to legislation and often critical of the poor treatment of victims by criminal justice professionals, have had to operate in an environment of short-term funding from a range of disparate sources, thereby creating an environment of victim services that 'lack clarity and coherence, often with conflicting aims and overlapping priorities' (Crawford and Enterkin, 1999, cited by Tapley et al., 2014: 23). This illustrates how the distribution of funding has been utilized by the government to exert political power and influence; effectively marginalising the politically critical groups by denying them funding, whilst supporting agencies adopting a non-political stance and whose underpinning philosophy was in tandem with the ideologies of successive governments during the 1980s and 1990s. The focus was on individualisation and responsibilisation (Rose, 2000), and Victim Support represented active citizenship through its reliance upon volunteers, self-help and a focus on helping innocent and blameless victims.

Following the financial crisis of 2008, austerity measures have placed even greater pressures on limited funding. It could be argued that the devolvement of funding from the national to the local removes governments from the complexities of funding decisions, allowing them to aspire to pursue policies that put 'victims at the heart of the system', whilst remaining unaware of the complex realities for those agencies commissioned to deliver victims' services at the local level.

In the real world of the third sector, the unintended consequences of increasing competition for limited funding has created tensions and distrust between agencies, actively discouraging information sharing and building barriers to partnership working. This has resulted in the duplication of services in some areas, whilst services remain patchy and inconsistent in others, leaving victims of crime exposed to a postcode lottery of service provision across England and Wales (Tapley et al., 2014: 88). It is now the responsibility of PCCs to actively promote a mixed model approach where quality services demonstrating successful outcomes can be delivered through partnerships and collaboration, while ensuring value for money.

The New Commissioning Framework

The PCC commissioning framework, guided by the Ministry of Justice (2013), has provided a valuable opportunity for all PCCs to improve the co-ordination of local victims' services and to develop a consistent, coherent and sustainable approach to the provision of high quality support, accessible to all victims of crime who need and require it. This has undoubtedly presented some challenges and a number of different models have subsequently evolved across England and Wales. Some PCCs were early adopters and started in October 2014, whereas the remaining PCCs started in April 2015. Whilst some PCCs have chosen to remain with their existing service providers and referral processes, others have embraced the challenge and sought to adopt more innovative approaches. Some PCCs have adopted a significant focus upon improving communication with victims and keeping them updated (Dorset and Avon and Somerset), as despite being well documented throughout the last 30 years, failures to provide sufficient information about the criminal justice process and keep victims updated about the progress of their case, still remains a major cause of dissatisfaction for victims of crime (Wedlock and Tapley, 2016: 13).

Early adopters and progress to date

Avon and Somerset PCC was an early adopter and set up Lighthouse Victim Care, which is a multi-agency team of police staff and independent support organisations co-located and working together to provide victim care. The officer in charge of the case is initially responsible for updating victims, but if a victim is required to attend court as a witness, they are allocated a Victim and Witness Care Officer to be their main point of contact as the case progresses to court. Dorset PCC set up the Victim's Bureau, which is a team of police staff who contact victims to update them on the progress of their case and inform them of the support services available. It is understood that plans are also in place to relocate the Victim's Bureau with other support services in order to create a multi-agency model. Kent PCC has set up Compass House, which is a co-located multi-agency hub, including Victim Support, the Witness Care Unit, the Witness Service and links to independent support providers. Compass House also has meeting rooms available and a live video link facility so that victims can give their evidence to the court remotely in a safe and secure environment. Cambridge PCC introduced the Victim and Witness Hub,

which involves an initial needs assessment undertaken by the responding police officer and then referral on to a relevant support service if required.

The local strategies introduced to improve the co-ordination and delivery of support services to victims have been in operation for at least 18 months at the time of writing and provide PCCs with an opportunity to evaluate the impact of the model adopted in their local area. The author of this paper was commissioned in April 2016 to evaluate the model of victim care introduced in Devon and Cornwall in April 2015.

An Evaluation of the Devon and Cornwall Victim Care Model

The model chosen consists of two major components: a Victim Care Unit (VCU) and the Victim Care Network (VCN). The VCU is located within Devon and Cornwall Constabulary, thereby alleviating issues regarding the transfer of data between agencies, and is based in Exeter. The VCU is staffed by an FTE Manager, 10 FTE VCU officers, 2.6 FTE Victim Care Advocates who provide outreach for victims with complex needs, and a 0.6 FTE senior mental health practitioner. The VCU process starts with the responding police officer completing a Victim's Needs Assessment (VNA) with the victim, asking how the crime has initially impacted on them and asking what needs they may have. The VNA is returned to the VCU, whereby VCU officers contact all victims who are identified as having a need within two days, and for those victims where no needs have been identified, a letter is sent outlining what support is available and where more information can be found, including the contact number of the VCU and details of the MyVCU website (victimcaredevonandcornwall.org.uk). A number of issues have been identified regarding the accuracy and efficiency of the completion of VNA's and these are explored further in the forthcoming evaluation report.

A fundamental principle of the VCU is the targeting of services to those individuals who require support at a time appropriate for them. Everyone's experience of victimisation is very personal and depending upon their circumstances, people may require support at different times. A pro-active approach initially ensures that people receive information about the support services available and they are then able to make an informed choice as to when and how they access these. This helps to ensure that victims are referred to the relevant support services available to assist them when they choose to. Previous referral processes have adopted a blanket approach whereby all victims are contacted,

often by letter, whether support is required or not, and specific needs have often remained unidentified and consequently unmet (Tapley et al., 2014). VCU officers contact victims by their preferred method of contact where the VNA indicates a need. Many needs are often met at this initial contact stage, with the VCU officer able to provide information, practical support, or provide details of other relevant organisations that are more suited to addressing the needs of the victim.

Victims who would like additional support to help them to cope with the impact of crime give their consent to the VCU to be referred on to an accredited support agency that is a member of the Victim Care Network (VCN). Referrals are made through MyVCU, a secure cloud-based management system that allows secure referral, case and performance management. The VCN consists of a diverse range of agencies that provide support to victims of crime. Some are single-issue services, for example, focusing on victims of specific crimes (domestic abuse, sexual violence, child abuse, fraud), some work with specific groups (children and young people, the LGBTQ community, elderly people, people with disabilities, and people with mental health problems). Other agencies provide more generic support services within the community, working with families and young people, and provide a more holistic service addressing a range of needs, including housing, addictions, debt, education and employment.

Support agencies apply to become an accredited member of the VCN and if successful receive funding in the form of a grant from the PCC. A key purpose of setting up the VCN is to increase the visibility of support services across the county, raise awareness of the types of support available and to encourage the development of partnership working to reduce duplication of services and identify gaps in service delivery. A further aim is to ensure sufficient capacity and choice for victims across the region and the VCN now consists of over 70 agencies.

Evaluation Methodology

The research design adopted a mixed methods approach, including both quantitative and qualitative methods and involved a range of key stakeholders. A total of six days were spent at the VCU, observing management meetings, examining the case management system, shadowing VC officers, and semi-structured interviews with four VC officers and the manager. Semi-structured interviews were also undertaken with two senior police

officers, the commissioning lead for the OPCC and two support services. An online questionnaire was distributed to members of the VCN. To gain a victims' perspective, three focus groups were held across the region, two semi-structured interviews and six telephone interviews. Responses to the PCC Victim Outcome Survey were also analysed.

Findings

A preliminary analysis of the results of an online questionnaire (34% response rate), demonstrates an overwhelming support for belonging to the VCN, with responses highlighting the following benefits:

- The VCU provides a valuable service for victims across the region, a seamless referral pathway to ensure clients' needs are met.
- Belonging to the Network enables greater up-to-date knowledge of existing services and increases awareness of the services available.
- Membership has opened up new opportunities to network with other agencies and to share knowledge, understanding, experience and best practice. There is much less repetition as a result.

The impact membership has had on referral numbers to the support agencies is not yet clear. Some organisations have indicated an increase, whilst others state there has been little impact or that referrals have actually decreased, indicating that further analysis of the referral process is required. However, of significant importance, is that some agencies are seeing a change in the profiles of victims they are supporting, indicating that referrals from the VCU has enabled harder to reach groups to access support services. This has included male victims, victims of domestic and sexual abuse, and has also revealed higher rates of victimisation amongst young people and people with disabilities who are now able to access support, and has also helped to identify where gaps in services exist.

Networking Days organised by the OPCC are held three times a year, providing agencies with an opportunity to meet up, share news and information of initiatives and services, and undertake joint training. Eighty-six per cent of members highlighted the benefits of attending these days, with one respondent commenting on how 'uplifting' the Networking Days were: 'it's good to see how much good work is being done and to share our values and commitment'. This demonstrates the valuable role of peer support and

partnership working, particularly at a time when increasing competition for funding has had a negative effect upon partnership working, due to agencies having to compete against each other for funding. The exchange of information, the relevant topics covered by speakers and the updates on the VCU were all found to be useful by participating agencies.

As part of the evaluation study, semi-structured interviews were undertaken with two support agencies. Participants described the often multiple and complex needs of many victims, but stated that belonging to the VCN enabled them to make referrals on to other services with confidence, as they were more aware of what support could be offered. For example, through their membership of the VCN, one agency working with a victim of hate crime was able to refer the client on to an agency that they were confident would be able to help them to improve and secure their business premises, thereby increasing the victim's access to appropriate services and helping them to gain the support needed. Whilst the findings from the online questionnaire indicated that 100% of members worked in collaboration with two or more other agencies, involving a mixture of formal and informal partnerships, evidence from the two semi-structured interviews suggested that in their experience, the majority of service providers remained protectionist and reluctant to engage with others, turning down potential opportunities to collaborate. Three participants suggested that it should be the role of the PCC to facilitate and encourage closer partnership working through the allocation of joint funding, thereby actively promoting a more efficient use of resources and the development of new services where gaps currently exist.

From April 2016, the OPCC introduced key performance measures in an attempt to capture the level of support being provided and to identify measurable outcomes for victims. The purpose is to measure volume, intensity and complexity in order to assist in a more effective and efficient targeting of resources. Whilst ensuring money is well spent is a key objective of a commissioning framework, it can be argued that to link funding with a requirement to join an accredited network, and to demonstrate competence through providing evidence of positive outcomes for victims, introduces a very different balance of power. Instead of funding decisions being made centrally by the Home Office or the Ministry of Justice, they are now administered locally by PCCs, but are still no less influenced by politics. In fact, PCCs are required to demonstrate tangible outcomes in regular reports requested by the Ministry of Justice, thereby demonstrating governance

at arms length, as suggested above.

The findings indicate that the role of PCCs is pivotal in encouraging collaborative partnerships and innovative practices, through the development of networks and the allocation of funding. A recent evaluation of the Safer Stronger Consortium in Cornwall (Westpoint, 2016: 2), a member of the VCN, emphasises ‘the need for the provision of specialist and multi-faceted support interventions for victims and their families’ and highlights the breadth of expertise and multi-agency collaboration found within the Consortium. Other agencies are in support of the PCC offering funding incentives to develop further consortiums, indicating an appetite for the development of wider communities of practice.

Discussion

The approaches adopted in some of these localised funding practices by PCCs has demonstrated that a joined-up multi-agency approach is key to successful delivery of services that provide effective and meaningful support for victims at the local level. There are still, however, benefits to the learning and sharing of good practice at the national level. Although many victims’ services are no longer commissioned centrally, there is still a place for learning and sharing at the national level in order to benefit from the knowledge and experience held across England and Wales, and in order to reduce the potential for victims to receive a different quality of service dependent upon their location.

At the National Level

The Victim’s Commissioner (VC) has signalled her intentions to cultivate a community of practice, which will facilitate learning and collaboration across statutory and non-statutory practitioners. This community of practice will aim to develop and disseminate good practice in supporting victims of crime. This is to ensure that victims are guided through the criminal justice process if they have reported the crime, and to assist them in their recovery through the provision of timely and appropriate services.

The VC’s role is defined in the Domestic Violence, Crime and Victims Act 2004 and can be summarised as:

- Promoting the interests of victims and witnesses;
- Encouraging good practice in the treatment of victims and witnesses; and,
- Keeping the operation of the Victims' Code under review.

Sharing and collaborating within and between criminal justice agencies and third sector practitioners can contribute greatly to each of these three key aims. The aim of the VC Community of Practice will be to act as a hub for this sharing and collaboration, bringing practitioners together physically and virtually to share their experiences and learn together how to best support victims.

Communities of Practice

The concept of a community of practice is age-long. People have always come together to learn and share their experiences about a subject that they are interested in. But the term 'community of practice' and the theory behind why they can be so helpful in supporting learning and practice was developed by Lave and Wenger (1991) who examined the role of where and how learning takes place. Their theory of situated learning focused on the relationship between the social situation in which learning occurs and the actual learning achieved.

Wenger (1998) went on to formalise the key attributes of a community of practice and develop them in relation to theories around social learning. He describes communities of practice as groups of people with a shared concern and a passion for learning how to do it better. They learn together how to improve their practice as they interact on a regular basis. He claimed that the very act of knowing is fundamentally a social act, therefore, communities of practice are a form of social learning.

The Victims' Commissioner will aim to facilitate the emergence of a community of practice, contributing to its development by providing infrastructure, facilitating the physical and virtual space for practitioners to come together to learn about what works in supporting victims of crime.

In a social learning situation, practitioners act purposefully, learning their way from finding out about the problems inherent to a situation to taking action to solve them. It is not just about finding one single solution to a single problem, but about learning about the situation, learning about the process and making continual improvements to practice

along the way. As learning develops and changes in practice are implemented, the situation in turn will change, there isn't necessarily one permanent solution. Problems in real life are not static; they alter as changes are made in the practice addressing them. There are also multiple perceptions of what the problem is in the first place. For example, the victims' perspective of the criminal justice system will be very different to that of the police, judges, and support practitioner perspectives, and yet all may agree that changes could be made to improve the situation for all, however complex the problems appear.

Learning can be social in that, not only can practitioners come together as a group, rather than just individually, but also there is often a potential unintended emergent outcome. Participants may also learn something about each other and their relative views on the subject, creating a greater understanding of differences in professional agendas and cultures. A social learning system, and particularly a community of practice, can then become more than the sum of its parts.

Wenger (1998) defined a community of practice as a form of social learning consisting of three key components: domain, community and practice. The domain of a community of practice is the particular focus that the members are passionate about. The focus defines what they do (at least partially). The domain of the community of practice that the Victims' Commissioner intends to cultivate will focus on working with victims, ensuring they are guided and kept informed throughout the criminal justice process and beyond, and provided with appropriate and targeted services to assist with their recovery. The domain is also about delivering justice for victims and achieving this whilst according victims the dignity and respect that they are entitled to as citizens. All members of this community of practice will have this as a core focus of their work.

Wenger (1998) defines the community aspect of a community of practice in terms of both its members and the high quality relationships that bind them. An ideal community of practice will encompass a wide range of perspectives. Membership of this community of practice will aim to include all of those agencies with responsibilities to provide the services stipulated in the Victims' Code of Practice (Ministry of Justice, 2015). However, it is acknowledged that a victim's true experience is not limited only to those agencies covered by the Code and so this community of practice will aim to broaden its membership to all statutory bodies that interact with victims. For example, judges; magistrates; defence lawyers and registered intermediaries, etc. The offer of membership

will also be extended to third sector organisations that are commissioned to support victims along with victims themselves.

The theory and application of communities of practice in social learning is not without critique (Hughes et al., 2007). It has attracted criticism that membership of a particular community of practice may signify an implicit power and advantage compared to organisations that are not included in the community of practice. Critics of the approach say there is a risk that organisations who choose not to participate or who are not aware of the community of practice may be marginalised and those who do participate are implicitly branded as having a level of competence to justify their membership. The Victims' Commissioner does not endorse any one victim charity over another and so care must be taken to set out in the rhetoric and terms of reference that membership of this community of practice is not an endorsement of their expertise or willingness to learn about supporting victims to the detriment of organisations that do not take part in the community.

As a working group, the community of practice will aim to make a real difference to the practical ways in which victims are supported. This means building a membership of participants from an organisational level that have practical experiences to share. The Victims' Commissioner will seek commitment from senior stakeholders within the criminal justice system, but the core social learning will be carried out by participants who are on the 'coal face' of working to support victims. By sharing practical learning and good practice, participants of the community of practice will be able to share their learning with colleagues from their own organisations who work directly with victims. The commitment and leadership provided at senior level will mean that community of practice members can also cascade their learning up to senior stakeholders in their organisations, with a view to informing and improving national policies and guidance to support victims.

Wenger (1998) states that in order to function successfully, a community of practice should have an effective co-ordinator and a core group to facilitate practical organisation. The Victims' Commissioner's Office will cultivate the community of practice, seeking the support of a core group of practitioners to facilitate practical elements, such as organising meetings and providing venues with an appropriate geographical spread across England and Wales. It is envisaged that much of the work of the community can be carried out

virtually through emails, newsletters and online, but occasional face to face meetings can help to cement relationships and provide opportunities to network and share experiences informally.

Membership should reflect the diversity of the organisations that they represent and the diversity of the victims that they aim to support. It is important, therefore, to ensure that membership of the community of practice is inclusive, encouraging practitioners from all backgrounds, regardless of gender, ethnicity, culture, disability, social class and geographical region.

The sense of belonging to the community is essential in a community of practice. It provides a foundation for learning and collaboration. There may be instances of collaboration between criminal justice agencies and there is increasing evidence of successful multi-agency working at the local level (Wedlock and Tapley, 2016). However, the VC facilitated community of practice will be in a unique position to provide a sense of community for practitioners with a focus on supporting victims across England and Wales by sharing examples of local practices nationally.

Wenger (1998) identifies that there should be space at the periphery of a community of practice to develop ideas and raise issues that are not central to the group. Smaller subgroups can develop over time, which can then report back to the core group. Specialist areas of victim support can be discussed within smaller subgroups that have a particular interest in an aspect of supporting victims, for example, supporting young and vulnerable victims, or supporting victims of domestic abuse. Learning from these subgroups can then be fed back to the core group for wider dissemination. Concentrating on specialist areas that tie into the wider area of victim support provides a 'Landscape of Practice' (Wenger-Trayner et al., 2014).

It is envisaged that the VC facilitated community of practice will start by outlining some initial terms of reference, but the theory states that at their most effective, communities of practice are flexible, evolving through time as they interact with the landscape of the situation that they are seeking to learn more about. Developments in the victim landscape will lead to subsequent changes for the community of practice. For example, the introduction of a Victims' Law would bring about a new set of complexities for those who work to support victims of crime (Strickland, 2016).

The final key aspect of a community of practice as defined by Wenger (1998) is the practice of the community. The practice element will be evident in the sharing of good practice, learning together how to better support victims through the practitioner's own experience of what worked well. The mechanisms for engagement are diverse and may cover activities such as workshops, sharing case studies, developing theoretical frameworks and practical guidelines. Through this practice the community of practice will aim to become a centre of excellence, collating and disseminating good practice in supporting victims of crime.

The practice of sharing what works in supporting victims through the criminal justice system can be broad and so the Community may focus on particular work streams, for example:

- providing timely and accurate information;
- victim personal statements;
- restorative justice;
- handling complaints;
- working with children and vulnerable victims;
- a victims' law;
- compensation.

Conclusion

In summary, recent changes in the commissioning of support services to PCC areas provides a valuable opportunity to improve the co-ordination and coherence of support services for victims of crime. Commissioning at a local level provides a more targeted approach in the allocation of resources to ensure that people are informed of the services available and are able to gain access to them when required. To ensure a wide range of services exist to address the often complex and multiple needs of victims, it is essential that policies and reforms are implemented as intended. To achieve this, the barriers preventing the development of effective partnership working and collaboration need to be addressed, including information sharing, communication, IT systems, professional cultures, joint training, funding and the sharing of resources. Lack of information sharing

and poor communication between agencies, results in the duplication of some tasks, the failure to undertake others and wasted resources, leaving victims to face a postcode lottery in the responses they receive from both statutory and non-statutory agencies (Tapley et al., 2014; Wedlock and Tapley, 2016).

An evaluation of the victim care model developed in Devon and Cornwall provides evidence that the creation of the VCU and VCN is making an important contribution to improving the experiences of crime victims. High levels of victim satisfaction were found for those who had reported a crime and received additional support from appropriate services. Although difficulties were still identified with keeping victims updated and a need for the police to work in closer partnerships with the VCU and service providers, the model remains work in progress and valuable lessons are being learned.

At a national level, the Victims' Commissioner aims to cultivate a community of practice to build upon local successes and facilitate the social learning of practitioners across all criminal justice agencies and commissioned services nationally. The VCN being developed in Devon and Cornwall is an example of success at a local level and has a contribution to make to the wider aim of a community of practice; to become a centre of excellence to gather and disseminate good practice in supporting victims, working together to improve victims' experiences. Whilst this may create challenges at both a local and national level, it also presents significant opportunities that have the potential to improve substantially the experiences of victims and their ability to regain a sense of autonomy and greater well-being.

As Henry Ford once said 'Coming together is a beginning; keeping together is progress; working together is success.'

Avon and Somerset Police and Crime Commissioner (2014) *Listening to the victims' voices: An initial assessment of the needs of victims of crime in Avon and Somerset* [online] Available at: avonandsomerset-pcc.gov.uk [Accessed 16 August 2014].

Home Office (1990) *Victim's Charter: A Statement of the Rights of Victims of Crime* (London: HMSO).

Home Office (2009) *Together We Can End Violence Against Women and Girls: A Strategy* (London: HMSO).

- Hughes, J., Jewson, N., and Unwin, L. (eds.) (2013) *Communities of Practice: Critical Perspectives* (Oxon: Routledge).
- Lave, J. and Wenger, E. (1991) *Situated Learning. Legitimate Peripheral Participation* (Cambridge: University of Cambridge Press).
- Ministry of Justice (2012) *Getting it Right for Victims and Witnesses* (London: HMSO).
- Ministry of Justice (2013) *Victims' Services Commissioning Framework* (London: HMSO).
- Ministry of Justice (2015) *Code of Practice for Victims of Crime* (London: HMSO).
- Rock, P. (1990) *Helping Victims of Crime: The Home Office and the Rise of Victim Support in England and Wales* (Oxford: Clarendon).
- Rose, N. (2000) 'Government and Control', in D. Garland and R. Sparks (eds.) *Criminology and Social Theory* (New York: Oxford University Press).
- Sarkis, A. (2013) *Victims' Voice: Report of the Northamptonshire Victims' Commissioner* (Northamptonshire Police and Crime Commissioner).
- Straw, J. (2001) 'New rights for crime victims', *BBC News* [online] Available at: www.news.bbc.co.uk [Accessed 18 November 2016].
- Strickland, P. (2016) 'A New Victims' Law in 2016?' *House of Commons Library Briefing Paper 07139* (London: HMSO).
- Tapley, J. (2010) 'Working Together to Tackle Domestic Violence' in A. Pycroft and D. Gough (eds.) *Multi-Agency Working in Criminal Justice* (Bristol: Policy Press).
- Tapley, J., Stark, A., Watkins, M., and Peneva, B. (2014) *A Strategic Assessment of Support Services for Victims of Crime in the South East of England* (Police and Crime Commissioners: Thames Valley, Surrey, Sussex, Kent and Hampshire).
- Wedlock, E. and Tapley, J. (2016) *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment* (London: Victims' Commissioner's Office).
- Wenger, E. (1998) *Communities of Practice: Learning, Meaning and Identity* (Cambridge: Cambridge University Press).
- Wenger-Trayner, E., Hutchinson, S., Kubiak, E., and Wenger-Trayner, B. (2014) *Learning in Landscapes of Practice* (Oxon: Routledge).
- Westpoint (2016) 'Safer Stronger Consortium: Victim Empowerment Model' (Cornwall: Westpoint Crime and Social Research Consultancy). www.westpointresearch.org.uk

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Exploring the impact of residential group programmes for children and young people bereaved by murder or manslaughter

Kalliopi Selioti and Sacha Richardson

Abstract:

A death by murder or manslaughter is one of the most painful and complicated types of bereavement families can experience. The psychological, educational and social effects on the survivors, who are indirectly victimised, have been widely documented. A study by Winston's Wish, a UK based charity for bereaved children, has been conducted to evaluate the effectiveness of murder and manslaughter residential group programmes. We specifically explored the perspectives of traumatically bereaved children and young people on residential weekends. Data was collected for 35 children and young people who attended a therapeutic weekend. Thematic analysis was conducted to explore the main themes. Five superordinate themes were identified: having fun, feeling understood and making friends, managing feelings and relationships, sharing the story of loss and remembering the deceased, and developing personal strengths.

Keywords:

Bereavement; homicide; residential groups; children; thematic analysis

Introduction

According to the Crime Survey for England and Wales (CSEW) there was an 11% rise (up 53 to 573 offences) in homicide cases (which encompasses murder, manslaughter and infanticide) for the year ending December 2015. For each murder victim, there are 6-10

members of the family who can be considered as co-victims of the homicide (Gross, 2007; Kilpatrick and Acierno, 2003). Taking this into consideration, the number of individuals affected is much greater than the number representing direct homicide victims. The family members, loved ones and friends that survive murder victims are usually called 'homicide survivors' or 'co-victims'.

Although the death of a parent or a sibling is one of the most fundamental losses a child will ever face, there are no official records showing how many children and young people are bereaved every year in the UK. Nevertheless, it is estimated that a child is bereaved through murder or manslaughter every day (Penny and Stubbs, 2015).

The secondary victimisation of murder and manslaughter

Attention is usually focused on the deceased and on the perpetrator of a crime, therefore those bereaved by homicide may, to a great extent, be left forgotten or somewhat invisible (Armour, 2002). Some family survivors describe feeling as if the murder had created a barrier between them and the people around them, which led to feelings of isolation, shame and stigmatisation (Mezey et al., 2002). In addition, they may face serious difficulties in their relationships with friends or family that are suspected perpetrators and become preoccupied with revenge (Feldman Hertz et al., 2005).

One in seven homicides are perpetrated by an intimate partner (Stöckl et al., 2013). When children are exposed to parental intimate partner homicide, they are confronted with a unique combination of trauma and loss. They lose not only a loved one but also the person who would usually help them cope with this loss (Gaensbauer et al., 1995). In such cases, one parent is deceased and the other one is usually detained, has fled, or has taken their own life (Steeves and Parker, 2007).

The situation may be further compounded because of the absence of guardianship which might result in conflict between relatives regarding the placement of the children and their contact with the perpetrating parent (Harris-Hendriks et al., 2000). In the complex situation of one parent killing the other, children will undergo multiple losses, involving their attachment figures and their living environment (Alisic et al., 2015). It is not uncommon for these children to face other secondary losses as well, e.g. losing their familiar living environment by changing home, changing school and losing their friends.

Grief with the volume turned up

The loss of a parent has been considered as a traumatic experience itself for a child, regardless of whether the death is sudden, expected, violent, or peaceful (Kaffman and Elizur, 1996). The experience of bereavement by murder or manslaughter is emotionally devastating. There has been the suggestion that it is impossible to imagine the depth of suffering for anybody who has not had the same experience (Malone, 2007). When it comes to traumatic loss, violence caused by humans is the most harmful and is responsible for the most severe reactions in survivors (Charuvastra and Cloitre, 2008). According to Trickey (2008), child risk factors for trauma include perceived life threat, lack of social support and psychological problems in the parent. These are all more likely to be present following death by murder or manslaughter.

A thorough review by Connolly and Gordon (2014) highlighted the variety of psychological, educational, social, occupational and familial effects of homicide on family member survivors or co-victims of homicide. Studies refer to symptoms of posttraumatic stress disorder (PTSD), distress, memory loss, attentional problems, sleep problems, angry outbursts, feelings of sadness and social withdrawal (Burke et al., 2010; Feldman Hertz et al., 2005; Mahoney and Clarke, 2004; Norris et al., 1998).

Supporting children, young people and their families after murder and manslaughter

There is evidence that specialist interventions and programmes which normalise grief can be helpful for all bereaved children, whether they exhibit clinical levels of distress or not; particularly when these interventions are tailored to each child's individual needs and situation (Akerman and Statham, 2014). Rolls and Payne (2007) interviewed 24 children and 16 parents who participated in group and/or one-to-one interventions; following the intervention children had increased understanding about the death and felt less isolated; parents reported that they found it helpful to share their experience with others and felt more confident to support their child.

Survivor support groups and survivor family therapy appear to be the most common interventions with family homicide survivors (Connolly and Gordon, 2014).

Psychoeducation support groups are time limited and structured to provide support within a time frame between 6 and 12 weeks (ibid). Participants are encouraged to share how the loss affected them, what their needs are, what support systems and future goals they have (Lyon et al., 1992). Being with others with similar experiences and discussing about what happened with them allows survivors to share what happened with people who can appreciate the significance of their loss. The main aim of these groups is to reduce the marginalisation survivors feel and to encourage them to acquire a sense of control over their lives (Lyon et al., 1992). Self-help support groups are more informal and member-managed. Bereavement camps or residential groups for bereaved children and young people are usually briefer but they share similar aims with other support groups. Overall research describes a positive experience of these camps (Clute and Kobayashi, 2013).

Specifically trauma-focused interventions combined with grief-focused interventions have been suggested, as for some children, trauma-related symptoms may obstruct the child's ability to mourn their loss (Cohen et al., 2002). In those cases, the child might need to process the event of the death first in order to be able to accept support towards mourning their loss (Black and Trickey, 2009).

Winston's Wish is a child bereavement charity, established in 1992 in the UK to meet the needs of children and young people following the death of someone important in their lives. It offers a range of services which include a two-day residential group for families bereaved by murder and manslaughter every year; this allows families with similar experiences to get together, talk openly, explore different ways of managing their feelings and the difficult situations they are dealing with. The aims of such groups are to: (a) Decrease sense of isolation and increase self-esteem through meeting similarly bereaved families, (b) Find ways to remember the person who died, not only how they died, (c) Create the opportunity for children and parents or carers to share their story with others who have had similar experiences, (d) Talk about the death and specific circumstances of the murder in a safe and accepting environment, (e) Create the opportunity to express feelings and thoughts and to specifically consider the trauma associated with a death due to homicide and (f) Explore positive strategies for coping with distress, fears and difficulties, and consider personal resources and ways of facing the future with greater confidence and hope. The full programme for the group and the theory behind the activities are fully described by Stokes (2004).

A previous evaluation of a therapeutic residential group organised by Winston's Wish for traumatically bereaved children and young people demonstrated measurable improvements in terms of their behaviour and emotions (Trickey and Nugus, 2011); after participating in the weekend, they were less hyperactive, less emotionally distressed and showed fewer behavioural problems. Although the authors highlighted particular elements of this intervention that could be linked to these positive outcomes, it was difficult to be certain about which aspects of the weekend group contributed to these results.

According to Rolls and Penny (2011), there is not much data on what helped and what might have changed after the completion of an intervention. In order to further explore what was most helpful regarding the efficacy of an intervention, qualitative studies have been suggested (Jordan and Neimeyer, 2003) as they could offer more insights and inform policy development.

Methods

The data for this paper originates from a wider study on the effectiveness of residential group bereavement programmes for children, young people and adults who have lost a family member due to murder or manslaughter. This service evaluation study explores the effects of specialised therapeutic residential groups on children and young people's (referred to as 'children' in the rest of the paper) mental health and wellbeing after the death, by homicide, of someone important in their life.

The focus for this paper is to explore the perceived beneficial aspects of such groups according to children. The qualitative questionnaires allowed for an in-depth exploration of children's views and experiences which are crucial in evaluating services offered and for building upon the available evidence.

Setting and participants

For this study, children who had received bereavement group support from Winston's Wish were recruited. All children had received face to face support at home or in a school setting. The intervention started with a family assessment meeting followed by a number

of visits, in this process it was mutually determined whether the weekend was right for the family and preparation work was completed.

Participants were assured of confidentiality and consent was requested from both children and their parents. All participants were given adequate and clear information about their involvement. They were re-assured that participation was voluntary, that they had the right to withdraw at any point and that their decision to participate (or not) would not affect any future support offered by the organisation.

Data had been gathered from groups run between 2012 and 2016. We gathered 35 qualitative questionnaires from the children who gave their consent to participate. Our sample included children bereaved by a parent, sibling or grandparent. Although services for bereaved children may vary throughout the country, Winston's Wish supports children bereaved by murder and manslaughter across England and Wales. This sample is based solely on children accessing this service and, therefore, may not be representative of all homicide bereaved children across the country. However, it can be considered as indicative of most homicide bereaved children receiving tailored support in the voluntary sector. The participants (46% male; 54% female) ranged in age from 4 to 18 years old ($M = 10.57$; $SD = 3.84$). Although participants were living in different parts of England or Wales, the majority of them are from the White British population. Demographic characteristics of the sample can be seen in Table 1.

Data collection and analysis

We utilised the Winston's Wish Residential Group Evaluation Questionnaire, a short, qualitative feedback questionnaire, to explore children's perspectives of participation in a residential bereavement group. The questionnaire consisted of open-ended questions about children's worries and hopes as well as the experience and most effective aspects of the residential group. The first part of the questionnaire was administered just before the weekend started (pre-intervention) and the second part at the close of the last day (post-intervention). All questions included in the questionnaire can be seen in Table 2.

We subjected our data corpus to an in-depth thematic analysis due to its theoretical flexibility and meaning-making direction (Braun and Clarke, 2006). Thematic analysis allows the emergence of patterns and the identification of notable issues (Boyatzis, 1998).

Moreover, it is used on many types of qualitative data, including qualitative questionnaires (Joffe and Yardley, 2004). To improve inter-coder reliability, multiple readings of the questionnaires were undertaken by both authors.

Table 1. Participants' responses according to their background characteristics

Category	Subcategory	<i>N</i> (%)	Theme 1	Theme 2	Theme 3	Theme 4	Theme 5
			Having fun	Feeling understood and making friends	Managing feelings and relationships	Sharing the story of loss and remembering the deceased	Developing personal strengths
			<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>	<i>N</i>
Gender	Male	16 (46)	14	8	11	9	3
	Female	19 (54)	14	12	7	6	9
	Total	35 (100)	28	20	18	15	12
Age	4 – 5 years old	1 (3)	1	0	0	0	0
	6 – 8 years old	13 (37)	13	6	7	7	4
	9 – 11 years old	6 (17)	5	3	4	2	3
	12 – 14 years old	10 (29)	6	7	3	4	3
	15 – 18 years old	5 (14)	3	4	4	2	2
	Total	35 (100)	28	20	18	15	12

Relationship of deceased to child	(Step)Father	15 (43)	10	10	9	7	5
	Mother	10 (28)	10	4	4	6	2
	Mother and father	3 (9)	2	1	2	0	3
	Brother	3 (9)	2	3	1	1	0
	Grandfather	4 (11)	4	2	2	1	2
	Total	35 (100)	28	20	18	15	12
Relationship of child to deceased	(Step)Son	14 (40)	12	7	9	7	2
	(Step)Daughter	14 (40)	10	8	6	6	8
	Brother	1 (3)	1	1	1	1	0
	Sister	2 (6)	1	2	0	0	0
	Grandson	1 (3)	1	0	1	1	1
	Granddaughter	3 (8)	3	2	1	0	1
	Total	35 (100)	28	20	18	15	12

Cause of death	Stabbing	20 (57)	16	11	8	9	7
	Shooting	8 (23)	7	4	6	4	2
	Assault – head injuries	6 (17)	5	4	4	1	2
	Road traffic accident – dangerous driving	1 (3)	0	1	0	1	1
	Total	35 (100)	28	20	18	15	12
Perpetrator	Family member	9 (26)	8	2	3	3	3
	Known person	12 (34)	11	9	6	5	5
	Stranger	8 (23)	4	6	4	4	3
	Unknown person	6 (17)	5	3	5	3	1
	Total	35 (100)	28	20	18	15	12

Time since loss	Less than 1 year	4 (11)	2	3	2	2	1
	1 – 2 years	18 (52)	15	8	11	7	7
	2 – 3 years	9 (26)	8	7	3	4	2
	3 – 6 years	4 (11)	3	2	2	2	2
	Total	35 (100)	28	20	18	15	12

Table 2. Winston's Wish Residential Group Evaluation Questionnaire items

Questionnaire items	
Pre- Intervention (Items 1 – 4)	1. What things are you most looking forward to this weekend?
	2. What things are you most worried about this weekend?
	3. What are you hoping to gain or achieve from the group?
	4. What changes in yourself would you most like to see after this weekend?
Post- Intervention (Items 5 – 8)	5. What was good about the weekend? What are you most proud of?
	6. What could make the weekend better?
	7. What things will be different for you now that you've been on the weekend?
	8. What would you say to others who are not sure about coming to the group?

Ethics

As part of a wider service evaluation, this study did not require the same level of ethical scrutiny as research projects. Although an ethical approval was not necessary, the study was conducted in accordance with generally accepted ethical principles which maintain the ethos of the organisation and its caring intent.

Findings

All children recognised at least one benefit after attending the group. Interestingly, the vast majority of children ($N = 32$, 91%) identified more than one relevant benefit. The findings also show that the group allayed some children's initial worries around being with others whom they had never met before.

Theme 1: Having fun

Most of the children ($N = 28$, 80%; 88% male; 74% female) reported that they had a lot of fun while engaging in the outside or indoors activities. This was a very positive aspect of the group and in some cases it made it a unique experience.

Fun. Having fun is an important part of the weekend. While directly appraising this aspect of the weekend, some children also commented on the group as a thoroughly memorable experience.

- It's fun and very helpful. (Participant 16 – female, 10 years old)
- It's a life experience. (Participant 22 – male, 17 years old)

In these extracts, children have commented on the fun element of the weekend but also on the value of therapeutic work. Having some normal fun with other bereaved children has been mentioned as one of the aims of such groups (Stubbs, 2006).

Physical/Outdoor activities. The programme is carefully designed to include a lot of physical activities throughout the weekend, for example: archery, rock climbing and football. Some of them aim to encourage children to realise hidden sources of strength or courage while others are included to facilitate relaxing, getting to know each other and building trust between group members.

- Question: What was good about the weekend? What are you most proud of? Respondent: Archery. Popping balloons. Hunting in the jungle. Football. (Participant 11 – male, 8 years old)

A great number of children highlighted how much they enjoyed being involved in a variety of outdoor activities. Traditional camp activities may help campers – especially those who cannot tolerate painful feelings for a long period of time – to relax and connect (Searles et al., 2012).

Creative activities. From the day of arrival, the children are also invited to participate in creative activities, for example: making a memory box, making a memory jar and creating a team flag. The main purpose of these activities is to serve as a canvas for talking about previous experiences and to encourage exploring and sharing a range of memories by also

being in control of painful memories. They provide another means of expression for inner feelings as well as support bonding with other group members.

- Question: What was good about the weekend? What are you most proud of? Respondent: Making the memory jar. (Participant 17 – male, 8 years old)

In this extract, the child proposed making a memory jar as being the best part of the weekend. The child did not expand on the reasons for their choice, but this has been described as a meaningful way to approach memories of the past (Stokes, 2004).

Theme 2: Feeling understood and making friends

A significant benefit proposed by more than half of the children ($N = 20$, 57%; 50% male; 63% female) was related to feeling less isolated, meeting others and making new friends. The group constantly offers gentle opportunities for social contact by bringing in sub-groups of children of similar age.

Less isolation and feeling understood. The group serves multiple social functions and offers an opportunity to counteract the feelings of isolation that may be linked to the stigma of homicide.

- I know I'm not the only person that [has] gone through it. (Participant 16 – female, 10 years old)
- You're not alone! (Participant 25 – male, 14 years old)
- I know that people feel the same as I do and that people can relate [to me]. (Participant 15 – female, 14 years old)
- Question: What things will be different for you now that you've been on the weekend? Respondent: Knowing that there are people who understand. (Participant 13 – female, 14 years old)
- Question: What things will be different for you now that you've been on the weekend? Respondent: Knowing that I have people who are in the same boat that I can talk to. (Participant 34 – female, 17 years old)

These extracts show that the weekend helped children who were feeling isolated. This view is consistent with literature emphasising the value of children's concerns regarding isolation from peers and feeling understood (Metel and Barnes, 2011; Worden, 1996).

Meeting others and making friends. The weekend offers various opportunities for social interaction and networking that may continue even after the group is over.

- Question: What was good about the weekend? What are you most proud of? Respondent: Meeting new people in the same situation. Being able to speak openly. (Participant 34 – female, 17 years old)
- I thought I would have no friends but I am friends with everyone in my group. (Participant 18 – female, 12 years old)

Following the decreased sense of isolation, meeting others with experiences of bereavement in a safe and supporting environment (Stokes et al., 1997) encourages participants' open communication as mentioned above. The last extract represents the weekend's potential to support the development of strong and sometimes lasting relationships. Through social interaction and the development of such friendships, children appear to feel less isolated and different (Metel and Barnes, 2011).

Theme 3: Managing feelings and relationships

This theme was identified by half of the children ($N = 18$, 51%; 69% male; 37% female) who referred to the effective management of difficult feelings, the use of coping strategies and the development of healthier personal relationships.

Managing feelings. One of the group's aims is to voice difficult feelings such as guilt, shame, sadness, fear, anger and confusion. During the weekend, professionals assist children in their effort to acknowledge the existence of these feelings and to find ways of being in control of them.

- Question: What things will be different for you now that you've been on the weekend? Respondent: Expressing feelings and feeling relieved. (Participant 19 – male, 17 years old)
- I don't usually cry but Winston's Wish taught me that you need to let your tears out. (Participant 8 – female, 10 years old)

- I told the story without crying. It helped me, I've now let my anger and feeling out. (Participant 23 – female, 11 years old)
- Even [though] my dad's passed away I can still keep on smiling. (Participant 24 – male, 13 years old)

Support group interventions are shown to be useful in terms of expressing feelings of sadness and grief (Rolls and Payne, 2007). Children referred to managing difficult feelings as a beneficial aspect of the group. Even after the tragedy they went through, the last extract shows that children also reported positive feelings. Experiencing positive emotions after bereavement can support thinking about the future and setting goals, which is likely to enhance psychological adjustment and better emotional wellbeing (see broaden-and-build theory of positive emotions by Fredrickson, 2001).

Coping strategies. The weekend includes a coping session where children express, share and explore ways of coping.

- Question: What things will be different for you now that you've been on the weekend? Respondent: To relax when I am sad. (Participant 17 – male, 8 years old)
- It's helped me, being with other children, coping with what's happened. (Participant 20 – female, 7 years old)

According to the first extract, the child validates relaxing as a useful way of coping with difficult feelings of sadness. Similarly, in the next extract, social support is recognised as a helpful way of coping with difficult experiences. A range of coping strategies and specific advice can enhance empowerment (Dyregrov et al., 2016) and are an important part of such programmes.

Personal relationships. A death by murder or manslaughter may have adverse effects in family life and social life. The group provides many opportunities for reflection and thinking about personal relationships.

- Question: What things will be different for you now that you've been on the weekend? Respondent: I will start getting along with my sisters and brothers. (Participant 23 – female, 11 years old)
- Be a bit more grateful to have my mum around. (Participant 22 – male, 17 years old)

years old)

It seems that the first child expresses a goal related to trying to establish a better relationship with other members of her family. The importance of close relationships (Worden, 1996) is acknowledged in the next extract too.

Theme 4: Sharing the story of loss and remembering the deceased

Fifteen children ($N = 15$, 43%; 56% male; 32% female) reported sharing the personal story of loss and finding ways to remember the deceased as important advantages of their participation to the group.

Telling the story. Another specific session of the group equips children with confidence in telling their personal story of loss and supports them into gaining control over this story and related thoughts.

- I can now talk to people about what happened. (Participant 18 – female, 12 years old)
- I can tell my story. (Participant 30 – female, 12 years old)
- Question: What was good about the weekend? What are you most proud of? Respondent: Hearing others' stories and telling mine. (Participant 22 – male, 17 years old)

In the first two extracts, managing to tell the story is acknowledged as an important benefit for children. This view is further developed in the next extract, where the young person also refers to sharing all stories of loss within the group. This aspect of the group has been described as an important element in helping participants to find their story of the life together with the deceased (Klass et al., 1996).

Remembering the deceased. Remembering the person who died and not only how they died aids the psychological adjustment of the bereaved. However, it constitutes a massive challenge for families bereaved by murder and manslaughter.

- It has helped me to remember all the important people who died. (Participant 11 – male, 8 years old)
- Question: What things will be different for you now that you've been on the

weekend? Respondent: To think about my mum. (Participant 2 – male, 6 years old)

In the first extract, the child states that remembering the people who died was helpful. Thinking about the person who died is also expressed in the following extract as something that will be different after coming to the group. Metel and Barnes (2011) have highlighted remembering the deceased as an important function of bereavement groups.

Theme 5: Developing personal strengths

The last theme emerged in the responses of a large number of participants ($N = 12$, 34%; 19% male; 47% female) and refers to realising personal strengths and abilities through the children's achievements during the weekend as well as developing confidence.

Personal achievements/strengths. It is vital that children are supported towards the recognition of their personal strengths.

- The climbing wall was hard but I did it! (Participant 21 – female, 6 years old)
- I'm proud of getting to the top of the climbing wall when there was just one person holding the rope for me. (Participant 7 – female, 13 years old)

In the first extract the child makes a reference to obstacles related to physical activities, the effort they made, and their sense of personal achievement. In the second extract, the child feels proud of succeeding in a difficult task while being open to receiving support from somebody else at the same time. Increasing children's self-esteem (Sandler et al., 2010) and having an area of competence (Brewer and Sparkes, 2011) may serve as protective factors that support resilience after the death of a parent.

Confidence. In a similar context, the weekend was supportive in terms of developing confidence for participants.

- I will be able to climb high things. (Participant 7 – female, 13 years old)
- Feel a lot better about myself. (Participant 25 – male, 14 years old)

The first extract suggests that the child feels confident about tackling future challenges whereas the second one demonstrates the child's positive, and probably more balanced, sense of self.

Discussion

According to Rynearson (1995), the three V's of unnatural dying – violence, violation and volition act as a catalyst for a strong psychosocial aftermath. Although there is still no conclusive proof of the most valuable interventions in the long-term, there is evidence on the benefits of support offered at critical times. For example, a meta-analysis of the outcomes of grief interventions with bereaved children described small to moderate effects, but showed that they were more effective if they took place closer to the time of death and when directed at children facing additional complicating factors (Currier et al., 2007). The provision of support following traumatic events is a very complex and sophisticated process that needs to be taken into consideration when designing and conducting such studies, especially because evidence regarding the effectiveness and protective value of this type of support does exist (Dyregrov and Regel, 2012).

The present study provided an opportunity for the experiences and views of children bereaved by murder and manslaughter to be heard. It aimed to support the effort for evidence-led improvements in services provided to families bereaved by homicide. The use of qualitative methods to explore the most helpful aspects of interventions has been reported of great value in designing and improving such interventions (Jordan and Neimeyer, 2003).

The weekend served as a basis for new relationships that could grow over time. Moreover, it provided an environment for children to tell their story and experience being understood by others who knew what they were going through. The group facilitated grief processing by remembering the person who died and normalising feelings and thoughts connected to the loss. It also provided an opportunity to learn new coping skills and recognise personal strengths.

These findings support the positive results of an earlier evaluation of the same therapeutic residential group work programme (Trickey and Nugus, 2011). According to that evaluation, the children who participated in the weekend demonstrated

improvements in terms of their emotional well-being and their behaviour; they were less emotionally distressed and better able to manage their behaviour following the intervention. Similarly, the children in our study referred to managing their feelings and personal relationships more effectively. They also reported developing personal strengths and self-competence, which may contribute to their ability to manage different situations and issues that may have caused behavioural problems previously.

Connecting with other children has been described as a great benefit of similar programmes (Searles et al., 2012), particularly for bereaved children who may experience social isolation as a result of their friends not understanding what they are going through (Worden, 1996). Group homogeneity has been associated with the enhancement of cohesion (Dyregrov et al., 2013) as well as a greater identification and support among the members of a group (Jordan and Neimeyer, 2003). Therefore, further research efforts should consider the comparison of interventions specifically designed for children bereaved by homicide and interventions for children bereaved by multiple causes of death.

The Winston's Wish Residential Group Evaluation Questionnaire is a simple child focused questionnaire used for all residential groups offered by the organisation to help review and evaluate service delivery. Therefore, it may not be sensitive enough to illuminate the particular issues and outcomes for this specific group for murder and manslaughter. The Childhood Bereavement Network (UK) has developed a thorough framework of the outcomes of childhood bereavement service provision and a set of evaluation tools which provide very useful insights into the impact of services on children's wellbeing (Rolls and Penny, 2011).

Moreover, we used the questionnaire to explore children's views immediately after the end of the group. This might not have offered participants enough time to process and reflect on the experience of the group, particularly when the perpetrator was a member of the family – these children appeared to recognise fewer benefits compared to the rest (see Table 1). We currently use another tool approximately a month after the group; the Strengths and Difficulties Questionnaire, which is a psychometrically robust measure and covers children's behaviours, emotions and relationships.

In their article, Searles et al (2012) refer to some studies where the positive experiences of weekend camps reported in interviews are not always accompanied by changes in anxiety and sadness as measured by rating scales. Thus, a mixed-methods approach for the evaluation of such programmes might be more beneficial. It would also be valuable to understand the long-term impact of the group, in particular to find out if it shares any of the long-term benefits identified in the longitudinal study by Sandler et al (2010).

The sample of participants for this study was limited to those accessing these residential weekends and as a result will not necessarily be representative of the full range of children bereaved in this way. The group was predominantly White British. It would be very interesting to explore if the outcomes would be similar for children from other ethnic backgrounds, who may use different coping strategies, and consider relevant implications for service delivery.

Finally, it is important not only to investigate the pathological consequences but also to conduct research on the effects of interventions on wellbeing and quality of life for homicide survivors (Tuck et al., 2012). For example, there is limited research on psychological adjustment and insight which have been reported to be particularly beneficial outcomes of bereavement support groups (MacKinnon et al., 2014).

Akerman, R. and Statham, J. (2014) *Bereavement in Childhood: The Impact of Psychological and Educational Outcomes and the Effectiveness of Support Services: Working Paper 25* (London: Child Wellbeing Research Centre).

Alisic, E., Krishna, R., Groot, A., and Frederick J. (2015) 'Children's mental health and wellbeing after parental intimate partner homicide: A systematic review', *Clinical Child and Family Psychology Review*, 18 (4), 328-345.

Armour, M.P. (2002) 'Experiences of co-victims of homicide: Implications for research and practice', *Trauma, Violence and Abuse*, 3 (2), 109-124.

Black, D. and Trickey, D. (2009) 'The effects of bereavement in childhood', in M. Geler, N. Andreasen, J. Lopez-Ibor, and J. Geddes (eds.), *New Oxford Textbook of Psychiatry*, 2nd ed (Oxford: Oxford University Press), 1758-1760.

- Braun, V. and Clarke, V. (2006) 'Using thematic analysis in psychology', *Qualitative Research in Psychology*, 3, 77-101.
- Boyatzis, R. (1998) *Transforming Qualitative Information: Thematic Analysis and Code Development* (London: Sage).
- Brewer, J. and Sparkes, A. (2011) 'Parentally bereaved children and post-traumatic growth: Insights from an ethnographic study of a UK childhood bereavement service', *Mortality*, 16 (3), 204-222.
- Burke, L.A., Neimeyer, R. A., and McDevitt-Murphy, M. E. (2010) 'African American homicide bereavement: Aspects of social support that predict complicated grief, PTSD and depression'. *Omega: Journal of Death and Dying*, 61 (1), 1-24.
- Charuvastra, A. and Cloitre, M. (2008) 'Social bonds and posttraumatic stress disorder', *Annual Review of Psychology*, 59, 301-328.
- Clute, M.A. and Kobayashi, R. (2013) 'Are children's grief camps effective?' *Journal of Social Work in End-Of-Life and Palliative Care*, 9 (1), 43-57.
- Cohen, J. A., Mannarino, A. P., Greenberg, T., Padlo, S., and Shipley, C. (2002) 'Childhood traumatic grief – concepts and controversies', *Trauma, Violence and Abuse*, 3 (4), 307-327.
- Connolly, J. and Gordon, R. (2014) 'Co-victims of homicide: A systematic review of the literature', *Trauma, Violence and Abuse*, 16 (4), 494-505.
- Currier, J.M., Holland, J.M., and Neimeyer, R. A. (2007) 'The effectiveness of bereavement interventions with children: A meta-analytic review of controlled outcome research', *Journal of Clinical Child and Adolescent Psychology*, 36 (2), 253-259.
- Dyregrov, K., Dyregrov, A., and Johnsen, I. (2013) 'Participants' recommendations for the ideal grief group: A qualitative study', *Omega: Journal of Death and Dying*, 67 (4), 363-377.
- Dyregrov, A., Dyregrov, K., Straume, M., and Grønvold Bugge, R. (2016) 'Weekend gatherings for bereaved family members after the terror killings in Norway in 2011', *Bereavement Care*, 35 (1), 22-30.
- Dyregrov, A. and Regel, S. (2012) 'Early interventions following exposure to traumatic events: Implications for practice from recent research', *Journal of Loss and Trauma*, 17, 271-291.

- Feldman Hertz, M., Prothrow-Stith, D., and Chery, C. (2005) 'Homicide survivors: Research and practice implications', *American Journal of Preventive Medicine*, 29 (5) [Supplement 2], 288-295.
- Fredrickson, B.L. (2001) 'The role of positive emotions in positive psychology: The broaden-and-build theory of positive emotions', *American Psychologist*, 56, 218-226.
- Gaensbauer, T., Chatoor, I., Drell, M., Siegel, D., Zeanah, C.H., and Jellinek, M. S. (1995) 'Traumatic loss in a one-year-old girl', *Journal of the American Academy of Child and Adolescent Psychiatry*, 34, 520-528.
- Gross, B. (2007) 'Life sentence: Co-victims of homicide', *Annals of the American Psychotherapy Association*, 10, 39-43. [online] Available at:
<http://www.annalsofpsychotherapy.com/articles/fall07.php?topic=article10>
- Harris-Hendriks, J., Black, D., and Kaplan, T. (2000) *When Father Kills Mother: Guiding Children Through Trauma and Grief*, 2nd ed. (London: Routledge).
- Joffe, H. and Yardley, L. (2004) 'Content and thematic analysis', in D.F. Marks and L. Yardley (eds.), *Research Methods for Clinical and Health Psychology* (London: Sage), 56-68.
- Jordan, J. and Neimeyer, R. (2003) 'Does grief counseling work?' *Death Studies*, 27, 765-786.
- Kaffman, M. and Elizur, E. (1996) 'Bereavement as a significant stressor in children', in C. R. Pfeffer (ed.) *Severe Stress and Mental Disturbance in Children* (Washington DC: American Psychiatric Press).
- Kilpatrick, D.G. and Acierno, R. (2003) 'Mental health needs of crime victims: Epidemiology and outcomes', *Journal of Traumatic Stress*, 16 (2), 119-132.
- Klass, D., Silverman, P.R., and Nickman, S. L. (eds.) (1996) *Continuing Bonds: New Understandings of Grief* (Washington DC: Taylor and Francis).
- Lyon, E., Moore, N., and Lexius, C. (1992) 'Group work with families of homicide victims', *Social Work with Groups*, 15 (1), 19-33.
- MacKinnon, C.J., Smith, N.G., Henry, M., Berish, M., Milman, E., Körner, A., Copeland, L.S., Chochinov, H.M., and Cohen, S.R. (2014) 'Meaning-based group counseling for

bereavement: Bridging theory with emerging trends in intervention research', *Death Studies*, 38, 137-144.

Mahoney, A. and Clarke, C. (2004) 'Understanding the psychosocial sequelae of the murder of a grandparent/caregiver: Cases of Jamaican school-age children', *Journal of Loss and Trauma*, 9 (4), 299-313.

Malone, L. (2007) 'In the aftermath: Listening to people bereaved by homicide', *The Journal of Community and Criminal Justice*, 54 (4), 383-393.

Metel, M. and Barnes, J. (2011) 'Peer-group support for bereaved children: A qualitative interview study', *Child and Adolescent Mental Health*, 16 (4), 201-207.

Mezey, G., Evans, C., and Hobdell, K. (2002) 'Families of homicide victims: Psychiatric responses and help-seeking', *Psychology and Psychotherapy: Therapy, Research and Practice*, 75, 65-75.

Norris, F.H., Ruback, R.B., and Thompson, M.P. (1998) 'Comparative distress levels of inner city family members of homicide victims', *Journal of Traumatic Stress*, 11, 223-242.

Penny, A. and Stubbs, D. (2015) *Bereavement in Childhood: What do we know in 2015?* (Childhood Bereavement Network).

Rolls, L. and Payne, S.A. (2007) 'Children and young people's experience of UK childhood bereavement services', *Mortality*, 12 (3), 281-303.

Rolls, L. and Penny, A. (2011) 'Mapping evaluation of UK childhood bereavement services', *Bereavement Care*, 30 (1), 43-47.

Rynearson, E.K. (1995) 'Bereavement after homicide: A comparison of treatment seekers and refusers', *British Journal of Psychiatry*, 166 (4), 507-510.

Sandler, I.N., Ayers, T.S., Tein, J.Y., Wolchik, S.A., Millsap, R., Khoo, S.T., Kaplan, D., Ma, Y., Luecken, L., Schoenfelder, E., and Coxe, S. (2010) 'Six-year follow-up of a preventive intervention for parentally bereaved youths: A randomised controlled trial', *Archives of Pediatrics and Adolescent Medicine*, 164 (10), 907-914.

Searles McClatchey, I. and Wimmer, J.S. (2012) 'Healing components of a bereavement camp: Children and adolescents give voice to their experiences', *Omega: Journal of Death and Dying*, 65 (1), 11-32.

Steeves, R.H., and Parker, B. (2007) 'Adult perspectives on growing up following uxoricide', *Journal of Interpersonal Violence*, 22, 1270-1284.

Stöckl, H., Devries, K., Rotstein, A., Abrahams, N., Campbell, J., Watts, C., and Moreno, C.G. (2013) 'The global prevalence of intimate partner homicide: A systematic review', *Lancet*, 382, 859-865.

Stokes, J.A. (2004) *Then, now and always. Supporting children as they journey through grief: A Guide for Practitioners* (Winston's Wish).

Stokes, J., Wyer, S., and Crossley, D. (1997) 'The challenge of evaluating a child bereavement programme', *Palliative Medicine*, 1, 179-190.

Stubbs, D. (2006) 'Piloting a residential weekend for families bereaved through murder', (Childhood Bereavement Network) (article available upon request).

Trickey, D. (2008) Children and Trauma (unpublished presentation).

Trickey, D. and Nugus, D. (2011) 'Evaluation of a therapeutic residential intervention for traumatically bereaved children and young people', *Bereavement Care*, 30 (1), 29-36.

Tuck, I., Baliko, B., Schubert, C.M., and Anderson, L. (2012) 'A pilot study of a weekend retreat intervention for family survivors of homicide', *Western Journal of Nursing Research*, 34 (6), 766-794.

Worden, W.J. (1996) *Children and Grief: When a Parent Dies* (New York: Guilford Press).

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