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Editorial

Lizzie Seal

The British Society of Criminology’s 2017 Conference was held from 4-7 July at Sheffield Hallam University. The theme was ‘Forging Social Justice’ and the keynote speakers were renowned criminologists whose work has contributed to the advancement of this: Valerie and John Braithwaite, Fergus McNeill and Beth Weaver, Stephen Farrall and Simon Winlow, and Phil Scraton. Phil Scraton’s keynote addressed his long-term work and campaigning in relation to Hillsborough – a vital example of the difference that criminologists can make, especially when they challenge malign power structures.

The papers submitted to this volume went through the journal’s rigorous peer review process and three out of seven submissions were accepted. Many thanks to the peer reviewers for their essential work in enabling publication of the journal and for the helpful comments that they provided to help further strengthen the submissions. Thanks is also due to the authors for their prompt revisions and co-operation. The timeline for journal is short and its production is greatly aided by this willingness to meet deadlines.

In the first article, Paterson-Young et al. examine how to develop adequate social impact measurements of interventions with young people in custody. They argue that ensuring the welfare of young people means locating them at the centre of such measurements. Jason Roach contends that the psychological and contextual factors that affect cold case homicide investigations must be understood differently from those in current cases. Cold case investigations are subject to negative framing effects. Eleanor Peters addresses the ways in which music requires criminological attention, both in
terms of the censorship and criminalisation of certain forms of music and its use by different militaries in techniques of torture.

In 2018, the British Society of Criminology Conference will take place at Birmingham City University from 3-6 July, with the title ‘Transforming Criminology: Rethinking Crime in a Changing World’. I wish you all a relaxing break and a successful 2018.

Lizzie Seal, University of Sussex, December 2017
Developing a social impact measurement framework to enhance outcomes for young people in custody – what to measure?

Claire Paterson-Young, Richard Hazenberg, Meanu Bajwa-Patel and Simon Denny

Abstract

Government and societal attention on young people’s involvement in offending has resulted in expansion of the youth justice system, with emphasis on developing effective and sustainable interventions to reduce recidivism and enhance outcomes for young people. Social impact measurement provides the tools for exploring the experiences and outcomes of youth justice interventions. By exploring the social impact of Secure Training Centres, this paper makes an original contribution to knowledge through exploring and identifying themes in developing a social impact measurement (SIM) framework for youth offending interventions, specifically in custody. By developing Farrington’s (2005) Integrated Cognitive-Antisocial Potential (ICAP) theory into a SIM framework, this research seeks to demonstrate the benefits of social impact measurement as a form of operational and performance management for organisations engaged in youth justice interventions provided that the outcomes for young people exist at the centre.

Key words:
Custody, Youth Justice, Social Impact, Re-settlement

Introduction

The number of young people entering the youth justice system has reduced since 2008, with equally significant reductions evident in the use of custody. Between 2007 and 2016, the number of offences committed by young people decreased by 73% (Bateman, 2017).
Despite this reduction in offending, the youth justice system exists in a wider context with austerity measures reducing the resources and provisions available for children and young people (UK Children's Commissioner, 2015). Improvements and developments in interventions for young people have relied on outcome data with limited emphasis on understanding the wider impact (e.g. on education and non-cognitive skills). Given that the Social Exclusion Unit's (2002) report emphasises the importance of factors such as education and family relationships in promoting desistance, this research explores the impact of interventions on such factors. To improve the impact of such interventions, the views of young people are central; therefore, this research is fuelled by a desire to facilitate the active participation of young people held in Secure Training Centres (STCs).

This article makes an original contribution to knowledge through exploring and identifying themes in developing a social impact measurement (SIM) framework for youth offending interventions, specifically in custody. By positioning Farrington's (2005) Integrated Cognitive-Antisocial Potential (ICAP) theory, with reference to strain theory, within a wider SIM framework, this research seeks to demonstrate the benefits of social impact measurement as a form of operational and performance management for organisations engaged in youth justice interventions provided that the outcomes for young people exist at the centre. Using an adapted sequential design strategy, the researcher applied a mixed methodological approach to data collection with initial phases of data collection contributing to the later phases. The initial phase of data collection, which is discussed in this article, gathered quantitative information from a scaled questionnaire and qualitative data from a case file analysis.

**Social Impact Measurement**

SIM has received considerable attention from the government and academics although a common definition remains elusive. Indeed, the Public Services (Social Value) Act (2012) details the government's focus on understanding the wider benefits of commissioned

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STCs are designed to accommodate vulnerable young people aged between 12 and 18 years-old, providing a safe environment within secure conditions with educational provisions at the centre. Young people have access to 25 hours education per week in addition to substance misuse, psychology and health care services.
services (GECES, 2014; Clifford and Hazenberg, 2015). A survey conducted by New Philanthropy Capital (NPC) stated that: “impact measurement means different things to different people...” (Ogain et al., 2012:33) and differing interpretations have resulted in confusion in measuring social impact. Definitions for social impact contain subtle differences, with the central element surrounding the intended or unintended consequences resulting from activities (Maas, 2014; Clifford et al., 2014).

Vanclay’s (2003) definition for social impact acknowledged the intended and unintended social consequences of interventions, which allows for the development of effective interventions with scope for identification of ineffective interventions. This definition identifies several areas in conceptualising social impact, including: life, community, political system, health and wellbeing, and fears and aspirations. In the youth justice field, these factors are relevant for measuring the social impact of youth offending interventions, specifically in considering the associations between social impact and the causes of crime. For example, criminological theories emphasise the impact of relationships, education, deprivation and attitudes on involvement in criminal activity (Merton, 1938; Agnew, 1985; Farrington, 2003 and 2007; Van Der Laan et al., 2009). In considering the social impact of youth offending interventions, one important area to consider is the promotion of changes in fears and aspirations that were highlighted by Vanclay (2003). Although this definition provides scope for measuring impact, in isolation this approach reduces the opportunity to capture changes achieved by others or changes occurring regardless of interventions or activities. Adopting the definition proposed by Clifford et al. (2014) in the GECES2 (2014) framework allows for consideration of elements missed from Vanclay’s definition (2003). Clifford et al. (2014) consider the changes resulting from other activities (alternative attributions), the changes occurring regardless of activities (deadweight), and the changes that decline over time (drop-off). Combining the two definitions, provided by Vanclay (2003) and Clifford et al. (2014) enables a more sophisticated and relevant measurement of social impact to be considered.

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2 Group of experts of the Commission on social enterprise.
For youth offending interventions the use of social impact measurements has benefits for the individual (micro), the organisation (meso), the government, funders and communities (macro) by identifying effective and sustainable interventions (Clifford et al., 2014). With concerns over the financial situation in England and Wales, understanding the social impact of youth justice interventions is increasingly important in determining ‘what works’ in allocating resources (Nevill and Lumley, 2011; Brand and Price, 2017). SIM frameworks can support the development of innovative and successful interventions that reduce recidivism and promote desistance (Nevill and Lumley, 2011). Such evidence-based assessment of intervention performance, that incorporates multi-stakeholder viewpoints and outcomes, will in the long-run improve outcomes for young people and reduce the need for costly punitive justice interventions. This article explores the social impact factors for young people in custody in order to identify how best social impact frameworks can be utilised to promote positive outcomes for young people and society.

Developing a theory of change

Developing a plausible theory of change that explores the perceptions of young people in STCs is crucial to the measurement of relevant data in social impact measurement (Clifford et al., 2014) and also assists organisations to engage in research that is relevant, accountable and transparent (Hazenberg and Clifford, 2016). Theory of change models are grounded in plausible evidence, experiences and literature enabling a wider understanding of the strategies to generate intended results (Knowlton and Phillips, 2013). Developing a theory of change is predicated upon understanding the factors that influence crime and offending, which allows organisations and governments to design effective interventions (Knowlton and Phillips, 2013). Theories of crime explore assumptions about human nature, social structure and causation to provide an explanation for the phenomena explored (Knowlton and Phillips, 2013).

Exploring the between-individual and within-individual theories of youth crime and offending are important for developing a theory of change. Integrated Cognitive-Antisocial Potential (ICAP) theory (Farrington, 2005) was developed by combining traditional (e.g. strain theory, labelling theory and differential associations) and
developmental (e.g. adolescence limited / life-course-persistent theory and social control theory) theories of crime and offending. The key construct in ICAP theory is antisocial potential (AP) “and it assumes that the translation from antisocial potential to antisocial behaviour depends on cognitive (thinking and decision-making) processes that take account of opportunities and victims” (Farrington and Ttofi, 2014:28). Figure 1 illustrates a simple example of Farrington's (2005) Integrated Cognitive-Antisocial Potential theory.

![Figure 1 - The Integrated Cognitive Antisocial Potential (ICAP) theory](image)

Farrington (2005) distinguishes the long-term antisocial potential from the short-term antisocial potential. These long-term factors are influenced by modelling, strain,
socialisation and labelling while the short-term factors depend on motivation, situation, intelligence and cognitive ability (Farrington and Ttofi, 2014). Farrington (2005) identified a continuum of long-term antisocial potential, ordering individuals from low to high. The distribution of antisocial potential on the continuum is skewed, suggesting that antisocial behaviour and offending are versatile (Farrington and Ttofi, 2014). This versatility explains the reasons ICAP theory applies across different types of offending and antisocial behaviour. Findings from the Cambridge Study suggested several core risk factors for later offending including: hyperactivity; impulsivity; low intelligence, poor school attainment, family criminality, poverty, ineffective parenting, disrupted families and attention deficit (Farrington, 2003 and 2007; Van Der Laan et al., 2009). The long-term risk factors associated with criminal behaviour identify the reasons some individuals commit crimes; however, the theory fails to explain the reasons other individuals desist.

Identifying the protective factors (for example, unconditionally supportive parents or carers, high school attainment) for individuals is equally important as identifying the risk factors (Farrington and Ttofi, 2014). Recognising the protective factors for children and young people in STCs are central in exploring the positive and negative (intended and unintended) impact. By exploring the positive protective factors, the researcher has the opportunity to examine the wider social impact of STCs. Farrington and Ttofi (2014) highlighted the complexities in distinguishing between the risk factors causing offending and antisocial behaviour and the correlating factors. By identifying risk factors causing offending and antisocial behaviours, researchers can develop effective interventions (Farrington and Ttofi, 2014). For individuals with high long-term antisocial potential, the most prevalent motivational factors are: strain; desires for material goods; status with family members or intimates; excitement; and sexual satisfaction. These motivational factors indicate the presence of high long-term antisocial potential; however, the availability of legitimate means to satisfy such factors (employment, income etc.) is equally important in predicting offending. For example, the desire to offend for individuals with legitimate means to achieve is lower than for individuals with no legitimate means. Furthermore, Farrington and Ttofi (2014) highlight the influence of socialisation, attachment and exposure to antisocial models (differential associations) on the antisocial potential. Van Der Laan et al. (2009) tested ICAP theory by completing a
survey with 1,500 young people aged 10-17 years-old in the Netherlands. Findings suggested that long-term individual, family and education factors correlated with serious offending and antisocial behaviour. Other factors considered by Van Der Laan et al. (2009) related to the short-term situational factors including drugs and alcohol and the absence of appropriate parents or guardians. The findings from the study conducted by Van Der Laan et al. (2009) support the idea proposed by ICAP theory that the probability of young people engaging in serious offending and antisocial behaviour increases with the number of antisocial probability factors.

ICAP theory identifies the short-term and long-term factors influencing future criminal behaviour as supported by research conducted by the Social Exclusion Unit (2002). According to the Social Exclusion Unit (2002), failure to address issues arising with education and training, employment, substance misuse, health attitudes and self-control, life skills, housing and family relations may influence recidivism. Identifying the factors influencing offending behaviour as well as protective factors (and risk factors) are important for this research project, particularly for developing an effective social impact measurement framework. Farrington and Ttofi’s (2014) focus on explaining the offending behaviour of children and young people from lower class backgrounds limits the generalisability of ICAP theory. Despite this limitation, synthesising ICAP theory with traditional and developmental criminological theories allows the researcher to create a robust theory of change framework. This is essential if one is to develop a holistic social impact measurement framework for youth offending that places young people at the centre of a beneficiary outcomes driven approach. It also allows the research to adopt a genuine multi-stakeholder approach to the developing of said framework, identified as best practice in prior research, through identification of all relevant stakeholders within the theory of change (Hazenberg et al., 2014; Clifford and Hazenberg, 2016).

**Methodology**
In order to explore both definable outcomes and socially constructed narratives, the researcher adopted a sequential mixed methods design strategy (Figure 2) (Johnson et al., 2007), allowing for an interactive process, with the initial data collected contributing to the data collected in later stages (Creswell, 1998). This ‘Straussian’ grounded theory approach allows the researcher to consult with the literature in order to identify research
focus and knowledge (Strauss and Corbin, 1990). Adopting this approach allows the researcher to simultaneously collect and analyse data, creating analytical themes and codes from data rather than by pre-existing conceptualisations (Strauss and Corbin, 1990).
A questionnaire was implemented to allow young people to share opinions confidentially. To create the questionnaire, the researcher considered the literacy and numeracy ages of the population and designed a Likert-scale questionnaire for young people, with open response questions for additional information. A retrospective case analysis was completed by accessing case file data for incarcerated young people agreeing to participate in the research. The initial categories and themes explored were grounded in existing literature, with revisions and adaptations made following analysis. Participants in the research were allocated codes to ensure anonymity and confidentiality throughout the research process. To complement the research, the researcher was also immersed in the research environment, attending meetings and spending time in the STC.

The STC participating in this research accommodates boys aged between 12 years-old and 18 years-old. At the time of data collection, the STC accommodated between 53 (YJB number cap from October 2016 – January 2017) and 96 young people. The demographic of young people was examined to establish the inclusion and exclusion criteria as directed by the literature and research questions. By adopting this method, the researcher excluded young people accommodated on remand due to their sentencing status (i.e. not yet proven guilty) and the indeterminate custodial timeframe. From the inclusion participant group, the researcher identified a sample of young people for invitation to the study. The research participants were aged 13-18 years-old, and the sample was representative of the STC population (n=68). The ethnicity of the participants was recorded by the researcher, with 46% identifying as White British, 32% identifying as Black, 14% identifying as mixed and the remainder identifying as White Other. Another important factor considered was the offence type, with participants indicating the offence type in the questionnaire. The main offence type for participants in the study was GBH (40%), with robbery the second most common offence type (29%). The experiences and relationships for children and young people prior to entering STCs was explored, with findings showing that a significant number of young people were exposed to parental separation (68.4 per cent), pro-criminal family members (68.4 per cent), domestic abuse (50.6 per cent), bereavement (25 per cent) and/or experiences in the care system (42.7 per cent).
Analysis

Supported by a Straussian grounded theory approach, the researcher completed concurrent data collection and analysis (Strauss and Corbin, 1990). This approach, framed by a sequential mixed-method design, informed the direction of each step in the research process. For example, the emerging categories and/or themes and categories from the questionnaire and case file data were compared with existing literature and the initial analysis (Eisenhardt, 1989). Adopting a constant comparative method involves considering: What is happening? What conditions lead this to happen? And what does the data indicate? (Glaser, 1978; Lincoln and Guba, 1985).

Data collected from the questionnaire was examined and analysed with the Statistical Package for the Social Sciences (version 22), a quantitative analysis software package for managing data. The following statistical tests were run: descriptive statistics, sample distribution normality test, chi-square (cross-tabulation) test, correlation, and regression analysis. The questionnaire achieved a Cronbach’s-alpha coefficient of .94, exceeding the recommended value of .80 (Loo, 2001) with no individual items significantly altering the overall reliability.

Findings

Relying solely on theoretical perspectives, with limited exploration of the perceptions of young people, limits understanding of the social impact of youth offending interventions; therefore, this research will explore the perceptions of young people, albeit grounded within a theoretical frame centred on social impact measurement and ICAP theory. Following repeated interrogation of existing literature and primary data, four themes were identified: education; independence and resilience; relationships and trust; and attitude to offending. These areas supported prior research by the Social Exclusion Unit (2002) that suggested recidivism may occur if education and training, employment, substance misuse, health, attitudes and self-control, life skills, housing, and family relationships are inappropriately addressed.
Education

Van Der Laan et al. (2009) suggested that long-term individual, family and education factors correlated with serious offending and antisocial behaviour. Further studies conducted by Machin and Meghir (2004) and Machin et al. (2011) reported empirical evidence of the positive effects of education on reducing acquisitive offences. Studies exploring the impact of education factors on desistance found that education has positive effects on reducing involvement in criminal activity (Van Der Laan et al., 2009; Machin and Meghir, 2004; Machin et al., 2011). A high proportion of participants had stopped attending education around 18 months before entering the STC, with an average education cessation age of 15 years-old. This finding raises questions about the effectiveness of education for this cohort of young people.

The negative impact of cessation in education for young people supports the ideas proposed by traditional strain theory around experiences of strain resulting from a failure to attain goals through legitimate means (Merton, 1938; Agnew, 1985; Farrington, 2003 and 2007; Van Der Laan et al., 2009). According to strain theorists, young people experiencing strain may resort to illegitimate means to achieve goals. The majority (76%) of young people in custody left education with no qualifications, training or employment opportunities. This reduces the legitimate means of achieving goals, hence influencing participation in criminal activity. In custody, young people receive 25 hours of education per week with the opportunity to complete GCSE and vocational qualifications; provision of such opportunities increases their available legitimate opportunities to achieve goals. On exploring satisfaction with education, young people that attended education prior to custody reported higher levels of satisfaction with education than those with prolonged absences from education. Satisfaction with education in the STC influenced the desire to continue with education, with those satisfied significantly more likely to continue with education or training on leaving the STC.

The number of young people in custody (36.4%) with Special Educational Needs [statement or Education, Health and Care (EHC) plan] was significantly higher than the national average for boys of 14.7% (DfE, 2016). Support for young people with Special
Educational Needs receives attention in government policy; however, support ceases for those Not in Education Employment of Training (NEET). From the case file information explored, 85% of young people were classed as NEET, with 36.4% reported to be SEN. The majority of young people failed to complete compulsory education before attendance ceased, with an average age for cessation of 14 years-old. The influence of educational factors (SEN, NEET, literacy and numeracy ability) on offending behaviour was explored by Lahey and Waldman (2005), Moffit (1997), and Sampson and Laub (1993).

Analysis showed that young people arriving at the centre had an average reading age of 12 years-old and average numeracy age of 11 years-old, whilst the mean age for young people accommodated in the centre was 16 years-old: 14.5% had a reading age between one and five years lower than expected and 24.0% had a reading age between six and eight years lower than expected. The differences in numeracy age were higher, with a numeracy age 5 years lower than expected in 50% of young people and a numeracy age between 6 and 8 years lower than expected in 35.4% of young people. On discharge from custody, the reading and numeracy ages for young people increased, with an average increase of seven months for reading age and nine months for numeracy age; the average increases in both reading and numeracy ages correlate with the length of sentences imposed. For young people receiving short custodial sentences the opportunities for improving their reading and numeracy skills is limited.

**Independence and Resilience**

Education plays a significant role in supporting young people to develop; however, in a custodial environment young people are isolated from society which reduces the opportunity for developing independence skills that are crucial on release (Maguire and Raynor, 2006). Whist the STC addresses active participation in education little is done to develop independence or resilience. Another important element of the STC statement of purpose relates to identifying stable living environments for young people (Dickens, Howell, Thoburn and Schofield, 2007). Dickens et al. (2007:639) found that young people require stable and secure accommodation to reduce the emotional turmoil resulting from “raised expectations and potential serial losses”. Knowledge of future stable and secure accommodation is central to reducing emotional turmoil, particularly for young people presenting emotional regulation difficulties (67.7% of participants had reported
emotional regulation difficulties). Despite the statement of purpose, results suggest that 58.5% of young people have limited or no knowledge of future accommodation plans, which could be seen to create insecurity and impact negatively on their emotional wellbeing and motivation for the future.

Developing resilience and independence in young people is central to promoting positive transitions (Masten, 2001). Masten (2001) explored the notion of resilience, focusing on the importance of the environment in fostering or hindering the individual’s ability to thrive, as a dynamic process with the interactions between the environment and individuals central to developing positive outcomes. The removal of adequate connected arrangements of support upon release creates a dislocation for young people at a time when they enter a difficult period confounded by a greater risk of involvement in criminal behaviour. Developing independence skills is equally important for promoting resilience in young people transitioning from custody, with young people receiving support to complete daily activities (e.g. cleaning, cooking), support that ceases upon release. Morris and Morris (1963) found that staff in custodial environments focused primarily on the custodial sentence, with limited emphasis on release preparations, a finding that this research supports. Over 50 years later, punishment appears to have remained the primary focus of custodial environments. Indeed, for young people leaving the STC, upon release the level of support reduces or ceases completely. Questionnaire data showed a significant number of young people (61.5%) received no support in learning independence skills or securing survival needs such as ‘a place to live, a place to work and people to love’ (Taxman, 2004:34).

**Relationships and Trust**

Traditional theories on youth crime and offending highlight the importance of relationships in shaping the behaviours of young people. Analysis showed that a high proportion of young people had exposure to pro-criminal family members and peers (Figure 3).
Research shows that strong and supportive relationships aid desistance from offending, highlighting that offending behaviour is influenced by poor family relationships, negative school experiences and delinquent influences (Sampson and Laub, 1993). Initial data analysis supports the work of Sampson and Laub (1993), with a high proportion of young people in the STC exposed to pro-criminal families and/or peers.

Another factor to consider in relation to family relationships was exposure to domestic violence, as 41.5% of research participants had witnessed or experienced domestic violence in their family home. Research by Kitzmann et al. (2003) found that exposure to parental aggression hinders the development of the psychosocial functioning of young people. Holt et al. (2006: 807) concluded that domestic violence “may resonate (for young people) inter-generationally with their own involvement in adult violence”. Information from a recent Ofsted (2017) report of the STC suggested that 37% (n=47) of young people had reported physical restraint since arriving and a significantly higher number will have witnessed this restraint. For young people with historical experiences of domestic violence, witnessing or experiencing a physical restraint in custody serves to mirror historical experiences, resulting in further trauma.

Given the importance of family relationships for young people in custody, the researcher examined the associations between mental wellbeing and relationships. Data shows that young people with positive family lives had significantly higher feelings of optimism and
usefulness. For these young people, the satisfaction with education and the desire to continue were also significantly higher. Developing positive and trustful relationships is central in motivating and supporting individuals to desist from offending, develop positive relationships and access services for support upon release (Clancy et al., 2006; Maguire and Raynor, 2006): Farrington and Ttofi (2014) discuss the importance of positive relationships and positive role models in reducing offending behaviour. Partridge (2004) explored trust, highlighting that young people do not want to share information with a succession of people.

Despite significant staff turnover, data suggests 95.4% of young people have positive relationships with some staff. On further exploration, young people reported relationship breakdowns following restraint, changes in case manager and/or inconsistent boundaries. Case files analysis shows that young people have significant relationships with an average of four members of staff (excluding unit staff members which vary on units). The impact of interventions delivered by staff members is influenced by the development of trust; however, this is challenging with young people in custody. This cohort will have experienced negative interactions with the criminal justice system (for example, police and social care), impacting on attitudes and relationships. The expectation that young people can develop significant and sustained trusting relationships with several staff members is unrealistic, reducing the impact of interventions (Hart, 2015). Hart (2015) recommended the creation of small living units, allowing staff and children to develop significant and trusting relationships. Before introducing small living units, organisations should consider the rates of turnover in order to minimise the impact on young people. Given the high turnover rates in STCs, training staff on managing change effectively is important in reducing the disruption caused to other staff members, young people and family members (Whitebook and Sakai, 2003).

Research conducted by Clancy et al. (2006), Maguire and Raynor (2006) and Lewis et al. (2007) highlighted the importance of continuity and trust in motivating and supporting desistance from offending. Young people in the STC report positive relationships with staff members on the units; however, the majority of interventions and key work sessions are delivered by different members of staff. This revolving door of professionals serves
to disrupt the continuity of trust between young people and staff, reducing the impact of interventions. Whilst acknowledging that ‘handover’ and change is inevitable in challenging environments, retaining the confidence and trust of young people relies on a sensitive transition process.

**Attitudes to offending and desistance**

Maruna’s (2001) research emphasised the role of personal narrative in understanding recidivism and desistance. This research suggested that recidivists viewed their personal circumstances and background as uncontrollable variables, while desisters acknowledged their responsibility for decisions and their control over life. Lewis et al. (2007) found that projects addressing attitudes and thinking with links to resources upon release are central to developing and sustaining motivation to change, resulting in higher rates of recidivism. Individuals sentenced to custody face several obstacles on release (for example, finding secure accommodation, reconnecting with friends and family, and securing education or employment). Zamble and Quinsey (1997) explored the impact of obstacles for adults leaving custody, finding that recidivists tended to respond with anger and despair, resulting in a decrease in motivation. For participants in this research, data shows that the majority (61.5%) felt no remorse for the crimes they had committed, with no desire to make amends. Given the high proportion of young people with pro-criminal relationships, young people learn definitions favourable to law violations rather than definitions unfavourable to law violations, in keeping with Sutherland’s (1947) concept of differential association.

Exploring the perceptions of staff on desistance allowed the researcher to understand staff views on the wider social impact of custody on young people. Despite the STC’s statement of purpose which highlights their aim of “preventing re-offending and preparing young people for their return to the community”, the researcher found that a significant number of staff (73%) felt that young people would offend in the future. This conflict between the theoretical purpose of STCs and the perceptions of staff members creates questions over the effectiveness of STCs. In comparison to staff perceptions, 27.7% of young people felt they would offend in the future and 23.1% were unsure. Given the fact young people receive limited opportunities to learn independence skills and
develop pro-social attitudes, both central elements to reducing recidivism (Masten, 2011), the social impact on a significant number of them is minimal.

**Rehabilitative Environment Model**

Based on the themes identified from this research, a model for developing an environment promoting positive outcomes and desistance was created by the researcher (Figure 4).

![Figure 4 – Rehabilitative Environment](image)

This model, developed by positioning Farrington’s (2005) framework within a wider SIM framework, highlights the key areas for developing positive outcomes for young people in custody (Farrington, 2005; Knowlton and Phillips, 2013 and Farrington and Ttofi, 2014). By monitoring and reviewing each step in this rehabilitation pyramid, STCs and Youth Justice Boards have the opportunity to measure the outcomes at each stage.
(Hazenberg et al., 2014). If satisfactory outcomes are not achieved, it is impossible to progress up the pyramid. An environment promoting positive outcomes is predicated upon developing safety, trust and continuity as supported by existing literature and the current research project. Before developing trust and continuity, however, addressing health, wellbeing and safety issues for young people is central to creating an environment for fostering positive outcomes. Developing trustful relationships is central in motivating and supporting young people to desist from offending and effectively transition from custody (Clancy et al., 2006; Maguire and Raynor, 2006). Developing trustful relationships is influenced by staff continuity and consistency, which is challenging in complex environments. Introducing small living units with consistent staff members allows staff and young people to develop significant trustful relationships.

Fostering the right environment creates opportunities for young people to engage in education and training. Participation in education, training and employment is beneficial in promoting desistance and achieving positive outcomes for young people. The average age of cessation from education for those in the STC is 14, meaning that creating a positive environment to encourage participation in education is key (Merton, 1938; Van Der Laan et al., 2009; Machin et al., 2011). Another important factor for young people in custodial environments relates to developing independence and resilience. As young people in custody are isolated from society, creating an environment that helps develop their independence skills and resilience is important and would support the initial stages of their rehabilitation by allowing them to explore their attitudes to offending while promoting positive outcomes.

**Conclusion**

This article sought to explore the use of social impact measurement as a form of organisational performance management for youth offending interventions. Measuring the social impact of youth offending interventions is a nascent area academically, with political and media attention focused on the offending and re-offending rates for this group. This article presented insights into the importance of education; independence and resilience; relationships and trust; and attitudes to offending in reducing recidivism and promoting desistance. By positioning ICAP theory within a wider SIM framework, an overall model (the rehabilitative model) was developed, providing the first steps in
introducing a model for measuring the wider impact of custody on young people. This rehabilitative model contains several sub-elements (i.e. relationships and trust), providing an opportunity for professionals to monitor and review the impact of each stage on young people in custody. This framework highlights the core factors of rehabilitation for young people in custody, paving the way for further research.

Acknowledging the limitations of findings from self-reported questionnaires are pivotal for developing further research. As statements in the questionnaire are fixed participants may misunderstand the statement or exaggerate responses. To reduce validity and reliability issues, responses were compared with data from the case file analysis and further research (semi-structured interviews) has been completed. Further research on developing a comprehensive social impact measurement framework for youth offending interventions remains a work in progress, with the interview stage nearing completion. Nevertheless, the early-stage data presented in this article suggests that a framework would provide a useful tool with which to assess outcomes for young people in custody, in order to better demonstrate those interventions that are most efficacious. Findings from this study have wider national and international relevance for the youth justice system, specifically in addressing the lack of effective measurement frameworks. Furthermore, the evidence gathered from such research provides support to those seeking to challenge the dominant policy discourse in youth justice that is centred upon punishment, control and retribution and has limited impact on recidivism.

References


**Claire Paterson-Young** completed an undergraduate and master’s degree in criminology and criminal justice. She has significant experience working in youth and restorative justice, child sexual exploitation and safeguarding. Claire is currently completing research on the use of social impact measurement on youth offending interventions at the University of Northampton.
The Retrospective Detective. Cognitive Bias and the Cold Case Homicide

Investigator

Jason Roach

Abstract

Current research on police psychology in criminal investigations assumes investigative decision-making in cold case (undetected) homicides to be the same as that of live/current homicide investigations, therefore not warranting exploration in its own right. In contrast, the present article suggests that significantly different psychological and contextual factors exist which can facilitate bias in investigator decision-making in cold case (undetected) homicides. These include the biasing effect of inheriting a chain of decisions often made by many previous investigators and the negative framing effect that the term ‘cold case’ can have on investigator confidence and on their subsequent investigative decision-making. Although the idea that cold case homicide investigation necessitates a different ‘investigative mindset’ to live cases is only suggested here, a possible agenda for a bespoke research project on cold case investigator decision-making is tentatively suggested.

Key words:

Police investigators; cold case, cognitive bias, homicide

Introduction

For one reason or another some crimes appear unsolvable, for example a stranger on stranger murder without witnesses, CCTV data, or any forensic evidence. Mercifully, most are not. The aim of this article is not to question the balance of priority which police might give to more recent crimes over historic unsolved ones, but to suggest that police investigators need to be made aware of several important psychological differences between live and cold case homicides that can have a negative influence on the investigative decisions that they make. Based on reading homicide case files and
from anecdotal conversations with police investigators, several examples of cognitive bias more likely to influence the investigator of a cold case homicide have emerged, culminating in the conclusion that undetected ‘cold’ case homicides often necessitate a slightly different ‘investigative mindset’ to the one propagated by the Murder Investigation Manual (ACPO/Centrex, 2006) developed for use in ‘live’ (or current) homicide investigations (Atkin and Roach, 2015). It is posited in this article that the term ‘cold case’ itself, can have a negative influence on investigator confidence with a subsequent negative effect on how a cold case homicide investigation is approached and conducted. This article begins with a short foray into the literature on investigative decision-making.

**Investigative decision-making**

Criminal investigators are human beings. As such their investigative decision-making relies on the same cognitive systems and processes as the decision-making in other (non-forensic) contexts, honed and selected as useful over evolutionary time scales (Roach and Pease, 2013b). It suffices to say here that psychologists have identified two broad decision-making processes (although admittedly considered an over-simplistic model by some). The first, *System 1*, operates quickly, automatically, effortlessly, associatively and is often emotionally charged (Stanovich and West, 2000; Kahneman, 2003; 2011) and represents what many of us would consider to be ‘intuition’ or ‘habit’. By contrast, *System 2* processing is slower, more effortful, controlled, serial, and is relatively flexible and potentially subject to rules (Kahneman, 2003; 2011). *System 2* processing represents what many of us would consider to be ‘rational thought’ or our ability to think more deeply about things and consider our actions before we act, although the fact is that many of the decisions we make during the course of a day will rely mainly on *system 1* thinking (i.e. decisions are intuitive and do not consciously employ formal types of reasoning). This has important implications for understanding investigator decision-making and has been widely researched in relation to live but not cold case investigations.

One of the defining properties of *System 1*, intuitive thought, is that it comes automatically and relies on ‘accessibility’ (Tory Higgins, 1996). Accessibility for example can be the mention of a familiar object (such as tree) or social category (such as
‘traveller’) and a wealth of associated information related to the category stereo-type comes to mind. The writer is reminded of an occasion when, on asking several officers with over twenty years’ police service, ‘who commits most of the acquisitive crime on your patch?’ all three immediately replied, ‘those from the traveller community’. When challenged to qualify their answers, the three were found to be from different forces (one had Leeds city centre as his patch) and only one admitted that the last couple of arrests he had made had been individuals from the traveller community. This is also an example of what is termed the ‘representativeness heuristic’ identified by cognitive psychologists and behavioural economists, whereby information of little or partial relevance is used as a basis for making decisions (e.g. Bar-Hillel, 1982; Kahneman and Tversky, 1982; Rossmo, 2009; Kahneman, 2011; Roach and Pease, 2013a). In this case a small number of traveller criminals are considered representative of the whole traveller community. On reflection, all three agreed that perhaps their reply had been greatly influenced by recent events and was perhaps subject to exaggeration. Psychologists refer to this type of system 1 thinking as schema theory, whereby for example the mention of the word ‘tree’, brings to mind associated information (schema) such as ‘branch’, ‘acorns’, ‘conkers’, ‘leaves’ and ‘huggers’.

The train of thought being followed is that when a homicide case is labelled ‘cold’, it can immediately trigger a specific schema or stream of associated information in an investigator’s System 1 thinking, which is likely to have a negative influence on how he/she perceives (1) the importance of a case and (2) whether they feel they are likely to make any progress, having in turn a negative impact on their conducting of the subsequent investigation. My point being that although investigators may be more vulnerable to certain types of cognitive bias in cold cases than in live/current homicide investigations, this is not explored in the research literature or acknowledged in police practice manuals.

In the UK, the concept of the detective as a specialist role requiring specific knowledge, skills, experience and resources (Atkin and Roach, 2015) has evolved over time as part of a wider move away from the traditional view of the ‘omnicompetent’ police officer (Stelfox, 2008). Although homicide investigation is generally seen to require different skill and knowledge sets to those of more mainstream policing, an omnicompetent view
of the detective is still visible by the fact that the same officers investigate all types of homicide suggesting the continued assumption of the 'omincompetent homicide detective' (Atkin and Roach, 2015). This article explores this by asking the question: are live and cold homicide investigations the same thing? We begin with an important influencer of investigator decision-making, the official guidance available to UK investigators.

**Investigative guidance in UK policing**

With regard to the conduct of criminal investigations, police in England and Wales are guided generically by *The Core Investigative Doctrine* (CID) and *Major Incident Room Standard Administrative Procedures* (MIRSAP). These are generic guidance in that they can be applied to a host of different types of criminal investigation, unlike for example the *Murder Investigation Manual* (MIM), which is specific to homicides. It is not my intention to criticise the MIM, indeed there is much to commend in trying to make criminal investigative practice and procedures for homicide more systematic and consistent and in providing valuable support to neophyte investigators. Such publications must not be overly-prescriptive as homicide is committed in a wide array of different contexts and scenarios, for example a gangland killing or the killing of a child by its step-parent, and a certain amount of investigator discretion will always be required. Moreover, as murders do not occur in the same circumstances and contexts, even if a definitive guide to investigating all murders was desired it would be unachievable. Instead the guide provides an outline of the necessary procedural requirements and processes (including evidential standards) for those conducting criminal investigations to consult and follow. Such guidance also provides a suitable benchmark by which individual investigations can be judged or reviewed, particularly those considered not to have reached a satisfactory conclusion (i.e. the identification and successful prosecution of a suspect).

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3 Theses and guidance on specific forms of homicide (e.g. child) are grouped together by the College of Policing under Authorised Professional Practice and can be found at https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/homicide/? (Accessed on the 12th December 2016).
A conclusion can be drawn therefore that in policing circles generally, no significant differences exist between the investigation of live/current and cold case homicides, evidenced by the fact that the guidance available (e.g. the MIM) does not itself differentiate between the two (Atkin and Roach, 2015). Put simply, there is no additional guidance or information for investigators of cold case homicides to draw upon in the MIM, as the same ‘investigative mindset’ is advocated for both types of investigation, and with no mention made of the potentially different biasing effects on investigators.

**Cognitive bias and criminal investigation**

The success of a criminal investigation (i.e. where a suspect is successfully identified, charged and convicted) largely depends on the correct decision-making of the investigator (Fahsing and Ask, 2013). We do not, however, inhabit a world which always facilitates such correct or optimal decision-making (see Kahneman, 2011). Optimal decision-making is often influenced by the pressures of the job, such as limited time and the competition for resources. Perhaps unsurprisingly, investigator objectivity has consistently been shown often to be debilitated (Ask and Granhag, 2007; Fahsing and Ask, 2013) and has led to numerous examples of miscarriages of justice (see Rossmo, 2009 for a fuller discussion).

Gollwitzer (1990) suggests that much human decision-making and consequently behaviour is ‘goal directed’. That is, we humans make decisions with specific goals in mind and there is little doubt that criminal investigators are any less human in this respect. Building on Gollwitzer and colleagues’ early work (Gollwitzer, Heckhausen and Steller, 1990), Fahsing and Ask (2013) tested the cognitive performance of criminal investigators’ decision-making across different stages of goal-directed behaviour. They found that when investigators were in the ‘deliberative mindset’ they were more open-minded and generated a greater number of hypotheses (for example about what might have happened and why) than when they adopted a more closed and narrow ‘implemental mindset’.

Although the research literature on investigative decision making in homicide investigations is replete with examples of how different types of cognitive bias, such as
'tunnel vision' (Rossmo, 2009; McLean and Roach, 2011), confirmation bias (Rossmo, 2009; Roach and Pease, 2013) and the 'representativeness heuristic' (Rossmo, 2009; McLean and Roach, 2011; Roach and Pease, 2013a) can and do negatively influence criminal investigations, it remains assumed by police and academics alike that:

(i) the same types of investigative decision are made irrespective of whether an investigation is live, historic or cold and then;

(ii) exactly the same types and contexts for cognitive bias exist that pose the same risks to both live and cold homicide investigations.

Research on cold case investigation is sparse when compared with that of live homicide investigation (Atkin and Roach, 2015). As Allsop (2012) states, the little that does exist tends to fall into two genres: practical resources for investigators (such as Silvia Pettem’s 2013 book *Cold Case Research: Resources for Unidentified, Missing, and Cold Homicide Cases*) or ‘true murders for an interested public’ (p. 179). To the writer’s knowledge, there has to date been no systematic study of investigative decision-making in cold case investigations and the different effects of cognitive bias on cold case investigators. By focusing on the as yet neglected area of decision making in cold case investigations, this article calls for research to question the assumption that cold and live investigations simply require the same thinking and so are vulnerable to the same cognitive bias.

A first question when looking at cognitive bias in cold case investigation is whether such cases are more likely to encourage an implemental rather than deliberative mindset. In this article the answer posited is yes. Next, follow some suggestions for how and why this is likely to be more the case for investigative thinking and decision-making in cold cases, compared with that of live homicide investigation. We begin with the common perceptions of the prefixes ‘live’, ‘historic’, and ‘cold’, when placed in front of ‘homicide’.

**Live, historic and cold homicide investigation. Substantively or semantically different?**

A logical place to start is with what live, historic and cold homicide cases are believed to mean, although these are not of course mutually exclusive or invariant over time. In fact, this is part of the argument: if investigators want to place a homicide into one of these three categories and keep it there, this will influence the mindset employed. However,
when commonly categorised, a live homicide (although seeming an oxymoron on first hearing) unsurprisingly refers to a current or recent case being investigated, whereby cold refers (arguably unsympathetically) to those cases where the investigation has not yielded a satisfactory conclusion (i.e. the killer has not been prosecuted or more commonly is yet to be identified). Although these often appear as two discrete categories created for investigative purposes, one must not forget that all cold homicides begin as live cases and some cold cases become live again, for example if a new witness comes forward or new forensic evidence comes to light. Use of the term historic homicides remains less defined, but generally is taken to be those cases where suspects are identified after a significant period of time - for example, in the case of Peter Tobin, where the gardens of his previous homes were searched for further victims after he was identified as a serial murderer. More recently the term ‘historic crime’ has become perhaps more synonymous with past ‘child sexual exploitation’ (CSE) in the minds of the British public, probably as a consequence of the high number of ‘historic’ investigations stretching back to the 1970s, which often involve prominent media celebrities of the time such as Operation Yew Tree incorporating many of the numerous Savile enquiries.

Deciding whether a homicide is live, historic or cold when understanding investigator decision-making is more than semantics. It is important because it is likely to affect the investigator’s initial level of confidence with regard to achieving a satisfactory investigative outcome. Figure 1 shows the logical flow of investigator confidence across all three different categories of homicide investigation.

Figure 1. Investigator confidence in different types of homicide investigation

- **Live homicide investigations**
- **Historic homicide investigations**
- **Cold case homicide investigations**

Let us hypothesise that all investigators begin live homicide investigations with the belief that they will get a ‘result’, so investigator confidence in all live investigations
should be highest initially. Given the live homicide clearance rate (usually around 92% in the UK), this confidence is well founded. For those beginning an investigation of historic homicide, although initial confidence is unlikely to be high, if investigating allegations against a likely suspect it should be reasonably high as there is a prime suspect to investigate. As Davis et al. (2014:375) point out, in the USA, although there is no 'universally accepted metric for when a case becomes cold', one year is seen by many to be the boundary between live and cold cases of homicide. In the UK, Innes and Clarke (2009) suggest that a case becomes cold when all viable leads have become exhausted. However a case may be defined 'cold' the fact that it is referred to as such is likely to have an immediate effect on those charged with investigating it. By definition, a cold case is likely to be considered the most difficult type of investigation to solve, with many investigators likely to have tried in the past but to no avail. Here somewhat unsurprisingly, it stands to reason that investigator confidence of success is likely to be much lower than for 'live' and 'historic' cases. This is reflected perhaps in the fact that solvability issues appear to be more important in determining the degree of resources given to a cold case investigation, with those promising more forensic leads prioritised over those cold cases with little or none (Atkin and Roach, 2015; Allsop, 2013). The most immediate (but not exhaustive) investigative differences between live and cold homicide cases are presented in Table 1.

Table 1. Investigative differences in live and cold homicide investigations.

<table>
<thead>
<tr>
<th></th>
<th>Live cases</th>
<th>Cold cases</th>
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<tbody>
<tr>
<td>Fresh</td>
<td>Previously investigated (possibly many times)</td>
<td></td>
</tr>
<tr>
<td>Real time</td>
<td>Long interval in time since the crime</td>
<td></td>
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<tr>
<td>High optimism</td>
<td>Low optimism</td>
<td></td>
</tr>
<tr>
<td>Greater chance of reliable witnesses</td>
<td>Less chance of reliable witnesses</td>
<td></td>
</tr>
<tr>
<td>Good chance of forensic evidence</td>
<td>Less chance of more forensic evidence</td>
<td></td>
</tr>
<tr>
<td>Control over gathering and storing of evidence</td>
<td>Little control over storing of past evidence</td>
<td></td>
</tr>
<tr>
<td>Greater utility of public appeals</td>
<td>Little utility in public appeals</td>
<td></td>
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<tr>
<td>Pressure is immediate</td>
<td>Pressure is less but constant</td>
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Table 1 suggests the level of investigator control in live homicides to be much greater than for cold cases, primarily because it appears, at face value at least, that the cold case investigator has little more to work with beyond that provided by previous investigators. Turning back the clock and beginning the investigation afresh is not an option, so the cold case investigator’s lot may not seem a happy one, with the likelihood of a successful detection looking slim.

Framing is the passive acceptance of the formulation given (Kahneman, 2003). The frame for cold case homicides suggests that by definition these are difficult if not impossible cases to solve, barring for example a recent breakthrough in forensic evidence. If this has not occurred, then the psychological effect on an officer or officers charged with investigating a cold case is likely to evoke pessimism and far more negativity than that for live and historic investigations. Put simply, the psychological frame for cold cases appears to be one of narrow investigative control with the investigative direction contingent on decisions made in previous investigations.

A related issue is whether investigators are likely to be equally pessimistic about all cold case homicides that they are asked to investigate and whether this has the same effect on investigators at the initial point of allocation irrespective of the cold case. An investigator assigned to a cold case homicide may not perceive it (or even approach it) in the same way if it involves a previous gross miscarriage of justice, as in the murder of Lesley Molseed, where the innocent, Stefan Kiszko, was imprisoned for sixteen years until eventually being exonerated in 1992 (Roach and Pease, 2009) as where a case does not involve miscarriage of justice. Similarly an investigator with little success in cold case investigations to date is more likely to be pessimistic about success in the next one.

A brief discussion of perceptions of ‘solvability’ and how they can influence investigator confidence in cold case homicides is presented next.

**Solvability and investigator confidence in cold case homicide investigations**
Dugan et al. (1999) found that although in the 1960s the vast majority of victims of homicide knew their killers, by 1992 in the USA this had dropped to 53% making homicide cases harder to solve and with a knock-on effect on clear-up rates and therefore a rise in the percentage becoming undetected, cold cases. 'Stranger on stranger' murders are often the most difficult to detect when a firearm has been used (Ousey and Lee, 2009) or where the homicide occurs in a high crime rate area (Borg and Parker, 2001). Roach (2012) in a study of two 'long interval detections' (where the homicide was solved decades after the crime by a DNA hit which identified the killer), found that detection had been severely hindered as both offenders had moved away from the area of the crime soon after the murder.

Davis et al. (2014), from a study of 189 solved and unsolved cases in Washington D.C., found that new information from witnesses or information from new witnesses (often criminal informants) was cited as the most common reason for case clear up. For cold cases specifically; crime context, initial investigation results, the basis for opening a cold case, and cold case investigator action, were found to be the factors that best predicted whether a case would be solved, and not new forensic evidence.

We turn next to the important influence of the interval of time since a homicide on investigator perceptions of solvability.

**Cognitive bias, time and the investigation of crime**

Although admittedly only hypothesised here, one likely biasing influence on cold case investigators’ decision-making is how confident they are of being able to get a satisfactory outcome (e.g. identifying the offender) when there has been a significant time interval between the original crime and when an investigator is asked to revive the case. The time since a crime has occurred is likely to impact on investigator confidence in achieving a successful outcome.

Investigator (and force) confidence in a successful outcome is likely to decrease as time passes, with the cold case investigator, for example, likely to be far less confident of achieving a satisfactory outcome after a two-year interval since the original crime (i.e. a detection) than the investigator of the same crime 6 months after it occurred. This is
mitigated if there is a major shift in its perceived solvability, when for example a significant witness comes forward, the discovery of new forensic evidence (e.g. DNA) or the offender confesses.

The effect of time on investigator confidence could be perceived as obvious and irrelevant, and as unrelated to investigative decision-making as all homicide investigations must be carried out in the same way irrespective of whether they are live or cold. As stated earlier, the purpose of this article is to question this assumption. The hypothesis posited is that cold case investigations demand a different investigative mindset because they are in many ways very different to live investigations. The effect of elapsed time is not the only important influence of potential bias here on investigator

Box 1. Framing effects and investigator confidence

Imagine that you are a police investigator given the cold case homicide of a young woman who was killed two years previously.

1. Based on this information how confident do you think that you would be that you were able to solve this case?

2. You quickly discover a new potential witness but no new forensic evidence. Now how confident do you think that you would be that you were able to solve this case?

3. Upon reading the case files you see that a number of great detectives have worked on this case in the past. Now how confident do you think that you would be that you were able to solve this case?

4. A number of live homicide cases come in at the same time with which you must be involved and you are also told that few resources are available to you for this cold case investigation. Now how confident do you think you would be that you would be able to solve this case?

How confident are you that you can progress this investigation in any way?

(and force) confidence in cold case homicide investigations. Box 1 presents a brief thought experiment:
The thinking hopefully stimulated by Box 1 is that investigator confidence can be easily influenced by the inclusion of new information, for example discovering a new witness is more likely to increase confidence, whereas realising that some great detectives have tried to solve the case in the past is likely to reduce it. Investigator confidence, like the mortgage rate, can go up as well as down as the perception of a case changes. How an investigator perceives a cold case can be influenced by a host of different variables, such as whether the case was previously investigated by a renowned detective, which in turn can affect their level of confidence in achieving a successful outcome. Put bluntly, if an investigator believes a case to be unsolvable before they have looked at it, then it most certainly is. Through this framing, they become a victim of confirmation bias by simply confirming investigative decisions made by previous investigators.

**Confirmation bias and the cold case homicide review**

Confirmation (or verification) bias is arguably the most researched influencer of investigative decision-making, whereby people tend to seek information that supports an existing belief over that which refutes or challenges it (Evans 1989; Nickerson, 1998; Kahneman, 2011). It leads to *selective information searching* (see Ask and Granhag, 2005; Snyder and Swann, 1978; Wason, 1968) where information supporting a favoured hypothesis is prioritised over that which does not support it, producing a biased interpretation of the available information (e.g. Snyder and Swann, 1978; Wason, 1968). Here, information available is interpreted in ways that are partial toward existing beliefs (Ask and Granhag, 2005). Seen in an investigative context, the effects of confirmation bias on investigative decision making is well documented, replete with examples of where it has played a major part in gross miscarriages of justice, such as that of Stefan Kiszko (Roach and Pease, 2009) mentioned earlier. Confirmation bias has led to other similarly disastrous investigative failures, such as that of Peter Sutcliffe, known as the Yorkshire Ripper (e.g. Rossmo, 2009: Roach and Pease, 2009). Stelfox and Pease (2005) identify confirmation bias to be the common result of adopting an implemental mindset, for example when investigators jump prematurely from the process of ‘suspect identification’ to ‘suspect verification’ (see Rossmo, 2009, for a very good account).
To date, research into the effects of confirmation bias on investigative decision-making has only focused on how live investigations are affected and not the probable cumulative effect of a succession of investigators working on the same undetected case. Confirmation bias can adversely affect investigator decision-making in cold cases in relation to the reviewing of cold cases and understanding what is actually meant by the term ‘review’ in the first place. Turner (2005:3) defines the investigative review process as:

A constructive evaluation of the conduct of an investigation to ensure an objective and thorough investigation has been conducted to national standards which seeks to ensure investigative opportunities are not overlooked and that good practice is identified.

That Turner’s (2005) definition captures well the necessity for and function of an effective review process in criminal investigation is not disputed here, but rather whether current review processes are setup exclusively with live investigations in mind and so do not fit well with cold case investigation (Atkin and Roach, 2015). The current case review process in England and Wales has several stages:

1. Management intervention – review within 24 hours to check that nothing has been missed and confirm staffing.
2. 28 day review or progress review – formal review with a full team utilised
3. Thematic reviews
4. Closure review
5. Peer reviews
6. Cold case reviews
7. Multi-agency reviews (e.g. serious case reviews; MAPPA).
8. Hot de-briefs


Taken as a whole the current review process appears to be quite thorough but by the time a case is considered cold that thoroughness does not appear to be equally applied, with the review of a cold case described thus, ‘If no viable lines of enquiry are left then enter ‘investigative maintenance process’ (Fox, 2007:141).
What the ‘maintenance process’ actually consists of is not elaborated on with, for example, little guidance given about the methodology to be adopted in live homicide cases and none given at all about how to prepare for and review cold cases (Atkin and Roach, 2015). Whether reviews of cold cases are actually often proper reviews at all is therefore debatable. Whether the frame for cold case review is far too narrow is not. I suggest that this point is important to cold case investigations for several reasons. First, a review of a cold case generally means a review of all the previous reviews and sometimes just the most recent one. If proven to be the case, then any confirmation bias in an initial investigation is likely to remain unrecognised by those ‘reviewing’ the same case evidence years later. Second, and perhaps most obvious, is that the reviewing officer with no new leads to follow is likely to agree with the decision-making of the initial investigator providing the correct procedures have been followed. As was previously suggested, nothing is more likely to excite confirmation bias than the perception of cold cases as ‘unsolvable’.

Third, as the cold case investigator has to rely on the evidence collected by the initial investigator, they will be in danger of succumbing to a biased interpretation of the information available to them, particularly if the case is a high-profile, famous one then they will have little information with which to refute any hypotheses held by the initial investigator. One can merely speculate here on the objectivity in which investigative decision-making and evidence is recorded by investigators for future investigators to review/use (Atkin and Roach, 2015). Research has consistently shown that we are not objective surveyors of our world (Rossmo, 2009) rather we are influenced by our experiences and expectations (Heuer, 1999). Moreover, what we remember depends on what we believe (Begley, 2005) and the cold case investigator that remembers a case from the media coverage years before is unlikely to be as objective as the one with no prior knowledge of the case – erroneous or otherwise.

Cognitive bias can affect investigators of cold case homicides in a number of different ways to live homicide investigations. One other example of how such bias can have an effect on cold case investigators is how they justify working on (or not working on) a cold case in the first place. Allsop (2013:373) presents some interesting research on the ‘motivational vocabularies’ used by cold case investigators which she distils down to:
(1) Because we can
(2) Because victims and families deserve it.
(3) Because justice deserves it.
(4) As a preventative measure.

The obvious question to be explored is the influence of cognitive bias and other variables on whether an investigator will use one of Allsop's motivational vocabularies to justify the resources necessary to conduct a cold case investigation or not, although this is beyond the scope of this article.

This article aims to inspire research in the area of investigative decision-making in cold cases, or at least to provoke some thinking about it. To this end, it concludes with a brief and tentative agenda for further research.

**Cognitive bias and the cold case investigation: A tentative research agenda**

To re-state the central argument: the cognitive influencers on investigative decision-making are arguably different in form and intensity in live and cold case homicide investigations and warrant empirical testing and exploration. They are not the same and so do not require exactly the same thinking and approach. The following represents a tentative research agenda:

1. Research that focuses on the different priming effects that different types of homicide investigation can have on investigators because the words 'live' (current), 'historic', and 'cold case' are more than likely to prime investigators into certain ways of thinking (i.e. framing). What is needed is research which identifies this framing effect by which a sample of investigators are asked questions relating to their initial thoughts when tasked with 'live', 'historic' and a 'cold case' homicide scenarios. The level and frequency of which system of thinking is employed needs to be understood.

2. Research to identify the variables which affect investigator confidence most in cold case investigations in order to generate a better understanding of how decisions are made and influenced in cold case homicide investigations.

3. Research which focuses on what is actually meant by a 'review' in cold cases, such as what a review usually entails and the common features necessary to trigger a full 'root and branch' review.
4. Research to identify whether a difference exists in the way that investigators think about and approach cold cases that are simply undetected compared with those which previously led to a miscarriage of justice. One presumes the latter will be more likely to be reviewed in the fullest sense of the word.

5. Cold case reviews are normally conducted by teams and not individuals. Research is needed that focuses on how group dynamics play a role in inadvertently encouraging cognitive bias, for example a team member opining that ‘there is no point in trying to solve this case’, is likely to negatively affect the confidence and conviction of the rest of the investigation team, particularly where the pessimist is the senior investigating officer.

6. Research exploring the biasing effect of prior knowledge of a case on cold case investigators. Roach and Pease (2009) suggest that the only way to achieve an objective approach to a cold case review is to bring in officers with no prior knowledge of it at all, either from another force or, even better, from another country.

This agenda is as tentative as it is incomplete. I hope to have warmed the thinking around cold case decision-making and moved on the research agenda a little with this brief discussion. Please do contact me for further information on these issues.

References


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Criminal Records: The relationship between music, criminalisation and harm

Eleanor Peters

Abstract
This paper will be examining how the state and corporations use, abuse, regulate and control music. Beginning with a discussion of ‘actual’ harms, the paper analyses state agents’ use of music in conflict situations including as part of so-called ‘torture-lite’ techniques, and briefly discussing the use of music as a punishment. The paper then explores the ways ‘deviant’ and ‘dangerous’ music is defined, suppressed and regulated via law and the market, leading to power imbalances and inequalities in the ability of some to access freedom of speech and expression via production or consumption of music.

Key words:
Music, torture, censorship, harm, rights

Introduction
Music (and sound in general) may not seem to be an obvious choice for criminological consideration, but there are promising areas of analysis in the relationship between sound, music, rights and harm. There are connections between music and crime beyond the obviously criminogenic ones of copyright and peer-to-peer file sharing, for example, towards wider harms that can be scrutinized in the interplay of the state, state agents and corporations. Law regulates and disciplines popular culture and there are power issues at play in whose, when, and what music and sound is labelled as deviant and this can lead to an erosion of liberty. Agencies of control are able to define the meanings of cultural products (DeNora 2010); the state can then be in the dichotomous position of having the power to control and to define some music as deviant but then channel that offensive and
undesirable music to its own purposes (via their agents such as soldiers, or via their ‘partners’ such as powerful corporations).

These are not new areas to social science in that cultural studies examines music, usually about its connection to societies, and cultural criminology has analysed issues of power, political control and how inequality is reproduced (Muzzatti 2006), particularly through theorists such as Ferrell et al. (2008) and Presdee (2004). However, with some notable exceptions, Cloonan (2003; 2007) and Cusick (2006; 2008) for example, sociologists and musicologists have seemed reticent to look at the ‘dark side of music’ (Hirsch 2007). In terms of criminology, the scarcity is more pronounced and as Kauzlarich and Awsumb (2012; 502) say ‘few expressly critical criminological studies have been conducted on the relationship between music and deviance.’ There are several aspects of music that should be of interest to criminologists, such as ‘the relationship between music and law, music and the market, and music and the state’ (Brabazon 2012; 200) and utilising a human rights and harms approach, this paper will offer a contribution to this small but growing area.

**Music, sound, noise**

Noise and music are not objective terms because they are connected to perception; music is regarded as positive sounds while noise is ‘a problem, a disordered sound that is unpleasant to the ears’ (Brabazon 2012; 50), an unwanted sound (Thompson 2014). Music is a socially defined set of sounds interpreted and constructed differently by listeners - classical music is generally less popular than rock and pop music (Kotarba 2009). Within popular music there are several well-studied genres or subcultures, such as punk (Savage 1991), heavy metal (Weinstein 2000), rap (Keyes 2002), goth (Hodgkinson 2002) and country music (Peterson 1997) which bring with them their own aesthetics and are subject to social construction via issues of ‘taste’ and cultural construction (Washburne and Derno 2004). Steven Jones of the Security Association for the Maritime Industry, when discussing the use of Britney Spears songs to deter pirates off the coast of Somalia, stated: ‘I’d imagine using Justin Bieber would be against the Geneva Convention’ (Radnedge 2013). The reason this makes sense to us is because of perceptions about Bieber’s music. There is a direct appeal to the public’s understanding
of his music as poppy, lacking in substance, even ‘naff’, so that Jones’ statement about violating human rights conventions becomes humorous.

Other famous examples of using ‘terrible’ music as punishment include a Canadian police force threatening Christmas drink-drivers with playing Nickelback in the squad car on the way to the cells and Rockdale Council in Sydney, Australia using the music of Barry Manilow to prevent young people from loitering outside shops (Peters 2016). One judge, incensed at young people playing music too loud from their cars in certain Colorado, USA neighbourhoods, sentenced them to his music immersion programme where they were, ‘punished and educated’ (Hirsch 2011; 40) by having classical and easy listening pop music played to them (including, again, Barry Manilow!). The various uses of music – as a punishment, as a weapon, as (re)education and conversely as an uplifting experience - forms the thematic framework for this article, which considers the uses and abuses of music in terms of rights and harm, and the potential for the erosion of freedoms and liberty.

Using human rights (and harms) to analyse music

The source of human rights is problematic to identify as it encompasses issues of morality, politics, equality and individual and collective social justice. Criminologists draw on the concept of natural law to illustrate how, just because something is legal, that does not necessarily mean that it is morally right or just. Although for some this could be a root of human rights, modern human rights theorists tend to conceptualise rights as social constructions, driven as much by politics as anything else (Freeman 2017).

This article is concerned with the erosion of the protection of rights in the terms of freedom and autonomy which can be infringed on by the state, even when no specific laws are necessarily being violated. In terms of wider surveillance, Cohen (1993) includes leisure as one aspect of life which is co-opted as part of the mechanism of social control which saturates public spaces in addition to the places where we live and work. Power is wielded when certain sounds or ‘noise’ can be heard, while the noise others can make is reduced by means of surveillance and social control (Attali 1984). Violation of human rights means that the intellectual and practical tools to improve the human condition are compromised (Quinney and Wildeman in Henry and Lanier 2001). As Presdee (2000: 17)
says ‘the powerful also define through culture what music is carnival and what is not; where and when it is played and where not’, which often results in restrictions of expression.

This next section considers how music can be understood as violating human rights and causing harms in terms of ‘actual’ harm, for example direct violence such as torture and physical and psychological harm; and symbolic violence, such as cultural repression, lack of freedom of expression, state and corporate repression and suppression of music (Salmi 2004).

**Music in war and conflict**
The use of music in war has a long history with the use of flutes, bugles and drums accompanying marching armies since ancient Greek times (Meilinger 2016), whether to aid marching battalions or boost morale or send messages (Norris 2012). The use of music as deception during war also has a long history, illustrated during World War Two when propaganda was broadcast on allied radio by playing popular songs with anti-German lyrics (Evans 2009). Use of music during the Holocaust has been documented and there are examples of resistance in music and songs composed during this period (Flam 1992). Prisoners who were members of concentration camp orchestras had a higher chance of surviving the war as these orchestras were valued by Nazi guards (Eckhard 2001), despite music also being used to torture and terrorize in the camps (Moreno 2006).

Developments in technology added to the portability of sound in conflict situations. The use of music during the Vietnam War is particularly well known, often due to the large number of cultural references regarding this conflict, perhaps the most well-known being the *Ride of the Valkyries* scene in the Francis Ford Coppola film *Apocalypse Now* (1979). Playing music from loudspeakers mounted on helicopters was used during Operation Lam Son 719 in Laos during the Vietnam War and it was also documented during the US intervention in Grenada in late 1993 (Garofolo 2012), although the use appears to have been more to distract the enemy, to disrupt sleep and rest and the ability to communicate to their troops rather than other purposes.
Another famous use of music as a weapon in conflict was in Operation Just Cause, when the former Panama leader Manuel Noriega was taking refuge from US forces in the Papal Nuncio in Panama City (essentially the Vatican Embassy). The New York Times reported that Noriega, tired and tormented by deafening heavy metal music directed towards the building, surrendered on January 4th, 1990 (Archibold 2011). The music used was broadcast from United States military radio and prior to Christmas the radio station played requests from the troops, which were for bands such as Guns 'N Roses and Twisted Sister, along with seasonal Christmas songs. Following the Christmas period, the radio station was contacted by a psychological military operations (PSYOP) officer who provided a list of 95 songs to be played which were designed to demoralise Noriega, such as Bruce Springsteen’s *Born to Run* and *Nowhere to Run* by Martha and the Vandellas (Ross 2016).

It does not necessarily have to be music that is used, sound in general can be used for harm (see reports of the use of sound against civilian populations in Kingsley and Henley 2015 and McGreal 2005), although the following section will look at why music can be especially problematic in cultural terms when used for hostile purposes (Cusick 2006). British government actions conducted during the conflict in Northern Ireland in the late 1960s and early 1970s was judged as tantamount to torture (Cobain 2012). In Operation Demetrius, twelve men were deprived of food and water and subjected to prolonged stress positions and ‘white noise’ (machine generated disturbing high-pitched sound). One man who was 20 years old at the time was so affected by the white noise that he hit his head repeatedly and began hallucinating (Hirsch 2012). Despite an original conclusion by the European Commission of Human Rights in 1976 that the techniques were torture, this was later overruled by the European Court of Human Rights when the techniques were judged to be consistent with inhuman and degrading treatment (Gallagher 2015).

There were reports of music being used by troops in the US-led coalition Gulf war. During ‘Operation Desert Storm, soldiers played their own music via tape recorders and other devices as motivation for impending combat. Pieslak’s (2007) study of the music used by soldiers showed that heavy metal predominated, with bands such as AC/DC and Megadeth proving popular. During the invasions of Afghanistan in 2001 and in Iraq in 2003, changes in technology meant that CD players and MP3s were more readily used by
troops (Von Lunen 2012). Speakers were hooked up to vehicles during the battle of Fallujah which took place in November 2004 and blaring heavy metal particularly Metallica was played over these loud speakers to anger insurgent fighters (Cusick 2006). In addition to culturally alien music being played by soldiers prior and during combat (Johnson and Cloonan 2009) music was also used for propaganda purposes. For example, allied forces distributed wind up radios across Afghanistan for the population to pick up British or American radio stations (BBC 2001). Knowing that the Taliban had banned music (discussed further in the next section), troops purposely used recordings consisting mostly of traditional Afghani folk songs to appeal to the local population and in between songs broadcast information and messages about the war.

Recent interest in music as torture arose with reports from Guantanamo Bay about the use of a range of so-called ‘torture-lite’ techniques. Techniques such as waterboarding, which is designed to make the victim feel as if they are drowning, were designed to cause psychological stress but not leave physical signs of harm (Cusick 2006). Loud music and sounds were used alongside sensory deprivation such as hooding to cause sleep deprivation and disorientation. Binyam Mohamed, an Ethiopian-born British resident who was arrested in Pakistan and held by the US authorities as a suspected Taliban fighter, described being tortured in Guantanamo Bay: "It was pitch black... there was loud music, Eminem's Slim Shady and Dr Dre for 20 days ..." (Swash 2008). Music that in other contexts might be associated with leisure and enjoyment have now become tools of torture.

Music, or any noise, can be a source of pain and the consequence of excessive sound can result in slower thinking, neurosis, increased respiration and heart rate, raised blood pressure and difficulties in speaking (Attali 1985). Any repetitious noise can be used for harm but in cases such the Iraq war and in Guantanamo Bay the choice of music used is culturally alien and discordant to ‘the enemy’ such as heavy metal and rap. For example, during interrogations of Iraqi fighters, American interrogators played the song Enter Sandman by the heavy metal group Metallica, which they apparently found to be effective as an interrogation tool (Smyczek 2005). There is an ideology apparent in the use of heavy metal, perceived as the loud, angry music of outsiders (Gilman 2010). Despite some opposition to the use of their music for the purposes of torture by bands such as Rage
Against the Machine (Swash 2008), certain bands are not unhappy to have their music used in this way (Stafford Smith 2008), although there is little artists can do about the unauthorised use of their music beyond the possibility of utilising the concept of moral rights (Greenfield & Osborn 2003; Schwender 2013).

Censorship

The use of music within recent conflicts such as that in Afghanistan is particularly interesting considering the history of censorship of music in that region. Despite there being no Islamic ban on music and Afghanistan having a rich musical history, there have been various periods of music censorship in the recent history of the country. When the Taliban took control of Kabul in 1996 several edicts were published against music. All musical instruments were banned and destroyed, often in public, as were confiscated audio and video cassettes and TV sets. While in the west this censorship could be attributed to the puritanical interpretation of Islam practised by the Taliban, there were restrictions earlier than this throughout the Communist period in the late 1970s and in the post-Communist period (1992-1996) music was heavily censored (Baily 2001). Although it may be no surprise that the Soviet Union controlled music output, more recently the Russian government have come under international pressure following the imprisonment of three women in the group Pussy Riot for hooliganism motivated by religious hatred (Zabyelina and Ivashkov 2017). There is also widespread censorship of music, as well as television and other media, in Uzbekistan (Freemuse 2016).

This is not just an issue for autocratic states because these harms of omission in neo-liberal capitalist countries can suppress human flourishing and the achievement of the ‘good life’ (Buchanan 1989). In modern rights language, this can be restrictions of individuals’ and certain groups’ freedom of thought, speech and expression.4 ‘The act of music censorship implicitly or explicitly assumes that music is in some way socially significant.’ (Kahn-Harris 2003; 81). Where music has perceived negative consequences then censorship can be a perceived answer, for example German authorities banned the

4 Article 18 of the Universal Declaration of Human Rights (UDHR) - Article 9 in European Convention of Human Rights (ECHR) / Human Rights Act (HRA) - protects the right to freedom of thought, belief and religion and Article 19 (Article 10 in ECHR / HRA) protects the right to freedom of opinion and expression.
sale, manufacture and distribution of music from neo-Nazi bands such as Storkraft because of their racist ideology (*New York Times* 1992). This could be perceived as a legitimate ‘brake’ on the limited right of freedom of speech and international human rights conventions provide scope for restrictions if this is for legitimate aims, such as national security or in the prevention of crime and disorder.⁵ However, state measures against these neo-Nazi bands mean that their concerts, which the German government perceive as sites of recruitment, go underground rather than disappear (Brown 2004).

There are difficulties in defining censorship, particularly given globalisation and the rise of the internet, as trans-national classifications are problematic because of the differing histories of global players in the music industries. For example, the United States has the first amendment in the Bill of Rights.⁶ Despite a common-law presumption of freedom of speech (Davis 2013), the UK had some of the most restrictive censorship laws in western Europe and until the Human Rights Act had no laws protecting the public’s right to free speech (Brabazon 2012; Lester 2016). However, the global reach of the internet has resulted in a decline in the power of nation states to censor materials that enter its jurisdiction.

Another issue of importance is that of purpose and intention because music involves socially determined meanings in articulation, communication and transmission and there are both moral and corporate interest protection issues to consider (Brown 2004). Restriction of access rather than outright bans might be viewed as appropriate; for example, the British Board of Film Classification (BBFC) examines and rates films and videos by age appropriateness before they are released. However, subjective values

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⁵ ECHR Art 10 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (European Convention on Human Rights Article 10).

⁶ Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (American Civil Liberties Union 2017)
about culture and taste are bought into the systems of restriction which states operate, and also some market-based decisions within the music industry indicate that the issue is as much about alteration as it is outright suppression. As Cloonan (2003; 15) states, censorship occurs when ‘an agent (or agents) attempts to, and/or succeeds in, significantly altering and/or curtailing the freedom of expression of another agent with a view to limiting the likely audience for that expression’.

In most western democracies, there is a privatisation of censorship, in that censorship is often devolved from the state into private hands. Although there may not often be state sponsored prior restraint to music production and distribution in western liberal democracies, several pressure groups have existed such as the Parents Music Resource Center (PMRC)\(^7\) in the US and the National Viewers’ and Listeners’ Association (NVALA)\(^8\) in the UK who make censorial demands (Cloonan 2003). These groups call for artists to exercise prior self-restraint and campaign for market based exclusions for those who refuse to accept limitations on their artistic freedom of expression. As a result, a product can be made unavailable to buy in certain high-volume marketplaces; for example, Wal-Mart has a history of not stocking certain music, demanding altered sleeve covers if the images are deemed unpalatable, and requiring sanitised versions of ‘offensive’ songs to fit into their ‘family ethos’ (Klein 2010: 166).

State political censorship is still demonstrable in liberal western democracies, however, and O’Higgins (in Brabazon 2012) describes various forms of censorship including obvious ones such as self-censorship and legal censorship, but also less recognisable ones such as subterranean and extra-legal. An example of extra-legal censorship was the Independent Broadcasting Authority (IBA)\(^9\) banning The Pogue’s song *Streets of Sorrow/Birmingham Six* as the IBA believed it could be considered as ‘soliciting opinion’ for the Irish Republican Army (IRA), an organisation proscribed by government. This is

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\(^7\) PMRC were particularly influential in the 1980s, inventing the ‘PAL mark’, the parental advisory explicit content label which was attached to albums deemed to have excessive swearing or sexual or violent content. The label is now also used on online content and is administered via the recording industry association of America (www.riaa.com)

\(^8\) Now called Mediawatch UK

\(^9\) IBA was a telecommunications regulatory body in the United Kingdom, disbanded 1990 superseded by Oftel and currently Ofcom (Office of Communications).
an example of political censorship but one carried out by an independent organisation rather than the state. A more recent example can be found following the death of former Prime Minister Margaret Thatcher in April 2013 when a Facebook-based campaign was launched to make ‘Ding dong! The witch is dead’ (from the film The Wizard of Oz) number one in the UK singles chart. Although not quite getting to the top spot, the song went into the chart top 5 and there was discussion in the media about whether the weekly chart countdown show on BBC Radio One should play the song (Express 2013). The song itself would not have raised much comment, aside from why a 50-odd year-old song had suddenly made a come-back, but it was the social and political environment surrounding it that caused apprehension. The Radio One controller at the time Ben Cooper said the decision not to play the song had been a "difficult compromise", balancing respect for someone who had just died with issues around freedom of speech (BBC 2013). The UK's official charts company considered it ‘one of the most controversial chart contenders of all time’ (Turner 2013). It is interesting to note that commercial radio stations followed the publicly-funded BBC in not playing the song in full, despite it being a mere 51 seconds long, and both BBC and independent stations provided news reports into the reasons for the campaign rather than play the song.

Defining music as ‘deviant’, ‘dangerous’ or ‘offensive’ is an exercise in power which allows for its suppression, limitation and surveillance (Korpe et al 2006). For example, concerts by artists from certain genres may be banned because authorities cite potential unrest and disorder should they occur (Horsfall 2013; Topping 2012; Gray 2010), thereby meeting the requirement of a proportionate, legitimate limitation on this qualified right. Grime and urban artists have recently found themselves being unable to find venues to play in following ‘risk assessments’ by licensing authorities (Olutayo 2017). Decoding music is problematic, but the classification of ‘danger’ often focuses on words, such as perceptions of misogynistic lyrics in rap and songs celebrating satanic rituals and violence in death metal (Brabazon 2012; Gray 2010; Weinstein 2000; Tatum 1999). Freedom of expression is an important aspect of human rights, and artistic expression is protected because of its perceived importance for individual fulfilment and as a means of communicating and developing ideas. Critics of censorship, such as the organisation Liberty, highlight the ‘chilling effect’ that disproportionate restriction can have on expression (Tambini et al 2008). One means by which to restrict ‘dangerous’ music is to
suggest it is outside legitimate free speech, and has ‘tipped over’ into being obscene and is therefore illegal.

Social control of deviancy includes both reactive and proactive restriction on the part of the state and others (Cohen 1995) and what occurs is a form of cultural protection - in part as a means to control the masses (Korpe et al 2003). Although the US has the First Amendment under which most artistic expression is protected, material deemed obscene is not protected. The definitions of obscene comes from *Miller v California*, 413 U.S. 15 [1973] and this determines ‘obscene’ to be ‘without socially redeeming value’ and lacking ‘serious literary, artistic, political, or scientific value’ (known as the SLAPS test) (Nuzum 2005). Material deemed ‘harmful to minors’ is also not covered by the First Amendment and music can be designated as ‘inciteful speech’ (Fischer 2003) and again outside the remit of free speech.

In the United Kingdom, legal dealings with obscenity developed incrementally via common law of obscene libel, but in England and Wales in 1959 the Obscene Publications Act was passed which defines obscenity as ‘content whose effect will tend to deprave and corrupt those likely to read, see or hear it’ (Corrin and Gask 2009; 147). The first song to be prosecuted under the Obscene Publications Act was the song ‘So What?’ by the Anti Nowhere League, following complaints by the pressure group the NVALA about the song’s content and use of five supposedly obscene words (Cloonan 1995). With the growth of the internet, the use of various other laws has impacted on freedom of speech and expression, particularly section 1 of the Malicious Communications Act 1988\(^\text{10}\) and section 127 of the Communications Act 2003.\(^\text{11}\) Ofcom’s guidance to broadcasters about

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\(^\text{10}\) It is illegal in England and Wales to "send or deliver letters or other articles for the purpose of causing distress or anxiety"; although the Malicious Communications Act 1988 was designed pre-internet it was updated in 2001 to include electronic communications.

\(^\text{11}\) ‘Sending ‘by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character’ is illegal. The Communications Act 2003 consolidates previous regulatory bodies for the broadcasting, telecommunications and postal industries into the Office for Communications (Ofcom) who regulate speech, music sound and visual images.
not playing songs with offensive lyrics when children are likely to hear them (Dowell 2011b) and directives about pre-watershed ‘raunchy’ music videos (Dowell 2011a) shows state appetite for censorship of music is still very much in evidence.

**Conclusion**

How the state and corporations use, abuse and control music and those who make it, play it and listen to it is a fitting topic for the criminological consideration of power, rights and harm. The misuse of cultural outputs for torture and acoustic bombardment are blatant misuses of music for harmful ends, many of which contravene human rights articles. The use of music as a weapon of war and conflict or as punishment in the criminal justice system takes something society generally perceives as intrinsically ‘good’ and subverts it.

States, their agents and corporations have the power to control and to define some music as deviant or offensive and therefore restrict it, suppress it, or subject it to an outright ban. In both environments, economic censorship is likely to be the greatest barrier to full expression for many people. Lack of equipment and space in which to play music, the scarcity of time and money to be able to spend on creative pursuits are immeasurable. Freedom of speech and expression are important issues because they reinforce all other human rights and are essential for society to be able to discuss, debate and effect change in society. The curtailment of expression and cultural innovation is a problematic one in free democratic countries as well as in obviously more repressive states, as is the use of violence by states and their agents, and the criminological study of music is a developing area to examine these phenomena.
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