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EDITORIAL

MORAL PANICS, AND KNEE JERK REACTIONS: PITFALLS TO A POSITIVE APPROACH TO RESETTLEMENT AND REINTEGRATION

Paul Senior, Hallam Centre for Community Justice, Sheffield Hallam University

In May and June 2014 the escape of the offender known in the press as the "skull cracker" Wheatley, and other high-profile failures of the temporary release schemes produced an immediate backlash by government, imposing restrictions on the use of temporary release and questions, at the extreme end of the commentary, about the utility of this process at all. I arrived in New Zealand towards the end of October 2014 at a time when a notorious New Zealand prisoner called Philip Smith had been released on a temporary licence but had fled to Brazil via Chile and also precipitated an immediate suspension of the temporary release programme for all prisoners there.

Both examples illustrate perfectly the problems of maintaining a positive approach to resettlement and reintegration when such cases, no matter how exceptional, drive policy down a route which is counter-intuitive to good resettlement practice in the system. In western neoliberal democracies the anxiety about the 'other' always produces this kind of overreaction. It is important to try and resist taking precipitate action on such incidents and rather make decisions based on good practice not such exceptional cases.

In England and Wales the process of temporary release, by any measure, is successful. The latest figures available in the UK follow the year 2012 (MoJ, Statistical Notice, Releases on temporary licence, 2012). This shows that there were 485,000 instances of release involving a total of 11,400 individual prisoners and that less than 1%, a total of 428, were recorded as fails on the administrative systems. Of these only 26 recorded a failure due to an arrest for a suspected offence. Whatever else we can draw from the statistics it is difficult to argue this is a function which carries a high level of risk. Temporary release by its nature is a system with inherent risk but clearly it performs remarkably well and it is arguable that if there were no instances of failure then the bar would have been set too high, producing 'false positives' where individuals are denied temporary release because of the fear of failure but who would not have failed. Subsequent calls for the introduction
of electronic monitoring for all temporary release prisoners seems both unnecessary and a costly solution to a minor problem.

Temporary release is part of the process of reintegration which is particularly important for prisoners serving long sentence jail terms. Having been in the prison system without exposure to the outside world it is vital if the public is to be protected and the individual assisted to successfully resist any temptations getting in the way of reintegration then a graduated system of release back into the community makes sense. If someone has served a prison sentence of five years and certainly for those serving sentences in excess of 15 years they will need time to adapt to the world as it is now. In addition if they are to manage the transition well then preparation for employment and for coping with the society they meet is vital as it will have changed beyond measure in their absence in prison.

Prisoners comply with temporary release because it is part of the process of preparation for their eventual release. Any sign that they might put at risk that process, which would result in either an extension of the prison sentence or a denial of further temporary release, which will mean that they will be ill-prepared when their release date comes, warns against such action. In many ways the actions of Wheatley in the UK and Smith in New Zealand should be seen to confirm that the boundaries of risk taking by the executive authorities have been reasonable. Certainly any temporary release that goes wrong should result in investigation so the practice can be improved. You have to ask how Smith could obtain a passport through legitimate means and not be picked up in the system. But it is doubtful that the expense of electronic monitoring can be justified for huge numbers that make this transition so successfully.

This of course is a rational, evidence-based solution not popular with our current government thinking. Whilst on the surface committed to reducing reoffending that commitment does not extend to a programme of work that would improve its chances of success. Instead the instinct to treat the 'other' as a folk devil and create a moral panic satisfies the political imperative to remain tough on crime. Occasionally the weaknesses in this approach are exposed as in the decision to overturn the ban on books for prisoners as a result of a high profile campaign by the Howard League. But the remorseless assault on prisoners' dignity and self-worth from both the changes in the privileges system, resulting in more unrest and the reduction in education classes because of cuts in staffing numbers puts the prisons just short of the tipping point for unrest and riots. This is an unsafe and knee jerk response to systems which are seeking to reduce risk, and ease the chances for successful reintegration and we should stop and look at the evidence base. But I fear this government lingers only briefly at the logic of resettlement practices preferring to garner moral panic amongst its followers to justify harsher policies. I fear disaster in the prison system may not be far away.

The articles in this edition range over an interesting set of topics. Hopkins Burke in the first of two articles on the theme of communitarianism explores the possibilities of the development of a radical moral communitarianism. He sets this in the context of the failure of recent governments, notably New Labour, to achieve this agenda against the backcloth of neoliberal efforts to control problematic social groups. The paper proposes a
radical moral communitarianism founded on notions of consensual interdependency with an appropriate negotiated balance between proper rights and responsibilities for all citizens.

Thomas and Thompson explore two new civil orders brought in by the Anti-social Behaviour, Crime and Policing Act 2014 to combat sexually harmful behaviour in the community. The new orders have lower evidential thresholds and they argue should be easier to obtain and involve less work for the police. They raise a number of difficulties in terms of human rights and the article examines the contested arena of balancing public protection with human rights.

Following the death of Jimmy Savile in 2011, a number of high profile British celebrities have been questioned about or arrested and charged with sexual offences. The Madoc Jones, Gorden, Dubberley and Hughes article explores whether the high profile and thematic framing of sex crimes will challenge how that form of crime, victim and offender is examined. The argument is made that a focus on the ‘extra-ordinary’ that celebrity sex offending encourages will deflect attention away from the family root of most sexual abuse.

De Angelis addresses the lack of women’s voices in the trafficking discourse. The research which supports this paper interviewed trafficked women about their experiences of being trafficked and also professionals about their work with victims. The use of women’s voices highlights the limitations of current policies and practices, emphasising a continuation of exploitation through restrictive policy and practices.

Heap explores substantial changes to anti-social behaviour (ASB) legislation driven by the Coalition Government focusing on the proposed impact of these changes by considering the turbulent development of their replacement: the Injunction. ASBO reforms are subsequently analysed with specific reference to the Transforming Rehabilitation agenda and the probation service. The familiar concerns of a lack of evidence-based policy; rushed changes, payment incentives and marketisation are revealed.

Wilson in her thought piece considers the legislative journey toward equality through an examination of the Marriage (Same Sex Couples) Act 2013 giving lesbians, gay men, bisexuals and transgender people (LGBT) almost parity with heterosexuals before the law. It makes a challenging and interesting read.
THE CASE FOR A RADICAL MORAL COMMUNITARIANISM
Roger Hopkins Burke, Principal Lecturer in Criminology, Nottingham Trent University

Abstract
Communitarianism emerged in the USA during the 1980s influentially proposing that the individual rights vigorously promoted by traditional liberals need to be balanced with social responsibilities to the communities in which we live (Etzioni 1995a, 1995b). It is a political philosophy that was very influential with the Clinton administrations in the USA and the New Labour governments in the UK from 1997. Critics nevertheless observed from the outset that these governments were more authoritarian in practice than suggested by the rhetorical appeal to the relatively autonomous powers of civil society proposed by communitarianism (see Driver and Martell, 1997; Jordan, 1998). Hughes (1998) refers to this version as moral authoritarian communitarianism and calls for a more radical non-authoritarian variant with policies focusing on the elimination of poverty, the promotion of equality and thus the reduction of social problems and crime (Jordan 1992, 1996; Currie 1993, 1996, 1997; Young, 1999). Houdt and Schinkel (2013) nevertheless observe that in the context of increasingly harsher economic times communitarianism has been used in conjunction with neoliberalism as a strategy of governmentality for controlling problematic social groups in the interest of the market economy with responsibilities increasingly enforced very much to the detriment of individual rights. This paper responds by proposing the development of a radical moral communitarianism founded on notions of consensual interdependency with an appropriate negotiated balance between proper rights and responsibilities for all citizens.

Keywords
Individualism; neo-liberalism; communitarianism; radical communitarianism; neo-liberal communitarianism; radical moral communitarianism
Introduction

An earlier paper published in the British Journal of Community Justice – ‘Moral Ambiguity, the Schizophrenia of Crime and Criminal Justice’ (Hopkins Burke, 2007) – entered into the debate ‘about the contested meanings of the concept of community justice’ (Williams, 2004:1) and argued that the parameters of discussion be extended to encompass observations about the very nature of community, crime and criminal justice in contemporary societies. That paper concluded with a proposal that any legitimate community justice needs to be located in the context of a wider ‘new liberalism’ which considers equally both the rights and responsibilities of individuals and societies.

This is the first of two papers which return to that debate and discuss the rationale, theoretical foundations and the policy implications of that ‘new liberalism’, a radical moral communitarianism with its foundations in the work of the French social theorist Emile Durkheim and a particular conception of individualism – French individualism – which provides the basis of a rather different form of social organisation than those offered by competing notions of individualism. This first paper presents the case for a radical moral communitarianism. It commences with an exploration of the political philosophy of communitarianism and its perceived authoritarian deficiencies in implementation, a consideration of the alternative agenda proposed by radical egalitarian communitarians and their analysis of the socio-economic inadequacies of contemporary society. It concludes with a discussion of the neoliberal response to economic decline and its failings evidenced by the increasing expansion of a seriously unbalanced UK economy and the emergence of a neoliberal communitarianism which has sought through the implementation of a multifarious multitude of disciplinary tutelage strategies to manage and control a fragmented and diverse population. Problematically, these interventions have merely accentuated these socio-economic problems and impacted disastrously on the process of capital accumulation to the extent it is argued where a tipping point has been reached and where we need a new way of doing things: a new social contract between the state and it citizens. We will start by considering the parameters of the orthodox communitarian agenda.

The Communitarian Agenda

Orthodox communitarianism emerged as a political philosophy in the USA during the 1980s as a response to what its proponents considered to be the limitations of liberal theory and practice. It is significant for the conclusions reached in this paper that diverse strands in social, political and moral thought, arising from very different locations on the political spectrum - such as Marxism (Ross, 2003) and traditional ‘one-nation’ conservatism (Scruton, 2001) - can be identified within communitarian thought. The general concept thus has support across political boundaries but nevertheless with significant differences in emphasis.

The two dominant themes of orthodox mainstream communitarian philosophy are first, that the individual rights promoted by traditional liberals need to be balanced with social responsibilities and second, autonomous individual selves do not exist in isolation but are shaped by the values and culture of communities. The key proposition is that unless we redress the balance toward the pole of community our society will continue to become
normless, self-centred, and driven by special interests and power seeking. In response this paper argues that the balance has subsequently shifted excessively and unhealthily towards the pole of community with a much greater contemporary emphasis on the responsibilities of individuals to the detriment of their rights in the context of the neoliberal backlash of austerity policies. The radical moral communitarianism proposed seeks a reconstituted appropriate balance between rights and responsibilities in the context of a fairer society and these themes are developed in more detail in the second paper in this series.

It is this critique of the one-sided emphasis on individual civil or human rights that is the key defining characteristic of orthodox communitarianism. ‘Rights talk’, it is argued, has corrupted political discourse, inhibited genuine discussion and has been employed without a corresponding sense of responsibilities (see Emanuel, 1991; Glendon, 1991; Etzioni, 1993, 1995a, 1995b). It is a perception of the individual as a ‘disembodied self’, uprooted from cultural meanings, community attachments, and the life stories that constitute the full identities of real human beings. Moreover, dominant liberal theories of justice as well as much of economic and political theory, presume such a self (see Etzioni, 1993).

Communitarians shift the balance and argue that the ‘I’ is constituted through the ‘We’ in a dynamic tension. Now, significantly, this is not an argument for the restoration of traditional communities with high levels of mechanical solidarity (Durkheim, 1933) and the repressive dominance of the majority or the patriarchal family, although some conservatives have influentially adopted that position. Orthodox communitarians are indeed critical of community institutions which are authoritarian and that cannot bear scrutiny within a larger framework of human rights and equal opportunities. Indeed, they appear to be accepting of the (post)modern condition argument that we are located within a complex web of pluralistic communities – or organic solidarity - with genuine value conflicts within them and within selves (see Hopkins Burke, 2013b).

Etzioni et al. (1991) outline the basic framework of orthodox communitarianism urging that the focus should be on the family and its central role in socialisation proposing that employers should provide maximum support for parents through the creation of work time initiatives, such as the provision of crèche facilities, and they warn us against avoidable parental relationship breakdowns, in order to put the interests of children first:

'The fact is, given the same economic and social conditions, in poor neighbourhoods one finds decent and hardworking youngsters next to antisocial ones. Likewise, in affluent suburbs one finds antisocial youngsters right next to decent hardworking ones. The difference is often a reflection of the homes they come from.' (Etzioni, 1995b:70)

Etzioni influentially referred to the existence of a ‘parenting deficit’ in contemporary western societies where self-gratification is considered a much higher priority for many parents than ensuring that their children are properly socialised and instilled with the appropriate moral values that act as protection against involvement in criminality and anti-social behaviour. The outcome is both inevitable and disastrous:
'Juvenile delinquents do more than break their parents’ hearts. They mug the elderly, hold up stores and gas stations, and prey on innocent children returning from school. They grow up to be useless, or worse, as employees, and they can drain taxpayers’ resources and patience...Therefore, parents have a moral responsibility to the community to invest themselves in the proper upbringing of their children, and communities – to enable parents to so dedicate themselves.' (Etzioni, 1995b:54)

In the UK, Dennis and Erdos (1992) explained the ‘parenting deficit’ in terms of the liberalisation of sexual mores that has been endemic in western societies since the 1960s. They observed that the illegitimate children of single parents do less well on several fronts with young males becoming involved in criminal behaviour because of the absence of a positive male role model while, at the same time, the whole project of creating and maintaining the skills of fatherhood is being abandoned and lost in contemporary societies.

Communitarians seek to reverse these trends and they demand a revival of moral education in schools at all levels, including the values of tolerance, peaceful resolution of conflict, the superiority of democratic government, hard work and saving. They also propose that government services should be devolved to an appropriate level, with the pursuit of new kinds of public-private partnerships, and the development of national and local service programmes. These ideas became very influential during the 1990s and beyond and in a pamphlet written shortly after he became Prime Minister of the UK, Tony Blair (1998:4) demonstrated his communitarian or ‘third way’ credentials:

'We all depend on collective goods for our independence; and all our lives are enriched - or impoverished - by the communities to which we belong...A key challenge of progressive politics is to use the state as an enabling force, protecting effective communities and voluntary organisations and encouraging their growth to tackle new needs, in partnership as appropriate.'

The most familiar and evocative, of the 'abstract slogans' used by Blair in the promotion of the importance of community was the idea that rights entail responsibilities which was taken directly from the work of Etzioni (1993). Thus, in contrast to the traditional liberal idea that members of a society may be simply entitled to unconditional benefits or services, it was now proposed that the responsibility to care for each individual should be seen as resting first and foremost with the individual themselves and their families. For Blair and his eminent sociological guru Anthony Giddens (1994, 1998) community is invoked very deliberately as residing in civil society: in lived social relations, and in 'common-sense' notions of our civic obligations. This ‘third way’ was presented as avoiding what its proponents observed as the full-on atomistic egotistical individualism entailed by the Thatcherite maxim that ‘there is no such thing as society’ (the Anglo-Saxon notion of individual we will encounter in the following paper), and on the other hand, the traditional social-democratic recourse to a strong state as the tool by which to realise the aims of social justice, most notably that of economic equality (epitomised by German individualism).
Dissenters have subsequently observed that the implementation of the New Labour agenda took rather a different course with its character rather more authoritarian than that suggested by the rhetorical appeal to the relatively autonomous powers of civil society to deliver progress by itself (see Driver & Martell, 1997; Jordan, 1998). Hughes (1998) thus refers to the communitarianism of Etzioni and his acolytes - and pursued enthusiastically by governments in both the USA and the UK - as moral authoritarian communitarianism and calls for the implementation of a more radical non-authoritarian variant that we will now consider.

Radical egalitarian communitarianism

Radical egalitarian communitarians such as Bill Jordan (1992, 1996), Elliot Currie (1993, 1996, 1997) and Jock Young (1999) have focused their attention on inequality, deprivation and the market economy as causes of crime and have thus proposed policies to eliminate poverty and a communitarian rebalance towards the pole of individual rights. Jordan (1992) argued that the UK and similar western societies have witnessed a substantial decline in social relations due to the poor being denied access to material goods with their only experiences of power being unjust ones. He observed the formation of two very different opposing communities of ‘choice’ and ‘fate’ with the former being ones where individuals and families have developed the income security strategies associated with comfortable ‘safe’, convenient, healthy and status giving private environments and the latter being those bound together by long-term interdependencies because of a lack of opportunities to move geographical location, gain access to good education or healthcare, get decently paid legitimate employment or share in the cultural enjoyments of mainstream society.

Jordan argued for an unconditional basic income for all citizens as one specific means of sharing out the common good in a more equitable fashion, opening-up the possibility for individuals and groups to participate in their own chosen projects and commitments while such a scheme would reduce the institutionalised traps and barriers to labour market participation that undermine legitimate efforts by members of ‘communities of fate’ to rejoin mainstream society.

The radical egalitarian communitarian agenda thus gives ethical priority to decisions about the redistribution of resources which allows all members an opportunity to share adequately in the life of community on an equal basis. This is clearly a laudable agenda but this does raise the question as to whether the state has to first ‘repair’ the social wounds before ‘the community’ can be allowed to participate in an inclusive politics of crime control and social justice. Moreover, this was before it became widely recognised that unconditional long-term welfare benefits paid to the fit and able can actually subsidize unofficial ‘off the cards’ non-taxed employment and a comfortable deviant criminal lifestyle in some cases. This was also before the great economic collapse of 2008 and the subsequent austerity policies which have transformed many communities of ‘choice’ into those of ‘fate’ with many more tottering on the edge of the apocalypse. At the same time, the Coalition Government has conducted an unprecedented assault on all categories of welfare benefit claimants.
Elliot Currie (1985, 1993, 1996 and 1997) made a significant contribution to the radical communitarian debate and argued that the most serious problem in contemporary USA was that the most disadvantaged communities are sinking into a permanent state of terror and disintegration in a society dominated by the market and consumerism. Currie (1993) outlines the complex deprivations of life in the inner-inner city and the failure of the state to respond with any sense of humanity, implementing a mass programme of incarceration and incapacitation, while at the same time introducing huge cut-backs in welfare expenditure. He argued that what characterises the ‘underclass’ in the USA is a ‘surplus of vulnerability’ exacerbated by the pervasive movement towards a more deprived, more stressful, more atomised and less supportive society, observing that many parents in the deprived communities are overwhelmed by multiple disadvantages and are in no position to counter the effects of family crises on their children.

Currie observed that the ‘triumph’ of the market society has created deprived communities characterised by the destruction and absence of legitimate livelihoods, significant extremes of economic inequality, the increasing withdrawal of public services, the erosion of informal/communal support networks, the spread of a materialistic and neglectful culture, the unregulated marketing of a technology of violence and a weakening of social and political alternatives:

>'The policies of the seventies and eighties, then, did more than merely strip individuals of jobs and income. They created communities that lacked not only viable economic opportunities, but also hospitals, fire stations, movie theatres, stores, and neighbourhood organizations – communities without strong ties of friendship or kinship, disproportionately populated by increasingly deprived and often disorganized people locked into the bottom of a rapidly deteriorating job market. In many cities these disruptive trends were accelerated by the physical destruction left by the ghetto riots of the 1960s or by urban renewal projects and freeways that split or demolished older, more stable neighbourhoods and dispersed their residents.' (Currie, 1993:70)

Radical communitarians like Currie are arguing that behind the growth of crime is a cultural, as well as a, structural transformation of poor communities and in this regard there are some common themes between orthodox communitarians and the radicals. The situation has certainly not improved in the intervening years and in some geographical locations in the UK we can observe communities where there are three or four generations of welfare claimants with little or no participation in the legitimate labour market. The reintegration of these socially excluded groups back into mainstream society was an essential and laudable New Labour strategy termed ‘reintegrative tutelage’ by Hopkins Burke (1999) and although clearly there were some success stories this was ultimately a flawed strategy scuppered not least by the unremitting ravages of the market economy.

Hall et al. (2008) conducted a study of the criminal patterns and criminals living on the alienated housing estates of the North East of England where in some cases there was no-one in employment. The researchers observed that the significant economic downturn of
The 1980s was more than a mere structural adjustment for those living in these communities. Rather, it was a radical shift in political economy and culture, a move to the unprecedented domination of life by the market which was to create a large number of locales in permanent recession in both the UK and the USA. Hall et al. (2008:3) observe that:

'The criminal markets developing in these areas now tend to operate in the relative absence of the traditional normal insulation...regarded as essential to the restraint of the inherently amoral and socially logic that lies at the heart of the liberal-capitalist market economy.'

The researchers pointedly observe that therefore contrary to the arguments presented by some, the 1980s was not a time of vigorous and inherently progressive cultural change for all, certainly not in those large brutalised and inherently criminogenic communities in which they conducted their research. Again this was the situation in a great deal of the UK prior to the great economic collapse of 2008 which was to spread that condition to a much wider section of the population both geographically and socially. The story nevertheless begins with the end of the long post-Second World War economic boom in 1973.

**Economic Recession, Austerity and Neoliberal Communitarianism**

Neoliberalism (sometimes termed ‘Thatcherism’ or ‘Reaganomics’) emerged as an economic strategy in response to the end of the long post-war boom in 1973. The apparent failure of Keynesianism and other forms of state capitalism predisposed many politicians, not just to accept, but wholeheartedly embrace, free-market and monetarist theories which they would earlier have rejected as eccentric, or even dangerously destabilising. Neoliberals initially tended to focus less on restoring the profitability of business and more on reducing the amount of state expenditure, the size of the state itself and controlling inflation, since these initiatives could be presented as beneficial to taxpayers and consumers. The major obstacle to the reorganisation of the economy was nevertheless perceived to be the need to control labour costs and this was to be done by a sustained assault on organised labour and abandoning the previously sacrosanct post-war economic strategy of full-employment.

Davidson (2013) observes that the sustained neoliberal attack on trade union power involved three chronologically overlapping political strategies. The first was to crucially abandon full-employment as the focal economic strategy and deliberately allow mass unemployment to grow by maintaining high interest rates and refusing to provide state aid to industries in the form of subsidies, contracts or import controls. The second was to provoke decisive confrontations between state-backed employers and one or two important groups of unionised workers and this was to ensure that there was little effective resistance to later closures that took place. The showdowns with postal workers in Canada (1978), car workers in Italy (1980), air traffic controllers in the USA (1981), textile workers in India (1982) all preceded that with the miners in the UK (1984-5). The third strategy was to establish new productive capacity, and sometimes virtually new industries, in geographical areas with low or non-existent levels of unionisation and to prevent as far as possible the culture of union membership from becoming established.
The relative success of these strategies allowed corporate restructuring, the closing of ‘unproductive’ units and the imposition of ‘the right of managers to manage’ within the workplace, which in turn ensured that wage costs fell and stayed down, so that profits were increased.

There were three further longer-term developments. The first was to ensure that when economic growth was resumed working class organisation was in no position to take advantage of increased profit rates by pushing for higher wages and better conditions. The second was the failure of neoliberal policies to deliver what they had promised in material terms for the majority of people, with resulting increases in poverty and inequality on the one hand, and increases in family breakdown and crime on the other (Wilkinson and Pickett, 2009). The consequences of which were, unintended or not, renewed rounds of the kind of state intervention supposedly rejected by neoliberalism in theory, but which were required to deal with the social problems it had generated, in increasingly expensive practice. The third was the failure of neoliberalism’s inherently contradictory aspiration to create a population that behaves as sovereign individual consumers in the marketplace, obedient wage labourers in the workplace and subordinate mass citizens before the state. Thus, a market which establishes personal fulfilment through consumer choice as the ultimate societal value not only destabilises those forms of identity which have traditionally helped support the market economy - like the family and the nation - but the very personal constraints which allow capitalist accumulation to take place (see Bauman, 2008).

It is in this context that some have argued that the last decades of the twentieth century saw ‘welfarism’ as a regime of social regulation replaced by neoliberalism in post-industrial Western societies (see Lacey, 2013) with the latter significantly responsible for the harsher penal regime of the last few decades (Cavadino & Dignan, 2006) which has helped discipline and tutor a recalcitrant working class population in the interests of the neoliberal economy (Wacquant, 2009). Houdt and Schinkel (2013) take this all a step further and pertinently observe that neoliberalism is not separate from but actually operates in combination with communitarianism with the emphasis on ‘responsibility’ in the latter compatible with the notion of ‘responsibilisation’ in the former, in other words, a neoliberal communitarianism.

Houdt and Schinkel (2013) argue that neoliberal communitarianism is a strategy of governmentality that combines the main features of neoliberal governmentality (Foucault, 2004) with those of governmental communitarianism (Delanty, 2003; Ross, 2003; Adams & Hess, 2001; Van Swaingenen, 2008) and it consists of a combination of the new public management and the outsourcing of responsibility to a plethora of agencies and organisations. It combines scientific measurement and the treatment of social problems with the stimulation of notions of ‘active citizenship’ and the rational governing of community.

Houdt and Schinkel illustrate how neo-liberal and communitarian elements have combined in crime policies over the last decades with reference to three crucial trends. First, there is ‘the prioritisation of crime and the intensification and pluralisation of punishment’ where we have seen increasing ‘selective incapacitation’ and ‘selective
rehabilitation’ (Downes & Van Swaingen, 2007) which involves a broader range of possible punishments, including restorative justice and a variety of tactics deployed to suppress ‘risky’ behaviour. Second, there is the ‘actuarialisation of crime’ where there is a transformation from the criminal subject as causally determined towards one as a bundle of risk factors, a focus on choice, and the discovery of inappropriate subculture as a risk factor (O’Malley, 1992; Osborne & Gaebler, 1993). Third, there is ‘the institutional transformation of crime regulation’ following the 1980s where penal welfarism was attacked for being ‘inefficient’ and ‘ineffective’ and which was replaced by the adoption of managerial principles and a business model to make criminal justice both more ‘effective’ and ‘efficient’. Hopkins Burke (2012, 2013a) argues that the practitioners, professionals and experts that have implemented these neoliberal strategies are invariably unaware of their contribution to the increasingly pervasive socio-control surveillance matrix of the carceral society which is encouraged and legitimized by a depoliticized general public ultimately but again usually unwittingly in the interests of the market economy.

All of which has occurred in the context of an increasingly unbalanced economy where a large population of economically non-productive people – the victims of the retreat from full-employment policies and their descendants – have come to be ‘looked after’ and ‘controlled’ by another large population of economically non-productive people in a world where apparently the only significant economically productive game in town is the banking and the financial service industries who contributed significantly to the disastrous economic meltdown of 2008.

The world-wide ‘credit crunch’ in September 2008 brought an inauspicious end to the long-run world-wide economic boom that had existed in the UK from 1997 and heralded a global financial crisis unprecedented in recent times, a major economic recession, with many business collapses, rising unemployment and, in many countries (such as the UK) the ultimate response being a new austerity politics aimed at reducing high and unsustainable levels of national debt. For the majority of ordinary working people, the consequences were felt directly in pay freezes, reduced hours, redundancies and an uncertain (but far from optimistic) future. The middle-classes (in particular, those public sector employees who had done so well during the previous artificially extended economic boom) were now increasingly absorbed into the ranks of socio-economic exclusion, previously the preserve of those involved in manual occupations, many of those now living workless, often out on the desolate jobless housing estates of our towns and cities (see Hall et al., 2008 above).

The General Election in 2010 produced the first coalition government since the Second World War formed between the Conservatives and the Liberal Democrats and the alliance agreement between the two parties contained a centrepiece economic policy of eliminating the UK’s structural deficit by 2015 which was to be based primarily on public spending cuts rather than on tax rises. The Spending Review later that year announced a series of measures aimed at achieving this goal, including an average 19 per cent cut across departmental budgets, an extra £7 billion in cuts to the welfare budget on top of £11 billion already announced, and a major reform of public-sector pensions (HM Treasury, 2010).
The issue of a rebalanced economy is fundamental to the argument being developed in this paper. The Coalition Government argues that the financial crisis exposed an unstable and unbalanced model of economic growth based on unsustainable levels of public and private sector borrowing and this has arisen during two overlapping phases (GOV.UK, 2014). First, the major neoliberal economic restructuring of the 1980s decimated traditional income-creating manufacturing jobs and produced as a consequence a large non-productive workless sector. Second, this situation was exacerbated from that time onwards by the rapid expansion of a further large section of the population employed in the public sector to ‘look after’ and ‘control’ the increasing first sector.

In response the Coalition Government produced a neo-Keynesian public sector economic investment package, the National Infrastructure Plan, with investment proposed in critical infrastructure projects worth £100 billion over the next Parliament as well as measures introduced to attract major new private sector investment to the UK. The Labour Opposition subsequently acknowledged the necessity of re-balancing the economy and at least partially plans to do this by introducing measures to increase the number of better paid middle income jobs but within the context of a high productivity, high skilled, innovation-led economy not in the non-productive public sector which epitomised the New Labour years (Thisismoney, 2014).

Reality would seem to be long-term if not permanent austerity not least if the economy continues to be unbalanced. Two influential think tank reports have cautioned that austerity measures in the UK could still be in place when the 2020 election takes place. The Institute for Fiscal Studies and the Institute for Government have both observed that, ‘we are still as far away from the (budget deficit) target as we were in 2010. ... Indeed, it would not be surprising if not just 2015 but also 2020 was an ‘austerity’ election’ (BBC, 2013). Some of us think that it could well take longer and austerity will be the economic orthodoxy in Europe for the foreseeable future if these economic policies continue to be pursued. Prime Minister David Cameron has reiterated that austerity policies are not only likely to stay for the anticipatable future but they are also a good thing and we can all look forward to a permanently slimmed down more efficient state (Mail Online, 2013). Clearly neoliberalism is not working. Capital accumulation is significantly impeded by the inherent contradictions within the neoliberal project which while demanding a pared back state is actually faced by an expanding state required to both look after and control the increasingly impoverished economically non-productive population it has rejected and the complex sophisticated costly strategies of the neoliberal communitarian disciplinary tutelage programme. What is clearly required is a different form of communitarianism.

**Concluding Comments**

It is the work of Emile Durkheim and his observations on the moral component of the division of labour in society that provides the theoretical basis of a radical moral communitarianism which challenges the orthodox articulation of the political philosophy and its hybrid neoliberal variation. It is a formulation which actively promotes both the rights and responsibilities of both individuals and communities but in the context of an equal (or at least significantly less unequal) division of labour. It is a communitarianism based on a particular conception of (French) individualism which provides the basis of a rather different form of social organisation than those which emerge from its rival
The case for a radical moral communitarianism

conceptions (Anglo-Saxon and German individualism) which inform the mainstream, radical egalitarian and neoliberal variants. The forthcoming second paper in this two part series discusses the theoretical foundations and outlines the policy implications of this radical moral communitarianism.
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NEW CIVIL ORDERS TO CONTAIN SEXUALLY HARMFUL BEHAVIOUR IN THE COMMUNITY
Terry Thomas, Visiting Professor of Criminal Justice Studies, Leeds Metropolitan University & David Thompson, PhD student, University of Leeds

Abstract
This article presents an overview of the new civil orders brought in by the Anti-social Behaviour, Crime and Policing Act 2014 to combat sexually harmful behaviour in the community in the United Kingdom. The two new orders – the Sexual Risk Order and the Sexual Harm Prevention Order – will replace earlier orders available in the Sexual Offences Act 2003. The new orders with their lower evidential thresholds should be easier to obtain and involve less work for the police. They may also present a number of difficulties in terms of human rights and have already been described as 'sweeping' powers and 'tougher' powers. The article looks at the origins of the new law and their subsequent development and seeks to examine these contesting viewpoints of balancing public protection with human rights.

Keywords
Sex offenders; sexual harm; sexual offences; public protection; travelling sex offenders; human rights
Introduction

The new Anti-Social Behaviour, Crime and Policing Act which received its Royal Assent on 13th March 2014 contains provisions for two new Orders for the regulation of behaviour likely to cause sexual harm. The two Orders are:

- the Sexual Risk Order; and
- the Sexual Harm Prevention Order

These Orders will replace the existing Sexual Offences Prevention Orders (SOPOs), Risk of Sexual Harm Orders (RSHOs) and Foreign Travel Orders (FTOs) available in the Sexual Offences Act 2003. The Anti-Social Behaviour, Crime and Policing Bill was first published on 4th June 2013 and Home Secretary Theresa May gave notice of amendments to the Bill to include these new Orders on 8th October 2013.

The Orders follow the now familiar hybrid pattern of law involving civil prohibitions and criminal enforcement. An Order will place prohibitions on individuals to desist from certain behaviour and if breached that person commits an offence and becomes liable for prosecution in the criminal courts. The prosecution is, of course, for the technical, administrative offence of breaching conditions and does not, for example, imply any substantive sexual offence has taken place. Some commentators have referred to the 'two-step prohibition' nature of such laws to describe how the civil law is used first and the criminal law follows up if there is breach of the civil order (von Hirsch & Simester, 2006).

The prime movers for the new Orders were the Association of Chief Police Officers (ACPO) who published a report in May 2013 calling for a review of the present arrangements. The existing regime was dismissed as reflecting 'the historic origin of the legislation rather than any purposive logic' (Davies Report, 2013, para 5.2).

This article begins by looking at 'the historic origin' of these Orders and the current thinking and campaigning behind the need for the new Orders. It also considers the nature and effect of the new and old Orders with respect to human rights and child protection.

The Existing Orders and Historic Origins

The existing Orders can all be found in the Sexual Offences Act 2003 Part Two.

Sexual Offences Prevention Orders (SOPO)

The Sexual Offences Prevention Order or SOPO has the longest history of the three civil prevention orders to be replaced. The SOPO started life as the Community Protection Order (CPO) and was later renamed as the Sex Offender Order (SOO) when it reached the statute book in 1998; it became the SOPO in 2003.

In one of the first major policies following their election in 1997, the New Labour government introduced their flagship policy of tackling Anti-social Behaviour. It was initially hoped that the Anti-social Behaviour Order or 'ASBO' could be used on those persons/individuals displaying harmful sexual behaviour. As it became apparent that a
separate Order was going to be needed, so the Community Protection Order was introduced to be specifically used with those displaying harmful sexual behaviour (Home Office, 1997: para.3). The secondary need stated for the introduction of the Community Protection Order was to add more names to the recently started sex offender register. The register was launched on 1 September 1997 and was not retrospective. This meant it did not apply to any one committing offences before that date unless they were still in prison or under supervision. Estimates suggested that as many as 110,000 people were living in the community with convictions for sexual offending at that time (Marshall 1997) and the register was simply not going to apply to them. As such, the Community Protection Order was seen as one way of collating these names and ensuring they were on the register (Home Office 1997: para2).

The Community Protection Order was renamed as the Sex Offender Order (SOO) in the Crime and Disorder Act 1998 (ss2-4). It was applied for by the police in a magistrates' court if a person with a conviction was considered a cause for concern, displaying inappropriate behaviour and the SOO was necessary to 'protect the public from serious harm'. 'Serious harm' was originally as defined by the Criminal Justice Act 1991 s31 (3) and later the Powers of Criminal Courts Act 2000:

‘In this Act any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.’ (Powers of Criminal Courts Act, 2000, s161 (4))

When the SOO was made it outlined the behaviour that was to be prohibited and any breach was to be dealt with in the criminal courts. The Police Reform Act 2002 amended the law to allow for interim emergency SOOs.

The civil provisions covering sex offenders were again updated in 2003 when the SOPO was created in the Sexual Offences Act 2003 when the SOO was merged with the Restraining Order (RO). As with the SOO's, the police applied to the magistrates' court for them to be imposed to prevent 'serious sexual harm' defined as:

‘protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3.’ (Sexual Offences Act 2003 s106(3)).

SOPOs were made by magistrates with, again, a list of prohibited activities in them. The Home Office states that:

‘[A SOPO] may, for example, prohibit someone from undertaking certain forms of employment such as acting as a home tutor to children. It may also prohibit the offender from engaging in particular activities such as visiting chat rooms on the internet. The behaviour prohibited by the order might
be considered unproblematic if exhibited by another member of the public – it is the offender’s previous offending behaviour and subsequent demonstration that he may pose a risk of further such behaviour, which will make him eligible for an order.' (Home Office, 2010:50)

The commission of any of these activities would lead to a criminal prosecution for a breach offence having been committed; breach of the SOPO was dealt with as a criminal offence and was punishable on summary conviction by a fine and/or maximum 6 months imprisonment or on indictment by up to 5 years imprisonment (Sexual Offences Act 2003 ss104-113).

**Foreign Travel Orders (FTO)**

As well as the introduction of SOPOs in the Sexual Offences Act 2003, a new Foreign Travel Order (FTO) was introduced; the Order was designed to prevent certain people travelling abroad.

Registered sex offenders had to notify the police of their international travel plans if they were going abroad for more than eight days (Sex Offenders (Notice Requirement) (Foreign Travel) Regulations 2001 No. 1846) but after campaigning by ECPAT (End Child Prostitution and Trafficking) this eight day period was reduced to three days (Sexual Offences Act 2003 (travel Notification Requirements) Regulations 2004 No. 1220). Notice of travel was to be made to the police at least seven days prior to travel.

Since 2012, the three day period has also been reduced and now notice for **any** travel abroad must be given by those on the UK sex offender register (Sexual Offences Act 2003 (Notification Requirements) (England and Wales) Regulations 2012 No. 1876). The Home Office has stated that there are three reasons for this:

'First, it enables local police to know the whereabouts of sex offenders and, in doing so, avoids sex offenders claiming that they have not complied with the notification requirements of the 2003 [Sexual Offences] Act because they were overseas. Second, it enables the police, where appropriate, to inform other jurisdictions that a sex offender is intending to visit their country. The information provided by the foreign travel notification requirements assist the police in making sensible judgements about whether to pass information about the risk an offender poses to other jurisdictions in order to prevent an offence from being committed overseas. Third, it gives the police the opportunity to decide whether to apply for a Foreign Travel Order to prevent the offender travelling abroad.' (Home Office, 2012a, p.22)

Convicted sex offenders might travel internationally to engage in so-called 'sex tourism' and sexually exploit children in other countries where poverty drove young people into prostitution and laws about ages of consent were less rigorously enforced. Registrants might also use travel to avoid the 'management' arrangements of sex offender registers, civil orders, probation supervision and similar policies and procedures and they might also be trying to avoid the domestic pre-employment screening of certain occupations that
would prevent them from working with - and thereby possibly abusing - children (Thomas, 2013).

The police having been notified of a registered sex offender's travel plans had to decide whether or not to apply for a Foreign Travel Order (FTO) that would prevent such travel and the possible abuse of children. The police had to demonstrate to the court that the person concerned had convictions for sexual offences and that the defendant had been acting in such a way as to give reasonable cause to believe that an FTO is necessary. Applications for an Order must be made by a chief officer of police with evidence of a detailed risk assessment. The FTO was made by magistrates if they were satisfied that there was a proven risk of 'serious sexual harm' to children and lasted for a designated time period of up to five years. Serious sexual harm meant:

'protecting persons under 18\(^1\) generally or any particular person under 18 from serious physical or psychological harm caused by the defendant doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.' (Sexual Offences Act 2003 s115 (2))

Once again breach of the FTO was dealt with as a criminal offence and was punishable on summary conviction by a fine or maximum 6 months imprisonment and/or on indictment by up to 5 years imprisonment (Sexual Offences Act 2003 ss114 – 122).

**Risk of Sexual Harm Orders (RSHO)**

The Risk of Sexual Harm Order was another preventative order created by the Sexual Offences Act 2003. The RSHO was specifically designed to target the 'grooming' of children and young people which is carried out with a view to committing sexual offences. This was something which had been discussed for a number of years but seemed to have taken on a new urgency with the advent of the internet and social networking arrangements providing the means to groom anonymously and at a distance. The person concerned needed to have committed two out of four acts as defined in the Act and the RSHO was made by a magistrate; breach of the prohibitions in the Order constituted a criminal offence (Sexual Offences Act 2003 ss123-129).

The RSHO was controversial in that – unlike the SOPO and FTO – an application did not require the person concerned to have any prior convictions for sexual offences. In theory it was now possible to be imprisoned for breach of a RSHO without having committed any substantive sexual offence. In other words anyone was now a potential sex offender if the police thought they had sufficient evidence even if that evidence was still insufficient to be used for a criminal trial. Such thinking underlies the Home Office's guidance at this time to stop using the phrase 'Schedule 1 offender' which related to the offences against children listed in Schedule 1 of the Children and Young Persons Act 1933 and to replace it with the phrase 'a person identified as presenting a risk, or potential risk, to children' (Home Office 2005: para4).

\(^1\) The age was raised from 16 by the Policing and Crime Act 2009 s23(1)
The Criticisms
The criticisms of all these Orders were varied. They were criticised for being ineffective, too difficult to obtain and therefore very underused. Whilst Foreign Travel Orders to stop sex offenders travelling abroad, for example, could be numbered in single figures, similar Orders (Football Banning Orders) to stop travelling football hooligans had been made in their thousands:

'Only five foreign travel bans have been issued under the current system, compared with 3,000 for football hooligans.' (BBC News, 2008)

As Table 1 shows the actual figures were reported annually to parliament; in the case of FTOs the numbers were fairly static.

Table 1: FTOs Made

<table>
<thead>
<tr>
<th>Year</th>
<th>FTOs Made</th>
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<tbody>
<tr>
<td>2006-07</td>
<td>3</td>
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<tr>
<td>2007-08</td>
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<td>2008-09</td>
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<td>2011-12</td>
<td>14</td>
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<td>2012-13</td>
<td>13</td>
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(MoJ 2013:13)

It could have been argued that this meant there was simply a low demand for Foreign Travel Orders but actually the counter argument was made that the Orders should be made easier to obtain. Related to this, another allegation was that civil orders were just an easier way of policing with their lower threshold of proof being 'balance of probability' rather than the higher 'beyond all reasonable doubt' proof required in criminal proceedings. This criticism had been in part answered by the courts who had also seen this problem and had ruled that civil orders such as SOOs and ASBOs should be applied for using the more rigorous criminal proceedings level of proof (R (on the application of McCann) v Manchester Crown Court [2002] UKHL 39).

Some questioned the need for the use of civil orders at all when perhaps straightforward prosecutions might be better. This was particularly so in the case of RSHOs when a previous conviction was not even necessary when it came to applying to magistrates (Liberty, 2003). Others pointed out that in the case of the RSHOs, two of the four criteria that had to be met included two that were actually offences in themselves:

'Engaging in sexual activity involving a child or in the presence of a child; Causing or inciting a child to watch a person engaging in sexual activity or look at a moving or still image that is sexual.' (Sexual Offences Act 2003 s123(3) (a) and (b))
The assumption being that again prosecution (rather than an application) could have been attempted (Craven et al., 2006; 2007).

Concern had also been expressed about what exactly constitutes the 'negative prohibition' that these Orders imposed. The police had sometimes worded the language of the SOPO, for example, to enable a de facto 'positive requirement' to be added. A police right of entry to the home of someone could not be written into a SOPO, because that would have been a 'positive requirement'. The police, however, had been known to re-word this 'right of entry' and make it a 'negative prohibition' by, for example, saying the person concerned 'must not deny access' to a police officer. The Appeal Court described such police tactics as 'draconian' because it effectively created a continuing search warrant lasting at least five years (Thompson [2009] EWCA Crim 3258).

The Campaign for Change
The current calls for change have come from campaign groups such as ECPAT UK (End Child Prostitution, and Trafficking) and 'Childhood Lost'; both have been supported by the police.

ECPAT, has a long history of campaigning against travelling sex offenders who have been taking advantage of jurisdictions with lax laws and law enforcement to sexually exploit children; an activity sometimes referred to as 'sex tourism'. As we have seen, registered sex offenders originally only had to notify the police of their international travel plans if they were going abroad for more than eight days (2001) but after campaigning by ECPAT this eight day period was reduced to three days (in 2008) and then in 2012, this was required for any international travel, however short in length.

The police have supported ECPAT:

'The recommendation to introduce a requirement to notify the Police of all travel outside of the United Kingdom, regardless of the duration of the trip, is strongly supported.' (ACPO, 2009)

Since August 2012 notification is required from registered sex offenders for 'any' time period at all spent abroad (Sexual Offences Act 2003 (Notification Requirements) (England & Wales) Regulations 2012 no. 1876 Regulation 5). At the time the Home Office confirmed that:

'[the] requirements introduced by these Regulations were identified by practitioners and experts as a priority area where action is required to prevent relevant offenders from seeking to exploit gaps in the system.'

(Home Office, 2012b, emphasis added)

Although little evidence had been produced to show that people were travelling abroad for less than three days to abuse children, Christine Beddoe, Director of ECPAT UK, clearly regarded it as a victory for her organisation declaring 'we are...delighted that the government has finally heeded ECPAT UK's call to close the '3-day loophole' (ECPAT, 2012).
It is this same combination of 'experts' and 'practitioners' who have now campaigned for a change in the civil orders to make them easier to obtain.

**The Practitioners**
The practitioners have primarily been the police. The Association of Chief Officers of Police (ACPO) Child Protection and Abuse Investigation Working Group commissioned a report to highlight deficiencies in the existing regime of civil orders and make proposals for change. The resulting Davies Report was published 15 May 2013 (Davies 2013). The working group looked at no original research but reference is made in the report to an unpublished MSc dissertation completed part-time by one of the police members of the working group at the University of Portsmouth (Gedden, 2010).

**The Experts**
The experts in this case are the campaign groups ECPAT and 'Childhood Lost'; other campaign groups including the NSPCC and 'Save the Children' have supported them (see e.g. Children's Society et al., 2013). 'Childhood Lost' was a group formed in the first part of 2013 by Nicola Blackwood MP and others (see [http://www.childhoodlost.co.uk/](http://www.childhoodlost.co.uk/)) based on the experiences of 'localised grooming' by gangs in the Oxford area.

The Davies Report recommended one new Order to simplify matters – the Child Sexual Offence Prevention Order. The whole tenor of the report is that this is all about protecting children and therefore it is mostly 'self-evident' what has to be done:

>'The simplification we propose removes arbitrary pre-requisites that have no logic within the reality of the criminality involved.' (Davies Report, para12.2.2)

Some would argue that these 'pre-requisites' were actually checks and balances to ensure that the imposition of these orders was proportionate and compatible with the 1950 European Convention on Human Rights.

Otherwise, evidence for change was limited and the statistics in the Report were not plentiful; the commentary in the report noted the limitations:

>'the evidence as to these procedural matters tends to be anecdotal.' (Davies Report, 2013, para6.9.4)

and enigmatically:

>'The numbers – inadequate as they are in terms of data collection – do not lie.' (ibid: para8.3.1)

The Report recommended that only one previous conviction should in future be required and that the need to prove 'serious sexual harm' had taken place should be repealed:

>'We resist the term 'serious', borrowed from existing legislation, since it presupposes that there is some category of sexual harm that may be caused
to a child that is not intrinsically serious or that is not worthy of prevention.'
(ibid: para2.6)

The result is a much lower threshold to argue for the imposition of an order.

**The Parliamentary Debate**

Nicola Blackwood MP took her amendment to the Anti-social Behaviour, Crime and Policing Bill into the House of Commons. Blackwood’s new Clause 5 had renamed the original Child Sexual Offences Prevention Order of the Davies Report to the Child Sexual Abuse Prevention Order. In the event the Clause was withdrawn because the Home Office’s own amendments introduced on the same day were considered to go even further and ‘[Nicola Blackwood] and the House agree that the Government amendments will deliver what new Clause 5 was intended to achieve' (Hansard HC Debates, 2013, col.495)

There were arguably serious human rights and civil liberties implications in these amendments to the Anti-social Behaviour, Crime and Policing Bill. Questions of ‘liberty’ ‘freedom of movement’ and degrees of ‘privacy’ were present. Registered sex offenders had only recently successfully appealed in the UK Supreme Court that elements of registration in itself breached Article 8 of the European Convention on Human Rights – the right to privacy ((R (on the application of F (by his litigation friend F)) and Thompson (FC) (Respondents) v. Secretary of State for the Home Department (Appellant) [2010] UKSC 17).

In the parliamentary debate however, none of these issues were discussed. Even the House of Lords/House of Commons Joint Committee on Human Rights was not given the opportunity to consider the relevant parts of the Bill. The Committee reported on the Bill generally but had to state:

‘On 8 October...the eve of our agreeing this Report, the Government tabled amendments to the Bill to reform the civil orders under the Sexual Offences Act 2003. We were...given no warning in advance that the Government intended to introduce such amendments which clearly have human rights implications. We are pursuing with the Leader of the House of Commons our concerns about the recurring inadequacy of the time available to scrutinise the human rights compatibility of significant Government amendments to Bills.' (emphasis added) (House of Lords/House of Commons 2013: para9)

Whether this avoidance of human rights scrutiny by the government was accidental or deliberate is hard to fathom. The Conservative part of the Coalition government has never been that enamoured of the European Convention or the Human Rights Act.

**The New Orders**

The Anti-social Behaviour, Crime and Policing Act Section 113 along with Schedule Five and Six have amended the Sexual Offences Act 2003 to introduce the new Sexual Harm Prevention Order and the Sexual Risk Order (Sexual Offences Act 2003 ss103A-K and 122A-K respectively).
The Sexual Harm Prevention Order
The Sexual Harm Prevention Order (SHPO) requires two conditions to have been met. The defendant has firstly to have committed an offence listed in Schedule 3 or 5 of the 2003 Act and thereby become a 'qualifying offender'. Schedule 3 lists the offences that lead to registration as a sex offender and Schedule 5 lists other offences that could lead to registration. Any defendant who has been found not guilty of any of these offences because of mental health problems or who was unable to be tried because they were 'under a disability' may also be made the subject of a SHPO if the second condition is met. The second condition is that the court believes the Order is necessary to protect the public or an individual from sexual harm from the defendant whether that harm might be inflicted in the UK or overseas. As with SOPOs, that SHPOs replace, applications must be made to the magistrates' court.

The new Order does not require the applicant to prove 'serious' sexual harm – as the old orders did - and refers only to 'sexual harm' defined as physical or psychological harm caused:

'(a) by the person committing one or more offences listed in Schedule 3, or
(b) (in the context of harm outside the United Kingdom) by the person doing, outside the United Kingdom, anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom.'
(Sexual Offences Act 2003 s103B (1))

The Sexual Harm Prevention Order prohibits the defendant from doing anything described in the order for at least five years and maybe longer. This prohibition could include foreign travel although this can only be for a maximum of five years; it could be extended after that period; Interim SHPOs may also be made. Breach of a SHPO is an offence punishable on summary conviction to a maximum six months imprisonment or a fine or on indictment to imprisonment for a maximum of five years.

The Sexual Risk Order
The new Sexual Risk Order (SRO) effectively replaces the RSHOs and allows for Orders to be made on people without any previous convictions. The only qualifying condition is that:

'the defendant has...done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for a sexual risk order to be made.' (Sexual Offences Act 2003 s122A (2))

The question immediately arises as to why this 'act of a sexual nature' is not prosecuted; especially as we are saying that the public needs protecting.

The police make applications for a SRO to the magistrates' court. The court must decide if the defendant has:

'done an act of a sexual nature as a result of which it is necessary to make such an order for the purpose of:'
(a) protecting the public or any particular members of the public from harm from the defendant, or
(b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the United Kingdom.’ (Sexual Offences Act 2003 s122A (6))

Neither are confined to child sex offenders but could cover sexual offending against anybody of any age. Both the SRO and the SHPO requires the individual subject to the Order to stop any behaviour described in the Order or a criminal offence is committed which could lead to a custodial sentence.

Conclusions
Writing 16 years ago in the context of an ever more punitive criminal justice system the late Barbara Hudson perceptively predicted:

'It is also likely that unchecked punitiveness in relation to offences where corroborative evidence is difficult to obtain will lead to the adoption of civil law standards of proof but with such cases resulting in criminal law punishments.' (Hudson, 1998)

The new civil orders added to the Anti-social Behaviour, Crime and Policing Act continue the trend toward policing by civil orders rather than prosecutions and will become far easier for the police to obtain. They have already been described as 'tougher' (Casciani, 2013) and as giving the police 'sweeping' new powers (Wright, 2013).

On Channel 4 News, Director of Liberty Shami Chakrabarti described the two new Orders as a 'soft option' and civil orders of this kind a 'distraction from the main event'; the 'main event' being arrest and prosecution (Channel 4 News, 2013).

The Davies Report on which the new laws are based is arguably not a rigorous piece of research. Phrases such as 'the numbers – inadequate as they are in terms of data collection – do not lie' (Davies Report 2013 ibid: para.8.3.1) highlight this lack of rigour. In the House of Commons Nicola Blackwood MP described the report as having been 'written independently by Hugh Davies QC and a team of experts' (Hansard HC Debates, 2013, col.482, emphasis added). Davies himself has described his report as 'a well-researched (multi-agency) independent report' (PACE, 2014, emphasis added).

Just how 'independent' the report was and who it was 'independent from' was not made clear. Hugh Davies is a QC who is also a member of the ACPO child protection executive board and has completed various pieces of work for the police; ACPO commissioned the report. Davies chaired the working group made up of two police officers, an Operations Manager from CEOP (Child Exploitation and On-line Protection section of the National Crime Agency) and someone from the Border Force National Intelligence Unit; it is hard to see this as an 'independent' group, let alone a 'multi-agency' group. Where were the probation officers, the social workers, magistrates and representatives from organisations like NOTA?
The final member of the working group was Christine Beddoe the Director of ECPAT UK. There has always been a close relationship between the police and ECPAT UK. Beddoe and Davies had previously published together (Beddoe & Davies, 2009) and the Davies Report, although commissioned by ACPO, is only available from them through the ECPAT UK website. ECPAT also managed to put out a press release supporting the Davies report the day before it was formally published (ECPAT, 2013).

All in all, the standing given to the Davies Report in Parliament and by MPs has to be more rigorously questioned, particularly as the narrow focus of the report appears to have the sole aim of promoting the introduction of new orders for the police. This is especially concerning given that this report has been the cornerstone upon which the SRO and SHPOs have been introduced and lessened the protections afforded to individuals and effectively bypasses the protections of criminal evidence burdens.

The SRO has also been criticised by the Chair of the Law Society's Criminal Law Committee:

"It is a dangerous move to take away the requirement for a conviction to make a restrictive order, not least because the order will be interpreted as proof that you committed the offence and that you are indeed a paedophile. Also if you...resist the restrictions [in the civil court], you are effectively telling the prosecution in advance how you intend to conduct your defence – giving the prosecution two bites of the cherry." (quoted in Rayner 2013)

On the wider brief of the Anti-social Behaviour, Policing and Crime Act the House of Commons Home Affairs Committee has criticised what it refers to as the ever widening approach towards all forms of anti-social behaviour now being taken:

"Each time successive Governments have amended the ASB regime, the definition of anti-social behaviour has grown wider, the standard of proof has fallen lower and the punishment for breach has toughened. This arms race must end. We are not convinced that widening the net to open up more kinds of behaviour to formal intervention will actually help to deal with the problem at hand." (House of Commons, 2013 para 35)

This is far from a new phenomenon, with six law professors reporting as far back as 1998 that the then ‘flagship’ ASBO policy was at risk of drawing evermore people, sometimes unnecessarily, into the criminal justice system with its low standards of proof and violation of due process (Ashworth et al., 1998).

Whether or not the new Orders will be used to any greater extent compared to the old ones remains to be seen. A Barnardo's report on child sexual exploitation in the UK accepted the potential of the Orders but has already suggested the government should at least:
New civil orders to contain sexually harmful behaviour in the community

'Carry out a review of their use and effectiveness after 12 months of coming into force, in light of the limited use of existing civil prevention orders.' (Barnardo's, 2014:21)

Practitioners will eventually become familiar with the new orders and no doubt in time will use it far beyond the intentions of the original SOOs from which they are descended. Important questions will remain about how effective these measures are in actually preventing 'harm' from occurring especially by a determined recidivist, or the extent to which they are an even easier measure to bypass the formal due process controls.

Important questions will also arise about human rights. Human rights are currently having a difficult time with respect to criminal justice policies amid a growing resistance to the human rights discourse in political agendas. This is particularly true of sex offenders and potential sex offenders which reflects the low esteem they are accorded (Spencer 2009).

At the time of writing (August 2014) no commencement date has been announced for the new Orders.
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FROM CELEBRITY CRIMINAL TO CRIMINAL CELEBRITY: CONCERNING THE ‘CELEBRIFICATION’ OF SEX CRIME IN THE UK

Dr Iolo Madoc-Jones, Dr Caroline Gorden, Dr Sarah Dubberley & Dr Caroline Hughes, Criminology and Criminal Justice, Glyndwr University

Abstract
Following the death of Jimmy Savile in 2011, a number of high profile British celebrities have been questioned about or arrested and charged with sexual offences. This article explores whether the high profile and thematic framing of sex crimes antecedent to this will presage any significant changes in how that form of crime, victim and offender is understood. The events leading up to the large numbers of celebrities being accused of sex crimes in the UK are discussed and ways of understanding and conceptualising the emergence of celebrity sex offenders are presented. Dominant discourses about sex offenders and victims of sex crimes are then considered and the implications of recent developments for these discourses are explored. The argument is made that a focus on the ‘extra-ordinary’ that celebrity sex offending undoubtedly entails will deflect attention away from the family root of most sexual abuse.

Keywords
Sex offending; victims; celebrity; Savile
**Introduction**

Our concern in this article is to explore aspects of the recent ‘celebrification’ of sex crime in the UK (Gamson, 1994; Harper & Treadwell, 2013). Sex crime is not a new phenomenon but recent incidents in the UK whereby various celebrities have faced allegations of sexual offending have catapulted the issue afresh into the public imagination. Whilst figures like Billy the Kid in the USA and Dick Turpin in the UK illustrate that the celebrity criminal has been around for some time, the criminal celebrity, and especially the celebrity sex offender, is a rarer more recent object of interest (Greer, 2003).

In the USA, Fatty Arbuckle was tried in the 1920s over the death of a fellow actress but more recently in 2002 Michael Jackson was charged with sexual offences against children. In the UK, Paul Gadd (aka the singer Gary Glitter) and Pete Townsend (guitarist with the rock band The Who) appeared in court in 2005 and 2007 respectively for offences relating to possessing indecent images of children. In the main, however, these have figured as isolated and episodic cases of alleged celebrity sexual offending which Iyengar (1991) has suggested tend to have little social impact. More recently, in the UK, a significant number of high profile celebrities have been accused and/or arrested for sex crimes. This article explores whether the high profile and thematic, as opposed to episodic, framing of sex crimes that arises antecedent to the arrest of so many celebrities can presage any significant changes in how that form of crime, victim and offender are understood (Iyengar, 1991). Though focused on events in the UK we intend the paper to make a contribution to understanding how discourses about sex crimes may be foregrounded and reproduced in other contexts where a number of celebrity offenders may emerge and capture the public imagination. We begin by discussing some of the events leading up to a number of celebrities being accused of sex crimes in the UK. Next we explore some of the ways of understanding and conceptualising the emergence of criminal celebrities, locating this discussion in the broader context of late modernity and the risk society. From there, we explore dominant discourses about sex offenders and the implications of the celebrification of sex crime for how sex offenders and their victims are viewed.

**Rise of the Criminal Celebrity**

It is apposite to note that ‘celebrity’ and ‘celebrity status’ is the epitome of inauthenticity or constructedness (Franklin, 1999), so that defining the field of interest of this paper is not a straightforward task. It is possible to draw distinctions between celebrities (A, B C-list), people who are well-known, people who are notorious and those who are famous. Whilst noting this, here ‘celebrity’ is used as an all-inclusive term for those who work in the media and thereby attract public attention. The paper focuses on the recent concern with ‘celebrity’ sex offending in the UK arising from the death and subsequent exposure of Jimmy Savile - a BBC TV presenter and DJ, as a predatory sex offender. In October 2012, twelve months after his death, a television documentary carried allegations that not only had Savile been a predatory sex offender, but that this had been widely known and tolerated by many within the entertainment industry (Exposure: The Other Side of Jimmy Savile, 2012). The ‘revelations’ prompted a number of Savile’s victims to come forward and for allegations to emerge and prosecutions to be instigated against other celebrities. In many instances, as in the case of Savile, some of the allegations were historical, with some dating back to the 1960s, and it was suggested they had not been thoroughly
investigated or prosecuted by the authorities with any vigour at the time. In response the London Metropolitan Police launched Operation Yewtree, an investigation with three strands - into Savile himself, into Savile ‘and others’ he may have offended with, and into unrelated claims made against other celebrities. Twelve months on, a number of celebrities had become embroiled in the investigations - Stuart Hall, Freddie Starr, Jim Davidson, Dave Lee Travis, Rolf Harris, Max Clifford, Jimmy Tarbuck, William Roach, Michael Le Vell, Paul Gambaccini and Cliff Richards, amongst others are household names in the UK. The question of which new or ‘bigger’ celebrity might be questioned or charged has generated feverish public speculation and online gossip. In December 2012 it was suggested 25 additional celebrities would be arrested (Furedi, 2013).

The origins of the criminal celebrity

The public and the media are obsessed with crime and celebrity (Greer, 2003; Thomas, 2005). In a context where urbanisation and globalisation have destabilised the traditional foundations for social order (rooted in religion, local community, nationhood or even gender) discussions about which celebrity one identifies with have come to serve as alternative processes wherein “relationships, identity, and social and cultural norms are debated, evaluated, modified and shared” (Turner, 2003:24). Rojek (2006) contends that historically, as texts, celebrities have served to promote consumption, multiple relationships and leisure. Presently, however, such a text is problematic and the roots of this may be traced to the moral crisis associated with the liberalising legislation and philosophy of the 1960s (Hall et al., 1978). From the late 1970s onwards, fuelled by the emergence of HIV/AIDS, public opinion began to converge on the idea that society had become too permissive and moral standards had declined too far. Bibbings (2009) suggests that a form of heterocrisis explains why subsequently ‘pro-family’ policies were championed at the same time as ‘dissident’ groups like single parents and people from the Lesbian and Gay community became the focus of negative rhetoric and exclusionary policies by a range of Western governments. Although from the 1990s onwards a more liberal discourse has re-emerged concerning sexual diversity, linked to this in many contexts has been claims that political correctness, or the desire to promote equality, has gone too far (Ford, 2008; Kohl, 2005; Marques, 2009). Throughout the decades a concern about ‘celebrity lifestyles’ and behaviours and the impact they, and the media in general, has on public behaviour has never gone away.

The sexuality of celebrities has always been of interest to the public and Surette (1998) argues sexual non-conformity has always been associated with and tolerated within the artistic community. Rojek (2006) suggests that celebrities have always been considered more sexually active than non-celebrities. The music industry more so than the TV industry has been associated with a lifestyle of ‘sex and drugs and rock and roll’. Osborne (1995:43) argues that in the UK and USA in particular “there is a prurient obsession with the sex lives of all public figures”. More recently and in the context of a global economic downturn this interest and concern seems to have increased. Over the last few years the need for personal restraint and self-discipline has been emphasised. Utilitarianism and moderation, however, are not associated with celebrity culture. Indeed, hedonism and

2 Only Hall, Clifford and Harris have been convicted of any criminal offence(s).
excessive individualism are increasingly blamed for the financial crisis sweeping the globe (Penfold-Mounce, 2009). As people’s sense of self has come to be increasingly defined by which aspects of celebrity culture they consume, then celebrities, it might be argued, have come to be the focus for the establishment of a revised social order based on restraint and austerity. At the same time technological advances mean that celebrities and others in the public eye are presently subjected to a qualitatively different level of attention than at any time in the past. Mathiesen (1997) refers to the power of synopticism whereby in mediated worlds the ‘many’ are now able to exert control and bring a disciplinary gaze onto the few. Thus, more recently in the UK there has been the emergence of not just the criminal celebrity, but the criminal politician, criminal reporter, and the criminal police-officer.

The construction of the sex offender and their victims

According to Levenson et al. (2007) the nature of most sex crime is misunderstood and the risk of falling victim to a sex offender has hitherto been discursively constructed by the media, and consumed by the public, as arising from ‘odd’ strangers in public places. In the face of evidence that the typical (convicted) sex offender is likely to be known to the victim and a family member or friend, the typical perpetrator of sexual offending has been constructed as ‘male, inherently evil, inhuman, beyond redemption or cure, lower class, and unknown to the victim (who is constructed as female’) (Gavin, 2005:395). Jewkes (2004) describes this as promoting paranoid parenting and pre-occupation with ‘stranger danger’ in the USA and UK. Also in the face of evidence which suggests victims of abuse are very reluctant to report matters to the police (Crow, 2003) a general distrust exists about the motivations of people who make accusations of sexual abuse. According to Jewkes (2004:159), even when their accounts are believed, victims of sex crime have typically been portrayed by the media as ‘partly to blame for their victimisation’. This is especially likely to be the case if they are women who are deemed to have breached conventional gender roles.

Furedi (2013:1) suggests the revelation that Jimmy Savile was a sex offender, however, has been enough to occasion some moral upheaval in UK society and especially amongst people now in their 40s who grew up with the impression of him as an odd, but kind hearted ‘people’s entertainer’. More recently, in June 2014, UK Health Secretary Jeremy Hunt suggested Savile’s actions "will shake our country to the core" (Hunt, 2014). The Metropolitan Police and Crown Prosecution Service have suggested that the investigations and arrests antecedent to Savile represent a ‘watershed moment’ in the history of investigating and dealing with allegations of sexual abuse in the UK (Jewkes & Wykes, 2012).

Such pronouncements herald the possibility that the arrest of Savile and other celebrities may challenge dominant discourse about sex offenders and presage changes in how sex offending is understood and managed in the UK (Jewkes & Wykes, 2012). Awareness of the problem of sexual abuse might increase because it is well established that the involvement of celebrities with a campaign or social issue increases the coverage given to it (Chibnall, 1977). Changes in the amount of attention given to a particular issue can be associated with shifts in levels of public concern about that issue. Perceptions may be
challenged because some of the celebrities accused of sex crimes occupy a middle ground in people’s lives—being neither strangers nor familiars. Thus they are less readily identified as ‘odd strangers’ or ‘the other’. Writing about Stuart Hall in the Daily Telegraph (Stanford, 2013), a reporter observed:

‘He was in our lounge in Birkenhead so much, on the snowy TV screen in front of the three-piece, that he almost felt like one of the family.’

As Black (1997:15) argues "intimacy breeds partisanship" and according to Horton and Wohl (1993) a 'parasocial' relationship can exist between celebrities and some of their audience. The familiarity people often believe they have with celebrities and the power of ‘identification’ with them may partly explain why accusations made against so many UK celebrities were not investigated and were largely disbelieved for so many years. At the same time, however, this familiarity may occasion a more reflective appreciation of the relational and normative foundations of most sex offending. Attendant to a widespread feeling that Savile and some other celebrity sex offenders, ‘groomed’ the nation, a shared sense of having being victimised may engender a greater sense of affinity with, and empathy for more proximate victims of their crimes. There is already some basis for thinking that the celebrification of sex crime has affected the expectancies and the willingness of victims of sex crimes to come forward. In January 2013 BBC Radio 5 live Breakfast submitted a Freedom of Information request to all 45 UK police forces, asking about the number of allegations made under the Sexual Offences Act since the offending by Savile was made public (Five Live, 2013). Whilst crime reporting had in general reduced, there was a 9.2% rise in all recorded sex offences after October 1, 2012, compared to the six-month period before. In the same time frame there was an increase of around 40% in the reportage of historic sexual offences.

**The Celebrity Criminal**

Notwithstanding the potentialities highlighted above, here, we argue the celebrification of crime will do nothing to challenge popular understandings about sex offenders or their victims. This is because the celebrification of sex crime locates the ‘danger’ to women and children within the world of glitz and glamour rather than where it normally exists— in the home and within patriarchal structures. It associates the problem with unusual individual offenders like Savile and the multiple relationships and sexual freedom linked to celebrity culture rather than the heterosexual two parent norm.

After October 2012 Jimmy Savile arguably became the UK’s highest profile and most well-known sex offender. Just as Myra Hindley and the police photograph of her with bleach blonde hair taken at the time of her arrest came to symbolise female criminality and evil in the UK (Birch, 1993), images of Jimmy Savile, ironically sporting the same bleach blonde hair, seem set to become representative of ‘the sex offender’. A problem with association, however, is that it will likely come to cement in people’s minds the association between sex offenders and 'otherness'. Savile fitted the stereotype of ‘the other’ in that he was an unconventional figure. For example, prior to his public denouncement his ‘otherness' had recommended him as a subject for a documentary by Louis Theroux who had developed a niche for himself as a BBC reporter of deviant (albeit rarely criminal) lifestyles and
identities (When Louis met Jimmy, 2000). Finkelhor (1984) argues that one of the preconditions to be fulfilled before a sexual assault is committed is that external inhibitions to such an act are overcome. Savile did this and gained access to victims partly by portraying himself as an eccentric but ‘harmless’ child-centred philanthropist’. Savile’s ‘otherness’, however, may explain why accusations against him ‘stuck’ so readily after his death when similar accusations against equally well known celebrities did not. In October/November 2012 various newspapers carried stories alleging sexual abuse by two other well-known British TV celebrities: Wilfred Bramble (Taylor et al., 2012) and Leonard Rossiter (Moyes, 2012). It does not bode well for securing convictions against celebrity offenders that a general reluctance exists on the part of jurors and members of the public to imagine that someone who is successful or famous could be guilty of a crime (Chamberlain et al., 2006). In addition the discussions and evaluations of social issues are effected by the ‘meaning transfers’ antecedent to involvement with celebrities (Agrawal & Kamakura, 1995; McCracken, 1989). Whatever the nature of any particular celebrity’s ‘real’ persona the public’s knowledge of them is likely to be fashioned by the way they are presented in the media. Thus we suggest a common experience will be greater unwillingness to believe accusations against celebrities who do not fit the stereotype of a sex offender rather than those who do. Accordingly, it presents as no surprise that a columnist writing in The Mirror the day following Harris’ conviction (Phillips, 2014) stated:

'Jimmy Savile. Yes, everyone thought he was a total weirdo from the distance of their TV screen. Stuart Hall? Yep, all the signs of a serial sleezeball. Max Clifford? About as surprising as rain in June. But Rolf Harris? Now this truly is shocking.'

Advertisers use the power of celebrity endorsements to forge links between their products and a particularly admired celebrity. More often than not the linkages and meaning transfers are positive in the sense that the dependent variable – whatever a celebrity is linked to, tends to be viewed more positively/less negatively as a result of the involvement with the celebrity. If this phenomenon is translated into the willingness of either the police to take an accusation seriously or a jury to convict, some variations in outcomes would be expected between those who fit the stereotype and those who do not fit the stereotype of sex offender. Moreover that notwithstanding who else is accused or convicted of a sex crime, the name and image of Jimmy Savile will still come to prominence and become iconographic of the typical sex offender.

Even when a more conventional and well-loved celebrity is accused and convicted of a sex crime it does not follow that the public will become more sensitised to the scale and nature of such offending. This is partly because a media ‘personality’ is not the property of specific individuals, but constructed discursively and thus celebrities can be made and unmade (Turner, 2004). In the case of Jimmy Savile the process of decelebrification has been both discursive and physical, as signs relating to his life and achievements (including his gravestone and plaques commemorating his life) have been defaced and/or removed. In the cases of Stuart Hall and Rolf Harris, who in most respects presented more conventionally than Savile, decelebrification has begun with the removal of the former celebrity’s OBE for services to British culture, and the suggestion that Harris’ CBE will be removed. Decelebrification is made easier by dint of what Turner (2004:52) has called
‘the demotic turn’ in celebrity culture in recent years whereby the ‘ordinary person’ may aspire to celebrity status through appearances on reality TV shows. A decline in deference in general towards people in power renders celebrity status more precarious and prone to deconstruction than it might once have been.

Added to this, the cultures within which journalists and newsrooms operate result in the packaging of news stories (Chibnall, 1977; Ericson et al., 1987). While preference is given in news reports to unusual events, in order to make these meaningful to the audience they are usually tied into existing explanations and stories (Surette, 1998). Complex events are often simplified (Altheide, 2006:416), and because the media industry services the mass market messages are usually delivered in an unambiguous way through simplistic binary opposites such as good versus evil (Osborne, 2002). In the service of decelebrification dehumanising discourses have been mobilised to re-brand former celebrities as ‘sicko’ ‘paedo’, ‘pervert’, ‘depraved’ and ‘evil’ as happened in the case of Gadd (Jewkes & Wykes, 2012:938), ‘pervert’ as in the case of Hall (Lines, 2013) and ‘evil Aussie’/child sex monster’ in the case of Harris (Pettifor, 2014).

One reason this is to be regretted is that a focus on ‘depravity’ and evil shifts moves attention away from the outwardly respectable, conventional ‘normal’ perpetrator of sexual violence. It feeds into stereotypes about sex offenders being readily identifiable and knowable on sight. It also focusses attention away from the way some organisations and cultures facilitates sexual abuse through a culture of silence. Thus Mejia et al. (2012) found that little attention was given to contextual information about the broader causes of sex offending in UK newspaper coverage of child sexual abuse between 2007 and 2009. There are parallels between features of the Savile case in the UK and those of celebrities in other contexts such as the case of Jerry Sandusky in the USA which became a media sensation (Belson, 2012). Sandusky worked as an assistant coach to the highly regarded Pennsylvania State University football team but was revealed in 2011 to have used his position to sexually abuse vulnerable boys. Subsequent enquiries suggested that just as was the case with Savile who offended on BBCTV premises his criminal actions were widely suspected but ignored (NSPCC, 2013). As part of the process of grooming, some offenders can be adept at manipulating workplace structures. In some instances however, it seems an overriding concern to protect the organisation implicated in the abuse can prevail to silence the victims concerned. Sanday (1996) proposed that some cultures can be described as rape-promoting. In a similar vein Stanko (1985) has argued that rape is not a product of male libido but of a culture which encourages men to use sex as a way of ‘conquering’ women and allows men to exploit and abuse women without fear of punishment. Here, explanations for sexual violence focus not on isolated acts but on the wider social context (Heidensohn, 2002). Suggestions that sexual abuse by celebrities such as Savile were ignored would support the conclusion that some organisations, as well as cultures can be rape supportive. In the Savile case, however, the role maledominated organisations and the social context played in his offending has hitherto attracted comparatively little interest.

Moving on, celebrity trials effectively focus on rich and relatively powerful and charismatic individuals who are alleged to have abused their position of power. Consequently particular discourses around victimisation are amplified in trials involving celebrities.
Celebrities are highly courted individuals, and this courting at times may be understood as fanatical and problematic (as in stalking) or desperate (groupie). This may fuel public understanding that some current offending is ‘victim driven’. In many instances accusations made against celebrities appear to have been disbelieved or played down. According to research carried out by the NSPCC some of Savile’s victims were laughed at or told they were lucky to have been ‘picked’ when they reported what had happened to them to the authorities (NSPCC, 2013). Newspaper reports have appeared questioning whether the ‘victims’ of celebrities were truly ‘victims ’ or simply ‘groupies’ who concealed their young ages from those whom they courted (e.g. Allen, 2013; Meikle, 2012). Spalek (2006) argues that the credibility of ‘victims’ (or their entitlement to that status) is assessed according to factors such as their age, gender race and sexuality. As Heidensohn (1985) argues, however, an underlying assumption is often that women are liars, that they make false accusations and that they ‘ask for it’. Claims to victimisation are stronger in relation to perpetrators who, ideally, are unquestionably evil. However, conferring unquestionable evilness on celebrities is problematic. In addition to this celebrities may plausibly claim to be the ‘real victims’ by suggesting their accusers seek to extort money from them. This was the defence mobilised with seeming success by Michael Jackson’s lawyers in 2003, and has been discussed in relation to some of Savile’s victims (Press Association, 2012). Indeed in 2009 Savile invoked that defence himself, in the first few seconds of an interview with Surrey police over allegations that he had offended:

‘...but I’ve had so much of it in 50 years, it started in the 1950s and it’s always either someone looking for a few quid, or story for the paper.’
(Surrey Police Interview Transcript, 2009:3)

It is not uncommon for a lengthy period to elapse before abused individuals are able to process what has happened to them well enough to report their experiences (Connolly & Read 2006). This may explain why many (but not all) of the offences linked to celebrities are historical in the sense they occurred when the adult victim was a child, and the celebrity was a much younger person. Criminal prosecutions of sexual abuse alleged to have occurred in the distant past, however, raise the issue of propriety of holding someone to account for something they may have done 30-40 years previously. In a report by the Metropolitan Police and the NSPCC into the offending of Savile the following point was made (Gray & Watt, 2013:24):

‘It would be naive to view this case as the isolated behaviour of an individual rogue celebrity. We do, however, need to recognise the context of the 1960s and 1970s (the peak offending period). It was an age of different social attitudes and the workings of the criminal justice system at the time would have reflected this, even though the abuse committed was as illegal then as it is now. Thankfully attitudes have changed considerably in a relatively short period of time.’

The authors note that while sexual offending was illegal in the 1960s the moral landscape at that time was different to what it is now. Arguably, the point being made is that some behaviours currently perceived as insulting, demeaning and predatory may have been more normalised and acceptable then. Here we contend that evaluation draws primarily
on the history of the men who were engaging in such illegal acts rather than the women and children who were being victimised. Moreover none of the celebrities discussed in this article stand accused of simply being ‘inappropriate’ or ‘caddish’ in their behaviour. Savile, for example, stands accused of indecent assault on children as young as five years old. A perception that the ‘real problem’ is generational may, however, render a more accepting discourse around the celebrity offender and a conspiratorial discourse around victim motivation. As an example, it was widely reported that Bill Oddie, another popular British celebrity, suggested that Rolf Harris should not be demonised for having had a ‘morning cuddle with his secretary’, notwithstanding the actual charges he was facing, and was eventually found guilty of, were considerably more substantial (e.g. Nolan, 2013).

In addition to the ‘generational’ explanation of celebrity sex offending, lack of public information about what celebrities have been accused of doing may lessen public understanding of the issues involved. Here, Boutrous and Dore (2004) have noted a tendency for celebrity trials to be less accessible, or more secret, than trials of non-celebrities. Arguments that the pendulum has swung too far in favour of victims of sex crimes have existed for some time (Lees, 1995). It is possible to imagine that a large number of acquittals, as appear to be transpiring, could give rise to further questions about the propriety of prosecuting cases of historic sexual abuse and/or the credibility of witnesses in sex crime cases.

Over the last few decades, new representations of diversity in public discourse have enabled some minority groups to benefit from greater economic, civil and political freedoms, and their members to become more empowered and supported in making their wishes and aspirations known (McNay, 2004). A considerable body of literature attests to how members of the majority group adapt to maintain a dominant position, however, through developing new discursive practices which construct prejudicial views and behaviour as reasonable (Billig, 1988). Research literature points to the growing phenomena of, for example new sexism (Benwell, 2007). The celebritification of sex crime may be understood as part of the ideological spectacle of new sexism, extending and (re)making the legitimacy of patriarchy. This is firstly by dint of the arrest of some individual celebrities making it seem as if there is a genuine commitment to tackling the problem of male violence against women and children. Because the offences occur in a celebrity context, however, and individual men will become demonised, the routine ways women and children are subjected to male violence in the content of ‘normal’ close relationships will be relegated to an afterthought. Secondly, the arrest of so many celebrities will likely cohere opinion towards an understanding of the public sphere as dangerous. Correspondingly, this constructs family life as safe and preferred for women and children. Finally if, as predicted here, more acquittals than convictions follow, discourses which position men as the real victims of equality of opportunity for women will become more dominant.

**Conclusion**

Innes (2003) suggests that some crimes have historically become ‘signal crimes’ which have engendered a 'culturo-criminal discursive shift' in society. In the UK the murder of Stephen Lawrence may be understood as a signal crime that led to changes in police
practices with ethnic minorities in the UK. A creative tension may be occasioned when discourses about one phenomenon (in this case celebrity) collide with another (sex offending). Celebrities are often the loved and adored folk heroes of contemporary society (Penfold, 2004) whilst sex offenders are the monsters or folk devils (Silverman & Wilson, 2002). Thus the alleged sex crimes of celebrities may be thought of as having the potential of becoming ‘signal crimes’ - heralding changes in how sex offenders and their victims are understood.

In this paper, however, we have argued this potential will not be realised. The large number of arrests will recede in the public consciousness as part of what Olafson et al. (1993:7) call the enduring “cycles of discovery and suppression” of consciousness about child sexual abuse, leaving only the enduring image of Savile. The focus on the extraordinary that this entails will simply further divert attention from the routine ways women and children are oppressed and abused in families (Bibbings, 2009). Crime stories and celebrity gossip make up a very large proportion of media content. Surette (1998:62) describes crime stories involving celebrities therefore as ‘super-primary’ news stories. The way sex crime stories arise however, and are then packaged, is within the ambit of dominant discourses about that phenomenon. Savile’s ‘otherness’ explains why accusations against him ‘stuck’ so readily after his death when similar accusations against equally well known celebrities have not. At the same time more conventional celebrities will be 'othered' and demonised to present news stories within dominant discourses to fuel stereotypes about sex offenders. This is of concern because Salter (2003) argues that it is misconceptions about sexual offenders that make people vulnerable to them and that it is only by dispelling the myths surrounding sexual offenders that people may be protected from them. Moreover how sex offenders are viewed has specific implications for policy and practice in relation, for example to sentencing and treatment approaches in the criminal justice system. As Black (1997) highlights, the outcomes of criminal proceedings can be readily witnessed to vary in accordance with the social characteristics of everyone involved. Outcomes become more positive as the social standing, conventionality and the degree of intimacy felt towards those involved increases. Notwithstanding practical difficulties associated involved in prosecuting historical cases of sexual abuse, this sets the scene for a large number of acquittals that will inevitably give rise to further questions about the credibility of witnesses in sex crime cases.
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‘I THOUGHT I AM MODERN SLAVERY’: GIVING A VOICE TO TRAFFICKED WOMEN
Dr Maria De Angelis, Senior Lecturer in Faculty of Health and Social Sciences, Leeds Beckett University

Abstract
This article addresses the lack of women’s voices in the trafficking discourse by presenting women’s perspectives on policy support. Undertaken as part of doctoral study at the University of Hull, the research asked formerly trafficked women about their experiences of trafficking and anti-trafficking professionals about their work with victims. This paper focuses on women’s views on material help, health care and social support, a perceived culture of disbelief, and family rights. Their narratives highlight a continuation of exploitation through restrictive policy practices, and identify gaps in policy and provision around family reunification, loss of children, and rights for trafficked wives. The paper offers a review of women’s experience against assistance stipulated in the Council of Europe (2005) Convention, and also the newer anti-trafficking measures introduced by the EU Parliamentary Directive (EUP, 2011). In this way, women’s voicing of experience highlights the limitations of current policies and practices.

Keywords
Trafficked women; policy support; Council of Europe Convention; EU Directive; women’s experience
**Introduction**

This paper presents experiences of policy support gathered between December, 2008, and February, 2010, from women who had been trafficked into the United Kingdom (UK). Undertaken as part of wider doctoral study at the University of Hull, formerly trafficked women were asked about their experiences of trafficking and anti-trafficking professionals about their work with victims. The research aim in talking policy with women was to understand how trafficking policy is experienced by women as policy subjects.

The last decade was ‘golden’ in terms of international-UK cooperation in human trafficking. On the 9th February, 2006, the UK signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, attached to the *United Nations Convention (2000) Against Transnational Organised Crime*. This statute defines trafficking as a serious and organised criminal process involving a person’s movement by force or deception into exploitative or slavery-like practices (Article 3). On the 17th December, 2008, the UK subsequently ratified the *Council of Europe Convention (2005) on Action against Trafficking in Human Beings*, which sets out a Human Rights-led framework of responses for protecting and supporting the presumed victims of a trafficking crime. Of particular relevance is Article 12, which endorses victims’ rights to subsistence living through material, safe accommodation, and psychological supports; access to emergency medical treatment; any necessary translation and interpretation services; counselling and rights based information; and legal help (CoE, 2005: Article 12.1 a-e). This package of supports covering ‘physical, psychological and social recovery’ constitutes the minimum required of ratifying States and provides the policy structure used within fieldwork conversations.

Although this study predates UK endorsement of the European Union Directive (EUP, 2011) - which extends trafficking protection to additional exploitations, for example, of forced marriage - this paper considers the Convention and the Directive in tandem. This comparison is vital since the Directive leads on policy development, and because the new EU Directive and women’s views resonate on so many levels. Comparisons are also imperative given a recognised absence of women’s voices in the trafficking discourse, and especially in policy support. The purpose of this paper is to present women’s perspectives on material help, health care and social support, a perceived culture of disbelieving victims, and family rights. In so doing, women’s voices canvass some of the limitations in existing trafficking support.

Before moving to methodology and findings, this paper argues the case for bringing women’s voices to this debate.

**Absent Voices**

Scholars identify global and localised gaps in empirically-led research on the Protocol and the Convention (Salt, 2000; Laczko and Gozdziak, 2005; IOM, 2008). This gap is considered

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3 This was implemented on the 1st April, 2009.
4 The UK was given a deadline of the 6th April, 2013, in which to implement the new EU Directive measures. The European Commission is tasked with assessing the extent of members’ implementation on the Directive and has until 6th April, 2015, in which to complete its report.
particularly acute in trafficking research with female victims. As Brennan (2005:43) observes for survivors in the United States:

'...they have been voiceless for different reasons: because of fear of reprisals from their traffickers, their stage in the recovery process, and concern that their community of co-ethnics will stigmatize them. Given these obstacles, it is possible that few ex-captives will ever step out from the anonymity of their case managers’ offices, to give interviews to researchers, let alone public presentations or press conferences as part of anti-trafficking movement activities.'

This is not to suggest that there is no direct research or representation of survivors’ voices. These exist, particularly where trafficking intersects with other more agentic migratory flows. For example, studies have researched experience at the intersection of sex trafficking and migrations for sex work (Andrijasevic, 2003; 2010; Agustin, 2005), at the nexus of economic migration and trafficking for forced labour (Bastia, 2005; Skrivankova, 2006), and on transnational marriage in the context of trafficking (Stepnitz, 2009; De Angelis, forthcoming). Victims have also contributed to research on a specific aspect of trafficking experience. Focussing on studies which are either UK centric or UK inclusive, women have participated in research on their physical and psychological health needs (Zimmerman et al., 2003; 2006), trafficking and bonded labour in the UK (Kalayaan & Oxfam, 2008; Wittenburg, 2008); trafficking and migrant domestic work (Lalani, 2011), gendered exploitation (Dickson, 2004) and, more recently, the experiences of trafficked women who end up in custody (Hales & Gelsthorpe, 2012).

In stark contrast, policy evaluations of the Convention and trafficking support do not grant a voice to women, even as the consumers of trafficking services. Victims are not directly interviewed in either of the Anti-Trafficking Monitoring Group (ATMG, 2010; ATMG, 2012:20) appraisals, which defend the exclusion as ‘unnecessary and possible secondary victimisation’. Nor do they feature in GRETA’s (2012) evaluation of UK delivery. Given that the safeguarding of victims is primary in policy, why is asking trafficked women what they think about policy so critical?

Firstly, it enables a degree of movement beyond what is typically known and claimed in the policy discourse. Women possess knowledge which remains hidden precisely because it is not sought after information. Reflecting on her counter-trafficking research with women supported by Poppy and Eaves Housing, Dickson (2004:1) writes:

5 Bastia’s paper addresses teenage migration but is included for its contribution on intersectionality and voice.
7 The Poppy Project and Eaves Housing provide accommodation and support services to women trafficked for sexual exploitation into the UK.
Many of these experiences will not have been raised by women in any other setting because these are not the experiences that are useful to statutory services in terms of prosecution.'

Secondly, consumer perspectives better connect policy supports with victim-related needs. How one interviews women may be contested (Oakley, 1981; Oakley, 2005), but interviewing women is long recognised for reaching subjective experience valuable for socio-political improvement (Reinharz, 1983; 1992; Mies, 1983; Oakley, 1989; 1992; Kelly, Burton & Regan, 1994). Oakley’s work on social support and motherhood (1992:327), for example, demonstrates a beneficial policy outcome from researching women’s perspectives on mothering:

'The provision of sympathetic listening support through continuity of care, which is what women have been requiring whenever anyone has thought to ask them, is a more effective way to promote their health and that of their babies than most of the medical interventions carried out in the name of ante-natal ‘care’.'

Thirdly, far from constituting secondary exploitation, Morris (1997:29) embodies a far greater harm in denying a voice to survivors of suffering. As Morris explains:

'Voice is what gets silenced, repressed, pre-empted, denied, or at best translated into an alien dialect, much as clinicians translate a patient’s pain onto a series of units on a grid of audio-visual descriptors. Indeed, voice ranks among the most precious human endowments that suffering normally deprives us of, removing far more than a hope that others will understand or assist us. Silence and the loss of voice may eventually constitute or represent for some who suffer a complete shattering of the self.'

In presenting women’s perspectives on trafficking support, this paper can be read as adding women’s absent voices to policy research.

**Methodology**

**Accessing Participants and Understanding Complex Experience**

Given that formerly trafficked women are hard to access, a snowball sampling of anti-trafficking projects and networks was key in sourcing participants (Atkinson and Flint, 2001). This search generated twenty four participants whose movements included trafficking, a mixture of smuggling and trafficking, or a forced migration. Women with a forced migration are economic migrants whose journeys cross other forms of movement ending in slavery-like practices. For example, one woman sought help from a smuggler to escape persecution in her home country and arrived in the UK without documentation and in debt bondage. Within this participant group, trafficking exploitations fell into three

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8 Although trafficking and smuggling are legally distinct, the legal distinctions merge when the smuggled person is exploited at any stage between recruitment and arrival (Goodey, 2008:422)
categories – sexual exploitation, forced marriage, and forced labour – though, as with movement, some women experience more than one form of exploitation. For example, one participant was trafficked into a forced marriage at home and for labour exploitation in a factory. Another woman was trafficked for forced marriage and sold for prostitution amongst her husband’s acquaintances. Such diversity in movement and exploitation contextualise the complexities vexing the identification and assessment of victims of trafficking (VoTs) in trafficking support.

Sample Profile and Choice of Methods
Women in this sample were aged between twenty two and forty two and possessed fifteen nationalities between them: Algerian, Bangladeshi, British Pakistani, Chinese, Gambian, Indian, Iraqi, Kenyan, Moldovan, Nigerian, Pakistani, Somalian, Sudanese, Turkish, and Ukrainian. With the exception of Algeria, Turkey, and a British born woman of Pakistani ethnicity, all participants originated from top sending countries for UK trafficking during the fieldwork period (SOCA, 2009/10:42). Additionally, China and Pakistan also featured in the top ten asylum producing countries at the time, with Iraq occupying the second top producing country for the UK in 2008 (Asylum Support Partnership, 2009). All participant women were mothers. Some had children left behind in their home country and/or born to British husbands during a forced marriage, or smuggled over with them. With the shortest and longest stay in the UK at one and seven years respectively, most of these formerly trafficked women had been in the country between twelve and thirty-six months. The two women who were resident longest in the UK were content with their immigration status. The longest resident had indefinite leave to remain and the second longest resident had leave to remain grounded in humanitarian protection (Immigration Rules: Part 11) and was hopeful of receiving indefinite leave. The rest had either refused or been refused a VoT status and were dependent on anti-trafficking projects and women-centred charities for help, either as asylum applicants or exiles fearing reprisals and re-trafficking if returned home.¹⁰

Seventeen women from this sample took part in a focus group, suited to researching women’s imposition of meaning on gendered experience (Wilkinson, 1998). Seven women requested individual interviews, also effective in studying experience from the perspective of the individual (Fontana and Frey, 2000). These were semi-structured (SSI), for greater space to explore personal narratives and their meaning. A grounded approach was applied to both data sets for key issues in lived experience. Whilst thematic analysis identified aspects in Article 12 which were core to women, the application of open or intuitive coding on responses (Charmaz, 2002) enabled commonalities and differences – as played out in women’s lives - to surface.

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¹⁰ Forced marriage in the context of trafficking is one where a process of deceit or coercion is used to move a woman away from home for sexual/domestic servitude as a wife. In trafficking for marriage, the terms forced and servile are interchangeable. This paper uses the term forced.

¹⁰ This helps to explain the impact of asylum policies in the lives of trafficked persons.
**Ethical Issues**

Gatekeepers were vigilant in protecting trafficked women from research harms.\(^\text{11}\) Prior to face-to-face meetings with participants, gatekeepers relayed women’s anxieties over consent, confidentiality and anonymity. Gatekeepers went through the research contract with women, which they signed in advance of interviews. The contract gave women permission to withdraw at any point and without explanation. It allowed SSI women to choose an alias and/or be classified as SSIs, and preserved the anonymity of focus group women through their identification as focus group members. The contract provided a further guarantee that women’s case histories would not be disclosed to any other agency.

Whilst interpreters and after-care support were central to the granting of ethics approval by the University of Hull, Watts (2006) theorises the research interview as a therapeutic opportunity, making counselling skills a pre-requisite in good ethical practice. In light of my lack in counselling skills, unforeseen offers from gatekeepers to refer women to in-house counsellors and use their bilingual interpreters (Thomson et al., 1999), raised the quality of communication and post-interview care beyond my single capacity to gift. Knowing that women had access to these professional services eased my ‘ethical hangover’ with using exploited people for research (Lofland & Lofland, 1995:28). Two women chose to engage directly with me: one following two months of email exchange and the other after numerous mobile-phone conversations. Both these women had a good command of spoken English and neither requested a formal interpreter or brought a friend along to interpret. In terms of their after-care, the first had access to support through her volunteering work and the second to pastoral care from her college, although all participants were offered an after-care phone call from me. All SSI women exercised choice over interview venues, choosing a project room or a coffee house where they felt safe and in control of the research process. The focus group took place in premises housing numerous social and charitable projects, where women could also feel safe.

**Bias**

The involvement of gatekeepers brought its own bias to this study. Women rescued and supported by particular programmes reflect the profiles of their supporting projects (Tyldum & Brunovskis, 2005). This explains the sample biases in sexual exploitation and forced marriage. These, in turn, make findings appear more representative of survivor experience than is the case had projects with other remits taken part. As Bosworth et al. (2011:776) suggest, a correspondence approach to researching ‘the direct experience of those we wish to understand’ (as in the two women above) offers an alternate gateway into trafficking experience with some victims of trafficking, and could help with this bias. In her paper on coping with bias, Tyldum (2008:28) suggests all VoT research carries ‘some kind of bias and limitation’ and all ‘give potentially interesting and valuable data.’ Following the claims made for qualitative policy research with refugees (Tait, 2006:135), the experiences of participant women bring ‘complement and supplement’ to existing knowledge of trafficking supports and their delivery.

\(^\text{11}\) For wider discussion of institutional gatekeepers in trafficking, see Bosworth (2011).
'I thought I am modern slavery': Giving a voice to trafficked women

Findings and Discussion
Thematic analysis of interviews identified four central themes pertinent in survivors’ experiences. These are a lack of material support and its effects, experiencing health care and social support, facing a culture of disbelief, and losing rights to a family and children. An application of open coding - on these four themes - raised commonalities and differences within women’s experiences.

Lack of Material Support and its Effects
A lack of adequate material support is a fundamental issue for persons formerly trafficked. With the exception of two women (the British born woman of Pakistani ethnicity and the person with indefinite leave to remain), having no recourse to public funds is their financial reality. ‘No Recourse to Public Funds’ (NRPF) is a UK Border Agency classification which denies welfare benefits (including income support, child benefit, disability allowance), Local Authority housing, and UKBA asylum support to any person deemed unlawfully present in the UK (NRPF, 2006). The impact of ‘no recourse’ is typically one of living hand to mouth:

'The Home Office took two years to process my application and I had no recourse to public funds. A charity took me in and they told Social Services, who gave me some emergency money every week just to help feed and dress my daughter. I lived like this for two and a half years.' (SSI-3: Indian woman: trafficked for marriage and labour)

A link between poverty and mental ill-health also surfaces in trafficking discussions on ‘no recourse’. Fewer post-trafficked women attribute their continuing depression and suicidal thoughts to recurring memories of trafficking than to living in enforced poverty:

'I said to myself: Oh, I’m tired. I’ve been through so much only to live like this [no money, no say]. I can’t do it anymore! I were on medication for depression and when it got to night I couldn’t sleep…standing by the window, sweating, my life taking its toll on me.' (SSI-4: Somalian woman: smuggled, then trafficked for labour)

'I was desperate! I had no recourse to public funds. Then [named charity] just helped me (pause) gave me some practical help (pause). This really gave me life [the will] to pick myself up and go on living.' (SSI-5: Gambian woman: trafficked for sex)

Women perceive the daily effects of living with ‘no recourse’ as a continuation of their exploitation. Amongst SSI women, this is conveyed using the language of slavery. During interview, many women described their trafficking ordeal as a form of slavery. For example, SSI-2 referred to herself as ‘a victim of human slavery’, SSI-3 as having been ‘treated as a slave’, and SSI-1 as having been ‘held in slavery’. These women view ‘no recourse’ as replacing slavery-like trafficking practices (of not being paid for labour and having no control over their lives), with a new mechanism of economic enslavement. After her transnational forced marriage broke down, SSI-7 (from India) explained:
'I thought I would never be poor or on the streets and here I am. I had no money, no work, and with a son to support. Sometimes I wiped tables to get cash, another time I gave out leaflets to strangers in the street. But every time it was long hours and hard work and I was given very little and felt so exhausted. It was like they owned me. I thought I am modern slavery.'

Discussion
In this study, women’s experience of acute destitution resonates with those of asylum seekers and refugees in two distinctive ways. Firstly, several trafficking accounts reflect a relationship between poverty and mental ill-health, noted in asylum experience (McColl et al., 2008; Lewis, 2009). Secondly, other slavery-related narratives portray how limited welfare and working rights in the asylum process (Aspinall and Watters, 2010; Burnett and Whyte, 2010) also push trafficked people back into highly exploitative working situations. Granted, the relationship of trafficking to slavery is a contested one (Bales et al., 2009; O’Connell Davidson, 2010) and trafficked women’s experience cannot escape the imagery of sex slaves or the rhetoric of modern slavery. Nonetheless, by applying the language of slavery to lives post-trafficking, women emphasise how ‘no recourse’ to money (whether through welfare or via legal(documented employment) increases their vulnerability to economic exploitation.

In new research, Lewis et al. (2013:3) establish a link between acute destitution amongst asylum seekers and increased susceptibility to ‘severely exploitative labour, including forced labour’. Participant voices not only reflect the negative impact of ‘no recourse’ in the daily lives of trafficked persons. Crucially, they also raise the imperative for policy exchange across displaced groups, in order to redress the effects that restrictive asylum policies have on the lives of formerly trafficked persons.

With regard to ‘no recourse’, neither the Convention nor the EU Directive improves women’s position. Neither obliges states to provide for victims who (for whatever reason) refuse a VoT assessment, or who are refused VoT status following formal assessment (EUP, 2011: paragraph 21). Participants in the focus group asked after an appeals process. As observed in GRETA’s first official evaluation of UK delivery on the Convention, there is no appeal process against formal decisions at any stage, only judicial review displaying a low success rate:

'According to information provided by the British authorities, 17 cases have reached the application stage of judicial review; of those that were granted permission by the court, two decisions were overturned following a full hearing.' (GRETA, 2012:50/214)

Experiencing Health Care and Social Support
When discussing their health care and social support needs, participant women prioritise continuity of care over personal symptoms or individual want. One explanation for its significance lies in the connection drawn by women between having social relationships and feeling safe. Without exception, all women become culturally and/or socially isolated post-trafficking, either through physical separation from loved ones or through the stigma
attached by co-ethnics to having been trafficked. Focus group women voice a particular dislike for change as it removes trusted social relationships established post-trafficking. Focus group women felt safer knowing there are health professionals and project staff in their neighbourhood alert to their circumstances. New faces mean having to ‘start at the beginning’ and recount a ‘difficult story’ in a ‘foreign tongue’ to ‘yet more strangers’, exampled in new GPs, health visitors and community psychiatric nurses. Consequently, any disruption or change in continuity unsettles and unnerves women.

Continuity, however, is not solely valued for increasing feelings of safety. Women also value continuity of care for its properties of social inclusion. All women talk about family and friends back home as important sources of social support, especially in the raising of children. Continuity fosters opportunities to build social networks which, in turn, actively engender feelings of connectedness and belonging with the host community. As illustrated by this focus group woman (smuggled out of northern Africa and trafficked en route to England):

‘My handler just dumped me – no money, no papers, no nothing! It was winter and I walked down the street in the freezing cold and wet wearing sandals and everyone stared at me. But I was given help and slowly I got to know these people and they got to know my situation and that’s when I started to feel safe, to belong. Then they needed my bed, so they moved me to [a different region] and I felt unsafe, like an outsider, and had to start all over again.’

Losses in safety and social belonging cause women to view disruptions in health and social support as oppressive and as continued exploitation. Focus group women describe the effects of disruption as ‘more persecution’, ‘big upheaval’, ‘not needed upset’ and ‘exploitation on top of exploitation’. A Somalian woman described each of her internal movements within the UK as a ‘second’ and ‘third exile’, given the lack of other discernible refugees in each of the new towns she was moved to.

In contrast, women with a more stable experience of social support view the future more positively. With the continuous support and encouragement of their NGO’s, several women began to adapt and slowly rebuild their lives. Although women describe going outside their refuge as ‘scary’, ‘difficult’, ‘lonely’ and ‘strange’, many acquired new skills which brought them a social life and increased their chances for economic independence.

‘I think they [project staff] are very good. If someone pushes you...now look at me. I know how to get bus to the swimming baths, which bus I need to buy something down the market. This opportunity gives you power to go forward, have future.’ (SSI-3: Indian woman: trafficked for marriage and labour)

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12 Co-ethnics refer to persons of the same ethnicity. Given the stigma attached to trafficking for sexual exploitation and / or prostitution, co-ethnic migrants and refugees often disassociate themselves from trafficked co-ethnics.
'I started thinking, I can’t work but I can maybe study or do something to get out of the house. So I started volunteering and now I’m on a language and a computer course. When I came to this country, I never touch a computer. Now I learn ’cos I will need it when I have work.' (SSI-4: Somalian woman: smuggled, then trafficked for labour)

'I finish training as beautician last year...Don’t know exactly, but maybe gonna get jobs doing hairdressing. I been in a couple of competitions!' (SSI-2: Ukrainian woman trafficked for sex)

Discussion
Neither the Convention nor the EU Directive addresses the longer-term needs of trafficked victims, making this an important topic for future policy investment and research. Women found themselves reliant upon and grateful to NGOs for the support and encouragement necessary in taking new opportunities and slowly rebuilding their lives post-trafficking.

'Staff always say just do it. Why you don’t do it? The project rules [supporting integration with the local community] opened lot of doors for me.' (Focus group member)

Facing a Culture of Disbelief
Most focus group members, and all SSI participants, mention that not being believed impedes emotional recovery post-trafficking. Being doubted or disbelieved makes women feel responsible for their predicament and raises a variety of negative emotions towards officials handling their cases. Most typically, these emotions are ones of feeling ‘let down’, ‘all alone’, ‘anxious’, ‘frustrated’ and ‘angry’:

'When I was in police cell, I have heard people [Police station personnel] say to me, you should have stayed in Turkey. I think, if this has not happened to you, you shouldn’t say you should do this or that. I’m just ignoring these people. They make me angry because they don’t understand the whole situation.' (SSI-2: Ukrainian woman trafficked for sex)

Women generally doubt the ability of the Police and Immigration Services to protect them whilst formally investigating them. However, as illustrated in the words of the Ukrainian woman above, this doubt is commonly rooted in personal experience of corruption prior to arriving in the UK.

'When I was in Albania, I was in a hotel and watched by two men with Kalashnikovs. At night, just to scare us, they are shooting into the air. Just to show us they are the mens, you know. They have the power, they are the Mafia, they can do whatever they want. Even the policemens come to join them, have a cup of tea. What can you do with that? When I was here in this country, I was scared of policeman.' (SSI-2)

Women’s experience of being disbelieved appears strongest where exploitations involve prostitution. SSI-2 above, who succeeded in escaping her trafficker, describes her
misidentification as trafficked and her experience of being judged as a prostitute in this way:

'They never asked me what I think. Only told me what they think. Told me to go to Home Office for asylum! I think they saw me on my own, dressed for sex and thought I was foreign prostitute...I never made it to go...I was found by men and returned to my owner [trafficker]. The police knew nothing.'

Other women trafficked for forced marriage, or tricked into a fake marriage (often a front for prostitution), also talk about feeling judged and misunderstood as genuine victims of sex trafficking. Amongst focus group members, women recall being told:

'You should have learnt the language first.'

'Foreigners think it’s all roses over here.'

'What kind of marriage did we expect?'

Discussion
One explanation for women’s misidentification lies in the discursive/moral rift between prostitution as violence against women (Jeffreys, 1997) and sex as legitimate work with rights to health and safety, including union protection (Doezema, 2005; Lopes, 2006). On one side of this rift, trafficked women eschewing any consent to prostitution become ‘Madonnas’- innocent of blame and worthy of trafficking protection and support. On the other, trafficked migrants – often sex workers in their country of origin and with no design to exit prostitution - become the guilty and undeserving ‘whores’ in trafficking-related assessments and provision (Doezema, 1998:47). Since the UK does not recognise a sex work agenda (Sanders and Campbell, 2007; Home Office, 2011), VoTs face questioning and sanctions over their consent in prostitution related activity (as happens when victims are discovered during raids on brothels and massage parlors).

In discussing ways of influencing this culture of disbelief, women support giving a victim statement to a trusted NGO staff member in a safe environment – typically a room in their own project. Several women expressed concern for ‘people like us’ (without papers), held in detention centres without access to NGO statement takers or their support. In terms of policy progression, the EU Directive (EUP, Article 12) introduces some new protections for victims who give evidence in Court. These prioritise VoT access to witness protection programmes and installing technological safeguards, for example, court room screens and external video links shielding the victim from the perpetrator. Additionally, Article 12 directs the Courts to adopt new rules of examination which ban gendered questioning, for example, over the victim’s private life or clothing. Some members of the focus group suggest ‘state officials’ (that is Police, Border Agency staff, social workers) should be trained in Human Rights, as per the leading anti-trafficking groups, exampled in La Strada, Stop the Traffik, and Anti-Slavery International.

13 See also the Global Alliance Against Trafficking (GAATW) website: www.gaaw.org


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Losing Rights to Family and Children

Basically, women are happy with the quality of information and legal advice supplied by asylum solicitors and a range of anti-trafficking networks. The one exception to this is the lack of legal process and legal aid supporting a women’s right to be with her children. Women trafficked into a forced marriage feel especially at risk of losing their children. The main reason for this is women’s lack of papers. When a forced marriage breaks down – as happened to a number of participants – the disposable wife (unlike the husband and child) has no documents proving her immigration status:

'When I came to Heathrow, my British husband and his brother and his sister came to met me and when I got my bags I just get in car. My sister-in-law say where your passport? I was really shocked and I give it to her. When I arrived to my new home, my mother-in-law say same thing, where is your passport? You know, now I know this is really important - what it means to give away your passport. I couldn’t show who I was, why I belong here.' (SSI-3: Indian woman: trafficked for marriage and labour)

Women who have been trafficked into a forced marriage live in real fear of being deported without their British-born children. As exampled in the unfolding narrative of SSI-3:

'When my daughter was 16-17 month old, an Indian neighbour, she asked me if I was alright and she told me my mother-in-law planning to send me back to India and keep my daughter here. She said where your passport? I say I don’t have my passport. What about your visa. I say I don’t know anything about that. She said, then I could be sent back and my daughter kept here. I cry.'

Women trafficked for reasons other than marriage voice distress over the prospect of rebuilding a life post-trafficking without children left behind in a home country:

'Real suffering is not being able to tell some-one about the things I have lost. My son and daughter are home in Africa. In suffering in silence, I’m never going to get them back again. This is what I want the most – help to have my children here with me.' (SSI-5: Gambian woman: trafficked for sex)

'I can’t move on with my life. I’m stuck! I can do job but can’t do new family. I’m meeting some guy and am three years with him and I don’t want to be pregnant, I don’t want to! I need my family here first and, then, I need time to get to know my children. It’s gonna be very hard. I didn’t been home in years.' (SSI-2: Ukrainian woman trafficked for sex)

Discussion

None of the provisions contained in the Convention or the EU Directive provides for this aspect of family unification/reunification. The Convention raises the desirability of reuniting a child with its family where a child is trafficked, but not where the parent has been trafficked (Chapter 111, Article 10 (4).
Women’s narratives also raise issues pertinent to the transposition phase of the EU Directive. Although the EU Directive (EUP, 2011: paragraph 11) recognises forced marriage as a trafficking exploitation, the UK currently differentiates forced marriage and trafficking (Poppy, 2009). The Forced Marriage Unit (FMU) builds distinct criminal cases on a unitary act – consent - using existing laws strengthened by the 2007 Forced Marriage (Civil Protection) Act. The FMU then actions a raft of non-trafficking related services for these recognised victims of a forced marriage. A wife trafficked into a forced marriage (where deceit or coercion is used to move her away from home for sexual / domestic servitude as a wife: also termed a servile marriage) currently falls between two systems. The Trafficking ‘National Referral Mechanism’ locates forced marriage and marriage-related exploitations under the FMU service umbrella and the FMU has no remit for working with trafficked women. Participants trafficked into a forced marriage become disposable once their usefulness (for bearing children, caring for a disabled husband, or earning from prostitution) wane. When this happens, women lose welfare entitlements accessible inside the marriage, have no independent recourse to public funds, and risk deportation without spousal or work visas proving their eligibility to be in the UK.

A final policy omission (though not one directly affecting participant women) surrounds the trafficking of babies under existing legislation. In the UK, a prosecution for baby trafficking is possible under the Asylum and Immigration Act (2004: section 4) if a pregnant VoT is induced. However, this legal cover does not extend to women trafficked into the UK in order to supply new born babies for benefit fraud (House of Commons, 2008-9: Evidence 252:10). For reasons stated above, the gendered implications of trafficking on motherhood are a critical topic for future research and policy investment.

**Conclusion**

This paper has brought some voices of formerly trafficked women into the discourse on policy support. In their position as policy subjects, women explain how policies (as in ‘no recourse’) and aspects of policy delivery (as in changes to health providers and social support networks; and a perceived culture of disbelief) are experienced as replacing trafficking-related exploitation and control of their lives. Crucially, participant women identify policy gaps in reuniting trafficked mothers with children left behind in home countries, and in allowing trafficked wives rights to children born during a forced marriage. Participant experiences also showcase the criticality of identifying forced marriage within a context of trafficking as a legitimate trafficking crime. Against this policy backdrop of restrictive practices, women display resilience and agency in rebuilding social and economic networks lost through trafficking. With the support of NGO projects, women commence the difficult process of adaptation (building a new social life) and becoming productive (via education and training), vital in restoring autonomy and independence stripped away by trafficking practices. Women’s qualitative contributions carry value for policy roll-out on the Convention, the EU Directive, and on the delivery of trafficking services (contracted to the Salvation Army since 2011). Ultimately, they and their remarkable voices show that survivors have much to add to the discourse of policy support for women trafficked into the UK.
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TRANSFORMING ANTI-SOCIAL BEHAVIOUR: ASBOS, INJUNCTIONS AND CROSS-CUTTING CRIMINAL JUSTICE CONCERNS
Dr Vicky Heap, Department of Law and Criminology, Sheffield Hallam University

Abstract
The Coalition Government has recently made the most substantial changes to anti-social behaviour (ASB) legislation since it was enacted in 1998. New Labour’s flagship Anti-Social Behaviour Order (ASBO) has been replaced as part of a raft of reforms to streamline the tools and powers available to tackle ASB. This paper examines the legislative changes to ASBOs and the proposed impact of these changes by considering the turbulent development of their replacement: the Injunction. ASBO reforms are subsequently analysed within broader transformative processes currently being undertaken in the criminal justice system, with specific reference to the Transforming Rehabilitation agenda and the probation service. A lack of evidence-based policy; rushed changes, payment incentives and marketisation are highlighted in this paper as cross-cutting concerns between these two different, but ultimately interconnected policy domains. Fundamentally the changes to ASB legislation are deemed to be superficial, although it appears the foundations are being laid for more radical changes in the future.

Keywords
Anti-social behaviour; coalition; ASBOs; injunctions; Transforming Rehabilitation
Introduction

The Coalition took up office in 2010 with the promise to take ‘radical action to reform our criminal justice system’ (HM Government, 2010:13). This promise is examined here in light of recent changes to anti-social behaviour (ASB) legislation, situating these adjustments in relation to broader reformative processes being undertaken to community justice and probation through the Coalition’s Transforming Rehabilitation (TR) agenda. The purpose of this paper is to question whether the changes to ASB legislation are as radical as initially suggested and to explore a number of cross-cutting criminal justice policy concerns highlighted in volume 11:2/3 of the British Journal of Community Justice entitled ‘Transforming Rehabilitation - Under the Microscope’. It appears the ideological and practical concerns provoked by the TR agenda are evident, albeit to a lesser extent, in the developments to ASB legislation.

The paper begins with an appraisal of the changes to ASB legislation proposed by the Coalition in the form of the ASB, Crime and Policing Bill; specifically focusing on the reforms to Anti-Social Behaviour Orders (ASBOs) to create the Injunction. The passage of the Bill through Parliament is then considered, examining the tensions that arose when it reached the House of Lords and the subsequent amendments. The implications of these changes are then discussed in relation to broader criminal justice policy concerns that have been highlighted by plans to implement TR, determining the extent to which the changes in ASB legislation have been radical.

Legislative Changes

ASB legislation has remained fairly static since its inception in 1998 through the Crime and Disorder Act and the extended powers provided by the Anti-Social Behaviour Act of 2003. Reflecting different politically populist themes, New Labour’s ASB agenda demonstrated evolving policy foci; for example nuisance neighbours in New Labour’s first term, environmental ASB in the second and youth intervention in the third. The Coalition Agreement (HM Government, 2010), where the commitment to radical change was stated, sets out nineteen specific criminal justice reforms, albeit none relating to ASB. However, since 2011 the Coalition has pursued the legislative reform of ASB with the primary objective of jettisoning the ASBO. Arguably the most well-known ASB sanction, ASBOs can be sought by the relevant authorities to hand down to anyone over the age of 10 to prevent behaviour that causes or is likely to cause harassment, alarm or distress. They operate for a minimum period of two years with the potential to operate indefinitely. There is no restriction on the type(s) or numbers of behaviour ASBOs sanction. Breaching the terms of an ASBO constitutes a criminal offence punishable by up to five years’ imprisonment for adults and a two year detention and training order for young people, or a fine of up to £5000.

With ASBOs (and ASB in general) regarded as a steadfastly New Labour creation, designing new tools and powers to sanction ASB presented an opportunity for the Coalition to markedly change a policy area that both constituent Coalition parties (the Conservatives

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14 A full account of New Labour’s ASB agenda and the challenges faced by the Coalition government can be found in Hodgkinson and Tilley (2011).
and the Liberal Democrats) fiercely criticised whilst in opposition (BBC News, 2006). The 2012 White Paper *Putting Victims First - More Effective Responses to Anti-Social Behaviour* outlines the Coalition’s vision to streamline the existing 19 sanctions to just 6, with ASBOs being replaced by Crime Prevention Injunctions. Despite conflating the issues of crime and ASB, these Injunctions intended to offer speedy redress to those suffering ASB by being both handed down and sanctioned through civil law. The Home Office (2012a: 24) states ‘our injunction will build on the success of the ASB Injunction, which social landlords use effectively to stop problems and protect victims, and which is faster and easier to use than the ASBO.’ Specifically for use by social housing providers, Anti-Social Behaviour Injunctions (ASBIs) can sanction *nuisance and annoyance* that affects the housing management function of the landlord. With this much looser definition of troublesome behaviour, ASBIs became popular with practitioners seeking speedy remedies for ASB (Heap, 2010), with their use surpassing ASBOs in some locations (Clarke et al., 2011).

What the White Paper fails to clarify is how the ASBI utilises a different ASB definition to ASBOs; ‘nuisance and annoyance’, compared to ‘harassment, alarm or distress’. The failure of the Home Office to explicitly detail this difference at the outset, perhaps assuming their readership would be familiar with the finer points of ASB and housing law, had stark consequences when the White Paper eventually progressed into the Bill at the House of Lords. Fundamentally, replacing the ASBO with an Injunction that implements the nuisance and annoyance definition further widens the pre-existing broad range of behaviours considered under the ASBO’s harassment, alarm or distress definition. Despite providing the opportunity to sanction troublesome *low-level nuisance* (as the White Paper promises), there is the very real danger that legitimate behaviour conducted by marginalised groups could suffer at the behest of persistent complainers. For example, young people playing football in the street may not be deemed to cause harassment, alarm or distress, but the repetitive thud of footballs could well be considered to cause nuisance and annoyance. The broad nature of the proposed definition could encompass almost *any* annoying behaviour; as such the new injunctions could technically be used to curb people: mowing the lawn at 9am on a Sunday, trick or treating at Halloween and talking loudly on mobile phones whilst using public transport.

Flippancy aside, this is problematic from a human rights perspective as it reprises and exacerbates the original criticisms levelled at ASBOs by Ashworth et al. (1998) and Pearson (2006) in relation to Article 5 (liberty and security of the person), Article 6 (right to a fair and public hearing) and Article 8 (right to a private and family life) of the European Convention for Human Rights. An even broader definition creates the possibility that more people will be brought under the jurisdiction of the criminal justice system, amplifying the net-widening and mesh-thinning concerns brought about by ASBOs (Cracknell, 2000; Brown, 2004). The nuisance and annoyance definition could also facilitate the extended use of the injunctions by the authorities to sanction difficult and/or persistent offenders instead of prosecution, in the knowledge that a breach will result in an easier prosecution (Burney, 2009). The swift application procedure would also prove more favourable to practitioners in this instance.

The White Paper also emphasises a fresh policy focus on victims. The heightening of ASB victims’ needs coincides with a number of tragic high-profile cases, such as Fiona
Pilkington and Suzanne Dow who both took their own lives (and in the case of Pilkington also the life of her disabled daughter) as a consequence of suffering persistent ASB that was not adequately addressed by the authorities. This marks a completely new direction for ASB; very little attention has been paid specifically towards victims in the past as previous legislation and policy has focused heavily on tough enforcement (Millie, 2009; Duggan & Heap, 2014). As an overall strategy, this coalesces with broader Coalition criminal justice policy modifications, with the prioritisation of victims also evident in hate crime (for example; Challenge it, Report it, Stop it: The Government’s Plan to Tackle Hate Crime (HM Government, 2012)) and domestic violence domains (the Domestic Violence Disclosure Scheme (House of Commons Library, 2013)). The heightened regard for victims’ needs espoused by the Coalition is considered a vote-winning tactic and has been discussed elsewhere (see Duggan & Heap, 2013; Duggan & Heap, 2014). ASB itself is suggested to serve a political function (Bannister et al., 2006), with evidence to show New Labour pursued ASB innovations around the time of general elections as a vote-winner (Heap, 2010). A proposition reconsidered later in this paper’s analysis.

The White Paper evolved into the Draft Anti-Social Behaviour, Crime and Policing Bill (2012), which began its passage through Parliament in May 2013. This reflects a relatively slow progression from the initial mooting of legislative changes by the Home Secretary in 2010 (May, 2010), followed by the consultation in early 2011 (Home Office, 2011) and the White Paper in 2012. During this time the Crime Prevention Injunction had morphed into the newly titled Injunction to Prevent Nuisance or Annoyance (IPNA). The full remit of the IPNA is generally similar to the ASBO, with the relevant authorities given powers to apply for an injunction applicable to anyone over the age of 10 who ‘has engaged or threatens to engage in conduct capable of causing nuisance and annoyance to any person’ (Great Britain, Parliament, House of Lords, 2013).

The IPNA process is conducted in the civil courts (County Court for adults and the Youth Court for young people) rendering the burden of proof to be based on the balance of probabilities. The original ASBO began with a civil burden of proof, until a successful legal challenge ensured future ASBOs were based on the higher burden of proof of beyond reasonable doubt. The consequences for IPNA breach are slightly blurry, with the Home Office Draft Guidance (2013:27) proclaiming:

‘breach of an IPNA is not a criminal office. However, due to the potential severity of the penalties which the court can impose on respondents, the criminal standard of proof - “beyond reasonable doubt” - is applied in breach proceedings.’

The criminalisation comes from breaching the injunction which is a civil contempt of court. The penalties for breach are slightly less severe than ASBOs, with adults facing up to two years imprisonment and/or an unlimited fine. Sanctions for juveniles include Supervision Orders and in more serious cases a Detention and Training Order. The terminology surrounding IPNA breach is potentially problematic for both offenders and victims. Unless well-versed in the complexities of civil law, the implications for breach appear unclear. Breaching the Injunction is not a criminal offence unlike the ASBO, but the evidence required to punish a breach must be scrutinised to the criminal standard of proof. This
does little to resolve the criticism levelled at ASBOs for containing elements that recipients find difficult to understand (Fletcher, 2005), with this issue compounded for those with mental health problems and/or learning difficulties (British Institute for Brain Injured Children, 2005).

In turn, if the penalties for breach are not criminal, a tension arises between putting victims first and fuelling criminalisation through net-widening. One of the rationales provided by the Home Secretary for pursuing changes to ASB legislation was to ensure the new sanctions ‘act as a real deterrent’ (Home Office, 2011:1). However if the sanctions for breaching IPNAs are not criminal, it is questionable whether perpetrators are going to be deterred from committing ASB. This is underlined by the fact that the effectiveness of ASBOs, which were criminal upon breach, was questioned by the Home Office (2011) because of increasing breach rates. Home Office and Ministry of Justice data shows 58% of ASBOs between 2000-2012 were breached at least once, with the average number of breaches per ASBO totalling 4.9 (HM Government, 2013). The likelihood may be that IPNAs will be breached just as much as ASBOs. Furthermore if the new sanctions are not stopping and preventing ASB, victims’ needs are not being ‘put first’ as espoused by the political rhetoric. Research already suggests victims do not consider ASB sanctions harsh enough (Heap, 2010), therefore IPNAs are unlikely to bolster confidence in victims that their needs will be met.

The element of IPNAs that definitively sets them apart from ASBOs is the ability to include positive as well as prohibitive conditions. This means recipients can be required to do something to address the underlying causes of their behaviour. Theoretically this is a positive step for ASB legislation, which as a whole has been criticised for failing to address the causes of ASB and being too enforcement led (Hodgkinson & Tilley, 2011). An example of a positive requirement could mean nuisance neighbours attending mediation sessions or receiving drug/alcohol treatment. However, the failure to comply with any positive requirements also results in a breach of the Injunction similar to prohibitive conditions. Consequently, even if the ASB has been stopped by the prohibitive conditions, the failure to meet the requirements of the IPNA’s positive condition(s) could result in the perpetrator receiving a prison sentence. This means an individual could be imprisoned for failing to commit an act, even when the act in question is legal. Furthermore, this reductivist logic assumes a causal relationship between the completion of the positive condition and the ASB stopping; rather, the interplay of a wide range of variables could occur to ameliorate the problem behaviour. ASBOs were renowned for their potential to imprison someone for breaching non-criminal prohibitions such as swearing in the street, but legislating to allow a potential custodial sentence for failing to conduct positive behaviour extends criminalisation to a whole new level.

**Amending the Changes - Back to ASBOs?**

The ASB, *Crime and Policing Act* received royal assent in March 2014, but despite experiencing a relatively smooth passage through the House of Commons, its progress through the House of Lords was turbulent. This section will examine some of the concerns raised by the Lords and how their intervention resulted in amendments to the Bill, which profoundly altered the IPNA.
The House of Lords raised two key concerns with the IPNA provisions. Firstly, there was apprehension about the civil burden of proof being too low, with a prediction of numerous IPNAs being handed down for relatively innocuous behaviours ranging from carol singing to nudism (HL Debate 13/14). Subsequently, an amendment was tabled to revise the threshold from the balance of probabilities to beyond reasonable doubt. If successful, this would have re-aligned the IPNA to the ASBO, giving it less resemblance to the ASBI upon which it was based. Social housing providers and victims’ advocates were against these proposals due to the increased time required to secure an IPNA at the higher threshold and the necessity for (often frightened) victims to have to appear in court for instances of minor ASB (Social Landlords Crime and Nuisance Group, 2014). After much debate, the Lords were unsuccessful in passing this amendment, which further highlights the tension between balancing victims’ needs and potential broadening criminalisation.

The ultimately successful second amendment opposed the nuisance and annoyance definition. Lord Dear tabled an amendment for the definition to be reinstated as harassment, alarm or distress, the same as ASBOs. This move was ‘concerned with the legal requirement that the law should be precise and not undermine fundamental human freedoms’ (HL Debate 13/14), which ultimately reflects some of the net-widening and mesh-thinning apprehensions outlined in the previous section. However, another amendment re-shaped the proposed legislation further still. This split IPNA provisions into housing and non-housing related categories. The housing IPNA retains the same housing management functions outlined in the old ASBI, but the powers have been extended to include provision for private landlords and residents. It will retain the nuisance and annoyance definition, essentially creating a tenure-neutral ASBI. This does not abate concerns surrounding the potential for increased criminalisation associated with the nuisance and annoyance definition; however it does create a more equitable situation because the sanctions are no longer targeted at social housing tenants alone, which contrasts the broader penalisation of poverty used to manage those at the lower end of the class structure (Wacquant, 2001). Nevertheless, it is yet to be determined how provision for private tenants and residents will translate into practice, with the latest government Spending Round projecting a further £11.5 billion of public funds needing to be saved (HM Treasury, 2013).

The other aspect of the IPNA covers everything apart from housing. It is a civil injunction based on the balance of probabilities, with the definition relating to harassment, alarm or distress; strikingly similar to the traditional ASBO, aside from the potential to include a positive requirement. To an extent this addresses some of the concerns about the Coalition’s net-widening agenda, as most types of ASB will be considered under the tighter definition. In essence, this is principally an ASBO with a new name. Indeed the name of these sanctions proved problematic once the over-arching nuisance and annoyance definition was removed. Since the Bill received royal assent, a decision was taken to refer to these sanctions simply as ‘Injunctions’, with this wording now evident in the published Act (Great Britain, 2014). It remains unclear how the Injunctions will be referred to in popular discourse; a bland title may remove the ‘badge of honour’ status attributed to ASBOs, although some distinction will be required to demarcate this Injunction from other injunctive provisions.
Implications and Cross-Cutting Concerns

It is clear the action taken to reform ASB powers has been far from radical. This assertion is not new, with Hodgkinson and Tilley (2011) suggesting an early incarnation of the proposals simply amounted to rebranding. However, the amendments pursued by the House of Lords have made this legislation even more like the original ASBO than the initial consultation first suggested. This demonstrates how the Coalition’s management of ASB policy is deficient, allowing parallels to be draw to other areas of criminal justice experiencing change, specifically the TR agenda and changes to the probation service.

The Coalition’s Transforming Rehabilitation: A Strategy for Reform consultation response document (Ministry of Justice, 2013a) outlines a range of proposed fundamental reforms to the way offenders are rehabilitated. The key modifications include: extending statutory rehabilitation to offenders sentenced to less than 12 months in custody, creating a nationwide resettlement service, marketising rehabilitation providers (dismantling the current probation service) and implementing new payment incentives (payment by results), and creating a new national probation service. The proposals have been far from well received by academics and probation practitioners alike, with Senior (2013:1) warning the consequences of these changes include ‘fragmentation, loss of expertise, conflicts of interest, inconsistent practices and the danger to public safety that would result from confusion on risk categorisation’. This section will consider cross-cutting concerns in both ASB and probation that relate to practical implications of the changes including: research informed and evidence-based decision making, the rushed nature of the changes, payment incentives and marketisation.

The Coalition’s TR proposals have been criticised for being ideologically driven rather than evidence based. Concerns abound from a range of perspectives, including: there being no evidence base for the planned organisational changes, with some proposals even contradicting existing research evidence (Senior, 2013); anxieties around the future use of accredited interventions grounded in evidenced based evaluation (Gilbert, 2013); and the suggestion that future evidence of ‘what works’ will be closely guarded by private companies motivated by profit (McNeill, 2013). The changes in ASB policy have also been ideologically driven with a disregard for evidence, albeit in a markedly different manner. Very little evaluative work has been undertaken to ascertain which ASB interventions ‘work’ as a consequence of inconsistent data collection mechanisms, that are largely a result of local ASB definitions, priorities and practises. The Home Office never evaluated the flagship ASBO (Chambers, 2010). Although Clarke et al. (2011) and Crawford et al. (2012) have assessed the impact of ASB tools and powers, both refrained from using the term evaluation. Accordingly the Coalition has had little option but to pursue a non-evidence based framework, although this does not justify merely rebranding the ASBO. The Home Office made it clear they wanted to dispose of the ASBO due to concerns over high breach rates (Home Office, 2011) and there is evidence to show ASBOs declining usage (Clarke et al., 2011). Worryingly, there is no suggestion of any impetus to evaluate the new powers, despite the National Audit Office suggesting ‘Departments should publish a list of significant evaluation gaps in their evidence base, and should set out and explain their priorities for addressing those gaps’ (2013a:10). Although considering the current situation in probation, it does not seem to matter if there is evidence in place to
dictate practise or not. Therefore an overarching disregard for developing evidence based policy is shared across probation and ASB, giving the impression that the Coalition (and to some extent New Labour are guilty here too in relation to ASB) do not care about ‘what works’. This generates the proposition that changes in both policy domains were made for the sake of change.

Inherently linked with the notion of deliberate and visible change is the suggestion that these changes were rushed; a criticism which Senior (2013) has already ascribed to the TR plans. The same can be said for the ASB developments, although there are some key differences. As mentioned previously, the build-up to the legislative changes to ASB were relatively slow, with nearly two years passing between the consultation (Home Office, 2011) and the draft Bill (Home Office, 2012b). In contrast the proposals to implement TR arrived quickly, with the initial consultation being held between January and February 2013 (Ministry of Justice, 2013b), with consultation published in May 2013 (Ministry of Justice, 2013a). It was when the ASB, Crime and Policing Bill got to Parliament that the pace quickened. In fact, the ASB, Crime and Policing Bill and the Offender Rehabilitation Bill (legislating the TR plans) both had their first reading on the same day (9 May 2013), in the House of Commons and House of Lords respectively, with both receiving royal assent after eight months on the same day (13 March 2014). However when comparing the parliamentary passage of each Bill, the paths taken were very different. The ASB, Crime and Policing Bill was subject to a large number of sittings (15 committee and 2 report in the Commons with 7 committee and 4 report in the Lords) compared to the Offender Rehabilitation Bill (2 committee and 1 report in the Lords with 6 committee and 1 report in the Commons). This highlights how the ASB legislation was subject to greater debate and more amendments in an equal amount of time. During the 2013/14 Parliamentary session only two other Bills had a comparable number of debates: the Care Bill and the Energy Bill, both of which took longer to receive royal assent, taking ten months and thirteen months respectively. There is no set time period for Bills to pass, but it does appear the ASB, Crime and Policing Bill was passed very quickly, despite the complexity of the Bill itself. It is surprising Home Office Ministers did not intervene during the periods of debate considering the implications of essentially reverting back to ASBOs, given the justifications for change they made in the first instance. The fact that it is likely to have been politically damaging for the Government to perform any sort of ‘U-turn’ at such a late stage, may have curtailed any intervention. The populist ASBO-scraping rhetoric will probably continue and likely convince the general public, but ASB stakeholders (including victims) will be aware of the fallacy of these claims. Overall, bulldozing through un-evidenced criminal justice policies is becoming symptomatic of the Coalition, which does little to meet the needs of offenders, victims or practitioners.

Payment incentives are already a familiar concept in the ASB sphere, as a result of the introduction of payment by results (PbR) to the Troubled Families Programme (Department for Communities and Local Government, 2012). Although in contrast to probation, it is Local Authorities not private companies that are incentivised in the criminal justice element of the programme (as opposed to the welfare element). Initial findings from the National Audit Office (2013b:7) demonstrate PbR in this setting remains a work in progress, suggesting ‘there is a lack of information on costs and the non-intervention rate (the level of outcomes that would have been achieved without the
programmes'), making it difficult to set the correct payment threshold. This reinforces Hedderman’s (2013) fears about this precise issue occurring in a probation context. Further concerns have also been raised about the performance level achieved by PbR in the Troubled Families Programme, with lower than anticipated outcomes attained to date. The initial target was to ‘turnaround’ the lives of 120,000 families by 2015, although as of October 2013 only 22,000 families had been helped in this way (House of Commons Committee of Public Accounts, 2014).

Based on the pervasiveness of PbR in other aspects of the public sector such as National Health Service (National Health Service, 2013), its use in criminal justice was perhaps inevitable given the neoliberal tendencies of the Coalition, whereas opening the market to a range of new providers is something new for probation and ASB. The move to introduce new providers to the rehabilitation market has been made explicit in the TR plans. However, subtle shifts towards a marketisation approach in ASB appear to be taking shape. For example, one method proposed to facilitate compliance with the Injunction’s positive requirement is that the Injunction must state a person or organisation responsible for ensuring adherence to the positive condition. The causation focused nature of the positive conditions means the individual or organisation taking responsibility is unlikely to be part of the criminal justice system. For example, the individual may be a trained mediator or a drugs worker. This could be seen as the first step in diffusing the responsibility for ASB away from criminal justice practitioners and onto other frontline service providers, who may not have experience of such supervision. There is no indication at this stage that such organisations will receive PbR or be a private company, but taking into account the changes being made to the probation service it may not be too far in the distant future. A further signal we may be heading in this direction is the news that private security firms, such as Sparta Security in Darlington, are beginning to undertake work tackling nuisance neighbours (The Northern Echo, 2014). This may have profound implications on the way ASB is managed in the future.

Conclusion - Future Gazing

This paper has focused on exploring and reconciling criminal justice reforms in two distinct policy areas. In doing so, it has uncovered matters of cross-cutting concern relating to both the ASB and probation reforms proposed by the Coalition Government. One of the purposes of this paper was to question whether the changes to ASB legislation were radical in light of the Coalition’s promise of radical criminal justice reform. The evidence presented here suggests that at face value the changes have not been radical at all, in fact the Injunctions passed into law are fundamentally the original ASBO from 1998 with the addition of a positive condition. However, when the ASB reforms are considered against some of the more radical changes proposed to probation; it is evident that the foundations for future radical changes have been laid, particularly in the case of payment incentives and marketisation. ASB stakeholders will undoubtedly follow how the probation changes unravel in practice, with one eye on the future of their own domain. Practice is the area that closely binds the main concerns about the reforms, specifically around changes being rushed in for the sake of change, without a robust evidence base. This illustrates how effective policy implementation has been disregarded by the Coalition, although it will be interesting to observe how the National Audit Office’s (2013a) call for
departments to address gaps in evaluation translates into reality. The evidence-based policy dream may not come true in the near future, as it appears Coalition priorities are to produce shallow, populist policies that resonate with the electorate, with pre-general election sound bites likely to focus on something along the lines of “scraping the useless ASBO” and “cutting the cost of probation”.

Heap
Transforming anti-social behaviour: ASBOs, injunctions and cross-cutting criminal justice concerns

References


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 should be submitted to the Journal in the normal way.

THE ROAD TO EQUALITY: THE STRUGGLE OF GAY MEN AND LESBIANS TO ACHIEVE EQUAL RIGHTS BEFORE THE LAW

Kath Wilson, Senior Lecturer, School of Applied Social Sciences, De Montfort University

Introduction

In this piece I want to consider the legislative journey toward equality which in March 2014 saw the Marriage (Same Sex Couples) Act 2013 giving lesbians, gay men, bisexuals and transgender people (LGBT) almost parity with heterosexuals before the law. The major focus is the exploration of key legislation that has been in place and the impact this has had on the LGBT community, particularly gay men; a history that is sometimes forgotten.

Lesbians have not been subject to the law in the same way as gay men although it is clear that the impact of legislation against men has had consequences for women in terms of for example, inheritance, marriage and indeed the way they lived their lives. I will consider why lesbians have been almost invisible before the law and how their behaviour was policed.

A theme of the work is that legislation not only defines legality but it also seems to be important in terms of setting out a state's attitude to equality and particular groups. It can signal the move from state homophobia to state recognition. At the same time the changing of attitudes, relationships of power and inequality take more to shift than legislation alone can achieve.

Finally, I will consider if the Marriage (Same Sex Couples) Act 2013 is a step in the right direction on the road to LGBT equality. Have the latest developments in legislation brought genuine equality and choice within a traditionally patriarchal society or will the
LGBT community become just another consumer group with the ‘pink pound’, now to be sold ‘gay weddings’?

The Law and Male Homosexuality

In March 2014 it became lawful for same-sex couples to enter into a partnership of marriage (this does not apply in Northern Ireland). Thus an opportune time to consider the road to equality as experienced by the lesbian, gay, bisexual and transgendered community (LGBT). Whilst there remain some outstanding issues regarding equality, for example, couples of the same sex are not entitled to inherit their partner’s pension; it is not an insignificant step in the process for both the community and individuals. In considering sexual orientation in terms of the legislative framework, Chakraborti and Garland (2009) point out that unlike many other aspects of discrimination, the gay community’s private and sexual lives have been subjected to police scrutiny as well as legislative and parliamentary intervention. Stout (2010) observes that the journey to equal treatment for the gay community is quite different from other groups as although discrimination has been longstanding in terms of race and gender, it has never actually been illegal to be black or a woman. One might question if it has actually been illegal to be ‘gay’, but judging from reports of the policing of gay venues in the 1950s and 1960s, then attendance seemed to be the only requirement to being arrested.

According to Stonewall (2013), the first mention of a punishment for homosexuality in English law was in 1290, the traditional ‘buggery’ statute was introduced in 1533 and was still in effect up until 1967 (Crompton, 1980). In 1628 Sir Edward Coke, a celebrated judge, compiled a list of all existing criminal offences. In volume three of ‘The Institutes of the Laws of England’ there is a chapter titled ‘Of Buggery or Sodomy’ This chapter is ‘the first piece of legal scholarship that addresses homosexual relationships in English Law’ (Moran 2000:98). Coke (in Moran 2000) lists a number of statutes such as the Queen Elizabeth I Act criminalizing sexual relations of this nature but notes that references to same-sex sexual relationships are a rarity in law. Whilst buggery & sodomy are not exclusively sexual acts between men, the work does make reference to sexual relations between people of the same sex. Buggery and sodomy are seen as serious offences and are likened to rape or treason, the only suitable punishment being death, usually by hanging. Coke’s (in Moran, 2000) view is that ‘homosexual acts’ are forbidden by the law of man and by God. This link between state and religion is a constant theme at this time and it is not until the State moves to a more secular position post war, that legislation has gradually liberalized (Moran, 2000). That said current debates as reported by the media, about the legalising of marriage between same-sex couples arguably have largely focused on matters of religion.

Successful prosecutions were rare during this period, largely due to the need for an eye witness to confirm penetration had taken place. Up until 1816 the most common form of punishment for those convicted was to stand in the town or village pillory and be pelted by a largely hostile crowd. Records from the Old Bailey Proceedings (2013) identify that between 1679 and 1772 there were 1072 convictions for sodomy and 96 for Assault with Sodomite Intentions. The proceedings also record a number of Thefts by Extortion against homosexual men. Jeremy Bentham in "Offences Against One's Self: Paederasty," written
in 1785 argued for the liberalization of laws concerning homosexual activity but the essay was never published in his lifetime due to his fear of the probable reaction.

During the late 17th and 18th Century there were a number of waves of prosecutions against homosexual men. They were often the result of self-appointed groups who advocated for the ‘moral’ savings of the day. The society for the Reformation of Manners used spies and provocateurs to pursue and prosecute homosexual men (Emsley et al., 2013). Between 1806 and 1835 60 men were punished by hanging (Crompton, 1980). In July 1860 John Spencer became the last man to be sentenced to death at the Old Bailey for the offence of sodomy; the sentence was never carried out. The following year the Offences Against the Person Act formally abolished the death penalty for buggery in England and Wales (Old Bailey Proceedings, 2013).

The Criminal Law Amendment Act (the Labouchere Amendment) was introduced in 1885 creating the offence of gross indecency, making all sexual acts between two men illegal. It became known as the ‘Blackmailer’s Charter’. The criminal law became focused on the punishment of homosexuality. One of the first men to be prosecuted under this Act was the playwright and author Oscar Wilde who was prosecuted in 1895 for gross indecency and sentenced to two years hard labour at Reading Gaol. Once the law had decreed that he and his behaviour were criminal he was shunned by many of his former friends and ‘society’ in general. The point being that Wilde as a popular man of the day, with his male companion Lord Alfred Douglas, was socially acceptable, once he was convicted of gross indecency he was not. Hypocrisy appears to be a constant theme on the road to equality.

**What about Lesbians?**

Lesbian sexuality has been an area that legislation has not been concerned with. Sex between women was not illegal and therefore it is more difficult to identify and compare lesbian life with gay men’s during this period. If women did appear before the law in the late 16th to early 18th century, it most likely would be for impersonating a man by cross dressing and thus they would be prosecuted for deception or fraud. There were a number of women who lived their lives as men, marrying women, dressing and engaging in male occupations of the day such as joining the army (Faderman, 1992).

A further reason why it is difficult to identify lesbian life (Moran, 2000) is that much legal scholarship has concentrated on same-sex relationships between men and whether or not they should be criminalized. Crompton (1980) is clear about the dearth of writing about lesbians and the law; how much we really know about lesbian life and the law during this period. He questions if lesbians really had impunity from capital laws during the 13th to 18th century. In Spain, France, Italy and Germany it was illegal to be a lesbian and there were a number of incidents of lesbians being punished by hanging, drowning and dismemberment for their sexuality (Crompton, 1980). Whilst this was not the case in England we might consider how women who were ‘different’ from the norm were ‘put in their place’. It may be useful to reflect on potential parallels between the characteristics of some women hung as witches to some stereotypes of lesbian women.
Feminist researchers (Faderman, 1992; Robson, 1998) have argued that women’s experience of the law is different from men’s and in particular lesbians’ experience of the law different from gay men’s. In fact much of what has been written about legal history is about the history of men. Whilst mainstream legal studies have remained silent on the subject, disciplines such as criminology have also failed to engage with sexual orientation on a theoretical basis (Blair Woods, 2014). It has been left to lesbians and queer legal theorists to begin to think about how lesbians have been vilified, marginalized and generally not sufficiently noteworthy to merit consideration by most academics.

Legal theorists in the US such as Ruthann Robson (1998, 2009) have considered areas including the codification of lesbian relationships and the conceptualization of lesbians in the court setting. Robson also looked at figures regarding the over representation of lesbians on death row. Anderson (1996) believes that close to half of inmates on death row are lesbian whilst Brownworth (1992) puts the figure at nearer to a third.

Returning to the road to equality, Moran (2000) notes women’s sexuality and place in the family during the 18th and 19th century was policed in different ways, by private rather than criminal law. In America for example, where the growth of education for middle class women also lead to a burgeoning lesbian community, it was policed through social pressure and patriarchal notions of a ‘woman’s role’. Dr. Edward Clarke in ‘Sex Education’ warned in 1873 that women engaging in higher education and study would lead to infertility and uterine disease, amongst other things (Faderman, 1992).

1928 saw the publication of Radclyffe Hall’s The Well of Loneliness, the first novel written in English by a woman about two female lovers. Whilst not sexually explicit, ‘and that night they were not divided’ (in Faderman 1992:113) it was clear enough to indicate to most readers that this was not a platonic relationship. Hall herself was influenced by Krafft-Ebing and Havelock Ellis and their new ideas about the origins and nature of sexuality (Souhami, 1999). She describes Stephen Gordon the female lead in her novel as ‘a man trapped in a woman’s’ body. She believed herself to be a ‘congenital invert’ or lesbian. Hall’s work was influential in both Britain and America remaining popular into the 1960s as the only famous lesbian novel. Faderman (1992) believes that the novel and Hall herself helped form images and ideas of how lesbians might look and behave. It is clear that the role of a female was immensely restrictive to Hall and no doubt some of these frustrations are reflected in the book.

The state’s response was swift and the novel was prosecuted for obscenity and banned from further publication. Smith (2005) notes that Hall attended the trial and heard the chief magistrate Sir Chartres Biron rule that the novel was an ‘obscene libel’ and that all copies should be destroyed. We now know that ‘official’ medical advice was sought and it was stated that the novel might encourage female homosexuality and lead to ‘a social and national disaster’ (Souhami, 1999:183). It transpires that leading politicians and the then Prime Minister Stanley Baldwin and his Chancellor Winston Churchill had gone to great lengths to suppress the book. The Director of Public Prosecutions wrote to colleagues stating he wanted to call witnesses who would support his view that female inverts were either unfortunate or those who voluntarily indulged in lesbianism, wicked (Smith, 2005).
Ultimately the Director of Public Prosecutions obtained the testimony he desired, the consulting medical adviser to the Home Office opined that lesbianism does have a debasing effect on women who practice it and that it would undoubtedly lead to mental illness, even suicide. He stated that ‘It leads to gross mental illness, nervous instability, and in some cases to suicide in addicts to this vice. It is a vice which, if widespread, becomes a danger to the well-being of a nation...' (Smith 2005:2). A major concern seems to be that it may have influenced the curious. The book was finally published in 1949 after Hall’s death.

**War and Post War Persecution**

Despite some of the very real issues faced by lesbians and gay men, gay communities were emerging in several European cities during the inter war period, notably Berlin, London and Paris (Souhami, 1999). The film ‘Cabaret’ captures aspects of gay life in Berlin as we glimpse the rise of Nazism. Stonewall (2013) record that during the 12 years the Nazis were in power, homosexuals were one of the groups/communities persecuted. It was predominantly gay men, but lesbians were also arrested and placed in Labour and Concentration Camps.Sexologists Havelock Ellis and Addington Symonds' work 'Sexual Inversion' had been published in 1897. This was significant because it was probably the first book that treated homosexuality as neither a crime needing punishment nor a disease needing a cure. It was instead viewed as an inborn condition that was unchangeable (Medhurst & Munt, 1997). Whilst this argument had been used by some as a reason to tolerate lesbians and gay men, as Weeks (1986) notes, it was equally used by the Nazis to argue for their suppression. Homosexuals were forced to wear a pink triangle symbol to identify the reason for their captivity. An estimated 50,000 gay men were sentenced to imprisonment and 15000 gay men deported to concentration camps. These men were subject to the death penalty, starvation, castration and were amongst those ‘medically’ experimented upon by the Nazi regime (Stonewall, 2013). The Nazi laws relating to homosexuality in Germany remained in place until 1967.

Gay men and lesbians were not amongst groups recognized as victims of Nazism by the Allies or Germany and were therefore ineligible for compensation. It is a recurring issue that gay victims of persecutions and instances of injustice were unable to come forward to tell their stories since many of the laws, attitudes and prejudices facing the community were still in place. It was not until 2001 that the German and Swiss Bank Compensation Programme was extended to include gay victims, many of whom were dead by that point (Stonewall, 2013).

Whilst post war there was little appetite for addressing injustices around sexuality, Alfred Kinsey et al. (1953) undertook one of the earliest pieces of research into the sexual practices of Americans. His ground breaking work in 1948 and 1953 demonstrated that homosexuality was more widespread than ever assumed. As part of his research tools, Kinsey used a scale or continuum. Interviewees were asked to describe their sexuality on a scale 1-6. One being exclusively heterosexual and six being exclusively homosexual. Kinsey introduced the notion that sexuality was not fixed, not exclusively one thing or the other. Amongst it seemed, the more surprising of results he found that 12 % of the women in his sample had engaged in lesbian sex. He also found that 46 % of American men and 28% of
American women had ‘homosexual tendencies’ at some point in their lives. Kinsey has been criticized on a number of counts, particularly in relation to his sample selection. The now familiar statistic of 10% of American men living as almost exclusively homosexual does derive from his work. A positive outcome of the research publication was that gay men and lesbians recognised there were others like them (Kinsey, 1953; Hekma, 2000; Fish, 2013).

In terms of the use of legislation post war, the case of Alan Turing gives some insight into the relationship between the lesbian and gay community and the Criminal Justice System. Turing has been acknowledged as being a founder of computer science who developed ideas leading to the first computer as well as the machine which enabled the decryption of the Enigma code during the Second World War (Davies, 2013). Turing moved to Manchester in 1949, working at Manchester University where he headed the computing laboratory and developed a body of work that helped to form the basis for the field of artificial intelligence. In 1951 he was elected a fellow of the Royal Society (Davies, 2013). He was arrested in 1952 for homosexuality and had his security clearance revoked. It was thought that being homosexual, he was a security risk and would be open to blackmail. This notion of homosexuals as ‘curiously susceptible to treachery’ is mirrored in America where the McCarthyite witch hunts were underway and where homosexuals were prime targets (Weeks, 2010). The police initially became involved with Turing when he contacted them to report a burglary at his home. The burglary was committed by a friend of the man Turing was involved with. The police focused not on the crime reported but instead on his sexuality. Turing was never imprisoned but was forced to undergo treatment including hormone injections which were said to have made him develop breasts and become depressed. He committed suicide two years later aged 41 (Davies, 2013).

The 1950s saw a rapid rise and rigorous prosecution of homosexuals by the Home Office (Stonewall 2013). In 1952 for example almost 4,000 gay men appeared in court; in 1954 there were 1069 men in prison for homosexual acts. Thousands of gay men were blackmailed, prosecuted, sentenced to prison, pilloried and shamed. It is impossible to assess the number of men who committed suicide during this period. For those men whose suicide attempts failed, worse was in store, as Horsfall (1988) notes, some were prosecuted for being both homosexual and attempting suicide which at that time was also illegal. Many were subject to supposed ‘cures’, which included lobotomies, aversion therapy and chemical castration (Fish, 2012).

Police interest in the gay community was not only concentrated on bigger cities, and dependent upon the attitudes of particular Chief Constables, men in more rural areas did not go unnoticed. Horsfall (1988:7-18) cites Dr. R.W. Reid who wrote to the Spectator in 1958:

‘The pogroms continue, one in this neighbourhood having started with long and weary police court proceedings on the eve of Christmas, so that the festival may presumably be spent in contemplation of the Spring Assize. And this for a lad of seventeen. The pattern is much the same in all these cases. The police go round from house to house, bringing ruin in their train, always
attacking the younger men first, extracting information with lengthy questioning and specious promise of light sentences as they proceed from clue to clue i.e. from home to home, often up to twenty. Last time a man of thirty seven dropped dead in the dock at Assize. Just because this happens in country places…it goes largely unreported’.

A snapshot of awareness of lesbian and gay men generally is perhaps demonstrated by the fact that in 1956 Liberace, the flamboyant pianist, sued the Mirror newspaper for libel. They had implied he was homosexual. He was able to sue the paper and win, despite the fact that he was indeed homosexual, in the knowledge that generally people would not believe that he could possibly be gay. As an issue of social justice, gay rights and gay recognition had not yet even reached public consciousness.

Allan Horsfall (1988) in his own account of the life of a gay man born in 1927 stated that whilst keenly aware of the illegality of his sexuality and therefore the prospect of ‘living a life of crime’ by his very existence, he never contemplated a celibate existence as an acceptable alternative. He made two gay friends whilst serving during the war in the RAF. On demobilization one converted to Roman Catholicism and began training to join the priesthood, soon after he had a breakdown whilst the other married but shortly after was found hanged (Horsfall, 1988). It is against this 1950s post war backlash that the modern lesbian and gay movement was formed. It is perhaps difficult now to understand the life lived by lesbian and gay people during the 1950s and 60s. The patrolling of public toilets by the police for example was common into the 1990s, where if caught gay men would usually be prosecuted for gross indecency (Schuff, 2000; Weeks, 2010).

**Wolfenden: A Step in the Right Direction**

The Wolfenden Committee was initially established in 1954 to review the law on prostitution, but after considerable pressure from amongst others Lord Boothby, finally agreed to add male homosexuality to its terms of reference. This was not a party political debate as the move for reform had considerable support amongst the Conservative Party; supporters included Margaret Thatcher and Enoch Powell. Support from members of the Labour Party was slower in coming as they did not necessarily see the rights of homosexuals as an issue to align with. The Wolfenden Report (1957) recommended that ‘homosexual acts between consenting adults’ should be legalized. This was partly as an acknowledgement that what consenting adults do in the private sphere should not necessarily be the business of the state. The law was therefore seen as helping to enforce common standards of public decency but not imposing moral absolutism (Moran, 2000). The Marriage (Same Sex Couples) Act 2013 however does place same-sex couples in the public sphere as their relationships enter formally into civic life.

Places where lesbian and gay men could meet were still limited during the 1950s and 60s and liable to constant scrutiny by the authorities; a time when unaccompanied women were not welcome in many pubs, no matter what their sexuality. Licenses granted to bars were withdrawn or managers warned and ‘leaned upon’ if they were suspected of allowing homosexuals to meet there. The licensee of the Union Hotel in Manchester was imprisoned for 12 months in 1965 for allowing homosexuals into one of its bars. The
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Recorder at Manchester Crown Court stated that ‘Your conduct of the licensed premises amounted to an outrage of public decency. You exploited abnormality for personal gain and allowed this public house to become a canker in the heart of a great city’ (Horsfall 1988:16). The Union bar and hotel remains at the heart of Manchester’s thriving gay village.

In 1967, 10 years post Wolfenden, sexual activity between two men over the age of 21 was decriminalized. For Peter Tatchell (2013) the debate lurched between vicious homophobia and ‘patronizing, apologetic tolerance’. The Earl of Dudley's contribution perhaps reflects the level of antagonism for the proposed change ‘I cannot stand homosexuals. They are the most disgusting people in the world. I loathe them. Prison is much too good a place for them’ (Bedell, 2007:7). Perhaps more surprising are the views of those who supported the 1967 Act. As Tatchell (2013) suggests they were hardly more tolerant than its detractors, a significant theme of their argument being that homosexuals are to be pitied and were in need of Christian compassion. Leo Abse introduced the Sexual Offences Bill in 1967 and explained that 'the thrust of all the arguments we put to get it was, "Look, these people, these gays, poor gays, they can't have a wife, they can't have children, it's a terrible life. You are happy family men. You've got everything. Have some charity"' (Bedell, 2007:7).

The treatment of lesbian and gay men after this partial decriminalisation did not immediately improve; 30,000 men were convicted between 1967 and 2003 for behaviour that if their partner had been female would not have been prosecuted (Bedell, 2007). Lesbians and gay men were extremely reluctant to approach the police in cases of for example extortion due to their sexuality. For the reasons discussed throughout this piece there has been mistrust between the lesbian and gay community and the Criminal Justice System in general and the police in particular, that is still evident at times today.

The Arrival of Gay Rights and Gay Pride

Movement toward establishing lesbian and gay rights began to increase in pace during the 1970s. This idea of having pride in your identity against the back drop of guilt, condemnation and prosecutions was new and exciting for the community. This was a time when under the American Psychiatric Association, homosexuality was still classified as a mental illness and not declassified until 1974 (in 1992 the World Health Organization followed suit).

Inspired by Dame Jill Knight and the Conservative Family Campaign, Prime Minister Margaret Thatcher introduced the notorious 1988 Local Government Act. The aim being to ban local authorities from ‘promoting homosexuality’ as well as tolerance of ‘pretended family relationships’. Section 28 stated that: ‘A local authority shall not: Intentionally promote homosexuality or publish material with the intention of promoting homosexuality; Promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship’. Section 28 seems to have been an attempt to restrict the developing LGBT community from expressing its views, its sexuality and growing confidence. It has been argued (Stout, 2010) that the significance of this legislation was not that it was enforced, this would have been time consuming and
difficult to perhaps prove what ‘promotion’ was, but that it created amongst teachers and others working with young people a climate of fear and confusion. It echoes with current policy in Russia and Uganda where politicians have used the argument that homosexuals are using propaganda to influence young people to suppress LGBT organisations (Day, 2014). Links are clearly being made between LGBT people and paedophilia, links that were not uncommon in this country well into the 1980s.

In Britain, we have seen a raft of legislation in recent years that will help the LGBT community achieve equality. This has included areas around equal age of consent, employment law, access to goods and services, rights to be named on birth certificates, gender re-assignment, protection from direct and indirect discrimination, harassment and victimization. There is still quite a way to go when we consider instances of hate crime, the rate of suicide amongst lesbian and gay teenagers and the vilification of transgender people, all of which still occur on a regular basis.

And finally the Marriage (Same Sex Couples) Act 2013, not quite the full story.
What has been significant about the arrival of the Marriage (Same Sex Couples) Act 2013 is the absence of debate, qualification or discussion about the concept of marriage and the implications for the LGBT community. There appears to have been an almost universal agreement that this is a significant step in the right direction from all perspectives and organisations within the LGBT community. Whilst Peter Tatchell has expressed some personal reservations about marriage given its patriarchal roots (Tatchell, 2014), he never the less has understandably, publicly given it his full support.

Equality has been characterised as meaning the ability to get married just like heterosexuals. Undoubtedly there are significant advantages in that this will give LGBT people access to the considerable legal and economic benefits of marriage, as well as symbolic recognition (Barker 2013). Legal recognition in terms of for example, rights of next of kin and inheritance appear to be a major reason why LGBT individuals have supported it along with wanting family respect (Shipman & Smart, 2007). The Act it is argued will signal that LGBT marriage is positively recognised and respected by the state and its people. The Act then is to rectify a perceived unfairness as well as giving status to same-sex relationships. In fact some arguments in favour of same-sex marriage have similarities with conservative ‘family values’ arguments. They include, marriage is good for families’, good for children type discourses and by broadening it to LGBT people it is seen as strengthening the institution. Significantly it poses that love, sex, monogamy and marriage go together.

Marriage for people of the same sex is seen as a symbolic step against the background of historic homophobia and discrimination, as discussed in this article. It would help remove negative symbolism associated with same-sex relationships and make a positive statement about their equal worth (Cox, 1994). Who can deny the part social support from friends and family plays in the maintenance of long term relationships? Same-sex marriage is also seen as having a role in changing attitudes and being a move in the general erosion of prejudice and discrimination. It is believed that LGBT people will no
longer be excluded and invisible in their relationships which will now be valued and treated with respect. Importantly young people growing up, straight or LGBT, will be receiving the message that homophobia is no longer acceptable.

Robson (2009) reminds us, however, that the benefits of marriage should not immunize marriage from interrogation. It is she asserts, a political institution which uses numerous formal and informal coercive measures to get people, particularly women to ‘choose’ as an option. Critically she suggests that marriage will further attempts to ‘domesticate’ lesbians, ‘reforming’ them from a tradition of transgressive behaviour. There are then a number of arguments as to if the LGBT community should go down this road, many of which have been absent from mainstream debate. Amongst the issues queer theorists such as Sullivan (2003) raise are, do we really want the assimilation of same-sex relationships to the heterosexual norm? Lesbian and gay relationships are different, precisely because they are relationships between two people of the same gender. Some LGBT people are consciously resistant to dominant ideologies and resist this narrative of assimilation as expressed in media reports surrounding the marriage bill; couples have been portrayed as wanting to be ‘normal’ like you. A further argument is that LGBT people should firmly oppose the idea of the ‘pink pound’, lesbian or gay wedding shows and refuse to be identified as just another consumer group. Indeed in terms of legislation it can be questioned if the law can actually provide the answer to LGBT equality, as in reality this is merely rhetoric as opposed to genuinely viewing LGBT people as equal and of equal worth. Thus, formal legal changes provide only one of the many measures needed to challenge current power relationships (Morgan, 1995).

Feminist writers have argued both in favour of and against same-sex marriage. In favour the argument is broadly that LGBT people can alter and transgress the institution from inside, because part of their oppression results from displacement from civil society, notably the family. What could be more anti-patriarchal for lesbians, Cox (1994) asks than for two women to stand proudly committing to each other without a man in sight? Other feminists such as Barker (2013) however, remind us that the institution of marriage remains as patriarchal as ever imbibing concepts of ownership, property and dominance as its foundation. They therefore reject the idea that entering into this contract can give LGBT equality.

**Conclusion**

The road to equality for LGBT people has been long and arduous. In common with other groups who have been discriminated against, their history often rendered invisible. Despite this, however, we should not necessarily view every change without some degree of critical questioning. We may conclude that we do not have the right to deny LGBT people, what both in the media and from personal narratives appears to be very real happiness. We can reflect that in this particular instance we may not be getting the whole story.
References

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Smith, D. (2005), Lesbian novel was ‘danger to the nation’, Observer Newspaper (Sunday 2nd January).
Preferred bidders for Community Rehabilitation Companies announced
The Ministry of Justice have announced their preferred bidders for the 21 Community Rehabilitation Companies. Over half of the probation services will be run by consortia led by just two private sector providers: Sodexo and Interserve. A full list of the preferred bidders is available at:

Criminal Justice and Courts Bill: Secure Colleges (Part 2, Schedule 5 and 6)
First laid out in the Government response to the Green Paper ‘Transforming Youth Custody (January, 2014) and now legislated for in the Criminal Justice and Courts Bill, proposals to introduce a network of ‘secure colleges’, putting “education at the heart of youth custody”, have raised growing concerns amongst penal reform groups over the safety, health and wellbeing of the children it is intended to hold in them. A 320-bed, £85million ‘pathfinder secure college’, accommodating girls and boys between the ages of 12 and 17, is due to open in Leicestershire in 2017. A briefing prepared by the Standing Committee for Youth Justice, the Children’s Right’s Alliance and the Howard League for Penal Reform to inform the House of Lords Report Stage of the Bill has emphasised the following:

Large institutions, far from a child’s home, potentially holding a very diverse population are unsafe, unsuitable environments, which will not help to reduce reoffending or improve education... very little detail has been provided about how secure colleges will operate or the minimum standards required... The very limited information which does appear in the consultation document does nothing to allay our very serious concerns about the safety of children in secure colleges. On the contrary, it heightens our concerns. The consultation contains only one page on education, yet nearly half of the document is on punishment and the use of force. The impression
is that punishment, rather than education, will be “at the heart of youth custody.”

The following amendments to the Bill were proposed:

- 108, 110, 111 and 118, which prevent a secure college being established, or an operating contract being entered into, before Parliament has approved comprehensive Secondary legislation, and require the Secretary of State to ensure that secure colleges meet the adequate health and wellbeing needs of children.
- 109 which prevents girls and children younger than 15 being detained in a secure college.
- 121 which permits force to be used on children in secure colleges only as a last resort, for the purposes of preventing harm to the child or others, and to the minimum extent necessary.

However, opinion in the House of Lords on the proposals for ‘secure colleges’ appears to be divided. During the debate held on 23rd July 2014, peers voted only in favour of the second of the amendments tabled and then by a majority of just one (186 to 185).

Secure colleges and the Criminal Justice and Courts Bill (Part 2 and Schedules 5 & 6) House of Lords Report Stage briefing, prepared by the Standing Committee for Youth Justice, the Children’s Right’s Alliance and the Howard League for Penal Reform, can be found at: http://www.crae.org.uk/media/74279/cjc-bill-hol-report-stage-final.pdf

HM Chief Inspector of Prisons for England and Wales Annual Report 2013-14

Concerns about the safety and welfare of children and young people held in new ‘secure colleges’ have also been raised recently by HM Chief Inspector of Prisons. In his Annual Report for 2013-14, Nick Hardwick outlines the drop in numbers over the past decade of young people held in young offender institutions which has led to a shrinking of the estate overall. This has left a smaller but much more vulnerable and challenging population with a higher propensity for violence. Given the reduction in the numbers, the 320 bed ‘secure college’, planned to open in Leicestershire in 2017, will hold about a quarter of all children in custody, raising doubts that these very troubled children will receive a “better education than that delivered in YOIs, where provision has improved significantly” (p.15).

Addressing pressures more generally within the prison estate, the Chief Inspector challenged the Government over policies to reduce expenditure and at the same time increase the prison population over operational capacity and projected levels. Financial savings made by reducing staff had resulted in staff shortages and a significant loss of more experienced personnel. Of most concern was that severe overcrowding in many prisons meant that safety outcomes had declined significantly. As well as a growing insufficiency of purposeful activities and rehabilitation programmes in prisons, there had been an overall increase in the level of assaults, especially in adult male prisons. The Chief Inspector found that “adult males prisons are becoming more violent every year; that trend accelerated in 2013-14 and included a dramatic 38% rise in the number of serious
assaults” (p. 10). Associated with this, there had also been a dramatic increase in the number of self-inflicted deaths and self-harm in prisons. Self-inflicted deaths in custody increased by 69% in 2013-14 compared to the previous year. Acknowledging that a rise in self-inflicted deaths in custody cannot be attributed to a single cause, the Chief Inspector nevertheless concluded that:

The conjunction of resource, population and policy pressures...was a very significant factor in the rapid deterioration of safety and other outcomes... The rise in the number of self-inflicted deaths was the most unacceptable feature of this (p. 11).

Responding to the Report on national radio, the Justice Secretary Chris Grayling disagreed with the findings of the Chief Inspector, maintaining that there were at present sufficient prison places, that new ones would be available in the future, and that any increase in the prison population was linked to the prosecution of historic sex offences. The Prisons Minister, Andrew Selous, was also quoted in the Guardian on 21st October 2014 saying that the rise in self-inflicted deaths was “a complex issue and the Chief Inspector has failed to provide any evidence to support his assertion that this is linked to reforms made under this government”.


Closure of North Liverpool Community Justice Centre

Following consideration by the Ministry of Justice and HM Courts and Tribunal Service of responses to the consultation paper ‘Proposal on the future of North Liverpool Community Justice Centre’, published on 17th July 2013, it has been decided to close and transfer the work of the Centre to Sefton Magistrates’ Court. Despite accepting that workload at the Centre had increased in recent years, for example criminal proceedings from April to July 2013 increased, by 31 per cent, HM Court and Tribunal Service concluded that “the North Liverpool Community Justice Centre is unlikely to offer value for money over future years” (p. 23).

Opened in 2005 and based on principles of problem solving and community engagement, the Centre was the first, and most highly developed, community justice court in the UK. Presided over by a judge, offenders were required to attend treatment programmes and undertake unpaid work for the benefit of local community residents. An evaluation of the centre, published in 2011 by the Centre for Crime and Justice Studies concluded that:

Community justice in general, and the North Liverpool Community Justice Centre in particular, could have a potentially transformative effect on criminal justice. It is vital that the North Liverpool Centre continues its work as a crucible for experimentation and a flagship for community justice. But
to do this successfully it requires long-term funding, an acknowledgement that – if it is expected to innovate and experiment – then failures will occur, and a long-term research strategy that can work alongside the Centre. Without the latter, the Centre will eventually be seen as an emperor with no clothes.

Interviewed by BBC News on 23rd October 2014, one of the authors of the evaluation report, Professor George Mair of Liverpool Hope University, said: “I think it is very unfortunate that one of the most exciting initiatives in community justice has been closed down with little evidence to back up such a decision”.


Figures from the Crime Survey for England and Wales and police recorded crime
Statistics published by the Office for National Statistics on 16 October show that there was a 16% reduction in the overall number of estimated incidents of crime against households and resident adults in England and Wales for the year ending June 2014. This is the lowest estimate since the survey began in 1981. The number of crimes reported to the Crime Survey for England and Wales was 7.1 million, roughly double the number of crimes (3.7 million) recorded by the police over the same time period (year ending 2014). Prior to this, police recorded crime figures have shown year-on-year reductions since 2003/04. The survey data showed a decline in most offences, including a 23% fall in violent crime, a 20% drop in criminal damage and a 12% decline in theft. The police recorded crime figures showed a 21% increase in sexual offences, including a 29% increase in rape. The ONS website states that “current, rather than historic, offences account for the majority of the increase in sexual offences (73% within the last 12 months). Despite these recent increases, it is known that sexual offences are subject to a high degree of under-reporting”.

Separate hate crime figures published by the Home Office showed that hate crimes in England and Wales rose 5% to 44,480 in 2013/14. Race hate crimes rose by 4% to 37,484 and religious hate crimes were up 45% to 2,273 offences.

The statistical bulletin for Crime in England and Wales, Year Ending June 2014, can be found at:

Hate crimes, England and Wales, 2013 to 2014 can be found at:

The Secretary of State for Justice, Chris Grayling’s speech to the Conservative Party Conference

The Secretary of State for Justice gave his annual speech to the Conservative Party Conference on 30 September. Key messages included the toughness of the Tories running the criminal justice system. Mr Grayling claimed “You are more likely to go to prison. You will go there for longer. And it will cost the hard-working tax payer less to keep you there.” Grayling also claimed he had “toughened community sentences” and “stopped prisoners claiming legal aid”.

A key focus of the speech was on victims. Grayling spoke about the introduction of the “widely acclaimed” Victims Code and stated that the next Conservative Government:

...will go much further, introducing a Victims Law to set victims' rights in statute...and are planning a new national information service, a single telephone number and website, so every single victim of crime has an easy place to go to find out what help is available to them.

He emphasized that these victim’s services are “being paid for by the criminals, not the taxpayers”.

On prisons, Grayling stressed that by the time of the election in 2015 there “will be three thousand more adult male [prison] places than we inherited from Labour”. And on “youth facilities”, he stated that “there will be double the amount of education each week in young offenders' institutions”. He also announced the opening of “a new kind of institution, a Secure College to take that education drive one step further”. Stressing the importance of work and education for effective resettlement, he emphasized that the new Secure College would be “tougher and more regimented”:

And we’re getting rid of playstations and Xboxes from cells there too. No young person in detention should be sitting up all night playing computer games.

The full version of Chris Grayling’s speech to the Conservative Party Conference can be found at:
http://www.politicshome.com/uk/article/105598/chris_grayling_speech_to_the_conservative_party_conference.html
Drugs: international comparators
The Home Office has published an international comparative policy paper on drug-related issues (30 October 2014). The introduction to the paper notes:

There is robust evidence that drug use among adults has been on a downward trend in England and Wales since the mid-2000s. This trend seems to be reflected in drug use among children of school age. While, historically, levels of drug use in the UK have been relatively high, there are signs that, following several years of declining use, levels of drug use in this country are close to the European average (p.4).

The paper draws on a 2010 report which looked at changes in the use of criminal justice system resources in Portugal since decriminalisation there. The report concluded there had been a reduced burden of drug offenders on the criminal justice system, highlighting that the proportion of drug-related offenders in Portugese prisons (including people convicted of crimes to fund drug consumption) fell from 44% in 1999 to 21% in 2008. The report also noted that the number of drug law cases brought to court fell sharply following decriminalisation.

There are difficulties in comparing the success of drug policies in different countries due to cultural, social and political variations effecting legislation, policing and sentencing. Nevertheless, the report makes the following observations:

- Following decriminalisation in Portugal there has not been a lasting increase in adult drug use. Looking across different countries, there is no apparent correlation between the ‘toughness’ of a country’s approach and the prevalence of adult drug use.
- There is evidence from Portugal of improved health prospects for users (e.g. significant reductions in the number of new diagnoses of HIV and AIDS among drug users), though these cannot be attributed to decriminalisation alone.
- It is not clear that decriminalisation reduces the burden on the police. Portugal appeared to apply similar police resourcing to drugs after decriminalisation as before.
- There are indications that decriminalisation can reduce the burden on criminal justice systems. Since decriminalisation, Portugal has reduced the proportion of drug related offenders in its prison population.

The report Report on the 2013 to 2014 international comparators study of approaches to drug-related issues by the UK and other countries can be found at: https://www.gov.uk/government/publications/drugs-international-comparators

Review of New Psychoactive Substances
The Home Office has published an evidence review of new psychoactive substances (NPS). It reports that mephedrone use tends to be higher than other types of NPS. Perhaps surprisingly, the Crime Survey for England and Wales (CSEW) reports that mephedrone
use has fallen since measurements began in 2010/11. The review covers topics such as the characteristics of NPS users, the market for NPS, motivations for NPS use, health harms, social harms and evidence gaps.

BOOK REVIEWS
Edited by Jake Phillips & Anne Robinson

CULTURES OF DESISTANCE: REHABILITATION, REINTEGRATION AND ETHNIC MINORITIES.

Adam Calverley's book is a long-due addition to the criminological literature on desistance. In the last two decades, research on desistance has extensively dissected the elements of this process of change, identifying how both structural and personal factors come into play and influence the outcomes of this life-changing process. Despite these wide investigations, the factors associated with ethnicity have been left mostly unexplored, especially in relation to UK based research. Calverley's research represents a breakthrough in this direction and it is remarkably important as it poses the basis for reflection and further research on the cultural factors which affect desistance. This book would suit anybody interested in desistance, ethnicities, resettlement, and practitioners working with ethnic minorities.

This book explores the efforts to desist of a group of Indian, Bangladeshi, and Black and dual heritage males from the London boroughs of Hounslow, Tower Hamlets, and Lambeth respectively. The choice of limiting the sample to London and those ethnic groups is related to the pool of eligible participants in these boroughs. This choice reduces the possible comparisons which can be drawn across different minorities. Also, the choice of these London boroughs (as recognised by Calverley) might have affected the dynamics of desistance identified in the study, which might be affected by this social context more than ethnicity. In addition, while this research is about ethnic minorities’ experience of desistance, its findings are not simply restricted to those communities or naively generalised to each single ethnic minority. Calverley recognises the limitations of this research and brilliantly uses its findings for a wider reflection on the wider issues related to desistance research and the policies which must develop from it.

The research steps from Calverley's PhD thesis and, with this in mind, it is hard to fault this book. Surely the research would have benefited from a wider range of nationalities, a ‘control group’ of white Londoners, or of persisters from the same minority groups, or even a short longitudinal design. However, it must be recognised that it would have been demanding to add anything more to the already ambitious design of this research. Thirty-
three in-depth semi-structured interviews with ex-offenders have been conducted, together with ten interviews with professionals working with minorities. This design has given the opportunity to start exploring desistance, and contrast them between different ethnic groups and in relation to literature.

The book is a gem in relation to the theoretical coverage of the issues related to desistance and ethnicity. Calverley has succeeded in the effort to condense an extensive amount of literature in the space of a book. The book is a detailed exploration of the literature and a very thorough examination of the socio-economic, historical and sociological background of each single minority. The way Calverley writes and the structure of the chapters is very helpful in fully understanding the historical background from which these communities come from.

The same detailed approach is maintained throughout the book. Findings are presented separately for each minority and are articulated in a manner that shows the wealth of knowledge and analytical thinking which has gone in writing this book. The analytical strategy adopted in chapters 4, 5, and 6 draws from the historical structural-personal dichotomy usually found in literature, discussing the main social and personal factors involved in desistance. The author goes a step further in the following chapter 7. Embracing the latest developments in desistance research (promoting a more holistic approach in the analysis of the factors related to desistance), this chapter is organised in three sections looking at the macro, meso and micro factors involved in desistance. With socio-historical, economic, and social policy attitudes included in the macro-level; community and neighbourhood, and religion at the meso-level; and agency, identity, family, and hooks for change at the micro-level. This analytical approach is what makes this book outstanding in comparison to previous desistance literature. This overview remarkably focusses on a neglected portion of population, and, also, the contemporary attention to these three levels of analysis represents a useful analytical and narrative device for two interconnected reasons: first, it reminds the reader (and especially researchers interested in personal change) that even the most individual or psychological event is closely interdependent and interconnected to the social background in which it takes place; second, that to fully understand the process of desistance, one has to keep track and analyse both at the individual and the social (or structural) level. This need becomes evident when trying to translate research findings in policies aimed at promoting desistance. For example, as highlighted in this research in the case of black and dual heritage desisters, the indications for practitioners to support the (re)establishment of family ties must be accompanied with enhancing personal development and the support in entering in the job market: the desisters from this minority background highlighted how family support for the necessary process of embracing a new non-criminal identity is conditional to obtaining recognition from the social context, for example, by finding a job. This was the cause of much distress for Calverley's interviewees as, because of factors at the meso and macro level, the ‘hooks for change’ needed were almost absent. Also, widely recognised factors supportive of desistance, such as the ‘knifing off’ from the criminal peers did not reach the desired effects showed in previous desistance research; rather, moving away from London was associated to increased racism and negative effect on their prosocial identity.
In summary, this research satisfactorily sheds some light on the processes of desistance of three main ethnical minorities. It shows how social and cultural factors, such as family, religion, or the neighbourhood, can have a significant effect on desistance. It also shows how the desisters' specific situation impacts upon the effects of structural and personal factors, which have long been associated to success in the process of desistance and should not be taken for granted. This book, besides being a must have, is an eye opener, and a cornerstone for future research in desistance.

Fabio Tartarini, PhD candidate, Cambridge University
RESTORATIVE JUSTICE IN TRANSITION

This is a book that takes on a challenging and important academic debate about ‘Justice’ and the ‘power over Justice’ and it draws our attention to the application of Restorative Justice in both local interpersonal settings (micro) and transnational contexts (macro) - concerned with the abuse of human rights, political crime and regime change. The book examines the corresponding problems and limitations of Restorative Justice and Transitional Justice, and asserts the need to move beyond the constraints of democratic and transitional literature to understand Transitional Justice as a response to issues of systemic conflict and oppression.

Clamp hopes to clarify how Restorative Justice can contribute to the transformation of conflict in transitional settings and suggests a ‘more ambitious transitional agenda’ (Clamp, 2014:8) centred on the values of engagement, empowerment, reintegration and transformation. However, the combined study of Criminal Justice, Restorative Justice, and Transitional Justice is problematic. Clamp's work is very ambitious, and remains inconclusive about the role of Restorative Justice as a mechanism to tackle the complexities of larger inter/national conflict, state crime, and institutionalised peace-building.

Clamp's work is well researched, easy to read, and supported by a variety of useful examples from the fields of RJ and TJ that include accounts of Truth and Reconciliation commissions, trials, financial compensation, amnesties, and indigenous practice. She argues vigorously for an understanding of ‘Justice’ that is concerned with the relationships between individuals and the state; and critically reflects on the dynamics of political power and the appropriateness of state intervention. Each chapter encourages us to understand the interpersonal and wider relations of contested transitional settings in order to consider ‘the structures that influence and constrain us [...] as well as the systemic injustices that need to be addressed’ (Clamp 2014:16).

The first two chapters provide a coherent outline of the issues and dilemmas present in RJ, in particular when it is approached as part of transitional settings. Clamp captures the shift in conventional thinking about CJ and highlights the emerging theory and practice that has accompanied the growth of alternative or restorative strategies for CJ with regard to victimization, offending, and reparation.

In chapter three, Clamp starts to outline a theoretical framework for RJ in TJ expressed as four key values - Engagement, Empowerment, Reintegration and Transformation. We are encouraged to think of these as potential values for action ‘that should be central to any response to international crime, and [...] contribute to peace-building and democratisation’ (Clamp, 2014:32). Such values can help to articulate a process orientated towards self-determined reconciliation/resolution, inclusive dialogue, mutual rights and responsibilities, and sustained reintegration. Nevertheless, Clamp's work is weakened by
the use of terms such as 'values', 'steps' and 'stages' as they are not clearly defined and seem interchangeable.

The remaining chapters are primarily concerned with what is achievable through the application of RJ in transitional settings, and the potential of what Clamp describes as the ‘restorative community’ in transitional settings. What follows is a robust examination of the role of RJ and TJ in moving individuals, communities, and governments, towards the ‘promise of ‘justice and democratic rule’ (Clamp, 2014:51). TJ is explored within local settings and transnational contexts concerned with the abuse of human rights, political crime, regime change, peacebuilding, and democratization. Clamp scrutinizes the competing agendas of RJ within transitional settings, and explores the ways in which stakeholders take action in accordance with differentiated perspectives, participation, power, interests and needs. Her discussions are very informative and reiterate a need to deconstruct prevalent Eurocentric ideological codes of legitimacy, legalism and law.

The author’s voice becomes clear during the concluding chapter, as Clamp argues for RJ to be appreciated as a theory of ‘Justice’ that challenges the ‘hegemony over justice practices’ (Clamp, 2014:118) and the ‘Western architecture of ‘Justice’ (Clamp, 2014:120). Clamp reiterates the transformative value of RJ and stresses the need for theorists and practitioners to critically examine the existing ideological premise of TJ and RJ to prevent it translating in ways that disenfranchise conflicted communities and leave state crime uncontested. As part of her on-going discussion, Clamp clearly hopes that CJ and RJ will evolve to challenge and redress the systemic injustices resulting from the structural causes of conflict and crime.

Unfortunately, Clamp does not provide a methodological argument for how these ideas might be developed. There is some suggestion that top down TJ mechanisms are useful to deal with past conflict and formally legitimise institutional justice; whereas bottom up community-based approaches can facilitate a greater individual sense of reparation and justice. Similarly, the United Nations is referred to as a useful source of codes of practice that may be translated into local culture as part of community projects (such as the Zwelethemb model) to ‘harness local knowledge and facilitate local actors to develop, engage with and pursue outcomes that are both relevant and sustainable’ (Clamp, 2014:123).

Clamp’s work offers a theoretical analysis of the ideas and methods applied to RJ and TJ. Hopefully, it will help to generate a discourse that brings us closer to a practical awareness of how RJ can be applied to influence the systemic injustices inherent in the complexities of larger inter/national conflict, state crime, and institutionalised peace-building. Overall, Clamp’s work is a timely critique of the current understanding of Restorative Justice and makes a useful contribution to the analysis and theorisation of Restorative Justice and Transitional Justice. It will be valuable for students, academics, practitioners, and anyone interested in the wider issues of criminology, peacebuilding and human rights.

Michael Ogunnusi, Part-Time Lecturer in Youth and Community, and Education, De Montfort University
ORGANISED SEXUAL ABUSE

Salter's first book, Organised Sexual Abuse, is an ambitious attempt to provide a comprehensive account of paedophile networks, their means of operating, and their effects on victims. Whilst Salter ensures that a range of academic perspectives are included throughout the book, its most notable feature is the presence of extensive, first-hand accounts from victims; often graphic, and always harrowing, it is the inclusion of these first-person narratives which makes Organised Sexual Abuse both compelling and disturbing. Salter provides a unique insight into some of the most extreme forms of group sexual exploitation, and through eliciting responses from those subjected to this abuse, he ensures that his book is an authentic account of a sensitive area of study.

Organised Sexual Abuse is divided into ten principal chapters, with each chapter containing various sub-divisions. Whilst this guides the reader through the subject matter, the headings and sub-headings of the chapters themselves are not in English. Although this is most probably a typographical error, it leads to difficulty when navigating oneself through the book, especially since the Contents and text of the book are both in English. With the exception of this oversight, Salter provides a comprehensive account of several forms of group paedophilia: ranging from incestuous abuse, to institutionalize paedophile groups, satanic child-abuse gangs and child-murder. Although Salter includes some data on the group sexual abuse of adults, the book's main focus is on child-victims.

The first four chapters provide the reader with a detailed theoretical background to the subject; Chapters One and Two present a review of the existing literature, and contextualize the current findings through including the opinions of practitioners. Chapter Three goes on to provide an historical account of the origins of sadism, child abuse and abuse more generally. The information provided is detailed, and is representative of the more sociological approach which Salter adopts throughout the book. Although much of the existing work on child sex-abuse is more psychological/quantitative in its nature, Salter's qualitative methodology provides this topic with a 'human' context, revealing abuse through the eyes of survivors and victims. It is from Chapter Five that these accounts begin in earnest, starting with a harrowing case-study of the author's friend 'Sarah', and her prolonged exposure to organised abuse as a child and as an adult. What makes this chapter particularly compelling is that the author himself was friends with 'Sarah' during a period of this abuse. He was, therefore, a witness to the aftermath of her abuse and the stalking she was subjected to. This level of proximity between author and victim of crime is unusual in an academic text, yet it only serves to increase the vividness of the chapter.

The following chapters contain the testimonies of several abuse victims, often including detailed recollections of the horrifying abuse they were subjected to. Readers who have not studied this area previously ought to be warned that some of participants’ accounts are particularly graphic, although this is an inevitably when studying this topic; it is also something which Salter acknowledges towards the end of the book (p.175). However, one criticism of Salter's work is the absence of any perspectives other than those of abuse
victims. Indeed, Salter concedes that “some readers may find it a curious or even unscientific endeavour to craft a criminological model of organised abuse based on the testimony of survivors” (p.4). This criticism, however, is not because such accounts cannot be believed, but rather, because including the perspectives of practitioners and other experts might have added another dimension to the text. Taking into account the tone and overall aim of the book, it clearly would not have been appropriate to interview abusers themselves. However, data from some individuals other than the abused would have been a desirable feature. One further criticism is the lack of methodological detail. Although Salter includes a four page 'Research Methodology' in the Appendix of the book (p.177-181) this feels like more of a methodological note. It would have been interesting had Salter explained, in more detail, how he gained the trust of participants and developed rapport, especially as this is such a sensitive area where victims often feel shame to discuss their abuse. It should be noted, however, that such a discussion is undertaken in Chapter 5, the case-study of Salter's female friend: in many ways the standout chapter of this book.

These criticisms notwithstanding, there are many positive aspects of the book. In particular, the issue of how victims often face scepticism for official bodies is a theme that runs throughout the text; Salter documents the 'rise of the “false memory” movement' (Ch.4), and how this led to endemic problems around victims of abuse not being believed. A further notable strength of the book is the strong theoretical framework which runs through it, but does not compromise the primacy given to victims' accounts. Although such data may prove shocking, the overall tone of the book never appears to be sensationalist. Rather, the topics are dealt with sensitively and methodically. Salter also describes, in detail, the roles played by gender and power in the sexual abuse of minors.

Overall, Organised Sexual Abuse provides a valuable insight into the abuse of minors by paedophile groups. It is accessible to both academic and non-academic audiences, includes a range of theoretical perspectives, and describes various types of group sexual abuse. Any weaknesses in the text are eclipsed by the rigour with which the subject is scrutinized, and it is clear that Salter feels strongly about this emotive topic.

Dev R. Maitra, PhD Candidate in Criminology, University of Cambridge
CAPITAL PUNISHMENT IN TWENTIETH CENTURY BRITAIN: AUDIENCE, JUSTICE, MEMORY

In 'Capital Punishment in Twentieth-Century Britain' Lizzie Seal has produced a fascinating, well researched and wide ranging book which examines the complexity of public perceptions of and responses to the perpetrators of crimes which did or once would have attracted the death penalty. This is a book about the everyday meanings and cultural life of capital punishment in twentieth-century Britain.

The disappearance of the gallows from public view is the start point for this book. The end of execution as public spectacle in 1868 meant that the event itself whilst directly experienced behind prison walls by very few continued to be experienced by the wider population largely through imagination and representation. Lizzie Seal is interested in how people's experiences of execution by the state have been transformed over the decades since its withdrawal from public view.

In chapters one and two, having offered an overview of capital punishment since 1868 and an examination of how in the twentieth century, executions were accessed primarily through the reading of newspapers, the author addresses the continuing role of capital punishment as entertainment and the anxieties this raised primarily around ‘taste’. Chapters four and five explore protest against the death penalty and public responses to capital punishment as expressed in letters to the Home Office about specific cases. In particular she focuses on the symbol of justice as crucial for articulating anxieties about capital punishment in mid-twentieth century Britain.

In Chapter six Lizzie Seal examines the political, legal and cultural significance of the Timothy Evans and Edith Thompson cases. Seal contends that in the years following their executions the cases of Evans and Thompson became 'emblematic of the failures and horrors of the death penalty' (p.122), Here Seal draws on Avery Gordon's concept of haunting to analyse how the 'seething presence' of Evans and Thompson returned following their deaths and continues to cast a ghostly shadow. Seal acknowledges that Evans and Thompson were not the only examples of 'haunting'. Other high profile cases such as those of Ruth Ellis, Derek Bentley and James Hanratty could be viewed through the same lens but as she contends, focussing on Evans and Thompson allows her to analyse themes of gender, horror, justice and error.

In chapter seven the author explores capital punishment's continuing place in British culture, examining competing perceptions and understandings and addresses the continuing support for capital punishment particularly in relation to terrorism. As Seal contends the bombings in England in the 1970s and in particularly the bombings in Guildford and Birmingham stirred pro death penalty sentiment with capital punishment being discussed in the House of Commons and some MPs claiming that the bombings had led them to revise their abolitionist views. There are clear echoes here of public, media and political responses to the murder of Drummer Lee Rigby in 2013.
Lizzie Seal notes that if the bombings of the mid 1970s were a key impetus to retributive sentiment and debate about restoration of the death penalty, the imprisonment of Myra Hindley and Ian Brady in 1966 'provided an enduring symbol for unslaked retributivism' (p.150). In the year after abolition the maximum sentence for Hindley and Brady could be no more than life imprisonment. Seal examines the response to that sentence particularly in relation to Hindley, the eventual imposition of a whole life term and the striving for some sort of equivalence in retributive justice terms.

Seal then explores the legacy of unease that miscarriages of justice have left us with. Gerry Conlon died in June 2014 but as Seal points out he would have been killed by The State forty years ago. Seal examines the significance of early 1990s films such as 'Let Him Have It' and 'In The Name Of The Father’ in highlighting miscarriages of justice and the eventual quashing of convictions of people who would had been executed or would have been executed if they had been convicted prior to abolition. Seal concludes this splendid chapter with an examination of perceptions on this side of the Atlantic of the death penalty in the United States and the significance of film portrayals such as 'Dead Man Walking' and 'The Green Mile'.

The final chapter offers an examination of cultural memories of capital punishment using oral history interviews from the Millennium Memory Bank and from interviews conducted for the BBC radio series 'A Century Speaks'. Here a deep public ambivalence is revealed, very much reflecting chapter seven with competing themes around the need for capital punishment and concern about miscarriages of justice.

This widely sourced, thoughtful and resonant work should appeal to historians, psychologists, as well as legal and criminal justice academics, students and practitioners. In truth Lizzie Seal's book would be a very fine read for anybody with an interest in the subject matter and that must surely include us all?

*Chris Cody, Social Work Practice Learning Tutor, Bradford University*
PROBATION: KEY READINGS

Probation occupies a crucial central role in the criminal and community justice system in England and Wales. For much of the 20th century, the probation service has operated as a relatively benevolent justice agency which was primarily focused on changing, rather than containing, its service users. As probation moved beyond its centenary, however, the agency was metamorphosing into a different institution to that fashioned by the early community rehabilitation pioneers. An agency which had embraced advising, assisting and befriending its service users was undergoing a perceptible shift towards a culture which privileged compliance, enforcement and actuarial risk assessment. To illuminate and enhance our understanding of the range of factors which have influenced this process, George Mair and Judith Rumgay have compiled and edited an essential collection of ‘key readings’ and seminal texts on probation.

In terms of structure, the material is presented in six sections, each of which is prefaced with an incisive, reflective and analytical introduction by the editors. The first section portrays what is, in essence, the official account of probation’s development since its inception, with readings meticulously selected in order to illuminate key policy shifts throughout the century. They range from the groundbreaking Probation of Offenders Act (1907) to the Ministry of Justice’s Capacity and Competition Policy for Prison and Probation (2009), via the strategic framework document A New Choreography (National Probation Service, 2001). The Choreography reflected the new model probation service, replete with ‘strategic imperatives’ and ‘stretch objectives’, and pinpointed the goal of developing a new organisation ‘designed and reconstructed in every way... We want the image of the Service to be that of a ‘hawk-like professional’, sharp and keen-eyed...’ (National Probation Service, 2001:8). The implication appeared to be that probation was previously insufficiently professional, inadequately focused on risk due to its perceived preoccupation with rehabilitation, and ultimately lacking in ‘hawk-like’ vigilance. The era of managerialism and risk assessment had arrived.

Having explored the official account, Section two reflects a range of alternative perspectives on the history and development of probation and other community sentences. These accounts are always instructive and sometimes fascinating. They include Young’s sociological account, which argues that probation developed in 19th century England as a consequence of class relationships. The third section of the book considers a range of theoretical perspectives, not least of which is ‘Tailgunner’ Parkinson’s disarming frank account of his practice with service users: ‘I give them money.’ Parkinson’s confession, originally published in 1970, led to his suspension (though following an unprecedented outbreak of common sense he was reinstated). The confident juxtaposition of Parkinson’s pragmatic frontline perspective with, for example, the Home Office’s Statement of National Objectives and Priorities for Probation (1984) is one of the real strengths of this book, and demonstrates the editors’ absolute command of their material. Rather than a dry official account, the reader is left with a strong sense of the editors’ vital engagement with the debate about what probation actually does.
Section four’s focus is on the nuts and bolts of intervention. It delineates a range of approaches to the coal face of practice, including groupwork, drug treatment programmes, day centre work, intensive supervision projects, and all manner of innovative community engagement. This section features Millard, whose elegiac observations on the primacy of reintegrative work in the 1970s offer an authentic flavour of probation’s crucial social importance and the nature of frontline practice predating the era of compliance. He notes that the service users who attended

‘...most frequently and most enthusiastically were the poorest, least able, and least articulate people, frequently lost and bereft, with no sense of community and no real sense of aspiration for the future... They did not come as a consequence of ‘conditions’, but because of what was offered, and sometimes they began to discover the possibility of a voice and a quality of life... which they had not known before.’ (p.341)

The fifth section explores the theme of diversity. The editors point to the dearth of detailed accounts focused on diversity from frontline probation practice. Two absorbing contributions from Lawson and Carlen point to the problems which may arise when potentially sensitive areas of frontline practice (race and gender respectively) are opened up to the outside observer.

Finally, section six explores the arguments around ‘effectiveness’. The contemporary probation service has witnessed the establishment of a thoroughly marketised environment, preoccupied with the exhibition of effectiveness, in which key performance indicators and a culture of targets have been predominant. However, for the first half of probation’s existence, the effectiveness of intervention was virtually unquestioned; it was simply taken for granted. The book includes the first serious assessment of probation’s effectiveness, which was undertaken in 1958 by the Cambridge Department of Criminal Science in collaboration with the Home Office. This enables the reader to view the advent of What Works in the early 1990s as part of a continuum. The inclusion of the seminal 1974 article by Martinson, so often identified as the high priest of Nothing Works (not least because he is so often cited, but perhaps less frequently actually read), is also refreshing. The book also features incisive contributions from Mair, Raynor and Stanley, which summarise the debate around effectiveness.

While this capacious volume is both sweeping in scale and ambitious in scope, the authors note that they intended the book to ‘ground and contextualise’ developments in probation, rather than add to the plethora of existing commentaries on those developments. This exhaustive volume never fails to achieve this aim. It is a timely publication that has particular resonance today, with the government poised to jettison much of probation’s hard-won public sector rehabilitative experience. Critics have argued that outsourcing probation work privileges profit and ideology at the expense of public safety, and this reader, at least, would have welcomed a little more political contextualisation and discussion of the linkage of the erosion of probation’s original reintegrative ethos with neoliberal policies. However, it seems churlish to point this out. The sheer scale of the editors’ enterprise means that some difficult, albeit necessary,
choices have been made in order to compress over a century of rehabilitative endeavour into just 542 pages.

Mair and Rumgay deserve our thanks for providing this definitive set of key readings, which combine to illuminate and deepen our understanding of the invaluable social contribution rendered by probation. When probation is thriving, communities benefit, offenders are rehabilitated and the creation of future victims is prevented. This superb volume offers a comprehensive, instructive and authoritative depiction of the evolution of probation policy and practice, and provides ample evidence of the tenacious survival of probation’s deep-rooted rehabilitative culture. As such, it is essential reading for academics, students, practitioners, and anyone who cares about the reintegrative ethos underpinning probation. Should a copy happen to find its way onto the Justice Secretary’s desk, Chris Grayling will also find much to ponder in this admirable book.

Michael Teague, Senior Lecturer in Criminology, University of Derby
References