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EDITORIAL
Jean Hine, Reader in Criminology, De Montfort University

The Criminal Justice System, along with many public services, is in a state of flux, with numerous proposals, white papers and legislation in various stages of implementation. Some aspects of this have been highlighted in the Community Justice Files in previous issues of the British Journal of Community Justice and others are presented in this issue. As we go to press yet more plans are announced with the publication of Swift and Sure Justice\(^1\), which includes proposals to speed up court cases and ‘engage local communities in dealing with low-level offending’. The proposals are wide-ranging, including plans for different court procedures and extended court sittings, plans to simplify and extend police-led prosecutions, and to ‘open the services to new providers and introduce alternative models of delivery including new forms of partnership with the private sector and mutuals’. These proposals clearly fit with the overall government agenda for the localisation of services and introduction of competition for the provision of services.

Whilst the government will be introducing legislation and structures to require and enable these changes to take place, what is unknown is how they will be implemented in practice. There are numerous examples of policy initiatives failing at implementation stage, despite substantial resources being invested in them. The first paper in this issue addresses just that question in relation to an apparent lack of anticipated change in policing practice following substantial review and revamping of the training of police officers. It is with great pleasure that we publish Reforming the Force: An Examination of the Impact of the Operational Sub-culture on Reform and Modernisation within the Police Service, which is the winning entry in the Brian Williams Memorial Prize 2011. This is the first article published by Chris Alcott, a serving police officer currently studying for a Professional Doctorate at De Montfort University. His article draws on the research undertaken for his recent Masters dissertation, and explores the conundrum of limited change in aspects of policing, despite the introduction of the Initial Police Learning and Development Programme (IPLDP), which aspired ‘to deliver police officers into the operational field who could deal with members of the community in a way which provided a more considered and proportionate service’. This is a critical requirement given the increased flexibility and authority proposed for police officers. Internal evaluations of the immediate impact of the training confirmed that officers were equipped with the required competencies, and

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yet a follow up study of public satisfaction with the service they had received from police revealed no difference in levels of satisfaction between officers who had received IPLDP training and longer serving police officers. This apparent paradox led Chris to interview a sample of IPLDP trained officers to explore their experience of joining an operational shift team. His results show the impact of the operational sub-culture on the practice of these police officers and demonstrate the importance of understanding the full range of influences on police officer practice.

The training of police officers, and criminology and criminal justice students more generally, is an issue taken up in the first of a new style of paper in this issue, *The Use of Avatar Based Learning as a Medium for Criminal Justice Education*. From time to time we receive submissions where the author draws very much on personal experience and ideas, sometimes controversially but always thought provokingly. We want to stimulate discussion in such areas and, following peer review, will publish these papers as 'Thought Pieces'. Responses to these pieces are welcomed and those of a suitable quality will be published in subsequent issues of the journal.

In this first Thought Piece, Annette Crisp describes her experiences in using technology to support her teaching, providing an innovative and more interactive learning experience for students. Her interest in this area led her to learn how to create a range of video scenarios to illustrate criminological concepts, and then move on to learning how to take greater control of these scenarios by creating avatars which could play a variety of roles or be specific individuals within them. She presents several examples that have been well received by students and argues that the demands of higher education structures and students will increasingly necessitate the use of such technology for both class based and distance learning. In a future of education where personalised learning becomes the norm, educators will 'require a willingness to step back from their current role as controller of the learning experience and fulfil a more subtle requirement as mentor/guide'. She argues that the use of avatar technology by both staff and students opens up new possibilities in this future and suggests that this technology and training should not only be made available to staff to develop their teaching, but could be developed so that students could use it as an interactive medium in coursework and assessment.

We then change tack quite dramatically with the third paper in this issue. *Widows and Community Based Transitional Justice in Post Genocide Rwanda* by Angela Tobin describes some of the initiatives that have taken place in Rwanda to deal with the hurt and trauma experienced by the survivors of the genocide there. Whilst thousands of men were killed during the atrocities, numerous women were allowed to live but subjected to rape and sexual violence, which subsequently led to HIV infection, unwanted pregnancies and humiliation. It was estimated that immediately after the end of the conflict, 70% of the population of Rwanda was female, with huge numbers of women having lost their husbands, fathers, sons, and/or having been the victim of rape. The article describes the impact of this situation on such women in the context of their lives in Rwanda and discusses some of the steps that have been taken to respond to the atrocities using the lens of transitional justice. In the aftermath of conflicts such as that in Rwanda,
transitional justice initiatives aim to recognise the rights of victims and achieve some redress at the same time as seeing perpetrators called to account and punished, thereby promoting reconciliation. Written from a feminist perspective, the paper argues that such initiatives also offer opportunities to challenge discrimination and to improve the lives and rights of women. In Rwanda, the significant shift in the balance of the population required women to take on roles and responsibilities that would not have been available to them prior to the conflict. The article describes three transitional justice initiatives in Rwanda: the UN's International Criminal Tribunal for Rwanda (ICTR); a system of community courts called Gacaca; and a community based approach established by women to help them to support each other in the aftermath of the genocide. Whilst the former two are primarily about bringing perpetrators to account and top-down initiatives, the latter is bottom-up and essentially about enabling women to cope with and rebuild their lives. The work of Gacaca has recently ended (BBC, 2012), and the ICTR is winding down its work, but community based initiatives can continue as long as they meet the needs of their community. Drawing on qualitative research with women involved in one such project, the paper describes their experiences and their journey to recovery. The project offered emotional and social support and enabled the women to work together for financial support, encouraging self-reliance. The participants overwhelmingly saw the project as not only positive, but also empowering, enabling them to take some control of their own circumstances. In this way, the project also facilitates reconciliation.

The final paper in this issue is another Thought Piece, and also relates to the theme of human rights on the international stage, arguing that the right to freedom of speech carries with it responsibilities to use that right wisely. Entitled Freedom of Expression, Minorities and State Protection, this paper examines the position of the Muslim community in the light of 'controversy in recent times about the lack of prosecutions in cases where the esteemed icons of the Muslim faith have been degraded'. The paper discusses cases attempted or brought to court around the world under international conventions and laws designed to prohibit the discrimination of communities based on their religious beliefs. The right of freedom of speech or public interest is frequently used as a defence in these cases. The author, Zia Akhtar, argues that freedom of expression is a qualified right, and places these recent cases in the context of increasing Islamaphobia and the growth of legislation enacted to respond to the threat of terrorism in Europe and the US. The main focus of the paper is the British situation, where there is a presumption that all religions are on an equal footing, though this is not always apparent in practice. The article provides an interesting discussion of human rights and discrimination legislation over the years, and a detailed description of the UK legislative journey to protect the rights of minority groups and freedom of religion. However, the author concludes that the legislation is rarely effective for cases not involving specific individuals.

Although the papers in this issue appear to offer an eclectic mix of topics, they have themes in common, and in particular all have messages of relevance to current government plans for criminal justice. The first is about the need to be aware of perverse

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incentives that may lead to policy not being implemented as intended; the second about the potential value of technology in equipping criminal justice professionals to undertake new responsibilities in a professional manner; the third that top-down localism does not always meet the needs of the community and that bottom-up localism can be more effective; and lastly we return to the theme that legislation and policy directives are not always experienced by local communities in the way intended, and the need to be aware of differences in the understandings and expectations of diverse communities.
THE BRIAN WILLIAMS MEMORIAL PRIZE 2011 - WINNING PAPER

REFORMING THE FORCE: AN EXAMINATION OF THE IMPACT OF THE OPERATIONAL SUB-CULTURE ON REFORM AND MODERNISATION WITHIN THE POLICE SERVICE

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Abstract  This article explores the contention that the police service within England and Wales demonstrates difficulty in carrying out long-term reform and modernisation in response to criticism and critical case recommendations. It provides an exemplar in the form of the introduction of the Police Learning and Development Programme (IPLDP) within the police service in 2006 as a means to provide the required initial education to new-to-role police officers. The argument is made that the specific sub-culture located in the area of the operational police response team acts to reduce the impact and effectiveness of reform and, in failing to take into account and mitigate such blocks to modernisation, provides a critical weakness in the change management processes of the police service. These contentions are briefly considered relative to the structures and operational cultures found within the Prison Service and the Probation Service. Work in these areas suggest possible conditions under which policy and practice reform within the police service may be more effectively delivered over the longer term.

Introduction  Many commentators contend that the police service demonstrates an inability to carry out effective reform and modernisation in response to public criticism and recommendations from serious case inquiries. Loftus (2009, p17) argues that police culture remains 'virtually untouched by initiatives aimed at changing everyday assumptions and behaviour' and Savage (2003, p171) suggests that the police service within England and Wales has been the most successful organisation within the public sector at 'resisting reform and subverting modernisation' and, in doing so, tends to frustrate change and support the cultural status quo position. A case in point can be illustrated by the wide chronology of a number of serious case reviews whose
recommendations all include a clear focus on the critical core issue of information management and sharing within the criminal justice system and which highlight shortfalls within this area of police service activity. Time and again, such recommendations were repeated through inquiries such as the Woolf Report (1991), the MacPherson Report (1999), the Bichard Report (2004) and the Keith Report (2006), and the fact that each successive inquiry highlighted issues of poor policing information management strongly suggests an inability of the management processes within the police service to effectively deliver change and reform where expressly demanded. As recently as May 2011, with the release of the Independent Police Complaints Commission’s (IPCC) report into the death of Fiona Pilkington in Leicestershire in October 2007 (IPCC, 2011), evidence was put forward that this inability to effectively manage critical information still remains a demonstrative feature of the police service. The impact of the growth of an influential performance management culture within the police service (Pollitt, 1993), an observed divergence between the strategic aims of police managers and the delivery of services by practitioners (Lacey, 1994) and what Holland (2004, p169) describes as organisational ‘memory loss’ and a ‘short-termist’ approach to problem solving may be contributing factors to the perceived inability of the police service to effectively reform and change over time. Arguably, these factors may tend to force the delivery of swift, disjointed and short-term organisational activity, which often does not cater for either cultural dissonance (Gordon and Yowell, 1999) or other forms of blocks to change that, if left unresolved, are likely to prevent long-term effective reform. This apparent lack of consideration of potential blocking issues within the change management process suggests a built-in problematic methodology in the way in which the police service manages its business over the longer term. This is a theme picked up by Berger (1976) in his examination of societal change and reform when he suggests that the ‘viability of modern societies...will hinge on their capacity to create institutional arrangements that take account of the counter-modernising resistances’ (ibid, 1976, p14).

**Exemplar**

In this respect the introduction of the IPLDP in 2006 represents a case in point and demonstrates how the police service has arguably failed to take into consideration and tackle potential blocks during the reform process. In 2002, the HMIC Training Matters inspection report concluded that within the training provided to new-to-role police officers up to that point ‘the learning requirement does not accord with the needs of a police officer in the twenty-first century, nor are the means of meeting it effective’ (Training Matters, 2002, p17). In response to this, the IPLDP was introduced to provide initial training for all new-to-role police officers in England and Wales, which reflects the context in which officers were expected to carry out their policing practice. The main thrust of the IPLDP consists of seven learning requirements developed by Elliott et al. (2003) at the behest of the government, which are designed to inform the student officer’s learning, development and subsequent practice in the operational field. The seven learning requirement goals consist of:

- Enforcing the law and following police procedures
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- Responding to human and social diversity
- Understanding and engaging with the community
- Positioning oneself in the role of a police officer inside the police organisation
- Professional standards and ethical conduct
- Learning to learn and creating a base for career-long learning
- Qualities of professional judgement and decision making

(Elliott et al., 2003, p2)

The learning requirements were specifically designed to provide student officers with the skills and competencies to apply critical reflective practice, problem solving and effective decision making during their operational practice and subsequent practice development. These competencies were intended to be used against the backdrop of an understanding of social diversity and community engagement and aspired to deliver police officers into the operational field who could deal with members of the community in a way that provided a more considered and proportionate service.

The IPLDP attempted to reset the operational policing sub-culture by providing new-to-role officers with the knowledge, understanding and competencies to deliver 'society's validated expectation of what a police officer needs to know, to do and be disposed to do in the 21st century' (Elliott et al., 2003, p2). This aspirational cultural shift was a departure from the hitherto reliance on experience alone as the major currency within the operational field and attempted to open up the decision making process so as to increase the opportunity of a bespoke response to individual operational situations, which more reflected the needs and requirements of individuals and communities.

**Student officer knowledge and competency evaluation**

An evaluation of the IPLDP provision for a specific East Midlands constabulary was undertaken in 2010 (Alcott, 2010). This looked to map the content of the taught course and the process of work-based competence assessment through to the aspired delivery of service to the public by student officers. As a result, it was possible to evidence that student officers who had undergone the taught phase of the IPLDP had received the required levels of inputs concerning legislation, policy, procedure and practice. By way of the required National Vocational Qualification (NVQ) in Policing, it is possible to demonstrate that students who successfully completed the work-based NVQ qualification as part of the IPLDP would have demonstrated the aspired skill and competency levels in the areas of the seven learning requirements. In effect, this indicated that all successful IPLDP student officers within this particular Force were exposed to the appropriate learning materials and had satisfactorily evidenced the associated operational
competencies in order to deliver the aspired level of service to the public reflected through the seven learning requirements. Only when the evaluation examined the quality of service actually delivered to the public by IPLDP trained student officers did any issues emerge.

**Student officer service delivery evaluation**

As part of this particular Force's customer service quality assurance processes, members of the public who had been provided with a service by the Force were routinely re-contacted in order to seek qualitative feedback on the service they had received. The specific survey tool used was a government validated process, involving tightly structured telephone interviews with service users which sought information as to how initial contact with the police had been made, what service was provided, how well the particular service was delivered, how the service user was updated, and how they felt they had been treated generally. It was possible to identify which operational officer had dealt with which surveyed incident and, as a result, it was possible to attribute qualitative customer feedback to specific officers, both those educated through the IPLDP and their pre-IPLDP colleagues. It was evident through the evaluation of the qualitative feedback from members of the public that officers educated through the IPLDP performed at or about the same level as their pre-IPLDP trained colleagues. This suggests that the aspired seven learning requirements of the IPLDP appears not to have delivered the expected increased service to the public, even though the evaluation process strongly indicated that IPLDP educated student officers are capable of demonstrating the enhanced skills and competencies required to deliver this aspired level of service to the public. Taking these issues together, one could hypothesise that when student officers move from the initial taught phase of the IPLDP into the operational arena they, in some way, identify with their operational colleagues to produce performance which reflects that which is consistent with the prevailing culture. This prevailing cultural influence and its intersection with the initial operational development of student officers is at the heart of this work and provides a focus for attempting to understand why the aspired improved service does not appear generally to be delivered by IPLDP educated officers. A similar phenomenon is identified by Kauffman (1988, p198) who studied trainee Prison Officers who were moving from their initial training environment into the operational field. She suggests that, having made this move, many trainee Prison Officers not only take on the characteristics of the prevailing officer culture, which in many areas is contrary to their training, but are also cognisant of these changes and in many cases 'grieve deeply over the changes they saw happening to themselves' (ibid, 1988, pp198-199). The influences of the initial operational destination of all student police officers when progressing from their initial training phase, that of the operational response shift team, appears to be key in determining the type of service new-to-role officers ultimately deliver to the public. Here, student officers are exposed to a perceived unique policing sub-culture made up of experienced officers who, it is argued, display a distinct culturally impactive 'working personality' Skolnick (1994, p42). The existence of such a sub-culture is, in many areas, seen as a cause for criticism but there are those who would argue that a sub-culture located within the operational shift arena is a necessity (Waddington, 1999) given that it provides police officers, who apply a large number of discretionary powers, with an accessible context with which to identify and differentiate what is considered to be good and bad practice. Thompson
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(2006, pp26-27) suggests that the development of this form of internalised 'norming' provide a 'shared way of seeing, thinking and doing', allowing student officers a context in which to apply their learning alongside their more experienced colleagues.

**Student officer perceptions**

In order to examine the relationship between the identified shortfall in performance by IPLDP educated officers and the operational shift team sub-culture, I conducted a small scale qualitative research study which attempted to draw upon the experiences, thoughts, views and perceptions of a group of six operational IPLDP educated officers selected by way of a purposive sampling process (Alcott, 2011). The purposive sampling process was intended to mitigate any potential influencing variables outside those being studied. The participant group consisted of both male and female officers, made up of a range of ages and ethnicities. They were selected from one specific Cohort intake, which was chosen to ensure that the student officers concerned had completed their initial training and had been operational on shift for more than six months. These officers were selected from one specific policing area, such that they were each exposed to identical local management processes and performance regimes during their initial operational work phase.

Issues of ethics and power were identified early in the research design given that, as a serving police officer, I not only had to contend with the challenges faced by being an insider researcher (Alcott, 2011) but also had to deal with power issues due to my hierarchical position within the police service relative to the members of the sample group. Attempts to ameliorate these issues were made through evaluated planned actions set out in the ethical approval process and the research evaluation design of my work (ibid, 2011, p48). The experiences, views and perceptions of the individual members of the group were obtained by semi-structured interviews, which focused on the impact of the shift culture on their practice development. Analysis of the data identified a number of potential themes which uncovered an array of potential blocks that appear to have possibly hindered and frustrated the implementation of the IPLDP (ibid, 2011, pp38-48).

The student officers who were interviewed reported that, on arriving initially onto their respective shift teams, they all felt a need to be accepted by their peers and a desire to learn the role from those more experienced officers already on the shift. All of the respondents expressed good fortune at being placed on the shifts they had been allocated to, describing their individual shifts as a 'family' (ibid, 2011, p36). During our conversations, each of the respondents took this issue further by demonstrating a fierce protectiveness towards their shift teams and shift colleagues. This was demonstrated during the early part of each interview, where the level of current practice knowledge possessed by their more experienced shift colleagues was probed, with each respondent claiming that their shift colleagues had generally a good level of current knowledge. Later, when looking specifically at examples where the respondents' understanding of legislation, policy and procedure differed from that which they saw their colleagues carrying out, a number of examples were provided where the practice knowledge of more experienced shift colleagues was identified by a number of the participants as poor and
outdated. For the most part, in these cases the respondents jumped to the defence of their colleagues by providing reasons why their colleagues might have acted as they had.

A number of respondents described specific incidents, usually involving threats or use of violence against police officers, which they had dealt with and which they felt resulted in an expression of tacit acceptance of them by the other members of the shift team. One respondent described it as having to go through a 'watershed' in order to gain the confidence and acceptance of his peers. Taken together, this reported need for 'peer acceptance' within the shift 'family' represents a strong force, which arguably may push new-to-shift student officers inexorably towards the prevailing shift sub-culture and away from the aspired practice of the IPLDP. Together, these issues indicate a degree of shift sub-culture internalisation by student officers and could arguably reinforce and propagate the views, opinions and practices of existing shift members and may be a contributing factor as to why the performance of IPLDP student officers appears to norm with that of pre-IPLDP trained officers.

One explanation for this state of affairs may be the existing power differential within the operational shift team makeup. The respondent student officers observed a definite hierarchical structure within their own shift teams, the order of which was generally determined by the length of service of officers within the shift. Other factors, such as an officer's level of police vehicle driving authority, specific courses they had attended, and their level of knowledge concerning active individuals within the Local Policing Unit (LPU), also had a bearing on their position within the shift 'pecking order', although these factors very much reflect the currency of operational 'time served experience'. Bourdieu (Bourdieu and Wacquant, 2007) would describe the knowledge and skills held by these more experienced officers as a form of 'capital'. This concept of 'capital' identifies the factors that are sought and collected by members of the group in order to improve their group standing and influence. Those reported to be high on the shift 'pecking order' were those who were generally listened to and were able to influence opinion within the team on matters which were discussed. This clearly equates 'time served experience' with a degree of influence as to the views, opinions and practices of the shift team.

**Observed hierarchical issues**

The respondents identified two main issues relating to the observed shift hierarchy, which impacted directly on their learning from the IPLDP. First, they reported that many pre-IPLDP trained officers demonstrated a resistance to and dislike of the IPLDP, especially the concept that officers should be required to be educated at university as a prerequisite of becoming a police officer. One respondent reported a conversation during which a pre-IPLDP trained officer was 'scathing' about the IPLDP, with other respondents reporting that humour was used as a means to denigrate the IPLDP process. This reported cultural dissonance suggests a degree of fear on the part of many experienced shift officers. It could be contended that when IPLDP student officers initially join a shift team, they represent something of the unknown and a possible threat to the more experienced pre-IPLDP trained officers. It could be considered that IPLDP educated student officers may have been provided with their own 'capital' (Bourdieu and Wacquant, 2007) by way of up-to-date practice knowledge and having been educated under this new perceptually
improved process. This may generate a feeling of fear in these more experienced officers, who perceive new-to-shift student officers as representing a threat to their already established position within the shift team hierarchy. In real terms, the ambivalence towards the IPLDP by many established shift officers is likely to prevent the developmental of an environment that will foster the changes aspired to by the IPLDP. The second issue relates to a point made earlier, that of reports from the respondents that many experienced time served police officers demonstrated a lack of current and up-to-date knowledge concerning legislation, policy and procedure. The respondents described a perception of an inverse proportionality between time served experience, which is valued and supports the development of skills such as problem solving, investigation and decision making, and current up-to-date practice knowledge required by an effective officer. Accepting the undoubted benefits of experience in any working environment, it could be argued that experience which uses ill-informed and outdated knowledge provides a distinct vulnerability for the organisation in which it operates. This issue identifies a lack of opportunity for continual professional development on the part of many experienced officers as they progress through their careers, an issue which, it could be argued, is a basic organisational responsibility and requires clear leadership and direction given the apparent ever-changing nature of the policing environment. The IPLDP learning requirement seeks to resolve this issue through the competency of 'learning to learn and creating a base for career-long learning' (Elliott et al., 2003, p2) but, given what is reported by the respondents, it is likely that the earlier identified sub-cultural power differentials may frustrate and dilute this aspiration.

Experience of other criminal justice agencies

Stout and Knight (2009) in their work, which looks at probation and offender management training within the National Offender Management Service (NOMS), pick up this theme of continual professional development, linking it to the issue of a Probation Circular in 2008 (PC, 15/2008) that required, amongst other things, that initial training for Probation Service Officers (PSOs) should be extended to provide refresher training for experienced PSOs. This not only supports the tiered approach to the levels of practitioner responsibility but also ensures a consistency and development of practice for all staff. This came as a result of major structural changes within the makeup and working practices of the Probation Service, where the need to change the working culture and 'capital' (Bourdieu and Wacquant, 2007) distribution within the service was identified at the senior organisational management level and translated into change management action as a result. This focus and engagement with continual professional development appears contrary to the experience of the Police Service, as evidenced by the IPLDP and the Prison Service, demonstrated by Kauffman (188, p198), where it is suggested that the operational culture ranks time served experience 'capital' over up-to-date practice knowledge 'capital'.

When asked, the research respondents generally reported that, following their initial work-based phase, they had developed their own policing practice through observing and listening to colleagues and deciding on the correct practice in the light of their own experiences and learning. This appears generally to be an adequate practice but it does come after the initial socialisation phase that shapes practice and its development. Much
of the reported sub-culture making up a typical operational shift team may, by this point, have been internalised by student officers such that their emerging practice reflects and carries on the prevailing shift team sub-culture, unchanged by the interventions of the IPLDP. Over the past few years, changes in the initial training of probation and offender management staff within NOMS in response to the development of the Offender Management Model (OMM) appears to have paralleled many of the issues that have been identified as impacting on the introduction of the IPLDP. Bailey, Knight and Williams (2007, p114, 130), as part of their work, identified a number of likely positive impactive issues on the effective implementation of the OMM. These issues included the need for an effective management of the change process in a non-prescriptive fashion, which involves engagement and discussion with practitioners and the need to provide continual professional development for staff at all levels. Berger sees engagement with practitioners as an essential part of reform, suggesting that 'Every human knows his own world better than any outsider (including the expert who makes policy)' (Berger, 1976, p13). Pragmatically, one could argue that the conditions for change and reform identified by Bailey, Knight and Williams in their work would appear to support the type of practice change required in a strong and engrained cultural work environment where challenging levels of cultural dissonance may be found.

**Conclusion**

The arguments presented within my research study use the introduction of the IPLDP within the police service to identify an organisation that proactively aims to carry out reform and modernisation but, on many occasions, has stumbled in doing so. In many instances, this failure can be directly linked to an inability to consider and act on the potential blocks that are likely to impact on the success of reform and modernisation initiatives. This appears to locate a major fault line within the police organisation as a whole, making reform difficult to achieve, especially where it involves cultural change over the long-term. Berger suggests that 'policies for social change are typically made by cliques of politicians and intellectuals with claims to superior insights. These claims are typically spurious' (Berger, 1976, p13). He appears to accord with the views of Bailey, Knight and Williams (2007, p114, 130) in suggesting that those subject to change and reform should be provided with the opportunity to participate in the identification and resolution of change policy in what he calls 'cognitive participation' (Berger, 1976, p13). This arguably draws our attention to the traditional hierarchical 'top-down' problem identification and solving processes, the focus of which may represent a profitable area of critical reform. This attention may be even more apparent given the rise in the importance at all levels of decision making within the police service of the National Decision Making model, with it's reliance on up-to-date, relevant and accurate information as the bedrock of good decision and policy making. An example of work in the area of practitioner engagement within organisational change and reform is the Nexus project, which took place in Victoria, Australia (Wood, Fleming and Marks, 2008). Here, rank-and-file police officers were provided with the opportunity to participate in an action research project aimed at developing critical areas of policing practice. The Nexus project research evaluation demonstrated good feedback from those practitioners who participated, identifying clear benefits in engaging with policing practitioners who are in a practical position to contribute to the identification of problems and the formulation of
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problem solving options. This could possibly point the way for future reform and modernisation projects, where problem identification, problem solving and solution application involves those subject to and who engage with the day-to-day lived experience of the situation, rather than those hierarchically far removed from the issues.

My work, relative to the IPLDP, has provided a number of recommendations, some of which are currently being implemented in an effort to impact on the issues identified by the respondents. In reality, mine is a small-scale project that requires a more in-depth exploration of the identified themes in order to provide a greater confidence that the relevant issues have been satisfactorily located. Work in this area is currently ongoing and seeks a better understanding and application of change and reform decision making processes within the police service and more widely throughout the Criminal Justice system.

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Thought Pieces are papers which draw on the author's personal knowledge and experience to offer stimulating and thought provoking ideas relevant to the aims of the Journal. The ideas are located in an academic, research, and/or practice context and all papers are peer reviewed. Responses to them, or new thought pieces are always welcome and should be submitted to the Journal in the normal way.

THE USE OF AVATAR BASED LEARNING AS A MEDIUM FOR CRIMINAL JUSTICE EDUCATION

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Abstract Computer and technological developments provide exciting opportunities for both classroom and distance learning teaching, but many educators feel they do not have the skills or support necessary to make the most of them. In this piece I describe and reflect upon my own experiences of learning about and using ICT tools to design and use avatars in computerised scenarios in my higher education teaching of Criminology and Criminal Justice. I consider their potential for future academic teaching, including the possibilities for improving learning opportunities for diverse learners. Further developments could enable students to become authors and partners in lifelong learning processes, though this would necessitate a rethinking of the pedagogies that inform much teaching.

Keywords ICT; avatar; education; policing; pedagogy

The potential for the use of ICT and gaming type approaches in teaching and learning is increasingly being explored in both literature and research (e.g. Grimley et al., 2011). Lecturers are well aware of the impact of technology in the lecture theatre, where students increasingly bring their mobile phones, digital recorders and laptops to lectures (Rheingold, 2009; Tindella and Bohlander, 2012), yet the consideration of the potential for such technology to enhance their teaching and students' learning experience is in its

1 I am grateful to Jean Hine for her advice and support in preparing this paper.
infancy. One area where there has been some progress is in the realm of distance and blended learning with the development and use technology enhanced learning tools such as Blackboard (www.blackboard.com). Yet even here there is often limited use of the technological potential available, with many lecturers simply reproducing their lectures as a PowerPoint or Word file. The pace of technological developments means that the ICT sophistication of students has often outpaced that of their tutors and may result in lack of student engagement with study opportunities that appear dated and cumbersome. Software developments in particular are providing opportunities for the creation of new styles of teaching materials that can engage students with diverse backgrounds and wide-ranging learning abilities. In this paper, I describe my experience of developing one approach to providing enhanced computer aided teaching materials - learning how to create avatars and using them in computer based learning materials.

In a recent review of the future of learning undertaken on behalf of the European Commission, Redecker et al. (2011) note the development of 'informalisation' (p9) for future strategies of learning and education, recognising that 'ICT will change what we will need to learn and how we will learn in 2020-2030' (p44). This prediction of future education extends to what they term the personalisation of education, which they state will develop as a response to a more learner focussed process that will need to accommodate real life experiences and generate collaborative styles of learning. These adjustments of direction will necessitate new pedagogical methods to accommodate the 'changing, living, working and learning patterns' of society (p61). In this environment, educators will become mentors and guides to learners involved in a generally self-motivated form of academic engagement, rather than the director of the learning experience. To achieve these ends, Redecker et al. (2011) conclude that holistic changes need to be made, which include changes to pedagogy, curricula and assessment in addition to teacher training. This forecast, based on current and predicted trends, has implications not only for education generally but also for vocational education and training, requiring, as the Bruges Communique (2010) acknowledges, a need for increased flexible and non-formal lifelong learning.

The use of virtual worlds and their associated technology for academic purposes is a relatively recent development. Such approaches have much in common with gaming platforms where anyone, with practice, might become expert. They hold the potential for total absorption and an opportunity for players to take an active role in problem solving exercises. Such processes have been identified as being successfully linked to education: Grimley et al. (2011) provide a convincing acknowledgement of these benefits in a study which used computer games to support student learning in face-to-face teaching, noting:

...the computer game mode invoked perceptions of a more active and challenging learning experience compared with more traditional lectures. If we have a constructivist view of learning then ensuring that learners are active and challenged in learning situations is of paramount importance. These positive effects for the game mode compared with the lecture mode ought to lead to higher engagement for students. (2011, p6)
These results are reinforced by Dickey (2003) in the area of distance learning, as he notes the academic benefits of exploration, manipulation, the associated discourse and reflection between players/learners within such environs. This view is supported by work undertaken by Jonassen (1992, 1999), Lave and Wenger (1991), and Duffy and Cunningham (1996). The use of virtual actors (or avatars) as pedagogical agents to facilitate domain knowledge in expert systems has also been noted as being highly productive (Lee and Williams, 2004). Students benefit from teaching approaches which utilise elements of content and process from online gaming, especially if this can catalyse peer to peer learning opportunities and stimulate deeper levels of learning. For instance, Fisher, Higgins and Loveless (2006) recognise the potential for clusters of what they term 'purposeful activity', when associated with digital technology; particularly if linked to creativity and the development of responses to 'what if?' questions; approaches to problem solving and the development of hypotheses to inform action (Plowman and Stephen, 2005; Gee, 2004; Shaffer, 2007). When using technological tools for creative purposes learners have both 'hands and minds on', which provides opportunities to not only ask questions but also to respond to the consequences of their decisions (Sefton Green, 2005).

Carroll (2000) explored the benefits of scenario based interaction with computers and highlighted the potential for multiple levels of learner reflection and cognitive interaction, stating:

\[
\text{People know that they must learn new concepts and skills in order to be able to do new sorts of things, however, they also know that by just trying things out they can see and feel progress, learning as they accomplish something meaningful}. \quad (2000, \text{p58})
\]

This links to the proposal by Mayer and Moreno (2002) that both narration and graphical images produce visual and verbal mental representations which link and integrate prior knowledge and then construct new knowledge. The generation of educational forms of machinima² (Middleton and Mather, 2008) may be the result of such ideas and represent a truly blended curriculum.

This paper draws on my experience of learning develop scenarios with active avatars in my teaching in criminal justice, suggesting a pedagogy which could accommodate the development of a constructivist method of learning to address this predicted future of learning.

**My journey into a virtual world**

I first became interested in the use of ICT in teaching around five years ago when, as a non-technologist lecturer in psychology and criminology, I reviewed some of the potentials for using avatar based learning with 'ITC envy', considering what I might do if only I had the training and the time to learn to develop virtual people and places and

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² Machinima is animated filmmaking within a real-time virtual 3-D environment, as defined by the AMAS (Academy of Machinima Arts and Sciences).
apply this knowledge in a non-technological environment. I continued to monitor
developments and last year I found some programming technology that was more
accessible. I purchased the software in the hope of being able to make the potential real
by devising a number of scenario based teaching tools in the area of criminology and
criminal justice. I wanted to use this in computer (distance learning) and TV based
(classroom) delivery to encourage student engagement by means of the development of
avatar empathy, identified as a key component in student engagement (Morrison and
Zemke, 2005; de Rosis et al., 2005; Matsumoto and Tokosumi, 2005).

Having found a fairly straightforward computer package which provided good on line
support, I started to teach myself how to build the characters and the world which they
would inhabit. I had previously attempted to find video clips that would help me to
explain different academic concepts but found that whilst I could download and, in some
cases, edit them (where copyright permitted), they never quite fulfilled my need and I
would have to readjust my explanation awkwardly to match. Now I had the opportunity
to download three-dimensional objects to populate and decorate the world I was creating
in order to match my ideas.

Having previously taught student police officers psychological theory I was well aware that
there was a short engagement period prior to the stage where boredom and irritation
could set in. If I could catch their attention in that first part, I could hold their
concentration through long teaching sessions (stretches of 4 hours and more). Some
aspects of psychological theory can be disengaging to even the most interested student so
I thought I would start with some of these areas. My first idea was to create an avatar
that represented me and, armed with my new technological knowledge, I was able to
adapt its lifelike appearance to capture some of my looks. I then began to wonder what it
would be like if I had a twin online and that twin explored the nature-nurture debate and
the various studies that psychologists have undertaken to consider this dynamic. If one
twin, why not another: the good twin and the bad one, who perhaps danced around and
caused mischief whilst the explanation was being presented. The students certainly did
not expect that and listened with interest whilst the video presentation explored the
debate. If that was a good method of providing information in a more engaging way, why
not take it one stage further and try to develop vignettes that taught the lesson by
example? As a result, I created a mum and dad who had a daughter who wanted an ice-
cream. I explained the ideas of good parenting within the scenario - how some parents do
not give the right signals to their offspring and as a result the learning experience is poor,
thus bad behaviour is the result and is reinforced. The vignette ended with the daughter
screaming for ice cream and the dad smacking her.
The Use of Avatar Based Learning as a Medium for Criminal Justice Education

Figure 1: I wannan ice cream!!!!

From this simple scenario, I wondered whether more meaningful exemplars might be developed. I created more sophisticated scenarios for teaching, which included a female avatar talking about her experiences of learning how to 'deal drugs' by describing links to processes within Bandura's Social Learning Theory (Bandura, 1962). The idea was to make learning about theory enjoyable by making it real. This short film has been used for teaching student police officers in addition to criminology students and provides an example of the practical application of a theoretical psychological concept.

Figure 2: 'Carol' explains Bandura's Social Learning Theory

In another piece, an explanation of Sheldon's (1940) 'Somotypes' is provided by means of the use of three male avatars with the physical attributes of Endomorph, Mesomorph and Ectomorph, who are introduced to the student audience by a female avatar who then goes on to explain which type, according to Sheldon, might be prone to commit crime. Like the previous example this short film, when used for teaching, generates student engagement, debate and interaction both online and in teaching face-to-face.
A sequence of avatar focussed film, (akin to machinima), which captures a montage of events around various aspects of domestic violence (DV) has been used in my seminars where it provides a catalyst for reflection and invites students to consider what they might do under different circumstances. To begin my lecture, I start the film and students see and hear a couple who are arguing in the street. The class is then asked the question 'What would you do if you saw this? Would you call the police?'. In seminars where I have taught DV, students engage with this first scene and want to contribute to the debate. This undoubtedly starts them thinking about the various dynamics involved. The second scene shows a police officer in attendance. Students are asked whether a male officer, alone, should attend or whether perhaps other officers should be involved. At this stage students start to think about the procedural implications of police practice and their comments indicate that the majority had not considered whether gender makes any difference to an investigation.

Figure 3: Arguments in the Street

Figure 4: Male and Female Officers deal with the event

Once they have had time to consider this aspect, the film starts again and this time shows a male and female officer in attendance. They are both talking together in the same room as the offender and his victim. Again, the practical and emotional implications of such actions are considered by the students and they suggest that a better way of dealing with
the situation would be to separate the couple. The film starts again and the couple are being interviewed separately but the male is in the kitchen with one of the officers and students are asked if this is appropriate. The personal safety of the officer is considered as a kitchen holds significant dangers. The film then considers other victims of this type of offence and focuses upon individuals who perhaps would not normally be considered (children and older people) as the psychological and legal implications are discussed. How should victims be supported? What behaviours might they exhibit if they are victims or witnesses to this type of offence? The questions and opportunities for debate here are endless and throughout the discussion there are opportunities to explain process and theory, and students enjoy the learning. After the final clip, which looks at honour crimes, there is an attached news media report to 'ground' the discussion in reality, which considers the death of a real victim of this type of offence and provides an opportunity to discuss how the victimisation has been portrayed in the media.

I have since developed other materials where avatar actors deliver theoretical subjects in a meaningful way. The academic challenges inherent in engaging students with theory can become enjoyable (for both academic author and student learner) and dynamic when such concepts are contextualised in exploratory or explanatory scenarios. They can reflect reality or represent a more outrageous fanciful process in order to make a point. So, for example, Jeremy Bentham's consideration of utility can be explained by a retired 'Jazzy Jerry' who is sitting in the garden of his sheltered accommodation with his helper. In a similar way, the theories of Karl Marx and their application to criminal justice and criminology are the basis of a number of short teaching videos. We can explore Marxist theory in Karl Marx's 'garden' (like the focus of the garden in the film 'the Godfather'). We have a discussion with Marx, Lenin, Stalin and Chairman Mao (Che Guevara is the body guard in this situation). To construct masculine voices for these presentations I have learned how to record my voice and alter its pitch which means that my males now talk like males – which is useful!

Figure 5: Karl Marx's garden with 'the communist mob'

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3 'Honour' crime involves violence, including murder, committed by people who want to defend the reputation of their family or community. BBC 2012 http://www.bbc.co.uk/ethics/honourcrimes/.
As my understanding of the technology has developed, I have become more creative combining music and narrative within Machinima. One example is a film which gives a 10-minute introduction to criminology for potential students, using avatar actors to show the theories of left and right realist criminologists applied to explanations of graffiti.

Informal feedback from students indicates that such methods of engagement are attractive, and have even generated applause at the conclusion of the presentation. From my experience, students find it stimulating and engaging, as described by writers such as Grimley et al. (2011). Academic staff also find this approach engaging. In a recent workshop for the Higher Education Academy, I was given an opportunity to 'showcase' some of this work to academic colleagues working in an unrelated area. It was rewarding to see how enthusiastic participants became when they too could see the opportunities presented by this type of teaching. There was a definite buzz amongst the group, which was reinforced by comments such as;

*This is fantastic. I’ve struggled to find clips that would explain this aspect of my work.*

*I could use the programme to help with examples of x or y or z.*

*I don’t have to worry about copyright issues!*

I am currently working on a new module in criminology and for the assessment component students will be given the opportunity to work on avatar submissions of their own, potentially, with peers from the computing faculty as facilitators. The technology available to our students and the potential that collaboration and student authorship of assessment might hold will provide an opportunity for a new, more student focussed, academic engagement, which I believe is a step in the right direction towards the predictions of Redecker et al. (2011) for the future of a truly student focussed education.

**Where next?**

Where does this leave vocational training and education or education for its own sake? Why should we be considering the development and adaptation of new pedagogies to accommodate the student of the future? I believe that the use of avatar actors offers the potential to engage with students not only within a different format facilitated by educational machinima, but also offers students ownership of their own learning experience. In our future technologically enhanced places of learning, it will be necessary to develop pedagogy that blends technical practice with academic rigour. We need to harness the potential of technology in order to enhance the learning experience for students and the teaching experience for practitioners. As teachers and trainers, we must reconsider some of the scholastic barriers that as academic specialists we currently appear to perpetuate, in favour of an educational experience without disciplinary boundary. Silo working in education can reinforce traditional ideas of training or working towards employment that lasts a lifetime, when the new reality is that those who are likely to succeed are individuals who are proactive and flexible in their expectations and are willing
to embrace lifelong learning. The job for life no longer exists due to changes in employment markets and because of personal choice.

Society is changing, with technological innovation being much more central to the lives of many members of the population, and yet this innovation does not seem to have permeated higher education to the same extent. Universities may offer laptops and tablets with 'special apps' to whet the potential student's appetite for a modern and exciting learning experience, but it often remains fundamentally the same. They might access the knowledge by linking to a snazzy PowerPoint sitting within a virtual library for their course but it feeds information in the way it has worked for a number of years - old pedagogies repackaged to look new. If, as has been suggested, the student of the future will participate in a sequence of learning experiences which fulfils their need for learning at various life stages, including the practical aspects of a vocational requirement, educationalists need to offer a highly flexible method or alternative methods of educational engagement. Such aspirations may readily co-exist with more traditional teaching theories and practices but may appeal to the more advanced structural learning, constructivist processes, which encourage both the flexibility of attaining sophisticated academic concepts in a flexible setting. We cannot afford to hold onto dated practices in education when, even now, instead of listening to our lectures many students spend their time texting their friends or checking their Facebook from their smart phones. New approaches, such as those I have developed, can engage students and open intellectual and empathetic learning channels, and may yet link to more traditional learning methods, as part of the learning experience is to elicit curiosity which might then lead to self-directed learning.

Reid and Usherwood (2002) identified how 'self-directed learning problems' provided medical students with an opportunity to own their learning by providing an academic response to case studies based in the community. Back in 1996, Watson and West highlighted the benefits that changes in continuous professional development processes had for vocational training for Occupational Therapists. They recognised that Problem Based Learning (PBL) provided clinicians as well as practitioners in Business and Law with the necessary tools to develop professionally and promote lifelong learning, noting:

*Vignettes and case-based problem scenarios create a learning environment that replicates the complexity, uniqueness, uncertainty, and non-routine nature of contemporary practice.* (Watson and West, 2006, p4; Curry, 1992; Schön, 1987)

Both these learning examples would lend themselves to a student or academic response by means of the use of avatar centred technology, as would the police 'OSPRE' Part 2 (Programme Object Specific Performance Related Examination), in addition to training under the Initial Police Learning and Development Programme (IPLDP). The fundamental elements currently held within these training/teaching processes provide academics and trainers with a baseline which might be adapted to meet the needs of student centric learning. By including training in these technological advances as part of the learning experience, we are introducing an additional option for engagement in the same way that
students, not that long ago, were encouraged to learn to word process their academic scripts for marking.

To meet the challenges of the future outlined by Redecker et al. (2011), academics and their institutions need to become more proactive in their understanding and development of teaching and learning strategies for new 'personalised' strategies within education. This will require a willingness to step back from their current role as controller of the learning experience and fulfil a more subtle requirement as mentor/guide. In doing so, they must adapt and be willing to consider a more blended approach to learning which currently may not sit comfortably with their perceptions of 'what is teaching?'. It is not just the technophobic barriers of education which need to be disassembled but also the academic perceptions held by some that teaching should not be entertaining and engaging. This question may be counterbalanced by the debate over what we as educators mean by learning. New models of learning and how they might link to accepted practice are needed to ensure the practical and developmental fit between the process and the technology. This element, I fear, will prove to be the harder aspect to promote, but I hope that my experience shows something of what is possible.

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Open and Distance Learning Association of Australia, Inc. Carfax


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After decades of cycles of violence between Hutu and Tutsi in Rwanda, 1994 witnessed genocide more effective than Hitler’s gas chambers (Carlsson, 2005) costing the lives of estimates between 500,000 (Desforges, 1999) to one million people (Gourevitch, 1998). The way communities and families killed neighbours and relatives has been documented by many. In light of the localised nature of this conflict, this contribution suggests that the community should be involved in the delivery of justice as part of an effort to repair the social bonds that were damaged. This article will focus on women’s relationship to transitional justice in the aftermath of the conflict. The role of community-based organisations and the support they provided to widows of the conflict will be considered. Widows have been selected as the focal point as they represent a distinctive group: they must contend with gender-specific challenges in the wake of their loss and adapt to become responsible for tasks which they previously depended on male relatives to complete. The International Criminal Tribunal for Rwanda and Gacaca, the formal judicial and quasi judicial models developed to aid all concerned with the means to face what had happened in order to live together peacefully, have been subject to much criticism; these will be discussed. The article will draw on empirical research exploring community-based projects that were supported by a women’s charity, established to support widows and orphans in the aftermath of the genocide. Their efforts will be presented as an efficient and effective strategy of transitional justice, due to its location in the community.

Keywords Gender, Widows, Transitional Justice, Rwanda, Community, Women’s groups.

Introduction
The objective of this contribution is to explore justice in post genocide Rwanda, the role of community-based organisations and the support they provide to widows of the conflict. The article will begin by outlining a brief overview of the nature of the 1994 Rwandan Genocide and the consequences of the conflict for women. Specific attention will be paid to the experiences and challenges that have widows faced since the genocide ended. Widows represent a particular group facing gender-specific challenges in the wake of the death of their husbands. These include having to assume roles and responsibilities which were previously undertaken by the men in the family. In the Rwandan context, many widows experienced sexual violence during the conflict and therefore had to deal with its impact, the consequences of the war and the added pressure of taking charge of new
tasks that would not have previously been expected of their gender role. In the aftermath of political violence, transitional justice mechanisms are utilised to respond to what happened during the conflict in order to aid the transition to a stable and peaceful future (Teitel, 2000). The field will be outlined and the mechanisms that were created to deal with the Rwandan situation, the International Criminal Tribunal of Rwanda (ICTR) and Gacaca, will be discussed and critically analysed in order to illustrate the short falls of each. The article will go on to consider the findings from empirical research that was conducted with community-based projects that were supported by AVEGA AGAHZO\(^1\), a women's charity that was established to support widows and orphans in the aftermath of the genocide. It presents findings from research conducted in Rwanda during two field trips, of four weeks in June 2007 and six weeks in June-July 2008, which will be used to illustrate what community-based organisations can achieve in the aftermath of conflict.

**The Rwandan genocide and its aftermath for widows**

The 1994 Rwandan Genocide claimed the lives of an estimated 500,000 (Desforges, 1999) to one million Tutsis and moderate Hutus (Gourevitch, 1998). During the three-month conflict, it has been estimated that somewhere between 250,000 and 450,000 women were raped (Baines, 2003). Rape was used as a weapon of war and a means of genocide. It was used systematically to instil fear, enforce pregnancy, attack the woman and her community, and infect victims with HIV (African Rights, 1995a; Human Rights Watch\(^2\), 1996; Sharlach, 2000; Baines, 2003; Amnesty International, 2004; African Rights, 2004). Gender mitigated individual experiences of the genocide\(^3\) and it will be used as a focus in examining the aftermath of the conflict. A focus on gender is not to suggest that other determining contexts are unimportant. Clearly, ethnicity, social class\(^4\), age and geographical location all influenced the lived experiences of the 1994 conflict (HRW, 1999). Just as they did during the conflict, women experienced specific, gender-related difficulties in the wake of the war. Gendered, differential experience of conflict is not unique to Rwanda. Such differences exist during conflict historically, currently and during times of so-called 'peace' (MacKinnon, 1993). Women in Rwanda were less likely to be killed during the conflict. Consequently, seventy per cent of the population was female in the immediate aftermath of the genocide (Women for Women International, 2004). Although their lives may have been spared, women were more likely to be targeted with rape and/or sexual violence than death (HRW, 1996). For many, being raped was akin to being killed. Evidence suggests that soldiers responsible for carrying out rapes were ordered to do so due to their HIV positive status (ibid). Raping a woman with the objective of transmitting HIV was designed to ensure that the victim would die a protracted death (Nowrojee, 2005). Surviving also meant that women had to cope with

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1\(^{\text{Association of the Widows and Orphans of Rwanda, referred to as AVEGA from here in.}}\)

2\(^{\text{HRW from herein.}}\)

3\(^{\text{It is important to acknowledge that women acted as perpetrators as well as victims of violence during the genocide (see African Rights, 1995b). See, for example, the case of Pauline Nyiramasuhuko, who was convicted by the ICTR in June 2011.}}\)

4\(^{\text{Desforges(1999) has described the differences between Hutu and Tutsi as more akin to social class than ethnicity.}}\)
the loss of loved ones including, in many cases, memories of seeing their loved ones being killed (HRW, 1996).

The gender-specific experiences during the conflict were followed by gender-specific challenges in the wake of the violence. A key social challenge facing widows was that Rwandan social mores dictate that women should not remarry; this was suggested as a reason why women found it more difficult to 'move on' after the genocide. Widows faced tasks which previously would have been carried out by their husbands. Women who had been raped or subjected to sexual violence during the genocide frequently experienced stigma, discrimination and, in many cases, were ostracised from their community (HRW, 1996; Baines, 2003; Nowrojee, 2005). This further compounded women's experiences of the genocide itself.

**What is justice in the aftermath of conflict?**

Transitional justice is a body of knowledge and activism which explores the ways in which societies emerging from mass human rights violations deal with the past whilst attempting to move forward to a peaceful society (Teitel, 2000). Ensuring there is a balance between dealing with what has happened and attempts to move forward is, Duthie (2008) suggests, key to their success. Nagy (2008, p276) argues that the field has become a permanent element in responding to human rights violations discourse and it is no longer the case of 'whether something should be done...but how it should be done'. Transitional justice recognises what can be achieved in the aftermath of human rights violations from both judicial, such as court proceedings, and non-judicial mechanisms, such as truth commissions and reparations (Wolfson, 2005). The complex nature of a society emerging from violence and terror results in the need for, usually, more than one mechanism of transitional justice being used to enable a peaceful transition and promote reconciliation. In many cases, this has resulted in a number of different mechanisms being adopted in order to respond to the different needs of a society. Broadly, transitional justice mechanisms are established to fulfil key objectives in order to enable a society to make a successful transition, these include: rule of law, security, accountability, and democratisation (Minow, 1998). Clark's (2008a) version of the intended outcomes includes reconciliation, peace, justice, healing, forgiveness, and truth. Boraine (2006, p18) stresses that to be most effective, transitional justice should:

...offer a deeper, richer and broader vision of justice which seeks to...address the needs of victims and assist in the start of a process of reconciliation and transformation.

As has been illustrated by Bell and O'Rourke (2007), Ni Aolain and Rooney (2007), Rooney (2007) and Reilly (2007), transitional justice needs to have a feminist perspective which is cognisant of gendered experiences during and after conflict. From a feminist perspective, transitional justice should assert that transitional periods should be utilised to improve the social standing and treatment of women. Transitions present opportunities to challenge

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5 The most famous is the South African Truth and Reconciliation Commission, created to uncover the truths of the apartheid regime and foster reconciliation after its demise (Minow, 1998).
patriarchal structures and the discrimination and marginalisation they underpin\(^6\) and create change for women (Manchanda, 2001). Perhaps this is an unintentional consequence of conflict but, nevertheless, the chance emerges to improve the lives and rights of women. Although women are frequently represented as victims of conflict, in accordance with 'appropriate' standards of femininity, they are agentic subjects and often seize the opportunity and become involved with aspects of life they would have once been excluded from (UNDP, 2002).

**Victim-centred perspectives**

When understanding transitional justice it is important to consider the impact it has on the lived experiences of those during and in the aftermath of conflict or political unrest. A survivor may have concerns both around holding human rights violators to account and gaining access to clean drinking water. Poverty may be directly or indirectly a consequence of conflict or oppression, therefore responding to it should be part of the transitional justice package. Victim-centred research, whereby the people directly affected by conflict have been asked what they need, has illustrated that peace and security is preferred over justice (Vinck and Pham, 2009). These were closely followed by financial assistance, housing, food and water, and access to education. Failure to address such needs can cause problems for the implementation of transitional justice. If an individual does not feel secure enough to go to a market place for fear of seeing perpetrators, it is not reasonable to expect an individual to feel sufficiently safe enough to disclose their experiences of conflict to a court or truth commission (*ibid*). Similarly, if a person does not have a reasonable standard of life then typical transitional justice issues are unlikely to be priorities.

It is important to understand that transitional justice mechanisms do not take place in isolation; they reflect to a greater or lesser extent the nation’s on-going development. They form a part of a society’s process for dealing with the consequences of conflict and human rights abuses. The same society or community may also have to address consequences of the conflict that transitional justice mechanisms have not always been designed to deal with. Kaldor et al. (2006) discuss how conflicts impact on the social structures and institutions, which mean that poverty, homelessness, access to healthcare provisions, access to education, and other human needs require attention. These ongoing, indirect effects of war were experienced by survivors in Rwanda. These are concerns outlined by Mary Kayetsi-Blewitt (2006, p319), who describes how survivors ‘feel that their survival is its own form of torture’. Those who were spared or fled death during the genocide struggle to survive in the aftermath. Amongst the other challenges faced by women, Women for Women International (2004) estimated that sixty-one per cent of women in Rwanda live in poverty. This illustrates that transitional justice mechanisms must be designed in a way which ensures that they should achieve what is necessary to the community in which they have been implemented. There is no blue print or template for transitional justice mechanisms; rather, they must cater for the specific needs of the community. In Rwanda, widows needed to be able to provide for themselves in the absence of their husbands.

\(^6\)This reflects women’s experiences of conflict when structural inequalities are exacerbated.
Transitional justice in post genocide Rwanda

In the months following the genocide, the international community placed a significant emphasis on the role of international justice and its potential to achieve justice for the people of Rwanda. Some argue that this was an expression of guilt caused by not responding to or even acknowledging the fact that genocide was taking place (Melvern, 2000; Desforges and Longman, 2004). Nevertheless, a year earlier, the United Nations had established an international tribunal to investigate crimes perpetrated by state officials during the Balkans crisis (Barria and Roper, 2005). This set precedence and, on the 8 November 1994, the UN Security Council adopted resolution 855, which created the International Criminal Tribunal for Rwanda (De Than and Shorts, 2003). For the people of Rwanda, the purpose of the ICTR was to hold accountable and punish those involved at the highest level of the genocide, in an attempt to aid peace and reconciliation (ibid).

The ICTR has experienced a range of problems throughout its existence. These include operational problems, such as initial issues in setting up suitable offices with electricity, and accessing resources, such as stationery and other office materials, in Rwanda (Mose, 2005). It has also been criticised in terms of the expense and the slow pace of the court proceedings (ibid). Initially, the court was heralded for its recognition of rape as a tactic of genocide in the landmark prosecution of Jean Paul Akayesu (Askin, 2005). Unfortunately, since this case, it appears that the ICTR, like national justice systems around the world, appear to be unwilling to efficiently investigate and prosecute sexual violence (Nowrojee, 2005). It is perhaps unsurprising that there is a pattern of ineffectiveness when it comes to holding perpetrators of sexual violence accountable during so-called 'peace' and conflict. This, combined with the slow pace of the tribunal, has resulted in many of the women who were raped during the genocide dying of the AIDS they contracted and not seeing the orchestrators of the conflict brought to justice (ibid).

A key objective of the ICTR was to aid peace and reconciliation in Rwanda. The decision to house the court in Arusha, Tanzania was an obstacle that prevented Rwandan people from feeling part of the process. Burnett (2008, p174) notes how Rwandans felt 'marginalised' from the proceedings, particularly prior to the ICTR funding information broadcasts on radio in the late 1990s and early 2000s. My findings suggest that this sense of marginalisation continues to be a problem. When participants were asked about the court they knew very little; during one interview it was as though the table had turned, as the participants asked me a number of questions about the court and its progress. The impact

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7 Known as the International Criminal Tribunal for the former Yugoslavia.
8 The mandate of the international criminal tribunal was to prosecute 'persons responsible for the genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1st January 1994 and 31st December 1994' (ICTR, 2011).
9 The budget for 2010-11 alone is £138,688,758 (ICTR, 2011).
10 To date, only 69 cases have been completed.
it has had on the grassroots of Rwanda is questionable when the people that the justice was intended for know so little about it.

Gacaca
In the days and months following the genocide, the transitional government adopted a policy of arresting and imprisoning anyone who was thought to have been involved with the genocide (Amnesty International, 2002). By 1997, the prison population of Rwanda stood at 124,000, even though there was only capacity to hold 18,000. The overcrowding and poor conditions resulted in 11,000 deaths between the end of the genocide and 2001 (ibid). With a damaged and weakened justice system, the Rwandan government estimated that it would take more than a century to try all the inmates (ibid). After a period of consultation, the government decided to employ Gacaca, a pre-colonial method of conflict resolution, which would be adapted and given powers to prosecute genocidaire. Gacaca is characterised by its participatory nature, as it requires all members of the local community to hear cases and contribute to the proceedings (ibid). Gacaca encompasses judicial, as some courts have the jurisprudence to imprison genocidaire, and non-judicial elements, such as truth recovery and the opportunity to seek forgiveness from victims or the families of victims, of transitional justice. Depending on the level of involvement, those who stand trial at Gacaca can be sentenced for up to 25 years, although some have the option to serve half their sentence in community service projects. These projects include maintenance of public spaces and buildings, and the maintenance of school and hospitals (Amnesty International, 2002).

The Gacaca courts have received mixed reviews. Megwalu and Loizides' (2010) research into public perceptions of the courts found that 74.4 per cent of their 227 non-representative sample thought Gacaca was doing a good job, with only 6 per cent disagreeing. A positive outcome of the courts has been that they have allowed some survivors to establish how and where their loved ones were killed. This has enabled them to give their loved ones a 'dignified burial', I was told by several widows. However, Burnet (2008, p187) discovered evidence of individuals settling personal grudges by making false accusations at the court; one reason why the proceedings have been said to have had a 'destabilizing effect' on the community. This paper will now present findings from community-based organisations and argue that these should be understood as part of the lexicon of non-judicial approaches to transitional justice.

The role of community-based approaches
The Rwandan Genocide is infamous for the way in which individuals were killed by people they knew and had previously lived peacefully alongside, even married or attended school with (Gourevitch, 1998). This resulted in a lack of trust and absence of a social network in the wake of the violence. In the aftermath of the conflict, women were not, in fact, 'passive' or 'powerless'. They helped establish community-based organisations to support each other in their recovery from the genocide. These organisations were tasked with

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11 The term genocidaire has been adopted by the Rwandan language to describe those who committed genocide.
dealing with the range of problems at different levels that women faced, including social, emotional, economic, political and medical. The role of community-based organisations in delivering support strategies for women in the wake of violence will now be considered. This will be explored in relation to the part that such organisations can also play in achieving transitional justice objectives. It is argued that community-based organisations can be responsible for promoting, delivering and achieving the goals of transitional justice at the local level. This is significant as community-based, bottom-up approaches, those which are founded, organised and implemented by members at the grass roots of society allowing the community to take ownership over such processes, can promote agency (Lundy and McGovern, 2008). This stands in contrast to top-down processes like the ICTR and, arguably, Gacaca, whereby the state is in control of the process and procedures of initiatives. Community-based organisations can be described as bottom-up approaches as they prioritise the needs and requirements of the communities in which the projects are taking place. As McEvoy (2008) argues, in the aftermath of violence, the needs of individuals and communities should be prioritised. As has been established, women are victimised in gender-specific ways during conflict, however, this does not mean that their agency is diminished in the aftermath of conflict (Smet, 2009). It is widely acknowledged that gender inequalities impact women’s access to aid during peace and in the aftermath of conflict (Bouta et al., 2005). In the Rwandan context, the gendered inequalities that existed prior to the genocide became exacerbated during the genocide and in its aftermath. Thus, it can be argued that when establishing and supporting community organisations, the role and significance of gender must be taken into consideration to inform policy and practice.

**Community-based organisations promoting transitional justice and development in Rwanda**

In this part of the article I will explore the empirical findings from my doctoral research into women’s relationship to justice on the aftermath of the Rwandan Genocide. Initially, the project was to focus on the ICTR and Gacaca. However, after spending time with women’s groups in Rwanda, it became apparent that these modes of transitional justice were not having as significant an impact on survivors as the community-based projects I am about to explore. Informed by the key principle of feminist methodology to represent women’s experiences from their perspective (DeVault, 1996), I endeavoured to explore these projects in more detail. For the purpose of this article I will draw on data from interviews and follow-up interviews conducted with representatives from AVEGA and a group interview with four beneficiaries. The women were aged between 40 and 50. The interview lasted for 68 minutes and took place at the AVEGA offices in Eastern Rwanda. It was conducted in Kinyarwanda and translated by a member of staff. The women were members of a cooperative, which translated to English as ‘working together’12. The group was made up of 21 widows, of whom 10 were HIV positive as a result of the genocide. Prior to the interview, I met the women and they showed me around the banana

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12 In order to protect the identity of the participants the name of the cooperative will not be provided, the nature of their work has been disguised and they are referred to by pseudonym only.
plantation project that they were involved with, which was a short distance from the location of the interview. The beneficiaries were selected to take part in the research for convenience reasons; they were already close by to the AVEGA offices and therefore did not need to go out of their way to take part in the interview. As with all research projects, there are some issues in terms of the representativeness of the findings. The project I will draw on is a successful one. The same sentiments may not be expressed by a project not doing so well. Nor are these findings representative of all widows. However, based on the data collected from representatives from women's NGOs, the problems experienced by widows were common due to the gender-specific problems widowhood resulted in. Therefore, these findings illuminate a case of best practice and potentially a model that could be utilised in other post-conflict settings as part of the response to the challenges of widowhood.

The widows were supported by AVEGA, which was founded in 1995 by 50 widows of the genocide. The main objectives of AVEGA include: providing holistic support for widows and orphans of the genocide; promoting solidarity between members; remembering the victims of the genocide; and playing a role in the reconciliation of the country. In order to achieve these objectives they run various schemes, including: distributing anti-retroviral drugs, counselling, training, education, and income-generating activities. As AVEGA was established and is coordinated by survivors of the genocide, it can be understood as a grassroots or bottom-up organisation (Lundy and McGovern, 2008). The members of staff that work for AVEGA are from the same communities affected by the genocide. Thus, they see and understand the problems survivors face and aim to provide them with the capacity to provide practical solutions to their problems. The AVEGA ethos is guided by the belief that practical schemes which encourage local participation can achieve long-term and sustainable results.

The women turned to AVEGA for support in the aftermath of the genocide. As the women all live in the same Sector and had shared similar experiences of the genocide, AVEGA encouraged them to form an association. One of the women said she became involved with the association 'to overcome her problems: the consequences of the genocide'. They were encouraged to share their experiences and discuss their problems with other members of the group in an attempt to reduce trauma. Associations were created to provide widows with a support network, initially on an emotional and social level but, later, also financially. Widows recognised that they shared common problems and, by working together, they began to find common solutions. In order to relieve their families of their post genocidal extreme poverty, widows began working together. Among the many important schemes organised and supported by AVEGA are income-generating projects (IGPs). IGPs provide beneficiaries with the capacity to earn their own income with the long-term goal of independence. This is a positive and empowering experience for widows and allows them to move forward and 'fills them with hope', as I was told by one beneficiary. AVEGA supports a range of IGP, including: agricultural activities, livestock keeping and trade, and the making and selling of crafts. Not only do they provide assistance relating to the project, they offer support and training around money

\[^{13}\text{See previous footnote.}\]
This is crucial as, prior to the conflict, although women would earn money, largely through agricultural work, it was usually controlled by their husbands or fathers. Thus, I was told that, women lacked the skills they needed to manage their money and survive. Such projects are designed to tackle the gender-specific consequences and challenges that widows faced in the aftermath of the genocide, particularly providing support to women to enable them to take responsibilities which would have previously been their husbands. AVEGA approached the association and asked them if they would like to farm some land in the local area. The members agreed, and as they were now working together on a financial enterprise they became a cooperative. This meant that they had to consider the organisation of the group and elect members to formal roles such as President, Vice President and Treasurer; again, levels of responsibility which would have been excluded from previously. The association had been saving money and these funds allowed the group to buy some of the tools and materials they needed, with AVEGA paying for the rest. This project was financially successful and the women made the equivalent of 900 pounds sterling in their first harvest. This has increased year on year from 2003 to 2008. The money raised was used to pay wages and expand and improve the business. The women were working on average, 20 days a month\textsuperscript{14} which earned them the equivalent of 10 pounds sterling a month.

Renee\textsuperscript{15}, the President of the group, talked of her role in the cooperative:

\begin{quote}
I am proud of the members of the group. They have confidence in me to elect me to be their leader and now I am proud of that confidence. Secondly, I found in me the quality of leadership. The third thing is that I helped the members from one level to the next level.
\end{quote}

For many women, being a part of the cooperative had changed their life:

\begin{quote}
Firstly, I am very happy, as after the genocide I was very traumatised. Being in and among the group my trauma diminished. Before I was alone, in the group I found friends that are now like the relatives that I lost. In the project I earn money and the money helps me to buy my [clothes] dress and respond to basic needs at home. And the killers who killed my relatives wouldn’t [won’t] find me begging. This is very important. Jenny

The project allowed us to have money to respond to the problems at home that needed money, for example, buying school materials for our children, buying soap and responding to the basic needs at home. So for me it has been a big support in front of the families of those who killed our relatives, our husbands and our children...even if our husbands died, we are able to find solutions to the problems at home and we don’t go on the road and begging. Renee
\end{quote}

\textsuperscript{14} The women had other jobs, typically working on family land or in the agricultural sector.

\textsuperscript{15} Names have been changed to protect the identity of the women.
The above quotes demonstrate that cooperatives can achieve some of the aims of transitional justice. The women’s work gives them a sense of achievement and confidence in their own ability. They have discovered that they have the ability to lead. They experience happiness and reduced trauma due to the support they find from a new social network. They gain an income and the capacity to provide for the needs of their families. They report freedom from humiliation, as they do not have to beg, and a sense of security. The women described how being in a member of the cooperative repaired the harms that they suffered during the genocide: trauma, isolation, poverty, happiness and loss of husbands and the services they would have provided, such as money.

The women were asked about their views on reconciliation. They said that being involved with the cooperative made it more possible to reconcile. Defining and labelling reconciliation is difficult and highly contested, and having an indicator to demonstrate what reconciliation constitutes is even more difficult. When the women told me that they had proof of their desire and capacity to reconcile I was somewhat confused; the cooperative of 21 widows, some of whom were HIV+ as a result of the genocide, employs people in their community to help with the upkeep of the banana project and some of the people they employ are relatives of those who killed their relatives. Paid employment in rural parts of Rwanda is uncommon; most villagers work only on their families land or livestock. Providing employment reflects their sense of security and willingness to reconcile.

**Discussion and conclusion**

Community-based projects fulfil some of AVEGA’s key objectives: encouraging members to be self-reliant through capacity-building projects and promoting reconciliation. Providing the community with the space and opportunity to communicate, negotiate and make their own decisions are skills that are essential for a peaceful Rwanda. Such skills also serve the purpose of creating new trust bonds and forming new relationships, which were destroyed during the genocide. Working in a cooperative has provided communities with the ability to generate their own income, which gives them autonomy, so they do not have to rely on aid agencies for help. The work of AVEGA would not typically be understood as a form of post-conflict community justice. However, the findings indicate that there is scope for such initiatives to be understood as an example of non-judicial community justice.

Although such projects can have a positive impact on the lives of those involved, their main limitation is due to lack of funds and resources, which prevent them from being scaled-up, and therefore reach only a relatively small number of people (Uvin, 2010). This raises significant questions about the decisions that are made in terms of how resources and funds are distributed in the aftermath of conflict. These choices must be informed by evidence and money should be prioritised for projects that are both efficient and effective. If schemes such as those discussed in this article can fulfil the objectives of transitional justice, then they should be deemed more effective than those which have a limited impact. Thus, a holistic approach must be adopted to ensure that societies

16 Leadership of any form was exclusively a male responsibility
recovering from political violence and mass human rights violations are dealt with in an effective manner.

References
Tobin


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THOUGHT PIECE

‘Thought Pieces’ are papers which draw on the author's personal knowledge and experience to offer stimulating and thought provoking ideas relevant to the aims of the Journal. The ideas are located in an academic, research, and/or practice context and all papers are peer reviewed. Responses to them, or new thought pieces are always welcome and should be submitted to the Journal in the normal way.

FREEDOM OF EXPRESSION, MINORITIES AND STATE PROTECTION

Zia Akhtar, Grays Inn

Abstract  The recent acquittal of Dutch MP Geert Wilder on a charge of inciting racial hatred, banning of veils in France, and the burning of the Koran in the US, are part of a sequence of criminalisation of Muslims. Iconographic figures of Muslims were demonised, beginning with the publicising of libellous cartoons of the Prophet Muhammad, initially in Denmark and then much of Europe, depicting him as a terrorist. There are international conventions that prohibit the discrimination of communities based on their religious beliefs. In the UK, the Racial and Religious Hatred Act 2006 has extended the ambit of the Public Order Act 1986 to cover religious harassment. However, the failed prosecutions under the statute show that it does not extend to vilification of the belief and only addresses the people who practice the creed. The findings of researchers in the UK and US show that the fundamental rights in granting freedom of expression vary according to the constitutions but their expression needs to be balanced with the effect on the rights of a minority. This paper presents an argument that the commission of hate crimes should include a grossly offensive insult to a religious faith for the improved protection of minorities from racist attack, even if the intention of the perpetrator is to invite contemporary discussion.

Keywords Libelous cartoons; Hate crimes; Human Rights; Public Order Act 1986; Racial and Religious Hatred Act 2006.

Introduction

In the last two decades, western literature in both print and electronic forms has offended the people of Muslim faith by the use of imagery and satire. The methodologies
employing to denigrate holy figures have caused court actions in European cities and disturbances on the streets of the Islamic world. This has brought the conflict between the occident and the orient into sharp relief by the defamation of the sacred canon of religion. It has been carried out in the climate of xenophobia and with legislation enacted against those suspected of terrorism on the European mainland. The issue of victimisation begs the question if the objectifying of symbols in disparaging a value system can be punished, or allowed as a valid debate.

The exercise of the right of freedom of expression carries with it duties and responsibilities enshrined in law by Article 10 of the European Convention on Human Rights 1952, as incorporated by the Human Rights Act 1998 (HRA) in the UK. The state can place this in abeyance if restrictions are considered to be necessary in the interests of national security and public safety. There is another contention surrounding the issue of further prejudicing the majority against the minority by the debasement of their sacred canons. It is particularly alienating for the minority when it is narrowly defined as a religious group, and not grouped together as a racial category.

There has been controversy in recent times about the lack of prosecutions in cases where the esteemed icons of the Muslim faith have been degraded. It was initiated with the illustrations in a Danish newspaper that castigated the Prophet Muhammad as a terrorist. Subsequently, there was the incineration of Koranic texts in the US that did not lead to criminal charges. The Dutch MP Geert Wilder was acquitted of inciting racial hatred when he compared the tenets in the holy book of Muslims to the Nazi ideology, and recently the wearing of veils has been proscribed in France. These have been deemed by their critics as propaganda against Islam by the West.

The treatment of the Islamic faith as a vehicle for contempt and ridicule has caused a victim complex amongst the Muslims. They are the minority community in Europe who have been suspected of dubious loyalty in the current 'war on terror' and the policy of liberal interventionism in their countries of origin. This has caused them to seek protection in laws against cynical and satirical excess in the European countries in which they have settled. In the UK, the concerns of Muslims have surfaced since the 'Satanic Verses' was published by Penguin in 1989. This book was seen to be defamatory of the Prophet Muhammad and there was civil agitation in the UK and abroad to have it pulped. The need was felt that a law should be promulgated that could protect Muslims and other religious minorities. This came with the enactment of the Racial and Religious Hatred Act 2006, which extended the Public Order Act (POA) 1986’s ambit to cover religiously aggravated harassment.

This article illustrates the controversy caused by the impact of the Danish cartoons. They were in the view of Muslims malicious by their depiction of the Prophet Muhammad as a

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1 Article 10 of the UK Human Rights Act states: 'Everyone has the right to freedom of expression.
This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.'
www.legislation.gov.uk/ukpga/1998/42/content
'terrorist'. The piece's main focus is the UK and there is an exploration of earlier legislation before the Racial and Religious Hatred Act (RRHA). There is a sequence of judgments that show that in the UK hate crime when visible is punished but not when it criticises the value system itself. It examines if censorship through law can be justified by reviewing authoritative texts. The argument that freedom of expression is a qualified right is explored by a comparison with the treatment of minorities in the US where there are fundamental rights enshrined in the Constitution.

**International Protections available for minorities**

In the UK, civil liberties are defined by case law rather than one statutory source or constitutional document and it is the common law that protects individual freedoms. The current law, which guarantees free speech, does place limits on absolute freedom of expression. This flows from the International Covenant of Civil and Political Rights 1966 (ICCPR), which the UK ratified 10 years later. It is an international treaty that places limits on free speech by prescribing it as a qualified right. Article 19 of the ICCPR refers to freedom of expression and advocacy of religious hatred in the context of incitement, discrimination, hostility or violence. It states as follows:

*Everyone without interference shall have the right to hold opinions.*

*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

*The exercise of this right carries with it special duties and responsibilities. It may therefore, be subject to certain restrictions, but these shall be such as are provided by law and are necessary. These are set out as (a) For respect of the rights or reputations of others; (b) For the protection of natural security or of public order or of public health or morals.*

This implies that the freedom of expression does not provide an absolute right to free speech. There has to be a restraining mechanism in its exercise. There is a clear duty under international law for abridging this unfettered right to freedom of expression where it discourages toleration in the broader framework of society.

The 1981 Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief establishes a moral obligation on state parties to be proactive in the 'recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life' and to prohibit all statutory
enactment that allows any risk of bias and to combat 'intolerance on the grounds of religion or other beliefs'.

Under the European Convention of Human Rights 1952, the freedom of expression is defined under Article 10 as a right. However, this freedom does carry with it duties and responsibilities, that the state can impose if they are in the public interest. The remit of the European Court of Human Rights has been interpreted by Clayton and Tomlinson (2001) as based on trying to balance the right to freedom of expression with the need to protect other rights under the Convention. They argue that:

\[ \text{According to the Court, interference will be justified if the interference is prescribed by law; if there is a legitimate aim; and if it is necessary in a democratic society.} \]

There is an equation between necessity and proportionality and it has to satisfy the test by proving the less intrusive measures had been exhausted before this restriction came into effect. It has to be seen against the background of the principle that has been enunciated by the European Parliamentary Assembly for promoting coexistence and toleration of all the peoples who reside in the European Union. The Recommendation states:

\[ \text{The Assembly emphasises the need for greater understanding and tolerance for individuals of different religions. Where people know more about the religions and religions sensitivities of each other, religious insults are less likely to occur out of ignorance.} \]

**Justification as a defence to the charge of sacrilege**

The international conventions show that there are obligations for the state parties to their minority communities not to offend their beliefs. It is a principle that had its acid test when the Danish newspaper Jyllands-Posten published cartoons under the banner 'Muhammad's ansigt', ('The face of Muhammad') on 30 September 2005. This depicted the Prophet Muhammad as a terrorist and the editor announced that this publication was an attempt to 'contribute to the debate regarding criticism of Islam and self censorship'. The Muslim organisations raised protests, which were met by newspaper publishers in various European countries closing ranks and republishing the cartoons in their own national newspapers. On 27 October 2005, a complaint was filed with the Danish police claiming that the newspaper had committed an offence under the Danish Criminal Code. This has a blasphemy section that prohibits distributing material that publicly ridicules or insults the dogmas of worship of any lawfully existing religious community in Denmark.

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2 This Declaration sets out in its preamble to 'promote understanding, tolerance and respect in matters relating to freedom of religion and belief' and to ensure that the use of a belief system is not used for objectives that are not in accordance with the United Nations Charter of 1948. Proclaimed by General Assembly resolution 36/55 of 25 November 1981.

3 P.A. Recommendation 1805 (29 June, 2007).

4 Section 140 and section 166 of the DCC are together known as the 'blasphemy law'.
In augmenting their charges by bringing a lawsuit against the newspaper the Muslim groups referred to Section 266b. It criminalises insult, threat or degradation of natural persons, by publicly and with malice attacking their race, colour of skin, national or ethnical roots, faith or sexual orientation. In Decisions on the Criminal Proceedings on case of Muhammad's cartoons (2005)\textsuperscript{5}, the editor's affidavit argued:

\begin{quotation}
There are interpretations of it [the drawing] that are incorrect. The general impression among Muslims is that it is about Islam as a whole. It is about certain fundamentalist aspects, that of course are not shared by everyone, but the fuel for the terrorists' acts stem from interpretations of Islam. [...] if parts of a religion develop in a totalitarian and aggressive direction, then I think you have to protest. We did so under the other 'isms'.
\end{quotation}

As a consequence of this submission, the Regional Public Prosecutor discontinued the investigation as he found no basis for concluding that the cartoons constituted a criminal offence. He stated that the article concerned a subject of public interest and Danish case law extends editorial freedom to journalists when it concerns a subject of public interest. He assessed that, when deliberating if there has been a commission of an offence, the right to freedom of speech must be taken into consideration.

This was upheld on appeal to the Danish DPP who agreed with this ruling. However, in the aftermath to this case, two imams who were dissatisfied with the reaction of the Danish Government and Jyllands-Posten, created a 43-page document entitled 'Dossier about championing the Prophet Muhammad peace be upon him' (Akhari Liban dossier).\textsuperscript{6} This consisted of several letters from Muslim organisations explaining their case, including allegations of the mistreatment of Danish Muslims, citing the Jyllands-Posten cartoons and the 'pain and torment' it caused for the authors. Appended to the dossier were multiple clippings from Jyllands-Posten, the Weekendavisen, some clippings from Arabic-language papers and three additional images, which had no connection with Denmark. The outcome was that the editor of Jyllands-Posten apologised to the Muslim community for the hurt he caused but not for the freedom to publish those articles. In the case before the prosecutor at the Danish Criminal Court, the editors of the newspaper were not indicted for creating the Angst Muhammad cartoons because the argument was accepted that it may not be intentional to offend the community even if the actual content may be so grave and salacious that it may lead to an insult by the racist inferences. This brings to the fore the question of when the freedom of speech comes with 'responsibilities' and if there is a 'moral' responsibility that makes the legal obligation an imperative. The concept of a moral duty can include legal obedience and the immoral act can require a legal intervention. The tension between legal freedom of speech and moral offence can be resolved if there is acceptance that the use of satire can lead to harm in society caused by targeting of a vulnerable group.

\textsuperscript{5} www.rigsadvokaten.dk/ref.aspx?id=890
\textsuperscript{6} http://wn.com/akkari-laban_dossier?orderby=relevanceandupload_time=today
There has been a critical appraisal of this decision by the Northwestern University. Professor Lars Tonder (2009), states that the observer should look beyond the constitutionality of cartoons and instead focus on the ‘framing of harm’ as an issue of political dispute. Its effect must be measured against the practice of community building, democratic activism and agnostic respect. Tonder argues that the debate on the cartoons concealed the discussion on harm. The legacy of this ‘veil’ is especially relevant in the literature of the cartoons. The challenge was to search the link between liberalism and free expression in order ‘to clarify the condition under which it once again can become an affirmative part of free expression, which required a critical and a reconstructive dimension’. It can be determined by finding a correlation ‘between the injury, hurt, vulnerability and woundedness from the encounter’.

Tonder argues that there can be undemocratic uses of free expression and that the cartoon depiction was evidence of liberalism’s current impasse. The Danish cartoon was a symptom of liberalism that was ‘part of the problem and not simply the solution’. There had to be a new set of imperatives that proposes a set of reasons ‘that justifies harmful speech with reference to whether or not it enriches our commitment to public scrutiny and mutual contestation’. He contends that religious hatred had to be distinguished from racist hatred and there had to be an objective analysis of the harm caused instead of the legal right to illustrate the cartoons. This could be accomplished in ‘the context of the general principles democracy with a call for self censorship in the name of multi culturalism and peace’.

In his commentary on the abuse of freedom of expression, Eric Barendt (2005) states that ‘the rational discussion of religious matters should be free, but not insults which it was implied, cannot provoke a reasoned response and so contribute nothing to worthwhile debate’. In support of this contention, Kevin Boyle (1992) argues that ‘The example of religious insult, discrimination and intolerance have been seen since the beginning of human existence’.

**Sanctions against hate crimes in the UK**

In Denmark, the freedom of expression doctrine had overridden the injury to the minority and the effect on its perception by the majority. The ruling in Muhammad’s cartoons showed that the legal regime in that country did not provide sufficient protection in its blasphemy law to cover the Muslim community, whose iconographic figure was displayed as a criminal.

The UK abolished the offence of blasphemy by the enactment of Section 79 of the Criminal Justice and Immigration Act 2008 (CJIA). This presumes that all the religions practiced in the UK are on an equal footing. In future, all charges that arise in terms of abusing a religious faith will have to be initiated by reference to the Racial and Religious Hatred Act 2006 (RRHA). However, the criminal sanctions against hate crimes have been enforced through the Public Order Act 1986.⁷ In Part 3 of the Act, there is a list of offences that

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⁷ S 291 of the POA states: 'An Act to make provision about offences involving stirring up hatred against persons on racial or religious grounds'.
arise from the use of words or behaviour or display of written material (Section 18), publishing or distributing written material (Section 19), public performance of a play (Section 20), distributing, showing or playing a recording (Section 21), or broadcasting (Section 22). The offence arises under Section 23 if the act is intended to stir up racial hatred, or possession of racially inflammatory material.

The RRHA was promulgated to extend the POA's ambit to cover religiously aggravated harassment. The criminal sanctions are covered by means of Part 3A of the new statute that inserted Sections 29A to 29N into the POA. This created new offences for acts intended to stir up religious hatred. Its promulgation has strengthened the protection against abuse to cover religious faiths by adding 'religious' to 'the racial' hatred in the commission of an offence. However, the sanctions against racial abuse predate the RRHA and it was the POA 1986 that set out an offence of disorderly conduct under its Section 5. It had an earlier impact on race hatred law. The breach of this provision would invite prosecution to a 'religious' hate crime, but only if it was a publicly defined offence and not a private assertion of belief. This is even if it attacked a belief system in the vilest of terms.

It was the enactment of the Crime and Disorder Act 1998 (CDA) Section 31 that augmented the POA and made publications of materials for public consumption inciting racial hatred into a punishable offence. The offence is caused by 'deliberately provoking hatred of a racial group; distributing racist material to the public; making inflammatory public speeches; creating racist websites on the internet; and inciting inflammatory rumours about an individual or an ethnic group for the purpose of spreading racial discontent'.

Under this legislation, an obviously insulting act that disparaged the whole Muslim community would be punished. This would be covered by the provisions of the Public Order Act and will be deemed to satisfy the Part III of the statute. It has caused prosecution to be brought when the libel is such as to cause the members of the group such alarm, distress or fear as to fall in the category of harassment.

In Norwood v DPP (2004)\(^8\), the indictment of the defendant was based on the allegation that he displayed a British National Party (BNP) poster beside a photo of one of the Twin towers being brought down in the USA. The image was surrounded by a crescent and a star and a prohibition sign. The defendant was accused of causing racial harassment and he was convicted under the Section 5(1) (b) of the POA 1986, aggravated in the manner provided by Sections 28 and 31 of the CDA 1998.\(^9\) The defendant appealed and his argument rested on the basis that the poster was not abusive or insulting; that there was

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\(^8\) 40 EHRR SE 111
\(^9\) The offence is created by section 5 of the Public Order Act 1986 when '(1) A person is guilty of an offence if he: (a) uses threatening, abusive or insulting words or behavior or disorderly behavior, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby and intends to so or aware it might happen.'
no evidence of anyone having been harassed, alarmed or distressed by its display. There were no Muslims who had been called to give evidence; if the offence was not religiously aggravated then there was no power to convict him of the basic offence under Section 5, which should have been charged in the alternative; conviction of him would infringe his right to freedom of expression under Article 10.1 of the HRA, and would be wrongfully discriminatory in contravention of Article 14 of the statute. The High Court dismissed his judicial review application and held that in the circumstances of this case, the issue included consideration of the defendant’s right to freedom of expression under Article 10 of the European Convention of Human Rights 1952 (ECHR), as incorporated by the Human Rights Act 1998. This consisted of evaluation of two parts under Article 10.1 (proclaiming the right to freedom of expression), and under 10.2 (permitting certain restrictions that were necessary conditions), upon which the original right had to be exercised. In taking them into consideration, the defendant had been properly convicted and no right under the HRA had been infringed.

The POA is not invoked when there is a visible demonstration of racial discrimination, as where the Muslims are targeted as an undesirable racial minority in the context of their alleged incompatibility with western norms, which were grounds upon which the British National Party has campaigned. When the BNP raised their flags bearing the slogan 'Islam out' after the London bombings in July 2005, the allegation was made that they committed an offence under the delineated Part III of the 1986 Act. This was not indictable because it was held that they were not attacking the 'racial origins' of Muslims even though their conduct was provocative and offensive.

In a BBC TV documentary 'The Secret Agent' shown in 2005, the Chairman of the BNP Nick Griffin described Islam as 'a wicked, vicious faith'. He made certain statements of Britain being turned into 'a multi racial hell', as a consequence of which he was charged with two counts of using 'words or behaviour intended to stir up racial hatred' and Nick Collett, his subordinate and party activist, was charged with four similar offences for insulting Islam by telling a political gathering 'Let us show the ethnics the door'. In R v Griffin and Collett (2005)11, heard at the Leeds Crown Court, the jury acquitted the defendants who had claimed in their defence that their statements were not an attack on Asians, but on Muslims. They also claimed that they were speaking at a private meeting and could not be accused of trying to stir up hatred among the general public. Griffin had even blamed the Koran for encouraging the Muslims to behave in a certain manner that undermined English society. He told the Court that this was 'not a racial thing. It's not an Asian thing. It's a cultural and religious thing.' The accused made no attempt to hide his contempt for Islam and linked activities of its followers which are not uniform of the practitioners of the faith.

In his summing up, the Recorder of Leeds, Norman Jones QC, drew attention to the fact that issues had arisen during this case which had drawn attention to politics and religion

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10 The documentary was the product of a six-month investigation by reporter Jason Gwynne, who infiltrated the BNP.
and mentioned that they were not 'about whether the political beliefs of the BNP are right or wrong. It's not about whether assertions made about Islam are right or wrong. Those are issues to be debated in different arenas'. His concluding observations were as follows:

_We live in a democratic society which jealously protects the rights of its citizens to freedom of expression, to free speech. That does not mean it is limited to speaking only the acceptable, popular or politically correct things. It extends to the unpopular, to those which many people may find unacceptable, unpalatable and sensitive. Along with those rights come rights and duties not to abuse them._

**Prosecuting religion based hate offences**

In the wake of the unsuccessful private prosecution against the 'Satanic Verses' by Salman Rushdie in 1990, the Muslims had pleaded that, unlike the Jews and the Sikhs, the existing legislation did not grant them sufficient protection. The UK government responded by promulgating the Racial and Religious Hatred Act 2006 (RRHA), that was designed for the protection of the minorities against those using racial abusive terms that crossed into religious hatred. This statute came into force on 1 October 2007 and states in its long title:

_Nothing in this Act shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytizing or urging adherents of a different religion or belief system to cease practicing their religion or belief system._

This provision provides an outlet for the defendant and it stops the prosecutors from bringing charges in all but the most obvious cases of criminal behaviour. It is an assumption based on the argument that the accused's anti-religious behaviour was not an expression of abuse or an effort to change someone's beliefs and, therefore, that behaviour is lawful. It would need the infusion of only a reasonable ground for doubt to prevent a defendant being convicted. The intention of the statute from the outset is to protect the believer and not the belief. This is a distinction that the defence lawyers will endeavour to use against the prosecution by asserting that it insulted a belief and not a group of people. The RRHA has introduced the offence of religious hatred, but despite its title it does not address racial hatred. It means that the judiciary has to exercise an approach that would defend the member of that religion but not the principles of their faith.

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12 On 23 July '11 the Dutch MP Geert Wilder was cleared of inciting racial hatred when he compared Islam to Nazism. The reasoning of the judges was that it promoted a general debate on religion, morals and society. [http://www.inquisitr.com/116670/dutch-politician-geert-wilders-found-not-guilty-in-hate-speech-trial](http://www.inquisitr.com/116670/dutch-politician-geert-wilders-found-not-guilty-in-hate-speech-trial)
The difficulty of prosecuting successfully this type of alleged offence can be seen in the recent UK case of R v Vogelanzang\(^{13}\) where hotel owners who had criticised a English female Muslim convert by disparaging her Muslim dress 'as bondage' and by calling the Prophet Muhammad 'a warlord' escaped criminal conviction. The proprietors were charged under Section 5 of the POA and Section 31(1) and (5) of the CDA '98, for using 'threatening, abusive or insulting words that were religiously motivated'. The accused were acquitted on the grounds that they had not intended to cause deliberate offence.

The obstacles in bringing a successful prosecution under the Act have been cited in a Times article by Stephen Gerlis (2007), Barnet County Court judge. In this piece, he explains the implementation barriers of the RRHA as follows:

*Freedom of religion is guaranteed by Article 9 of the European Convention on Human Rights. Likewise, laws against stirring up racial hatred already existed, but they were over 20 years old. The new provisions bring the law up to date by creating new criminal offences of inciting racial hatred. That covers everything from the everyday use of words and behaviour to the production and distribution of written or recorded material. For each of the offences, the words or material must be threatening, and it must be intended to stir up religious hatred.*

*Religious hatred is defined as hatred against a group of persons defined by reference to their religious belief, or even their lack of religious belief. Oddly, though, the Act steers clear of defining exactly what amounts to a religion or a religious belief. Someone once famously gratified 'Eric Clapton is God', but does that make him a religion? Who will decide then whether a particular belief amounts to a religion?*

In defining what constitutes a hate crime in judicial reasoning, Barbara Perry (2003) states that hate crime is 'relative and is historically and culturally contingent' (p6). The contemporary dynamics of hate motivated violence have their origins in a historical condition and this is a cycle which repeats itself with the similar pattern of motivation, sentiment, and victimisation. She contends that just as the 1890s immigrants 'were subjected to institutional and public forms of discrimination and violence so were those of the 1990s'. In Perry's view, the commission of hate crimes has implications beyond the immediate victims and offenders. It is implicated not merely on the relationship between the direct 'participants' but also in the transactions 'between the different communities to which they belong'.

**Religious persecution by a law of 'suspects'**

The tension in the UK has increased in the wake of the 9/11 bombings in the US. The UK Parliament enacted the Anti Crime and Terrorism Act in 2001 (ACTA) Part IV Section 21 that imposed a power of indefinite detention on foreign nationals resident in the UK.

These suspects were deemed to be sympathetic to those who had participated in the attacks abroad. The aftermath of the law was draconian in effect and led to a series of measures such as solitary confinement at HMP Belmarsh for 11 Muslims. This provision in ACTA was later quashed by the House of Lords by their ruling in FC (Appellants) v SSHD\(^{14}\) as incompatible with the right to liberty granted under the European Convention of Human Rights 1952 (ECHR) Article 5, incorporated as the Human Rights Act 1998 (HRA) in the UK. However, as the threat of home-grown terrorism became a reality in July 2005 when a group of UK Muslims detonated the explosives in London, it led to a series of Anti-Terrorism Acts that impacted on the Muslim community. The outcome was that there was increasing surveillance, stop and search powers, and Special Tribunals where the defence was not allowed to view the prosecution case. In the charged atmosphere, there were prosecutions of Muslims that led to convictions for potential acts of terrorism. The outcome was a hostile reaction in the host community against Muslims that was manipulated by some politicians who are members of the extreme right parties. This may have been a factor in their lack of implementation of the RRHA 2006.

The Islam phobia has been increased by the immigration of Muslims into the UK and Europe. This has been used in scare tactics and is another factor that has caused the host community and its agencies to be apprehensive of them as a community. The media has magnified the threat of 'hordes' of foreigners arriving who do not share the same aspirations and cause a hostile reaction against those who are already settled in this country. There has been a public misconception induced by the media which can be defined with reference to Stanley Cohen (1973). The sociologist ascribed moral panic as 'A condition, episode, person or groups of persons which emerges to become defined as a threat to societal values and interest, its nature is presented in a stylised and stereotypical fashion by the mass media' (1973, p9).

In their analysis of the growth of race hate crimes that correlate with the perception of a marginalised minority, Chakorboti and Garland (2009, pp36-38) state:

> Since the turn of the millennium an increased focus has been placed up on the issue of religious identity in the UK, and with this has come greater scrutiny over the extent to which particular religious values and practices are compatible with constructions of British identity. Although this growth in attention has in some respects been constructive in promoting an enhanced awareness of religious diversity and distinction between religious and ethnic identity, it has also had rather more negative implications for faith communities targeted on the basis of their religious beliefs.

They describe this as a clash of cultures between the visibility of faiths and the secular values of British society which may be witnessed through disputes over faith schools, religious dress and social customs. They criticise the existing criminological literature by its ethno-centric bias that may have 'resulted in the marginalisation of religious affiliation and in it overlooking important divisions within ethnic communities' (2009 pp34-38). It is

\(^{14}\) [2004] UKHL 56
manifested from the application of 'the secular term Asian to describe people from the Indian subcontinent which can overshadow differences between the Hindus and Muslims'. This is an argument that implies that the distinction between religious identity is very important within a pluralistic society such as the UK. The study cites the increased awareness of religious identity in the UK by the pioneering inclusion of a question about religion in the 2001 Census. This has revealed the separate categories in the membership of various religious groups in the UK.

Inadequacy of laws to deal with religious defamation
While there is a plank of legislation to deal with religious hatred, there is insufficient protection for indirect or satirical abuse in the statute books. The controversy that erupted in the late 1980s surrounded the publication of the Satanic Verses, which was defamatory of the Prophet Muhammad. The proclamation by religious figures to ban the book and the refusal to grant Muslims the same protection as available to Christians under the criminal law led to the Law Commission publishing a report entitled 'Criminal Law: Offences against Religious and Public Worship'. This sought to create a replacement offence for blasphemy that could be based around a sanction for those who would purportedly 'insult or outrage the religious feelings of others'. Its conclusions were set out to achieve protection from a salacious attack on religious sentiment, such as when it brought into contempt a revered figure of religion. However, prior to the enactment of the RRHA, the House of Lords had tightened the definition needed for a prosecution by substituting the term 'threatening' to 'insulting' or 'abusive' language. This increased the threshold for a prosecution and made it more difficult for a case to reach the courts. It would have allowed the accused to claim that it is not the group themselves but their ideas which are under attack and has the potential to provide an escape route in all but the most categorical of cases for a prosecution to be successful.

The expectation of the Muslims that they would be able to challenge the lampooning of their religious figures by reference to the RRHA was also dampened by the Liberal Democrat peer Lord Lester, who voted for a more moderated version. He cited the example of Mr. Iqbal Sacranie, OBE then leader of the Muslim Council, who claimed that the creation of a new offence would enable Salman Rushdie to be prosecuted for writing the Satanic Verses. Lord Lester gave his reasons as the following:

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\text{In seeking to criminalise the stirring up of religious hatred the Bill links vulnerable groups to religion or belief. It is that link, between protecting groups of people and protecting their beliefs and practices which gives the impression to those seeking to protect their religion against insult that the offences are akin to a blasphemy laws writ large. The new speech crimes are sweepingly broad.}
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\[
\text{They apply to threatening abusive or insulting words, behaviour, written material, recordings or programmes intended or likely to stir up religious}
\]

hatred. Unlike most other serious offences they require no criminal intent. They apply not only to words spoken in public but in private. They cover the electronic media, plays, films, works of fiction, political argument, preaching by priests and clerics, comedians and politicians.

However, the commission of hate crimes needs a wider ambit because Ray and Smith (2002) argue that hate crimes are a special kind of crime and are not a result of actions by pathological individuals. The commission of these crimes 'is embedded in institutional practices of offending communities, in locales and habitual ways of dealing with the world, and especially problematic situations' (2002, p203). This view about the need to frame legislation against hate crimes by a more objective approach is shared by Gail Mason (2002, p253):

...the terminology of hate crime encourages us to think that it has considerable explanatory force. In turn the enactment of legislation against hate crimes codifies the same psychological model of behaviour by the causal link between hate and violence as a legal wrong.

The Racial and Religious Hatred Act 2006 (RRHA) will not stop those who want to practice ridicule on the Muslim faith or its iconic symbols. The apprehensions expressed by its critics that the legislation would enable the Christians to stop 'Jerry Springer - The Opera' ever being screened have also been proven to be false; Sikhs who drove the play 'Behzti' off the stage could also not expect to use the force of this law to similar effect. It means that the RRHA will not stop a religion from being smeared and their canon may be subjected to contempt by those who have the intention to do so publicly.

The argument that any behaviour intended to stir up hatred or likely to lead to a 'hate crime' is not supported by any impending prosecution of the satirists has left the Muslims considering that there is no recognition for their status as a racial minority, in the same manner as a religious group in the UK. The Shadow Report compiled by the Muslim Research and Development Foundation, (MRDF) an Advisory Committee of Experts on the Framework Convention on National Minorities (FCNM) adopted at Strasbourg on 1 February 1995, has criticised the application of the term 'Muslims' in the UK as only acknowledging a religious minority and not a racial minority. Their criticisms stem from the fact the UK ratification of FCNM on 5 January 1998 was on the condition that 'racial groups' in Britain are defined with reference to the Race Relations Act 1976 (RRA). The UK ratified the Convention on the understanding that it would be applied with reference to members of racial groups within the meaning of Section 3(1) of the RRA 1976, which are groups defined by colour, race, nationality, or ethnic or nationality origins. MRDF argues that Muslims would like 'to primarily or solely self-identify as religious minorities as opposed to ethnic or linguistic minorities based on their ethnic heterogeneity'.

The document contends that even a semi-denial leads to a 'compromising of dignity and the very essence of all international human rights and that the cultural identity of a group enjoyed in community with others' underpin all developments of minority rights law encapsulated in Article 3 of the FCNM. It invites the UK government to implement this
provision in full by accepting the broader definition as the Muslims are more likely to be discriminated against or face prejudice due to their religion and their ethnicity. This is a drawing of a parallel with the Jews and Sikhs that has been recognised in case law. However, the UK has consistently rejected the recommendations of the FCNM State Reports and has formulated the response that has limited the application to only racial groups and it has not been possible in the Report's conclusion for the full compliance to the Article 3 of the Convention.¹⁷

The lack of acceptance by the UK has to be seen in the background of an omission of a provision on minorities in European Convention of Human Rights 1952 (ECHR). The originating document of the European Convention for the Protection of Human Rights and Fundamental Freedom merely mentions that there is a prohibition from discrimination on account of religion, race, political or other opinion. This was the genesis of the Article 14 of the ECHR.¹⁸ It does not cover minority rights either in this non-discrimination clause or elsewhere and this view has been confirmed by the Pamphlet no.7 that accompanied the FCNM adoption in 1995.¹⁹

During the first general debate of the Consultative Assembly of the Council of Europe that opened on 10 August 1949 on the HR Convention, Hermod Lannung, the Danish representative, drew to the attention of the Assembly the need for the provision for the protection of minorities. He said as follows:

*But when we are dealing with human rights, we should stress the very important point that human rights should also include minority rights and their protection. Important aspects are protected through the fundamental human rights, such as freedom of speech and expression, freedom of association and assembly etc. But it is necessary to extend, supplement and elaborate in order that national minorities may secure the right to a free national life and protection against persecution and encroachment on account of their national conviction, aspirations and activities.* (Tietgen, 1993)

The lesson for the UK from the failure of the RRHA to protect the Muslims from abuse of their symbolic beliefs is that there have to be limits on the freedom of expression and that there has to be an enactment of a law that is backed by a moral sanction. At the level of the Council of Europe there has to be recognition for the improved protection of communities who are subject to vitriol in the communications media. In that regard,

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¹⁸ Article 14 states: *'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.*

there has to be an evaluation of the principle that has been breached and its exercise was for an altruistic objective, such as the promotion of a reasonable public debate.

**Controlling the exercise of free speech**

In a modern critique, Hare and Weinstein (2009) provide a comparative analysis in which they examine the constitutionality of hate speech regulation. They analyse how countries with liberal constitutions have adopted fundamental differences in their response to freedom of expression, which amount to communicating extreme hatred. The issues that they address are the freedom of speech and the media in relation to protecting liberal values. They contend that, in the UK, free speech doctrine is not as liberally interpreted and there are more restrictions then in the US, where it is a First Amendment right that the Supreme Court has protected by rendering unconstitutional even narrow restrictions on hate speech. The questions that the authors pose are namely: what accounts for the marked differences in attitude towards the constitutionality of hate speech regulation; does hate speech regulation violate the core free speech principle constitutive of democracy; has the precedence of the US position on extreme expressions justifiably been adjudged to lack a sympathetic response; and, finally, can other values such as the commitment to equality or dignity legitimately override the right to free speech in particular circumstances?

The answers can be found in the constituencies that the hate crimes are directed towards and the expectations of reaching out to a favourable audience. The Danish cartoon case shows that the Jyllands-Posten newspaper had the knowledge that the printing of the cartoons would not lead to any repercussion even though their symbolism was grossly offensive. The issue of it being intentional is what needs to be addressed and the inference that can be drawn from Hare and Weinstein (2009) is that it should lead to prosecution in order to protect the values of decency and equality of opportunity.

However, in the treatment of minorities a liberal constitution does not necessarily lead to the solution of their problems of integration. According to Myrdal (1944), there is a correlation between the incompatibility of the American liberal ideals and the impoverishment of the African Americans. He argued that, on the one hand, enshrined 'in the American creed is the tenet that people are created equal and have human rights; on the other hand, blacks, as one tenth of the population, were treated as an inferior race and were denied numerous civil and political rights' (1944, p1021).

Myrdal contended that 'the Negro problem is not only America’s greatest failure but also America’s incomparably great opportunity for the future'. In a modern analysis of this theory, Leach (2002) argues that Myrdal did not assume that equality could only oppose racial equality and racism. It was the 'commitment to egalitarianism itself that led Euro Americans to avoid the dilemma presented by avoiding equality in a purportedly egalitarian society. The avoidance was most easily accomplished by racism' (2002, p682).
Conclusion

The freedom of expression in different countries has to meet the international obligations set out in Article 19 of the International Covenant for Civil and Political Rights 1966 (ICCPR) and the Declaration against Elimination against all forms of Discrimination. In the cartoon controversy in Denmark, the public interest was deemed to override that of the hurt sentiments of the Muslim community. There was no criminal offence deemed in the circumstances and no charges were brought against the Jyllands-Posten newspaper. It was grossly offensive and was not prosecuted under the blasphemy offence or under any of the public order legislation. This is a defence of justification that is based on a human rights criteria that draws its inspiration from Article 10 of the European Convention of Human Rights 1952 (ECHR), which has been interpreted as upholding the right to be offensive in satire. It provides a right to demean a public personality in ostensibly vulgar terms. However, this is not acceptable where the religious/racial minority is disparaged because it could lead to hate crimes against it and marginalise it in the community.

In the UK Racial and Religious Hatred Act 2006 (RRHA), the minorities who are subject to hate crimes have received statutory protection by the extension of the Public Order Act 1986 (POA) Part III. For the insult to be criminal it has to satisfy the requirement of Section 5(1) (b), that the person has been threatened, abused or insulted by words, deeds or symbolic actions. If that is carried out by the representation in the form of published materials for consumption inciting racial hatred then it becomes a punishable offence under Sections 28 and 31 of the Crime and Disorder act 1998. The breach of this section led to the conviction in the Norwood case where the Article 10 defence under the ECHA was not accepted by the courts. However, the ambit of these Acts has not been sufficient for the protection of a minority from a political group, as the acquittal of the BNP leaders in Griffin and Collett (2005) shows. Their argument was that their attack was on the belief system rather than the race itself. It was not culpable because it was part of engendering debate in society that was permissible by its democratic framework.

The promulgation of the RRHA 2006 has not provided state protection for the members of a religious minority who are also a separate ethnic group. The requirements of proving an offence has been committed is raised by the bar being overly high and the alleged conduct has to be 'threatening' and not 'insulting' or merely 'abusive'. It has made prosecution difficult because it does not prohibit or restrict the flow of vitriol towards the disparagement of any religious ideology and defends only the practitioner and not the belief system itself. As the Vogelanzang case showed, it does not lead to a hate crime if the religion is insulted or its iconic figures are abused. This also means that the lack of protection if the insult is satirical has already been removed from the ambit of the Act and the revered figures can be defamed without breaching its provisions. The lack of success in these prosecutions may also be because of the perception of Muslims as a community that has been negatively affected by the media. However, the questions that Hare and Weinstein (2009) pose require that freedom of speech satisfy the test of protecting fundamental rights and the dignity of a minority. Its legitimacy has to be adjudged by these overriding factors. It can also be discerned from the US findings that commitment to equality in a democracy does not satisfy those ideals if there is racism.
In interpreting the RRHA, the UK has fallen short of an ambit that will provide a broader compass leading to prosecution. If there is an insult to religion then that too must be deemed as a public order offence if the likelihood is the resulting of harm. There has to be a moral duty underpinning a legal duty to respect the rights of a minority and not to be defamatory. The cartoons in Denmark were malicious libel and should be designated as a criminal course of conduct. The disparaging of revered symbols when it clearly boosts hate preachers amounts to condoning the spirit of the Nuremberg laws that were promulgated against a cornered minority.

References
COMMUNITY JUSTICE FILES 27
Jean Hine, Reader in Criminology, De Montfort University

Reform of Community Sentences and Probation Services
The two recent consultations on community sentences and probation services have now closed but, given their content a summary of the proposals and some of the published responses will be of interest to readers.

Punishment and Reform: Effective Community Sentences
This consultation document has three sections: tough and effective punishment; reparation and restoration; and rehabilitation and reform.

As part of tough and effective punishment there is a proposal to develop Intensive Community Punishment, which will include a combination of Community Payback, an electronically monitored curfew, exclusion, a foreign travel ban, a driving ban, and a fine. It is also intended that the purpose of all community sentences should be punishment and that all should include a 'distinctly recognisable punitive element'. The consultation includes a section on extending the use of electronic monitoring, both in terms of the extent and purpose of its use, including tracking the movements of offenders. The paper presents ambitions to extend the use of technology more broadly in the punishment and management of offenders. Greater use of fines is to be encouraged, both as a sentence on its own and combined with other community sentences, and probation officers are seen to have an important role here by more frequently recommending such options to the courts. They should also provide information about offenders' means to enable the court to ensure 'that the punishment is fair and the relative impact of the fine on each offender is substantially the same regardless of that offender's means'. Sentencing guidelines will also be reviewed to give the courts more flexibility in the fines imposed. Enforcement of payment is an issue that will be addressed, and resources will be allocated to the development of a commercial partnership to improve this, though the report does say '[we] are also drawing on behavioural approaches to look at other influences and incentives to encourage offenders to pay their debts promptly'.

The reparation and restoration section includes a commitment to build capacity and capability for restorative justice (RJ) in the community and in custody, including substantial training for staff in probation and prisons. The Thames Valley Partnership Restorative Justice Services will develop best practice templates for the effective introduction, implementation and delivery of face-to-face conferencing across prison and
probation services. Pre-sentence restorative justice will be supported by 'working with one or more local areas to test pre-sentence RJ processes to establish when it would be appropriate, how it can be carried out and how it influences the views of the court'. There is a stated commitment to increasing the role of victims in the court process by reinforcing existing provision, though nothing new here with local innovation being seen as the best way forward. There are, however, plans to extend the imposition of compensation orders alongside community sentences as reparation for the victim rather than punishment for the offence.

Rehabilitation and reform highlights the use of payment by results as the way to improve the effectiveness of 'offender services', with pilots running for four years from 2013. The needs of women offenders are given specific consideration in this section, though through reference to the potential positive impact of proposals elsewhere in the CJ process rather than any specific provision. Drugs and alcohol, and mental health related offending receive special attention, with proposals for more drug recovery wings in prisons and police custody liaison services. There are plans to extend the range of drug and alcohol treatments, with consideration being given to the introduction of compulsory sobriety schemes, initially in the form of pilots.

Compliance with the requirements of a community sentence is also an issue addressed in the paper, with a proposal to create a new option for offender managers of giving a financial penalty without returning the offender to court.

Punishment and Reform: Effective Community Sentences can be found at: https://consult.justice.gov.uk/digital-communications/effective-community-services-

Punishment and Reform: Effective Probation Sentences

This paper essentially describes proposals to introduce competition into the delivery of 'probation services'. Probation Trusts will hold devolved budgets and become the commissioners of services and responsible for the local delivery of 'better outcomes to protect the public and reduce reoffending'. The Trusts will retain direct provision of court reports, the initial risk assessment of all offenders and the supervision of high risk offenders. All other work with lower risk offenders will be open to competitive tendering, increasingly incentivised by payment by results. This may result in a reduced number of Probation Trusts.

Punishment and Reform: Effective Probation Sentences can be found at: https://consult.justice.gov.uk/digital-communications/effective-probation-services.

Responses

A range of organisations have published their responses to these documents. The Prison Reform Trust welcomes many of the proposals, but adds several notes of caution. They are particularly concerned that the focus on the punitive aspects of sentencing could be counter-productive: first, because the rhetoric may reduce rather
than increase public confidence in community sentences; and second, because the stringent compliance procedures could well result in more breaches of orders. They believe that probation services should remain in the public sector for several reasons, perhaps the most important of which is that risk is a dynamic concept that can change suddenly creating difficulties for case management. See:
http://www.prisonreformtrust.org.uk/Portals/0/Documents/effective%20probation%20services.pdf
and

NAPO (National Association of Probation Officers) expresses its commitment to a public sector Probation Service promoting best practice in probation work and highlights the punitive elements that currently exist within community sentences. It welcomes some aspects of the proposals but is concerned about the impact of competition in relation to, amongst other things, public protection, rehabilitation, risk assessment, and staffing. See:

HM Inspectorate of Probation argue that the proposals for offender management could 'compromise public safety' and that this responsibility should remain with Probation Trusts in the public sector. They point to recent inspections of Multi-Agency Public Protection Arrangements (MAPPA) and Integrated Offender Management (IOM), which highlighted the complexities of multiple agencies working together on cases and the dynamic and changing nature of risk, and remind us that most of the serious further offences that have occurred have initially been assessed as low or medium risk and changed circumstances have increased that risk. At the same time, they support the proposals for increased commissioning by Probation Trusts. See:

Perhaps unsurprisingly, the Restorative Justice Council has responded positively to the proposals, presenting a range of arguments in support of pre-sentence RJ, in particular that it has already been substantially trialled and evaluated as successful, and had a better rate of offender participation than post-sentence RJ. They argue the need for a legislative framework to enable this to happen, with complementary training for sentencers. See:

It’s Complicated: The Management of Electronically Monitored Curfews
This report by HM Inspectorate of Probation presents the results of the follow-up to a criminal justice joint inspection of electronic monitoring (EM) in 2008. Its findings, coming as they do at a time when the latest government proposals for sentencing include increasing the number and range of electronic monitoring of offenders, give cause for concern. In her foreword, the Chief Inspector of Probation, Liz Calderbank, says:
Curfews applied in recent years have only rarely been used to best effect. In the vast majority of cases in our sample, the curfew was unrelated to the circumstances of the offence. We saw very few instances where it had been imposed specifically to stop the individual from doing something, or was part of a strategy to address their behaviour. Such an approach would require thorough assessment at the pre-sentence stage, something which now only appears to happen in a limited number of cases. Inaccuracies in information conveyed by courts to the probation service or the electronic monitoring provider are sufficiently serious to undermine the efficient management of cases.

The results of this inspection call into question the government proposals on two grounds. First, on the expectation of comprehensive assessment of all offenders before sentence: this inspection found that more than 70% of community orders with electronic monitoring had been made without a pre-sentence or other report or proper assessment of home circumstances. Second, on proposals to change the management of cases: the report highlights problems in communication between the various organisations involved in managing EM.


Putting Victims First: More Effective Responses to Anti-Social Behaviour

This White Paper, recently published by the Home Office, presents government plans for responding to anti-social behaviour, which it states 'still ruins too many lives and still damages too many communities. It is time to start putting victims first and it is time to put a stop to anti-social behaviour.' The strategy is described as three-fold:

- First, supporting local agencies to focus their response to anti-social behaviour on the needs of victims by helping agencies to identify and support high risk victims; giving frontline professionals more freedom; and improving understanding of the experiences of victims.

- Second, supporting people and communities in establishing what is and isn't acceptable locally and in holding agencies to account by: (i) introducing the Community Trigger, which will give victims and communities the right to require action to be taken where a persistent problem has not been addressed; and (ii) introducing Community Harm Statements that make it easier to demonstrate the harm caused by anti-social behaviour.

- Third, introducing new powers that enhance agencies' ability to deal with anti-social behaviour in public places, including a civil injunction that
agencies can use before an individual causes serious harm; a new court order that requires anti-social individuals to 'stop their behaviour and address its underlying causes'; simpler powers to deal with 'quality of life' crime and to close premises that are a magnet for trouble; and speeding up the eviction of anti-social tenants.

There is also a stated intention to 'focus on long term solutions to anti-social behaviour by addressing the issues that drive much of it in the first place – binge drinking, drug use, mental health issues, troubled family backgrounds and irresponsible dog ownership'.

*Putting Victims First: More Effective Responses to Anti-Social Behaviour* can be found at: http://www.official-documents.gov.uk/document/cm83/8367/8367.asp

**Economic and Social Research Council Reports**

The ESRC (Economic and Social Research Council) has recently published a couple of reports that may be of interest to readers:

*Me and my befriender: exploring adult/child befriending relationships*  This study explored the views and experiences of a range of children involved with befriending projects in Scotland and England. The briefing describes the value of befriending relationships for children, particularly those living in difficult circumstances, and highlights the need for more male befrienders to work with both boys and girls. See: http://www.crfr.ac.uk/reports/crfr%20briefing%2060%20web.pdf

*Understanding Society: Findings 2012*  This report has been published from a major longitudinal survey study of the socio-economic circumstances in 40,000 UK households. Beginning in 2009, the study consists of year-by-year interviews about participants’ working and personal lives. Topics include health, experiences of crime, personal finances, bringing up children, involvement in local community, working lives, and views and outlook, including about the political system. This recent report includes sections about staying out late and risky behaviours among 10-15 year olds, and young people’s experience of the employment market. See: http://research.understandingsociety.org.uk/files/research/findings/Understanding-Society-Findings-2012.pdf

**Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act**

The content of this Bill, which has now received royal assent, was discussed in Community Justice Files in our previous issue (Volume 9, Issue 3). See: http://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act

**Open Justice: new website**

This new government site is described as 'bringing together some of the key facts and real stories about different aspects of criminal justice; including sentencing and sentences, restorative justice, prison and probation'. Designed as a means of communicating with
the general public and receiving their feedback, the site is a useful location for current statistics about courts, sentencing and re-offending. See: http://open.justice.gov.uk/home/

**Statistics about Race and the Criminal Justice System**
The requirement to publish statistics about race in the criminal justice system was introduced in section 95 of the Criminal Justice Act 1991. Since then, they have been regularly produced as full statistical reports. The latest report for 2010 is now available. The report shows that Black, Asian and mixed ethnic groups continue to be over-represented as offenders in all stages of the criminal justice process, and also as victims. At the same time, the number of racially motivated incidents recorded by the police has fallen and the number of staff from BME backgrounds in criminal justice agencies remains low. See: http://www.justice.gov.uk/statistics/criminal-justice/race and http://www.justice.gov.uk/downloads/statistics/mojstats/stats-race-cjs-2010.pdf/

**FORTHCOMING EVENTS**
**Innovation in Probation Practice: past present and future**
Napo Centenary Conference. 15-17 July 2012, York.
http://www.napo.org.uk/resources/events/event.cfm/eventid/56

**Reframing Punishment: Opportunities and Problems**
http://www.inter-disciplinary.net/probing-the-boundaries/persons/reframing-punishment/details/

**Criminology in the 21st Century: A necessary balance between freedom and security.**
European Criminology Conference. 12-15 September 2012, Bilbao, Spain.
http://eurocrim2012.com/

**Seminar Probation in, with and through the community**
17-19 October 2012, Belfast, Northern Ireland.

**Annual Youth Justice Convention 2012**
22-23 November 2012, Birmingham.
http://www.neilstewartassociates.com/li306/
BOOK REVIEWS

Edited by Rose Parkes, De Montfort University

DRUGS, CRIME AND PUBLIC HEALTH: THE POLITICAL ECONOMY OF DRUG POLICY


Like much of Alex Stevens work, Drugs Crime and Public Health is well-written, persuasive, analytical and yet easily accessible to both students and scholars alike. Drawing on an array of quantitative and qualitative evidence, each chapter contributes to the thematic coherence and credibility of this book by providing a rich, meticulously-argued and assiduous overview of drugs, crime and public health.

Unlike other books in this area, Drugs Crime and Public Health is a welcome addition to the drug-crime literature, because it offers an alternative view to the hegemonic ideological notion that drug use causes crime. Stevens takes the less-travelled, but more realistic path, which seeks to explain drug use and criminality as a symptom of wider societal factors. Instead of focusing on the deterministic notion underpinning current drug policy, he attributes many of the problems arising from drugs and their use to inequality, whilst identifying that drug policy also seeks to perpetuate and reproduce this inequality. Consequently, Stevens reconceptualises the drug-crime debate in the wider social context, emphasising that long-term solutions rely on more radical societal changes. Until a more realistic stance is taken and attempts are made to tackle and reduce inequality, the drug problem will not be resolved; ‘we will not solve the drug problem by legislating, legalizing, educating, arresting, imprisoning or treating our way out of it’ (2011, p128). During the course of the book he successfully undermines current drug policy and provides a convincing case for its renunciation. However, he does not leave the reader speculating about the future; instead he goes on to offer a range of solutions, including international law reform and ‘progressive decriminalization’. Throughout this book Stevens successfully situates the social to the forefront of the drug-crime debate.

The opening chapters provide the raison d’être for his subsequent arguments. Drawing on an array of theorists (Foucault, Rousseau, Giddens, Young, Gewirth and Kant), Stevens not only demonstrates the interdisciplinary nature of the subject area, but illustrates the drug-
crime relationship is considerably more complex than the official ideological rhetoric would have us believe. By using the moral philosopher Gewirth to discuss harm, Stevens neatly avoids the hackneyed reference to utilitarian John Stuart Mills in his debate about human rights, harm and drugs. Chapter one successfully contextualises all subsequent chapters and provides the reader with an historical overview of drug policy, including its contentious foundations, which are premised on class, race and emphasise ‘otherness’. These are themes which are revisited later on in the book.

The second chapter goes on to deconstruct the concept of social inequality and asks whether drug use and dependence are ‘afflictions of inequality’, an argument which is extended in the next chapter to the debate on drugs and crime. In this chapter Stevens successfully challenges Goldstein’s tripartite framework and its inability to explain ‘the social distribution of drug-related harms’ (2011, p50). He also discusses the over-exaggerated, but often accepted relationship between drug use, crime and criminality. Drawing on the concept of subterranean structuration as an alternative explanation, the author attempts to explain why crime and problematic drug use are concentrated in the most socioeconomically deprived areas, among people the rest of society consider to be ‘underground’. Although Stevens attaches important caveats to his explanation, he provides a compelling and more realistic alternative to the traditional drug-crime relationship perpetuated by policy.

The ensuing chapters (4 to 7) discuss the politicisation of drug policy and the selective use of evidence to inform and create it. Drawing on his experience as a policy advisor working in the civil service, Stevens not only highlights the importance of ethnographic research in uncovering hidden procedures, but illustrates the exclusionary and discriminatory practises indoctrinated in drug policy and the practical impact this has on people’s lives both in the UK (chapter 6) and internationally (chapter 7). The final chapter offers an alternative policy agenda, which seeks to address many of the issues raised in this book, via three strategies: the reduction of inequality; international law reform; and, decriminalization (which provided a welcome change to the monotonous prohibition-legalisation debate). Stevens mentions denying treatment to those unable to stop using opiates and prioritising those who can, an idea also proposed by McKeeganey (2011) to reduce the numbers in treatment. However, unlike McKeeganey, Stevens dismisses this idea as a practice more likely to cause ‘death and disease’ than a practical solution to the problem.

Many will undoubtedly criticise aspects of Stevens’ analysis and find fault with his proposed solutions, something the author seems fervently aware of, since he circumvents many of these objections by pre-empting the criticisms and acknowledging ‘that some may find his account overly simplistic’ (2011, p130). As highlighted by the author himself, his suggestions are not a definitive answer to creating new policy, but a ‘list for discussion’. Consequently, I think Stevens achieves what he sets out to do at the beginning of the book:

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1 He is mentioned on page 4.
This book is my attempt to create a more adequate analysis. It discusses theoretical perspectives and presents new evidence that can be used to test them. Its aim is to change the way you think about the links between drugs, crime and public health. (pxiii).

While the majority of those already teaching or working in the drugs field may need less persuading about the arguments proposed by Stevens, others might be less convinced. However, he presents such a compelling and meticulously constructed argument, drawing on an array of international evidence, that I challenge anyone who reads this book to say it did not challenge the way they think about this topic.

This book is essential reading for academics, students, practitioners and policy-makers, although anyone with an interest in drugs and crime would find this book interesting and insightful. However, reiterating Toby Seddon’s sentiments (2011), we can but hope that presidents and prime ministers will also read this book, which will not only give them something to think about, but provoke a debate about the issues outlined in the last chapter. Realistically, however, this is unlikely to happen and, in my view, drug policy will continue along its own imprudent and illogical path, for many of the reasons already outlined in this book.

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References
In September of last year, Anne Worrall and I were involved in organising a small conference on 'probation cultures and offender management' and, during a lively session, one delegate pertinently questioned what we meant by 'offender management'. From the discussion that followed, it was clear just how loaded and contentious the term (rarely heard before Patrick Carter's report that led to the formation of the National Offender Management Service (NOMS) in 2004) had become. Ironically, the term was originally chosen as a neutral one, apparently inoffensive to both the prison and probation service. It was, therefore, with some interest that I picked up this book, keen to learn Anne Robinson's take on the term. As it happens, she confronts it at the outset, acknowledging that the term is neither neutral nor unproblematic, and she uses it fully aware of the power relations involved. It is used in the book because it reflects official terminology and official discourses, but she also points out that 'offender management' is a new term for what probation officers would recognise as 'supervision or case management' (pvi). What is different, the book argues, is the complexity of the criminal justice practice context and the numbers of practitioners, in addition to probation workers, who are now involved in offender management. The author sets herself the task of shedding some light on this complexity and, in doing so, charts a path based on a rights-based framework that has the potential for all agencies involved in offender management to buy into and which ameliorates the technocratic risk-obsessed tendencies of government policies.

The book is organised into three distinct sections. Part one, comprising four chapters, sets the scene. Chapter one seeks to establish the possibility of a common underpinning value base across the range of agencies now involved in offender management. Despite the centrality of risk and public protection to criminal justice agencies, the author suggests that a common rights-based approach to offender management has the greater potential to achieve the building of relationships with offenders that may help them to change their lives and reduce the harm to others. It is this rights-based approach that threads through the remainder of the text. Chapter two charts the landscape of offender management and, specifically, explains developments in the probation service and NOMS since the election of New Labour in 1997 and the onslaught of the modernisation agenda with the management of risk moving ever closer to centre stage. Chapter three makes a good job of explaining the development and maze of partnership, joined-up, multi- and inter-agency working that probation workers now engage in. Chapter four concludes the first section by considering, within the complex context described, what intervention models might look like that involve various agencies jointly utilising a rights-based approach to interventions rather than the current dominant community protection model (Kemshall, 2008) predicated on notions of risk and dangerousness and negative assumptions of offenders' motivation. Drawing on recent research on desistance and human and social capital, a model is developed for working positively with offenders that reconfigures the more negative associations of offender management.
Section two of the book comprises eight chapters which outline current law and policies relevant to offender management. The themes developed in section one are continued in these chapters and range from equalities, human rights, and risk and danger, to court procedures, community and custodial sentencing. There is much in these chapters that current practitioners and those in training will find useful. Students too will gain an insight into the realities and practicalities of probation work.

The third section of the book contains six chapters on discrete areas of practice, beginning with working with victims and moving on to youth justice, substance use, sex offenders, mentally disordered offenders, and finally indeterminate sentence prisoners. The latter highlights the difficulties of writing a contemporary book on criminal justice law, policy and/or organisational structures; as I was reading this book in November 2011 the breaking news was Ken Clarke's intention to scrap indeterminate sentences. Criminal justice policy is constantly shifting; sections of books inevitably become quickly outdated and readers need to be responsive to this.

The target audiences of this book include students of criminal justice in addition to current probation workers and practitioners in training. I would agree that there is something of interest and value in this book for both students and practitioners, though, in my opinion, it is rather more suitable for postgraduate students. It will also be a valuable resource for researchers and academic teachers. The author has produced a guide to help practitioners and students navigate their way in humane fashion through an important component of an increasingly technical and complex criminal justice system; this is not an easy or light read, but it is a rewarding and hopeful one.

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References
SOCIAL WORK IN NORTHERN IRELAND: CONFLICT AND CHANGE


It is tempting to assume that a book with Northern Ireland in the title is only of interest to those who live or work in that country, but this book has much wider scope and application. It is certainly an essential text for anyone practising social work in Northern Ireland. The material covered, particularly the discussion of innovative practice in violence and civil emergencies, should be of interest to a very wide readership, including those working in community justice.

The book starts by putting the development of social work in Northern Ireland into an historical context, linking the development of social work to the formation of the Northern Ireland state, and the political and social influences from the UK, Ireland and within Northern Ireland. The strong voluntary sector and the location of probation work within the auspices of social work are characteristic features of the Northern Ireland system, but there has been a general trend to follow developments in Great Britain. Important themes for social work in Northern Ireland include those that are related to Northern Ireland’s specific situation (such as sectarianism, violence devolution and cross-border work) and those that are present in most jurisdictions but have strong relevance in Northern Ireland (such as poverty, community development and organisational issues).

The two chapters on violence and sectarianism give most insight into the working lives of Northern Ireland social workers. The authors clearly explore the meaning and definition of sectarianism and the different ways it can influence individuals in social work practice. This includes implications for work with clients, relationships between staff, and legal, organisational and training issues. The advantages of linking anti-discriminatory and anti-oppressive approaches to sectarianism in Northern Ireland are explored. One tangible effect of sectarianism in Northern Ireland has been the violence that the community has had to endure but, prior to this book, the impact that this violence has had on social work practice has been largely, and surprisingly, underexplored. The authors examine the nature of violence, the response to civil emergencies and mental health and trauma as related to both staff and service users. Responding to trauma is a particular contribution that social work makes and the discussion of this issue is the strongest and most fascinating part of the book. The skill and experience developed by Northern Irish social workers, and other professionals, in responding to many years of violence and trauma is invaluable and is seen both in the work of individual practitioners and in the structures that have been put in place. For example, the Northern Ireland Centre for Trauma and Transformation (NICTT) was established following the Omagh bombing. Northern Irish social work researchers have also led the way in exploring the impact of violence and trauma on professional staff and this learning and expertise has been exported around the world.
Social workers in all jurisdictions deal with poverty but, in Northern Ireland, the levels of deprivation are greater than UK averages leading to, for example, high numbers of referrals to social services and high numbers of children on the child protection register. In contrast to the ground-breaking and innovative work on violence and trauma, the authors describe how social work in Northern Ireland has been slow to respond appropriately to this situation. There are significant research gaps and some areas of practice, such as youth transition work, welfare advice and provision of early years services, which are underdeveloped in Northern Ireland. Community development, in contrast, is another area where the Northern Irish experience can provide lessons for other jurisdictions. The five main tenets of community development – collective action, active citizenship, empowerment, participation and inclusion and partnership – can have an important impact on social work practice. A community development approach responds to an individual in the context of their community and has accountability to that community. The large community and voluntary sector in Northern Ireland facilitates this community-oriented approach to social work.

Organisational and legislative issues in Northern Ireland are also of wider interest, in that an integrated approach to health and social care was taken there before it became such a key part of organisation in the wider UK. The identified advantages and disadvantages provide important lessons in that there are many improved outcomes such as the links from hospital-based care to community care but an associated risk of social work becoming overwhelmed by the larger health sector. In addition, as there is a greater focus on European and cross-jurisdictional work, lessons can be learned from the cross-border social work that has taken place in Northern Ireland. The authors describe how the greater flexibility of the voluntary sector has enabled Northern Irish social work practice to lead the way here.

Victims work is gaining a greater profile in Great Britain but it is in Northern Ireland where real development with that group is seen. Political debates are heated and high profile, but social care professionals have led on actually meeting the needs of victims both in response to emergencies and on an ongoing basis. The Social Care Institute for Excellence made the important recommendation that social care should be the lead agency in providing humanitarian assistance in emergencies.

Although there is little direct material dealing with probation or with the voluntary organisations that work with offenders in this book, the discussions of violence, trauma, community development and victims’ services mean that there is much to interest community justice practitioners. The writing style is both academic and accessible, combining clear description with the promotion of good practice. The book should be of great value to both practitioners and academics in a variety of disciplines and locations.

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SOCIAL WORK UNDER PRESSURE: HOW TO OVERCOME STRESS, FATIGUE AND BURNOUT IN THE WORKPLACE

Although there is evidence that social workers gain considerable enjoyment and satisfaction from their work, they tend to report higher levels of stress, fatigue and burnout than many other occupational groups. This has serious implications for health and job performance, as well as recruitment and retention. The need for social workers to develop the emotional resilience required to cope with the numerous stressors inherent in their role has been widely emphasised. Nonetheless, although numerous books have been published on work-related stress and its management in general, very few focus specifically on the social work context. This book aims to help social workers overcome stress and enhance their wellbeing. It is targeted towards managers and supervisors, as well as front-line social workers. As an experienced social worker, van Heutgen has a deep understanding of the pressures faced by social workers in criminal justice, mental health and child protection settings. She also draws on interviews with 14 social work practitioners, supervisors and managers based in New Zealand that explored the most stressful features of social work and ways by which these may be ameliorated.

The book comprises nine chapters that are presented in two parts. Relevant, engaging and effective quotes from interviews are provided in each chapter in order to present the views and experiences of front-line social workers. Each chapter concludes with a 'stock-take' or 'tool-kit' section that encourages the reader to reflect on personal experience. Suggestions for further reading, including up-to-date journal articles and reports, are also provided. Part 1 introduces the reader to meanings and definitions of workplace stress. Van Heugten effectively contextualises the nature of stress in the sector by exploring the stressors inherent in the job, emphasising the complexity and increasing bureaucracy of the social worker’s role. The wide-ranging impact of stress is examined, placing particular emphasis on compassion fatigue and the burnout syndrome. Ways by which work-related pressure may 'spill over' to affect the social worker in her or his personal life is also explored. A discussion of the emotional labour inherent in human service work and its potential impact is a particularly welcome addition.

Three prominent models of job stress are described, including Karasek’s widely utilised Demand-Control-Support framework. Although the author argues that these models can help social workers gain insight into the sources of the pressure they face, and inform the development of interventions to enhance work-related wellbeing, how this may be accomplished is not adequately explored. Nonetheless, several strategies that have the potential to help social workers manage stress are examined, including workload management, education / training and supervision. Although employers clearly have a legal and moral responsibility to manage the structural sources of stress, several meta-analyses indicate that secondary stress management strategies such as cognitive-behavioural techniques and relaxation can be useful in reducing the arousal associated
with the fight and flight response and enhancing wellbeing. It is surprising, therefore, that the author dismisses such techniques as lacking support for their effectiveness.

The chapters included in Part 2 of the book explore issues encountered in front-line practice, trauma work, and the impact of violence from clients or colleagues. One chapter focuses on working with victims of trauma, drawing on the recent New Zealand earthquake to contextualise the difficulties experienced by social workers in such circumstances. This chapter is particularly welcome as it emphasises the need for social workers to be aware of the impact that working with distress can have on them both personally and professionally. Some potentially useful techniques are described to help reduce the possibility of long-term negative impact on their own wellbeing. Chapter 7 focuses on workplace bullying and harassment and the impact this may have on social workers. This is useful and informative, but many of the points made are not specific to social work and could be equally applied to other workplace contexts including community and criminal justice. There is an increasing tendency for organisations to adopt, often unwittingly, cultures of blame rather than providing a 'safe' environment whereby workers learn from their mistakes and 'near misses'. Van Heugten considers the implications of a 'blame' culture for the wellbeing of social workers emphasising the effect on wellbeing of worries about risks, mistakes and complaints.

The final chapter draws together some of the themes introduced in the book and makes some recommendations for enhancing wellbeing in the profession. However, the issues introduced in this chapter are somewhat fragmented and under-developed. This book makes a significant contribution to understanding the stressors and strains experienced by contemporary social workers and emphasises the importance of having appropriate organisational support. The author adopts an evidence-based approach, citing up-to-date evidence to support her argument. Nonetheless, in order to help the workforce overcome stress, fatigue and burnout, more detailed recommendations are required of the ways in which social workers can enhance their resilience to stress.

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